

Top Q&A for Delta Smelt

Q: If the Delta Smelt weren't listed under the ESA, would water users south of Delta get their full contract amounts?

A: Not necessarily. Only in the wettest of years do all water users south of the Delta receive their full contract amounts. Two federal biological opinions (BiOps) as well as State Water Resource's Control Board's Water Right Decision D1641 influence operations of the State and federal water projects. The U.S. Fish and Wildlife Service's (FWS) BiOp for Delta Smelt was issued in December 2008. In June 2009, The National Marine Fisheries Service (NMFS) issued a BiOp for Sacramento River Winter-run and Central Valley Spring-run Chinook salmon, Central Valley steelhead and Southern Distinct Population Segment (DPS) of green sturgeon. Both BiOps concluded that unmodified water operations would put these Delta fish species at risk of extinction. If there were no Delta Smelt protections, there would continue to be protections for the fishes covered under the NMFS BiOp and water quality and flow standards under the D -1641, which includes water quality objectives for downstream municipalities and Delta farmers as well as salinity protection.

Q: Aren't farms being fallowed because pumps watering the San Joaquin Valley from the Sacramento River are "shut off" because of the Delta Smelt Biological Opinion?

A: Since the BiOp was put into place in late 2008, the pumps have not been "shut off" to protect Delta smelt. Very infrequently, maintenance work requires the pumps to be shut off completely. Pumping levels are sometimes less than full capacity for a variety of reasons (for example, due to a general lack of suitable water availability, due to salinity concerns, etc.). In addition, there are several laws and regulations that can limit pumping levels during times when water is available. This includes U.S. Army Corps of Engineers requirements that limit how much the pumps can export from the Delta in any 3-day period; the 1992 Central Valley Improvement Act (Section 3406(b)(2)), which authorizes reduced pumping at the Federal facilities to protect salmonids; and flow and water quality requirements associated with the State Water Resources Control Board's Water Right Decision D-1641. In addition, the 2009 NMFS and 2008 FWS BiOps can limit pumping at certain times of the year. None of these laws and regulations mandates that agricultural lands be fallowed. Decisions to fallow are based on a number of agricultural concerns, including persistent drought, water availability, plant age and productivity, soil conditions, and agricultural pests.

Q: Isn't the water that's moving through the Delta being wasted if it runs out to the ocean?

A: Water that originates in the northern portion of the state has a number of functions, including providing water to farms and cities in and north of the Delta; providing water to farms and cities south and west of the Delta; and sustaining the Bay-Delta estuary. The water that flows through the estuary to sustain the Bay-Delta estuary has several meaningful uses as it moves towards the ocean. "Delta outflow" provides fresh water to the Bay-Delta estuary. This enables municipal water diversions for the east Bay Area and for farms in the Delta itself. Delta outflow also contributes to waterfowl production on some Delta islands and in Suisun Marsh. Delta outflow lowers concentrations of pollutants in the Delta and Bay, pollutants that would otherwise be harmful to San Francisco Bay area residents. And, Delta outflow performs many important ecological functions including contributing to the production of fish and shellfish (salmon,

striped bass, smelt, sturgeon, and bay shrimp). Outflows also prevent high-salinity water from moving upstream and into agricultural areas in the Delta. Thus, water passing through the Delta and out to the ocean is not being wasted.

Q: Isn't Delta Smelt just a bait fish? Why should we protect them?

A: Delta Smelt are considered an “indicator” species, and their abundance reflects how well the Delta’s aquatic environment is functioning – meaning that as Delta Smelt decline, the overall functioning of the Delta is declining along with other species (including Pacific salmon, longfin smelt, green sturgeon, Central Valley Chinook Salmon) that are dependent on the system. Declines of species like Delta Smelt indicate that the ecosystem is strained and that, at some point, the ecosystem could lose its structural integrity and ability to provide goods and services to humans. The Delta Smelt is an essential part of the complex ecosystem of the Bay-Delta estuary. The estuary needs fish, such as the Delta Smelt that serve as prey to support larger sport fish and fish-eating birds. In the past, Delta Smelt were one of the most common prey species in the Bay-Delta. However, after decades of decline, recent field surveys indicate that species abundance is at an all-time low. This suggests that the species is less able to play its historic ecological role in the Delta.

Q: Recently, some scientists have said that the Delta Smelt is going extinct. Will they survive another drought year? Why continue trying to conserve the species?

A: We are not able to determine when or if Delta Smelt will go extinct, but we are concerned about the species’ ongoing decline. Delta Smelt abundance indices have trended downward since the early 1980’s and are now at their lowest numbers ever recorded. The population appeared to rebound somewhat in the mid-1990s, yet an additional steep decline was recorded starting in the early 2000s. Eleven of the last 12 years have seen the lowest fall abundance indices of Delta smelt ever recorded. The index numbers reflect increases and decreases in a species’ abundance over time, but they are not estimates of the actual numbers of fish in the estuary.

Congress enacted the Endangered Species Act (ESA) in 1973 to provide a means to conserve endangered and threatened species and their habitats. These habitats and ecosystems represent a vast amount of biodiversity. The loss of species can indicate that an ecosystem is not functioning properly and that important ecosystem processes have been altered, ultimately affecting many other species, including humans that are dependent upon that ecosystem. Under the ESA, all federal agencies must seek to conserve endangered and threatened species and utilize their authorities to do so. Further, it is policy under the ESA that federal agencies cooperate with State and local agencies to resolve water resource issues in concert with the conservation of listed species. Under the ESA and federal policy, the FWS is obligated to continue to work towards the conservation and recovery of listed species until a species is removed from the list, either due to recovery or extinction. While Delta Smelt indices in recent years suggest that the species continues to decline, it is the role and responsibility of the Service to work with our partners to implement all available tools to halt and, if possible, reverse that decline.

Q: Wasn't the FWS 2008 biological opinion overturned in federal court?

A: No. In 2010, a District Court remanded the 2008 BiOp, though during the period of the remand, the BiOp and its Reasonable and Prudent Alternative (RPA) continued to be in effect. However, in March 2014, the Ninth Circuit Court of Appeals issued an opinion reversing the District Court's earlier Remand and affirmed the 2008 BiOp. In September 2014 the Ninth Circuit court issued its mandate to that effect. Consequently, the 2008 BiOp and its RPA continues to be implemented.

Q: Why doesn't the Reasonable Prudent Alternative (RPA) in the biological opinion prescribe more flexibility in pumping so that water can be exported more readily?

A: The FWS 2008 BiOp includes a RPA that put limits on the extent to which Old and Middle river flows are allowed to move toward the south delta CVP/SWP export pumps during certain periods of the year. This is done to decrease the risk of Delta Smelt mortality due to entrainment at the export pumps.

The RPA is comprised of five components, two of which (components 1 and 2) are designed to protect adult and larval/juvenile Delta Smelt from entrainment by water project pumps. The protections for preventing Delta Smelt from entrainment are accomplished by modifying water project operations to allow for advantageous flows from Old River and Middle river flows. Because Delta Smelt entrainment risk is highly dependent on changing conditions, such as fish distribution, weather, and water conditions, implementation of the RPA is not a process that can be fixed using prescriptive steps or calendar-based criteria. In order to allow maximum flexibility, the specific river flow requirements, action criteria, and data monitoring stations prescribed in the RPA are evaluated continuously through an adaptive process. The Smelt Working Group, a multi-agency group of experts comprised of representatives from State and Federal agencies, reviews this data and may call for actions in near real-time. This allows for flexibility by responding with Delta Smelt protections when they are most needed.