

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ALSEA VALLEY ALLIANCE, and)	
MARK SEHL,)	Case No. 99-6265-HO
)	
Plaintiffs,)	
)	ORDER
v.)	
)	
DONALD L. EVANS, Secretary of)	
the United States Department)	
of Commerce; NATIONAL MARINE)	
FISHERIES SERVICE; PENELOPE)	
DALTON, NMFS Director; and)	
WILLIAM STELLE, NMFS Regional)	
Director for the Northwest)	
Region,)	
)	
Defendants.)	
)	

On August 10, 1998, the National Marine Fisheries Services ("NMFS") published its final rule listing the Oregon Coast Evolutionary Significant Unit ("ESU") coho salmon as

"threatened" pursuant to the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531, et seq. Plaintiffs bring this action challenging the validity of the listing decision. Currently before the court are plaintiffs' motion (#74) for summary judgment and defendants' cross motion (#81) for summary judgment.

I. Background

In 1973, Congress enacted the ESA "to provide a program for the conservation of . . . endangered and threatened species." 16 U.S.C. § 1531(b). The purposes of the ESA are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve [these] purposes" Id. § 2(b).

The ESA also recognizes that conservation of listed species may be facilitated by artificial means. Specifically, the ESA defined the term "conservation" as:

. . . the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation

16 U.S.C. § 1532(3).

In addition, "if a species is listed under the ESA, the Secretary must not merely avoid elimination of that species, but is required to bring the species back from the brink sufficiently to obviate the need for protected status."

Federation of Fly Fishers v. Daley, 131 F.Supp.2d 1158, 1163 (N.D. Cal. 2000).

Section 4(a) of the ESA commits to the Secretary of Commerce ("Secretary") the responsibility of determining whether certain species are "endangered" or "threatened." The Secretary has delegated this authority to the NMFS.

An "endangered species" is defined as "any species which is in danger of extinction throughout all or a significant portion of its range." 16 U.S.C. § 1532(6). A "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." 16 U.S.C. § 1532(20).

When determining whether a species is "endangered" or "threatened," the NMFS must consider five statutorily prescribed factors: 1) "the present or threatened destruction . . . of its habitat"; 2) the "overutilization" of the species by humans; 3) disease or predation pressures; 4) "the inadequacy of existing regulatory mechanisms"; and 5) "other natural or manmade factors

affecting" the continued existence of the species. 16 U.S.C. § 1533(a). This determination is to be made "solely on the basis of the best scientific and commercial data available to [the Secretary]." 16 U.S.C. § 1533(b)(1)(A).

The ESA defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." 16 U.S.C. § 1532(16) (emphasis added). Congress did not define the term "distinct population segment" ("DPS") and the ESA does not set forth any restrictive criteria for defining a DPS. See Southwest Center for Biological Diversity v. Babbitt, 980 F.Supp. 1080, 1083 (D. Ariz. 1997).

Beginning in 1991, NMFS issued various policies that interpreted the ESA and its DPS provision, relevant to the Pacific salmon. NMFS eventually applied these policies to the coho salmon in its August 10, 1998, listing decision.

On November 20, 1991, NMFS issued its "Policy on Applying the Definition of Species Under the Endangered Species Act to Pacific Salmon" (hereinafter the "ESU Policy"). 56 Fed. Reg. 58,612 (1991). In the ESU Policy, NMFS introduced the term "evolutionary significant unit" ("ESU") to interpret the ESA's meaning of "distinct population segment." 56 Fed. Reg. at 58,613 (Nov. 20, 1991). NMFS explained:

a stock of Pacific salmon will be considered a distinct population, and hence a "species" under the ESA, if it represents an Evolutionary significant unit (ESU) of the biological species. A stock must satisfy two criteria to be considered an ESU:

- (1) It must be substantially reproductively isolated from other conspecific population units; and
- (2) It must represent an important component in the evolutionary legacy of the species.

56 Fed. Reg. at 58,618.

NMFS states that the first criterion can be measured "by movements of tagged fish, recolonization rates of other populations, measurements of genetic differences between populations, and evaluations of the efficacy of natural barriers." Id.

The second criterion is concerned with the "ecological/genetic diversity" of the species as a whole. Id. NMFS states that the following questions are relevant in determining whether this criterion is met 1) is the population genetically distinct from other conspecific populations, 2) does the population occupy unusual or distinctive habitat, 3) does the population show evidence of unusual or distinctive adaptation to its environment. Id.

On April 5, 1993, the NMFS published its policy entitled "Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act" (the "Hatchery Policy"). 58

Fed. Reg. 17,573 (1993). The Hatchery Policy describes how the NMFS considers hatchery populations when making listing decisions about the Pacific salmon. The Hatchery Policy interprets the ESA as requiring NMFS to focus its recovery efforts on "natural populations." The Hatchery Policy builds upon this cornerstone interpretation with the position that "artificial propagation may represent a potential method to conserve listed salmon species when the artificially propagated fish are determined similar to the listed natural population in genetic, phenotypic, and life-history traits, and in habitat use characteristics." 58 Fed. Reg. at 17,573-74 (April 5, 1993) (emphasis added). Although hatchery populations may be included as part of a listed species, NMFS policy is that it should be done sparingly because artificial propagation could pose risks to natural populations. Id. at 17,575. Thus, the Hatchery Policy states:

[I]f available information indicates that existing hatchery fish can be considered part of the biological ESU, a decision must be made whether to include them as part of the listed species. In general, such fish will not be included as part of the listed species. An exception may be made for existing hatchery fish if they are considered to be essential for recovery.

The Hatchery Policy defines "risks" to natural populations in terms of genetics, such as the loss of genetic diversity that could lead to greater instances of disease and/or the inability of natural populations to survive relative to hatchery populations. 58 Fed. Reg. 17,574.

Id. at 17,575 (emphasis added).

NMFS excludes hatchery populations from its listing decision unless the hatchery population can be considered part of the ESU and the NMFS considers the hatchery population "essential to recovery." Id. at 17,575. Although the phrase "essential to recovery" is not specifically defined, NMFS gives the examples of a natural population facing a "high, short-term risk of extinction, or if the hatchery population is believed to contain a substantial proportion of the genetic diversity remaining in the species." Id.

On July 25, 1995, NMFS completed a status review of west coast coho salmon and issued a proposed rule to list six ESU's of coho salmon as threatened. 63 Fed. Reg. at 42,587-88. One

NMFS Policy states that a hatchery population will not be considered part of the ESU if the available information indicates that:

- 1) the hatchery population in question is of a different genetic lineage than the listed natural populations,
- 2) artificial propagation has produced appreciable changes in the hatchery population in characteristics that are believed to have a genetic basis, or
- 3) there is substantial uncertainty about the relationship between existing hatchery fish and the natural population.

58 Fed. Reg. 17,575.

of the ESU's proposed as "threatened" by NMFS was the "Oregon Coast ESU." NMFS subsequently revoked this decision based partly on conservation measures in the Oregon Coastal Salmon Restoration Initiative and a Memorandum of Agreement between the NMFS and the State of Oregon that assured state protection of this species. 62 Fed. Reg. 24,588 (May 6, 1997). However, a lawsuit was filed in this district that challenged NMFS' decision not to list Oregon Coast coho as threatened. See Oregon Natural Resources Council v. Daley, 6 F.Supp.2d 1139 (D. Or. 1998) (Stewart, J.). The court ultimately found that NMFS should not have considered the conservation measures in the state restoration initiative and the memorandum agreement with the state of Oregon and remanded to the agency to reconsider its decision. Id. at 1161.

Pursuant to court order, on August 10, 1998, NMFS issued a final rule listing the Oregon Coast coho ESU as threatened. 63 Fed. Reg. 42,587 (Aug. 10, 1998). However, within this ESU, NMFS only listed all "naturally spawned" coho inhabiting streams between Cape Blanco and the Columbia River. Id. In reaching this listing decision, NMFS applied its April 5, 1993 Hatchery Policy to the coho salmon. 63 Fed. Reg. 42,589. NMFS concluded that nine Oregon hatchery populations were part of the same Oregon Coast ESU as the natural populations. However, the

hatchery populations were not included in the listing decision because the hatchery populations were not "deemed 'essential' to recovery." Id. Although excluded from the listing decision, NMFS stated that it might consider using these hatchery populations for future recovery but that "in this context, an 'essential' hatchery population is one that is vital for full incorporation into recovery efforts." Id.

