

PACIFIC FISHERY MANAGEMENT COUNCIL

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March 3, 2000

Mr. Garth Griffin
National Marine Fisheries Service
Protected Resources Division
525 NE Oregon Street, Suite 500
Portland, OR 97232-2737

Dear Mr. Griffin:

We are writing with comments regarding the proposed 4(d) rule of the Endangered Species Act.

The Pacific Fishery Management Council (Council), through the 1976 Magnuson-Stevens Fishery Conservation and Management Act and its subsequent amendments, has been charged by Congress to provide comments on federal actions to "protect and conserve" the essential fish habitat of the fish it manages. The chinook and coho salmon species subject to this rule are also subject to our management. We find this rule-making congruent with work the Council has accomplished in amending their salmon management plan to incorporate information about salmon essential fish habitat and management measures that may be appropriate to avoid degradation to that habitat. We believe the proposed 4(d) regulations will help assure the protection of the essential habitat needed for salmon and help assure the recovery and viability of these populations.

We view this rule making as a positive step forward in defining and regulating actions of key concern for salmon protection and recovery. We also view this rule making as providing good guidance (through your proposal to exempt certain specific activities) of the standards which must be met for activities to be exempted from take provisions.

Our comments herein relate to the habitat components of the 4(d) rule. Comments regarding hatchery or harvest components of the rule may be forthcoming from our individual member states, but are not included here.

Take Guidance

We agree the activities listed in 'Take Guidance' (section 1) are very likely to injure and kill salmon, but would also include items A, B, G, and H from section 2, in this 'very likely' to injure or kill category.

Additionally, we note the importance of identifying some additional activities in section 2 which we believe are likely to kill or injure salmonids and prevent their recovery. Though item 2(C)

refers to activities that destroy or alter salmon habitat, the wording seems to focus on rivers, streams, and tidal channels. We would like to assure the rule makes special note of activities that would degrade or disrupt habitats of special importance to coastal coho including:

- a) Oregon coastal lakes (e.g., activities which remove a riparian buffer or increase erosion and sedimentation, activities which carry nutrients as well as silt into the lake, and the introduction of noxious weeds that alter habitat components).
- b) Beaver ponds (e.g., activities that remove or limit beaver populations in coho areas with limiting winter habitat are likely to take salmon).
- c) Complex woody debris for coho summer habitat (e.g., activities which remove or do not restore complex debris such as root wads, brushy trees, etc. are likely to result in a take of coho due to increased predation).

Additionally, we would like to assure the rule makes special note of activities that would degrade or disrupt the nearshore marine habitat of Puget Sound chinook. Activities of special concern would be those that alter the tidal channels, marsh edges, eel grass beds, or the shallow sublittoral and lower littoral habitat that produce epibenthic prey organisms for outmigrating chinook juveniles. Activities such as dredging and shoreline hardening are likely to result in such alteration.

Furthermore, while removal of large woody debris is mentioned in item 2(C), we believe that it is especially important to spell this activity out for special emphasis. Removal of large woody debris by homeowners, boaters, and others is continuing. After flood events, cities, counties, and ports remove woody debris without concern for fish habitat and re-establishing flood plain function. Such activities must require consultation and be minimized if a take is to be avoided.

While the activities noted by National Marine Fisheries Service (NMFS) in the proposed rule and those above, are likely to take salmon, there is a need to clarify (and specify) what actions and magnitude of actions that individually, or cumulatively, would constitute an illegal take of salmon. Though the Council recognizes the difficulty involved, it is important for NMFS not to ignore or downplay cumulative or sublethal impacts. When a water body is already water quality limited, for example, when does discharge of additional pollutants constitute a take? In that light, we believe NMFS needs to cross reference activities that prevent or hinder attainment of 'properly functioning conditions' for salmon habitat factors in this section on take guidance (and not only in the section entitled "Evaluating Habitat Conditions"). Those properly functioning conditions have already been defined by NMFS and are incorporated in the Council's Salmon Fishery Management Plan Amendment 14 (see Table 3-3 of Draft Amendment 14, Appendix A). Further, when uncertainty is high, for example when a pesticide is in use that has not been studied for its biological effects, it is important NMFS take a conservative approach to assure avoidance of take.

