



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division F/NWR2
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115-0070

FEB 20 2009

Dr. Donald O. McIsaac
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland Oregon 97201

Dear Dr. McIsaac

I am writing to convey our determination regarding the status of Klamath River fall Chinook salmon (KRFC), and review the circumstances related to that decision. Our effort to make the status determination came up in response to a routine request from headquarters to clarify the status of KRFC for use in their annual report to Congress. I appreciate that salmon are unlike most other species that we manage under the Magnuson-Stevens Act (MSA). The current Fishery Management Plan (FMP) explains the unique biological characteristics of salmon and was designed to meet the requirements of the MSA. However, our recent conversations reveal that the FMP could provide clearer criteria that allow us to make overfishing and overfished status determinations. We should consider such criteria when the salmon plan is amended for consistency with the new annual catch limit requirements.

Under the MSA, overfishing determinations are generally related to a rate of fishing while overfished determinations are related to measures of abundance or biomass. The status determination benchmarks are designed to indicate when the capacity of a stock to produce maximum sustained yield (MSY) on a continuing basis is jeopardized. The Salmon FMP uses escapement as an indicator of abundance for most stocks; if escapement falls below the designated level for three consecutive years, an overfishing concern is triggered. An overfishing concern in turn leads to a workgroup review that is designed to identify the causes of that shortfall. The workgroup is also assigned to develop a rebuilding plan and criteria that can be used to define the end of the overfishing concern if appropriate. The FMP does not provide further guidance about when or under what circumstances a stock should be considered overfished.

Klamath River fall Chinook failed to meet the escapement floor for three consecutive years beginning in 2004. A workgroup was formed following the procedures specified in the FMP.



There were obviously a number of factors that contributed to the escapement shortfall, but the workgroup did conclude that overfishing had occurred in each of the three years. The workgroup did not conclude that the stock was overfished. However, the FMP does not require such a determination as part of the overfishing review and offers no criteria for making such a determination. The workgroup did report that certain key stocks were depressed raising concerns about the genetic integrity of those stocks and, in turn, the ability of KRFC to produce MSY on a continuing basis. At the June meeting the Council recommended a set of criteria for ending the overfishing concern and a rebuilding plan that was to be implemented until the rebuilding criteria were met.

One mitigating factor among the events related to KRFC is the fact that the escapement in 2007 was over 59,000 and thus well above MSY spawning escapement level. The 2007 return broke the sequence of low escapements, but was not sufficient to meet the Council's criteria for ending the overfishing concern. The Council's criteria require multiple years of higher escapements to end the overfishing concern. I understand that the escapement of KRFC was below 35,000 again in 2008.

There is no clear answer on whether KRFC should be classified as overfished or not overfished. However, there is some agency precedent to guide us. In cases where previously overfished stocks have demonstrated progress toward rebuilding, they have been determined as "not overfished – rebuilding." This general approach, although not an exact fit to this situation, seems most appropriate given the circumstances. Therefore, the National Marine Fisheries Service concludes that the status determination for KRFC will be "not overfished – rebuilding." This status determination will be reconsidered each year to determine if continued rebuilding progress has been demonstrated.

I apologize for the confusion on this matter and not communicating better with you and the Council with respect to this status determination. However, having gone through this exchange it is apparent that the FMP should be restructured to provide clearer criteria for making overfishing and overfished status determinations as required by the MSA.

I look forward to discussing this further with you and the Council.

Sincerely,

A handwritten signature in black ink that reads "Frank Lockhart". The signature is written in a cursive, flowing style.

Frank Lockhart
Assistant Regional Administrator