



County of Santa Cruz

BOARD OF SUPERVISORS

701 OCEAN STREET, SUITE 500, SANTA CRUZ, CA 95060-4069

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JANET K. BEAUTZ
FIRST DISTRICT

ELLEN PIRIE
SECOND DISTRICT

MARDI WORMHOUDT
THIRD DISTRICT

TONY CAMPOS
FOURTH DISTRICT

JEFF ALMQUIST
FIFTH DISTRICT

AGENDA: 5/7/02

May 2, 2002

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: MEMORANDUM OF UNDERSTANDING (MOU) FOR RECOVERY
PLANNING **AMONG** NATIONAL MARINE FISHERIES SERVICE,
CALIFORNIA DEPARTMENT OF FISH AND GAME, **U.S. ARMY**
CORPS OF ENGINEERS, FISHNET 4C COUNTIES OF MENDOCINO,
SONOMA, MARIN, SAN MATEO, SANTA CRUZ, AND MONTEREY,
AND THE COUNTY OF HUMBOLDT

Dear Members **of** the Board:

Three species of salmonids which now inhabit, or once inhabited, the coastal waters of Santa Cruz County (coho salmon, chinook salmon, and steelhead) have been listed as threatened under the federal Endangered Species Act (ESA). The ESA requires that recovery plans be developed and implemented for the conservation and survival of these species. The County's watersheds are part of evolutionarily significant units (ESUs) for one or more of these species. Collectively, the ESUs include watersheds from Humboldt County to Santa Cruz County. The National Marine Fisheries Service (NMFS) has recently initiated the recovery planning process for this recovery planning area. Recovery of these threatened fish species here and elsewhere in California's coastal waters will require participation and support from a wide range of public and private agencies and groups, including the County **of** Santa Cruz.

The County is one **of** six central California coastal counties that have organized under the name of Fishery Network of the Central California Coastal Counties, or FishNet 4C. FishNet 4C members share the mission to protect the threatened and endangered salmonid populations found within the coastal streams of our region and to restore those populations to levels that are healthy and sustainable. I have had the pleasure of representing the Board **of** Supervisors in the formation and activities of this

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organization over the last five years, and have been ably assisted by Karen Christensen of my staff, Kristen Schroeder of the Planning Department, Connie Silva of the Public Works Department, and other representatives of Planning and Public Works.

The FishNet 4C counties have proposed the signing of a Memorandum of Understanding for Recovery Planning (MOU) among NMFS, the California Department of Fish and Game (CDFG), the U.S. Army Corps of Engineers, the FishNet 4C counties of Mendocino, Sonoma, Marin, San Mateo, Santa Cruz and Monterey, and the County of Humboldt. The impetus for this came from Sonoma County, which is under considerable pressure in the Russian River watershed to satisfy the competing interests for the available water resources in order to have sufficient resources for residents, agriculture, industry and the fish and habitat values. Their Board of Supervisors was concerned that the NMFS process was not sufficiently focused and was being conducted without adequate input from the county governments.

The proposed MOU establishes the general framework under which the signatories would collaboratively work with **NMFS** and CDFG to assist in recovery planning. Although **NMFS'** recovery planning process will establish the scientific framework for achieving recovery, there is an opportunity for local jurisdictions to participate in and contribute to the recovery planning process. Such participation and partnership is critical for effective recovery of listed salmonid species, and is in the interest of the County and the Agency in order to ensure our continued ability to provide various public services. Having an MOU in place will also provide a mechanism for participants to seek to obtain federal and state funding to support recovery goals.

A copy of the proposed MOU is attached. The MOU discusses the purpose and objectives of the MOU, summarizes the recovery planning process, identifies roles and responsibilities of the signatories, describes the duration of the MOU, provides for future amendments, and sets forth the authorities for parties to sign the MOU. Generally, the MOU provides for sharing of information, technical assistance, avoiding duplication of efforts, meetings between participants to track progress of recovery planning, and pursuing recognition from regulatory entities of programs that contribute to recovery planning. It does not create any significant financial burden on the County, other than to continue to support the activities of FishNet4C as it has done in the past. Rather, it creates a clear process for incorporating the concerns that County staff or residents may have into the recovery planning process.