Identifying Populations Within ESUs

The Council supports the proposed rule regarding the definition of independent populations. Management of take keyed to this issue is crucial to the recovery of salmon populations and the maintenance of genetic diversity.

Assessing Population Status

NMFS has identified four primary biological parameters with which to evaluate population status: abundance; productivity; population structure; and genetic diversity. The Council agrees these parameters are necessary to evaluate population status. However, from the short descriptions provided of each element, we are uncertain if these parameters are sufficient. We are concerned if a population status evaluation using these elements will assure the maintenance of the diversity of both spatial and temporal distributions within populations across basins and sub-basins. Such diversity is crucial to population survival, especially given the risk caused by catastrophic events when populations are at such low numbers. Similarly, the Council is uncertain from the description if the 'population structure' review for habitat conditions will consider the condition, location, and security of habitat refugia and linkages of this refugia across the landscape. We are also uncertain whether the evaluation will consider if habitat elements meet properly functioning condition or whether or not key habitat elements such as beaver dams, connected floodplains, large woody debris, salmon carcasses, and the like exist across the landscape for the given population. The viability of populations must be evaluated with these considerations in mind.

Evaluating Habitat Conditions

The Council urges NMFS to incorporate specifics regarding properly functioning condition into these regulations. Amendment 14 to the salmon plan has incorporated such specifics, provided by NMFS, into its essential fish habitat guidance (see Table 3-3 of Amendment 14, Appendix A). Additional specifics regarding properly functioning conditions for estuaries would be especially useful for Puget Sound chinook.

Habitat Restoration Limits on the Take Prohibition

The Council is supportive of the many restoration efforts being undertaken across the region through individual as well as multi-partnership efforts. We believe such efforts are necessary triage and such actions as culvert repairs, large woody debris placement, creation of side channels, and estuarine dike removal in strategic areas where there is otherwise salmon-supportive habitat can have immediate, beneficial results and should be encouraged. However, the Council is also concerned habitat restoration efforts are not sufficient, and in fact, have the danger of diverting attention away from the need to look at watershed function as a whole and from a longer range perspective. Therefore, the Council is supportive of the direction provided by NMFS in the proposed rule to require a watershed conservation plan to be prepared.

The Council agrees there is limited risk of take from the habitat restoration activities mentioned in the proposed rule provided they are conducted within the proper timeframe and follow the conditions and guidance mentioned. We are supportive of allowing such a limitation from take for up to two years while a watershed conservation plan is approved. We also applaud the direction provided by NMFS regarding the requirements for conducting a watershed assessment and assuring restoration activities are prioritized based on that assessment. However, we recommend NMFS clarify the purpose of the watershed assessment is to identify factors that are limiting watershed function and to propose activities keyed to addressing those issues. We urge NMFS to clearly identify the information that needs to be included in any assessment (e.g., riparian condition, pool densities, road densities, unstable soils, woody debris

sources) and the appropriate scale for analysis (the Council suggests 6th field watersheds as an appropriate scale).

We urge NMFS to add protection criteria to watershed conservation plan requirements. It is critical that areas of properly functioning habitat within a watershed with listed species stay protected. Restoration activities should build on and enhance areas of such healthy habitat. The assessment must prioritize these areas for protection and spell out the mechanisms in place to assure such protection, then work to enhance production from these areas with appropriately planned restoration efforts.

The Council supports the requirement for watershed management plans to have an effective monitoring plan to evaluate and redirect, as necessary, the restoration efforts using best available science. The Council believes however, it is incumbent on NMFS to define a sufficient monitoring strategy for various types and scales of restoration projects. Not only will this minimize the uncertainty for those undertaking restoration, it will allow similar projects to be compared within and across basins which will help to improve the science of restoration.