Plaintiffs seek to invalidate the August 10, 1998 listing decision. Plaintiffs central argument is that NMFS' distinction between "naturally spawned" and "hatchery spawned" coho salmon is arbitrary and capricious and thus unlawful under the Administrative Procedures Act ("APA") 5 U.S.C. § 706.

II. Standards

An agency's actions pursuant to the ESA are reviewed under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A). See Friends of Endangered Species, Inc. v. Jantzen, 760 F.2d 976, 980-81 (9th Cir. 1985). The APA requires this court to conduct a "thorough, probing, in-depth review" of the agency decision. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971). However, this court must also give the agency decision a high level of deference by presuming the agency's action to be valid. See Ethyl Corp. v. Environmental Protection

Agency, 541 F.2d 1, 34 (D.C. Cir.), cert. den., 426 U.S. 941 (1976).

An agency's decision is invalid, and summary judgment is appropriate, only if it is "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); Oregon Natural Resources Council v. Daley, 6 F.Supp.2d 1139, 1145 (D. Or. 1998). An agency's decision is arbitrary and capricious if it:

has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

O'Keeffe's Inc. v. U.S. Consumer Prod. Safety Comm'n, 92 F.3d 940, 942 (9th Cir. 1996) (quoting Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

"When a plaintiff challenges a final agency action, judicial review normally is limited to the administrative record in existence at the time of the agency's decision." Friends of the Clearwater v. Dombeck, 222 F.3d 552, 560 (9th Cir. 2000) (internal citations omitted). Therefore, the agency is only required to "justify its final action by reference to the reasons it considered at the time it acted." Id. However, the

Ninth Circuit has allowed judicial review of final agency decisions beyond the record under the following four circumstances:

- (1) if necessary to determine "whether the agency has considered all relevant factors and has explained its decision;"
- (2) "when the agency has relied on documents not in the record;"
- (3) "when supplementing the record is necessary to explain technical terms or complex subject matter."
- (4) "when plaintiffs make a showing of agency bad faith."

Southwest Center for Biological Diversity v. United States

Forest Service, 100 F.3d 1443, 1450 (9th Cir. 1996) (internal citations omitted). Although both parties submitted affidavits in support of their respective motions for summary judgment, several of those affidavits relied on material outside of the administrative record. The court declines to consider this information.

For example, Oregon Trout, a non-profit organization, submitted an amicus curiae brief ("Amicus Brief") to the court on behalf of defendants. Oregon Trout opposes the extension of ESA protection to hatchery fish because "to do so would effectively undermine the protection that the [ESA] affords to remaining wild populations." (Amicus Brief at 1.) The court will consider the Amicus Brief to the extent that it assists the court in understanding the administrative record as it existed at the time of the disputed listing. However, the Amicus Brief relies, in part, on material not before the agency prior to its final decision and therefore is not appropriately considered by this court.

III. Discussion

Both parties move for summary judgment on plaintiffs' claims. Defendants further move for summary judgment on statute of limitations grounds.

A. Statute Of Limitations

Defendants correctly note that the ESA contains no express statute of limitations. Therefore, the applicable statute of limitations is found at 28 U.S.C. § 2401(a), the general statute of limitations for civil actions against the federal government. See, e.g., Broadened Horizons Riverkeepers v. United States Army Corps of Engineers, 8 F. Supp.2d 730, 736 n.9 (E.D. Tenn. 1998); Kentucky Heartwood, Inc. v. Worthington, 20 F. Supp.2d 1076, 1092-93 (E.D. Ky 1998); Strahan v. Linnon, 967 F.Supp. 581, 607 (D. Mass. 1997).

28 U.S.C. § 2401(a) provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." Under section 2401(a), a cause of action first accrues when the "person challenging the action can institute and maintain a suit in court." Trafalgar Capital Assoc. v. Cuomo, 159 F.3d 21, 34 (1st Cir. 1998).

Plaintiffs first filed this case in November of 1999.

Defendants argue that plaintiffs' challenges to the ESU Policy, adopted in 1991, and the Hatchery Policy, adopted in April of 1993, are time barred by section 2401(a) because they exceed the applicable six-year statute of limitations. However, plaintiffs' first cause of action under the ESA challenges the NMFS decision to list only naturally spawned populations of coho salmon as threatened. (Plt.s' First Am. Compl. ¶¶ 42-43.) The final agency decision that promulgated this rule was issued on August 10, 1998. Similarly, plaintiffs' second cause of action challenges the above referenced listing as violating the APA. Id. at ¶¶ 57-66.

Any challenge to the earlier NMFS policies would have been premature because they only provided an outline of what the government could do in the future with any Pacific salmon population. The earlier policies did not provide a final agency decision regarding specific salmon in specific geographic regions. Also, the earlier policies were not binding on the NMFS and therefore could not provide the basis of the current suit. See Sierra Club v. Slater, 120 F.3d 623, 631 (6th Cir.1997) (holding that under the APA the cause of action accrues at the time of final agency action). It was appropriate for plaintiffs to await defendants' final listing decision of August 10, 1998, before bringing suit. This presents a

justiciable issue for the court and does not run afoul of the statute of limitations. Defendants' motion for summary judgment on statute of limitations grounds is denied.

B. The ESA Challenge

Plaintiffs argue that the distinction between hatchery spawned and naturally spawned coho is untenable under the ESA because the ESA does not allow the Secretary to make listing distinctions below that of species, subspecies or a distinct population segment of a species. Essentially, plaintiffs argue that the Secretary, in this instance, must include or exclude all members of a distinct population segment, as opposed to only some members of a distinct population segment. Defendants argue that the distinction between hatchery coho and natural coho is valid because the NMFS interpretation of the ESA, and in particular its interpretation of a "distinct population segment," should be afforded great deference by this court.

After reviewing the administrative record and the relevant statutes and legislative history, the court finds that the NMFS August 10, 1998 listing decision is arbitrary and capricious and therefore invalid because it relied on factors upon which Congress did not intend the NMFS to rely. The NMFS decision defines the ESU and thus DSP, but then takes an additional step, beyond its definition of an ESU, to eliminate hatchery coho from

its listing decision.

NMFS defined a "distinct population segment" by making it the equivalent of a term (it created) called an "evolutionary significant unit" ("ESU"). "A species is considered an ESU, and hence a DPS, if it is "substantially reproductively isolated from other conspecific population units" and "represent[s] an important component in the evolutionary legacy of the species." 56 Fed. Reg. at 58,618.

The NMFS interpretation of what constitutes a "distinct population segment" is a permissible agency construction of the ESA. See Panamsat Corp. v. Federal Communications Comm'n, 198 F.3d 890, 894 (D.C. Cir. 1999) (citing Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837, 842-43 (1983) (court must defer to a permissible agency construction of a statute)). Specifically, the NMFS creation of an ESU and the factors used to define it, geography and genetics, are within permissible limits under the ESA.

"56 Fed. Reg. 58,612 states "a salmon stock will be considered a distinct population, and hence a 'species' under the ESA, if it represents an evolutionary significant unit (ESU) of the biological species."

"Congress did not prohibit genetics from being considered during the listing process and specifically included language in the ESA that allows agencies to differentiate its listings among the same species based, in part, on the degree of threat that species face in different geographical regions. For example, Congress linked the degree of threat a species faced

The central problem with the NMFS listing decision of August 10, 1998, is that it makes improper distinctions, below that of a DPS, by excluding hatchery coho populations from listing protection even though they are determined to be part of the same DPS as natural coho populations.

