

## **9 RESPONSE TO COMMENTS**

The Council office received 58 comment letters in addition to oral comments and questions at the public hearings for Draft Amendment 14 and the Draft SEIS (copies of the written comments and a summary of comments received at the public hearings is contained in a separate Public Comment Appendix). Responses to the comments included making appropriate changes in the final amendment and SEIS and/or the statements and explanations contained in the responses to substantive comments provided below which are arranged by topic. Similar comments in various letters have been combined and summarized. The numbers in parentheses provide an index to the letters in the Public Comment Appendix which are pertinent to each comment.

### **9.1 ACHIEVING OPTIMUM YIELD**

#### **Continued use of the theory of MSY is not scientifically justified (44).**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Council to use MSY as a basis for determining optimum yield and thereby provides little choice in this matter. MSY is a commonly accepted theoretical construct to guide management decisions for exploited fish populations. However, in actual practice it is very hard to specifically ascertain, difficult to determine when it may be changing, and can only be approximated over the long-term. When there is a high degree of uncertainty about the MSY of a stock, the Council may need to choose spawner escapement objectives that significantly reduce fishing impacts at low stock sizes while allowing variable spawner escapements at medium and high stock sizes. This approach provides a way to annually determine allowable harvest while preserving the long-term productivity of a stock and gathering information from which to better understand stock production dynamics.

### **9.2 CONSERVATION**

#### **A “precautionary approach” should be added to the conservation alert procedure and estimation of bycatch in selective fisheries (16, 21, 33, 40, 52).**

The Magnuson-Stevens Act does not specifically use the term “precautionary approach”. This term appears in the National Standard Guidelines (NSG) in reference to the specification of optimum yield. The amended FMP does explicitly include reference to uncertainty and imprecision in its definition of optimum yield in Section 2.1.

The NSG characterize a precautionary approach by three features: (1) target reference points, such as optimum yield, should be safely below limit reference points that indicate a stock is overfished; (2) a stock or stock complex below the size that would produce MSY should be harvested at a lower rate than one which is above that stock size; and (3) criteria used to set target catch levels should be explicitly risk averse (i.e., greater uncertainty regarding stock status corresponds to greater caution in setting target catch levels). The FMP does not specifically use the term “precautionary approach” with regard to the conservation alert and selective fisheries. However, both procedures incorporate features of such an approach as described below.

The Council-adopted conservation alert is triggered when the STT projects that a managed stock will not meet its MSY, MSP, or floor spawner objective in the coming season. This finding requires a cessation of fishing impacts on that stock or special impact reductions in the case of some specific stocks managed under court-ordered procedures. This procedure clearly meets the three features of the precautionary approach in that (1) the MSY, MSP and floor spawner objectives are well above a level that indicates overfishing, especially if they are missed in just one year, (2) harvest rates are completely or significantly reduced in Council-managed fisheries, and (3) in the case of stocks managed through court procedures, the available stock production data is generally more complete and maintained at a finer (less aggregated) level than for the other stocks which are subject to the conservation alert procedure.

With regard to selective fisheries, the requirement for the Council to use the best science and the guidelines in Section 6.5.3 provide a precautionary type of approach to their implementation. Among the requirements is that any selective fishery proposal be made in a timely manner to allow full analysis and public comment. An example of this precautionary approach is provided by a Council implemented selective coho fishery off central Oregon in 1999. The fishery was only approved based on estimated fishery impacts being significantly below the allowable level to meet the pertinent conservation objectives while using a hook-and-release mortality rate that was double the standard rate currently in use to account for both uncertainty in the status of the stock and in the hook-and-release mortality estimates.

**The draft supplemental EIS does not evaluate the health and viability of all salmon stocks of the entire Pacific Coast population, nor whether hatcheries have been successful in compensating for past adverse impacts and maintained populations at predam levels (57).**

The salmon FMP provides some general information as to the status of stocks which have conservation objectives (Table 3-1) and references sources of additional information. Evaluating the success of hatcheries to fulfill mitigation for losses due to dams is beyond the scope of this amendment and the Council's FMP.