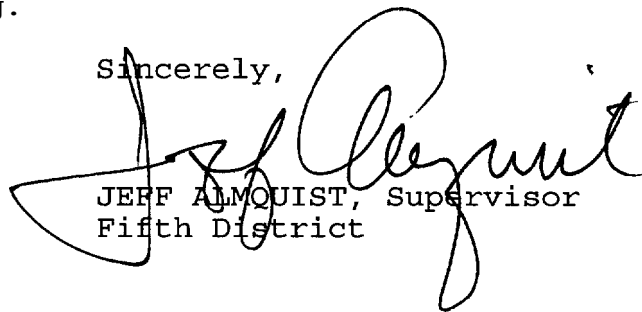
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Today the Board is requested to support and adopt the MOU for Recovery Planning and authorize me as the Board's representative to sign the MOU for Recovery Planning, in a form substantially the same as that provided in Attachment 2. **An** official signing ceremony is scheduled for Thursday, May **16**, 2002, during a FishNet 4C conference in San Francisco which I will attend. It **is** not anticipated that there will be any substantive changes to the MOU for Recovery Planning between now and the signing ceremony; however, the final MOU will be reviewed by Agency staff and County Counsel prior to signature.

Accordingly, **I** recommend that the Board take the following actions:

1. Adopt the attached resolution supporting and approving the MOU for Recovery Planning among National Marine Fisheries Service, California Department of Fish and Game, U.S. Army Corps **of** Engineers, FishNet 4C Counties of Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, and Monterey, and the County of Humboldt.
2. Authorize Supervisor Almquist to sign the MOU for Recovery Planning, in a form substantially the same as provided in Attachment 2.
3. Direct County Administrative Officer to continue to allocate staff and coordinate with other County departments for FishNet 4C and recovery planning activities in the implementation of the MOU for Recovery Planning.

Sincerely,



JEFF ALMQUIST, Supervisor
Fifth District

JA:ted
Attachments

cc: County Administrative Officer
County Counsel
Planning Department
Public Works Department

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BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO.

On the motion of Supervisor
duly seconded by Supervisor
the following resolution is adopted

CONCURRENT RESOLUTION SUPPORTING AND APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) FOR RECOVERY PLANNING AMONG NATIONAL MARINE FISHERIES SERVICE, CALIFORNIA DEPARTMENT OF FISH AND GAME, U.S. ARMY CORPS OF ENGINEERS; FISHNET 4C COUNTIES OF MENDOCINO, SONOMA, MARIN, **SAN** MATEO, SANTA CRUZ AND MONTEREY, AND COUNTY OF HUMBOLDT; AUTHORIZING SUPERVISOR ALMQUIST TO SIGN THE MOU FOR RECOVERY PLANNING ON BEHALF OF THE COUNTY; AND DIRECTING THE COUNTY ADMINISTRATIVE OFFICER TO CONTINUE TO ALLOCATE STAFF AND COORDINATE WITH OTHER COUNTY DEPARTMENTS FOR FISHNET 4C AND RECOVERY PLANNING ACTIVITIES

WHEREAS, the six central California coastal counties **of** Monterey, Santa Cruz, San Mateo, Marin, Sonoma, and Mendocino have formed a working group: FishNet 4C-the Fishery Network **of** the Central California Coastal Counties; and

WHEREAS, the working group is comprised of Supervisors representing each county as well as other key local, state, and federal agency representatives; and

WHEREAS, the FishNet 4C working group was organized to address the fact that three salmonid species (coho salmon, chinook salmon, and steelhead) have been listed as threatened under the federal Endangered Species Act within evolutionarily significant units (ESUs) designated by National Marine Fisheries Service in the region of the FishNet 4C counties; and

WHEREAS, FishNet 4C working group members share the mission to protect the threatened and endangered populations **of** coho salmon, chinook salmon and steelhead trout found within the coastal streams in our region and to restore natural salmon and steelhead populations to levels that are healthy, sustainable and support a productive fishing industry within our region; and

