

Memorandum of Understanding Among

National Marine Fisheries Service
California Department of Fish and Game
Army Corps of Engineers
FishNet4C/Counties of Mendocino, Sonoma, Marin, San Mateo, Santa Cruz and Monterey
County of Humboldt

SECTION 1 - BACKGROUND AND PURPOSE

This Memorandum of Understanding (MOU) establishes a collaborative process for recovery planning in the North-Central California Coast recovery planning domain. The National Marine Fisheries Service (NMFS) is required under the Endangered Species Act of 1973 as amended (ESA) to develop a plan for the recovery of salmon and steelhead listed under the ESA. The recovery planning process has begun with the convening of Technical Recovery Teams (TRT) that will establish the scientific framework for achieving recovery. Recognizing that the implementation of any recovery strategy will require the participation and contributions of people and agencies at the federal, state, county and local level, this MOU sets forth an approach for local jurisdictions to support the identification and implementation of recovery goals established by the TRT. As partners in the recovery planning process, the signatories to this MOU agree to pursue policies and actions that include the interests and capacities of the local jurisdictions, incorporate their data and information as appropriate, and recognize the mutual need to work together to achieve the recovery of healthy and sustainable populations of salmon and steelhead within the North-Central California Coast recovery planning domain. This will be accomplished by the signatories working together to:

1. Participate in the NMFS recovery planning process as described in "Recovery Planning For West Coast Salmon," dated October, 1999, and the NOAA "Recovery Planning Guidelines" dated September, 1992.
2. Share data, information, and knowledge that may be used to develop and improve both the technical and policy components of the recovery plan.
3. Pursue the development and implementation of policies, procedures, plans, ordinances, and other jurisdictional authorities and commitments that local jurisdictions may bring to bear in improving the quality of, and increasing the quantity of, habitat suitable for the conservation and recovery of salmon and steelhead populations.
4. Encourage locally led watershed stewardship efforts aimed at restoring and protecting water quality, ecosystem integrity and sustainable populations of listed species while providing for the wise use of natural resources.

SECTION 2 - DEFINITION OF TERMS

To facilitate the implementation and shared understanding of this MOU, the following key terms are defined and clarified below.

- “Recovery plan” and “recovery planning”: documents prepared in accordance with the Endangered Species Act of 1973 as amended (ESA), section 4(f).
- “Listed species”: salmon and steelhead (salmonid) species that are listed or proposed for listing under the ESA or that are listed or candidates for listing under the California Endangered Species Act (CESA). NMFS is responsible for developing recovery plans for species listed pursuant to the ESA.
- “Early recovery actions”: those efforts intended to improve the quality or increase the quantity of habitat suitable and necessary for the conservation and recovery of listed species that are undertaken in advance of the completion of the final recovery plan.

SECTION 3 - OBJECTIVES

Recovery efforts must involve not only NMFS but must include the coordinated participation and contributions by other federal agencies, state and local governments, private industry, conservation groups, subsistence/traditional native peoples and sovereign Indian tribes, and the public generally. The development and implementation of recovery plans will help to combine the programs and expertise of these agencies and organizations into effective recovery strategies. In recognition of the need to integrate the efforts of these many interests, the signatories to this MOU set forth the following objectives:

1. Expedite the development of a recovery plan for listed species and facilitate the implementation of recovery-related activities.
2. Where appropriate, explore the feasibility and pursue the implementation of early recovery actions.
3. Share to the maximum extent practicable information, technical assistance, staff support and other resources to prevent duplication of effort, identify gaps in data or regulatory coverage.
4. Where appropriate, pursue regulatory recognition of state agency and local jurisdiction programs that contribute to the recovery of listed species through mechanisms including ESA section 4(d) limits on take prohibitions and section 10 Habitat Conservation Plan permits. Programmatic approaches for harmonizing state regulatory authorities, such as the California Department of Fish and Game’s “Streambed Alteration Agreement” program, with federal regulatory authorities, will be explored with all due diligence.
5. Support the involvement of key watershed groups in the decision-making process to facilitate community-based recovery actions.

SECTION 4 – THE RECOVERY PLANNING PROCESS

The NMFS recovery planning process is expected to take several years to complete. It is broadly organized in phases, identified as set forth below:

Phase I – Preparation of a scientific description of the limiting factors, genetic makeup and diversity, and required fish populations needed to achieve recovery of salmon and steelhead within the planning domain. NMFS has appointed a TRT to prepare the de-listing criteria that describe biological recovery. This phase is expected to take approximately 18 to 24 months.

Phase II – Preparation of a Recovery Implementation Plan. Concurrent with Phase I, NMFS intends to begin the process for developing conservation measures, programs, plans, policies, funding commitments, and other mechanisms that may be required to achieve the biological recovery goals identified in Phase I. This recovery implementation phase will be based on collaboration among the agencies, local jurisdictions, stakeholders, constituents, non-governmental organizations, and others as appropriate to develop the recovery implementation plan. In addition to the development of a final Recovery Plan, Phase II activities are expected to include early recovery actions, education and outreach, partnership building, and program planning. The outcome of Phase II is the adoption by NMFS of a final recovery plan for all federally listed salmon and steelhead in the North-Central California Coast recovery planning domain. The final recovery plan will be subject to public review and comment prior to being adopted by NMFS. This phase of recovery planning is expected to take approximately five years.

