

**Agreement and Co-Management Framework
for Reintroduction of Anadromous Salmonids in the Tribal Cultural Landscape
of the Winnemem Wintu Tribe along the McCloud River Watershed**

The parties to this Agreement and Co-Management Framework (Agreement) include California Department of Fish and Wildlife (CDFW) and the Winnemem Wintu Tribe (WWT). The parties to an accompanying Agreement and Co-Stewardship Framework include the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and the WWT. NMFS and CDFW are collectively herein referred to as "Agency" or "Agencies". The Agencies and the WWT are collectively herein referred to as the Parties or individually referred to as a Party. Additional Parties may be added by consensus.

Recitals

WHEREAS, the fate of the WWT and its people, as an Indigenous People, is intimately and explicitly tied to the fate of their salmon relatives; and

WHEREAS, reintroduction of Sacramento River winter-run Chinook salmon (winter-run) to historical habitats upstream of Shasta Dam is an action that NMFS considers necessary for their recovery under NMFS' Central Valley multi-species recovery plan; and

WHEREAS, reintroducing winter-run and Chinook salmon imported from New Zealand to the McCloud River are not tied, nor mutually exclusive, in policy or regulatory law. These are two separate actions that share the same overall goal of Chinook salmon reintroduction upstream of Shasta Dam; and

WHEREAS, unless importing Chinook salmon results in unauthorized take of a listed species under NMFS' jurisdiction, NMFS does not have authority or jurisdiction over the action. Both reintroduction efforts could be successful; and

WHEREAS, the Agencies hold the legal authority to manage wildlife, fish, and waterways for the benefit of the resources and the public and also hold the regulatory responsibility for recovering listed fishes; and

WHEREAS, the WWT's goal is to provide, in a culturally appropriate way, for the return of former Chinook salmon that now thrive in New Zealand (Nur) to the McCloud River; and

WHEREAS, federal and state laws and regulations apply to the importation of fish or eggs of fish. The United States Fish and Wildlife Service (USFWS) has responsibility for regulating the importation or shipment of these animals. A federal agency taking action to import species must ensure that species importation would not jeopardize the continued existence of listed species or adversely modify their critical habitat. CDFW must provide written approval for importation and placement of imported animals in waters of the state; and

WHEREAS, the Viable Salmonid Population (McElhany et al. 2000) concept serves as NMFS' underlying framework for salmon conservation and recovery efforts. As such, genetic diversity and effective

population size are also important factors to evaluate prior to any reintroduction or restoration of salmonids; and

WHEREAS, the goal of long-term reintroduction is volitional upstream and downstream fish passage; and

WHEREAS, with the California Governor's Drought Emergency Proclamations in May 2021 and July 2021 and State of Emergency Declaration in October 2021, and persisting or worsening drought conditions in 2022, the Parties were concerned about the near complete loss of the third consecutive generation of endangered winter-run and their long-term population viability; and

WHEREAS, water temperatures in the Sacramento River below Keswick Dam during winter-run egg incubation in summer 2022 were expected to lead to extremely high mortality prior to emergence; and

WHEREAS, urgent actions were evaluated and implemented by the Parties to mitigate the drought conditions and secure the future of endangered winter-run; and

WHEREAS, NMFS has made funds available to support the WWT's participation in the short-term urgent actions described herein; and

WHEREAS, within the State's 2022/2023 Fiscal Year budget, funds were appropriated for Fish Passage Actions and Co-Management Efforts with Tribes; and

WHEREAS, NMFS and the WWT are parties to an Agreement and Co-Stewardship Framework that provides a federal accompaniment to this document.

Purpose

1. The purpose of this Agreement is to establish a co-management framework that integrates WWT traditional knowledge and cultural tribal values with CDFW's and NMFS' recovery responsibilities and research and management practices, toward the goal of restoring traditional cultural fisheries including State and federally listed winter-run impacted by loss of access to historical spawning grounds above Shasta Reservoir to the extent possible and consistent with Indigenous Rights and federal, state, and local laws and regulations.
2. The Parties intend to implement a variety of short-term and long-term planning and implementation actions associated with anadromous salmonid reintroduction. Potential benefits and impacts on the WWT Tribal Cultural Landscape (TCL) and other WWT Tribal Cultural Resources (TCRs) along and within the McCloud River will be evaluated.
3. The planning and potential implementation of restoration and reintroduction actions of winter-run and Nur, at a minimum, are coequal goals for the Parties regardless of whether one advances prior to the other in time and space.

