National Marine Fisheries Service
Office of Enforcement

NORTHWEST ENFORCEMENT DIVISION

QUARTERLY REPORT

MODIFIED FOR COUNCIL DISTRIBUTION

First Quarter FY00
October 1, 1999 - December 31, 1999

To report fisheries violations,
call our National Hotline at 1-800-853-1964.
NORTHWEST ENFORCEMENT DIVISION

Quarterly Report
October 1, 1999 - December 31, 1999

Contents

Significant Actions ......................................................... 3
Community Oriented Policing and Problem Solving .................. 11
Number of Cases Opened By Investigation Type ...................... 14
Complaint Action ............................................................. 15
CIVIL INVESTIGATIONS

ENDANGERED SPECIES ACT

Case number withheld: This case involves a private landowner who hired a consultant to re-channelize about two miles of private property on the Innaha River in northeastern Oregon. The project was permitted by the Corps of Engineers but was completed without consultation of NMFS. NMFS, State, and Tribal biologists provided statements indicating the project caused take of ESA-listed chinook salmon. A large restoration project was undertaken under the direction of NMFS and the Environmental Protection Agency (EPA) after the case was referred to the Department of Justice for violations of the ESA and the Clean Water Act. Civil penalties will be assessed by NOAA and the Department of Justice (DOJ) in the near future.

Case number withheld: This case involves a dam operation along the Rogue River in Southern Oregon. State and Federal agencies allege that the dam takes listed fish (SONC coho) during the course of their normal operations. The Office for Law Enforcement documented take of listed juvenile coho as a result of a normal dam draw down operation in 1998 prior to the filing of a court injunction. The irrigation district that operates the dam had not applied for an incidental take permit at the time of the recorded take event. Negotiations currently underway with dam officials will be monitored and consideration for prosecution under Section 9 of the ESA will be revisited if takes of SONC coho continue to occur.

Case number withheld: This case involves a landowner who re-channeled a portion of the Little Butte Creek in Southern Oregon by removing riparian vegetation and de-stabilizing portions of the bank and streambed as a result of in-stream construction. This case was completed and forwarded to General Counsel for prosecution.

Case number withheld: This case alleges that an irrigation district’s diversion has inadequate fish passage and fish screens which reportedly result in listed fish (SONC Coho) spawning in its diversion ditch and juveniles becoming impinged on the screens. The irrigation district, located on the Rogue river in Southern Oregon, NMFS, and the Oregon Department of Fish and Wildlife (ODFW) are aware of the shortcomings of the diversion. A NMFS hydrologist has already prepared a take statement and a NMFS habitat biologist is in the process of drafting a separate take statement. The Office for Law Enforcement plans to contract for services to provide monitoring and a take evaluation of the irrigation district facility for the 2000 irrigation season.

Case number withheld: This case involves a Corps of Engineers (COE) Project Manager who allegedly issued construction permits within ESA critical habitat without consulting with NMFS.
The same project manager issued another permit for construction which caused take of listed chinook salmon. This case was referred to the US Army Criminal Investigations Division (CID) where a Crime Prevention Survey was recently completed. The survey found that the COE was not complying with consultation requirements of the ESA, not documenting decisions, and their work was not being reviewed beyond the project manager level. Recommendations were made by the CID to fix these problems and disciplinary action will be brought against the respondent.

Case number withheld: This case involves a privately-owned timber company diverting water from a creek in Southern Oregon. The dam reportedly obstructs adult SONC coho fish passage. The dam is located on U.S. Forest Service (USFS) property and the diversion is permitted by USFS through an existing permit issued prior to the listing of SONC coho. Representative biologists from ODFW, USFS, and NMFS agree that the dam would likely obstruct fish passage, however, documentation of listed fish migrating through the dam and/or habitat use above the dam is sketchy. The Office for Law Enforcement sent a letter to the respondent advising them of the take situation created by the dam as defined under Section 9 of the ESA. Under Oregon state law, the water user holds the responsibility to maintain fish passage at their diversion site at all times. The USFS acknowledged their responsibility under Section 7 of the ESA to re-initiate consultation with NMFS on the respondent’s USFS permit as a result of the SONC coho listing. The USFS and ODFW contracted services to monitor adult SONC coho passage at the dam this Fall/Winter.