WHEREAS, the several coastal watersheds in Santa Cruz County are part of these ESUs, and collectively the ESUs and the recovery planning domain include watersheds from Humboldt County to Santa Cruz County; and

WHEREAS, the National Marine Fisheries Service (**NMFS**), the federal agency with the responsibility **of** listing and protecting the salmon fisheries on our coast, has embarked on a multi-year recovery planning program in our region; and

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CONCURRENT RESOLUTION SUPPORTING AND APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) FOR RECOVERY PLANNING AMONG NATIONAL MARINE FISHERIES SERVICE, CALIFORNIA DEPARTMENT OF FISH AND GAME, U.S. ARMY CORPS OF ENGINEERS, FISHNET 4C COUNTIES OF MENDOCINO, **SONOMA**, MARIN, SAN MATEO, SANTA CRUZ AND MONTEREY, AND COUNTY OF HUMBOLDT; AUTHORIZING SUPERVISOR ALMQUIST TO SIGN THE MOU FOR RECOVERY PLANNING ON BEHALF OF THE COUNTY; AND DIRECTING THE COUNTY ADMINISTRATIVE OFFICER TO CONTINUE TO ALLOCATE STAFF AND COORDINATE WITH OTHER COUNTY DEPARTMENTS FOR FISHNET 4C AND RECOVERY PLANNING ACTIVITIES

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WHEREAS, the FishNet 4C counties have proposed the signing **of** a Memorandum **of** Understanding (MOU) for Recovery Planning with NMFS, with signatories to include the California Department of Fish and Game, the U.S. Army Corps of Engineers, the FishNet 4C counties **of** Mendocino, Sonoma, Marin, San Mateo, Santa Cruz and Monterey, and the County of Humboldt (hereinafter referred to as Signatories); and

WHEREAS, the MOU Signatories will participate in a collaborative partnership with NMFS to participate in the recovery planning process by sharing data, information, and knowledge that can be used to develop and improve the technical and policy components of the recovery plan; pursuing policies and actions that may result in the achievement **of** the recovery of healthy and sustainable populations of salmon and steelhead within the recovery planning domain; and encouraging locally-led watershed stewardship efforts aimed at restoring and protecting water quality, ecosystem integrity and sustainable populations of salmon and steelhead while providing for the wise use **of** resources; and

WHEREAS, the County of Santa Cruz is requested to support and adopt the MOU for Recovery Planning; and

WHEREAS, it is in the interest of the County **of** Santa Cruz to become a signatory to the MOU for Recovery Planning.

NOW, THEREFORE, BE IT RESOLVED that the Santa Cruz County Board of Supervisors hereby finds, determines, and declares as follows:

1. All of the above recitals are true and correct.
2. The Board **of** Supervisors supports and approves the MOU for Recovery Planning.
3. Supervisor Jeff Almquist is authorized to sign the MOU for Recovery Planning in a form substantially the same as provided, subject to review by Agency staff and County Counsel.

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CONCURRENT RESOLUTION SUPPORTING AND APPROVING THE MEMORANDUM OF UNDERSTANDING (MOU) FOR RECOVERY PLANNING AMONG NATIONAL MARINE FISHERIES SERVICE, CALIFORNIA DEPARTMENT OF FISH AND GAME, U.S. ARMY CORPS OF ENGINEERS, FISHNET 4C COUNTIES OF MENDOCINO, SONOMA, MARIN, **SAN** MATEO, SANTA CRUZ AND AND MONTEREY, AND COUNTY **OF** HUMBOLDT; AUTHORIZING SUPERVISOR ALMQUIST TO SIGN THE MOU FOR RECOVERY PLANNING ON BEHALF OF THE COUNTY; AND DIRECTING THE COUNTY ADMINISTRATIVE OFFICER TO CONTINUE TO ALLOCATE STAFF AND COORDINATE WITH OTHER COUNTY DEPARTMENTS FOR FISHNET 4C AND RECOVERY PLANNING ACTIVITIES

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4. The County Administrative Officer is directed to continue to allocate staff and coordinate with other County departments for FishNet 4C and recovery planning activities.

