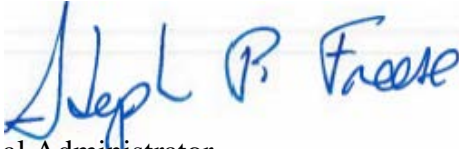




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way NE
SEATTLE, WA 98115

February 27, 2017

MEMORANDUM FOR: Barry A. Thom
Regional Administrator

FROM: Stephen P. Freese Ph.D. 
Acting Assistant Regional Administrator
Sustainable Fisheries Division

SUBJECT: National Marine Fisheries Service (NMFS) Consultation on the
Confederated Tribes of the Colville Reservation (CTCR) Tribal Resource
Management Plan (TRMP) under the Endangered Species Act (ESA)
Tribal 4(d) Rule-Decision Memorandum

Issue

The Confederated Tribes of the Colville Reservation (CTCR) have submitted a Tribal Resource Management Plan (TRMP) that details harvest, hatchery, research, monitoring and evaluation (RM&E), kelt reconditioning and predator control actions for their effects on listed salmon and steelhead above Wells Dam in the Upper Columbia River (CTCR 2014a). The TRMP and additional supplemental materials were submitted for review and determination by NMFS under the Endangered Species Act (ESA) Tribal 4(d) Rule.

Recommendation

The NMFS Sustainable Fisheries Division (SFD) has evaluated the TRMP and recommends that the TRMP be approved, and the West Coast Region issue its written determination on the TRMP to the CTCR provided that the TRMP is implemented in accordance with the implementation terms detailed at the end of this memo.

Background

An application prepared by the CTCR for determination by the NMFS under the ESA Tribal 4(d) Rule was received and deemed sufficient by NMFS in February 2014 (Jones 2014). The activities included in this evaluation are described in a TRMP and the following supplemental materials: the Okanogan steelhead Hatchery and Genetics Management Plan (HGMP), proposed action summaries for the Chief Joseph Hatchery spring and summer/fall Chinook salmon programs, and a kelt reconditioning project plan (CTCR 2014a; CTCR 2014b; CTCR 2016a; CTCR 2016b; CTCR 2016c). The applicants have decided through early consultation with NMFS to combine all these materials into one application to be covered under the Tribal 4(d) Rule.

As part of the TRMP, RM&E would be implemented for all activities to assess their performance in meeting population conservation or harvest augmentation objectives, and their effects on ESA-listed natural-origin Chinook salmon and steelhead. Information gained through RM&E

will be used to assess whether the impacts of the programs on listed fish are as expected, and will be reported annually to NMFS.

The Bonneville Power Administration (BPA) funds all, or a portion of, some of the activities covered by this 4(d) determination under the Pacific Northwest Power Planning and Conservation Act of 1980, 16 U.S.C. §§ 839 et seq. (Northwest Power Act). The Northwest Power Act directs BPA to protect, mitigate, and enhance fish and wildlife and their habitat affected by the development, operation, and management of federal hydroelectric facilities on the Columbia River and its tributaries. BPA funds the following activities:

- A portion of the continued operation and maintenance of the Chief Joseph Hatchery facilities
- A portion of the continued operation and maintenance and RM&E for two non-listed Chief Joseph Hatchery programs (the un-listed Summer/Fall Chinook Salmon and Spring Chinook Salmon Hatchery Programs)
- Activities associated with the Okanogan Basin Monitoring and Evaluation Program.

Discussion

Controversial Issues

The activities described in the TRMP are not controversial, and none are the subject of on-going or pending litigation.

Public Review and Comment

NMFS prepared a Proposed Evaluation and Pending Determination (PEPD), per the 4(d) Tribal Rule based on the TRMP. NMFS also prepared an Environmental Assessment (EA) per the National Environmental Policy Act (NEPA). Both documents were made available for public comment upon publication of a notice of availability in the Federal Register on December 15, 2016 (81 FR 90783). The public comment period expired on December 30, 2016. NMFS received comments from Washington Department of Fish and Wildlife (WDFW), and responses to those comments are detailed in Attachment 1. Subsequent revisions to the NMFS 4(d) document to address those comments were made and are reflected in the final version (Attachment 1).

Evaluation of the TRMP under the ESA 4(d) Rule

After addressing public comments, NMFS SFD determined that the TRMP meets all of the requirements of the ESA Tribal 4(d) Rule. See Attachment 1 for our evaluation.