Case number withheld: This case involves a private landowner in Southern Oregon who placed a culvert, approximately 10 feet in diameter, in the middle of a creek and built a sand and gravel push up dam around it. The landowner uses a road on the push up dam to access land on the other side of the creek. The landowner has a long history with ODFW regarding inadequate fish passage and fish screening issues and with Oregon’s Department of State Lands (DSL) regarding removal/fill and DSL permit violations. NMFS Habitat and NMFS Hydro personnel have visited the site and are drafting take statements to support a violation of the ESA. The case agent is waiting for General Counsel review.

Case number withheld: This case involves a contractor hired by the Bonneville Power Administration (BPA) to clear trees from around their power lines along the Bandon-Port Orford line. The respondent clearcut a stand of alder trees down to Butte Creek in Curry County Oregon. According to the Incident Report forwarded by the Oregon State Police, this action resulted in a logjam of the creek and removal of riparian habitat. Additionally, turbidity was severely increased during the removal of the logjam by heavy equipment operating in the stream. The work was allegedly done in contradiction to the terms and conditions in the respondent’s contract with BPA. The Office for Law Enforcement is working with the NMFS Oregon Habitat Conservation Division to assist them in re-opening consultation with BPA to ensure all reasonable steps are taken to prevent this practice from occurring again.

Case number withheld: This is an investigation of a project where the COE responded to a flood emergency and repaired a dike on a side channel of the Methow River. An Hydraulic Project Approval (HPA) permit had been issued by the WDFW and the COE greatly exceeded the work
prescribed under the HPA. WDFW is currently investigating the incident and is assisting NMFS by providing a “take” statement from a WDFW biologist.

Case number withheld: This case involves a landowner, a contractor, the Federal Highway Administration (FHWA), and the USFS. During the construction of a bridge in northeastern Oregon (under a contract with FHWA), the four subjects agreed to block a channel on Big Sheep Creek. The agreement resulted because FHWA trespassed onto the landowner’s property and destroyed several trees. The FHWA and the USFS agreed to do some work for the landowner (work that benefitted the landowner) in return for trespassing onto his private property. One project that the FHWA employee agreed to perform (under contract with a contractor) involved blocking a side channel that was allegedly eroding land and undercutting the bridge abutment downstream. An agreement was signed and the channel was blocked, killing listed steelhead and chinook salmon (juveniles). There were many witnesses to the dead fish and all have provided sworn statements.

NW990077: This case involved failure to follow a NMFS biological recommendation and failure to consult with NMFS regarding construction of fire line ditches. However, no evidence indicated that a “take” of endangered species occurred, so this case was closed due to lack of evidence.

NW990078: This case involved an unpermitted irrigation diversion. No evidence indicated that a “take” of endangered species occurred, so this case was closed due to lack of evidence.

NW990079: This case involved operation of heavy machinery in a creek and alteration of the creek bed. However, no evidence indicated that a “take” of endangered species occurred, so this case was closed due to lack of evidence.

Case number withheld: An investigation was opened after NMFS agents salvaged approximately 120 live salmonids by returning them to the river and collected approximately 200 dead salmonids from an Eastern Washington irrigation ditch operated by the an irrigation district. Laboratory testing has identified endangered spring chinook and steelhead trout among the dead fish collected. This investigation moves forward on parallel paths which are not mutually exclusive. One route leads to a possible injunctive action to prevent further take without a Section 10 permit, and the other is a Section 9 take case for the dead fish identified as endangered.

