

EXCERPT FROM AMENDMENT 14

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3.2.3 Overfishing Concern

“For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations . . . for such fishery shall—(A) specify a time period for ending overfishing and rebuilding the fishery that shall—(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of the fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock within the marine ecosystem; and (ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. . .”

Magnuson-Stevens Act, § 304(e)(4)

The Magnuson-Stevens Act requires overfishing be ended and stocks rebuilt in as short a period as possible and, depending on other factors, no longer than ten years. For healthy salmon stocks which may experience a sudden reduction in production and/or spawner escapement, the limitation on fishing impacts provided by the Council’s MSY or MSY proxy conservation objectives provide a stock rebuilding plan that should be effective within a single salmon generation (two years for pinks, three years for coho, and three to five years for chinook). However, additional actions may be necessary to prevent overfishing of stocks suffering from chronic depression due to fishery impacts outside Council authority or from habitat degradation or long-term environmental fluctuations. Such stocks may meet the criteria invoking the Council’s overfishing concern.

3.2.3.1 Criteria

The Council’s criteria for an overfishing concern are met if, in three consecutive years, the postseason estimates indicate a natural stock has fallen short of its conservation objective (MSY, MSP, or spawner floor as noted for some harvest rate objectives) in Table 3-1. It is possible that this situation could represent normal variation, as has been seen in the past for several previously referenced salmon stocks which were reviewed under the Council’s former overfishing definition. However, the occurrence of three consecutive years of reduced stock size or spawner escapements, depending on the magnitude of the short-fall, could signal the beginning of a critical downward trend (e.g., Oregon coastal coho) which may result in fishing that jeopardizes the capacity of the stock to produce MSY over the long term if appropriate actions are not taken to ensure the automatic rebuilding feature of the conservation objectives is achieved.

3.2.3.2 Assessment

When an overfishing concern is triggered, the Council will direct its STT to work with state and tribal fishery managers to complete an assessment of the stock within one year (generally, between April and the March Council meeting of the following year). The assessment will appraise the actual level and source of fishing impacts on the stock, consider if excessive fishing has been inadvertently allowed by estimation errors or other factors, identify any other pertinent factors leading to the overfishing concern, and assess the overall significance of the present stock depression with regard to achieving MSY on a continuing basis.

Depending on its findings, the STT will recommend any needed adjustments to annual management measures to assure the conservation objective is met, or recommend adjustments to the conservation objective which may more closely reflect the MSY or ensure rebuilding to that level. Within the constraints presented by the biology of the stock, variations in environmental conditions, and the needs of the fishing communities, the STT recommendations should identify actions that will recover the stock in as short a time as possible, preferably within ten years or less, and provide criteria for identifying stock recovery and the end of the overfishing concern. The STT recommendations should cover harvest management, potential enhancement activities, hatchery practices, and any needed research. The STT may identify the need for special programs or analyses by experts outside the Council advisors to assure the long-term recovery of the salmon population in question. Due to a lack of data for some stocks, environmental variation, economic and social impacts, and habitat losses or problems beyond the control or management authority of the Council, it is likely that recovery of depressed stocks in some cases could take much longer than ten years.

In addition to the STT assessment, the Council will direct its Habitat Steering Group (HSG) to work with federal, state, local, and tribal habitat experts to review the status of the essential fish habitat affecting this stock and, as appropriate, provide recommendations to the Council for restoration and enhancement measures within a suitable time frame.

3.2.3.3 Council Action

Following its review of the STT report, the Council will specify the actions that will comprise its immediate response for ensuring that the stock's conservation objective is met or a rebuilding plan is properly implemented and any inadvertent excessive fishing within Council jurisdiction is ended. The Council's rebuilding plan will establish the criteria that identify recovery of the stock and the end of the overfishing concern. In some cases, it may become necessary to modify the existing conservation objective/rebuilding plan to respond to habitat or other long-term changes. Even if fishing is not the primary factor in the depression of the stock or stock complex, the Council must act to limit the exploitation rate of fisheries within its jurisdiction so as not to limit recovery of the stock or fisheries, or as is necessary to comply with ESA jeopardy standards. In cases where no action within Council authority can be identified which has a reasonable expectation of providing benefits to the stock unit in question, the Council will identify the actions required by other entities to recover the depressed stock. Upon review of the report from the HSG, the Council will take actions to promote any needed restitution of the identified habitat problems.

For those fishery management actions within Council authority and expertise, the Council may change analytical or procedural methodologies to improve the accuracy of estimates for abundance, harvest impacts, and MSY escapement levels, and/or reduce ocean harvest impacts when shown to be effective in stock recovery. For those causes beyond Council control or expertise, the Council may make recommendations to those entities which have the authority and expertise to change preseason prediction methodology, improve habitat, modify enhancement activities, and re-evaluate management and conservation objectives for potential modification through the appropriate Council process.

3.2.3.4 End of Overfishing Concern

The criteria for determining the end of an overfishing concern will be included as a part of any recovery plan adopted by the Council. Additionally, an overfishing concern will be ended if the STT stock analysis provides a clear finding that the Council's ability to affect the overall trend in the stock abundance through harvest restrictions is virtually nil under the "exceptions" criteria below for natural stocks.