Agreement

1. Effective Date. This Agreement will be effective on the date upon which the last Party signs below.

2. Acknowledgment of Authority. The WWT acknowledges that written approval for importation and placement of fish and eggs in waters of the State is contingent upon meeting both federal and state importation requirements.
3. Co-Management.
 - a. CDFW and the WWT agree to coordinate with respect to decision-making processes for short-term urgent actions on the McCloud River described herein and all planning and implementation activities for any long-term anadromous salmonid reintroduction program on the McCloud River that impacts WWT TCL and TCR. To the extent permitted by federal and state law, the WWT shall be a co-equal decision-maker in all such processes; provided, however, that the Agencies retain their full statutory and regulatory decision-making authority.
 - b. Due to the imminent threat to winter-run in summer 2022, the Parties agree this Agreement will suffice to allow specific and agreed-upon urgent actions to occur prior to final funding agreements being executed for fish passage feasibility analyses, pilot projects for juvenile salmonid collection systems, evaluation of Nur importation, and salmonid reintroduction (collectively referred to as long-term actions).
 - c. The WWT's agreement to support short-term urgent and long-term actions is conditional. CDFW and the WWT have developed this Agreement to honor the WWT co-management of anadromous salmonids on the McCloud River, to the extent possible and consistent with federal, state, and local laws and regulations and WWT TCR protection.
 - d. Agencies acknowledge WWT will provide traditional ecological knowledge (TEK) as part of this process, and that WWT retains ownership of their intellectual property and TEK shared during the term of this agreement.
 - e. Agencies agree that WWT will be consulted and provide a timely response on all media messaging related to public reporting on salmon reintroduction in the McCloud River. Photographic images and video that include WWT gathered during this project must be approved by WWT prior to publication or public release.
4. Actions to Mitigate Threats to Winter-Run. The Parties agree to formulate and implement urgent actions on the McCloud River that will help mitigate the on-going extreme drought and water conditions that could threaten winter-run.
 - a. The Agencies will work with the WWT to select biologically and culturally appropriate sites for remote site incubators, rotary screw traps, and other fisheries monitoring equipment with permissive access on the McCloud River.
 - b. The WWT will be consulted on the design and placement of short-term urgent actions and confirm that it is done in a culturally sensitive and appropriate manner.
 - c. The Agencies agree WWT monitors can be at the site to provide for cultural compliance, security, and to ensure the measures are properly operated according to this Agreement.
 - d. The WWT will be informed prior to and included in any decision-making processes for these short-term urgent actions.

5. Winnemem Wintu Fishery. CDFW will coordinate with the WWT for the establishment of a WWT fishery, in the McCloud River that is biologically, ecologically, economically, and culturally appropriate for all concerned (including the salmon).
 - a. The Parties commit to evaluating the reintroduction of Nur in the McCloud River, and to coordinate and identify the requirements for the necessary studies if conditions in existing laws and regulations allow for the importation and placement in state waters.
 - b. The Parties will review existing laws and regulations that impede the importation and placement in State waters and consider investigation and implementation of any possible beneficial solutions to any such impediments.
 - c. The Parties will cooperate in plans for determining if Nur can be safely and legally imported into California. If the Agencies, and other authorizing entities determine that importation is legal, safe, and feasible:
 - i. The Agencies will provide technical assistance for reintroducing Nur to the McCloud River;
 - ii. The WWT will be included in the evaluation of Nur in New Zealand to determine how importation into California may be permitted; and
 - iii. The WWT will develop a budget and the Parties will work collaboratively to identify potential funding mechanisms (which may include grants from the Agencies, to the extent permitted by applicable laws and regulations and sufficient resources) for the WWT, its members, employees, and/or subcontractors to participate in the steps and evaluations towards receiving importation permits, including but not limited to screening, testing and plans for receiving and quarantining eyed eggs.
 - iv. The Parties will support reintroduction of New Zealand Nur on the McCloud River, above Shasta Dam.
6. Near-term Juvenile Salmonid Collection System Planning and Testing. The Parties agree to coordinate on the implementation of the Juvenile Salmonid Collection System (JSCS) Project. The JSCS is an interim step toward evaluating the feasibility of anadromous salmonid reintroduction into the McCloud River and passage between the McCloud River and the Pacific Ocean. The Agencies agree that the success of the JSCS depends on WWT participation. The WWT, its members, employees, and/or subcontractors will participate in meetings, review documents, and participate in site visits to the JSCS during installation and operation.
7. Fish Passage Facility Planning and Science. The Parties agree to coordinate to ensure successful evaluation of biological components of fish passage facilities. The WWT, its members, employees, and/or subcontractors will participate in various scientific evaluations—such as assessing the biological responses of anadromous salmonids in the McCloud River, reservoir transit studies, donor stock, fish culture, TCL, TCR, and modeling—in assessing the overall success of the fish passage facilities. Results of fish passage evaluations will be used as one of many indicators of the anadromous salmonid reintroduction feasibility. Fish passage facilities testing will include components other than the Juvenile Salmonid Collection System contingent on funding availability.