Evaluation of NMFS' Proposed Determination under NEPA

The SFD published an EA to evaluate whether NMFS' PEPD would result in significant environmental impacts and necessitate an Environmental Impact Statement (EIS). The EA also evaluated the effects of terminating all TRMP activities, and the effects of reducing hatchery programs. After public comment, the SFD prepared a Finding of No Significant Impact (FONSI). The FONSI was signed on February 24, 2017 (Attachment 2).

Evaluation of Federal Actions under the ESA Section 7 and the Magnuson-Stevens Act Essential Fish Habitat

NMFS SFD prepared an ESA section 7 biological opinion¹ to evaluate the effects of our TRMP determination and funding of some TRMP activities by the BPA on listed salmonids (Attachment 3). As described in SFD's biological opinion, the approval of the TRMP is not likely to jeopardize the continued existence of listed Upper Columbia River Chinook salmon evolutionarily significant unit or Upper Columbia River steelhead distinct population segment, nor result in the destruction or adverse modification of their critical habitat. Adequate measures are described to monitor the performance and effects of each activity, including the viability status of the affected listed Chinook salmon and steelhead populations.

NMFS SFD also considered the potential effects of the proposed action on other ESA-listed species, and determined that the TRMP activities would have no effect on southern resident killer whales, because the number of hatchery fish released represents a small proportion of the Columbia River Basin salmon that could serve as prey for southern resident killer whales.

The SFD also analyzed the effects of the actions on Essential Fish Habitat (EFH) under the Magnuson-Stevens Act in our biological opinion. We determined that the effects of the action on EFH are likely to be within the range of effects considered in the ESA portion of the opinion, and concluded that the proposed actions are not likely to have any additional adverse effects on Pacific salmon EFH. What small adverse effects on EFH might occur as a result of facility operations (hatchery intake structure and screening) would be adequately addressed by the Reasonable and Prudent Measures and Terms and Conditions included in the ESA section 7 biological opinion. NMFS and BPA shall ensure that these measures and terms and conditions are implemented.

Implementation Terms

To help ensure consistency with the NMFS effects findings and ESA determinations for the proposed actions, the applicants must comply with the following implementation terms for the TRMP (NMFS provides these implementation terms to the applicant in a letter describing our final determination). These terms respond to monitoring, take accounting, and reporting regulations for hatchery actions specified in subparagraphs 5(ii) and 5(iii) of Limit 5 of the ESA 4(d) Rule, and are applied to actions under the Tribal 4(d) Rule.

1. Notify NMFS in advance of any change in operation and/or monitoring activities that may result in increased take of ESA-listed species.
2. Notify NMFS within 48 hours if the proposed level of take is exceeded. Ensure submission of a written report describing the circumstances of the unauthorized take within two weeks of take exceedance. Pending review and discussion with the CTCR, NMFS may suspend the program activities or amend the consultation documents to allow activities to continue.
3. Provide plans for changes to TRMP activities and obtain concurrence from NMFS prior to implementation.

¹ Certification by General Counsel, Northwest Section, of their review of the opinion is on file (see ledger).

4. Discuss with NMFS adult steelhead release mortality calculations during fisheries when water temperatures exceed 21°C.
5. If/when night fisheries occur, include monitoring to estimate harvest during all diel periods to better calculate take estimates.
6. Conduct sampling of fish from each Chinook salmon program-yearling component to assess precocial maturation rates based on the methodology described in Harstad et al. (2014).
7. Demonstrate that the proportionate natural influence (PNI) for the Okanogan steelhead population exceeds 0.5, measured as a five year running average starting in 2021, which includes years 2017 to 2021. An annual PNI limit of 0.3 or higher is required for years 2017-2020, since a five-year average cannot be calculated for the proposed action until 2021.
8. Demonstrate that the proportion of hatchery-origin spawners (pHOS) for the Chief Joseph spring Chinook salmon program is 5 percent or less of each receiving non-target population in the Upper Columbia (Okanogan, Methow, Entiat and Wenatchee).
9. Submit all reports and required notifications electronically to NMFS, West Coast Region, Sustainable Fisheries Division, Anadromous Production and Inland Fisheries Branch. The current point of contact for document submission is Charlene Hurst (charlene.n.hurst@noaa.gov, 503-230-5409). The annual report should include:
 - a. A calculation of quantifiable encounter and mortality take for each species across all TRMP activities. Encounters and mortality of listed species incidentally caught during fisheries can be reported as detailed in the spreadsheets submitted by Truscott (2016a); Truscott (2016b).
 - b. This report shall be submitted to NMFS by December 15, of the year following the monitoring and evaluation activities (i.e., surveys conducted in 2015, report due December 2016).
 - c. Hatchery Environment Monitoring Reporting
 - Number and composition of broodstock, and dates of collection
 - Numbers, pounds, dates, locations, size (and standard deviation), and tag/mark information of released fish
 - Survival rates of all life stages
 - Disease occurrence at Chief Joseph Hatchery and the acclimation sites
 - Precocious maturation rates for each yearling Chinook salmon program
 - d. Natural Environment Monitoring Reporting
 - The number of returning hatchery and natural-origin adults
 - The number and species of listed fish encountered and that die at each adult collection location
 - Distribution of hatchery- and ESA-listed natural-origin spawners
 - pHOS of CTCR hatchery program fish for Upper Columbia recipient listed natural populations
 - Proportion of natural-origin broodstock (pNOB; steelhead program only)
 - PNI (steelhead program only)
 - Post release out-of-basin migration timing of juvenile hatchery-origin fish to Rocky Reach and Bonneville Dams

