

HABITAT COMMITTEE REPORT

Queets and Western Strait of Juan de Fuca Coho Overfishing Report

The Habitat Committee (HC) discussed the status of the Queets and Western Strait of Juan de Fuca coho overfishing report. The Salmon Technical Team (STT) is meeting this week and trying to determine if the overfishing problem is related to fisheries, management data, or productivity. If the problem is productivity, further analysis will be conducted to determine if the productivity problems are marine or freshwater based. If the STT determines that freshwater production is indeed an issue, the HC, working with the relevant state and tribal entities, will develop a review of freshwater habitat issues that may be contributing to reduced productivity and with recommendations to address those habitat issues. The HC made plans to respond to the coming STT request, and is prepared to assist in coordinating the collection of habitat information for the overfishing review. The HC will report further on this matter in November.

Salmon Essential Fish Habitat (EFH) Five-Year Review

The HC received a briefing from Bryant Chesney, National Marine Fisheries Service (NMFS) Southwest Region, on the work plan for the salmon EFH five-year review. The current designations of EFH for Pacific Coast salmon were approved by NMFS in September 2000 and are in need of review.

In collaboration with the Northwest Region, Southwest Region, Northwest Fisheries Science Center and Southwest Fisheries Science Center, the Pacific Council received a \$100,000 grant for a joint proposal to support the five-year review of Pacific salmon EFH. The funds will be used to conduct a comprehensive assessment of Pacific Coast salmon EFH, focusing on information that has become available since the initial designation in 2000. Project funding will be administered by the Pacific Council conducting the assessment. Funding will be used to support special scientific, stakeholder, or public meetings, outreach, supplies and printing, travel and Council contract work and/or staffing necessary to develop, analyze, draft, and review the pertinent salmon EFH information.

An oversight panel has been established to provide assistance and direction to accomplish this task. The panel is chaired by the Northwest Region and will be responsible for planning, coordinating assignments within their respective organizations, providing sideboards for contract work, and reviewing preliminary draft documents and products.

Further review, including final stakeholder and public involvement, will occur through the normal Council review process, which will include all Council advisory bodies, in particular the Habitat Committee and Scientific and Statistical Committee. Under the grant to the Council, the contractor and/or Council staff will review and synthesize information on:

- the distribution and abundance of Pacific Coast salmonids to further refine existing spatial datasets,
- the impassible man-made barriers in each basin, review existing barrier designation criteria and recommend changes if necessary
- existing and emerging threats to the EFH of Pacific Coast salmon.
- potential conservation measures to address those threats
- specific habitat types or locations important to the life history of Pacific Coast salmon that can be used to designate Habitat Areas of Particular Concern.

This information will be used to draft a report for the Council for subsequent review by the public through the Council process. It will provide the basis for the Pacific Coast salmon EFH five-year review and will be presented to the Pacific Council in summer 2010. The Council will review the document for submittal to NMFS and consider whether a Fishery Management Plan Amendment process is warranted.

The Habitat Committee can assist this process in the following ways:

- Help the Oversight Panel to determine the project scope and scale.
- Facilitate communication between the contractor and our respective agencies to identify new data and identify agency concerns.
- Provide input to update the list of threats to salmon EFH.

The HC believes it would be efficient if a framework were developed during the current EFH review process to facilitate the integration of new data and information for subsequent EFH reviews. Such a framework would facilitate coordination between management agencies.

California State Board of Forestry Action

The HC received a report from Dick Butler of NMFS regarding the California Board of Forestry and ongoing discussions of state forestry practices relative to the impacts on listed coastal California coho Evolutionarily Significant Units.

For the last 10 years, NMFS representatives have been working with Bureau of Forestry (BOF) to develop forest practice rules that address listed coho incidental take issues. NMFS has been urging the BOF to develop either no-take rules (similar to those under the northwest forest plan) or move forward on the development of an ESA Section 10(a)(1)(B) statewide permit (HCP) that authorizes incidental take of listed salmonids.

NMFS is concerned about California forest practices for many reasons, including the fact that NMFS has found them not to provide for the protection and conservation of salmon and steelhead and their freshwater habitats (Agenda Item B.1.b, Attachment 1).

NMFS has repeatedly stressed the need for BOF rules that are adequately protective of salmon and steelhead. In NMFS' opinion, the BOF has not appropriately addressed this issue. Therefore, there is a risk that NMFS may be forced to take ESA enforcement actions against forest operators and the State of California. This could be avoided if the BOF could create adequate rules and/or engage in a habitat conservation planning process that would adequately protect these fish.