The ESA "specifically states in the definition of 'species' that a 'species' may include any subspecies and any distinct population segment (DPS) of any species . . . which interbreeds when mature." 16 U.S.C. § 1532(16); Southwest Center for Biological Diversity v. Babbitt, 980 F.Supp. 1080, 1085 (D. Ariz. 1997). Listing distinctions below that of subspecies or a DPS of a species are not allowed under the ESA. Southwest Center, 980 F.Supp. at 1085. Yet, this is precisely

with its geographic location by defining "endangered" or "threatened" under the ESA, as a degree of harm experienced "throughout all or a significant part of its range" 16 U.S.C. § 1532(6), (20). Additionally, Congress adopted the DPS language stating:

The committee agrees that there may be instances in which [the Fish and Wildlife Service] should provide for different levels of protection for populations of the same species. For instance, the U.S. population of an animal should not necessarily be permitted to become extinct simply because the animal is more abundant elsewhere in the world. Similarly, listing populations may be necessary when the preponderance of evidence indicates that a species faces a widespread threat, but conclusive data is available with regard to only certain populations."

S. Rep. No. 96-151.

what the NMFS did in its final listing decision of August 10, 1998. NMFS concluded that nine hatchery stocks were part of the same Oregon Coast ESU/DPS as the "natural" populations but none of the hatchery stocks were included in the listing decision because NMFS did not consider them "essential for recovery." 63 Fed. Reg. 42,589.

The distinction between members of the same ESU/DPS is arbitrary and capricious because NMFS may consider listing only an entire species, subspecies or distinct population segment ("DPS") of any species. 16 U.S.C. § 1532(16). Once NMFS determined that hatchery spawned coho and naturally spawned coho were part of the same DPS/ESU, the listing decision should have been made without further distinctions between members of the same DPS/ESU.

The NMFS listing decision could arguably be proper under the ESA if the NMFS had defined "hatchery spawned" coho as a separate DPS, but it does not appear that this is possible. To classify hatchery spawned coho as a DPS under NMFS's own standard, hatchery spawned coho would have to be 1) "substantially, reproductively isolated from other conspecific population units," and 2) "represent an important component in the evolutionary legacy of the species." 56 Fed. Reg. at 58,618. Here, hatchery spawned coho are likely not

"substantially reproductively isolated" from naturally spawned coho because, once released from the hatchery, it is undisputed that "hatchery spawned" coho and "naturally spawned" coho within the Oregon Coast ESU share the same rivers, habitat and seasonal runs. (Plt.s' Stmt. of Mat. Facts at ¶2; Dft.s' Resp. to Plt.s' Stmt. of Mat. Facts at ¶ 2.) It is undisputed that "hatchery spawned" coho may account for as much as 87% of the naturally spawning coho in the Oregon coast ESU. (AR Ex. 12 at 120.) In addition, hatchery spawned and natural coho are the same species (Dft.s' Resp. to Plt.s' Stmt. of Mat. Facts at ¶ 1.), and interbreed when mature (Id. at ¶ 4). Finally, the NMFS considers progeny of hatchery fish that are born in the wild as "naturally spawned" coho that deserve listing protection.

Despite these facts, NMFS decided that hatchery coho, that are part of the same DPS/ESU as natural coho, should not be listed because they were not "essential" to recovery. Thus, the NMFS listing decision creates the unusual circumstance of two genetically identical coho salmon swimming side-by-side in the same stream, but only one receives ESA protection while the other does not. The distinction is arbitrary.

Finally, NMFS argues that its listing decision does not contradict the terms of the ESA because the listing decision, and relevant policies, are in accordance with ESA goals that

prioritize "natural" salmon populations and "genetic diversity" within those populations. Although I agree with the general concept that "genetic diversity" is one factor in the long term success of a threatened species, and thus is one of many underlying goals of the ESA, genetics cannot, by itself, justify a listing distinction that runs contrary to the definition of a DPS.

The term "distinct population segment" was amended in the ESA in 1978 so that it "would exclude taxonomic [biological] categories below subspecies [smaller taxa] from the definition."⁶ H.R. CONF. REP. NO. 95-1804, at 17 (1978), *reprinted in* 1978 U.S.C.C.A.N. 9485, 14855.

Congress adopted the DPS language stating:

The committee agrees that there may be instances in which [the Fish and Wildlife Service] should provide for different levels of protection for populations of the same species. For instance, the U.S. population of an animal should not necessarily be permitted to become extinct simply because the animal is more abundant elsewhere in the world. Similarly, listing populations may be necessary when the preponderance of evidence indicates that a species faces a widespread threat, but conclusive data is available with regard to only certain populations."

S. Rep. No. 96-151.

Thus, Congress expressly limited the Secretary's ability to

"The original definition of species was "any subspecies of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature."

make listing distinctions among species below that of subspecies or a DPS of a species. Here, the NMFS listing decision was based on distinctions below that of subspecies or distinct population segment of a species.

Therefore, the NMFS's listing decision is arbitrary and capricious, because the Oregon Coast ESU includes both "hatchery spawned" and "naturally spawned" coho salmon, but the agency's listing decision arbitrarily excludes "hatchery spawned" coho. Consequently, the listing decision is unlawful. 5 U.S.C. § 706(2)(A).

IV. Conclusion

For the foregoing reasons, plaintiffs' motion (#74) for summary judgment is granted. Defendants' cross-motion (#81) for summary judgment is denied. The August 10, 1998 NMFS listing decision, contained at 63 Fed. Reg. 42,587, is declared unlawful and set aside as arbitrary and capricious. The matter is remanded to the NMFS for further consideration consistent with this opinion. The agency is further directed to consider the best available scientific information, including the most recent data, in any further listing decision concerning the Oregon coast coho salmon.

IT IS SO ORDERED.

Dated this 10th day of September, 2001.

/s/ Michael R Hogan
UNITED STATES DISTRICT JUDGE

NATIONAL MARINE FISHERIES SERVICE REPORT

Situation: National Marine Fisheries Service (NMFS) will report on the status of regulatory and non-regulatory activities and issues affecting ocean salmon fishery management. In particular for this meeting, NMFS will provide a report on the status of Columbia River flows to assist salmon and steelhead passage survival.

Council Task:

1. Provide information and discussion.

Reference Materials: None.

PFMC
8/16/01

Sequence of events in ocean salmon fishery management, January through August 31, 2001.^{1/} (Page 1 of 6)

GENERAL MANAGEMENT ACTIONS AND INSEASON CONFERENCES

- Mar. 2 National Marine Fisheries Service (NMFS) provides the Council with a letter outlining the 2001 management guidance for stocks listed under the Endangered Species Act (ESA).
- Mar. 6 NMFS inseason conference number one (at the Council meeting) results in a Council recommendation to open the commercial and recreational fisheries off Oregon from Cape Falcon to Humbug Mt. on April 1 for all salmon except coho. There were no requests for test fisheries opening prior to May 1.
- Mar. 8 Council adopts three troll and three recreational ocean salmon fishery management options for public review.
- Mar. 13-14 North of Cape Falcon Salmon Forum meets in Portland, Oregon to initiate consideration of recommendations for treaty Indian and non-Indian salmon management options.
- Mar. 27-28 Council holds public hearings on proposed 2001 management options in three locations within the three Pacific Coast states. In addition, the states of Oregon and California hold additional hearings in Tillamook, Oregon and Moss Landing, California, respectively.
- Mar. 28-29 North of Cape Falcon Salmon Forum meets in Tukwila, Washington to further consider recommendations for treaty Indian and non-Indian salmon management options.
- Apr. 5 Council adopts final ocean salmon fishery management recommendations for approval and implementation by the U.S. Secretary of Commerce. The proposed measures include selective fisheries and comply with the salmon fishery management plan (FMP) and the current biological opinions for listed species. An emergency rule is not required for implementation.
- May 1 Ocean salmon seasons implemented as recommended by the Council and published in the *Federal Register* on May 5 (65 FR 26138).
- May 3 NMFS inseason conference number two results in allowing non-Indian commercial troll salmon caught in the May/June fishery north of Cape Falcon to be landed in Oregon ports south of Cape Falcon as long as notice is given to Oregon Department of Fish and Wildlife prior to leaving the area north of Cape Falcon.
- May 21 NMFS inseason conference number three results in a closure of the Horse Mt. to Point Arena (Fort Bragg) non-Indian commercial troll fishery effective midnight, May 21, because the quota of 3,000 chinook was projected to be met.
- June 6 NMFS inseason conference number four results in:
- Closure of the U.S./Canada border to Cape Falcon non-Indian commercial troll fishery effective midnight, June 8, because the quota of 17,000 chinook was projected to be met.
 - Changing the late season (September 24 through October 21) recreational set-aside fishery in the La Push area to match Washington state regulations defining the open area as a line from Teahwhit Head northwesterly to "Q" buoy to Cake Rock then true east to the shoreline.
 - Correcting the opening date for the Quinault all-species treaty troll fishery published in the *Federal Regulations* to July 1, 2001.
 - Allowing fishing 7 days per week in the Humbug Mt. to Oregon/California border commercial troll quota fishery effective June 15, 2001.
- July 9 NMFS inseason conference number five results in closure of the non-Indian commercial troll salmon season from the U.S./Canada border to Leadbetter Point effective midnight, Monday July 9, 2001, because the quota of 5,349 was projected to be met.

