

**(CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
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**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2023-013-00**

Project: Sierra Pacific Industries – Habitat Conservation Plan for Seven Populations of Anadromous Salmonids
Location: Siskiyou, Trinity, Shasta, Tehama, Plumas, Butte, counties
Applicant: Sierra Pacific Land and Timber Company

Background

Sierra Pacific Industries (SPI), the authorized representative and manager of Sierra Pacific Land & Timber Company lands, developed a fifty-year Habitat Conservation Plan (HCP) (Project) (effective September 29, 2021) that supports the issuance of authorizations from the National Marine Fisheries Service (NMFS) that allow for limited take of three species of anadromous salmonids: Central Valley spring-run Evolutionarily Significant Unit (ESU) Chinook salmon (*Oncorhynchus tshawytscha*), Southern Oregon/Northern California Coast ESU coho salmon (*O. kisutch*), and Sacramento River winter-run ESU Chinook salmon (*O. tshawytscha*) (collectively “Covered Species”) incidental to SPI’s forest management activities on their commercial timberlands. The HCP covers 355,000 acres of land spread throughout the Klamath, Cascade, and Sierra Nevada ranges in California.

SPI’s HCP covers timber operations and related management activities including, but not limited to: growing, harvesting, and transporting timber; timber stand regeneration and improvements; water drafting, watercourse crossing facilities placement and maintenance; road and landing construction and maintenance; fuel break construction and maintenance; and monitoring and research (e.g., for salmonids) (Project Activities).

The Project Activities described above have the potential to incidentally take¹ the Covered Species where those activities take place within the Klamath Mountains, Southern Cascades, and Sierra Nevada ecological subregions, specifically within the Trinity and Sacramento River Basins (Project Area). In particular, the Covered Species could be incidentally taken as a result of habitat modification and lost reproduction. Sacramento River winter-run ESU Chinook salmon are designated as endangered pursuant to both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd.

¹ Pursuant to Fish and Game Code section 86, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), “‘take’...means to catch, capture or kill”).

(b)(5)(G).) Southern Oregon/Northern California Coast ESU coho salmon and Central Valley spring-run ESU Chinook salmon are both listed as threatened under both ESA and CESA.

Because Project Activities may result in take of multiple species designated as threatened or endangered under the federal ESA, SPI prepared an HCP in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(b) of the ESA. The ITP requires full implementation of, and compliance with, all conservation measures listed in the HCP for avoidance, minimization, and mitigation for impacts to the Covered Species, all of which NMFS incorporated as conditions of the ITP. On September 21, 2021, NMFS issued a biological opinion (NMFS Consultation Number WCRO-2020-03564) (BO).

The ITP also requires SPI to implement and adhere to measures contained within the HCP.

On July 12, 2023, the Director of the Department of Fish and Wildlife (CDFW) received a notice from SPI requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and its related HCP are consistent with CESA for purposes of the Project and the anticipated incidental take of the above listed anadromous species. (Cal. Reg. Notice Register 2023, No. 31-Z.)

Determination

CDFW has determined that the ITP and its related HCP along with the Incidental Take Statement (ITS) and its related BO, are consistent with CESA as to the Project and the Covered Species, because the mitigation measures contained in the ITP and its related HCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of the Covered Species will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the ITP and its related HCP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of any of the three salmonid populations. The mitigation measures in the ITP and its related HCP that will be implemented by SPI include, but are not limited to, the following:

Avoidance and Mitigation Measures

Section 10(a)(2)(A) of the ESA requires that an HCP specify the measures that the permittee will take to minimize and mitigate to the maximum extent practicable the impacts of the taking of any ESA-listed species as a result of activities covered by the HCP.

A list of conservation actions that will be taken in the future to address potential take is included in Table 2 of Appendix L of the HCP. Examples of actions that are planned in the immediate future include upsizing existing stream crossings, armoring inlets and outlets of existing stream crossings, road abandonment, installation of a 48-foot bridge in the Battle

Creek watershed, installation of hydrologic disconnects, and replacing round culvert crossings with squashed pipes to better facilitate movement of aquatic organisms.

A list of conservation actions from SPI's 2022 Annual Monitoring Report that have been taken to address the impacts of take is included in Table 1 of Appendix L of the HCP. Examples of these actions include removal of poorly functioning crossings, stabilization and enforcement of existing stream crossings, surfacing road segments with clean rock to create a more stable running surface in close proximity of existing stream crossings, and improving the overall function of existing stream crossings.

