

## NATIONAL MARINE FISHERIES SERVICE REPORT ON USE OF EMERGENCY RULES

Ocean troll fisheries were severely constrained in 2005 in order to meet the 35,000 natural spawner escapement conservation objective for Klamath River fall Chinook. This action prompted a review of the escapement floor and consideration of a permanent modification to the conservation objective. Any such modification would require an amendment to the Salmon Fishery Management Plan (Salmon FMP). The Pacific Fishery Management Council (Council) deferred making this decision until the November meeting to allow consideration of additional information, including the possibility of using an emergency rule to provide flexibility to manage around the escapement floor. The Council directed NOAA's National Marine Fisheries Service (NMFS) to provide a report on this issue in time for discussion at the November meeting.

Before examining the required criteria for implementing an emergency rule, it should be noted that provisions exist under the Magnuson-Stevens Act to allow for public involvement during the rulemaking process. Emergency rule implementation severely limits this public participation and therefore, should only be used for extremely urgent, special circumstances where substantial harm to or disruption of the resource, habitat, fishery, industry participants, community, or public health would be caused during the time it would take to follow standard rulemaking procedures.

NMFS has established policy guidelines for determining whether the use of an emergency rule is justified under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These guidelines set forth the criteria for determining whether an emergency exists and are consistent with the requirements of section 305(c) of the Magnuson-Stevens Act as amended by the Sustainable Fisheries Act.

In order to implement an emergency rule, the Secretary must have an administrative record justifying emergency regulatory action and demonstrating its compliance with the national standards. Although the only legal requirement for the use of an emergency rule is that an emergency must exist, this action should only be taken to address extremely rare circumstances that would lead to significant adverse impacts as previously detailed. The guidelines further state that an emergency action may not be based on administrative inaction to solve a long-recognized problem, and establish the following criteria to define an emergency as a situation that:

- 1) Results from recent, unforeseen events or recently discovered circumstances; and
- 2) Presents serious conservation or management problems in the fishery; and
- 3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

If the preceding criteria for defining an emergency are met, the emergency action must then be justified under one or more of the following situations:

- 1) Ecological – (A) to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
- 2) Economic – to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or
- 3) Social – to prevent significant community impacts or conflict between user groups; or
- 4) Public health – to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.

In addition to meeting the emergency criteria and justification requirements, the emergency rule should indicate what measures could be taken or will be considered to permanently resolve the problem addressed by the emergency rule.

Implementation of an emergency action would, in effect, temporarily amend the FMP as detailed in the emergency rule language. Since the conservation objectives within the FMP were established to achieve optimum yield, prevent overfishing and assure the rebuilding of depressed salmon stocks, any emergency action would require confirmation from the NMFS Science Center directors that such action would continue to prevent overfishing, provide optimal yield, and conform to any affected rebuilding plans.

Once an emergency rule has been implemented, it can remain in effect for up to 180 days. An additional 180 day extension period is possible, providing there is an opportunity for public comment and the Council is following the standard procedure to address the emergency situation through an FMP amendment.