



# United States Department of the Interior

OFFICE OF THE SOLICITOR 2007 MAR -2 PM 2:59

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

March 2, 2007

Gita Kapahi, Chief  
Bay Delta/Special Projects Unit  
PO Box 2000  
Sacramento, CA 95812-2000

Subject: Consideration of the Pelagic Organism Decline in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; Notice of Public Workshop

Dear Ms. Kapahi:

Enclosed please find comments by the U.S. Department of the Interior ("Department") for the SRWCB's public workshop on the pelagic organism decline in the San Francisco Bay/Sacramento-San Joaquin Delta. This information is intended to supplement the information expected to be provided by representatives of the Department on the IEP POD work team and is intended to inform the SWRCB as to how the Department makes use of the information generated by the IEP as it is developed. We are submitting 15 paper copies of these comments, as requested in the Notice of Public Workshop.

Please feel free to call either Jim Monroe, at (916) 978-5674, or Kaylee Allen, at (916) 978-5686, if you have any questions.

Sincerely,

  
Daniel Shillito  
Regional Solicitor

Enclosure

cc: Kirk Rodgers, U.S. Bureau of Reclamation  
Steve Thompson, U.S. Fish and Wildlife Service

**Comments of the  
U.S. DEPARTMENT OF THE INTERIOR  
Prepared for the Public Workshop Regarding Consideration of the Pelagic  
Organism Decline in the San Francisco Bay/Sacramento-San Joaquin Delta  
Estuary  
March 2, 2007**

The U.S. Department of the Interior ("Department") appreciates this opportunity to provide comments for the Public Workshop regarding the Pelagic Organism Decline ("POD"). As noted in the Background section of the State Water Resources Control Board's Notice of Public Workshop, there has been a marked decline in numerous pelagic fish species in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Delta"). One of the responses by the member agencies of the Interagency Ecological Program ("IEP") was to form the Pelagic Organism Decline Project Work Team ("POD Work Team"). However, that has not been the only response to the decline of these pelagic fish species.

Partially as a result of early information developed by the POD Work Team, the U.S. Bureau of Reclamation ("Reclamation"), in concert with the California Department of Water Resources ("DWR"), has reinitiated consultation, under Section 7 of the Endangered Species Act, with the U.S. Fish and Wildlife Service ("USFWS") and the National Marine Fisheries Service ("NMFS") for the long term operations of the Central Valley Project ("CVP") and the State Water Project ("SWP"). The purpose of this consultation is to evaluate the effects of the continued long term operations of the CVP and SWP upon the various fish species listed under the Endangered Species Act ("ESA") and, where designated, the critical habitat for those species. This includes consultation of the effects of the projects' operations upon the delta smelt, one of the pelagic species upon which the POD Work Team's efforts are concentrated.

During the course of the development of the Biological Assessment upon which the Section 7 consultation will be based, Reclamation and DWR will continually integrate information provided as a result of the POD Work Team's efforts. This information generated by the POD Work Team is also provided independently to the USFWS. This will help ensure that the USFWS has the best available scientific information regarding the status of the delta smelt during its development of a new Biological Opinion ("BiOp").

During the pendency of the new ESA Section 7 consultation process on long term CVP and SWP operations, the adaptive management process for protection of the listed fish species under the existing BiOp for long term CVP and SWP operations will continue to be utilized. This involves the development of recommendations by the Delta Smelt Working Group ("DSWG") for protective actions to be taken by the CVP and SWP, when necessary. The membership of the DSWG includes several individuals who are also participating in the POD Work Team, ensuring the rapid integration of information generated by the POD Work Team into the adaptive management process.

Additionally, when the DSWG makes recommendations regarding delta smelt protective actions

which are modified by the Water Operations Management Team ("WOMT") or operational decisions by Reclamation and DWR based on WOMT's recommendations, the USFWS will independently review the operational action to ensure that the action to be implemented will be adequately protective of the delta smelt. In the event that the USFWS determines that the action needs modification, the Service may notify the WOMT as to how the action should be modified or recommend other measures to protect the delta smelt. See the attached letter from the USFWS to the other agencies that are members of the WOMT, dated August 21, 2006.