Additionally, the ITP requires SPI to comply with the California Forest Practice Rules (CFPRs), which set prescriptive standards for natural resource protection minimization measures for all activities. The list below summarizes the standards contained in the CFPRs particularly relevant to salmonid and aquatic habitat protection. The ITP also requires SPI to implement measures to mitigate unavoidable take, including use of the Road Erosion and Sediment Delivery Index (READI model) and the support of ESA-listed species reintroduction efforts proposed by NMFS. These measures are designed to protect riparian resources and water quality. This combination of conservation measures is expected to minimize and mitigate, to the maximum extent practicable, the impacts of take of the anadromous fish species addressed in the HCP.

1. **Erosion Control** measures include limitations on tractor operations, standards and spacing for waterbreak installations, restrictions on timber operations in the winter period, and tractor road watercourse crossing specifications.
 - a. Tractors and other heavy equipment are restricted from operations that cause erosion, such as operating on skid roads or slopes when equipped with a blade and operating in unstable areas, slopes greater than 65 percent, or slopes with a high hazard rating. Slash and debris shall not be placed in locations where they could be discharged into nearby waterbodies.
 - b. Waterbreak installations shall be seasonally restricted. Discharge from waterbreaks shall flow through some form of vegetative cover, duff, slash, rocks, or less erodible material. Waterbreaks shall be maintained during timber operations so they minimize erosion and slope instability and prevent water quality degradation.
 - c. During the winter period (November 15 – April 1), mechanical site preparation and timber harvest are restricted unless a winter period operating plan is incorporated in the timber harvesting plan. The winter period operating plan shall include specific measures taken during the winter operating period to avoid or minimize erosion, soil movement into watercourses, and soil compaction from timber operations.
 - d. Road crossings shall be kept to a minimum, and existing crossing locations shall be used when possible. If a new watercourse crossing is required, it will be prepared using a structure, such as a bridge, culvert, or temporary log culvert. Crossing facilities on watercourses supporting fish shall allow unrestricted

passage for all life stages that may be present. All tractor road watercourse crossing facilities shall be removed and stabilized before the winter operating period unless described in the winter operating plan and approved by the Director of the California Department of Forestry and Fire Protection (CAL FIRE).

2. **Site Preparation** shall be planned and conducted in a manner to encourage maximum timber productivity, minimize fire hazards, prevent substantial adverse effects on soil resources and fish and wildlife habitat, and prevent degradation of water quality. Heavy equipment will not be used for site preparation under saturated soil conditions that may produce sediment discharge. Watercourse crossings for heavy equipment shall be planned, constructed, maintained, and removed in accordance with requirements for tractor roads. Undisturbed areas or energy dissipaters shall be used to control and disperse concentrated runoff from roads, landings, tractor roads, firebreaks, and erosion control facilities where it flows into site preparation areas.
3. **Watercourse and Lake Protection** conservation measures ensure that timber operations do not cause significant adverse site-specific and cumulative impacts on the beneficial uses of water and native aquatic and riparian-associated species, and the beneficial functions of riparian zones. Protective measures include general limitations near watercourses, lakes, marshes, meadows, and other wet areas; watercourse and lake protection; reduction of soil loss; protection and restoration of the beneficial functions of the riparian zone in watersheds with listed anadromous salmonids; and Class I watercourses with confined channels in watersheds in the coastal anadromy zone.
 - a. Several general mitigation measures apply to all watercourses and lakes. Trees shall be felled to lean away from watercourses and lakes. Equipment shall be serviced in locations to prevent grease, oil, or fuel from entering lakes or watercourses. Pesticides shall not be used, and snags and green wildlife trees shall be retained within watercourse protection zones. Accidental depositions of soil or other debris in lakes or watercourses shall be removed immediately. Tractor roads shall not be constructed or used in watercourses and other wet areas, except at prepared tractor road crossings, crossings over dry watercourses, and at new and existing tractor road crossings as part of the Fish and Game Code process (Fish & G. Code § 1600 *et seq.*). Non-commercial vegetation bordering and covering meadows and wet areas shall be retained and protected during timber operations unless explained and justified in the THP and approved by CAL FIRE. Where less than 50 percent canopy cover exists, sanitation salvage will be the only permitted silvicultural prescription. This will help protect stream functions and features, which include maintaining appropriate water temperature, streambed and flow modification by large woody debris (LWD), filtration of organic and inorganic material, upslope stability, bank and channel stability, spawning and rearing habitat for salmonids, and vegetation structure diversity for fish and wildlife habitat. LWD recruitment for instream habitat is provided by retaining core, inner and outer tree zone and canopy requirements as described in CFPR 936.9 and maintaining at least two

