

**Coordination Between the U.S. Fish and Wildlife Service (FWS) and NOAA's National
Marine Fisheries Service (NMFS) throughout the OCAP Consultation Process
Prepared for the NAS Panel**

January 21, 2010

FWS and NMFS coordinated throughout the 2-year development of the OCAP biological assessment:

1. NMFS and the U.S. Fish and Wildlife Service (FWS) participated in the following forums, along with representatives from the Bureau of Reclamation (Reclamation), California Department of Water Resources (DWR), and California Department of Fish and Game (CDFG)¹, in order to provide technical assistance to Reclamation in its development of a biological assessment (BA) and reinitiation package: (i) biweekly interagency OCAP team meetings, (ii) biweekly five agencies management meetings, (iii) weekly directors' meetings, and (iv) several modeling meetings.
2. The FWS, CDFG, and NMFS² met biweekly to ensure that all fisheries issues were addressed in the OCAP BA. In addition, the fish agencies met often to brainstorm modeling scenarios that they wanted Reclamation to conduct, and also ran the CalLite model themselves. Finally, the fish agencies coordinated their reviews and comments on each draft section of the OCAP BA. Any disparate comments were discussed within the fish agencies, with one set of coordinated comments submitted to Reclamation on behalf of the fish agencies.

FWS and NMFS coordinated throughout the development of the OCAP biological opinions (Opinions), including the development of the Reasonable and Prudent Alternatives (RPAs):

1. Weekly directors, five agencies managers, and technical meetings continued to discuss any issues pertaining to effects analyses, meeting court-ordered deadlines, and considerations of RPA actions. Consideration of requesting extensions to the court-ordered deadlines for the FWS and NMFS to complete their respective OCAP consultations were vetted through the directors' meeting to ensure that all five agencies were in agreement to the extensions.
 - i. One issue that was perceived as an inconsistency between the FWS' and NMFS' draft biological opinions was the interpretation and characterization of the environmental baseline. Characterization of the environmental baseline was discussed many times during directors, five agencies managers, and technical meetings. NMFS and FWS coordinated extensively to ensure that their respective characterizations of the environmental baseline were consistent with each other and the section 7 regulations. NMFS Opinion, section 2.3.3, beginning on page 57, summarizes the consistency between the FWS' and NMFS' Opinions.
2. Multiple meetings between the fish agencies and five agencies occurred throughout the development of the RPAs to ensure that the regulatory requirements for an RPA are met, but also to ensure that any potential interspecies conflicts were minimized. Examples of these efforts included the following:
 - i. The FWS' OCAP Opinion included an RPA action where the Head of Old River Barrier would not be installed (as proposed in the OCAP BA) if delta smelt entrainment is a concern (FWS' Opinion RPA Action 5, page 383). As a result of the FWS coordinating

¹ Reclamation, DWR, FWS, CDFG, and NMFS are collectively referred to as the five agencies.

² FWS, CDFG, and NMFS are collectively referred to as the fish agencies.

this RPA action with DWR and NMFS early on, DWR and NMFS were able to coordinate the proposed installation of a non-physical barrier at the Head of Old River in 2009 in order to provide some level of protection to steelhead migrating down the mainstem San Joaquin River.

- ii. In an initial brainstorming of RPA actions, NMFS' considered a barrier across Georgiana Slough to minimize entrainment of juvenile salmonids and sturgeon into the interior Delta. As a result of FWS' concern regarding the effects of that RPA action on Delta smelt critical habitat, NMFS did not further develop that RPA action, but rather, broadened the RPA action to consider engineering solutions through a rigorous scientific process that would include smelt considerations (NMFS' Opinion, Action IV.1.3, page 640).
- iii. The FWS' OCAP Opinion includes an action to improve fall habitat for Delta smelt through increased Delta outflow during fall, *i.e.*, fall X2 (FWS' Opinion, RPA Action 4, page 383). In consideration that an X2 requirement that benefits Delta smelt could result in drawing down storage at Shasta reservoir (which could impact NMFS species), the FWS limited the X2 requirement to above normal and wet water year types. In the development of the NMFS RPA, in order to accommodate the fall X2 requirement in the FWS' RPA, and in consideration of the potential for interspecies incompatibilities, NMFS included in its RPA Action I.2.2.A (NMFS' Opinion page 593) the provision that the Fall flow action can only be considered to be implemented if Shasta End of September storage is greater than 2.4 MAF, and if a fall flow action is recommended that draws down fall storage significantly from historical patterns, then NMFS and USFWS will confer and recommend to Reclamation an optimal storage and fall flow pattern to address multiple species' needs.

FWS and NMFS coordinated during implementation of the OCAP Opinions:

1. Part of the responsibilities of the Delta Operations for Salmonids and Sturgeon (DOSS) Technical Work Group (NMFS' Opinion page 658) is to coordinate with the Smelt Working Group (SWG) to ensure maximum benefits to all listed species (conversely, to ensure that interspecies conflicts are minimized). The SWG has representation from the DOSS, and the DOSS has representation from the SWG to ensure coordination between the technical groups during real time operations discussions and advice to the Services.
2. Although not specifically the implementation of the recent OCAP Opinions, the following are examples of the coordination between NMFS and the FWS, and also interspecies considerations, that occurred in the past:
 - i. NMFS considered the HORB as an integral part of VAMP that protected juvenile salmonids by directing them away from Old River and subsequent entrainment at the CVP/SWP export pumps. However in 2007, and during court proceedings pursuant to Natural Resources Defense Counsel *et al.* v. Dirk Kempthorne *et al.*, at the request of FWS, NMFS agreed to "no installation of the HORB" for water year 2008 in order to improve conditions for the imperiled delta smelt.
 - ii. In February 2009, during the pending drought crisis, storage in all of the CVP and SWP reservoirs was very low, and Reclamation was releasing water in order to meet the Water Board's Decision (D) 1641 Delta outflow and San Joaquin River flow requirement standards. NMFS and the FWS were concerned with both Delta smelt habitat and the need to conserve storage for anadromous salmonid species. The

Services conferred with each other and, after discussing the issue with the Water Operations Management Team (which included the five agencies), Reclamation and DWR requested that the State Water Resources Control Board consider granting temporary urgency relief from certain standards contained in D-1641. The temporary urgency change petition included modifications to the Delta outflow and San Joaquin River flow requirement standards. During the process, it began raining and hydrologic conditions in the Delta quickly changed, negating the need for relief of the D-1641 standards.