Over the longer term, Interior Department agencies are working with state agencies, under the leadership of the California Resources Agency, and a broad constituency of stakeholder interests, on the development of the Bay-Delta Conservation Plan ("BDCP"). The BDCP is expected to culminate in the development and implementation of management and conservation strategies for at-risk species in the Delta, including the species which are the focus of the POD Work Team's efforts, as they are affected by the CVP and SWP operations and, potentially, specified activities of other parties.

State and federal agencies continue to integrate new information as it becomes available, whether by the POD Work Team or from other sources, to develop actions intended to increase protection for the delta smelt and other pelagic fishes. Therefore, the Department does not believe the State Water Resources Control Board should consider additional measures at this time to address the Pelagic Organism Decline.



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846



AUG 21 2006

IN REPLY REFER TO:

1-1-06-I-1690

Michael E. Aceituno, Supervisor  
National Marine Fisheries Service  
650 Capitol Mall  
Suite 8-300  
Sacramento, California 95814

Kirk Rodgers, Mid-Pacific Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, California 95825-1898

Lester Snow, Director  
Department of Water Resources  
P.O. Box 942836  
Sacramento, California 94236

Ryan Broddrick, Director  
Department of Fish and Game  
1416 Ninth Street  
12th Floor  
Sacramento, California 95814

Subject: Water Operations Management Team Process and the Delta Smelt  
Working Group during the Revision of the OCAP Biological Opinion

Dear Messrs. Aceituno, Rodgers, Snow and Broddrick:

The Fish and Wildlife Service (Service), as a member agency of the Water Operations Management Team (WOMT), has identified a need to work with your agencies to revise the process for identifying and implementing protective actions for the delta smelt involving the Delta Smelt Working Group and ("Working Group") and the Water Operations Management Team ("WOMT"). This process will be followed during the period of the reinitiated consultation addressing the coordinated operations of the Central Valley Project ("CVP") and the State Water Project ("SWP"). The Service has determined this revision is necessary in the course of evaluating the appropriate conditions under which the CVP and SWP should continue to receive take coverage under the 2005 biological opinion for the OCAP issued by the Service.

The Bureau of Reclamation has requested reinitiation of consultation under §7 of the Endangered Species Act for implementation of the OCAP, based on significant new information concerning the status of the delta smelt. The consultation process has started and the current schedule calls for a final biological opinion to be completed by April of 2008.

During the period of §7 consultation on the OCAP, the Working Group and WOMT shall revise the procedures that it follows for identifying and implementing protective actions to conserve the delta smelt. Prior to this date, the WOMT was not required to fully document the circumstances and rationale for determining that the delta smelt would be adequately protected in those instances where the WOMT did not accept some or all of the recommendations made by the Working Group. As of this date, when the Working Group makes recommendations to the

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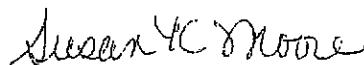
WOMT it will include the technical basis for its recommendations. If the WOMT does not agree with the recommendation of the Working Group, the WOMT shall fully document the technical basis for not fully implementing the recommendations of the Working Group, the basis for such alternative action that WOMT may determine will be implemented, and how the decision that the WOMT ultimately makes will ensure that the delta smelt are adequately protected from the effects of the operations of the CVP and SWP under the OCAP. This documentation is also to include minutes of the WOMT meetings that describe the protective actions to be taken.

For those circumstances where the WOMT does not follow the recommendations of the Working Group, the minutes and technical justification from such meeting of the WOMT will be submitted to this office, which will evaluate whether WOMT's proposed action falls within the adaptive management element of the project description of the OCAP biological opinion, or if the action is inadequate to protect the delta smelt. If the action needs modification, the Service will notify the WOMT what action should be taken to protect delta smelt. In the event that the WOMT determines that the actions identified by the Service are not practicable, the WOMT will notify the Service, so that alternative protective actions can be identified and implemented. By following this process, the delta smelt can be protected during the preparation of a revised biological opinion for the OCAP. As an active member of WOMT, we will work with you to insure that this process is followed.

The Service will continue to work with the other WOMT agencies to further study the causes of the latest delta smelt decline and will strive to determine additional actions that can help to minimize effects to the delta smelt and move towards recovery.

Please contact Cay C. Goude, David Harlow or Ryan Olah of my staff at (916) 414-6600, if you have questions regarding this letter.

Sincerely,



Susan K. Moore  
Acting Field Supervisor