Scott River Drought Initiative Individual Agreement (Drought Agreement)

Goals of the Voluntary Drought Initiative

NOAA's National Marine Fisheries Service (NMFS) and the California Department of Fish and Wildlife (CDFW) are among the Federal and State agencies that recognize the severe constraints the 2014 drought is likely to have on agriculture and fish in California. The California Voluntary Drought Initiative (Drought Initiative) expresses our intention to work with water users in high priority areas throughout the State who acknowledge the unprecedented conditions in order to reduce the negative effects of the drought on salmon and steelhead.

NMFS is charged by Congress to protect species through the Endangered Species Act (ESA). The ESA provides for formal agreements with individuals and organizations pursuing activities, such as agriculture, that allow them to be conducted while protecting fish and their habitat. These processes generally take time to implement and may simply be impractical for severe drought-related water use this year.

Governor Brown proclaimed a drought state of emergency on January 17, 2014 directing State officials to take all necessary actions to prepare for water shortfalls and instructed the State Water Resources Control Board (SWRCB) to notify water right holders that they may be directed to cease or reduce water diversions from streams and rivers later this season due to low water conditions. On April 25, 2014, Governor Brown issued an Executive Order directing state agencies to, in part, work with landowners in priority watersheds to protect certain species and maximize the beneficial uses of scarce water supplies, including employment of voluntary agreements to secure instream flows, relocate members of those species, or take other measures.

To address the urgency created by the drought, NMFS and CDFW have developed the Drought Initiative to reduce the effects of the drought on priority salmon and steelhead populations in California during the 2014 drought, while Federal and State drought declarations or designations are in effect. The initiative includes an approach to the application of the ESA's section 9 enforcement standards, as they are related to the withdrawal of water, from salmon and steelhead-bearing stream and rivers. This is a temporary, volunteer initiative that is only being implemented during Federal and State drought declarations or designations, with the goal of supporting agricultural activities while protecting the survival and recovery of ESA and CESA-listed salmon and steelhead and other species of special concern where they co-occur with ESA or CESA-listed populations.

Scott River Listed Fish Species and their Recovery Value

Coho salmon in the Scott River basin are part of the Southern Oregon/Northern California coast (SONCC) coho salmon Evolutionarily Significant Unit, which is listed as threatened under the ESA and the CESA.

Due to the potential severity of the drought in 2014, NMFS in coordination with DFW and other partners, is investigating options for improving survival of juvenile salmonids in the Scott River. The size of the adult coho salmon run in the Scott River was large this year (2,600+ adults) and there was a substantial run of fall-run Chinook salmon and steelhead. Fish rescue has been identified as a strategy to increase the chance of survival for juvenile salmon and steelhead in the Scott River watershed.

Given the dire water supply conditions that we are faced with this spring and summer, NMFS would like to encourage local landowners to engage in collaborative water conservation and rescue/relocation actions to enhance the survival and fitness of fry and juvenile life stages of coho salmon that are present in the Scott River. NMFS expects that under the most conservative approaches to water management, some coho salmon fry in Scott River will perish. To assist local landowners and provide additional guidance for conservation actions intended to reduce impacts to coho salmon, NMFS has developed the following Emergency 2014 Drought Initiative Individual Agreement.

Benefits for Water Users Who Participate in the Drought Initiative Individual Agreement

ESA Enforcement

Under the Endangered Species Act, NOAA has responsibility to protect and recover listed species including salmon and steelhead in California. The NMFS Office of Law Enforcement, often working with state and other federal agencies, investigates activities or inactivity that may result in the unlawful take of these species, and refers suspected unlawful activity to the Enforcement Section of the NOAA Office of the General Counsel for civil prosecution, or to the Department of Justice for criminal prosecution. Protection of ESA listed salmon and steelhead are a priority for NOAA across their range, and NOAA uses management plans and takes enforcement actions to help ensure the protection and recovery of these species.

At this time, severe and unprecedented drought conditions are affecting parts of California. To help address the concerns those conditions present, NMFS is working with those withdrawing water from California streams and rivers to take into account those needs and at the same time carry out its responsibilities towards ESA listed salmon and steelhead by taking the extraordinary steps outlined in this agreement. NOAA is thus seeking to encourage participation in the Drought Program. To that end, in making decisions about bringing or referring enforcement actions and about appropriate penalties, NOAA will consider participation in the Drought Program an important mitigating factor if a Drought Program participant unintentionally takes ESA listed fish species while withdrawing water or carries out other action that affects fish

passage while complying with a Drought Initiative agreement. To obtain this special consideration, a Drought agreement participant must implement the applicable best management practices of one of the attached CESA MOUs as described below. NOAA will actively pursue enforcement actions against those who act negligently, recklessly or intentionally in violation of the ESA.