GENERAL MANAGEMENT ACTIONS AND INSEASON CONFERENCES, (continued)

- July 18 NMFS inseason conference number six results in:
- Opening of the Queets River to Cape Falcon non-Indian commercial troll salmon season on July 20 under a 4-days open and 3-days closed structure with a landing restriction of 65 chinook per vessel per 4-day open period.
- Closure of the Cape Falcon to Humbug Mt. selective coho recreational fishery effective midnight July 19, 2001, because the coho quota of 55,000 was projected to be met.
- July 26 NMFS inseason conference number seven results in no change to the Queets River to Cape Falcon non-Indian commercial troll salmon season. The next opening is July 27 through July 30 with a landing restriction of 65 chinook per vessel per 4-day open period.
- Aug. 1 NMFS inseason conference number eight results in opening the Queets River to Cape Falcon non-Indian commercial troll salmon season on August 3 through August 12 with a landing restriction of 100 chinook per vessel per 10-day open period.
- Aug. 8 NMFS inseason conference number nine results in allowing fishing 7 days per week in the Humbug Mt. to Oregon/California border commercial troll quota fishery effective August 9, 2001.
- Aug. 14 NMFS inseason conference number ten results in opening the Queets River to Cape Falcon non-Indian commercial troll salmon season on August 17 through August 27 with a landing restriction of 150 chinook per vessel per 11-day open period.
- Aug. 17 NMFS inseason conference number eleven results in no action, but an update on North of Falcon recreational fisheries.
- Aug. 22 NMFS inseason conference number twelve results in transfer of 20,000 coho from the North of Falcon non-Indian commercial troll salmon fishery to the Leadbetter Point to Cape Falcon recreational fishery.

NON-INDIAN COMMERCIAL TROLL SEASONS

- Apr. 1 Cape Falcon to Florence south jetty, Oregon, all-salmon-except-coho fishery opens through July 18. The fishery will reopen July 27 through August 29 and September 1 through October 31.
- Florence south jetty to Humbug Mt., Oregon, all-salmon-except-coho fishery opens through July 9. The fishery will reopen July 18 through August 29 and September 1 through October 31.
- May 1 U.S./Canada border to Cape Falcon, all-salmon-except-coho fishery opens through the earlier of Jun. 30 or a 17,000 chinook guideline. The 17,000 chinook guideline includes a subarea guideline of 12,000 chinook for the area between the U.S./Canada border and the Queets River.
- Humbug Mt. to Oregon/California border, all-salmon-except-coho fishery opens through May 31. The fishery is scheduled to reopen June 3 through the earlier of June 30 or a 3,000 chinook quota, and reopen again August 1 through the earlier of August 31 or a 3,000 chinook.
- Horse Mt. to Point Arena, all-salmon-except-coho fishery opens through the earlier of May 31 or a 3,000 chinook quota. The fishery reopens September 1 through September 30.
- Pt. San Pedro to Point Sur, all-salmon-except-coho fishery opens through August 14.
- Point Sur to U.S./Mexico border, all-salmon-except-coho fishery opens through August 14. The fishery reopens September 11 through September 30.
- May 21 Horse Mt. to Point Arena, all-salmon-except-coho fishery closes May 21 after reaching the 3,000 chinook quota (actual catch estimated at 4,298).

May 24 Pt. Reyes to Pt. San Pedro, all-salmon-except-coho fishery opens through September 30. The fishery reopens October 1 through October 12.

NON-INDIAN COMMERCIAL TROLL SEASONS, (continued)

May 31 Humbug Mt. to Oregon/California border all-salmon-except-coho fishery closed.

June 3 Humbug Mt. to Oregon/California border, all-salmon-except-coho fishery opens through the earlier of June 30 or a chinook quota of 1,500. The fishery is scheduled to reopen August 1 through the earlier of August 31 or a 3,000 chinook.

June 8 U.S./Canada border to Cape Falcon, all-salmon-except-coho fishery closes effective midnight June 8, 2001 as chinook guideline is reached.

June 24 Pt. Arena to Pt. Reyes, all-salmon-except-coho fishery opens through September 30.

June 30 Humbug Mt. to Oregon/California border, all-salmon-except-coho fishery closes as scheduled.

July 1 U.S./Canada border to Leadbetter Point, all-salmon fishery, opens through the earlier of July 27 or a guideline of 6,493 chinook (7,000 in the preseason guideline minus 507 overage from the May-June season) and 12,000 coho with healed adipose fin clips (selective fishery).

July 9 Florence south jetty to Humbug Mt. all-salmon-except-coho fishery closes as scheduled.

U.S./Canada border to Leadbetter Point, all-salmon fishery, closes effective midnight, July 9, 2001 as chinook guideline is reached.

July 18 Scheduled closure of the Cape Falcon to Florence south jetty, all-salmon-except-coho fishery. The fishery reopens July 27 through August 29 and September 1 through October 31.

Florence South Jetty to Humbug Mt., Oregon, all-salmon-except-coho fishery opens through August 29. The fishery reopens September 1 through October 31.

July 20-23 Queets River to Cape Falcon, all-salmon fishery opens through the earlier of September 30 or a quota of 7,607 chinook (6,000 in the preseason guideline plus 1,607 transferred from the July U.S./Canada border to Leadbetter Point season) and 73,733 coho (63,000 preseason plus 10,733 from the July U.S./Canada Border to Leadbetter Point season) with healed adipose fin clips (selective fishery). Fishery proceeds on a cycle of 4-days open and 3-days closed with landing limit of 65 chinook for the open period.

July 27 Cape Falcon to Florence South Jetty, Oregon, all-salmon-except-coho fishery opens through August 29. The fishery will reopen September 1 through October 31.

July 27-30 Queets River to Cape Falcon, all-salmon fishery opens for the second period (4 days) under the same regulations as the initial opening.

Aug. 1 Humbug Mt. to Oregon/California border, all-salmon-except-coho fishery reopens through the earlier of August 31 or a chinook quota of 3,000.

Aug. 3-12 Queets River to Cape Falcon, all-salmon fishery opens for the third period (10 days), with a landing limit of 100 chinook for the open period.

Aug. 14 Pt. San Pedro to Point Sur, all-salmon-except-coho fishery closes.

Point Sur to U.S./Mexico border, all-salmon-except-coho fishery closes. The fishery reopens September 11 through September 30.

Aug. 17-27 Queets River to Cape Falcon, all-salmon fishery opens for the forth period (11 days), with a landing limit of 150 chinook for the open period.

Aug. 29 Cape Falcon to Florence south jetty, all-salmon-except-coho fishery closes for 2 days. The fishery reopens September 1 through October 31.

Florence south jetty to Humbug Mt., all-salmon-except-coho fishery closes for 2 days. The fishery reopens September 1 through October 31.

NON-INDIAN COMMERCIAL TROLL SEASONS, (continued)

Aug. 31 Scheduled closure of the Humbug Mt. to Oregon/California border, all-salmon-except-coho fishery.

Sept. 1 Cape Falcon to Florence south jetty, all-salmon-except-coho fishery reopens through October 31.

Florence south jetty to Humbug Mt., all-salmon-except-coho fishery reopens through October 31.

Humbug Mt. to Humboldt south jetty, all-salmon-except-coho fishery opens through the earlier of September 30 or a quota of 8,000 chinook, of which no more than 2,000 chinook may be landed in the Ports of Brookings, Port Orford and Gold Beach.

Horse Mt. to Pt. Arena, all-salmon-except-coho fishery opens through September 30.