### 9.2.1 Conservation Objectives

**Modifying the floor conservation objective for Klamath River fall chinook should require an FMP amendment rather than being possible through a technical review.**

This requirement has been included in the Council's final adoption.

**The Strait of Juan de Fuca coho stock should not be a key salmon stock that drives Council management (29).**

There is no new conservation objective for the Strait of Juan de Fuca coho stock. The amended FMP simply clarifies the objective agreed to by the State of Washington and the pertinent treaty tribes through U.S. District Court procedures.

**Each stock that is impacted by Council fisheries should have a conservation objective (16, 40). Conservation objectives should be associated with ecological functions such as nutrient enrichment and gene conservation (16). A time line should be included for developing conservation objectives for stocks which currently have none (33, 52).**

The Council has included conservation objectives for each stock for which information is sufficient to do so and hopes to add other stocks as appropriate data are developed. Even though a stock may not have a specific conservation objective it may still be protected by objectives for other stocks which have similar distributions or life histories and by limits for stocks listed under the ESA.

The Council's MSY and MSP objectives are associated with ecological functions such as nutrient enrichment and gene conservation as long as they are accurate reflections of the productive potential of each pertinent stream system. In cases where there is considerable uncertainty about the current MSY or MSP levels for a stock, such as for OCN coho and Klamath River fall chinook, the Council has established rebuilding goals which allow the spawner escapements to vary well above previously theorized estimates of MSY or MSP to test the results of such numbers on productivity.

Table 3-1 indicates if efforts are ongoing to provide more specific conservation objectives for individual stocks within a particular stock complex. In an ideal situation, the Council would have the staff and funds to establish an effort and time line to complete these tasks. However, the Council must rely on the states and tribes to take the primary role in developing these new objectives and is not in charge of the direct management of many of these stocks. Therefore, a specific time line for the development of new objectives is not possible.

**More conservative standards than NMFS jeopardy standards should be used as conservation objectives in Table 3-1 to rebuild the stocks listed under the ESA and they should not be exempted from the overfishing concern (51).**

The FMP considers the jeopardy standards and recovery plans developed by NMFS for listed populations as interim rebuilding plans and it is unlikely that they will recover listed populations to historical MSY levels within ten years. However, they should be sufficient to stabilize populations at currently depressed MSY levels until freshwater habitats can be restored and estimates of MSY developed consistent with recovered habitat conditions. As species are delisted, the Council will establish long-term conservation objectives with subsequent overfishing criteria and manage to maintain the stocks at or above MSY levels for the recovered habitat.

**The conservation objective for OCN coho is not appropriate (e.g., the allowable harvest rate may be too high, criteria for initiating harvest is not well founded, and some data used in the habitat model is questionable) (30, 32, 40, 44).**

Modifications to the conservation objective for OCN coho is beyond the scope of Amendment 14. However, the FMP calls for a comprehensive, adaptive review of the management measures for OCN coho in 2000 which could result in changes to the objective.

**There are no objectives to deal with differentiating and enumerating central and northern Oregon fall and spring chinook.**

While there are no objectives in the FMP at the current time, ODFW is developing specific objectives for fall and spring chinook that may be incorporated in the FMP when they are completed.

**The Central Valley fall chinook conservation objective should not include hatchery fish to be consistent with NMFS requirements for ESA listed stocks and goals for certain habitat protection and restoration projects (24).**

Identifying individual goals for each stock of fish would be ideal. However, these stocks are mixed in the ocean fisheries and it is not possible to manage them individually. It is possible to manage ocean fisheries to meet an overall spawner escapement to the river which is based on providing enough natural stock to meet enhancement and recovery needs. The current FMP conservation objective for Sacramento River fall chinook is based on a blend of data from the 1950s and 1970s. It recognizes that many naturally produced stocks have been at depressed levels due, in considerable part, to water diversion and other habitat problems. Combining hatchery and natural stocks in the objective has allowed for changes in the proportions of natural and hatchery production to account for losses and recoveries without constantly amending the FMP. In the future, as improvements occur in habitat, the Council may need to revisit the Central Valley objective to assure it is meeting the needs of the naturally produced stocks.

