



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:
81420-2009-I-0748-1

SEP 03 2009

Ms. Jane M. Hicks
Regulatory Division
Attn. Justin Yee
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, California 94103-1398

Subject: Informal Consultation on California Department of Fish and Game's Proposed 2009-2014 Fisheries Restoration Grants Program (Corps File Number 2003-279220N)

Dear Ms. Hicks:

This is in response to the U.S. Army Corps of Engineer's (Corps) March 17, 2009, letter requesting consultation with the U.S. Fish and Wildlife Service (Service) on California Department of Fish Game's (CDFG) proposed 2009-2014 Fisheries Restoration Grants Program (2009-2014 FRGP) in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties, California. Your request was received by our office on March 23, 2009. At issue are the potential effects to the endangered California freshwater shrimp (*Syncaris pacifica*) (freshwater shrimp), threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog), endangered Sonoma County Distinct Population Segment (DPS) and threatened Central California DPS of the California tiger salamander (*Ambystoma californiense*) (tiger salamander), endangered least Bell's vireo (*Vireo bellii pusillus*) (vireo), threatened marbled murrelet (*Brachyramphus marmoratus*) (murrelet), threatened northern spotted owl (*Strix occidentalis caurina*) (spotted owl), and endangered southwestern willow flycatcher (*Emidonax trailii extimus*) (willow flycatcher). In addition, we are concerned about the potential effects to the endangered tidewater goby (*Eucyclogobius newberryi*) (goby), and endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) (garter snake). This response is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*) (Act).

The 2004-2009 Fisheries Restoration Grants Program (2004-2009 FRGP) is currently in place and will expire on December 1, 2009. The Sacramento Fish and Wildlife Office (SFWO) issued a programmatic biological opinion (PBO) (Service File Number 1-1-03-F-273) for the 2004-2009

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FRGP. The Corps proposes to reissue a Regional General Permit (RGP) authorizing CDFG to continue funding and implementing various salmonid habitat enhancement and restoration projects through the implementation of the proposed 2009-2014 FRGP. The new RGP would have a term of 5 years from the date of authorization. 2009-2014 FRGP activities will be proposed annually for various watersheds throughout Alameda, Contra Costa, Del Norte, Humboldt, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Siskiyou, Solano, Sonoma, Trinity, and Ventura counties. The Corps' RGP addressed by this informal consultation only applies to 2009-2014 FRGP projects in counties within the regulatory jurisdictional boundaries of the Corps' San Francisco District. Of the resulting geographic area, the SFWO has regulatory purview over Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties. Therefore, this informal consultation pertains only to proposed 2009-2014 FRGP projects that would be executed in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma counties.

Individual restoration projects would involve the application of one or more of the restoration treatments described in Parts VII, IX, X, XI, and XII of the *California Salmonid Stream Habitat Restoration Manual* (Restoration Manual) (CDFG), with the exception of dam removal. Dam removal activities are not addressed in this information consultation due to the varying potential effects of sediment mobilization and require separate consultation. All projects would be restricted to and carried out in accordance with techniques identified in the Restoration Manual.

We concur with your determination that the proposed 2009-2014 FRGP may affect, but is not likely to adversely affect, the murrelet and northern spotted owl. Our concurrence is based on the following factors:

1. Protocol surveys for spotted owls and murrelets will be conducted at proposed project sites with potential habitat.
2. Work will not be conducted within 0.25 mile of any site with known or potential murrelet habitat between November 1 and September 15, or known or potential spotted owl habitat between November 1 and July 31. If protocol surveys determine that nesting spotted owls or murrelets do not occur within 0.25 mile of a specific project site, project activities at that site may commence prior to September 15.
3. Project activities will not remove or degrade suitable spotted owl or murrelet habitat.

We concur with your determination that the proposed 2009-2014 FRGP may affect, but is not likely to adversely affect, the vireo. Our concurrence is based on the following factors:

1. Protocol surveys for least Bell's vireo will be conducted at proposed project sites by a qualified biologist knowledgeable in least Bell's vireo identification and biology.

2. Work will not begin within 0.25 mile of any site with known or potential least Bell's vireo habitat until after September 15.
3. Willow branches will not be harvested at any site with potential least Bell's vireo nesting habitat, as determined by a Service-approved biologist knowledgeable in least Bell's vireo identification and biology.

