




**SAN JOAQUIN RIVER
RESTORATION PROGRAM**

**Experimental Population Rules
10(j) and 4(d) for Spring-run Chinook
Salmon Reintroduction**

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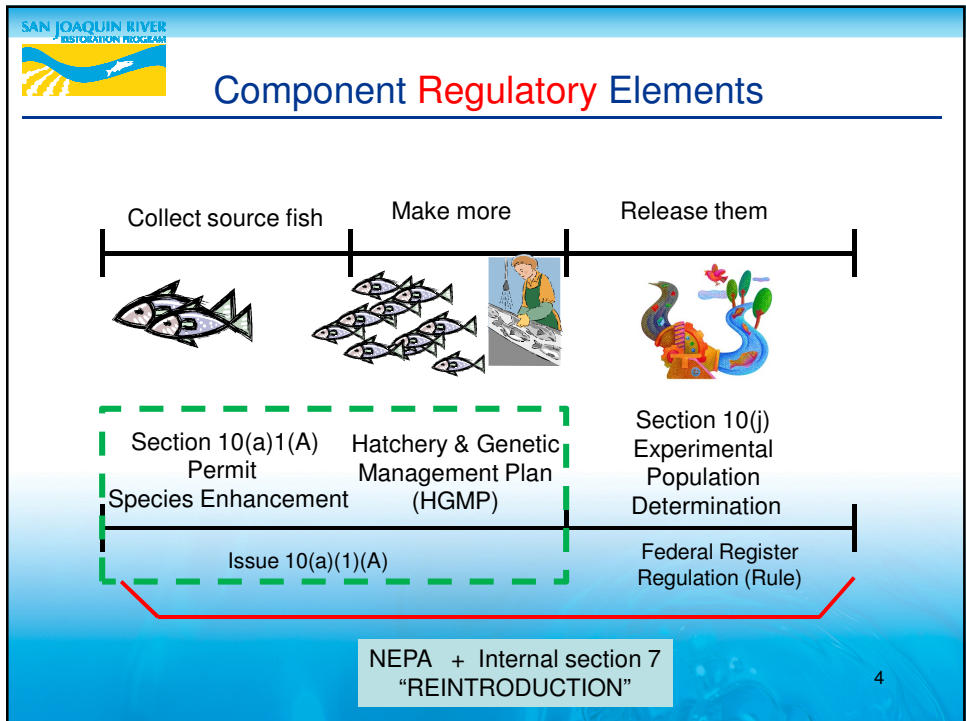
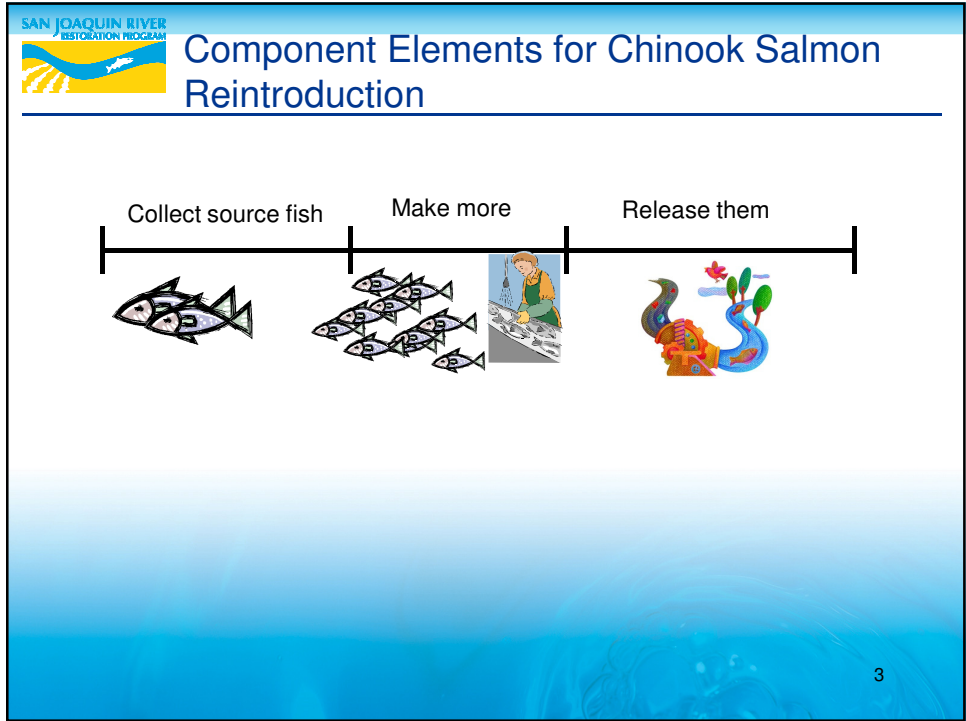
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SJRRP salmon reintroduction

- **Settlement:** reintroduce spring-run and fall-run Chinook salmon (by 2012...)
- **Federal legislation:** spring-run reintroduced under the SJRR Settlement Act shall be as 10(j) experimental population (provides regulatory relief)
- **State law:** new authority - CDFG may concur with NMFS SJR spring-run experimental population designation.