Case number withheld: This case involves potential cyanide contamination from a mining site into a nearby creek which may be inhabited by spring/summer chinook. The cyanide levels were monitored as the creek volume decreased and the Environmental Protection Agency declined to take enforcement action due to the inability to find a single point source of the leak. Officials from the Idaho Department of Environmental Quality (DEQ) and DEQ’s Natural Resources Deputy Attorney General were notified of the leak and DEQ cited the mining operation for various violations relating to the mine’s cyanide discharge permit. The Northwest Fisheries
Science Center has agreed to assist in reviewing the water sampling data and their evaluation of surface water quality data is expected soon. Direct mortality was not documented in this case; therefore, expert opinion of take as defined under the new harm rule will be a key element in this case.

HALIBUT ACT

NW990106: The master was issued a written warning for failure to separate halibut from two regulatory areas.

LACEY ACT

NW960099: General Counsel had previously issued a $610,000 Notice of Violation and Assessment (NOVA) against NDC Group Inc. for violating the Lacey Act for the purchase, sale, and interstate transportation of at least 61 shipments of unlawfully taken geoduck clams. After months of unsuccessful negotiations, an administrative hearing was set in January 2000, and just prior to the hearing date General Counsel accepted a $25,000 settlement offer when it was discovered that the defendant had sold all of the corporate assets, dissolved the corporation, and claimed that they were willing to spend the corporation's final assets of $30,000 to defend itself against NOAA's charges.

Case number withheld: This Lacey Act case involves a Canadian vessel which unlawfully fished for albacore tuna in the U.S. Exclusive Economic Zone (EEZ) and on the high seas in violation of Canadian law. The proceeds from the sale of approximately 13,840 pounds of albacore tuna were seized by NMFS and the vessel was released after a PD27 discussion occurred. The case package will be forwarded to General Counsel for consideration of a NOVA.

NW990111: This investigation involves a shipment of 40,000 pounds of sockeye salmon that was detained by the U.S. Customs Service at Tacoma, Washington. The sockeye had been exported from Alaska to Japan but the ultimate consignee, a Japanese company, 'rejected the shipment' after it was in Japan for two months and it was re-imported into Tacoma. NMFS agents were asked to participate in the inspection of the shipment when it was detained at Tacoma and five fish were seized and sent to the Auke Bay laboratory for genetic identification. The investigation continues since the fish were gill-net marked and the U.S. Customs Service indicated that this was one of over 90 shipments by the same company that had traveled the same route.

MAGNUSON ACT

Case number withheld: This case involves a minor IFQ overage and multiple logbook violations. Initially the respondent was given a written warning, however it was later discovered that he has previous similar offenses so the case will be referred to General Counsel for consideration of a NOVA.
Case number withheld: This case involves an IFQ overage and is currently being reviewed by General Counsel.

NW990081: A written warning was issued for failure to complete Daily Fishing Logbooks during IFQ halibut fishing. In addition, a summary settlement was issued for failure to obtain required observer coverage. The summary settlement was paid in full and the case was closed.

NW990082: A written warning was issued for failure to retain Pacific cod with IFQ halibut on board.

NW990083: A written warning was issued for failure to use the logbook required in the Pacific Halibut Fishery Regulations and a summary settlement was issued for failure to submit required logbook on a quarterly basis. The summary settlement was paid in full and the case was closed.

NW990085: A summary settlement was issued for retention of prohibited species. The summary settlement was paid in full and the case was closed.

NW990086: A summary settlement was issued for a groundfish overage. The summary settlement was paid in full and the case was closed.

NW990087: A 30-day fix it notice was issued for failure to affix proper markings on vessel.

Case number withheld: This case involves failure to retain Pacific Cod with IFQ halibut on board and is currently being reviewed by General Counsel.

NW990089: The master was issued a written warning for failure to properly log discards in Daily Fishing Logbook.

NW990090: The master of this vessel was issued a written warning for failure to retain pollock as required under Improved Retention/Improved Utilization regulations.

NW990091: The master was issued a fix-it ticket for failure to maintain 18" vessel markings on the pilot house of the vessel.

NW990092: The master was issued a fix-it ticket for failure to maintain 10" vessel markings on the pilot house of the vessel.