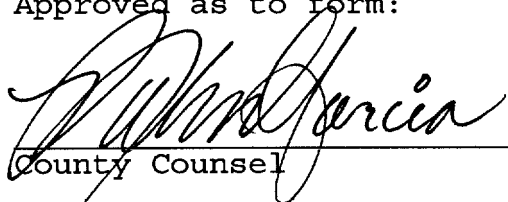
PASSED AND ADOPTED by the Board **of** Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 2002, by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS

JANET K. BEAUTZ, Chairperson
Board of Supervisors

ATTEST: _____
Clerk **of** said Board

Approved as to form:



County Counsel

DISTRIBUTION: County Counsel
County Administrative Officer
Public Works Department
Planning Department

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Memorandum of Understanding Among

National Marine Fisheries Service
California Department of Fish and Game
Army Corps of Engineers
FishNet4C/Counties of Mendocino, Sonoma, Marin, San Mateo, Santa Cruz and Monterey
County of Humboldt

SECTION 1 - BACKGROUND AND PURPOSE

This Memorandum of Understanding (MOU) establishes a collaborative process for recovery planning in the North-Central California Coast recovery planning domain. The National Marine Fisheries Service (NMFS) is required under the Endangered Species Act of 1973 as amended (ESA) to develop a plan for the recovery of salmon and steelhead listed under the ESA. The recovery planning process has begun with the convening of Technical Recovery Teams (TRT) that will establish the scientific framework for achieving recovery. Recognizing that the implementation of any recovery strategy will require the participation and contributions of people and agencies at the federal, state, county and local level, this MOU sets forth an approach for local jurisdictions to support the identification and implementation of recovery goals established by the TRT. As partners in the recovery planning process, the signatories to this MOU agree to pursue policies and actions that include the interests and capacities of the local jurisdictions, incorporate their data and information as appropriate, and recognize the mutual need to work together to achieve the recovery of healthy and sustainable populations of salmon and steelhead within the North-Central California Coast recovery planning domain. This will be accomplished by the signatories working together to:

1. Participate in the NMFS recovery planning process as described in "Recovery Planning For West Coast Salmon," dated October, 1999, and the NOAA "Recovery Planning Guidelines" dated September, 1992.
2. Share data, information, and knowledge that may be used to develop and improve both the technical and policy components of the recovery plan.
3. Pursue the development and implementation of policies, procedures, plans, ordinances, and other jurisdictional authorities and commitments that local jurisdictions may bring to bear in improving the quality of, and increasing the quantity of, habitat suitable for the conservation and recovery of salmon and steelhead populations.
4. Encourage locally led watershed stewardship efforts aimed at restoring and protecting water quality, ecosystem integrity and sustainable populations of listed species while providing for the wise use of natural resources.

SECTION 2 - DEFINITION OF TERMS

To facilitate the implementation and shared understanding of this MOU, the following key terms are defined and clarified below.

- “Recovery plan” and “recovery planning”: documents prepared in accordance with the Endangered Species Act of 1973 as amended (ESA), section 4(f).
- “Listed species”: salmon and steelhead (salmonid) species that are listed or proposed for listing under the ESA or that are listed or candidates for listing under the California Endangered Species Act (CESA). NMFS is responsible for developing recovery plans for species listed pursuant to the ESA.
- “Early recovery actions”: those efforts intended to improve the quality or increase the quantity of habitat suitable and necessary for the conservation and recovery of listed species that are undertaken in advance of the completion of the final recovery plan.