- Mean length, standard deviation, number, and age of natural-origin juveniles
- Number and species of listed juveniles and adults encountered and the number that die during RM&E activities, including predator control
- Number of steelhead kelt encountered, rehabilitated and released and the number that die during kelt reconditioning activities before being released

Consistent with subparagraph 5(vi) of Limit 5 of the ESA 4(d) Rule, it is NMFS' intent to regularly communicate with the applicants regarding the TRMP's effects on listed salmon and steelhead population viability.

Summary

NMFS SFD concludes that the TRMP and supplemental materials provided by the CTCR meet all the requirements for the ESA Tribal 4(d) Rule. Therefore, SFD recommends that the activities described in the TRMP qualify for limitation of take prohibitions pursuant to the Tribal 4(d) Rule, provided they are implemented in accordance with the implementation terms and reporting requirements described in NMFS's letter of concurrence. SFD recommends that you concur with the implementation of the TRMP.

Concurrence

I concur with your recommendation to approve the CTCR TRMP, provided the plan is implemented in accordance with the Implementation Terms described above.

Barry A. Thom
Regional Administrator

Date

I do not concur with your recommendation to approve the CTCR TRMP.

Barry A. Thom
Regional Administrator

Date

cc (w/ attachments): Sharon Houghton (file number: WCR-2014-388)
Charlene Hurst
Chris Fontecchio
Natasha Meyers-Cherry

Attachment 1: 4(d) Rule Evaluation and Recommended Determination
Attachment 2: Finding of No Significant Impact/Environmental Assessment
Attachment 3: Section 7 Biological Opinion

Literature Cited

- CTCR. 2014a. Okanogan Basin Summer Steelhead Conservation Program HGMP. February 4, 2014. 118p.
- CTCR. 2014b. Tribal Resource Management Plan for The Confederated Tribes of the Colville Reservation. Final plan. February 4, 2014. 80p.
- CTCR. 2016a. Chief Joseph Hatchery Spring Chinook Program. April 28, 2016. NMFS' request for additional information. 8p.
- CTCR. 2016b. Chief Joseph Hatchery Summer/Fall Chinook Program Description. April 29, 2016. NMFS' request for an updated Proposed Action. 13p.
- CTCR. 2016c. Confederated Tribes of the Colville Reservation Fish & Wildlife Program Kelt Reconditioning Project. May 23, 2016. 7p.
- Harstad, D. L., D. A. Larsen, and B. R. Beckman. 2014. Variation in minijack rate among hatchery populations of Columbia River basin Chinook Salmon. *Transactions of the American Fisheries Society* 143(3):768-778.
- Truscott, K. 2016a. Email to Charlene Hurst (NMFS) from Kirk Truscott (CTCR). Follow-up email from yesterday's meeting with attachment. August 30, 2016. Regarding estimated steelhead encounters in the Okanogan River Basin associated with CTCR harvest and adult management actions, 2010-2015. 4p.
- Truscott, K. 2016b. Email to Charlene Hurst (NMFS) from Kirk Truscott (CTCR). Follow-up email from yesterday's meeting with attachment. July 11, 2016. Attached are additional information requested for the TRMP. 3p.