

FISHERY MANAGEMENT PLAN AMENDMENT ISSUES

There are a number of issues related to the Pacific Coast Salmon Fishery Management Plan (FMP) the Council should be aware of and be prepared to provide direction to staff and the Salmon Technical Team (STT). Many of these issues can be addressed without an FMP amendment, however, if an amendment is initiated for at least one issue, it may be more efficient to address the other issues simultaneously in order to cover National Environmental Policy Act (NEPA) requirements in a single document, such as a supplemental environmental impact statement (SEIS) on the salmon FMP.

NEPA Requirements for Annual Management Measures

Amendment 6 to the FMP established a framework for salmon management intended to relieve the need for annual amendments and associated NEPA analysis in order to set annual management measures, as long as the conservation and allocation objectives of the FMP were met. In addition, as stated in the current FMP, the preseason process includes a nearly equivalent amount of analysis, public input, and review to the former amendment process for annual management measures. From 1991 to 1993, a brief (five page) environmental assessment (EA) was submitted with the final management measure proposals to cover actions that did not meet the conservation objectives of the FMP, and were, therefore, outside the scope of previous NEPA analyses. These management measures were implemented by emergency rule. Beginning in 1995, a brief EA accompanied all final management measure proposals, none of which failed to meet the FMP conservation or allocation objectives, or were implemented by emergency rule.

In 2001, NMFS guidance, as part of the regulatory streamlining process, recommended that an appropriate draft NEPA analysis be available to regional fishery management councils prior to final action on annual management measures (Agenda Item D.4.a, Attachment 1). Since that time, Council staff has prepared a draft EA for Council consideration at the April Council meeting and completed a final EA for submission to the Secretary of Commerce along with the Council-adopted annual salmon management measures. The work load of producing this EA during the course of the preseason process is significant, and Council and NMFS regional staff feel the document is redundant to the preseason documents and does not meet the intent of the framework amendment.

Between now and the March meeting, staff will pursue better ways to meet our NEPA obligations that would alleviate some of the work load associated with the current process. It is hoped the solution will be purely administrative and require no Council action; however, it could be addressed or facilitated through the next FMP amendment. In any event, staff believes that eventually having the NEPA process for setting annual management measures addressed explicitly in the FMP would be appropriate. Staff will update the Council at the March 2005 meeting on potential solutions.

Essential Fish Habitat

The essential fish habitat (EFH) final rule [50 CFR 600.815 (a)(10)] requires regional fishery management councils to review the EFH provisions of FMPs at least once every five years and to revise or amend FMPs as warranted. Salmon EFH was designated initially in September 2000 and is, thus, due for review by September 2005. There are some technical corrections that need to be made to the current designations. There is also some new information resulting from NMFS's recent review of critical habitat that may be relevant to the EFH designations. The Council may also choose to further modify EFH designations by identifying habitat areas of particular concern (HAPCs). Whether an FMP amendment and associated EIS is required, depends on the degree to which the current designation is changed based on new information. Options for conducting the EFH review are discussed in more detail in Agenda Item D.4.a, Attachment 2.

Selective Fishery Allocation Considerations

At the September 2004 meeting, the STT reported that the process the Council has been using to allocate coho north of Cape Falcon has not followed FMP guidelines. The Council has allocated the overall total allowable catch (TAC) calculated as the landed catch of marked fish, rather than setting the TAC based on non-mark selective fisheries, then allowing each sector or port to utilize impacts in a selective fishery, as required by the FMP. The process used by the Council, however, has satisfied commercial and recreational objectives in the FMP, largely because all fisheries were modeled as selective, and trades were prosecuted using the same "currency" of marked fish. The STT requested guidance on the process for use in 2005 because it is likely a combination of mark selective and non-selective coho fisheries will be considered. The Council directed comanagers north of Cape Falcon to review and discuss the process by which the Council has been allocating selective fishery coho quotas with stakeholders. If Council guidance for 2005 deviates from the FMP, NMFS may implement annual management measures by emergency regulations, and an amendment of the FMP should be initiated to bring the process into compliance with the FMP.

In addition to the coho allocation issue above, coho allocation south of Cape Falcon is also a candidate for an FMP amendment. Current FMP guidelines do not consider selective coho fisheries and give no guidance on how allocation should proceed if selective fisheries are considered for either or both recreational or commercial fisheries. The Oregon Department of Fish and Wildlife (ODFW) expressed interest in sponsoring an FMP amendment to address this, and possibly other allocation issues, but has been unable to commit the necessary resources up to this point. Staff does not anticipate any additional work load associated with this issue before next summer.

Conservation Objectives

Several conservation objectives in the FMP have been identified for updating, including Oregon coastal natural (OCN), Lower Columbia River (LCR), and Puget Sound coho; and Sacramento winter and spring, Klamath spring, Snake River fall, Willapa Bay fall, and Puget Sound chinook. While most conservation objectives can be updated through a technical review process similar to the salmon methodology review, new objectives, or those that are based on different metrics, should probably be adopted through the FMP amendment process.