We concur with your determination that the proposed 2009-2014 FRGP may affect, but is not likely to adversely affect, the tiger salamander or its designated critical habitat. Our concurrence is based on the following factors:

1. 2009-2014 FRGP projects will occur in or near streams and riparian corridors.
2. Upslope projects will be limited to road upgrading and decommissioning in areas that are steep, eroding, and often vegetated with trees and shrubs.
3. California tiger salamanders use ponds and vernal pools for breeding, and existing burrows in grassland habitat for estivation. Neither of these habitats are typically located in close proximity to anadromous fish-bearing streams.

We concur with your determination that the proposed 2009-2014 FRGP may affect, but is not likely to adversely affect, designated or proposed revised critical habitat for the red-legged frog. Our concurrence is based on the following factors:

1. Projects implemented under the 2009-2014 FRGP will not damage or deteriorate any of the primary constituent elements (essential aquatic habitat, associated upland habitat, and dispersal habitat) of the proposed revised or designated critical habitat.
2. Restoration projects implemented under the 2009-2014 FRGP within proposed revised and designated critical habitat units will likely improve the quality of red-legged frog habitat in these areas. This will improve the function and productivity of the proposed revised and designated critical habitat units for red-legged frogs.
3. Restoration projects implemented under the proposed authorization will revitalize degraded or impaired aquatic and riparian habitats and result in higher quality habitat in dispersal corridors and core areas.

We do not concur with your determination that the proposed 2009-2014 FRGP may affect, but is not likely to adversely affect the willow flycatcher. We believe the 2009-2014 FRGP will have no effect on the willow flycatcher. Our determination is based on the following factor:

The proposed action area does not include the known geographic range of the willow flycatcher.

We have determined that the 2009-2014 FRGP may affect, but is not likely to adversely affect, the goby. Our determination is based on the following factor:

Proposed 2009-2014 FRGP activities will not be conducted within the tidal zone habitat of the goby without project specific consultation with the SFWO.

We have determined that the 2009-2014 FRGP may affect, but is not likely to adversely affect, the garter snake. Our determination is based on the following factor:

Proposed 2009-2014 FRGP activities will not be conducted within the range of the garter snake without project specific consultation with the SFWO.

We do not concur with your determination that 2009-2014 FRGP may affect, but is not likely to adversely affect, the freshwater shrimp or red-legged frog. We believe that the proposed 2009-2014 FRGP may adversely affect these species. Factors contributing to this determination are: (1) proposed 2009-2014 activities are likely to occur within the range and habitat of the freshwater shrimp and red-legged frog; (2) the project description includes the possible removal of freshwater shrimp and red-legged frogs from project areas; and (3) the project description includes disturbing potential freshwater shrimp and red-legged frog habitat with heavy equipment. Therefore, these activities may adversely affect these species and thereby warrant formal consultation.

We have determined the PBO (Service File Number 1-1-03-F-273) will continue to provide incidental take coverage, for projects executed under the 2009-2014 FRGP, for the freshwater shrimp and red-legged frog pursuant to section 7 of the Act for the following reasons:

1. Our species determinations remain the same.
2. The 2009-2014 FRGP project description remains the same as the 2004-2009 FRGP project description.
3. The *Effects of the Proposed Action, Cumulative Effects, and Conclusion* in the PBO remain valid.

Therefore, unless new information reveals effects of the project that may affect federally listed species or critical habitat in a manner not identified to date, or if a new species is listed or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary.

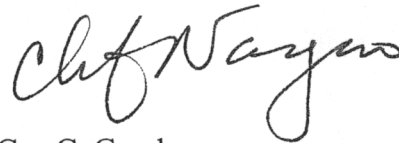
If you have any questions regarding our response to the proposed 2009-2014 Fisheries Restoration Grants Program, please contact Ben Solvesky or Ryan Olah at the letterhead

Ms. Jane M. Hicks

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address, telephone (916) 414-6600, or electronic mail at Ben_Solvesky@fws.gov or Ryan_Olah@fws.gov.

Sincerely,



Cay C. Goude
Assistant Field Supervisor

cc:

Scott Wilson, California Department of Fish and Game, Yountville, California
Holly Sheradin, California Department of Fish and Game, Sacramento, California
Arcata Fish and Wildlife Office, Arcata, California
Ventura Fish and Wildlife Office, Ventura, California

Literature Cited

California Department of Fish and Game. 2002. California salmonid stream habitat restoration manual; third edition, volume II. State of California, The Resources Agency, California Department of Fish and Game, Native Anadromous Fish and Watershed Branch; Sacramento, California.