



## HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe  
Post Office Box 1348 Hoopa, California 95546  
PH (530) 625-4211 • FX (530) 625-4594  
www.hoopa-nsn.gov

Agenda Item D.5.a  
Supplemental Tribal Report 1  
March 2019



Chairman Ryan Jackson

February 25, 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 2019 Salmon Management Measures**

The following comments are submitted by the Hoopa Valley Tribe in advance of the PFMC's March 6-12 meeting regarding 2019 salmon management measures. The Hoopa Valley Tribe, a sovereign federally-recognized Indian tribe, is located on the Hoopa Valley Reservation, which was set aside and reserved as a permanent homeland for the Tribe by the United States in 1864. The lower twelve miles of the Trinity River, as well as a stretch of the Klamath River near the confluence with the Trinity River flow through the Hoopa Valley Reservation. Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe and other Klamath Basin tribes. When the Hoopa Valley Reservation was created, the fishery was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett*, 663 F.2d 906, 909 (9<sup>th</sup> Cir. 1981) (quoting *United States v. Winans*, 198 U.S. 371, 381 (1905)). Today, the salmon fishery holds significant cultural, commercial, and economic value for the Tribe. The Tribe holds federally-reserved fishing rights in the Klamath and Trinity Rivers, and a federal reserved water right to support the fishery. *Parravano v. Babbitt*, 70 F.3d 539 (9<sup>th</sup> Cir. 1995); *United States v. Adair*, 723 F.2d 1394, 1411 (9<sup>th</sup> Cir. 1984). Adverse impacts to ESA-listed SONCC Coho that result from excessive incidental take of coho in ocean fishing directly impair and injure the Tribe and its sovereign, legal, economic, and cultural interests.

On February 7, 2019, the Tribe submitted comments relating to Draft 9 of the Klamath River Fall Chinook (KRFC) Rebuilding Plan. In addition, on July 18, 2018, the Tribe sent you a 60-day notice letter providing notice of alleged violations of the Endangered Species Act regarding the 2018 salmon management measures and specifically the impacts that the PFMC-regulated ocean fishery has on threatened SONCC Coho. The Tribe subsequently filed litigation in the Northern District of California against the Secretary of Commerce and the National Marine Fisheries Service (NMFS) alleging unlawful failure to reinstate consultation prior to promulgating the 2018 salmon management measures. The focus of that litigation, which remains pending, is on the change in methodology implemented for the first time by the Council and NMFS in 2018, without reinstatement of formal consultation, regarding calculation of incidental take of SONCC Coho in the ocean Chinook fishery. The new methodology utilized in 2018 was first described in the *Salmon Technical Team Report on Tentative Adoption of 2018 Management Measures for Analysis: Investigation of Exploitation Rates on Rogue/Klamath Coho in Fisheries South of Cape Falcon* (April 2018) ("STT Report"). Due to the continued failure to reinstate consultation, the Tribe is currently preparing a new 60-day notice letter that alleges PFMC, NMFS, and the

Secretary will be in violation of the ESA unless formal consultation is reinitiated prior to adoption of the 2019 management measures affecting SONCC Coho.

The comments in this letter focus on continuing impacts to SONCC Coho resulting from the PFMC-regulated ocean fishery and the continuing legal obligation to reinitiate formal consultation pursuant to Section 7 of the Endangered Species Act regarding the impacts of the ocean fishery on SONCC Coho. Specifically, the Tribe urges the Council to not utilize the methodology described in the April 2018 STT Report for the purpose of calculating incidental take of SONCC Coho in the 2019 Management Measures or in any subsequent years' management measures until the methodology is reviewed in a formal reinitiated consultation with NMFS. The revised methodology in the STT Report allows for more SONCC Coho to be incidentally taken than would be allowed under the prior methodology consistently used by PFMC and NMFS since at least 1999. Given the continued imperiled condition of SONCC Coho, as reflected in the most recent 5-year status review, there is no basis to permit additional SONCC Coho to be incidentally taken and certainly not prior to reinitiation of formal consultation with NMFS. Unless and until the new methodology contained in the April 2018 STT Report is reviewed and approved by NMFS in formal consultation, the Council should continue to calculate incidental take of SONCC Coho in the same manner that it did prior to 2018.

Adopting the change in methodology described in the STT Report makes it artificially appear that a lower percentage of SONCC Coho are being incidentally taken even though the lower rates of exploitation (as compared to exploitation rates in prior years) are arbitrarily driven down solely by the change in methodology. For example, the Review of 2018 Ocean Salmon Fisheries ("2018 Review") states that the projected exploitation rate for SONCC coho in all relevant fisheries was 5.7%, but it fails to mention that the projected exploitation rate was just under 13% when incidental take was calculated under the methodology consistently used prior to 2018 (See 2018 Preseason Report II). Upon receiving the change in methodology in the STT Report, the Council recommended increasing the permissible KRFC harvest in 2018 – a modification that would not have been legally permissible without the change in methodology. Specifically, in 2018, the Preseason Report II assumed that KRFC harvest rates of 7.9% to 9% would result in incidental coho take of 12.7% - 12.9%. But, after the change in methodology resulting from the April 2018 STT Report, the Council concluded that KRFC harvest rates of 11.5% would result in incidental coho take of 5.5%. Thus, the 2018 exploitation rates appear to be lower only because of the change in methodology. This is not explained in the 2018 Review.

In addition to directly resulting in increased amounts of incidental take of SONCC Coho, changing the way that incidental take is measured during the implementation of the governing Incidental Take Statement makes it difficult and potentially impossible to meaningfully compare exploitation rates in current and future years to the exploitation rates that were predicted or reported in years prior to the April 2018 STT Report. For example, a 5.7% exploitation rate calculated under the new methodology is likely not the same (in terms of numbers of fish incidentally taken) as a 5.7% exploitation rate calculated under the prior methodology. More significantly, an exploitation rate calculated to be 12.9% under the new methodology likely would have exceeded 13% and been in violation of the Incidental Take Statement under the old methodology (assuming identical levels of Chinook harvest). This significant change in methodology is new information that requires reinitiation of formal consultation with NMFS prior to its implementation.

The Tribe urges the Council to not utilize the methodology described in the April 2018 STT Report when calculating the predicted levels of incidental take of SONCC Coho resulting from the 2019 ocean Chinook fishery. Instead, the Council should continue to calculate incidental take pursuant to the methodology used prior to 2018. If the Council desires to use the new methodology in future management years, it must first reinitiate formal consultation with NMFS to obtain the expert agency's views on the appropriateness of the new methodology.

Sincerely,

HOOPA VALLEY TRIBAL COUNCIL

A handwritten signature in black ink, appearing to read 'R. Jackson', written in a cursive style.

Ryan Jackson, Chairman