Financial and Technical Assistance

NMFS will endorse efforts by public and private organizations to provide technical and financial assistance for water users who participate in this program. If requested, NMFS will provide recommendations and letters of support to those organizations for targeting financial and technical assistance for improvements to fish passage associated with water deliveries for program participants.

Elements of the 2014 Drought Agreement

To qualify for the benefits of the 2014 Drought Agreement, the water user must implement the applicable best management practices at least one of the 3 attached CESA MOUs developed by CDFW. The attached MOUs include best management practices (BMPs) for landowners in locations where fish stranding may occur and landowners who are willing to allow fish relocation to occur on their property in order to facilitate the survival of juvenile coho in the Scott River watershed, Siskiyou County, CA. Specific BMP requirements applicable to an individual landowner will be determined based on the diversion activities occurring at a particular fish rescue and/or relocation site.

Protecting Saved Water

It is the intent of NMFS' and CDFW's drought initiative to help ensure contributions of willing participants will be honored by downstream water users so that whatever drought measure is chosen, the saved or dedicated water will be prioritized for passage flows and protected from downstream appropriation to maximum extent feasible.

If you have questions about the program or your eligibility for program benefits, please contact:

Jim Simondet
National Marine Fisheries Service
California Coastal Area Office
1655 Heindon Road
Arcata, CA 95519
Email jim.simondet@noaa.gov
(707) 825-5171

Participating Parties

5/15/2014

Applicant Date

5-19-14

Irma Lagomarsino Date
Assistant Regional Administrator
National Marine Fisheries Office, West Coast Region, California Coastal Area Office

Attachments (3)

MEMORANDUM OF UNDERSTANDING

by and between

Landowner and

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

This California Endangered Species Act Memorandum of Understanding ("CESA MOU") is made and entered into by and between [illegible] *(Landowner) and the California Department of Fish and Wildlife (hereinafter called the "DFW").*

The purpose of this CESA MOU is to provide a framework for cooperative activities and studies that involve or address issues of importance to the Scott River coho salmon (*Oncorhynchus kisutch*). This CESA MOU provides for take associated with actions taken by the DFW to rescue and relocate coho salmon as a management activity under authority of Section 2081(a) of the California Fish and Game Code.

WITNESSETH

WHEREAS, the DFW has jurisdiction over the conservation and protection of fish, wildlife, and native plants and their habitats, and holds those resources in trust for the people of California (California Fish and Game Code Section 1802).

WHEREAS, coho salmon are classified as a threatened species by the State of California Fish and Game Commission pursuant to the California Endangered Species Act (CESA, California Fish and Game Code section 2050 et seq.).

WHEREAS, Fish and Game Code section 2080 prohibits the import, export, take, possession, purchase or sale of any species, in whole or in part, that has been listed as threatened or endangered by the California Fish and Game Commission. Take is defined in Fish and Game Code section 86 as 'hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." However, Fish and Game Code section 2081(a) allows DFW to authorize take and other acts prohibited by Fish and Game Code section 2080 for scientific, educational, or management purposes. This CESA MOU authorizes a limited level of take of coho salmon for management purposes.

WHEREAS, on January 17, 2014, Governor Brown issued a proclamation declaring the state to be in an emergency due to the ongoing severe drought conditions.

WHEREAS, on April 25, 2014, Governor Brown issued an Executive Order directing state agencies to, in part, work with landowners in priority watersheds to protect certain species and maximize the beneficial uses of scarce water supplies, including

employment of voluntary agreements to secure instream flows, relocate members of those species or take other measures.

WHEREAS conditions on the Scott River and its tributaries are poorer than is typical for this time of year and may deteriorate such that listed juvenile coho salmon will need to be relocated to areas with more suitable conditions in the watershed to prevent mortality of those CESA-listed fish.

WHEREAS, Landowner owns real property in the Scott River watershed more particularly described as (Real Property) *Add parcel number and river mile here*

WHEREAS, the Real Property is adjacent to the Scott River, which has suitable habitat for listed coho salmon. Landowner is willing to participate with the DFW in fish rescue and relocation activities, by allowing access to the Real Property for the purposes of capturing and removing, or relocating juvenile coho salmon on or to Scott River adjacent to the Real Property.