NW990093: The master was issued a fix-it ticket for failure to affix 10" vessel markings on the pilot house of the vessel.

Case number withheld: This case involves failure to make accurate DCPL landing report.

Case number withheld: This case involves a groundfish overage and possible illegal commercial fishing.
NW990099: The master was issued a fix-it ticket for failure to keep current Federal Limited Entry Permit on board.

Case number withheld: This case involves a failure to maintain vessel markings and fishing with an undersized net mesh. The Coast Guard is currently gathering more information in preparation for this case to be sent to General Counsel for prosecution.

NW990101: The master was issued a fix-it ticket for failure to maintain properly sized document numbers on the hull of vessel.

NW990102: The master was issued written warnings for failure to retain Pacific cod with IFQ halibut on board the vessel and for failure to submit yellow log book sheets for the 2nd and 3rd quarter.

Case number withheld: This case involves failure to retain rockfish with IFQ sablefish and halibut on board, and is currently being reviewed by General Counsel.

NW990105: The master was issued a written warning for a groundfish overage.

NW990107: The master was issued a written warning for failure to have an IFQ Buyers Permit.

Case number withheld: This case documented fishing with an undersized bottom trawl net mesh and was forwarded to General Counsel for prosecution.

NW990109: The master was issued a written warning for failure to submit Daily Fishing Log blue sheets.

Case number withheld: This case involves a failure to maintain vessel markings and fishing with an undersized net mesh. This case was forwarded to General Counsel for prosecution.

NW990113: The master was issued a written warning for a groundfish overage.

MARINE MAMMAL ACT

NW990094: This case involved the potential unauthorized removal of seal pup from a beach. This case was closed as unfounded.

NW990098: The respondent in this case was issued a written warning for unlawfully picking up and moving a marine mammal.

NW990112: The respondent in this case owns a dock that is used for fishing, and reportedly shot a bb gun at seals to scare them off the dock. The respondent admitted to shooting the bb gun to scare the seals, and he was issued a written warning.
CRIMINAL INVESTIGATIONS

LACEY ACT

NW960129
NW970040
NW970041
NW970042
NW970046
NW970047
NW970048

All of these related investigations deal with Lacey Act violations involving geoduck clams and are currently awaiting prosecution through the U.S. Attorney’s Office in Seattle, Washington, pending the availability and schedule of the Assistant U.S. Attorney. During the last quarter, one of the suspects provided testimony before the federal grand jury and is cooperating in the prosecution of the other suspects.

NW970011: After a plea agreement with the U.S. Attorney’s Office could not be reached, the respondent decided to go to trial to challenge the indictment charging him with violating the Lacey Act and conspiracy to violate the Lacey Act. The jury returned a guilty verdict on both counts.

Case numbers withheld: These Lacey Act investigations deal with the unlawful sale and purchase of Canadian salmon harvested under Canadian aboriginal rights. Because the salmon were harvested for ceremonial purposes they are not allowed to be sold under Canadian law. These cases were forwarded to the U.S. Attorney’s Office in Seattle, Washington for prosecution.

Case numbers withheld: These Lacey Act investigations involve the sale and purchase of several hundred pounds of undersized dungeness crab by tribal members. Two of these cases were forwarded to the U.S. Attorney’s Office in Seattle, Washington for prosecution. The third case was forwarded to the Lummi Tribal Court, which declined to prosecute. The case was then forwarded to the U.S. Attorney’s Office, who also declined to prosecute. The case was accepted for prosecution by NOAA General Counsel.

Case number withheld: This case involves the interstate transportation of stolen seafood.