### **9.2.2 Overfishing Criteria**

**The conservation alert procedure must meet the “conservation necessity” standard when applied to ocean treaty troll fisheries (29).**

The Council agrees with the comment and included such recognition in its final adoption as follows:

In the case of Washington coastal and Puget Sound salmon stocks and fisheries managed under U.S. District Court orders, the Council may allow fisheries which meet annual spawner targets developed through relevant U.S. v. Washington, Hoh v. Baldrige, and subsequent U.S. District Court ordered processes and plans, which may vary from MSY or MSP conservation objectives.

**The term “overfishing” should only apply if changes in the fishery management regime offer the primary opportunity to improve stock status and excepted stocks should be those in which Council fisheries have a 15% or less impact, rather than 5% (25, 53). The 5% exemption criteria should only apply to the stocks already identified in Table 3-1 of the FMP and not to small local stocks that are not currently in the table and would be adversely affected by such an action (e.g., lower Columbia River coho) (32).**

The Magnuson-Stevens Act defines overfishing without respect to identifying the primary factor that has led to or can reverse the stock depression, be it fishing or habitat related. However, the Council action in reviewing a stock which meets its overfishing concern criteria includes identifying the primary factors which can prevent or end overfishing.

The choice of a minimal incidental impact level that prevents the Council from being able to take meaningful actions to rebuild a stock is somewhat arbitrary and may be more thoroughly reviewed and possibly recommended for change in the future. In view of the strong emphasis in the Magnuson-Stevens Act for avoiding overfishing and recovering an overfished stock in the shortest time possible, the Council chose to adopt 5% as the exemption cutoff. A very low rate, such as 5%, provides considerable certainty that the Council will not fail to adequately consider rebuilding a stock that may receive some benefit from the effort. This is especially true for small stock groups at low abundance which reside primarily within Council-managed waters as opposed to stocks which have distributions that are mostly outside Council fisheries and for which Council area fishery reductions would have little effect on their recovery.

The 5% impact cutoff would apply to stocks that are added to Table 3-1 in the future. The 5% is a total exploitation rate on the stock and is a very low level of impact that is well below the incidental levels currently allowed in the recovery of most stocks listed under the ESA. Also, the 5% applies to the base period for the Council models (generally 1979-1982) during which time the ocean fisheries had full seasons, few restrictions and much greater fishing effort. Under today's restricted fisheries, the impact on a stock that was 5% during the base period would likely be significantly reduced.

**What would be the allowable incidental harvest impact rate for stocks that meet the criteria for a conservation alert or an overfishing concern (40)?**

The Council's adopted amendment would allow no incidental impacts on a stock which triggered a conservation alert, unless the stock were managed by WDFW and tribes pursuant to U.S. District Court orders. In these cases a very low level of incidental impact could be allowed as agreed to by WDFW and the treaty tribes.

The allowable incidental harvest impact rate on a stock that meets the Council-adopted overfishing concern criteria would be dependent on the results and recommendations of an STT review for stock rebuilding in accordance with the requirements of the Magnuson-Stevens Act.

### **9.2.3 Bycatch**

**The definition of bycatch should be expanded to cover all fisheries, not just the salmon fishery (30, 40, 53).**

The Council deals with bycatch in other fisheries through the FMPs for those fisheries (e.g., the Pacific Coast groundfish FMP and the Coastal Pelagic FMP).