- live conifers (at least 16-inch dbh and 50 feet tall) within 50 feet of Class I and II watercourses in the Project Area.
- b. Within the Watercourse and Lake Protection Zone (WLPZ), at least 75 percent surface cover and undisturbed area will be retained for wildlife habitat, to provide ground cover, and act as a filter strip to dissipate raindrop energy and reduce potential surface erosion. Soil deposited during timber operations will be removed, and debris deposited during timber operations will be removed or stabilized before the conclusion of timber operations. Temporary crossings will be removed before the winter period unless explained and justified in the winter operating plan and approved by the Director of CAL FIRE. Heavy equipment will not be used in timber falling, yarding, or site preparation within the WLPZ unless explained and justified in a Timber Harvest Plan or other harvest document.
 - c. Where 100 continuous square feet of exposed mineral soil exists within WLPZ areas as a result of timber operations, the areas shall be treated to reduce soil loss. Treatment shall be completed by October 15, and bare areas created after October 15 will be treated within ten days. Stabilization measures will be selected to prevent significant movement of soil into watercourses. Where mineral soil is exposed by timber operations on approaches to watercourse crossings, the disturbed area will be stabilized to prevent the discharge of soil into watercourses or lakes in amounts deleterious to the quality of water. Where necessary to protect water from timber operations, protection measures, such as seeding, mulching, or replanting, will be specified to retain and improve the natural ability of the ground cover within the standard width of the WLPZ to filter sediment, minimize soil erosion, and stabilize banks of watercourses and lakes.
 - d. Every timber operation shall be planned and conducted to protect, maintain, and contribute to restoration of properly functioning salmonid habitat and ESA-listed salmonid species. To achieve that goal, every timber operation will be planned and conducted to comply with the terms of a total maximum daily load, prevent significant sediment load increase to a watercourse systems or lakes, prevent instability of a watercourse channel, prevent significant blockage of aquatic migratory routes, prevent significant adverse effects to streamflow, protect and restore riparian vegetation, and restrict timber operations within the channel zone.
 - e. The WLPZ delineation and timber operations in coastal anadromy Class I WLPZs have several requirements, such as designing minimum buffer widths of four separate zones along watercourses, incorporating overstory canopy retention, large tree retention, and silvicultural and operational requirements. (See Cal. Code Regs., tit. 14, § 916.9 [936.9, 956.9] (f) (2).)
4. **Road Construction and Maintenance** minimization measures for the design and location of all forest roads and landings include avoiding unstable areas, out-sloping logging roads and landings, draining with waterbreaks, and hydrologically disconnecting logging roads and landings from watercourses and other water bodies.

SPI will not build any new roads in the currently identified WLPZ on anadromous stream reaches during the permit term. In addition, the HCP states that all existing crossings in anadromous stream reaches shall be passable to every life stage of all Covered Species and SPI will maintain that passage status for the permit term.

5. **Water Drafting** sites shall be selected to minimize disturbance to riparian systems. Where possible, existing drafting sites, storage tanks, and off-channel sources will be used. Drafting sites will be chosen in streams and pools where water is deep and flowing, as opposed to streams with low flow and small isolated pools. Pumping shall be terminated when the tank is full. In all watersheds, all intakes will be screened to prevent impingement of juvenile fish against the screen. The following requirements apply to screens and water drafting in Class I waters:
 - a. Openings in perforated plate or woven wire mesh screens shall not exceed 3/32 inch (2.38 millimeters). Slot openings in wedge wire screens shall not exceed 1/16 inch (1.75 millimeters).
 - b. The total (unobstructed) surface area of the screen shall be at least 2.5 square feet.
 - c. The drafting operator shall regularly inspect, clean, and maintain screens to ensure proper operation whenever water is drafted.
 - d. The approach velocity (water moving through the screen) shall not exceed 0.3 foot/second.
 - e. The diversion rate shall not exceed 350 gallons per minute.
6. **Grazing** permits issued by SPI require licensees to abide by all state and federal laws and prohibit licensees from overgrazing the property. Salt licks will be located a minimum of 150 feet from WLPZs. Licensees must maintain proper distribution of livestock by frequent herding via horseback or vehicles. Licensees must agree to use the property in accordance with the best approved practices for range management.
7. **Fuels Reduction** will be implemented to reduce the potential for catastrophic fires. SPI recognizes that large-scale, high-severity fires pose a risk to ESA-listed species on SPI lands. Fuels management will be accomplished through the continued use of even-age management and the ongoing establishment of a system of fuel breaks. Generally, these protective measures are located on top of ridges (far from salmonid habitat) and include roads for firefighting access.