Stocks without FMP objectives include Sacramento winter and spring, Klamath spring, and Willapa fall chinook; and LCR coho. Currently, inadequate information is available to establish exploitation- rate-based conservation objectives for Sacramento winter and spring chinook, as reported at the September Council meeting. Klamath spring and Willapa fall chinook likely fall into the same category; however, NMFS Endangered Species Act (ESA) consultation standards are in place for the Sacramento stocks, which currently serve as FMP objectives.

LCR coho are listed as a candidate species under the ESA and will likely be covered by the annual NMFS ESA guidance letter in 2005. If the Council adopted conservation objectives for LCR coho, NMFS could issue a biological opinion on the Council's objectives. The ODFW established a draft management plan for LCR coho after they were listed under the Oregon State ESA, which could serve as the basis for one alternative for FMP conservation objectives. Staff recommends the Council defer to the ESA process for 2005 and consider developing FMP conservation objectives during the next FMP amendment process.

The OCN coho matrix was reviewed by the OCN work group, and suggested modifications were adopted by the Council as expert biological advice in November 2000. The Council has recommended that the modified matrix be incorporated into the FMP conservation objectives through a technical review. The SSC is awaiting development of a technical appendix to complete the review.

The FMP objectives for Puget Sound coho are based on spawner escapements. New exploitation-rate-based objectives established in the Pacific Salmon Commission (PSC) forum in 2002, and approved under U.S. District Court orders, can be used for annual management objectives in the Council process, but do not apply when considering overfishing concerns of the FMP. Incorporation of the PSC objectives into the FMP would ensure Council management would not conflict with either the Pacific Salmon Treaty or Magnuson-Stevens Fishery Conservation and Management Act (MSA). While it is unlikely such a conflict will occur in the near future, staff recommends the Council consider updating these conservation objectives during the next FMP amendment process.

Puget Sound chinook are ESA listed and have conservation objectives established through a Section 4(d) determination that could be incorporated into the FMP. Puget Sound chinook are exceptions to overfishing considerations both because of their low exploitation rate in Council area fisheries and because they are an ESA-listed species. Therefore, there is little risk that Council management would conflict with MSA requirements, even if they were no longer ESA listed. However, having conservation objectives in the FMP consistent with co-manager objectives and NMFS ESA consultation standards would reduce confusion. Staff recommends the Council consider updating these conservation objectives during the next FMP amendment process.

The work load for updating conservation objectives would primarily impact state and tribal agencies and the STT.

Council Task:

- 1. Discuss issues relevant to the FMP and possible amendment topics.**
- 2. Provide guidance to staff on initiating an EFH update and FMP amendment(s).**

3. Provide guidance to STT on the selective fishery modeling process for 2005.

Reference Materials:

1. Agenda Item D.4.a, Attachment 1: Letter from Dr. Hogarth to Dr. Radtke dated November 14, 2001 regarding NEPA requirements for Council actions.
2. Agenda Item D.4.a, Attachment 2: NMFS proposal for salmon EFH update process.

Agenda Order:

- a. Agenda Item Overview
- b. Agency and Tribal Reports and Comments
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. Council Discussion

Chuck Tracy

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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Silver Spring, Maryland 20910
THE DIRECTOR

NOV 14 2001

Mr. Hans D. Radtke
Chairman
Pacific Fishery Management Council
7700 N.E. Ambassador Place
Portland, Oregon 97220-1384

Dear Mr. ^{Radtke} Radtke:

At our meeting this summer, I promised I would get back to you in November with more specific guidance on expectations for fishery management actions taken by the Councils in 2002. This guidance is part of the major regulatory streamlining and improvement project I have initiated. As you know, managing living marine resources more effectively and efficiently and freeing ourselves from this litigation vortex will require significant changes in operations both at the National Marine Fisheries Service (NMFS) and within the Council system.

Several reviews have recommended that we need to effect a fundamental change in the way we do business. The two highest priorities with respect to NMFS-Council interactions are:

1. All mandates need to be considered with greater transparency and much earlier in the process of formulating fishery management actions. This will help ensure that Councils take an active role in developing management measures in full consideration of impacts to protected species, habitat, and socio-economic factors while making the best decisions to rebuild and sustain fisheries.

2. Documentation needs to be completely in compliance with the National Environmental Policy Act (NEPA) and other statutory or executive order requirements for analysis before submitting for Secretarial review (i.e., before the Council casts the final vote). One of the main purposes of this work is for decisionmakers to have detailed information available to them on an acceptable range of alternatives and their effects before making a decision. This information includes fish and the associated fisheries, social data, economics, endangered species, marine mammals, and essential fish habitat. We are in the process of reviewing the operational guidelines to ensure that they reflect this emphasis. If necessary, we will revise them in January.

This is a partnering effort. We are fully committed to working closely with you and providing early and timely reviews of draft analytical documents, prepared to comply with NEPA and other applicable laws, prior to Council final action and submission to the Secretary.

Operation Planning for 2002

In finalizing your operational plan for 2002, you need to take into account what this will mean for your workload. Resources are the limiting factor. Recognizing this, I will do what I can, depending on funding levels in the final FY 02 budget, to provide you with at least one additional temporary person in addition to the money you received for NEPA improvements in FY 01. That person's role will depend on the greatest need in each FMC. Beyond the fundamental changes noted above, a few specific tasks need to be done. I've asked my Regional Administrators to work with you on the following items.

