



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

March 15, 2010

In response refer to:
2007/07325

Ms. Sue Fry
Area Manager
U.S. Bureau of Reclamation
Klamath Basin Area Office
6600 Washburn Way
Klamath Falls, Oregon 97603

Dear Ms. Fry:

This document transmits NOAA's National Marine Fisheries Service's (NMFS) final biological opinion (Opinion; Enclosure) based on NMFS review of the proposed operations of the Klamath Project from 2010 to 2018 and its effects on listed anadromous fishes and marine species, and designated critical habitats, in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Opinion is based on information provided in the Bureau of Reclamation's (Reclamation) October 2007 transmittal letter and biological assessment (BA), discussions between NMFS and Reclamation staff; comments received from Reclamation, USFWS, the Yurok Tribe and the Hoopa Valley Tribe; peer review reports from the Center for Independent Experts; and extensive literature review completed by NMFS staff. A complete administrative record of this consultation is on file at the NMFS Arcata Area Office.

Based on the best available scientific and commercial information, NMFS' Opinion concludes that the Klamath Project Operations are likely to jeopardize the continued existence of threatened Southern Oregon/Northern California Coast (SONCC) coho salmon and is likely to destroy or adversely modify their designated critical habitat. The final Opinion also concludes that Klamath Project Operations are not likely to adversely affect threatened Southern Distinct Population Segment (DPS) of green sturgeon or the threatened Southern DPS of Eulachon.

The ESA provides that if NMFS has reached a jeopardy, or destruction or adverse modification conclusion, it must identify a reasonable and prudent alternative (RPA) to the proposed action that is expected to avoid the likelihood of jeopardy to the species, and avoid destruction or adverse modification of designated critical habitat, if such an alternative action can be offered. NMFS includes with this Opinion an RPA that we believe meets all four regulatory requirements, as set forth in 50 CFR 402.02. NMFS and Reclamation have had extensive discussions on the preparation of the BA, the draft Opinion, and the draft RPA, and while Reclamation may have reservations with portions of the Opinion, NMFS also understands that it is a package that Reclamation can accept. On March 4, 2010, Reclamation requested that NMFS finalize its consultation consistent with "revised draft RPA2" that NMFS had provided to Reclamation in November 2008. Because this is a jeopardy Opinion, Reclamation is required [50 CFR 402.15(b)] to notify NMFS "...of its final decision on the action." NMFS, therefore, requests that Reclamation provide us with timely notification as to your agency's final decision.

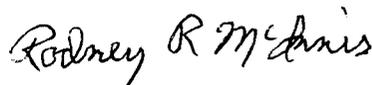


In addition, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, each Federal agency is mandated to consult with NMFS with respect to any action authorized, funded, or undertaken, or proposed to be, by such agency that may adversely affect any Essential Fish Habitat [EFH, 16 U.S.C. 1855(b)(2)]. In a November 14, 2007, letter to Reclamation, NMFS concluded that Reclamation's proposed operations of the Klamath Project would adversely affect designated Pacific Coast Salmon EFH (*i.e.*, Chinook and coho salmon) within the Klamath River basin. In a June 20, 2008, letter to NMFS, Reclamation concluded that it could not complete an analysis on the effects of its proposed action on Pacific Coast Salmon EFH since that action could be modified by a NMFS' reasonable and prudent alternative. Therefore, NMFS requests that once Reclamation provides NMFS with notification of its final decision regarding the enclosed Opinion, Reclamation also notify NMFS regarding its schedule to complete an analysis on Pacific Coast Salmon EFH so that we can proceed with an EFH consultation and provide EFH Conservation Recommendations, as necessary.

Finally, as NMFS stated in its June 3, 2008, transmittal to Reclamation, endangered *Orcinus orca* (commonly known as orcas or "killer whales") Southern Resident DPS could be affected by the proposed action since operation of the Klamath Project may affect the amount of prey for orcas (*e.g.*, Chinook salmon) during certain periods when orcas are feeding along the west coast. Although Reclamation has not yet submitted an assessment of the operation of the Klamath Project effects on Southern Resident DPS orcas, its preparation of analysis on Pacific Coast Salmon EFH should be useful for evaluating potential effects on orcas since Chinook salmon comprises a portion of the orca's diet. If Reclamation's assessment indicates that the Klamath Project may affect orcas, NMFS expects to consult with Reclamation to evaluate the potential effects of the Klamath Project on the Southern Resident DPS orca population.

Please contact Ms. Irma Lagomarsino at (707) 825-5160, if you have any questions.

Sincerely,



Rodney R. McInnis
Regional Administrator

Enclosure

cc: Copy to file: 151422SWR2008AR00148