Case number withheld: This case involves the illegal importation of seafood.
MARINE MAMMAL ACT

NW990094: This case was initiated after an employee of a wildlife center picked up seal pups. Two separate incidents were documented in Seattle Police Department (SPD) reports. An investigation revealed that SPD policy is to contact this particular employee of the wildlife center to respond to any wildlife problems that occur after 9:00 P.M. (which is when the local Animal Control office closes). The NMFS Marine Mammal Coordinator was asked to consult with SPD to discuss and review their marine mammal referral protocols. This case was closed as unfounded.
COPPS

Assistant Special Agent in Charge Marc Cline and Special Agent Dali Borden attended the Problem Oriented Policing Conference in San Diego, California. Over one hundred different agencies from across the US and other countries attended the three day conference, and the presentations discussed many strategies to incorporate a problem oriented policing approach into organizations. After the conference, ASAC Cline and SA Borden attended a Supervising Problem Solving Process course, which discussed specific techniques and guidance procedures for team leaders to encourage and promote problem solving among co-workers.

Endangered Species Act
ESA Brochure
The purpose of the ESA brochure is to provide public outreach and regulatory information for identifying and reporting violations. After approval of the brochure it will be distributed to areas impacted by ESA decisions. The first draft of the brochure was sent to the Snohomish Conservation District, Washington Department of Fish and Wildlife, USDA Natural Resources Conservation Service, Puget Sound anglers, University of Washington Fisheries Department, and the University of Washington Forest Department for input. The effectiveness of the brochure was split at 50 percent, but all agencies felt that the role of the Office for Law Enforcement in ESA is clearly explained in the brochure. Recommendations from the above identified agencies are being considered.

Okanagon County
Passage, barrier, and screening problems on Beaver Creek, a tributary of the Methow River in Okanagon County, have been identified as a significant risk to listed fish and their eventual recovery. A culvert which has historically blocked passage of anadromous fish into Beaver Creek is scheduled to be corrected in the summer of 2000. NMFS has been successful in convincing the Washington Department of Transportation to sustain the funding for the Beaver Creek Program in spite of severe budget impacts due to the passage of State Initiative 695. These aggressive engineering efforts will eliminate some risk to fish but to address flow concerns and all associated risks to fish, a long term strategy including development of an HCP will need to be employed. After restoring passage at the culvert, individual passage and screen problems upstream of the culvert become a risk to listed fish. To address these anticipated upstream risks, extensive planning and stakeholder meetings with the diverters have occurred this quarter. NW Enforcement staff attended a planning meeting with NMFS, WDFW and staff from Senator Slade Gorton’s office to identify and discuss flow, passage barrier, and water diversion screen problems on Beaver Creek. Engineering solutions, funding options, and short and long term compliance objectives and strategies were identified. This meeting was followed by a stakeholder meeting with the Beaver Creek diverters and interested stakeholders. As an outcome, all but one of the primary diverters have made application to the WDFW for screening their diversion. The one outstanding issue is being pursued through a community policing strategy involving WDFW officers and NMFS agents.
Walla Walla River
Anticipating the promulgation of 4d rules for steelhead, the Office for Law Enforcement is researching the risks to listed fish inherent in the irrigation activities on the Walla Walla River. Enforcement personnel attended a meeting of the Walla Walla Basin Watershed Council and answered questions involving ESA issues including 4d impacts, HCPs, Section 9 take risks, and relevant compliance options. The primary enforcement concern in the basin is the annual dewatering of the Walla Walla River in late spring, which last year stranded 6,000 plus steelhead and hundreds of bull trout. Beyond the 6,000 fish stranded and salvaged, biologist estimate that at least an equal number of steelhead and bull trout died as a result of the dewatering. Although the irrigators in the area are involved with a host of agencies in a number of engineering improvements, the issue of flows is not being addressed to the extent that future dewatering events that take fish will be avoided this spring. Enforcement will spend considerable time this winter and spring establishing an historical fact pattern and in developing monitoring plans to document the anticipated spring dewatering event. Depending on how and when the 4d rule for steelhead is ultimately published as a final rule, a Section 9 take investigation could be enacted.

