



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

October 19, 2020

US Army Corps of Engineers
Sacramento Regulatory Division
Attn: Mr. Zachary Simmons
1325 J Street, Room 1350
Sacramento, CA 95814-2922

RE: National Environmental Policy Act Scoping for the Delta Conveyance Project

Dear Mr. Simmons:

The Pacific Fishery Management Council (Council) is submitting the following scoping comments for the Army Corps of Engineers (Corps) National Environmental Policy Act (NEPA) analysis for the construction of California Department of Water Resources' proposed Delta Conveyance Project (DCP)¹.

The project includes various configuration options, all of which include construction and operation of a new North Delta Diversion facility, consisting of two diversion intakes in the Sacramento River south of Sacramento for the conveyance of water to the existing State Water Project pumping facilities in the South Delta. The volume of water to be diverted from the Sacramento River by the DCP is not specified at this time but is proposed to be between 3,000 and 7,500 cfs. The estimated permanent impact to wetlands and other waters from the construction of the project is over 240 acres, with another 100 acres temporarily impacted by fill associated with the construction project.

The Corps scoping materials indicated request for comments related to "...probable impacts on the aquatic environment and the secondary and cumulative impacts."² The Council notes the proposed project will have permanent impact to designated essential fish habitat³ (EFH) for salmon and likely have secondary and cumulative impacts to salmon EFH and Council-managed fisheries from the construction and operation of the DCP.

Council Authority under the Magnuson-Stevens Fishery Conservation and Management Act Authority

Under Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Council is charged with designating EFH and commenting on Federal agency actions that affect EFH for Council-managed species. For activities that the Council believes are likely to

¹ See 85 *Fed. Reg.* 51420 et seq. (August 20, 2020).

² See The Permit Process for the Delta Conveyance Process, <https://www.spk.usace.army.mil/Missions/Regulatory/Delta-Conveyance/>

substantially affect the habitat of its anadromous species managed salmonids, the Council is obligated to provide comments (MSA §305(b)(3)) on impacts to EFH.

The MSA also requires Federal agencies, including the Bureau of Reclamation and the Corps, to consult with the National Marine Fisheries Service (NMFS) on all proposed actions that may adversely affect EFH (MSA §305(b)(2)) to avoid, minimize, mitigate, or otherwise offset those adverse effects.

Habitat Concerns

Sacramento River fall-run Chinook Salmon support tribal, commercial, and recreational ocean and freshwater fisheries and are the largest contributor to harvests in both California and Oregon ocean fisheries. The Council manages these ocean fisheries to protect Central Valley winter-run and spring-run Chinook salmon from the Sacramento River basin in accordance with Endangered Species Act (ESA) consultation standards. Therefore, the Council is concerned that any impacts to EFH may reduce the productivity and abundance of fall-run Chinook salmon and ESA-listed Central Valley winter and spring-run Chinook salmon.

The Council is particularly concerned about negative impacts to EFH and Council-managed fisheries due to the diversion of water from the Sacramento-San Joaquin Delta. The diversion of water should be evaluated in the NEPA process from the perspective of both direct and cumulative impacts on EFH. Water withdrawals will adversely affect the complex channels, floodplain habitats, and estuarine habitat areas designated as “habitat areas of particular concern” for their importance as migratory and rearing areas for salmon.

The NEPA analysis should include the potential of water diversion to impact juvenile salmon outmigration due to impingement and entrainment of fish at the North Delta Diversion and the impact of altered river flows affecting juvenile migration route. Analysis should also include potential increased water temperatures from lower flows downstream of diversion, reduced access to off-channel salmon rearing habitat resulting from lower flow levels, and limited rearing area for salmon in the lower Delta and San Pablo Bay due to increased salinity.

Any actions to increase water diversions from the Sacramento/San Joaquin River system without regard for the habitat needs of salmon will exacerbate an already dire situation for these stocks and the fishing communities that depend on them.

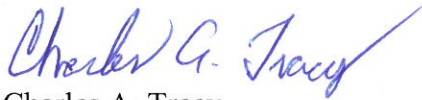
Conclusion and Request

The Council urges you to thoroughly evaluate the proposed Project’s impacts on EFH, including all areas of the Delta and the reaches of the Sacramento River upstream and downstream of the proposed project. Such an evaluation would include differential impacts to EFH of ESA-listed and unlisted Council-managed stocks mentioned above based on geography, life histories, or other factors in light of the reductions in salmon populations that have already occurred, and the impacts that the proposed operational changes pose to Council-managed fisheries and Council-designated EFH. In addition, the analysis should examine potential indirect effects such as improved conditions for predators of juvenile Chinook salmon.

We understand that the environmental impact statement for the DCP will be publicly available and that the Corps will be consulting with NMFS on the potential adverse impacts of the proposed DCP on EFH. We request that the Council be provided a copy of the EFH Assessment when it is submitted to NMFS. Further, this EFH consultation should be included in the final NEPA analysis upon which the record of decision will be based so that the decision maker, the public, and interested agencies and other parties are adequately informed of the impacts of the proposed action and any agency-recommended measures necessary to conserve EFH.

If you have any questions, feel free to contact me or Jennifer Gilden of my staff.

Sincerely,



Charles A. Tracy
Executive Director

JDG:kma

Cc: Pacific Council Members

Dr. Cathy Marcinkevage, Assistant Regional Administrator, California Central Valley Area,
National Marine Fisheries Service