SECTION 3 - OBJECTIVES

Recovery efforts must involve not only NMFS but must include the coordinated participation and contributions by other federal agencies, state and local governments, private industry, conservation groups, subsistence/traditional native peoples and sovereign Indian tribes, and the public generally. The development and implementation of recovery plans will help to combine the programs and expertise of these agencies and organizations into effective recovery strategies. In recognition of the need to integrate the efforts of these many interests, the signatories to this MOU set forth the following objectives:

1. Expedite the development of a recovery plan for listed species and facilitate the implementation of recovery-related activities.
2. Where appropriate, explore the feasibility and pursue the implementation of early recovery actions.
3. Share to the maximum extent practicable information, technical assistance, staff support and other resources to prevent duplication of effort, identify gaps in data or regulatory coverage.
4. Where appropriate, pursue regulatory recognition of state agency and local jurisdiction programs that contribute to the recovery of listed species through mechanisms including ESA section 4(d) limits on take prohibitions and section 10 Habitat Conservation Plan permits. Programmatic approaches for harmonizing state regulatory authorities, such as the California Department of Fish and Game’s “Streambed Alteration Agreement” program, with federal regulatory authorities, will be explored with all due diligence.
5. Support the involvement of key watershed groups in the decision-making process to facilitate

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community-based recovery actions.

SECTION 4 – THE RECOVERY PLANNING PROCESS

The NMFS recovery planning process is expected to take several years to complete. It is broadly organized in phases, identified as set forth below:

Phase I – Preparation of a scientific description of the limiting factors, genetic makeup and diversity, and required fish populations needed to achieve recovery of salmon and steelhead within the planning domain. NMFS has appointed a TRT to prepare the de-listing criteria that describe biological recovery. This phase is expected to take approximately 18 to 24 months.

Phase II – Preparation of a Recovery Implementation Plan. Concurrent with Phase I, NMFS intends to begin the process for developing conservation measures, programs, plans, policies, funding commitments, and other mechanisms that may be required to achieve the biological recovery goals identified in Phase I. This recovery implementation phase will be based on collaboration among the agencies, local jurisdictions, stakeholders, constituents, non-governmental organizations, and others as appropriate to develop the recovery implementation plan. In addition to the development of a final Recovery Plan, Phase II activities are expected to include early recovery actions, education and outreach, partnership building, and program planning. The outcome of Phase II is the adoption by NMFS of a final recovery plan for all federally listed salmon and steelhead in the North-Central California Coast recovery planning domain. The final recovery plan will be subject to public review and comment prior to being adopted by NMFS. This phase of recovery planning is expected to take approximately five years.

SECTION 5 – ROLES AND RESPONSIBILITIES

In recognition of the dynamic nature of the recovery planning process, amendments and addendums to this agreement will clarify the roles of signatories, review procedures, planning timelines, and other relevant issues acceptable to all parties, as such understandings are agreed upon. To facilitate the timely development of such amendments and addendums in support of Objectives 3.1, 3.3 and 3.5 as noted herein, the signatories agree to the following process:

1. Within three months of the signing of this agreement by four of the counties, NMFS, and one of the other agencies, and on a quarterly basis thereafter, NMFS will meet with representatives of the signatories. Topics to be addressed at these quarterly meetings will include:
 - a. Summary of the studies and information currently being considered by the TRT;
 - b. Identification of opportunities for providing information not summarized in 5.1.a above to the TRT;
 - c. Identification by the signatories of activities currently underway and information being gathered which could contribute to the TRT efforts and to the recovery

planning process.

2. Within twelve months of the signing of this agreement by four of the counties, NMFS, and one of the other agencies, NMFS will meet with representatives of the signatories. Topics to be addressed at this meeting will include:
 - a. Progress of the **TRT** in assessing and describing limiting factors, genetic makeup and diversity, and required fish populations;
 - b. Current timeline of the TRT for completing the description of the limiting factors, genetic makeup and diversity, and required fish populations;
 - c. Current timeline of the Phase II recovery implementation planning process;
 - d. Information and data related to fish populations, limiting factors, habitat analysis, genetic makeup and diversity, and any other relevant scientific information being considered by the **TRT** and/or being generated by other signatories to the agreement to insure that the **TRT** is aware of current information relevant to their analysis;
 - e. Information related to enhancement activities being performed either by or in cooperation with signatories to the agreement;
 - f. Proposed amendments and addendums to this agreement reflecting the information provided at the meeting as described above and to guide the parties through the next phase of the recovery planning process and to support Objectives 3.1 through 3.5 as described herein.
3. NMFS is developing a public involvement process that will include opportunities for signatories to contribute during each phase of recovery planning. Specific opportunities for such contributions and review will be developed by NMFS during Phase I, in consultation with signatories and others.
4. The NMFS Recovery Coordinator will report TRT progress to the other signatories, including information on technical and policy issues, timeline targets, and emerging recovery strategies during regularly scheduled meetings of FishNet4C, or at other mutually agreed upon times.