3.2.4 Exceptions

“Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.”
Magnuson-Stevens Act, National Standard 6

This plan contains three exceptions to the application of overfishing criteria and subsequent Council actions for stocks or stock complexes with conservation objectives in Table 3-1: (1) hatchery stocks, (2) stocks for which Council management actions have inconsequential impacts, and (3) stocks listed under the ESA.

3.2.4.1 Hatchery Stocks

Salmon stocks important to ocean fisheries and comprised exclusively of hatchery production generally have conservation objectives expressed as an egg-take or the number of spawners returning to the hatchery rack to meet program objectives. This plan recognizes these objectives and strives to meet them. However, these artificially produced stocks generally do not need the protection of overfishing criteria and special Council rebuilding programs to maintain long-term production. Because hatchery stocks can generally sustain significantly higher harvest exploitation rates than natural stocks, ocean fisheries rarely present a threat to their long-term survival. In addition, it is often possible to make temporary program modifications at hatcheries to assure adequate production to sustain the stock during periods of low abundance (e.g., sharing brood stock with other hatcheries, arranging for trapping at auxiliary sites, etc.). If specialized hatchery programs are approved in the future to sustain listed salmon stocks, the rebuilding programs would be developed and followed under the ESA .

3.2.4.2 Natural Stocks With Minimal Harvest Impacts in Council-Managed Fisheries

Several natural stock components identified within this FMP are subject to minimal harvest impacts in Council fisheries because of migration timing and/or distribution. As a result, the Council's ability to affect the overall trend in the abundance of these components through harvest restrictions is virtually nil. Components in this category are identified by a cumulative adult equivalent exploitation rate of less than five percent in ocean fisheries under Council jurisdiction during base periods utilized by the fishery regulation assessment models (1979-1982 for chinook and 1979-1981 for coho). Council action for these components, when a conservation alert or an overfishing concern are triggered, will consist of confirming negligible impacts of proposed Council fisheries, identifying factors which have led to the decline or low abundance (e.g., fishery impacts outside Council jurisdiction, or degradation or loss of essential fish habitat), and monitoring of abundance trends and total harvest impact levels. Council action will focus on advocating measures to improve stock productivity, such as reduced interceptions in non-Council-managed fisheries, and improvements in spawning and rearing habitat, fish passage, flows, and other factors affecting overall stock survival.

3.2.4.3 Stocks Listed Under the Endangered Species Act

The Council regards stocks listed as endangered or threatened under the ESA as a third exception to the application of overfishing criteria of the Magnuson-Stevens Act. The ESA requires federal agencies whose actions may jeopardize listed salmon to consult with NMFS. Because NMFS implements ocean harvest regulations, it is both the action and consulting agency for actions taken under the FMP. To ensure there is no jeopardy, NMFS conducts internal consultations with respect to the effects of ocean harvest on listed salmon. The Council implements NMFS' guidance as necessary to avoid jeopardy, as well as in recovery plans approved by NMFS. As a result of NMFS' consultation, an incidental take statement may be issued which authorizes take of listed stocks under the FMP that would otherwise be prohibited under the ESA.

The Council believes that the requirements of the ESA are sufficient to meet the intent of the Magnuson-Stevens Act overfishing provisions. Those provisions are structured to maintain or rebuild stocks to levels at or above MSY and require the Council to identify and develop rebuilding plans for overfished stocks. For many fish species regulated under the Magnuson-Stevens Act, the elimination of

excess fishing pressure is often the sole action necessary to rebuild depressed stocks. This is, however, not the case for many salmon stocks and, in particular, for most listed populations. Although harvest has certainly contributed to the depletion of West Coast salmon populations, the primary reason for their decline has been the degradation and loss of freshwater spawning, rearing and migration habitats. The quality and quantity of freshwater habitat are key factors in determining the MSY of salmon populations. The Council has no control over the destruction or recovery of freshwater habitat nor is it able to predict the length of time that may be required to implement the habitat improvements necessary to recover stocks. While the Council could theoretically establish new MSY escapement goals consistent with the limited or degraded habitat available to listed species, adoption of revised goals would potentially result in an ESA-listed stock being classified as producing at MSY and; therefore, not overfished under the Magnuson-Stevens Act. The Council believes that the intent of the ESA and the Magnuson-Stevens Act is the recovery of stocks to MSY levels associated with restored habitat conditions.

The Council considers the jeopardy standards and recovery plans developed by NMFS for listed populations as interim rebuilding plans. Although NMFS' jeopardy standards and recovery plans may not by themselves recover listed populations to historical MSY levels within ten years, as required under the Magnuson-Stevens Act, they are sufficient to stabilize populations until freshwater habitats and their dependent populations can be restored and estimates of MSY developed consistent with recovered habitat conditions. As species are delisted, the Council will establish conservation objectives with subsequent overfishing criteria and manage to maintain the stocks at or above MSY levels.

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