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Statutory and Regulatory Framework

Experimental Population 10(j)

- Delineated area
- Threatened Status
- Section 9: prohibits “take”
- Section 4(d):
 - May exempt “take” prohibition
 - For conservation purposes
 - For Threatened species
 - Applies also to non-federal entities

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10(j): Essential or Non-essential


Essential population

- Critical habitat
- Federal agencies consult : Section 7

Non-essential population

- No critical habitat
- Federal agencies: Section 7 candidate species


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SJRRP 10(j) Rule Proposal

- Initial introduction will be as non-essential experimental population (NEP)
- Area: from Friant Dam to Mossdale, and associated waterways accessible to anadromous fish
- Sunset* at end of 2025
 - Settlement conditions change
 - FERC prohibitions change
 - Report to Congress on reintroduction status in 2024

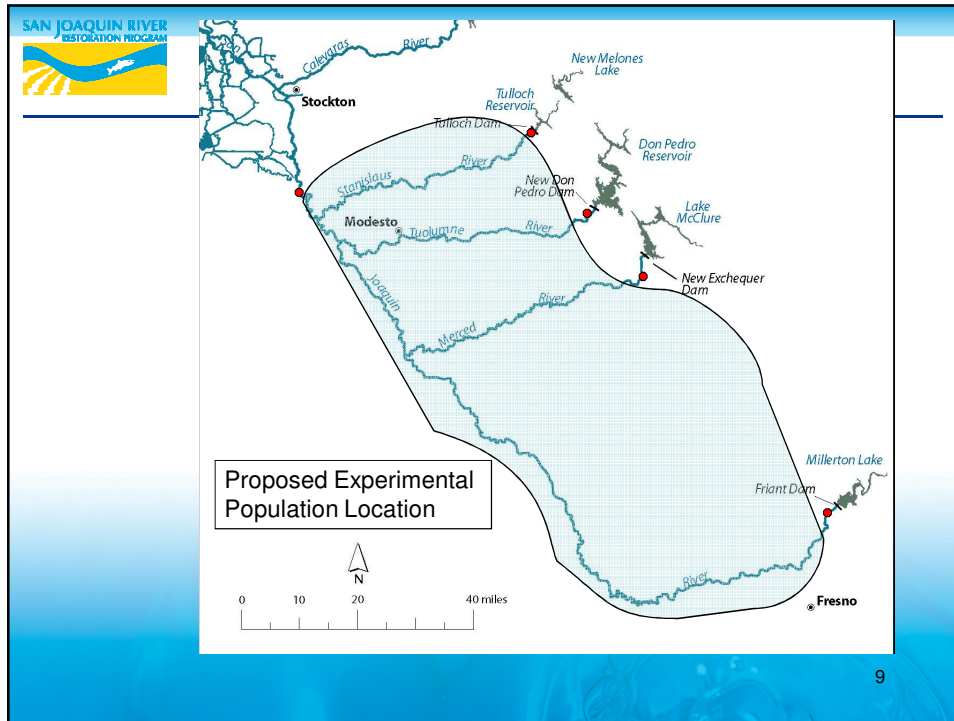
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Statutory and Regulatory Framework

- The 4(d) rule:
 - Usually reserved for essential experimental populations, but...
 - PL111-11 required 4(d) rule to be established with the San Joaquin experimental population whether or not it is essential or non-essential
 - *De minimus* [sic] impact on third parties:
 - Water supply (exports)
 - No unwilling releases
 - No added bypass flows at dams

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Proposed “take” Exemption

- From a NMFS 10(j) proposed rule
 - *“Incidental Take:*
 - *allowed, provided that the take is unintentional... as part of an otherwise lawful activity,*
 - *not due to negligent conduct,*
 - *or is consistent with State fishing regulations that have been coordinated with NMFS*
 - *...such take will not be a violation of the ESA.”*


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SJRRP 10(j) proposal (cont'd)

- NEP designation and “take” language provides substantial regulatory relief
- Reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.
- Voluntary third party programs (e.g. diversion screens)
- The SJRRP Implementing agencies will all be involved in the management of the reintroductions to ensure successful reintroductions of the species

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Management Considerations and Protective Measures

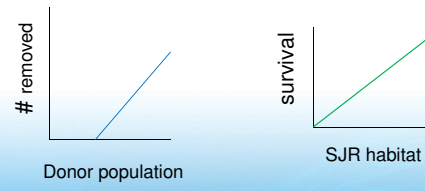
- Existing lawful land use activities will not change as a result of the NEP designation.
- The NEP designation will not require specific management by private land owners for reintroduced species in the NEP area.
- Private landowners within the NEP area will still be allowed to continue all legal agricultural and recreational activities.
- CDFG may modify fishing regulations for the benefit of the species in consultation with NMFS.

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Protect Existing Populations

- Intentional Take only allowed through ESA section 10 and section 7 authorities.
- Any allowance for collection of fish for founding stock will consider source population condition and San Joaquin River habitat condition.



- Conservation fish facility will minimize the number individuals taken from existing populations.


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NEPA Alternatives

- Source populations
- 10(j) Experimental Population
 - Geographic coverage
 - Duration of NEP designation
- 4(d) rule
 - Existing (no action)
 - De minimis effect on 3rd party water supply, releases, and bypass flows
 - Other – but no ideas yet


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Discussion

<http://www.restoresjr.net>

<http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm>



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