**In Option B-5, the Council should state that it will initiate an independent, comprehensive analysis of hooking mortality and encounter rates, as well as methodologies used in predicting impacts in nonretention fisheries (52).**

Specifying this level of detail in the FMP is generally not useful and is quickly outdated. The Council's advisory groups, annual processes, and operating procedures have been established to ensure assessment of the technical issues the Council must face to meet the requirements of the Magnuson-Stevens Act. For example, in 1998, the Council established an ad-hoc committee to review nonretention mortality issues and

data. At the November 1999 Council meeting, as a result of action by this ad-hoc committee, the STT (with guidance from the Scientific and Statistical Committee) provided a preliminary technical review of the rates reported in recent research for ocean sport fisheries. Prior to the March 2000 Council meeting, the STT will complete its analysis and provide recommendations for an interim nonretention mortality rate for the 2000 season.

### **9.3 HABITAT AND PRODUCTION**

#### **9.3.1 Essential Fish Habitat**

##### **9.3.1.1 Definition and Description**

**The Council's designation of essential fish habitat (EFH) is overly broad, should not extend beyond water and substrate (1, 2, 5, 7, 10, 11), and exceeds Congressional intent by ignoring the terms "necessary" and "essential". The definition should just describe those areas which are truly essential and focus only on weaker stocks. It should not include the entire historic habitat. (31, 46, 51, 55)**

The Council's designation of EFH is broad rather than narrow because the Magnuson-Stevens Act [Section 301(a)(1) and (8)] is not about preserving remnant fish populations, but about being able to recover, maintain, and harvest the Nation's fishery resources at optimum levels which contribute to the social and economic well being of fishery dependent communities and the Nation as a whole. This is reflected in NMFS' 1997 Interim Final Rule on EFH which defines "necessary" as the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and defines "spawning, breeding, feeding, or growth to maturity" as covering a species' full life cycle. To maintain and harvest the Nation's fishery resources at optimum levels requires utilizing the habitat that has historically been available to salmon with certain exceptions for impassable dams and other current barriers which the Council has excluded.

The Council's designation does not extend beyond water and substrate. However, in accordance with NMFS' 1997 Interim Final Rule on EFH, the designation of "water" includes aquatic areas and their associated physical, chemical and biological properties that are used by fish and may include historic areas if appropriate. In the same rule, "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities. The properties of the designated "water and substrate" are certainly affected by the input to the aquatic environment from the surrounding dry land. To ignore this linkage would make the habitat provisions of the Magnuson-Stevens Act ludicrous.

**The designation of EFH overlaps with existing environmental laws (i.e., the ESA and NEPA) and will overwhelm NMFS, the Council staff, and federal action agencies to deal with it. Additionally it will unduly burden non-fishing stakeholders and homebuilders. (46, 55)**

The consultation requirements of the EFH provisions of the Magnuson-Stevens Act do overlap with existing environmental laws and requirements and will add some additional workload to NMFS, federal action agencies, and the Council staff. To keep that additional workload at a minimum, the amendment proposes that the consultations be combined with existing interagency consultations and environmental review procedures that may be required under other statutes. The EFH provisions call for the Council and NMFS to provide recommendations for conservation and enhancement measures to protect and restore the Nation's fishery resources in the case of federal or state actions which may have adverse impacts on the EFH. It is possible that some of these recommendations may result in actions by non-fishing stakeholders and homebuilders that were not previously required. The Council does not agree that this constitutes an undue burden or is beyond the scope of Congressional intent in including EFH provisions in the Magnuson-Stevens Act.

**The amendment has too much emphasis on habitat and not enough on actions to control overfishing and predators (1, 2, 5, 7, 11, 17, 46, 50, 51)**

The Council disagrees and believes the coverage of EFH accurately reflects the very strong emphasis found in the Magnuson-Stevens Act. In terms of specifics, less than three pages of the main body of the proposed

salmon FMP is devoted to EFH, while 27 pages are used to cover overfishing and the Council's salmon stock conservation objectives. An additional eight pages in the current FMP outline harvest control measures. The EFH Appendix is quite large due to the extensive area covered by the Council (four states plus the ocean area). The appendix provides background on the ecological needs and range of salmon, details the extent of EFH over four states and the Council's ocean management area, and provides conservation and enhancement recommendations that are advisory to federal and state action agencies.

