

NATIONAL MARINE FISHERIES SERVICE REPORT: OVERVIEW OF ISSUES  
REGARDING PACIFIC SALMON ESSENTIAL FISH HABITAT AND SALMON  
REINTRODUCTIONS

Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Essential Fish Habitat (EFH)

The MSA established a requirement for Federal agencies to consult with the National Marine Fisheries Service (NMFS) on actions that may adversely affect EFH, and for NMFS to provide EFH Conservation Recommendations to Federal agencies to avoid, minimize, mitigate or otherwise offset adverse effects to EFH. Under the regulations implementing the EFH provisions of the MSA, EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity”, and necessary is defined as the “habitat required to support a sustainable fishery and the managed species’ contribution to a healthy ecosystem”. An adverse effect means “any impact that reduces the quality and/or quantity of EFH”. Although compliance with NMFS’ EFH Conservation Recommendations is not mandatory, the Federal agency must provide a written response within 30 days that either describes the measures the agency proposes to avoid, minimize, or offset the impact of the activity, or explains the reasons for not following the recommendations. In addition, Regional Fishery Management Councils and NMFS are required to review the EFH provisions of Fishery Management Plans (FMPs) and revise or amend them as warranted based on the best available information at least every five years.

EFH Designations in Areas Unoccupied by Salmon

With the overall objectives of supporting a sustainable fishery and the managed species’ contribution to a healthy ecosystem in mind, justification for considering the designation of EFH above impassable barriers or in habitats that were historically, but not currently, occupied exists in both the EFH regulations and Amendment 14 to the Pacific Coast Salmon FMP<sup>1</sup>. New information, contained primarily in official NMFS documents (e.g., biological opinion, recovery plan, fishway prescription under the Federal Power Act), released since Amendment 14 to the Salmon FMP that could inform a refinement of the EFH designations was available during the 5-year review and is being more thoroughly evaluated during the FMP amendment process. In some cases, this new information may lead to a conclusion that EFH should be expanded. EFH designations above currently impassable dams or in accessible areas that historically had salmon but are currently unoccupied, may have certain implications for ongoing and future efforts to re-establish Endangered Species Act (ESA)-listed salmon populations in these areas.

Reintroductions Under Section 10(j) of the ESA

Section 10(j) of the ESA provides for authorizing the reintroduction of a species to historic, but currently unoccupied habitat, and designates them as an experimental population. This is done through rulemaking. The Secretary must determine that the reintroduction of an experimental population would “further the conservation of such species”. Part of the reason for an

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<sup>1</sup> For a detailed discussion on this issue, please see the Pacific Coast Salmon 5-year Review of Essential Fish Habitat, Info\_Sup\_Rpt3\_Att1\_EFH\_Jun2011BB.pdf

experimental population designation is that it can encourage stakeholder support by easing certain potential ESA liabilities to Federal agencies and private entities within the reintroduction area. For instance, an experimental population designation could remove most section 7 requirements for Federal activities. In addition, the rule could be used to reduce regulatory burdens for private entities by exempting or relaxing incidental take prohibitions for otherwise legal activities. Congress specifically added Section 10(j) to the ESA in 1982 to encourage cooperative reintroduction efforts where reintroduction of listed species is perceived to conflict with human activities, with the intent that such a designation would encourage stakeholders, including private parties and government agencies, to support these efforts.

The success of an effort to reintroduce salmon into historical habitat depends, in part, on the support of involved stakeholders, including private citizens. Gaining the trust and support of involved stakeholders is a significant challenge. Therefore, public involvement through education, outreach, rulemaking and designations is important and the process needs to be transparent and sequenced in a logical manner.

#### EFH Designations for Experimental Populations Could Lead to Opposition to Reintroduction Efforts

The current EFH description for Pacific Coast salmon does not account for experimental populations because none were considered at the time. While NMFS supports the designation of EFH above dams or in other unoccupied areas, where appropriate, there are currently two potential concerns related to such designations: 1) the timing or sequencing of EFH designations above dams relative to ongoing reintroduction efforts; and 2) conducting consultations after EFH is designated within an experimental population area.

There are several dams in California that have been identified for fish passage and reintroduction efforts (e.g., Shasta Dam on the Sacramento River). Some of these dams block passage to habitats that have been identified in NMFS documents as being necessary to conserve the species. Therefore, the potential for overlap between areas proposed for reintroduction of salmon and expanded EFH designations is high. Under some specific circumstances, the EFH consultation requirement could create a perceived regulatory burden that may cause both Federal and private stakeholders to oppose the reintroduction.

In addition, as noted above, some habitats that were historically occupied but where salmon have been extirpated are currently designated as EFH for salmon. In these areas, where MSA-managed salmon are absent, NMFS typically does not conduct EFH consultations on actions that have only localized or temporary effects (e.g., construction of a recreational boat dock) because the threat to EFH resources are considered to be minimal. Experimental population reintroductions of salmon are being considered in some of these currently unoccupied habitats (e.g., Okanogan River in Washington), and EFH designation could result in opposition to reintroduction efforts.

#### Moving Forward

As mentioned previously, the objective of designating EFH is to support a sustainable fishery and the managed species' contribution to a healthy ecosystem. Reintroducing fish into their historical habitats will be necessary to achieve this objective, especially when impacts associated with climate change are considered. In fact, the intent of designating EFH above impassable barriers and other currently unoccupied areas would be to conserve these habitats, which have

been identified as necessary to conserve the species, in the hope that salmon would be able to access them in the future. EFH designations could be cause for public concern when considering reintroducing listed salmon into historical habitats. Therefore, NMFS is working on a resolution to present to the Council in April that would allow better integration of EFH designations with ESA reintroduction efforts.

PFMC  
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