Sept. 11 Pt. Sur to U.S./Mexico border, all-salmon-except-coho fishery opens through September 30.

Sept. 30 Scheduled closing of the Queets River to Cape Falcon all-salmon fishery.

Scheduled closure of the Humbug Mt. to Humboldt south jetty, all-salmon-except-coho fishery.

Horse Mt. to Pt. Arena, all-salmon-except-coho fishery closes.

Pt. Arena to Pt. Reyes, all-salmon-except-coho fishery closes.

Pt. Reyes to Pt. San Pedro, all-salmon-except-coho fishery closes. Fishery reopens October 1 through October 12.

Pt. Sur to U.S./Mexico border, all-salmon-except-coho fishery closes.

Oct. 1 Pt. Reyes to Pt. San Pedro, all-salmon-except-coho fishery opens through October 12.

Oct. 12 Pt. Reyes to Pt. San Pedro, all-salmon-except-coho fishery closes.

Oct. 31 Cape Falcon to Florence south jetty fishery closes.

Florence south jetty to Oregon/California border fishery closes.

TREATY INDIAN COMMERCIAL TROLL SEASONS

May 1 All-salmon-except-coho fisheries open through the earlier of June 30 or a 18,500 chinook quota for the May-June season (any remainder of the quota is not transferable to the July-September season).

June 30 The all-salmon-except-coho fisheries close as scheduled..

July 1 All-salmon fisheries open through the earlier of September 15, an 18,500 chinook quota, or a 90,000 coho quota.

Sept. 15 Scheduled closure of the all-salmon fisheries.

RECREATIONAL SEASONS

Feb. 17 Horse Mt. to Pt. Arena, all-salmon-except-coho fishery opens through November 18.

Mar. 31 Pigeon Point to the U.S./Mexico border, all-salmon-except-coho fishery opens through September 30.

RECREATIONAL SEASONS

Apr. 1	Cape Falcon to Humbug Mt., all-salmon-except-coho fishery opens through October 31. The fishery becomes selective for marked hatchery coho beginning June 22 through the earlier of July 31 or a 55,000 coho quota, then reverts back to all-salmon-except-coho for the remainder of the season.
Apr. 14	Point Arena to Pigeon Point, all-salmon-except-coho fishery opens through November 13.
	RECREATIONAL SEASONS, (continued)
May 17	Humbug Mt. to Horse Mt., all-salmon-except-coho fishery opens through July 8. The fishery reopens July 24 through September 3.
June 22	Cape Falcon to Humbug Mt., all-salmon selective coho fishery opens through the earlier of July 31 or a quota of 55,000 adipose fin clipped coho. The fishery reopens for all-salmon-except-coho the earlier of August 1 or the attainment of the coho quota, through October 31.
July 1	U.S./Canada border to Cape Alava, all-salmon fishery opens through the earlier of September 30, a 1,700 chinook guideline, or a 23,400 coho quota. Daily-bag-limit is two fish, but only one may be a chinook; all coho must have a healed adipose fin clip.
	Cape Alava to Queets River, all-salmon fishery opens though the earlier of September 23, a 1,000 chinook guideline, or a 53,500 coho quota. Daily-bag-limit is two fish, but only one may be a chinook; all coho must have a healed adipose fin clip. The fishery is scheduled to reopen September 24 through the earlier of October 21, a 100 chinook guideline, or a 500 coho quota.
	Queets River to Leadbetter Pt., all-salmon fishery opens Sunday to Thursday though the earlier of September 30, a 19,450 chinook guideline, or a 83,250 coho quota. Daily-bag-limit is two fish, but only one may be a chinook; all coho must have a healed adipose fin clip.
	Leadbetter Pt. to Cape Falcon, all-salmon fishery opens Sunday to Thursday though the earlier of September 3, a 7,750 chinook guideline, or a 102,500 coho quota. Daily-bag-limit is two fish, but only one may be a chinook; all coho must have a healed adipose fin clip. Closed between Tillamook Head and Cape Falcon beginning August 1.
July 8	Humbug Mt. to Horse Mt., all-salmon-except-coho fishery closes. Fishery reopens July 24 through September 3.
July 19	The Cape Falcon to Humbug Mt., all-salmon selective coho fishery closes, effective midnight, Thursday, July 19, 2001, as the coho quota of 55,000 is reached.
July 20	The Cape Falcon to Humbug Mt., all-salmon-except-coho fishery reopens following the closure of the all-salmon selective coho fishery. The fishery closes October 31.
July 24	Humbug Mt. to Horse Mt., all-salmon-except-coho fishery reopens through September 3.
Sept. 3	Scheduled closure of the Leadbetter Pt. to Cape Falcon, all-salmon selective coho fishery.
	Humbug Mt. to Horse Mt., all-salmon-except-coho fishery closes.
Sept. 4	North Head Lighthouse to Tillamook Head, all-salmon fishery opens though the earlier of September 30, or a 10,000 coho quota. Daily-bag-limit is two fish, but only one may be a chinook; all coho must have a healed adipose fin clip.
Sept. 23	Scheduled closure of the Cape Alava to Queets River, all-salmon selective coho fishery. Fishery reopens September 24 through the earlier of October 21, a 100 chinook guideline, or a 500 coho quota.
Sept. 24	Cape Alava to Queets River, all-salmon selective coho fishery reopens through the earlier of October 21, a 100 chinook guideline, or a 500 coho quota.

Sept. 30	Scheduled closure of the U.S./Canada Border to Queets River, all-salmon selective coho fishery. Scheduled closure of the Queets River to Leadbetter Pt., all-salmon selective coho fishery. Scheduled closure of the North Head Lighthouse to Tillamook Head, all-salmon selective coho fishery. Pigeon Point to U.S./Mexico border, all-salmon-except-coho fishery closes.
Oct. 21	Scheduled closure of the Cape Alava to Queets River, all-salmon selective coho fishery. RECREATIONAL SEASONS , (continued)
Oct. 31	Cape Falcon to Humbug Mt., all-salmon-except-coho fishery closes.
Nov. 13	Pt. Arena to Pigeon Pt., all-salmon-except-coho fishery closes.
Nov. 18	Horse Mt. to Pt. Arena, all-salmon-except-coho fishery closes.

i/ Unless stated otherwise, season openings or modifications of restrictions are effective at 0001 hours of the listed date. Closures are effective at midnight. Some events occurring after June 4 are subject to change, depending on achievement of quotas or other inseason management actions.

STATUS REPORT OF THE 2001 OCEAN SALMON FISHERIES OFF WASHINGTON, OREGON, and CALIFORNIA.
Preliminary Data Through August 31, 2001.

Fishery and Area	Season Dates	Effort Landings	CHINOOK			COHO		
			Catch	Quota	Percent	Catch	Quota	Percent
TROLL								
Treaty Indian	5/1-6/30	64	1,908	18,500	10%	Non-Retention		
	7/1-9/15	0	0	18,500	0%	0	90,000	0%
Non-Indian North of Falcon a/ US/Can. Border - Queets R a/ US/Can. Border - Leadbetter Pt. a/ Queets R - Cape Falcon a/	5/1-6/8	158	9,140	17,000	54%	Non-Retention		
	5/1-6/8	63	3,150	12,000	26%	Non-Retention		
	7/1-7/9	0	0	6,493	0%	0	12,000	0%
	7/20-9/30	0	0	7,607	0%	0	73,733	0%
Cape Falcon-Florence S. Jetty	4/1-7/18	2,700	56,020	None	NA	Non-Retention		
	7/27-8/29	0	0	None	NA	Non-Retention		
	9/1-10/31	0	0	None	NA	Non-Retention		
Florence S. Jetty - Humbug Mt.	4/1-7/9	1,160	30,790	None	NA	Non-Retention		
	7/18-8/29	0	0	None	NA	Non-Retention		
	9/1-10/31	0	0	None	NA	Non-Retention		
Humbug Mtn-OR/CA Border	5/1-5/31	7	50	None	NA	Non-Retention		
	6/3-6/30	0	0	1,500	0%	Non-Retention		
	8/1-8/31	0	0	3,000	0%	Non-Retention		
Humbug Mt.-Humbolt S Jetty	9/1-9/30	0	0	8,000	0%	Non-Retention		
Horse Mtn-Pt. Arena	5/1-5/21	114	4,300	3,000	143%	Non-Retention		
	9/1-9/30	0	0	None	NA	Non-Retention		
Pt. Arena-Pt. Reyes	6/24-9/30	0	0	None	NA	Non-Retention		
Pt. Reyes to Pt. San Pedro	5/24-9/30	28	1,472	None	NA	Non-Retention		
	10/1-10/12	0	0	None	NA	Non-Retention		
Pt. San Pedro-Pt. Sur	5/1-8/14	1,304	75,324	None	NA	Non-Retention		
Pt. Sur-US/Mexico Border	5/1-8/14	68	3,064	None	NA	Non-Retention		
	9/11-9/30	0	0	None	NA	Non-Retention		