In regard to adequately dealing with overfishing, the salmon FMP limits fishing to meet specific stock conservation objectives (see Chapter 3 of the FMP). Under the FMP, the Council and NMFS have the authority to develop and implement regulations that, when necessary, can completely close all salmon fishing within the Council's area of jurisdiction (i.e., ocean fisheries of California, Oregon, and Washington). In accord with Council recommendations for the 1994 season, all non-Indian fisheries north of Cape Falcon, Oregon were closed and fisheries south of that area greatly reduced. Fisheries north of Cape Falcon have been allowed only at very low levels since that time. The retention of coho salmon has been prohibited in all fisheries south of Cape Falcon from 1994 through 1998. Every year, large areas of the ocean fishery are restricted or closed to assure the Council's conservation objectives are achieved. In contrast, with regard to EFH, the Council and NMFS may only submit comments and recommendations for federal or state actions which may adversely affect the salmon EFH. The federal and state action agencies are not required to follow the recommendations. However, federal action agencies must respond to the recommendations in writing within 30 days and, if their actions are inconsistent with the proposed conservation measures, explain their reasons for not following them.

The Council recognizes that in certain cases mammalian, avian and fish predators can be a significant factor in the mortality of juvenile and adult salmon and has been supportive of research and actions to better document, understand and control these impacts where possible. Appendix A notes the implications and impacts of predation in several places in both Chapters 2 and 3. While there is voluminous information from many sources documenting thousands of lost miles of freshwater salmon habitat and loss of salmon production throughout the Council management area, significant region wide impacts from predation are much less well documented and scientific evidence does not support that predators are currently the limiting factor in West coast salmon production. Many of the cases in which significant predation is documented are in conjunction with habitat degradation that makes salmon more susceptible to predation such as low flows, reservoirs, dam passage, artificially created islands from dredge spoils, etc. (see pages 3-23, 3-28, 3-29 and 3-43 of the draft Appendix A). The Council has no management authority with regard to avian or mammalian predators of salmon, but must meet the requirements of other applicable federal law which provides protection to these species.

### **How can changes be made in the EFH definition in the future (33)?**

From time to time and as necessary to meet legislative mandates, the Council considers amendments to its salmon FMP. Changes to the definition of EFH can be considered in the amendment process. NMFS guidelines call for reviewing the EFH provisions at least once every five years.

**The following areas should not be included in EFH: several smaller Sacramento Valley stream reaches (Stone Corral Creek, Stony Creek, Thomes Creek, Elder Creek, and Bear River) and upstream of Englebright Dam (47); San Pablo Creek below San Pablo Dam (24); and the area above Hell's Canyon Dam should be permanently excluded (38, 51).**

The identification of EFH has had to proceed quickly. Changes and updates may prove to be necessary in the future. Based on the information before it, the Council has included the areas in California which the commenter believes should be excluded.

The area above Hell's Canyon dam, which historically produced large numbers of salmon, is not included in the description of EFH. No function would be served by permanently excluding it in the FMP. If restoring runs above the dam again became feasible and valuable, the FMP could be amended to account for the change.

**The definition should include: a forest riparian management area (26, 28); release of waters from areas above impassable dams in terms of quality and quantity of water (25, 48, 53); and habitat above Cougar Dam (South Fork Mckenzie River), Dexter Dam (Middle Fork Willamette River), and Soda Springs Dam (North Umpqua River) (28, 39, 40, 41).**

The Magnuson-Stevens Act defines EFH as “waters and substrate” and does not include adjacent dry land. Therefore, a forest riparian management area cannot be included in the definition. However, the adverse effects on EFH from activities within riparian areas are addressed in Chapter 3 of the EFH Appendix.

In its final adopted definition, the Council included activities occurring above impassable barriers that are likely to adversely affect EFH below impassable barriers as requiring consultation under the terms of the Magnuson-Stevens Act.