WHEREAS, NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Methods**

   A. DFW, or its agent, will carry out all monitoring and fish capture and relocation activities in accordance with standard fishery practices. DFW, or its agent, will notify Landowner, at least 24 hours in advance, to the telephone number listed below, of all planned monitoring and fish rescue/relocation activities it will carry out on the Real Property. Those activities may include:

      1) Monitoring of habitat conditions in the Scott River and salmonid abundance, size, and condition prior to relocation of salmonids at risk, including coho salmon;

      2) Upon determination that stream flow and temperature conditions for salmonids, including coho salmon, are deteriorating in the Scott River watershed, or upon reasonable projections of same, DFW will capture and remove salmonids, including coho, from the Scott River adjacent to Landowner's Real Property and relocate those salmonids to suitable habitat elsewhere in the watershed;

      3) Relocating juvenile salmonids, including coho salmon, captured from elsewhere in the Scott River watershed, to the Scott River adjacent to Landowners Real Property if suitable aquatic habitat for summer rearing conditions are then occurring in those waters; or

      4) Monitoring stream depth and temperature at relocation site(s) post-relocation to determine if conditions remain adequate to keep salmonids alive and provide for salmonid passage.

2. **Landowner Commitments Regarding Fish Management Activities on the Real Property**

   A. Landowner agrees to provide reasonable access to DFW and its agents, including equipment access, to the Real Property to carry out any of the management activities listed in Section 1 of this CESA MOU for the purposes of:

      1) Monitoring habitat conditions and coho salmon abundance, size, and condition prior to any management activities;

      2) Capturing and removing coho salmon from and/or relocating fish to suitable habitat, and for monitoring conditions post-relocation; or

      3) Monitoring stream flow conditions post-rescue/relocation to determine if conditions remain adequate to keep fish alive and provide for passage.

   B. Landowner agrees to perform Best Management Practices (BMPs) as outlined in Attachment 1 as a condition of this MOU, according to the type of diversion activities conducted at a particular site.

   C. Landowner agrees to provide reasonable access over the Real Property to allow DFW and its agents to either capture coho salmon or allow captured coho salmon to be placed in the Scott River, adjacent to the Real Property. Landowner also grants access to the Real Property to DFW and its agents to carry out the management activities described in this CESA MOU for the purposes of monitoring habitat conditions, possibly later capturing and removing fish from and/or relocating fish to suitable habitat, and for monitoring conditions post-relocation.

      DFW agrees that DFW and its agents will conduct all rescue/relocation activities only after DFW has provided the advance notice to Landowner, as provided in Section 1 above.

3. **Authorized Take Level**

   Coho salmon: The number of coho salmon which may die in the course of fish capture and relocation activities conducted by DFW is typically small (less than 10%) and is much-reduced from levels of mortality that will potentially occur in absence of carrying out this activity. As such, fish mortalities related to, or occurring in the course of, fish rescue activities is authorized.

4. **Federal Endangered Species Act**

   The Southern Oregon Northern California coho salmon is listed as a threatened species under the federal Endangered Species Act (ESA) of 1973. DFW has a permit from the National Marine Fisheries Service (NMFS) that allows DFW, its employees and its

designees to perform the rescue activities listed in Section 1 above. Landowner is not expected or authorized to assist in the handling of coho salmon as a part of the fish rescue effort. Nothing in this CESA MOU authorizes any action pursuant to the federal ESA.

5. **Effective Date and Termination**

Unless terminated sooner by either party of the CESA MOU by giving thirty (30) days prior written notice of earlier termination, this CESA MOU shall commence on the date of execution and will terminate on **December 31, 2014,** both days inclusive.

6. **Amendments**

Amendments to this CESA MOU may be proposed by either party and shall become effective when both parties sign a written modification to this document.

7. **Disclaimer**

The DFW shall incur no fiscal obligation under this CESA MOU.

8. **Authority**

The undersigned represents that they have the authority to, and do, bind the person or entity on whose behalf and for whom they are signing this CESA MOU.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CESA MOU TO BE IN EFFECT AS OF THE DATE LAST WRITTEN BELOW.

Tobias Ranch
Landowner

Date: 5/15/2014
Phone Number: 541-620-2214
Street address: 4315 S. Hwy 3
Etna - CA.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By

NEIL MANJI, Regional Manager, Northern Region

Date: 5/14/14

Note that there are 3 Attachments here, each on a separate page- but only the one that applies to your diversion activates will be attached to your CESA MOU.

Attachment 1

CESA MOU

CDFW (Department) and _____

The following are Best Management Practices (BMPs) for landowners in locations where fish stranding may occur and landowners who are willing to allow fish relocation to occur on their property in order to facilitate the survival of juvenile coho in the Scott River watershed, Siskiyou County, CA. Specific BMP requirements applicable to an individual landowner/cooperator will be determined based on the diversion activities occurring at a particular fish rescue and/or relocation site:

Landowner Best Management Practices

The following Best Management Practices shall apply if the landowner is actively diverting, or has plans to divert water, at a site where coho salmon are known to have spawned in Fall/Winter 2013-14:

1. All water diversion facilities that the landowner owns, operates, or controls associated with the property where juvenile fish may need to be removed and relocated to more suitable habitats shall be operated and maintained in accordance with current law and applicable water rights, including any specified in the following court decree: Shackleford Creek #13775 (April 10, 1950), French Creek #14778 (July 1, 1958), and Scott River #30662 (January 30,1980), and Shasta River #7035 (December 29, 1932).
2. Diversions shall be operated, and potentially reduced, such that sufficient stream flow is maintained in areas of the Scott River where salmon have spawned in fall and winter 2013-14 to ensure the survival of eggs and emergent fry, which could hatch out over a period of several months. This could be provided by a reduction in the amount of water diverted as conditions deteriorate, potentially including participation with the Scott River Water Trust.
3. For all activities performed in, or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up of all spills shall begin immediately, and the landowner shall notify the California Emergency Management Agency at 1-800-852-7550, as well as the Department immediately after any spill occurs. The operator shall consult with the Department regarding clean-up procedures.
4. The Landowner shall prevent the discharge of sediment and/or muddy, turbid, or silt-laden waters into the stream channel.
5. The Landowner shall notify the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days prior to any significant changes in operation of the diversion and associated screen and bypass and other structures.

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Landowner Best Management Practices

The following Best Management Practices shall apply if the landowner is actively diverting or has plans to divert water at a site where salmonids are deposited for summer rearing:

1. All water diversion facilities that the Landowner owns, operates, or controls associated with the property where fish may be relocated to shall be operated and maintained in accordance with current law and applicable water rights, including any specified in the following court decree: Shackleford Creek #13775 (April 10, 1950), French Creek #14778 (July 1, 1958), and Scott River #30662 (January 30, 1980), and Shasta River #7035 (December 29, 1932).
2. All water diversion facilities shall be maintained so they do not prevent, impede, or tend to prevent or impede the passing of fish upstream or downstream. This includes, but is not limited to, maintaining or providing a supply of water at an appropriate depth and velocity to facilitate upstream and downstream migration of salmonids consistent with the criteria described in the Department's (*Standard Operating Procedure for Critical Riffle Analysis for Fish Passage in California (*DFG-IFP-001, October 2012; attached). This could be provided by a reduction in the amount of water diverted as conditions deteriorate, potentially including participation with the Scott River Water Trust.
3. The Landowner shall notify the Department prior to closing a headgate or valve when fish stranding may occur in the diversion conduit as a result of that activity.
4. The Landowner shall regularly inspect all fish screens and bypass pipes or channels to verify that they are effectively protecting salmonids and other fish species in accordance with Department and NMFS fish screening criteria. When necessary, the Landowner shall clean and repair all fish screens and bypass pipes or channels. If a fish screen is removed for cleaning or repair, the Landowner shall ensure either that a replacement screen is installed immediately, or water is not flowing through the area where the screen is removed. In cases where Department is currently maintaining the existing fish screen, and in the instance a landowner identifies a malfunction to a screen , the landowner shall notify the Department as soon as possible of such

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circumstances affecting the screen and its ability to meet Department and NMFS screening criteria. Sufficient flow will be supplied from the diversion into a fish bypass to safely and efficiently return fish back to the stream.

5. Water diversion locations shall be accessed using existing roads and access ramps.
6. The Landowner shall prevent the discharge of sediment and/or muddy, turbid, or silt-laden waters into the stream channel.
7. Significant fish habitat, such as pools, spawning sites, large woody debris structures, and riparian shade shall not be disturbed.
8. The Landowner shall notify the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days prior to any significant changes in operation of the diversion and associated screen and bypass and other structures.
9. For all activities performed in or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up of all spills shall begin immediately, and the landowner shall notify the California Emergency Management Agency at 1-800-852-7550, as well as the Department immediately after any spill occurs. The operator shall consult with the Department regarding clean-up procedures.

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Landowner Best Management Practices

The following Best Management Practices shall apply if the landowner is not actively diverting, has no plans to divert water, or has no diversion near a site where salmonids are deposited for summer rearing:

1. The creek or river shall be accessed by the landowner using existing roads.
2. The Landowner shall prevent the discharge of sediment and/or muddy, turbid, or silt-laden waters into the stream channel.
3. Significant fish habitat, such as pools, spawning sites, large woody debris structures, and riparian shade, shall not be disturbed.
4. The Landowner shall notify the Department's fisheries program in Yreka at (530) 842-9322 at least five (5) days in advance if landowner intends to begin water diversion at the site.
5. For all activities performed in or near a stream, where there is a potential for an accidental spill of deleterious substances, absorbent materials designated for spill containment and clean-up shall be present and available for use at the project site. Clean-up of all spills shall begin immediately, and the landowner shall notify the California Emergency Management Agency at 1-800-852-7550, as well as the Department immediately after any spill occurs. The operator shall consult with the Department regarding clean-up procedures.