

**HOOPA VALLEY TRIBAL COMMENTS ON
F.1.e Tentative Adoption of 2019 Management Measures for Analysis**

The Hoopa Valley Tribe (Tribe) thanks the Pacific Fishery Management Council (Council) for this opportunity to speak regarding adoption of management measures for analysis of 2019 salmon fisheries. In our report, the Tribe advocates for Alternative 2 as described in Pre-Season Report II, discusses innovative management concepts for terminal fisheries in Klamath River and responds to concerns raised by Yurok Tribe regarding inter-tribal harvest sharing.

The Tribe supports adoption of Alternative 2 because it would optimize access for tribal fisheries in Klamath River, adequately conserve Klamath River Fall Chinook (KRFC) and minimize collateral mortality to Endangered Species Act (ESA) listed Southern Oregon and Northern California Coastal (SONCC) Coho in Chinook directed marine fisheries.

As modeled in STT's Pre-Season II Report of March 2019, Alternative 2 would yield approximately 32,500 to Klamath River tribal fisheries. Further, as discussed in March, the Tribe supports achieving the Maximum Sustainable Yield (MSY) escapement for KRFC this fall. Amendment 16 of the Pacific Coastal Salmon Fishery Management Plan clarified that 40,700 natural area adult spawners are needed to produce MSY for KRFC. The draft rebuilding plan for KRFC, presented to the Council at this meeting, indicates marginal benefits for timeframes to achieve rebuilt status when comparing status quo management (i.e. 40,700 S-MSY) with progressively increased conservation objectives and harvest control rules. The draft plan identifies a comparable likelihood for achieving rebuilt status under status quo alternative within 6 or 7 years.

As the Council is aware, the Tribe has expressed concern over the manner in which impacts to SONCC Coho have been calculated in 2018 and again in 2019. While we continue to object to the procedures used to estimate SONCC Coho non-directed impacts, Alternatives 1 and 2 limit impacts to 5.8% while Alternative 6 as currently modeled produces an impact in excess of 6%.

The Tribe continues to explore creative solutions to facilitate meaningful fisheries for our membership including appropriate mitigation, selective harvest, and river-by-river, run-by-run harvest management. The Tribe is pursuing these issues in response to increasing environmental and human caused challenges. It appears that California may soon be emerging from a multi-year drought and ocean conditions may be improving providing much needed relief to naturally produced fish in our watershed. At the same time, the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS) recently issued a new Biological Opinion (BO) for the Klamath Irrigation Project operated by U.S. Bureau of Reclamation (BOR). We have significant concerns regarding the BO and the process leading to its execution.

The Council may recall that our Tribe initiated legal action against BOR and NMFS in 2016 because of the agencies' failure to curb incidental take of Coho. Other plaintiffs joined our effort and the court ultimately directed the agencies to reconsult based upon new information regarding disease infection rates among federally protected Coho salmon. Since late summer 2017, the Tribe participated with NMFS, FWS and BOR in a court-ordered re-consultation that would

support the continued existence and eventual restoration of SONCC Coho salmon. However, in fall of 2018 the call for accelerated consultations by the administration resulted in an abbreviated process limiting meaningful participation by the Tribe and other litigants. We are greatly concerned with what is lacking in the current BO. Proactive measures to ensure adequate flows to inhibit future disease outbreaks among out-migrating salmonids are absent. Accordingly, the Tribe continues to pressure BOR to implement flow mitigation measures when opportunities such as favorable hydrology arise.

The rapid evolution of the Klamath Project Re-Consultation is comparable to other fast-tracked ESA permitting actions implemented recently by NMFS affecting our fishery. For example, in 2018 NMFS supported the recommendation of this Council to implement a novel method for calculating SONCC Coho impacts in non-Coho directed fisheries. As the Council is aware, this issue is currently being litigated by the Tribe.

Additionally, in 2017 NMFS approved a modification to the operations of the Willow Creek fish counting weir requested by California Department of Fish and Wildlife (CDFW). The modification involved impeding the upstream migration of all Trinity River fish above the Hoopa Valley Reservation on a 24-hours-a-day / 7-days-per-week basis to facilitate a census of adult salmon. Federally protected Coho salmon are affected by this action, yet this permit was approved within a few months.

