



"A Voice for Salmon"
365 Days a Year

February 17, 2022

Barry Thom, Regional Administrator
National Marine Fisheries Service
West Coast Regional Office
1201 Northeast Lloyd Blvd, Suite 1100
Portland, OR 97232

Re: Failure of the Feather River Habitat Expansion Agreement

Dear Barry,

I am writing to request that NMFS take immediate action to address the failure of the Feather River Habitat Expansion Agreement (HEA). The HEA process has failed to produce an outcome for 15 years. Given NMFS' and the licensee's obligations under federal law, and the crisis facing California salmon, it's time to act. This letter includes a specific recommendation for breaking the current gridlock – a pilot trap and haul reintroduction program to suitable upstream Feather River habitat.

The HEA required the development of a Habitat Expansion Plan (HEP) to meet the obligations of California's Department of Water Resources and Pacific Gas and Electric under the Federal Power Act and the ESA, related to the renewal of their FERC licenses. The HEA calls for the restoration of adequate Spring-Run spawning, rearing and holding habitat to support an additional 2,000-3,000 adult salmon in the Sacramento River Basin. Since the original HEA was negotiated in 2007, Central Valley salmon and California's salmon fishing industry have suffered a series of disasters, including:

- The 2008-2009 closure of California recreational and commercial salmon fishing.
- The near complete loss of juvenile Sacramento River Winter-Run and Fall-Run salmon in 2014, 2015 and 2021.
- The near complete loss of Spring-Run adults on Butte Creek in 2021.

These disasters were caused by irresponsible and illegal water management, climate change driven droughts and the failure to take action on a broad range of restoration opportunities, including on the Feather River. Although many fish kills – such as those below Shasta Dam – can and must, under state and federal law, be avoided through improved water management, it is also essential that agencies take action in light of the growing evidence that climate change threatens the survival of California's salmon and salmon fishing industry. Responding to this growing crisis requires taking action in gridlocked processes such as the Feather River HEA.

In 2008, talks began to develop a HEP to meet the requirements of the 2007 HEA. In 2010, DWR and PG&E submitted a final HEP for approval. In January of 2014, NMFS rejected that

2010 HEP as inadequate for multiple reasons, most importantly, including failure to meet the Habitat Expansion Thresholds in the HEA. In other words, the HEP did not provide sufficient benefit for Spring-Run Chinook salmon and Central Valley Steelhead to meet legal requirements.

Since 2014, there have been occasional periods of activity in the HEA process. However, despite the passage of nearly 15 years since the original HEA and the 2009 deadline in the original HEA for the preparation of a HEP, the FERC licensees have failed to produce a legally adequate plan.

In September of 2021, the HEA process held its most recent signatory meeting. (It is worth noting here that the HEA is so old that it predates the founding of GSSA. Therefore, we could not have signed the original HEA, had we desired to do so.) GSSA requested to be allowed to attend that meeting, but were denied that opportunity. Since that meeting, there is no indication that the HEA process is making progress toward an adequate final plan.

After nearly 15 years, including more than a decade since the development of an inadequate final HEP, it is time to acknowledge that the current HEA effort has failed. It is also important to acknowledge that federal law, and the state of Central Valley salmon and steelhead populations, require immediate action.

Finally, since the original HEA was negotiated in 2007, it has become increasingly clear that Central Valley salmon and steelhead populations will remain extraordinarily vulnerable to climate change driven droughts and temperature increases as long as they are limited to the ten percent of historic Central Valley spawning habitat remaining below the rim dams. In the case of Feather River Spring-Run salmon, they are entirely blocked from their historic spawning habitat and are confined to an eight mile stretch of the Feather River downstream of Oroville Dam. To improve the climate resilience of salmon populations, it is important that all Central Valley runs be given access to a portion of their historic higher elevation habitat. Some of that habitat contains reliable stream flows and low water temperatures that are needed to improve salmon resilience. This need is reflected in the reintroduction requirements included in the 2009 NMFS BOR/DWR Coordinated Operations Agreement Biological Opinion.¹ It is also reflected in your recent op-ed in the Sacramento Bee.²

Across the Central Valley, there are several available strategies to allow salmon improved access to higher elevation habitat. However, in the case of the Feather River, a trap and haul reintroduction program, likely to the North Fork of the Feather, appears to be the most promising.

It is worth noting that the HEA Evaluation Criteria for the NMFS evaluation of the HEP include “availability of appropriate stocks of Spring-Run and Steelhead for reintroduction.” Thus, it is clear that a reintroduction program could be undertaken pursuant to the HEA.

¹ As you know, GSSA believes that the 2019 NMFS BO, which does not include reintroduction requirements, does not meet legal requirements.

² <https://www.sacbee.com/opinion/op-ed/article257221967.html>

It is also worth noting that the related FERC settlement addressing Oroville Relicensing requires a Fall-Run trap and haul program – from the proposed Low Flow Channel segregation weir to the Feather River hatchery. It is, therefore, clear that DWR and other signatories to that agreement are not opposed to a salmon trap and haul program on the Feather River.

It is now apparent that a HEP focused on restoring habitat below Oroville and Englebright Dams will not meet legal requirements. With this in mind, GSSA offers the following recommendation for moving forward.

Recommendation: GSSA recommends that NMFS negotiate an agreement with DWR and PG&E, in cooperation with CDFW and stakeholders, to implement a multi-year pilot trap and haul salmon reintroduction project, likely to the North Fork of the Feather River, to evaluate the potential for a permanent reintroduction program. As explained above, this recommendation is consistent with the HEA. If an agreement cannot be reached within six months to implement such a pilot project, we believe that the law requires NMFS to terminate the HEA and impose a fish passage requirement under your Section 18 Federal Power Act authority.

We believe that a failure to act immediately to respond to the failure of the HEA process would violate federal law. We also believe that the recommendation above offers significant potential benefits at a reasonable cost and could be implemented rapidly.

We request a meeting at your earliest convenience to discuss this recommendation. We also request to attend future signatory meetings of the HEA process.

We look forward to discussing this recommendation with you. Thank you for your work at NMFS.

Sincerely,

A handwritten signature in cursive script that reads "John McManus".

John McManus
President

Cc: DWR, PG&E, CDFW, State Water Contractors, American Rivers, USFWS