



HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe
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Chairman Ryan Jackson

February 7, 2019

Via electronic submission

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220-1384

Re: Comments of Hoopa Valley Tribe on Draft 9 of Klamath River Fall Chinook Rebuilding Plan (dated January 2019)

Dear Pacific Fishery Management Council members:

The following comments are submitted by the Hoopa Valley Tribe regarding Draft 9 of the PFMC's Klamath River Fall Chinook (KRFC) Salmon Rebuilding Plan, dated January 2019. As part of the KRFC rebuilding plan, the Tribe urges the PFMC to develop and adopt a recommendation for action that would require PFMC to calculate incidental take of SONCC coho during the term of the KRFC rebuilding plan pursuant to the methodology consistently used by PFMC and NMFS prior to 2018 rather than using the new methodology that PFMC used and the Secretary adopted for the first time in the 2018 Management Measures. 83 Fed. Reg. 19005 (May 1, 2018).

The new methodology that PFMC used for the first time in 2018 to calculate incidental take of SONCC coho resulting from PFMC-regulated ocean Chinook (i.e., KRFC) fisheries is described in the April 2018 Salmon Technical Team (STT) report entitled "Investigation of Exploitation Rates on Rogue/Klamath Coho in Fisheries South of Cape Falcon." Use of the new methodology developed by the STT in April 2018 allowed PFMC to increase ocean harvest rates of KRFC in 2018 beyond the rates that would have been permissible under the previously-used methodology. Specifically, KRFC ocean harvest rates proposed in the 2018 Preseason Report II were limited to 7.9% - 9.0% due to applicable limits on incidental take of SONCC coho but were increased to 11.5% following the adoption of the new methodology described in the STT April 2018 report. This change in methodology also likely resulted in increased incidental take of SONCC coho, potentially beyond levels permitted by the 1999 Incidental Take Statement if such take were calculated in accordance with the previously-used (pre-2018) methodology. NMFS' adoption and reliance on the new methodology described in the April 2018 STT Report without reinitiation of formal consultation under Section 7 of the Endangered Species Act is the subject of pending litigation. *Hoopa Valley Tribe v. Ross*, Case No. 18-cv-6191-JSW (N.D. Cal.). A copy of the Tribe's Complaint and 60-day notice are attached for your reference.

In light of the overfished status of Klamath River Fall Chinook, and the need for the PFMC to develop and approve a strategy for rebuilding KRFC stocks which would necessarily include reduction in ocean harvest, and the pending litigation regarding the change in methodology for calculating incidental take of SONCC coho, the Tribe encourages

PFMC to abandon the new methodology described in the April 2018 STT Report for the duration of the KRFC rebuilding plan and to instead calculate incidental take of SONCC coho using the methodology that PFMC and NMFS consistently relied upon since issuance of the 1999 Supplemental Biological Opinion until the abrupt change in 2018.

Returning to the pre-2018 methodology for calculation of incidental take of SONCC coho would ensure that incidental take of SONCC Coho remains limited to levels consistent with the governing Incidental Take Statement and would also have the effect of reducing permissible rates of ocean-harvest of KRFC, which is consistent with the current goals and objectives of the rebuilding plan. Moreover, calculating incidental take of SONCC coho pursuant to the pre-2018 methodology during the term of the KRFC rebuilding plan (anticipated to last from two to four years) would allow PFMC and NMFS sufficient time to conduct formal consultation to determine whether the change in methodology proposed by the STT in April 2018 is scientifically defensible and appropriate for use in calculating incidental take of SONCC coho under the 1999 Supplemental BiOp/Incidental Take Statement.

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL

A handwritten signature in black ink, appearing to read "R. Jackson", written over a horizontal line.

Ryan Jackson, Chairman