RECREATIONAL	Season Dates	Effort Angler Days	CHINOOK			COHO		
			Catch	Quota	Percent	Catch	Quota	Percent
US/Canada Border-Cape Alava a/	7/1-9/30	0	0	1,700	0%	0	23,400	0%
Cape Alava-Queets River a/	7/1-9/23	0	0	1,000	0%	0	5,350	0%
	9/24-10/21	0	0	100	0%	0	500	0%
Queets River-Leadbetter Pt. a/	7/1-9/30	0	0	19,450	0%	0	83,250	0%
Leadbetter Pt.-Cape Falcon a/	7/1-9/3	0	0	7,750	0%	0	102,500	0%
Tillamook Head-N. Head Lighthouse a/	9/4-9/30	0	0	w/ above	w/ above		10,000	0%
Cape Falcon-Humbug Mtn	4/1-10/31	1,530	240	None	NA	Non-Retention		
---selective fishery	6/22-7/19	0	0	None	NA	0	55,000	0%
Humbug Mtn-Horse Mtn	5/17-7/8	6,660	2,730	None	NA	Non-Retention		
	7/24-9/3	0	0	None	NA	Non-Retention		
Horse Mtn-Pt. Arena	2/17-11/18	5,310	3,620	None	NA	Non-Retention		
Pt. Arena-Pigeon Pt.	4/14-11/13	14,270	9,630	None	NA	Non-Retention		
Pigeon Pt.-US/Mexico Border	3/31-9/30	30,850	17,980	None	NA	Non-Retention		

TOTALS TO DATE	Effort			Chinook Catch			Coho Catch		
	2001	2000	1999	2001	2000	1999	2001	2000	1999
TROLL									
Treaty Indian	64	79	93	1,908	3,017	2,773	0	0	0
Washington Non-Treaty	123	100	136	8,300	6,534	4,191	0	0	0
Oregon	3,902	876	784	87,700	7,501	6,883	0	0	0
California	1,514	1,900	1,500	84,160	204,700	34,100	0	0	0
Total Troll	5,603	2,955	2,513	182,068	221,752	47,947	0	0	0
RECREATIONAL									
Washington	0	0	0	0	0	0	0	0	0
Oregon	5,210	703	820	1,040	73	136	0	0	0
California	53,410	68,100	27,100	33,160	69,700	9,900	0	0	0
Total Recreational	58,620	68,803	27,920	34,200	69,773	10,036	0	0	0
PFMC Total	64,223	71,758	30,433	216,268	291,525	57,983	0	0	0

a/ Numbers shown as chinook quotas for non-Indian troll and recreational fisheries North of Falcon are guidelines rather than quotas.

**Preliminary Results from the 2001 Selective Recreational Fishery
for Adipose Fin-clipped Coho Salmon from Cape Falcon to
Humbog Mountain, Oregon**

PRINCIPAL INVESTIGATORS

Jay Hensleigh
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September 13, 2001

Oregon Department of Fish and Wildlife
2501 SW 1st Avenue, P.O. Box 59
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In 1999 and 2000, the Pacific Fisheries Management Council (PFMC) adopted a recreational selective fishery off the central coast of Oregon that would allow the harvest of fin-clipped hatchery coho salmon while minimizing the impacts on threatened Oregon Coastal Natural (OCN) coho. Based on the success of the fishery in those years, the PFMC again adopted the fishery in 2001. The fishery operated in an area from Cape Falcon to Humbug Mountain that was comprised of three major catch areas (Figure 1). The fishery started as scheduled on 22 June and was open seven days per week. A daily catch limit of two salmon per day and a weekly bag limit of no more than 6 salmon in 7 consecutive days were in place. All retained coho were required to have a healed adipose fin-clip and all unmarked coho were to be released unharmed immediately. The fishery was to remain open through the earlier of 31 July or a landed catch of 55,000 coho. The quota was reached on 19 July and the fishery closed effective midnight on that date.

Total effort in the fishery was estimated at 47,349 angler days and the fishery harvested 54,627 fin-clipped coho and 6,169 chinook (Table 1). An estimated total of 24,946 unmarked coho were released during the fishery (Table 1). Private boats made up the bulk of the catch and effort in the fishery (Table 1). Catch area 4 had the highest overall effort and largest number of fin-clipped coho retained, whereas catch area 5 had the largest number of chinook retained (Table 1).

Weekly effort remained fairly constant throughout the fishery (Figure 2). Overall, the number of fin-clipped coho retained weekly increased through the fishery and catch per effort increased in the final two weeks of the fishery (Figure 2). The pattern of cumulative catch observed (Figure 3) and the increasing catch per effort necessitated the rapid closure of the fishery with little advanced notice.

Mark rates were estimated from observer data collected on charter vessels and ranged from 62.4%-74.9% (Table 2). Overall, the mark rates observed in the fishery were lower than those predicted by the Fisheries Regulation Assessment Model (FRAM) used by the PFMC. This difference indicated that unmarked fish (comprised of both naturally produced and unmarked hatchery produced fish) made up a larger proportion of the fish encountered in the fishery than was predicted. Whether this was caused by improved stock status of wild fish will not be known until all fishery returns and escapement have been reported.

The total estimated adult coho mortality in the fishery was 62,688 which was comprised of retained catch, hook-and-release mortality, and drop-off mortality. A total of 54,803 adult coho were retained in the fishery, of which 176 were illegally retained unmarked coho (Table 3). Hook-and-release mortality of the unmarked adult coho released was estimated at 3,490. No fin-clipped coho were observed released during the fishery and we assume hook-and-release mortality of fin-clipped coho is negligible. Drop-off mortality was estimated at 4,395 adult coho, of which 1,330 were unmarked (Table 3). Using preseason FRAM assumptions regarding coho distribution and stock composition, we estimated that 17 OCN coho were illegally retained, 284 died from hook-and release, and 128 died after dropping-off the hook for a total of 429 OCN coho mortalities during the fishery (Table 3). This represents 0.8% of the OCN coho preseason estimate of 50,100 adults.

Table 1. Estimated angler effort, fish retained, and fish released with 95% confidence intervals (95% CI) during the recreational selective fishery from Cape Falcon to Humbug Mountain, Oregon, in 2001.

Statistic	Catch Area 3		Catch Area 4		Catch Area 5		Combined Catch Areas	
	Estimate	95% CI	Estimate	95% CI	Estimate	95% CI	Estimate	95% CI
<u>Private Boats</u>								
Angler Days	8,366	716	12,945	1,288	17,462	1,385	38,773	2,022
Coho								
Retained	10,311	773	15,029	1,304	17,486	1,394	42,826	2,058
Released ^{a/}	5,815	730	6,979	735	6,643	678	19,437	1,237
Chinook								
Retained	646	141	665	1,659	4,025	983	5,336	1,933
Released ^{b/}	0	--	0	--	0	--	0	--
<u>Charter Boats</u>								
Angler Days	1,132	86	6,115	161	1,329	61	8,576	192
Coho								
Retained	1,859	27	8,402	75	1,540	22	11,801	83
Released ^{a/}	1,088	107	3,850	232	571	40	5,509	258
Chinook								
Retained	141	0	218	5	474	0	833	16
Released ^{b/}	0	--	0	--	0	--	0	--
<u>Combined Boats</u>								
Angler Days	9,498	721	19,060	1,297	18,791	1,387	47,349	2,031
Coho								
Retained	12,170	773	23,431	1,304	19,026	1,394	54,627	2,058
Released ^{a/}	6,903	738	10,829	770	7,214	679	24,946	1,264
Chinook								
Retained	787	141	883	1,659	4,499	983	6,169	1,933
Released ^{b/}	0	--	0	--	0	--	0	--

^{a/} Coho released are estimated from the mark rates of legal-sized fish collected by observers onboard charter vessels.

