



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NOAA FISHERIES SERVICE
Southwest Division
501 W Ocean Blvd., Suite 4300
Long Beach, CA 90802

50001.1SWD2009F/EN000002DWM

November 2, 2009

Mr. Archie "Red" Emerson
1900 Smith Road
Redding, CA 96002

Dear Mr. Emerson,

This office represents the National Marine Fisheries Service Office of Law Enforcement (NMFS OLE), a part of the National Oceanic and Atmospheric Administration. As such, we are responsible for the enforcement of the Endangered Species Act (ESA) (Title 16, United States Code, §1531 et seq.) and implementing regulations promulgated thereunder.

NMFS OLE, California Department of Fish and Game (CDFG) and the California Regional Water Quality Control Board (RWQCB) are currently involved in a joint investigation. This investigation was initiated following receipt of information and evidence regarding the ranching practices on your property in Siskiyou County, California. Specifically, we received information regarding the use of your irrigation diversion on Kettle Springs Creek. The information and evidence indicates that the diversion is having adverse effects on Southern Oregon/Northern California Coast coho salmon that have been documented in this watershed. We have received additional information and evidence regarding cattle ranching practices in this and other watersheds on your property. The information we have discovered during our investigation has revealed that cattle management practices on your property may also have adverse effects on all life-stages of Southern Oregon/Northern California Coast coho salmon that have been documented in these watersheds.

Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*) were listed as a threatened species, pursuant to the federal ESA, on May 6, 1997, 62 Federal Register 24588. The Shasta River and its tributaries have been designated as "critical habitat" for Southern Oregon/Northern California Coast coho salmon. The NMFS is aware of recent documentation of Southern Oregon/Northern California Coast coho salmon in this watershed. More specifically, we have learned that Kettle Springs Creek provides the only currently accessible over summer rearing habitat for coho in Parks Creek and is the only known location in the entire Shasta watershed where juvenile coho are rearing.

Under the ESA, [Title 16 United States Code. § 1538(a)(1)(G)], it is unlawful for any person subject to the jurisdiction of the United States to "take" any species of fish or wildlife listed as threatened within the United States.



The term "take" is defined by the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such activity. 16 U.S.C. § 1532(19). "Harm" has been defined by NMFS to mean,

An act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering [Title 50 Code of Federal Regulations. § 222.102]

Under section 4(d) of the ESA, 16 U.S.C. § 1533(d), the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. Such regulations may include application of the prohibitions contained in section 9(a) of the ESA, 16 U.S.C. § 1538(a), which apply to threatened species. Protective regulations for Southern Oregon/Northern California Coast coho salmon issued pursuant to section 4(d) of the ESA became effective on May 6, 1997. 62 Federal Register 87 (May 6, 1997); 50 C.F.R. § 223.102(a)(11). With certain limited exceptions, these regulations apply the section 9(a) prohibitions, including the "take" prohibition, Southern Oregon/Northern California Coast coho salmon. The prohibition against unauthorized "take" of Southern Oregon/Northern California Coast coho salmon applies equally to persons engaged in activities that are not intended or designed to take species listed under the ESA, but may do so incidentally.

The protective regulations for Southern Oregon/Northern California Coast coho salmon describe certain activities that are most likely to cause "harm" resulting in a violation of the ESA. These activities, which may pertain to the actions associated with the ranching practices on your property, include, in part:

Removing water or otherwise altering stream flow when it significantly impairs spawning, migration, feeding, or other essential behavioral patterns . . .

Constructing or operating dams or water diversion structures with inadequate fish screens or fish passage facilities in a listed species' habitat...

We strongly recommend that you comply with all State and Federal regulations relating to water diversions/ranching practices and Southern Oregon/Northern California Coast coho salmon. It is also important that we meet with you and/or your representatives to discuss this matter as soon as possible. Compliance with this request and additional consultation with NMFS OLE, CDFG, and the RWQCB on other projects that impact the Shasta River and its tributaries may help to ensure that you avoid unlawful taking of Southern Oregon/Northern California Coast coho salmon, which could result in significant fines, imprisonment, or injunctive relief.



Please contact NMFS OLE special agent Derek Roy at (707) 575-6073, as soon as possible to schedule a meeting to discuss these issues.

Sincerely,

For

Dan Torquemada
Donald W. Masters
Special Agent in Charge
Southwest Region

cc:

file

Dan Torquemada, NMFS OLE, 777 Sonoma Ave., Rm 203, Santa Rosa, CA 95404

Derek Roy, NMFS OLE, 777 Sonoma Ave., Rm 203, Santa Rosa, CA 95404

Steve Edmondson, NMFS, 777 Sonoma Ave., Santa Rosa, CA 95404

Paul Ortiz, NOAA General Counsel, 501 W. Ocean Blvd. Long Beach, CA 90802

Rod McInnis, NMFS, 501 W. Ocean Blvd. Long Beach, CA 90802

Irma Lagomarsino, NMFS, 1655 Heindon Rd., Arcata, CA 95521-4573

Diane Windham, NMFS, 650 Capitol Mall, Sacramento, CA 95814

Rich Wharton, CDFG 1625 S. Main St, Yreka, CA 96097

Mike Carion, CDFG, 601 Locust St., Redding, CA 96001

Larry Harris, CDFG, 601 Locust St., Redding, CA 96001

Gary Stacey, CDFG, 601 Locust St., Redding, CA 96001

Catherine Kuhlman, RWQCB, 5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403

Bill Neely, RWQCB, 5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403

Andrew Baker, RWQCB, 5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403