8. Long-term Salmonid Reintroduction Planning. Anadromous salmonid reintroduction is dependent on successful operation of fish passage facilities. The species considered may include winter-run, other state or federally listed salmonids, and/or Nur. The Parties will work together to develop a comprehensive restoration plan that includes the reintroduction of anadromous salmonids to the McCloud River if determined feasible and funding can be secured. The Parties will coordinate on potential reintroduction of anadromous salmonids to the McCloud River.
9. Federal Energy Regulatory Commission Relicensing Cooperation. The Agencies will participate and make recommendations, within their authority, in the McCloud Pit Hydro Project Subsequent Environmental Impact Report and other Federal Energy Regulatory Commission processes. As appropriate, the Agencies will discuss their recommendations with the WWT and if appropriate, include WWT feedback prior to submitting final recommendations.
10. Traditional Cultural Property/Traditional Cultural Resources. The Agencies will assist as appropriate and within their legal framework in the WWT's advocacy for salmon as a Traditional Cultural Property (TCP)/TCR. The WWT will provide the Agencies with its legal analysis and justification for considering salmon to be a TCP/TCR.
11. Target Timelines. The Parties will seek to meet the following target timelines.
 - a. The Parties intend to complete a volitional upstream and downstream fish passage feasibility analysis by December 31, 2025.
 - b. The Parties intend to determine if Nur can be imported into California by December 31, 2025.
12. Funding Plan.
 - a. CDFW intends to enter into one or more agreements for three focus areas to fulfill the funding needs identified in this Agreement, contingent on funding being available and entities being willing to enter into agreements with CDFW, as follows:
 - i. Grant for upstream and downstream volitional fish passage;
 - ii. Grant for pathology testing in New Zealand to help determine if Nur can be imported into California and reintroduced into the McCloud River; and
 - iii. Grant to fund co-management and full participation for the WWT in short-term and long-term actions.
 - b. The Parties will support actions by any Party to request a funding authorization for that Party's actions pursuant to the Agreement, provided that such request is acceptable to each potentially supporting Party and that supporting such action does not conflict with any statutory, regulatory, or other legal obligations. The Parties recognize that long-term funding needs to be secured to continue actions identified in this Agreement.
 - c. Nothing herein will be interpreted as a fiscal or a funding obligation of an Agency. Any commitment of NMFS under this Agreement is subject to the continued and sufficient availability of appropriations. Any obligation of CDFW under this Agreement is subject to Article 16, Section 7 of the California Constitution.
13. Point of Contact. The primary contact for this process will be:

- a. WWT – Chief of the Winnemem Wintu Tribe and Tribal Historic Preservation Officer (currently Chief Caleen Sisk and Mark Miyoshi respectively).
- b. CDFW – Northern Region Tribal Liaison and Fisheries Program Manager (currently Jason Roberts).
- c. NMFS – FERC Hydropower Branch Supervisor (currently Steve Edmondson).

14. Other Provisions.

- a. No Delegation. Nothing in this Agreement is intended to, nor shall it be construed to: (1) constitute a delegation of federal or state authority; or (2) diminish or alter the Agencies' legal authority or duties.
- b. Governance. The Parties will explore and consider a formal or informal governance process.
- c. Limits on Discretion. Any decision made under this agreement that binds, obligates, requires action, or restricts otherwise legal and appropriate exercise of discretion by any party, shall be made by unanimous consent.
- d. Cooperation and Dispute Resolution. Disputing Parties will devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. Disputing Parties will cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution process.
- e. Amendment. Any amendment of this Agreement will be effective only if the amendment is in writing and duly executed by the authorized representatives of all Parties.
- f. Termination. Any Party may terminate this Agreement upon providing written notice to the other Parties at least sixty days prior to the effective date of the termination. The WWT may terminate this Agreement at any time if Chief Sisk determines, in her discretion, that the terms and conditions of the Agreement will violate the cultural values and norms of the WWT.
- g. Other Remedies. This Agreement does not create a cause of action for monetary damages or other remedies for any alleged breach by any Party.
- h. Conformity with Applicable Laws. The Parties intend to conduct the activities set forth in this Agreement in accordance with existing authorities and applicable laws. If any provision of this Agreement is determined to be inconsistent with any applicable law, including the Federal Advisory Committee Act 5 U.S.C. Appendix II, then the applicable law will control.
- i. No Third Party Beneficiary. This Agreement does not create any right or interest in the public, or any member thereof, as a third-party beneficiary thereof, and will not authorize any third party to maintain a suit at law or equity pursuant to this Agreement.
- j. Confidentiality of Public Records. The Parties acknowledge that CDFW is subject to the California Public Records Act and that NMFS is subject to the Freedom of Information Act. CDFW and NMFS shall take all reasonable steps to maintain the confidentiality of any proprietary or confidential information provided by WWT. Nothing in this section is intended, nor shall it be interpreted, to alter CDFW's obligations under the Public Records Act or NMFS' obligations under the Freedom of Information Act.

APPROVALS:

Chief Caleen Sisk, Chief of the Winnemem Wintu Tribe

Date

Charlton Bonham, Director, CDFW

Date