SECTION 5 – ROLES AND RESPONSIBILITIES

In recognition of the dynamic nature of the recovery planning process, amendments and addendums to this agreement will clarify the roles of signatories, review procedures, planning timelines, and other relevant issues acceptable to all parties, as such understandings are agreed upon. To facilitate the timely development of such amendments and addendums in support of Objectives 3.1, 3.3 and 3.5 as noted herein, the signatories agree to the following process:

1. Within three months of the signing of this agreement by four of the counties, NMFS, and one of the other agencies, and on a quarterly basis thereafter, NMFS will meet with representatives of the signatories. Topics to be addressed at these quarterly meetings will include:
 - a. Summary of the studies and information currently being considered by the TRT;
 - b. Identification of opportunities for providing information not summarized in 5.1.a above to the TRT;
 - c. Identification by the signatories of activities currently underway and information being gathered which could contribute to the TRT efforts and to the recovery planning process.

2. Within twelve months of the signing of this agreement by four of the counties, NMFS, and one of the other agencies, NMFS will meet with representatives of the signatories. Topics to be addressed at this meeting will include:
 - a. Progress of the TRT in assessing and describing limiting factors, genetic makeup and diversity, and required fish populations;
 - b. Current timeline of the TRT for completing the description of the limiting factors, genetic makeup and diversity, and required fish populations;
 - c. Current timeline of the Phase II recovery implementation planning process;
 - d. Information and data related to fish populations, limiting factors, habitat analysis, genetic makeup and diversity, and any other relevant scientific information being considered by the TRT and/or being generated by other signatories to the agreement to insure that the TRT is aware of current information relevant to their analysis;
 - e. Information related to enhancement activities being performed either by or in cooperation with signatories to the agreement;
 - f. Proposed amendments and addendums to this agreement reflecting the information provided at the meeting as described above and to guide the parties through the next phase of the recovery planning process and to support Objectives 3.1 through 3.5 as described herein.
3. NMFS is developing a public involvement process that will include opportunities for signatories to contribute during each phase of recovery planning. Specific opportunities for such contributions and review will be developed by NMFS during Phase I, in consultation with signatories and others.
4. The NMFS Recovery Coordinator will report TRT progress to the other signatories, including information on technical and policy issues, timeline targets, and emerging recovery strategies during regularly scheduled meetings of FishNet4C, or at other mutually agreed upon times.

SECTION 6 – DURATION OF AGREEMENT

This MOU becomes effective upon signature by four of the counties, NMFS and one of the other agencies and shall remain in effect until modified by mutual consent of all signatories hereto. Participation of a signatory in this MOU may be terminated with sixty days' notice by that signatory.

SECTION 7 – AMENDMENTS; ADDITIONAL PARTIES

Upon written consent of all signatories, this MOU may be modified as necessary for achieving the purpose and objectives stated herein. Such modifications may include, but are not limited to,

revising roles and responsibilities, or other such revisions as are deemed appropriate. Notwithstanding the foregoing, the addition as signatories to this MOU of 1) other counties within the recovery planning domain, or 2) parties having the consent of NMFS, shall not require the written consent of all signatories hereto, but may be accomplished by such counties or other parties by execution of this MOU.

SECTION 8 – AUTHORITIES

The National Marine Fisheries Service is authorized to enter into this MOU pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e). Under the ESA, the Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration and NMFS, is responsible for implementing the ESA with respect to anadromous salmonids including steelhead trout and coho and chinook salmon. This responsibility includes the issuance of biological opinions and incidental take statements, incidental take permits, and recovery plans.

The U. S. Army Corps of Engineers is authorized to enter into this MOU pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544). Under section 7 of the ESA, the U. S. Army Corps of Engineers is responsible for utilizing their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species listed pursuant to section 4 of the ESA.

The California Department of Fish and Game is authorized to enter into this MOU pursuant to the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Fish and Game Code section 6900 et seq.).

The Counties of Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz and Monterey are authorized to enter into this MOU pursuant to Sections 1 and 7 of Article XI of the California Constitution and Sections 23003 and 23004 of the California Government Code.

This MOU does not alter existing regulations or agency responsibilities and authorities. It specifically does not commit any agency or entity to activities beyond the scope of their mission, funding and authorities. This MOU recognizes that any new funding and personnel to carry out the responsibilities described in this MOU shall be subject to the approval of the appropriate governing board or executive official. Implementation of this MOU shall be subject to the availability of resources and, with respect to the federal signatories, funding for implementation, including the obligation of personnel time, shall be subject to the availability of appropriated funds, pursuant to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

The provisions of this MOU do not confer any rights or defenses, substantive or procedural, on any person or entity not a signatory to this MOU, nor are such provisions enforceable by any person or entity not a signatory to this MOU.

SECTION 9 – CIVIL RIGHTS

The activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-2590), and other nondiscrimination statutes, namely, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990.

For the National Marine Fisheries Service:

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Acting Regional Administrator

For the U. S. Army Corps of Engineers:

Lieutenant Colonel Timothy O'Rourke, USA
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For the California Department of Fish and Game:

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For the County of Humboldt:

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For the County of Mendocino:

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For the County of Sonoma:

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For the County of Santa Cruz:

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