1. Evaluate planned actions for FY 02 and prioritize actions according to whether they are imperative to comply with the Magnuson-Stevens Act (M-S) and other applicable laws. For example, measures needed to keep a fishery on a rebuilding plan may be imperative for Sustainable Fisheries Act compliance, measures to refine a permit may not be. Being in compliance with NEPA, but out of compliance with M-S is not acceptable. We need to achieve a balance of resources and mandates at which we can perform well. This means a workload that is realistic at a reasonably high quality standard. Based on your prioritized list, and an assessment of available resources, we will work with you to determine what actions can be undertaken in FY 02.

2. Determine what the role of an additional person would be based on each Council's needs. For example, a Council may require a person with expertise in marine mammals and endangered species, socio-economics, or some other combination of skills related to improving our NEPA and overall regulatory processes.

3. Establish a regulatory working group or task force whose mission is to identify specific measures to streamline the regulatory process, (e.g. multi-year harvest specifications). Inquiries into potential regulatory streamlining options need to be made in each council area and likely for each FMP to determine where different strategies can be implemented effectively. The types of alternative management measures that can be applied may be affected by issues such as stock status relative to an overfishing definition.

I am confident that, as a team, the Councils and NMFS can solve these problems. I will send a follow-up letter providing more detail on some of these issues in a few weeks. If you have questions, please feel free to call me or my Senior Policy Advisor, Laurie Allen. We can be reached on 301/713-2239. Laurie and I will make a concerted effort to attend upcoming Council meetings to address your questions.

Sincerely,

William T. Hogarth

William T. Hogarth, Ph.D.
Assistant Administrator
for Fisheries

cc: Council Executive Directors
NMFS Regional Administrators
NMFS Science Directors
NMFS Office Directors
OS - Sloan Rappoport
OGC- Dan Cohen
A - Scott Gudes
GC-Craig O'Connor
GCF-Mariam McCall, Kevin Collins
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ESSENTIAL FISH HABITAT FIVE-YEAR REVIEW FOR THE PACIFIC COAST SALMON PLAN

Background

The Magnuson-Stevens Fishery Conservation and Management Act requires a periodic review of the essential fish habitat (EFH) portions of fishery management plans (FMPs), and the implementing regulations (50 CFR 600.815 (a)(10)) stipulate a five-year cycle for the review. Since the salmon FMP was approved September 27, 2000, the five-year review should be completed by about September 27, 2005.

Options

The EFH Final Rule states that “the review should include, but not be limited to, evaluating published scientific literature and unpublished scientific reports; soliciting information from interested parties; and searching for previously unavailable or inaccessible data.” After completing the EFH review, the Council and the National Marine Fisheries Service (NMFS) will have a range of options:

1. Provide updates and make technical corrections where necessary to freshwater areas currently designated as EFH. The resulting changes would likely be minimal, and probably not trigger an FMP amendment, but could be incorporated into an amendment process for other issues. They could also consider whether there is new information suggesting the need to reconsider the definition of EFH in marine areas.
2. Incorporate new information from Endangered Species Act (ESA) critical habitat and incorporate into EFH where ESA-listed and FMP-managed stocks overlap. This may trigger an FMP amendment and associated National Environmental Policy Act (NEPA) analysis.
3. Complete Item 2 above, and establish a process and criteria for designating salmon habitat areas of particular concern (HAPC), and if appropriate, designate specific HAPC. This would trigger an FMP amendment and associated NEPA analysis.

Key Issues to be Considered

- FMP Amendment and NEPA Analysis – Any substantive changes to descriptions of EFH will necessitate an FMP amendment. The outcome of the EFH review will determine the need for an amendment and associated NEPA documents.
- Data Review - NMFS conducted a data review in conjunction with the revised critical habitat proposal under the ESA. These data provide an in-depth examination of fish presence on the stream reach scale and could be used to refine or support the existing EFH descriptions where there is stock overlap. The review provides new information for approximately one third of salmon stocks covered under the salmon Plan. However, the critical habitat review focused on defining the end points of currently occupied freshwater habitat. EFH was intentionally broader in scope and included both currently occupied and historically accessible habitat.

- HAPC – HAPCs were not identified in the original EFH designation. The Council, therefore, may consider whether to designate HAPC at this time or to establish a process and criteria for designating HAPC. HAPC are identified based on one or more of the following four criteria: the importance of the ecological function; the susceptibility to human-caused degradation; whether development activities will stress the habitat; and the rarity of the habitat. While there are no additional regulatory or consultation requirements for HAPC, they do serve to highlight the importance of specific habitats.
- Staff Resource Needs – The time required for a review of the new information related to EFH will be relatively limited. However, if substantive changes are made in EFH, time requirements for an associated FMP amendment and NEPA analysis would be significant.

Recommendation

Staff recommends that Council and NMFS staff initiate the review and report back to the Council at the March 2005 meeting.