UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

AUG 12 2019

Mr. Joseph Dillon
National Marine Fisheries Service, California Coastal Area Office
777 Sonoma Avenue, Suite 325
Santa Rosa, CA 95404

Re: Initiation of Informal Consultation; Request for Confirmation of Listed Species/Critical Habitat, Technical Assistance, and Essential Fish Habitat for a Federally Proposed Selenium Water Quality Criterion for California

Dear Mr. Dillon,

On November 29, 2018, the Acting Administrator of the U.S. Environmental Protection Agency (EPA) signed a proposed rule for a selenium water quality criterion for certain California waters; on December 13, 2018, the proposal was published in the Federal Register for review and comment (83 FR 64059). Pursuant to a consent decree, EPA must request initiation of any necessary Endangered Species Act (ESA) consultation no later than nine months after the date EPA proposed the criterion. Because the proposed rule would establish a water quality criterion to protect aquatic life and aquatic dependent wildlife in California, the action is subject to ESA Section 7(a)(2), interagency consultation procedures. By this letter, EPA is initiating informal ESA consultation by requesting confirmation of the National Marine Fisheries Service (NMFS) species and habitat for the action area in Enclosure A. EPA is also asking NMFS for technical assistance by identifying pertinent information that EPA should consider in its consultation analyses, and for identification of essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act.

Section 7(a)(2) of the ESA requires that federal agencies consult with the U.S. Fish and Wildlife Service (FWS) and NMFS (together, the Services) to ensure that any action it funds, authorizes, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. To assist with the development of a biological evaluation, EPA requests confirmation of the enclosed list of NMFS listed, proposed and candidate threatened and endangered species, and designated and proposed critical habitat that may be present in surface freshwaters and estuarine waters within the State of California, except for the San Francisco Bay Estuary. The proposed rule does not apply to ocean waters (i.e., salinity greater than 10 parts per thousand); therefore, marine species that do not spend time in estuarine or fresh waters would not be included in the scope of the action and should not be included on the list. EPA requests that NMFS identify any species and critical habitat that are not included on the list that would require evaluation, and any species that are included that would not require evaluation.

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EPA is also asking that NMFS identify (and provide if not readily available) all pertinent information and data, including key or important published or unpublished literature, that EPA should consider in determining whether the proposed selenium criterion is likely to affect listed species or their critical habitat. EPA wants to ensure that all appropriate sources of information are considered when it prepares a biological evaluation.

Lastly, since EPA's proposed selenium criterion may apply to enclosed bays and estuaries in California (except the San Francisco Bay Estuary), EPA requests NMFS to identify any essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA includes a mandate that federal agencies consult with the Secretary of Commerce on all activities, or proposed activities, authorized, funded or undertaken by the agency, that may adversely affect EFH.

We are requesting your response by September 30, 2019. Thank you for your timely attention to these matters. If you have any questions, please contact me at (415) 972-3462 or Diane Fleck at (213) 244-1836.

Sincerely,

Terrence Fleming
Acting Manager
Standards and Assessment Section

Enclosure

Enclosure A

List of NMFS Threatened and Endangered Species in California Freshwaters and Estuarine Waters

Sources: NOAA West Coast Protected Resources Application (Mapping Application) at: https://www.webapps.nwfsc.noaa.gov/portal/apps/webappviewer/index.html?id=7514c715b8594944a6e468dd25aaacc9. List of NMFS species in the letter dated February 22, 2017, from Alecia Van Atta, Assistant Regional Administrator, concerning the ESA consultation for EPA's approval of the State of California's statewide mercury water quality objectives.

Species Name	DPS/ESU	Status	Designated Critical Habitat	
Eulachon *(Thaleichthys pacificus)*	Southern DPS	T	Y	Threatened (March 18, 2010, 75 FR 13012); Critical habitat (October 20, 2011, 76 FR 65324)
Sturgeon, green *(Acipenser medirostris)*	Southern DPS	T	Y	Threatened (April 7, 2006, 71 FR 17757); Critical habitat (October 9, 2009, 74 FR 52300)
Sea turtle, leatherback *(Dermochelys coriacea)*	(West Coast/Pacific Populations)	E	Y	Endangered (June 2, 1970, 35 FR 8491); Critical habitat (January 26, 2012, 77 FR 4200)
Sea turtle, Green *(Chelonia mydas)*	East Pacific DPS	T	N	Threatened (April 6, 2016, 81 FR 20058)
Chinook Salmon				
Salmon, Chinook *(Oncorhynchus tshawytscha)*	California Coastal ESU	T	Y	Threatened (June 28, 2005, 70 FR 3 7160); Critical habitat (September 2, 2005, 70 FR 52488)
Salmon, Chinook *(Oncorhynchus tshawytscha)*	Sacramento River winter-run ESU	E	Y	Endangered (June 28, 2005, 70 FR 37160); Critical habitat (June 16, 1993, 58 FR 33212)
Salmon, Chinook *(Oncorhynchus tshawytscha)*	Central Valley spring-run ESU	T	Y	Threatened (June 28, 2005, 70 FR 37160); Critical habitat (September 2, 2005, 70 FR 52488)
Steelhead				
Steelhead *(Oncorhynchus mykiss)*	Northern California Coast DPS	T	Y	Threatened (January 5, 2006, 70 FR 37160); Critical habitat (September 2, 2005, 70 FR 52630)

Steelhead *(Oncorhynchus mykiss)*	Central California Coast DPS	T	Y	Threatened (January 5, 2006, 70 FR 37160); Critical habitat (September 2, 2005, 70 FR 52630)
Steelhead *(Oncorhynchus mykiss)*	California Central Valley DPS	T	Y	Threatened (January 5, 2006, 70 FR 37160); Critical habitat (September 2, 2005, 70 FR 52630)
Steelhead *(Oncorhynchus mykiss)*	South-Central California Coast DPS	T	Y	Threatened (January 5, 2006, 70 FR 37160); Critical habitat (September 2, 2005, 70 FR 52630)
Steelhead *(Oncorhynchus mykiss)*	Southern California DPS	E	Y	Endangered (January 5, 2006, 71 FR 834); Critical habitat (September 2, 2005, 70 FR 52630)
Coho Salmon				
Salmon, Coho *(Oncorhynchus kisutch)*	Southern Oregon/Northern California Coast ESU	T	Y	Threatened (June 28, 2005, 70 FR 37160); Critical habitat (May 5, 1999, 64 FR 24049)
Salmon, Coho *(Oncorhynchus kisutch)*	Central California Coast ESU	E	Y	Endangered (June 28, 2005, 70 FR 3 7160); Critical habitat (May 5, 1999, 64 FR 24049)