SECTION 6 – DURATION OF AGREEMENT

This MOU becomes effective upon signature by four of the counties, NMFS and one of the other agencies and shall remain in effect until modified by mutual consent of all signatories hereto. Participation of a signatory in this MOU may be terminated with sixty days' notice by that signatory.

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SECTION 7 – AMENDMENTS; ADDITIONAL PARTIES

Upon written consent of all signatories, this MOU may be modified as necessary for achieving the purpose and objectives stated herein. Such modifications may include, but are not limited to, revising roles and responsibilities, or other such revisions as are deemed appropriate.

Notwithstanding the foregoing, the addition as signatories to this MOU of 1) other counties within the recovery planning domain, or 2) parties having the consent of NMFS, shall not require the written consent of all signatories hereto, but may be accomplished by such counties or other parties by execution of this MOU.

SECTION 8 – AUTHORITIES

The National Marine Fisheries Service is authorized to enter into this MOU pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e). Under the ESA, the Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration and NMFS, is responsible for implementing the ESA with respect to anadromous salmonids including steelhead trout and coho and chinook salmon. This responsibility includes the issuance of biological opinions and incidental take statements, incidental take permits, and recovery plans.

The U. S. Army Corps of Engineers is authorized to enter into this MOU pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544). Under section 7 of the ESA, the U. S. Army Corps of Engineers is responsible for utilizing their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species listed pursuant to section 4 of the ESA.

The California Department of Fish and Game is authorized to enter into this MOU pursuant to the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Fish and Game Code section 6900 et seq.).

The Counties of Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa **Cruz** and Monterey are authorized to enter into this MOU pursuant to Sections 1 and 7 of Article XI of the California Constitution and Sections 23003 and 23004 of the California Government Code.

This MOU does not alter existing regulations or agency responsibilities and authorities. It specifically does not commit any agency or entity to activities beyond the scope of their mission, funding and authorities. This MOU recognizes that any new funding and personnel to carry out the responsibilities described in this MOU shall be subject to the approval of the appropriate governing board or executive official. Implementation of this MOU shall be subject to the availability of resources and, with respect to the federal signatories, funding for implementation, including the obligation of personnel time, shall be subject to the availability of appropriated funds, pursuant to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

The provisions of this MOU do not confer any rights or defenses, substantive or procedural, on any person or entity not a signatory to this MOU, nor are such provisions enforceable by any

For the County of Marin:

Steve Kinsey
County Supervisor

For the County of San Mateo:

Rich Gordon
County Supervisor

For the County of Santa Cruz:

Jeff Almquist
County Supervisor

For the County of Monterey:

Dave Potter
County Supervisor



County of Santa Cruz

COUNTY ADMINISTRATIVE OFFICE

701 OCEAN STREET, SUITE 520, SANTA CRUZ, CA 95060-4073

(831) 454-2100 FAX: (831) 454-3420 TDD: (831) 454-2123

SUSAN A. MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

May 6, 2002

AGENDA: MAY 7, 2002

BOARD OF SUPERVISORS
County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

FISHNET 4C MEMORANDUM OF UNDERSTANDING

Dear Members of the Board:

Item 64.1 on the Board's May 7, 2002 agenda presents a proposed Memorandum of Understanding (MOU) for Salmon and Steelhead Recovery Planning between the National Marine Fisheries Service (NMFS), California Fish and Game, the Army Corps of Engineers and six counties, including Santa Cruz. As indicated in the proposed MOU, the agreement is intended to establish a collaborative process for salmon and steelhead recovery planning for the California north-central coast recovery area.