Pending before NMFS are two other fast-paced re-consultations. The Central Valley Project (CVP) Operations, Constraints and Procedures (OCAP) and a recently completed draft Hatchery and Genetics Management Plan (HGMP) for the Trinity River Hatchery (TRH) Coho program submitted jointly by BOR and CDFW. Both plans are expected to be approved by NMFS by fall of 2019. The OCAP contemplates the effects of CVP upon listed Sacramento winter-run Chinook while ignoring effects upon SONCC Coho which are affected by the project due to significant Trinity River exports to the CVP. Meanwhile, the draft HGMP effectively trades a reduction in numbers of mitigation fish against the Tribe's interest to implement selective harvest of TRH adult Coho.

In contrast to the fast-paced permitting and review of complex actions proposed by the BOR and CDFW, the NMFS continues to procrastinate in meaningful engagement on the Tribe's selective harvest plan. We remind the Council that the Tribe requested formal consultation with NMFS in 2015. This winter, NMFS informed the Tribe that our proposed action would require considerable scrutiny and perhaps an additional two-year process to fully evaluate. We find this double standard troubling, particularly given the relative magnitude of the Tribe's plan when compared with the sweeping actions implemented by BOR in Klamath and potentially in the CVP.

Many concerned with the fate of west coast Chinook fisheries are eying removal of aged hydroelectric dams on Klamath River with great optimism. The Tribe shares this optimism but cautions that there will need to be measurable benefits as we move into the post-dam removal era after 2021. There remains great uncertainty with regard to the ecological changes that will beset the basin upon removal of the four affected dams in the upper Klamath basin. While parties to the Klamath Hydroelectric Settlement Agreement (renewed in 2016) have prescribed suspending mitigation 8 years after dam removal, the Tribe remains adamant that there will need to be

compelling evidence to justify elimination of the approximate 6-million annual Fall Chinook salmon production at Iron Gate Hatchery.

Tribal staff recently attended a Klamath fish reintroduction strategy meeting hosted by the Oregon Department of Fish and Wildlife (ODFW). Efforts by ODFW to organize a discussion on recolonization of salmon after dam removal is greatly appreciated. Passive reintroduction of KRFC is being advocated by the agency. Unfortunately, clear timelines and objectives are poorly developed at this time and the plan lacks coordination among affected states, federal and tribal co-managers.

As in the case of Trinity River Hatchery, the Tribe regards mitigation as a contemporary necessity to supplement harvest in light of habitat loss. While the removal of Klamath Dams will restore considerable habitat to fish, there will remain many uncertainties with regard to sedimentation downstream and water quality upstream of the removed dams. Quantifiable objectives need to be developed to which progress may be measured as we enter the post-dam removal era to ensure the strength of our future fisheries.

Related to the removal of the Klamath Dams were the adoption of compromised instream flows embraced by signatories of the 2010 Klamath Basin Restoration Agreement (KBRA). The Tribe chose not to compromise adequate flows for fish protection and did not sign the KBRA. While the KBRA ultimately failed in 2015 due to the lack of enabling legislation, the 2013 BO for Klamath Project operations adopted equivalent flow volumes (U.S. Department of the Interior, Supplemental Impact Report, Klamath Facilities Removal Environmental Impact Statement/Environmental Impact Report, State Clearinghouse #2010062060, March 2016). Today, the Council is informed by the draft Rebuilding Plan that among the causative factors suspected in the decline of KRFC were precisely the flows inspired by the failed KBRA!

The Tribe holds the signatory parties to the KBRA accountable for this disaster and points also to the commitments made in 2010 by those parties to modify their harvest levels should unanticipated declines in fish abundance occur under the terms of the agreement. While some may be eager to forget the past, our Tribe seeks accountability and reconciliation.