Monitoring and Reporting Measures

SPI will provide an annual report to NMFS for the duration of the HCP to verify that the conservation measures are being implemented and to ensure that the level of authorized take is not exceeded. The report will be prepared by SPI and delivered to NMFS by June 30 of each year, covering the previous calendar year that the HCP is in effect. The water quality-related monitoring and reporting will include data and analysis for the previous water year (October 1 through September 30). The monitoring report will contain summaries of all effectiveness, implementation, and compliance monitoring including:

- A summary of project implementation
- Monitoring methods and results
- Efforts supporting salmonid reintroduction
- Information on the project status and impacts
- Incidental take tracking
- Avoidance and minimization measures
- A summary of habitat surrogate monitoring results
- Relevant information on mitigation, changed circumstances, and funding
- A summary of CAL FIRE violation notices pertaining to HCP Covered Activities, if such notices occur

Security

In the HCP, SPI warrants that it has, and shall expend, such funds as necessary to fulfill its obligations under the ITP and HCP. HCP Table 32 projects a total Project implementation cost of \$14,000,000 in 2018 dollars. Each year, SPI will provide a summary of expenditures made in the previous year, a scope of work and budget for all monitoring actions, and any other HCP implementation actions to take place in the following year. The HCP states that a responsible corporate official with authority to commit SPI's financial resources shall certify under penalty of perjury that funds to implement the HCP have been budgeted and will be committed for use in the following year, as well as any material changes in cost estimates based on actual work performed. The annual funding commitment includes \$200,000 for installation and maintenance of permanent habitat surrogate monitoring stations, \$6,000 for annual operations reviewing and documenting progress made to improving hydrologic disconnection of Sierra Pacific Land and Timber Company forest roads, and \$6,000 for additional salmonid monitoring or measures in response to adaptive management.

SPI has modified Section 8.14, page 221 of the HCP to include the following statement: "Conservation actions required by the HCP will stay ahead of any incidental take that may occur during the term of the ITP. A list of conservation actions from SPI's 2022 Annual Monitoring Report that have been taken to address the impacts of take are identified in Table 1 of Appendix L. A list of conservation actions that will be taken in the future to address potential take are also outlined in Table 2 of Appendix L. If at any point NMFS or SPI determine that the HCP may not stay ahead of the incidental take, then NMFS, SPI, and CDFW will meet and confer to discuss potential actions in response". CDFW Northern Region staff have determined that these conservation actions contained in Table 2 qualify as appropriate mitigation measures in support of a CESA consistency determination. Because SPI will complete conservation actions commensurate with and in advance of any take, traditional security is not required, and the ITP and its related HCP ensure adequate funding to implement the mitigation and monitoring measures.

Conclusion

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of the three covered anadromous salmonids, provided SPI implements the Project as described in the ITP and related HCP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITP and related HCP. If there are any substantive changes to the Project, including changes to the mitigation measures, or if NMFS amends or replaces the ITP and related HCP, S, SPI shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c).)

In making this determination, CDFW acknowledges that the ITP and related HCP address three species of anadromous salmonids designated as threatened or endangered under the ESA and threatened or endangered under CESA. (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(5)(g).) These species are known to occur within the Project Area. NMFS determined in the BO and ITS that, for purposes of the ESA, mortality or injury to individual adult salmonids is unlikely but that the authorized take of habitat could result in limited mortality of eggs and juveniles. NMFS authorized such take under the ESA, requiring SPI to implement various avoidance and minimization measures for the species. SPI is aware that, for purposes of CESA, take of these three salmonids as defined by state law is prohibited, except as authorized by the Fish and Game Code. (See generally Fish & G. Code, §§ 86, 2080.)

CDFW's determination is that NMFS's ITP and related HCP are consistent with CESA is limited to the Covered Species.

DocuSigned by:
By: Joshua Grover Date: 7/27/2023
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