^{b/} No legal-sized chinook were observed released onboard charter vessels.

Table 2. Predicted (FRAM) and observed mark (ODFW) rates for the recreational selective fishery from Cape Falcon to Humbug Mountain, Oregon, in 2001.

Source	Catch Area 3		Catch Area 4		Catch Area 5	
	Mark Rate	95% CI	Mark Rate	95% CI	Mark Rate	95% CI
<u>June</u>						
FRAM	85.3%	--	78.8%	--	80.1%	--
ODFW	67.9%	18.4%	66.2%	7.7%	68.2%	10.1%
<u>July</u>						
FRAM	84.4%	--	82.0%	--	82.6%	--
ODFW	62.4%	6.6%	69.5%	4.8%	74.9%	5.4%

Table 3. Sources and estimates of adult coho mortality in the recreational selective fishery from Cape Falcon to Humbug Mountain, Oregon, in 2001.

Statistic	Catch Area 3			Catch Area 4			Catch Area 5			Combined Catch Areas						
	Marked	Unmarked	Total	OCN <i>a/</i>	Marked	Unmarked	Total	OCN <i>a/</i>	Marked	Unmarked	Total	OCN <i>a/</i>				
Coho Retained <i>b/</i>	12,170	30	12,200	1	23,431	55	23,486	4	19,026	91	19,117	12	54,627	176	54,803	17
Coho Released																
Estimated no.	0	6,903	6,903	--	0	10,829	10,829	--	0	7,214	7,214	--	0	24,946	24,946	--
Mortality <i>c/</i>	0	966	966	35	0	1,515	1,515	131	0	1,009	1,009	118	0	3,490	3,490	284
Coho Drop-off <i>d/</i>																
Estimated no.	1,288	718	2,006	--	12,206	5,685	17,891	--	8,421	3,105	11,526	--	21,915	9,508	31,423	--
Mortality	179	100	279	4	1,708	796	2,504	71	1,178	434	1,612	53	3,065	1,330	4,395	128
Total Mortality	12,349	1,096	13,445	40	25,139	2,366	27,505	206	20,204	1,534	21,738	183	57,692	4,996	62,688	429

a/ Oregon Coastal Natural (OCN) coho mortality is a component of the unmarked mortality.

b/ Unmarked coho retained (illegal retention) was estimated using "random" Oregon State Police observations. Random observations exclude any OSP contacts that result from a referral or anonymous tip.

c/ The mortality of coho released was estimated as the estimated number of coho released x the PFMC approved hook-and-release mortality rate of 0.14. No legal-sized coho were observed released.

d/ The number of coho that dropped-off were estimated from onboard observer data. Drop-off mortality was estimated as the estimated drop-off x the PFMC approved hook-and-release mortality rate of 0.14.

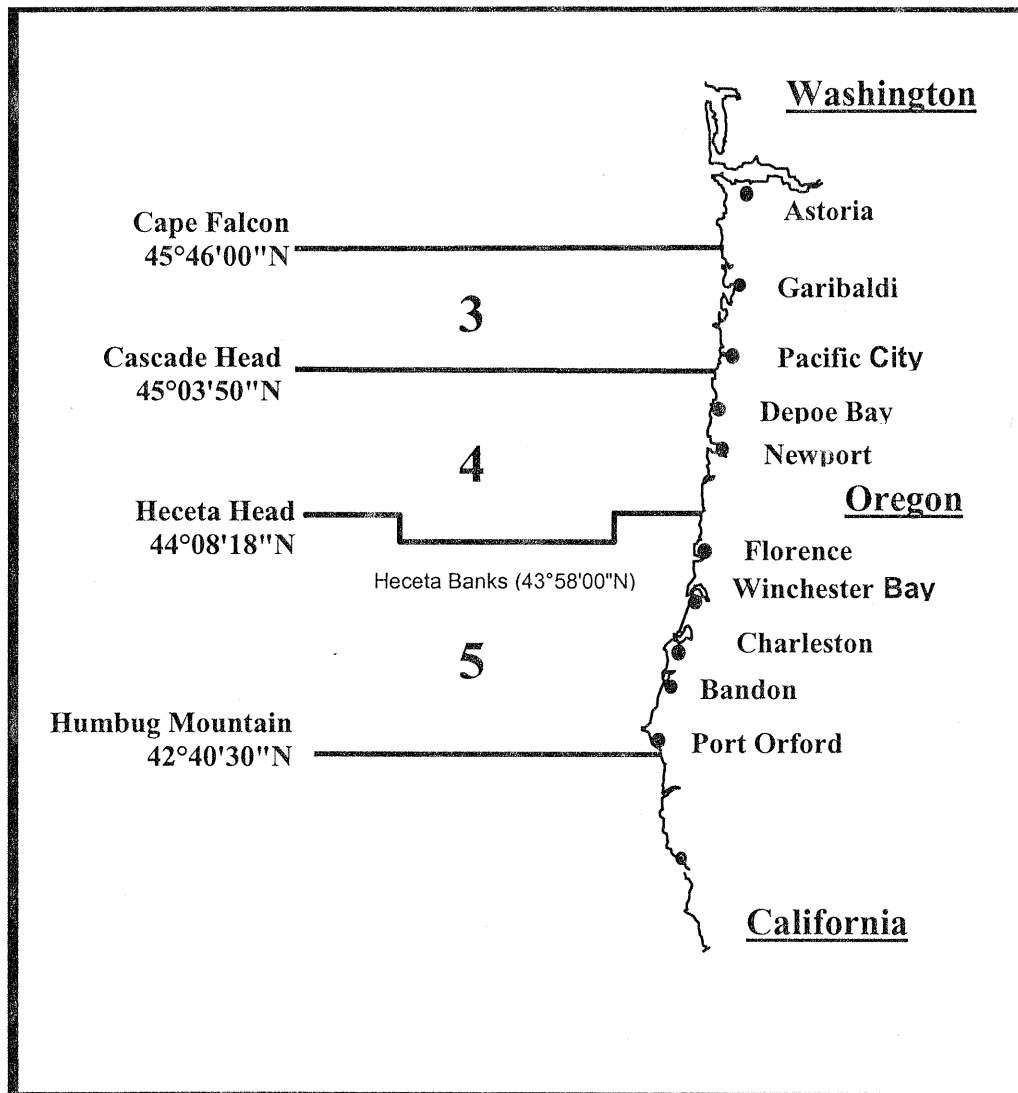


Figure 1. Area of the recreational selective fishery off the Oregon Coast from Cape Falcon to Humbug Mountain with catch areas 3, 4, and 5 used in sampling and monitoring.