We have repeatedly asked that a central clearinghouse for Klamath Basin management issues be formulated among federal, state and tribal co-managers. The concept for a Joint Directorate would be patterned after regional fishery management councils and be served by technical and representatives of affected parties. In the interim, the Tribe has attempted to work directly with co-managers to advance innovative fishery management concepts including selective harvest and a river-by-river, run-by-run management strategy. We renew our call for these discussions with willing co-managers so that preservation of our Tribe's rightful entitlement to a meaningful fishery may be preserved.

There are claims being made that the Hoopa-Yurok Settlement Act (PL 100-580), which was enacted by Congress in 1988, gave the Yurok Tribe a permanent 80 percent guaranteed share of tribal fish allocation from the Klamath River. It says nothing of the kind. It must be understood that the HYSA is another sad story of historic federal mistakes, failures to protect senior tribal trust obligations, and need to resolve decades of federal shortsighted regulations and policies that were only designed to escape immediate problems without regard to their long terms implications.

The HYSA was not a law that allocated Klamath fish when it was enacted in 1988, but instead was a well-crafted comprehensive settlement of problems that started in 1891 and resulted in the longest running case in the U.S. Court of Claims of its times, more than 16 separate cases involving Indian fishing rights, questions whether federal protection laws could apply to children of Yurok descent and whether Yurok families could cross private lands to exercise fishing rights, and federal court orders preempting the Yurok Tribe from organizing a formal tribal government. Clearly, the HYSA includes far more than simply tribal allocation of Klamath fish.

So, what did the HYSA really do? Some things include:

- Formally recognized the decades of positive contributions of the Hoopa Valley Tribe to address and resolve problems associated with Klamath and Trinity fish and water management prior to the HYSA being enacted;
- Separated the Hoopa and Yurok Reservations based on aboriginal tribal origins, as was the original intent prior to the mistaken “technical” joinder of the Reservations in 1891;
- It transferred from Hoopa Reservation accounts nearly \$100 million to the Yurok Tribe;
- It set enacted mechanisms that could set aside Federal Court orders preventing the organization of the Yurok Tribal Government;
- It transferred several tracts of formerly federal lands for the use and benefit of the Yurok Tribe;
- Facilitated organization of the Yurok Tribal Government, created several funding opportunities for the Yurok Tribe that continue to benefit the Yurok Reservation today.

However, the HYSA did not create a legal allocation division between Klamath River fishery resources of the Hoopa and Yurok Tribes. It must also be recognized that it was not the HYSA that caused our present-day fish and water problems. Instead, the recent dramatic reductions in Klamath fish production caused by the KBRA which the Yurok Tribe agreed to. The Federal District Court has already determined that the 2013 Klamath BO flows, which were nearly identical to the KBRA flows, were illegal because of their detrimental impacts to ESA listed Coho salmon. Other chinook salmon that were in the Klamath River at the same time were also negatively impacted, resulting in the lowest Klamath fish returns on record. The KBRA parties, including Yurok Tribe, agreed to reductions in their harvest to mitigate for any negative impacts resulting from their agreement. Another part of the KBRA calls for the elimination of the Iron Gate Fish Hatchery, which support 37% of Chinook and 86% of Coho in the Klamath Basin. No one has stepped up yet to say that the reductions in hatchery fish will be mitigated by adjustments to their harvest share.

The KBRA also included provisions that its signatory parties would not hold the U.S. liable for damages to the fishery by implementing the KBRA agreement. The Yurok Tribe was a signatory to the KBRA but the Hoopa Valley Tribe aggressively opposed it and helped to prevent its permanent enactment by Congress. Had the KBRA 50-year water allocation agreement been enacted and made permanent, there would not be any fish left for us to be fighting over.

In summary, the Tribe supports Alternative 2 as presented in STT’s Pre-Season Report II. Our objectives will include accessing our share of the inter-tribal reserve of KRFC assuming a 40,700 natural area escapement conservation standard. We will continue to engage with co-managers to address innovative harvest management strategies and to ensure that habitat loss is adequately mitigated so that our fishery remains meaningful. Our objectives in 2019 will also include

selective harvest of hatchery marked Coho salmon consistent with our management plan provided to NMFS in 2015. The Tribe will continue to insist upon deference to tribal management plans as identified in Secretarial Order 3206 and seek the assistance of NMFS in the expedited adoption of our management plan.