



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

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September 30, 2008

Mr. John Kirlin
Executive Director, Delta Vision
650 Capitol Mall, 5th Floor
Sacramento, California 95814

Dear Mr. Kirlin:

Thank you for the opportunity to review the fourth draft of the Delta Vision Strategic Plan. I understand that this draft was considered by the Task Force at its meetings on September 18 and 19, 2008, and that, in accordance with the timeline established by the Governor, a final plan will be adopted by October 31, 2008.

With our limited capacity and mandatory duties, NOAA's National Marine Fisheries Service (NMFS) has not been able to review this fourth draft plan in depth. For the record, we are submitting comments of Mr. Russ Strach, Assistant Regional Administrator, regarding the second draft of the plan, which he delivered to the Task Force during a Federal panel session earlier this year. I hope these comments will assist you, Task Force members, and other Delta Vision participants in understanding our perspectives on the Delta Vision process and draft plan.

Upon quick review of the fourth draft, I see that many changes have been made that, in part, respond to these comments. Important changes that we support include: simplifying the governance structure; including more context on current court supervision of actions in the Delta; and incorporating more of Calfed's successful programs, including the Ecosystem Restoration Program.

NMFS remains committed to work with you on crafting a long-term plan for the Bay Delta estuary and believes that such a plan is vitally important to creating a comprehensive approach that transcends authorities of individual agencies. We encourage you to establish an efficient mechanism to engage the Federal agencies, as there has been no regular avenue for participation to date. Please feel free to contact me at (916) 930-3600 if I can provide any additional information necessary for completion of your report.

Sincerely,

Maria Rea
Supervisor, Sacramento Area Office

Cc: NMFS, PRD, Long Beach, CA



**Comments of Russ Strach, Assistant Regional Administrator, July 18, 2008,
on the Second Draft of the Delta Vision Plan**

General

Clearly, the issues in the Delta warrant a comprehensive solution. I applaud the Governor's leadership in forming the Delta Vision Task Force, and I want to work with you in whatever way is helpful to you. We have not been involved to date. And, in quickly reviewing your draft strategic plan, it raises many questions for me. I hope today will be the beginning of a dialog.

We, as one Federal agencies charged with species protection, do not have the full suite of tools that the State has in designing an optimal system for managing the critically important resources of the Delta. Many of your recommendations concerning land use, conservancies, and "Delta as Place" go far beyond our authorities, and we fully expect that these actions would contribute to a more comprehensive solution to the Delta.

As a Federal agency, NMFS is charged with implementing authorities under Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act. We take these obligations very seriously. It is commonly known that Central Valley fall-run salmon, our commercial stock, have declined steeply in 2007, leading to a complete closure of the fishery. Similarly, winter-run Chinook salmon, our one endangered listed species, has experienced a steep decline. Spring-run Chinook, Central Valley steelhead, and green sturgeon are all listed as threatened and are in need of serious additional protections. All of these species would be greatly benefited by restoring important ecological functions of the Delta.

NMFS Priorities

I'd like to quickly mention three priorities that may be relevant to you:

- 1) ***Responding to litigation/Operations, Criteria and Plan (OCAP)***. We are currently in a litigious environment that is creating a great deal of regulatory uncertainty regarding conflicts between endangered species protection and water supply. NMFS has lost three lawsuits in relatively quick succession on all of our major biological opinions on the west coast: Columbia River, Klamath River, and of course OCAP – our consultation on the joint operations of the State Water Project (SWP) and Central Valley Project (CVP). That's not a good track record, and we know that we must do things differently. We've been told by the courts that we need to consider climate change, that we need to ensure that adaptive management has accountability that traces back to independent recommendations by the Services, and that future actions have to be reasonably certain to occur. We are also engaging in an extensive scientific peer review process, with the assistance of the CalFed science program.

We are committed to following the science and the law and delivering the next round of an OCAP opinion that we can under a great deal of time pressure. I fully expect that opinion to also go to court, given the stakes here. Ultimately, we all need to accept that we will have Federal court oversight of these decisions for some time.

- 2) ***Bay Delta Conservation Plan (BDCP)***. We are fully engaged and supportive of the Resources Agency-led Bay Delta Conservation Plan process. This process is highly collaborative and ambitious in its scope of examining alternative conveyance options in the legal Delta. The process includes a broad examination of restoration and conservation actions, and envisions a science program and science-based adaptive management plan. The BDCP is still discussing governance options. Much of what is being discussed eventually must be coordinated with the Delta Vision's strategy.
- 3) ***Recovery Planning***. NMFS is criticized by some parties for being in a reactive mode, and not setting strategic priorities. Since joining the Southwest Region, I have been pushing to complete our recovery plans. We currently have a co-manager review draft for the Central Valley and expect to issue a public draft plan by December. This plan will be our roadmap for recovery of the species and will provide important priority actions that I hope would be relevant to your work.