The HC recommends that the Council direct the HC to draft a letter for consideration and approval at the November meeting addressed to the Governor of California that:

- encourages continued BOF discussions that result in state forest management practices that fully address the needs of listed salmon and steelhead ESUs, and
- highlights the need for quick action to avert ESA take enforcement by initiating a request to consult with NMFS on California forest practices.

NMFS Marine Fisheries Habitat Assessment Improvement Plan

The HC received a presentation by HC member Waldo Wakefield (NMFS) on the current status of the NMFS Marine Fisheries Habitat Assessment Improvement Plan (HAIP). Recently, the HAIP working group incorporated comments from an internal review by the NMFS Offices of Science and Technology and Habitat Conservation. In mid-August, NMFS Science and

Technology sent the draft plan out for review to all NMFS science centers, NMFS regional offices, fisheries management councils, and state marine fisheries commissions. The HAIP working group will be meeting in mid-October to present the current status of the plan to the NMFS Science Board and incorporate comments from the major round of reviews. Currently, the HAIP report will be published by end of November or early December.

A National Habitat Assessment Workshop is being planned for May 2010 and will coincide with the National Stock Assessment Workshop. Objectives of the workshop are, in part, to strengthen and focus the NMFS national habitat science community, and to establish approaches for implementing recommendations from the HAIP Plan. A significant portion of the National Habitat Assessment Workshop will be devoted to defining ways to improve scientific support for managers.

PFMC
09/13/09



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
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September 8, 2009

In response refer to:
SWR/F/SWR3:CAA

Mr. Stan Dixon
Chair, California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, California 94244-2460

Dear Chairman Dixon:

This letter from NOAA's National Marine Fisheries Service (NMFS) is in response to the State Board of Forestry and Fire Protection's (BOF), July 24, 2009, 45-day Rule Re-notice (Rule Notice) and requests for comments and assistance regarding the development of the BOF Anadromous Salmonid Protection Rules, 2009 (previously named Threatened or Impaired Watershed Rules, 2009 [T/I rules]). NMFS appreciates the invitation and opportunity to participate in the BOF appointed Technical Advisory Committee (TAC), literature review process, Forest Practice Committee and BOF meetings of the last 2 ½ years leading up to this Rule Notice.

NMFS would like to take this opportunity to acknowledge the work by the BOF/TAC staff and Chair, Mr. Chris Zimny, Mr. Pete Caffereta and Mr. Gary Nakamura. The February 2009 proposed rule prepared primarily by Mr. Caffereta and Mr. Zimny was the outcome of the TAC process, well-done and science-based. The July 24, 2009, Rule Notice includes a number of significant changes to the February 2009 BOF staff proposal per requests of BOF members during Forest Practice Committee meetings and BOF meetings. In addition, changes and improvements have been incorporated into the proposed Rule Notice based on recommendations by California Department's of Forestry and Fire Protection (CalFire) and Fish and Game (CDFG). The BOF staff report of 2008 outlines that the formulation of the TAC and the literature review process involved was intended "as a pilot for developing science-based information for regulation development...and...to be highly transparent involving stakeholders, scientists and other responsible government agencies". NMFS found Mr. Zimny and Mr. Caffereta, in all cases, endeavoring to meet that goal.

According to the BOF, changes to the T/I Rules are warranted to (1) protect and restore habitat conditions for coho salmon and other anadromous salmonids in California river systems, (2) increase fish population abundance and (3) improve the conservation status of threatened salmonid species. NMFS concurs that changes to the T/I rules are warranted and directs the BOF to refer to NMFS' previous communications with the BOF on T/I Rules; in particular the NMFS June 22, 2009 letter to the BOF regarding the May 8, 2009 T/I 45-day Rule Notice.



Noticed Rules

NMFS is concerned that the current Rule Notice contains modifications and optional amendments proposed by BOF members that lack a scientific basis and depart significantly from the February 2009 BOF staff proposal. Several most notable changes include: (1) reduced riparian canopy retention standards for all watercourses including the option of an angular canopy density versus overstory canopy standards; (2) increasing Quadratic Mean Diameter of riparian zone trees to only commercial thinning and the deletion of a minimum basal area retention standard in Class I zones; (3) removed linkages to the biological and physical characteristics of the floodprone area; (4) greater allowances for timber activities closer to watercourses (e.g., road-building; use of heavy ground-based equipment); (5) options not to adopt Class II and III watercourse protections and (6) allowance of variances from standard operating provisions absent a comprehensive understanding of watershed processes and adequate multi-agency review.