Limit on Take Prohibitions for New Urban Density Development

The Council believes this section is a major step forward in defining ways development activities can avoid take of salmon. In the past, 'salmon recovery' has concentrated on activities related or applied to forestry, water and flood control projects, and grazing and irrigation/farming activities, while ignoring the contribution of urbanization to habitat decline and salmon take. The rule guidance for maintaining or restoring natural stream flow patterns, floodplain function, and avoiding road impacts to streams are especially important and often unacknowledged. We support NMFS direction in these areas. The Council also supports the call for regular maintenance of such features as detention basins to assure they are effective and the requirement for plans to show both administrative and fiscal ability to assure the enforcement of criteria 'on the ground'.

The 12 guidelines spelled out in the proposed rule provide meaningful direction for developers and land use planners looking at new developments. We think that 'urban-level' density should be defined as development of one home per five contiguous acres or more. Such guidance must also be applied for areas undergoing re-development and are critical considerations for new road building activities as well, if take is to be avoided.

The Council suggests providing some additional guidance and standards regarding the amount of impervious surface and the width of the riparian buffer that would be exempted from take considerations. According to a study of urbanization effects in Puget Sound, total impervious surface of less than 5%, and wide (greater than 30 m) and nearly continuous (less than 2 breaks per km) riparian buffers appear to be necessary for maintaining a natural level of stream quality and biotic integrity.^{1/}

Finally, we note again you have urged protection of streams and wetlands, but have not mentioned the need to protect the riparian area and water quality and quantity of coastal lakes. This is key to coho protection.

1/ C.W. May et al. 1997. Quality Indices for Urbanization Effects in Puget Sound Lowland Streams, (Publication Number 98-04), Washington Department of Ecology, Olympia, Washington.

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While perhaps outside the scope of this rule making, it is equally as important NMFS work on a strategy to encourage actions to restore the existing degraded status on much of our urban watersheds.

We are very pleased issues of monitoring, enforcement, and funding were addressed in Principles 11 and 12. We would support a monitoring component to be developed in conjunction with other landscape level strategies in order to assess stream habitat conditions at the urban/rural interface.

Thank you for providing the opportunity to comment on these rules. We urge you to move forward quickly to assure protection of our threatened fish stocks.

Sincerely,



Jim Lone
Chairman

JCC:rdh

cc: Habitat Steering Group



PACIFIC FISHERY MANAGEMENT COUNCIL

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Hans Radtke

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February 4, 2000

David Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Mr. Boergers:

We are writing with comments regarding the Draft Environmental Impact Statement (DEIS) for the Potter Valley Project on California's Eel River (FERC project 77-110).

The Pacific Fishery Management Council (Council), through the 1976 Magnuson-Stevens Fishery Conservation and Management Act and its subsequent amendments, has been charged by Congress to provide comments on federal actions in order to assure the protection and conservation of essential fish habitat for Council-managed fish stocks. The decisions you make on the operation of the Potter Valley Project have the potential to reduce adverse affects on essential habitat for fall chinook and coho salmon stocks of the Eel River Basin, within the Council management area. The pertinent essential fish habitat includes water quantity and quality parameters within the Eel and Russian Rivers and estuaries that are necessary for successful adult migration, spawning, egg to fry survival, and smolt migration.

We are writing to ask for a new DEIS. We understand the computer simulation model, devised by the Oak Ridge National Laboratory to analyze the fish, habitat, and economic benefits and risks of the various alternatives reported in the current DEIS, contained serious flaws. Given the current imperiled state of the coho, steelhead, and chinook resources in the Eel River, and the potential role of the Potter Valley Project to mitigate adverse impacts by different operating and storage regimes, it is imperative that the public have access to an accurate and complete assessment of those regimes.

Thank you for considering and responding to our comments.

Sincerely,



Jim Lone
Chairman

JL:rdh