Based on the information before it, the Council chose not to include the areas above Cougar, Dexter, and Soda Springs dams in the identification of EFH. Should these areas warrant such designation in the future, they could be added through FMP amendment.

### **9.3.1.2 Consultation Process**

**Clarify, simplify, and streamline the consultation process (23, 46).**

In the final adoption, the Council approved a simplified and less redundant consultation process in which there are four general scenarios rather than seven. The specifics of each consultation, including suggested EFH conservation and enhancement recommendations, will be tailored to meet the proposed program or project activity (see page A-62 of the final Appendix A).

**Conduct EFH consultation at both programmatic and project levels (26, 28).**

The Council agrees and adopted such an approach as it appeared in the draft amendment (also see page A-63 of the final Appendix A).

**The Consultation process is duplicative and should be a partnership rather than adding more regulations (24).**

The consultation is required by the Magnuson-Stevens Act, Section 305(b)(2). To prevent duplication, the FMP proposes that the consultations be combined with existing interagency consultations and environmental review procedures that may be required under other statutes such as the ESA, Clean Water Act, the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Federal Power Act, or the Rivers and Harbors Act. To the extent that EFH and ESA consultations are integrated, NMFS will apply the provisions of the 1997 Secretarial Order 3206.

**The FMP should provide a clear process for how the Council will comment on habitat issues (33).**

The specific process for the Council’s comments on habitat issues is contained in Council Operating Procedure 6 rather than in the FMP. A review and updating of this procedure to specifically identify EFH may be beneficial.

### **9.3.1.3 Conservation and Enhancement Measures**

**Add or upgrade measures to: decommission roads (16, 21, 35, 40, 52); address cumulative watershed impacts (21, 35, 40, 52); strengthen properly functioning condition designations (26, 28, 40); prohibit wet season log hauling (28, 39); improve all area plans for spill prevention and better protection of sensitive areas from spills (40); and hold shellfish production in estuaries at present levels until effects on salmon can be determined (40).**

These recommended changes may include some valid measures, but would take further review and consideration before incorporation into the FMP at some later date. The Council will need to regularly review its proposed measures to ensure they reflect the best science.

**Appendix A identifies overly general and restrictive prescriptions to apply to nonfishing activities and does not take into account best management practices (BMP) (31, 55).**

Early on in the process, the Council considered the option of providing specific or more general conservation and enhancement measures in Appendix A and opted to be more general. The specificity belongs in the actual regulations that govern the actions while the Council's advisory recommendations generally deal more with intent and broader guidance which give flexibility to the action agencies in achieving the end result of protecting or restoring EFH. In addition, the more specific the measure the higher the probability that it may become outdated or otherwise need to be modified. Updating the measures in the salmon FMP is generally not a quick procedure.

The Council does not agree that the measures are overly restrictive and do not take BMPs into account. The measures in the amendment are those necessary to support a long-term sustainable fishery capable of producing optimum yield and healthy ecosystems. BMP's can be helpful in protecting EFH, but are not an end in themselves (i.e., habitat losses still occur despite meeting BMPs). These losses need to be addressed through more risk averse considerations that are geared at achieving the bottom line of no loss of EFH.

#### **9.3.1.4 Miscellaneous**

**The FMP should indicate a higher priority for protecting existing EFH rather than to develop mitigation plans to replace it (16, 21, 40, 52).**

The tenor of the amended FMP is in agreement with this statement, though it may not be quite as specifically stated. The introduction to chapter four (Habitat and Production) states:

The Council will be guided by the principle that there should be no net loss of the productive capacity of marine, estuarine, and freshwater habitats which sustain commercial, recreational, and tribal salmon fisheries beneficial to the nation. Within this policy, the Council will assume an aggressive role in the protection and enhancement of anadromous fish habitat, especially essential fish habitat.

In addition, the amended FMP guidelines for mitigation are premised on the fish population losses being unavoidable.