Status of Salmonids and Actions to Prevent Their Extinction

Nearly all of California's salmon and steelhead are critically at risk of becoming extinct in the foreseeable future. For millions of years salmon and steelhead have successfully persisted in abundance often under catastrophic and shifting environments (e.g., marine mammal predation, prolonged drought, uncontrolled wildfires, marine and freshwater conditions, changing climate, etc). However the human configured landscape developed over the last two centuries and harvest pressures have expanded. Thus, the persistence and recovery of salmonids (and the sustainability of our natural resources) will require re-thinking our land and water resource conservation values to work towards a mutual benefit to both mankind and the environment. NMFS acknowledges that a full suite of land/water use activities, including forestry practices on private lands, and direct take of salmonids significantly affect persistence of salmon and steelhead in California.

To that end, Federal, State and local entities are enacting laws and policies to prevent extinction and develop a plan for their recovery. Actions are occurring across both freshwater and marine environments to include among many others:

- The State of California and NMFS, on recommendation of the Pacific Fishery Management Council, issued a closure on all commercial offshore fishing for salmon;
- NMFS' Biological Opinion for the Central Valley Project and the State Water Project advises the Bureau of Reclamation and the Department of Water Resources to provide fish passage above Shasta, Folsom and Nimbus dams to ensure avoidance of jeopardy to Central Valley salmonids;
- Discussions regarding the removal of the Klamath dams and restoration of the Klamath Basin;
- Freshwater fishing regulations to be proposed by NMFS and supported by a number of fishing organizations for the central coast of California that include low flow and timing closures; and

- ❑ The development of Habitat Conservation Plan (HCP's) for industrial timber companies, which are targeted at sound timber management practices and the conservation of anadromous salmonids on nearly 780,000 acres of forest land in northern California.

No single entity can recover salmon and steelhead in California; actions must be unified and strategic. However, the forestlands of California play a critical role for ensuring freshwater survival and the likelihood of long term recovery of salmonids. The decisions by this BOF will have a significant influence on the future of California's salmon.

Noticed Rules and Habitat Conservation Plans

The State of Washington and several industrial timber companies in California have, or are seeking, for their forestry operations a section 10(a)(1)(B) permit (*e.g.*, habitat conservation plan [HCP]) that authorizes incidental take of listed salmonids under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Staff from the NMFS Southwest Region, California, reviewed the standard prescriptions under these HCPs and coordinated with the NMFS Northwest Regional Office staff from Washington and Oregon regarding the Washington State Forest Practice HCP and other forest landowner HCPs. NMFS found the following in regards to the current Rule Notice before the California BOF:

- ❑ The July 24, 2009, BOF Rule Notice contains substantively less protective standards for salmonids for nearly all watercourses than those standards under west coast forestry HCPs that authorize incidental take of federally listed salmonids.
- ❑ Decisions regarding timber harvest operations and riparian protection under these HCPs are the outcome of data collection, watershed analysis and monitoring. In a number of cases, riparian protections for timberlands with HCPs have become more restrictive than the initial standard because watershed analysis information indicates a significant deficiency in properly functioning aquatic conditions for salmonids (*e.g.*, expanded no harvest Class I's due to critical lack of large woody debris).
- ❑ Extensive monitoring is conducted in Washington that informs a Washington State Department of Natural Resources comprehensive database that includes an updated and standardized set of information and mapping tools regarding salmonids, their habitats and upslope/watershed conditions. This information system is publicly available and used by landowners, foresters, agencies, tribal representatives, and others to inform harvest planning and review. No such comprehensive and standardized information system regarding salmonid habitats currently exists for California's forestlands.
- ❑ The ESA section 7 consultation and biological opinions for these HCPs provide a context describing how forest management practices and/or the measures of the HCP are anticipated to affect processes that support salmonid habitats (*e.g.*, sediment introduction to streams, large wood recruitment, canopy as an influence on instream temperature conditions, etc.).

Taking into consideration these analyses, the current BOF Rule Notice (optional amendments inclusive) and the lack of a statewide watershed analyses program, NMFS advises the BOF take

the most conservative approach and avoid approving Rules that may allow the unauthorized take or harm to California's salmon and steelhead.