Comments of Third Draft of Delta Vision Plan

- 1) **Delta focus – need to make connections upstream**. The plan seems to be focused on the Delta – which is appropriate. However, in our view, because salmon need to access the full part of the habitat, the connections to tributaries is critically important. The CVP and SWP operational rules in the tributaries are based on management of cold water behind dams. This occurs because salmon have been blocked by the rim dams from accessing much of their historic cold water habitat. Our recovery planning process is reviewing alternative approaches which would allow for a more ecosystem-based management system. This would include studying the feasibility of fish passage at some of the rim dams. Some of these upstream operations do and will continue to constrain Delta options. ***Upstream species needs and operational constraints need to be more fully recognized in any comprehensive planning process.***
- 2) **Questions about the governance structure with respect to water operations**. The governance structure raises many questions about how our legal Federal authorities will be coordinated with the new state authorities. For example, how will the Delta Operations Team be coordinated with our biological opinion on OCAP or the following operational coordination being developed as part of BDCP? Daily operational decisions are made by California Department of Water Resources (DWR) and U.S. Bureau of Reclamation, and NMFS is one of five agencies that make weekly decisions through the Water Operations Management Team (WOMT).

The new biological opinion, due to be completed in March 2009, is expected to contain adaptive management procedures for species protection that will be implemented through a series of geographically based technical teams, including Clear Creek, Sacramento River, American River, Feather River, Stanislaus River, and the Delta smelt workgroup that report to WOMT and Agency Directors.

The Federal court has been very clear that the Services are to make final determinations on necessary species protections within the adaptive process. What role would additional Council members play and how is this consistent with the court's direction? Additional process improvements may well be possible, and these are being evaluated as part of BDCP.

I also see the Task Force's proposed structure splits the DWR into two agencies. It is unclear to me what benefit would be achieved. The current configuration of DWR conducts the full suite of identified functions well. We work collaboratively with DWR on its flood management efforts, which include its levee programs. DWR has provided important leadership on integrating ecosystem functions, including riparian forest, into levee repairs.

- 3) **Collaborative process expectations.** Delta Vision proposes a new collaborative and comprehensive planning effort that moves away from individual agencies exercising authorities and towards integrated management. NMFS supports this approach. However, I want to note two issues to consider during your planning process:

- a) ***Lack of Funding.*** Collaborative processes require more meetings, more technical workshops, and a general expansion of each agency's workload. Under Calfed, NMFS never received funding to participate. Therefore, although we wanted to participate in collaborative processes, we frequently were put in the position of making regulatory decisions without the benefit of participation, which exacerbated failed expectations decisions would be made in a participatory structure.
- b) ***Avoiding conflicts and over-promising.*** When I discuss the Calfed process with my predecessors, they convey that there were many benefits, but there was also the expectation that the regulatory agencies not fully implement their authorities if those created conflict with others at the Calfed table. Calfed has also been criticized for promising too much to too many. How will these drawbacks to a highly collaborative process be managed, and what are your expectations of regulatory agencies?

Your language on p. 2 about a fundamental conclusion "not guaranteeing survival of any species" could be read to convey an expectation that the Endangered Species Act will not be fully implemented, but will somehow be compromised or "balanced." We need to all learn from past lessons and experiences. Again,

NMFS must fully implement our legal authorities based on best available science. Exercising our legal authorities is also in the best interest of the water supply needs, as it will create more regulatory certainty and allow for additional water management planning to proceed in a more predictable manner.

4) **Good parts of Calfed to keep.** As you develop a new comprehensive program similar to Calfed, I want to direct your attention to two important programs which NMFS sees as very beneficial. NMFS hopes that these will be retained:

a) **Ecosystem Restoration Program:** This program is administered by the three “fish agencies” and has been very successful at targeting important upstream restoration projects and developing an ecosystem-based plan. We consider that this program will serve as a critical implementation arm for our Central Valley recovery plan for salmon and steelhead. It is designed and administered well, and should not be lost in the shuffle of creating new programs.

b) **Calfed’s Science Program.** The science program works collaboratively with our agency to fulfill science needs for species management, adaptive processes, biological opinions, evaluations, peer review, *etc.* This is a highly effective and critically important program that is designed and managed well, and we encourage you to keep it in its current form as much as possible. It provides important services to our agency that enhances our ability to fulfill our mandates.