#### **9.3.2 Artificial Production**

**Maximizing hatchery production, as stated in the Council's objectives, will have serious adverse effects on long-term natural production (26, 27).**

Taken as a whole, the four objectives for artificial production in the adopted FMP recognize the need to minimize adverse ecological and genetic impacts on natural stocks, but do not propose there will be no impacts at all. The objective to maximize present ongoing artificial production is aimed primarily at efficiency and is only within the constraint of achieving the conservation objectives for natural stocks which are meant to ensure their long-term health.

### **9.4 HARVEST**

#### **9.4.1 Allocation**

**Will the change in allocation for the La Push and Neah Bay areas increase fishing pressure and impacts on natural stocks of concern (57)?**

The change in allocation for La Push and Neah Bay does not increase harvest and is likely to change fishing effort distribution rather than to increase fishing pressure. The allocation change does not change the allowable impact rates on the various stocks which is set by the conservation objectives.

#### **9.4.2 Selective Fisheries**

**The final supplemental EIS should provide convincing evidence that targeting additional hatchery stocks with selective fisheries will not adversely affect natural stocks (57).**

The use of selective fisheries does not change the Council's management constraints with regard to meeting conservation objectives for natural stocks. It does add importance to the accurate, or risk averse, determination of the impacts of such fisheries on natural stocks. However, if the stocks fail to meet expected conservation objectives, action will have to be taken to reduce fishery impacts and assure stock rebuilding.

**How will fish be uniquely marked and regulations enforced to assure selective fisheries operate as modeled (57)?**

Hatchery fish are uniquely marked by removal of the adipose fin prior to their release as juveniles. Regulations require that only salmon with a healed adipose fin clip may be retained by anglers. Enforcement and monitoring occurs by patrols on the water, participation in charter boat trips, and checks dockside. Such monitoring of the selective fisheries in 1998 and 1999 showed a high rate of angler compliance (overall, more than 98% of the harvest was finclipped). In addition, public education to solicit angler support for preserving natural stocks enhances compliance with the regulations. Estimates of noncompliance are included in pre-season fishery impact projections.

**The FMP should ensure that the production and mass-marking of hatchery fish poses minimal risk to salmon management tools and, in particular, not compromise the integrity of the coded-wire tag data base maintained by the U.S. and Canada (56).**

The state, tribal, and federal fishery management entities that are members of the Council and have the primary fishery management responsibility in this regard have coordinated with Canada in developing a marking program that they believe will not compromise the coded-wire tag data base or prevent the collection of other management data, such as hatchery smolt survival, etc. The FMP specifically requires selective fisheries to be in accordance with U.S. v. Washington stipulation and order concerning co-management and mass marking (Case No. 9213, Subproceeding No. 96-3) and any subsequent stipulations or orders of the U.S. District Court and consistent with international objectives under the Pacific Salmon Treaty (see the final FMP at section 6.5.3.1).

#### **9.5 SOCIO-ECONOMICS**

**The amendment does not adequately cover the economic effect on Neah Bay and the Makah Tribe (29).**

Appendix B is intended to provide a baseline description of the fishery. Section 5.3.3.8 of the main text of the EIS provides additional information on some of the effects of ocean fishing on coastal communities such as Neah Bay and how those effects have changed over time. The Council has not generally had access to the type of information needed to provide a more thorough assessment of the impacts on specific tribes. If the tribes wish to provide more detailed information it may be possible in the future to provide a more adequate description of the economic effects.

**The cost-benefit analysis fails to acknowledge the economic investments being made throughout the region which are focused on wild fish recovery, including employment in coastal communities (40, 53).**

The focus of the EIS and the cost benefit analysis is the ocean harvest of salmon. Interactions are recognized between ocean harvest and inside fishing opportunities. However, the document is not an

analysis of the entire system that sustains the salmon resource. Such an analysis may be part of a comprehensive EIS being developed by NMFS.