As a part of the review of the agenda materials submitted, staff had intended to suggest several clarifying changes to underscore the voluntary cooperative intent of the agreement. However, after further review with others more directly involved in the development of the MOU, it appears that changes at this point in the process would be difficult given the multi-agency nature of the MOU and the upcoming signing ceremony. With those concerns in mind, we would suggest that the County seek to clarify only one aspect of the MOU, as discussed below.

The last paragraph of Section 8 - Authorities states as follows:

"The provisions of this MOU do not confer any rights or defenses, substantive or procedural, on any person or entity not a signatory to this MOU nor are such provisions enforceable by any person or entity not a signatory to this MOU."

As written, staff is concerned that this section could be interpreted to confer additional legally enforceable rights to the regulatory agencies in the permit process (NMFS, Fish and Game and the Army as well as others that could be added in the future) notwithstanding the considerable language in the MOU which underscores the intended voluntary nature of participation and the cooperative relationships that are envisioned by the MOU.

In an effort to determine the intent of this section, staff contacted Kallie Kull, director of the FishNet 4C project. Ms. Kull indicated that the section was intended to limit the liability of the parties from third party suits and was certainly not intended to confer additional legal rights to the regulatory agencies. She suggested staff contact Miles Croom, the recovery coordinator at NMFS, who was responsible for drafting most in the language of the proposed agreement.

Staff did contact Mr. Croom who stated that the intent of the agreement is to promote the voluntary working relationship based on FishNet 4C, to recognize the existing relationships that have been created, to develop options for the counties to consider relating to recovery planning and to structure the dialog for the consideration of options. When asked whether he believed that the language could be interpreted to allow the regulatory

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Board of Supervisors
May 6, 2002
RE: Fishnet 4C MOU
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agencies to hold the participating agency to higher standards from a regulatory perspective, he assured staff that the intent of the language was to limit third party suits and was not intended to confer legal rights to any of the signatories in the regulatory process or otherwise. He confirmed that the agreement is strictly voluntary.

It was helpful to hear Mr. Croom's perspective, since he indicated that he had authored the language under discussion. Mr Croom also stated that the MOU was not intended to be a legally enforceable agreement but rather a voluntary partnership to advance mutually held goals and provide for the filing of grants. Lastly, Mr Croom indicated that since the previous paragraph expressly states that the MOU does not alter existing regulations or agency authorities, that these sections should be read together and conclude that the MOU is a cooperative agreement rather than an enforceable agreement. Mr. Croom referred staff to Deanna Harwood, the NMFS attorney in Long Beach for further input. As of the writing of this letter County Counsel was attempting to confirm these understanding with her, as well.

In the process of reviewing these matters, staff was also contacted by Steve Shupe of the Sonoma County Counsel's office. He recognized that the language as drafted could be interpreted to confer implied rights. However, he too agreed that this was not the intent. He stated the sections purpose was solely to limit suits based on third party beneficiary claims and nothing more. He indicated that since the agreement was intended to be a cooperative agreement rather than an enforceable contract that the drafting proceeded in what I would describe as a somewhat more informal manner.

In view of the foregoing and in an effort to proceed with the signing ceremony, staff would suggest that your Board accept this clarifying letter into the record to document the County's understanding of the intent of the section highlighted above and that staff be directed to communicate our understanding to the regulatory agencies, requesting that they concur in our interpretation.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

1. Take the actions as outlined in the letter of Supervisor Almquist;
2. Accept and file this letter as a part of the record to document the County's understanding of the intent of the section highlighted above;
3. Direct staff to communicate our understandings to the regulatory agencies and request that they concur in our interpretation; and
4. Direct the CAO and County Counsel to report back to the Board on September 17, 2002 with a further report on the resolution of this issue.

Very truly yours,


Susan A. Mauriello
County Administrative Officer

cc: County Counsel
Planning Department
Department of Public Works
Kallie Kull, FishNet 4C

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