ESA Performance Measurement
ESA Coordinator Dayna Matthews has been assisting WDFW and the Governor’s Office for Salmon Recovery in its education and performance measurement efforts this past quarter through his involvement in the Washington Salmon Recovery Plan Balanced Scorecard Initiative. The Balanced Scorecard, a performance measurement instrument developed by the Harvard School of Business, has been adapted for measuring the performance and ultimate success of the Governor’s Salmon Recovery Plan by the Governor’s Joint Natural Resources Committee. Matthews has been working with WDFW in establishing the criteria from measuring the contributions and performance of volunteers in the recovery effort. Key involvement in voluntary recovery efforts keeps the Office for Law Enforcement compliance message at the forefront and builds advocacy for fish protection measures. Additionally, involvement in performance measurement activity adds to OLE capacity for measuring its own voluntary compliance efforts.

Cooperative Enforcement with Idaho
The Office for Law Enforcement has identified problems regarding state enforcement of existing water regulations that are integral to the recovery of endangered salmonids and we are considering a COPPS approach that will expand state awareness of the ESA and increase enforcement efforts addressing in stream alteration projects and allowable water removal rights. The Office for Law Enforcement has met with officials of the Idaho Department of Water Resources (IDWR) and discussed IDWR’s role in issuing state permits that comply with ESA regulations and possible funding for an ESA permit/enforcement-oriented state position. Justification may be realized for allocating NMFS resources by showing the number of potential overlapping violations and permit applications. Potential violations and permit applications that could apply would have to occur in ESA habitat involving ESA species and the Idaho State Stream Protection Act. Idaho is interested in applying for Federal enforcement dollars to support them in their efforts to enforce the State Stream Channel Protection Act. Other stakeholders
include property owners, agricultural and ranch irrigators and other Idaho state agencies such as the Idaho Department of Fish and Game.

Our approach will increase our operational effectiveness by enabling IDWR (and eventually other states) to address more violations and unauthorized activities that affect endangered species and endangered species habitat. By developing agreements with state agencies we will enhance our relationships and encourage better cooperation between our organizations. We plan to measure our efficiency and evaluate our successes by tracking state investigation numbers that relate to ESA issues as well as ESA complaint referrals.

Magnuson-Stevens Fishery conservation and Management Act Outreach
Fish Expo ’99
Seattle Fish Expo is the largest commercial fishing trade show on the West Coast and remains our best opportunity to provide outreach and regulatory information to the fishers involved in fishing off the coasts of Alaska, Washington, Oregon, and California. The Office for Law Enforcement portion of the booth was staffed by Enforcement Officers from the Northwest and Alaska Enforcement Divisions, the National VCP Coordinator from headquarters, and the NMFS Western Inspection Branch (seafood). In partnership with state enforcement agencies, Oregon State Police - Fish and Wildlife Division, and the Washington Department of Fish and Wildlife Enforcement provided officers, displays, and their expertise at the fisheries enforcement booth. There were approximately one thousand contacts during the show.

WOC West Coast Trawl
A multi-agency meeting, which included personnel from NOAA General Counsel, Northwest Enforcement Division, Southwest Enforcement Division, National Marine Fisheries Service Net Loft, United States Coast Guard District 11 and District 13, Oregon State Police, and the California Department of Fish and Game, was held in Seattle, Washington. The purpose of the meeting was to discuss problems encountered in trawl mesh net enforcement under 50 CFR 660 West Coast Groundfish. During 1999, the U.S. Coast Guard documented a number of undersized trawl net cases which initiated concern from two respondents and the industry over the construction and application of the net gauges used by enforcement personnel. The meeting concluded with the decision to redesign the net gauges and to standardize the manufacturing of all gauges that will include individual serial numbers.
### NUMBER OF CASES OPENED BY INVESTIGATION TYPE
FY99 and FY00

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## COMPLAINT ACTION
10/1/99 - 12/31/99

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| Number of Complaints Assigned CCN’S | 3       |
| Number of Complaints Upgraded     | N/A     |
| Unfounded Complaints Assigned CCN’S | 0       |
| Number of Complaints not Assigned CCN’S | 27      |
| Number of Hotline Complaints      | 0       |