Noticed Rules and the Listing of Northern California Steelhead on June 7, 2000

The administrative record outlining the process and final adoption of the current T/I Rules in March 2000 (now termed the Anadromous Salmonid Protection Rules, 2009) and the inadequacy of the current rules is detailed in the Northern California steelhead Federal Register Notice (FRN) of June 7, 2000 (65 FR 36074). The new title of the Rule Notice (e.g., Anadromous Salmonid Protection Rules, 2009) was changed between the May 8, 2009, 45-day Rule notice and the July 24, 2009, 45-day Rule notice. The specific inadequacies of the Forest Practice Rules to provide for salmonids is outlined in 65 FR 36074 and include: "(1) protective revisions that are not supported by scientific literature; (2) provisions that are scientifically inadequate to protect salmonids including steelhead; (3) inadequate and ineffective cumulative effects analyses; (4) dependence upon registered professional foresters (RPFs) that may not possess the necessary level of multidisciplinary technical expertise to develop THPs protective of salmonids; (5) dependence by CDF on other State agencies to review and comment on THPs; (6) failure of CDF to incorporate recommendations from other agencies; and (7) inadequate enforcement due to staffing limitations. NMFS further concluded that until a comprehensive scientific peer review process was implemented and appropriate changes to the Forest Practice Rules and the THP approval process were made, properly functioning habitat conditions would not exist on non-Federal lands in the northern California steelhead ESU." NMFS recommends the BOF determine which measures from the current Rule Notice can fulfill the issues outlined in the FRN and those outstanding and to devise a timeline to discuss and resolve those issues to ensure these Anadromous Salmonid Protection Rules are meeting their full intent.

NMFS Recommendations

NMFS recommends the BOF adopt highly protective Rules and make them permanent on September 9, 2009. We recommend the BOF include Optional Amendments 20, 21, 22, 23, and 107 in the Anadromous Salmonid Protection Rules. We oppose the adoption of Optional Amendments 9, 26, 27, 100, 101, 102, 103, 104, 105, and 106 as these would not provide sufficient protection of salmonids and their habitats and may, in combination with other activities, increase the likelihood and risk of unauthorized harm and take of anadromous salmonids. At this time, the Central California Coast coho salmon Evolutionarily Significant Unit is critically at risk of extinction. Reduced protections on forestlands could result in accelerated localized extinctions.

For the last 10 years, NMFS representatives have been recommending the BOF develop either no-take rules (e.g., similar to those for the federally listed northern spotted owl and marbled murrelet) or move forward on the development of a section 10(a)(1)(B) statewide permit (e.g., habitat conservation plan [HCP]) that authorizes incidental take of listed salmonids under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Adopting the most protective proposed rules would be a step in the right direction towards the development of an HCP and ESA compliance. However NMFS finds the proposed Anadromous Salmonid Protection Rules are not no-take rules, are unlikely to meet the intent of the Rules themselves and are not likely to abate the risk of extinction for listed salmonids where these Rules are implemented.

As described in the June 22, 2009, letter to the BOF, NMFS supports the concept of conducting watershed analysis and assessment for a spatially explicit management alternative but recommends the BOF not adopt this alternative at this time. NMFS recommends the BOF develop a structured process, establish a system similar to Washington State and work through the appropriate Federal processes (e.g., HCP) that provide for alternative management planning without risk of unauthorized incidental take or harm to federally listed salmonids. NMFS additionally recommends the BOF not adopt the Class II measures outlined for the Southern Subdistrict of the Coast Forest District at this time.

Even the most protective measures in the proposed Anadromous Salmonid Protection Rules are still less protective than timberland operations that have secured NMFS' authorization for incidental take under HCPs. NMFS recommends CalFire, landowners and timber harvest plan submitters ensure compliance with the ESA in approving, and operating under, CalFire approved timber harvest plans. To this end and depending on the decision of the BOF, NMFS is intending to re-initiate discretionary reviews of timber harvest plans (including post harvest reviews) and become more engaged in pre-harvest inspections and the timber harvest approval process. NMFS' goals in participating will be to ensure no take or harm occurs to federally listed salmonids and that the habitats supporting salmonid essential behavioral patterns such as spawning, rearing, migrating, feeding, etc. are not being impaired through timber operations.

NMFS urges the BOF to adopt Rules that provide the greatest possible protections to anadromous salmonids and their habitats. This action would (1) set the stage for furthering the discussions regarding a statewide HCP initiated by the California Natural Resources Agency in 2006 and (2) increase assurances that industrial and non-industrial forest landowners without an HCP are not subject to discretionary timber harvest reviews by NMFS.

Thank you and if you have any questions or would like to meet with staff regarding comments in this letter please contact Charlotte Ambrose at (707) 575-6068.

Sincerely,



 Rodney R. McInnis
Regional Administrator

Enclosures

1. June 22, 2009 letter to CA Board of Forestry and Fire Protection
2. Federal Register Notice

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