Section 2.0 of Appendix B discusses increasing world salmon supply and the effects on prices. Section 4.3.1.3 of Appendix B discusses changes in participation as a function of increasingly restrictive regulations. A general description of the effects of the rationale for and effects of fishery management measures is provided in Section 5.3.2.1. Stock condition factors that shape the ocean fisheries change from year to year and are discussed only in generalities with some specific examples. The general economic data collected by the government is inadequate to provide a basis for a thorough discussion of the interaction between fisheries and local community employment. Fishery specific harvester and processor information needs to be collected. NMFS is beginning to make an effort to collect the needed information.

## **9.6 NATIONAL ENVIRONMENTAL POLICY ACT ISSUES**

**The EIS fails to provide an adequate range of alternatives for identifying EFH and fails to properly consider the potentially huge socio-economic impacts on nonfishing activities and communities (46, 55).**

The Council disagrees that the range of alternatives is inadequate. The Magnuson-Stevens Act [Section 303(a)(7)] requires FMPs to describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary of Commerce. A key phrase in this section is "for the fishery", which, under the Magnuson-Stevens Act, the Council must manage for optimum yield. On this basis, simply identifying the limited amount of habitat currently available for maintaining weak or depressed stocks, or for the purpose of preventing the extinction of any species is therefore not a viable alternative. While public comments stated that the EFH identification was too broad or too narrow or should or should not include certain areas, in the view of the Council, no other significantly different and viable alternatives were offered. The Council considered more limited areas within the marine environment and some variations in essential freshwater habitat in its early preliminary amendment drafts, but chose to include the whole EEZ and most of the historically available freshwater habitat in its final adoption (see Chapter 2 of Appendix A). Therefore, the amendment and EIS considered a limited, but pertinent range of alternatives to implement the relatively specific provisions of the Magnuson-Stevens Act for optimum yield and EFH, as well as to follow the guidance of the NSG with regard to EFH.

The Council does not agree that the potential impacts on non-fishing activities and communities were not properly considered. The identification of EFH does not have a direct socio-economic impact on nonfishing activities and communities. Indirect effects are identified in Section 2.6.3.2 of the EIS. These affects deal mainly with potential administrative responsibilities and delays. The identification of EFH imposes no new standards for evaluation of land use action but rather increases the probability that currently existing standards will be considered more carefully when there are potential impacts on fisher stocks. While some impacts may occur to non-fishing entities, to characterize nonbinding recommendations as having a "huge socio-economic impact" is purely speculative and not supported by fact.

**The EFH portion of the amendment and EIS fails to incorporate any analysis of impacts on small entities pursuant to the RFA and applicable Executive Orders (31, 55)**

Section 3.1 of the draft amendment contains the analysis of impacts on small entities pursuant to the RFA and applicable Executive Orders. The EFH portion of the amendment requires no new regulations for its implementation by the Council.

**A federalism assessment should be prepared for the amendment (51).**

The Council disagrees. The proposed amendment does not result in policies or regulations that preempt state law. The EFH recommendations provide advisory information with no requirements for state agencies. Council representatives of the affected states have been closely involved in reviewing the options considered in the amendment and have not expressed federalism related opposition to the options. The proposed action does not have sufficient federalism implications to require the preparation of a federalism assessment.

## **9.7 MISCELLANEOUS OR GENERAL COMMENTS**

**There is nothing in the FMP to indicate the Council's role in promoting and accomplishing research (33).**

The comment is correct. Chapter 10 of the FMP (which was not amended) covers data needs, but does not speak specifically to research. While not covered in the FMP, the Council has an operating procedure for the development and communication of research and data needs. In the future, this policy could be referenced in the FMP so as to be more visible to the public.

**The amendment should provide an evaluation of the effects of the salmon aquaculture industry and pending use of genetically altered salmon on the fisheries (57).**

This issue was not part of the scoping for Amendment 14. However, Appendix B to the FMP provides some quantitative perspectives on the aquaculture industry and its economic impacts on the Pacific Coast salmon fishery. The Council does not have regulatory authority with regard to aquaculture or the use of genetically altered salmon which is handled by the various states. This issue has not yet been elevated to the Council for consideration.