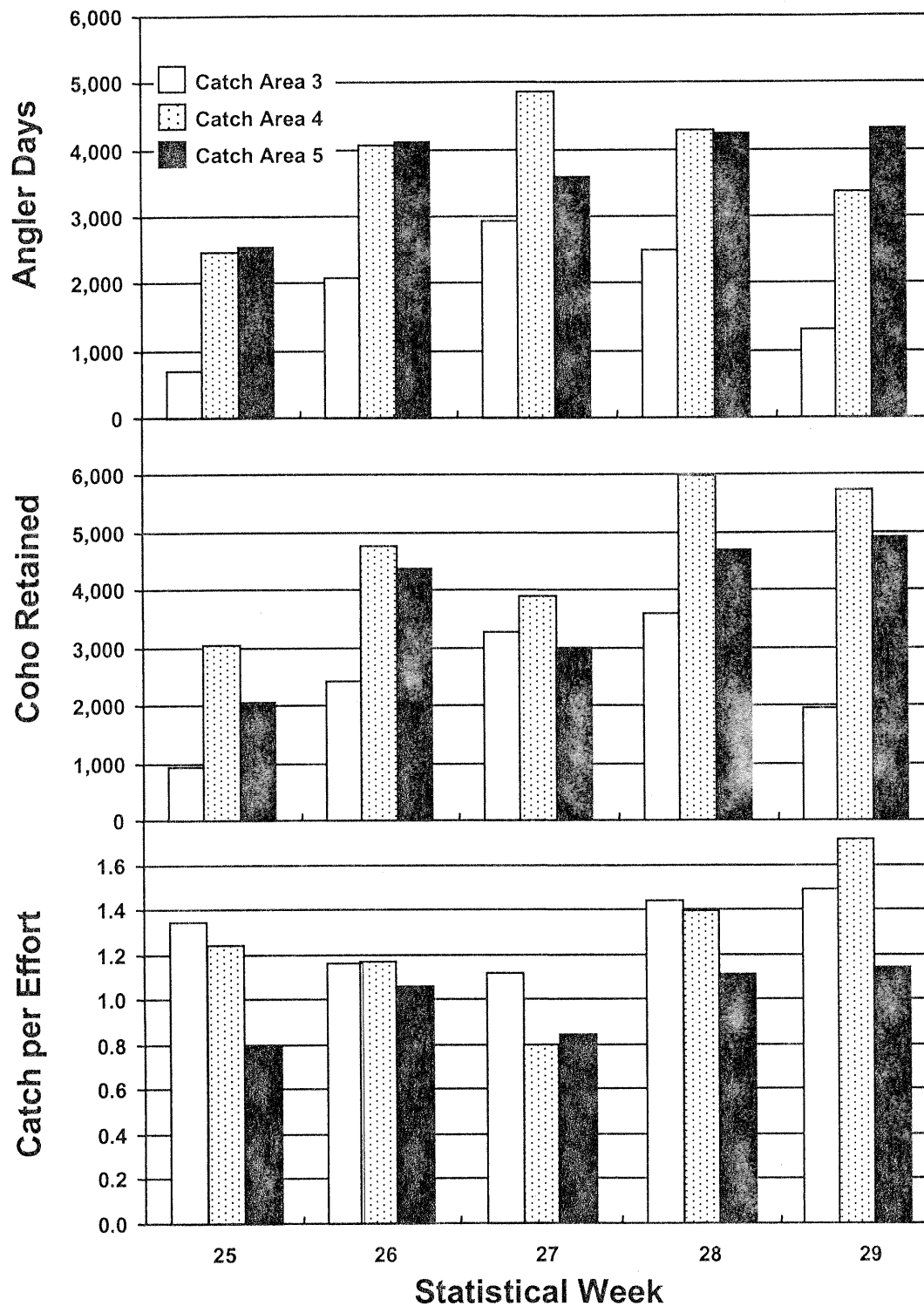


Figure 2. Effort, retained coho, and catch per effort in each statistical week and catch area during the recreational selective fishery from Cape Falcon to Humbug Mountain, Oregon, in 2001. Due to the opening and closing dates of the fishery, statistical weeks 25 and 29 were comprised of 3 and 4 days, respectively.

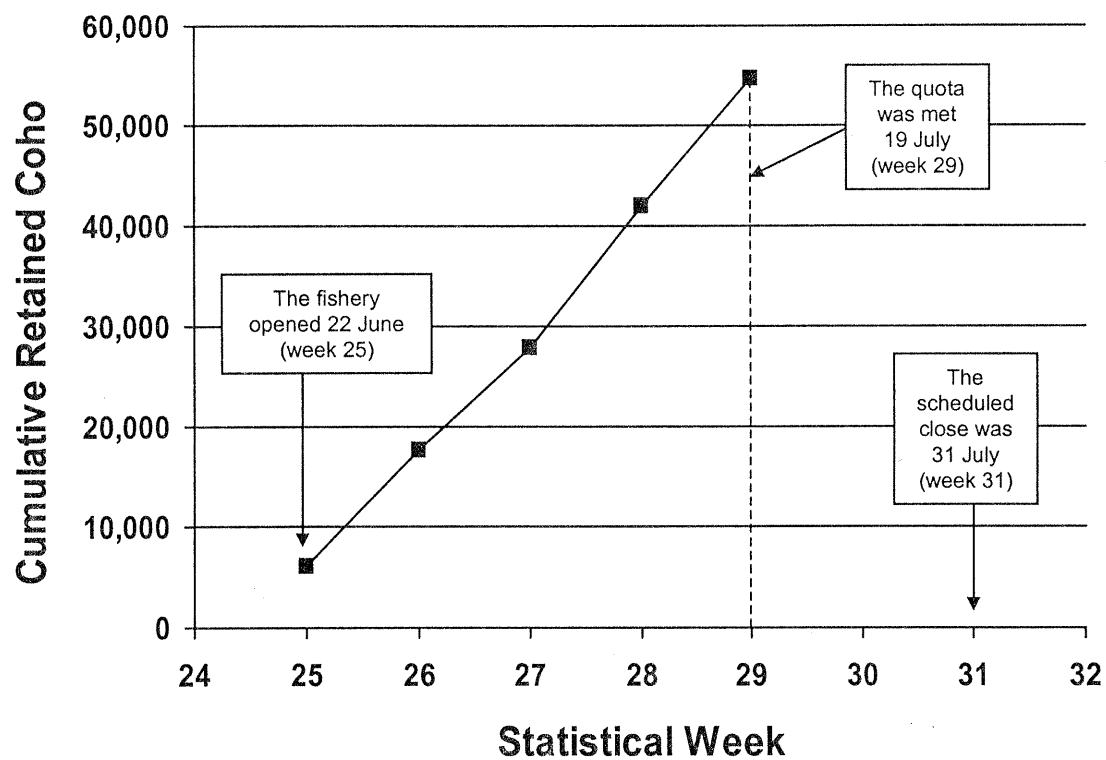
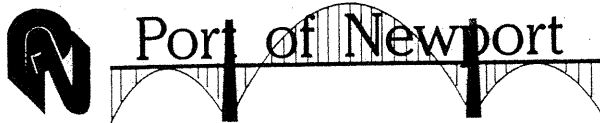


Figure 3. Cumulative coho salmon retained during the recreational selective fishery from Cape Falcon to Humbug Mountain, Oregon, in 2001. Due to the opening and closing dates of the fishery, statistical weeks 25 and 29 were comprised of 3 and 4 days, respectively.



600 S.E. BAY BOULEVARD NEWPORT, OREGON 97365 (541) 265-7758 FAX (541) 265-4235

August 14, 2001

RECEIVED

Mr. David McIsaac, Executive Director
Pacific Fishery Management Council
7700 N.E. Ambassador Place, Suite 200
Portland, OR 97220-1384

AUG 15 2001

PFMC

Dear Mr. McIsaac:

My name is Don Mann, and I am the General Manager of the Port of Newport in Newport, Oregon. I am writing to provide you and your salmon management committee with some information that will provide a snapshot of the financial impact that the recreational ocean coho fishery has had on the Port of Newport directly.

The Port derives revenue from several sources, including our commercial fishing fleet and our building and land leases. However, our recreational sport marina and our RV park are key components of our revenue sources. As you are aware, for the past three years the sport fishery on the Oregon Coast has enjoyed a coho season. Even with a two-day-on, two-day-off season in 1999, and a quota of 15,000 fish, it was wonderful to have the first coho season in nearly eight years. Although the actual catch was only about 6,000, our launch revenue for June and July jumped 39% from the prior year when there had been no coho season. In 2000, the quota was 20,000 fish, with no fishing on Mondays or Fridays. Our launches were up again another 5% over the prior year, and our RV park revenue was up 31% over the same period during the prior year. The biggest impact came this year however, when the season opened on June 22nd with a 55,000 fish quota and closed on July 19th. Our RV park revenue was up 33%, launch ramp was up 77%, and sport moorage revenue was up 60% over the prior year. The Port's related leases were also positively effected, with the fuel dock pumping 27% more gallons than during the prior season, charter boat revenue up 56%, and marine supply store revenue up 61%. Please keep in mind that these statistics are all directly related to port operations and do not take into account the indirect effects throughout the community and the region. The coho fishery has had a tremendous effect on the overall economics of the Newport area.

On a related issue, the impact of recreational fishing activities has finally caught the attention of the Army Corps of Engineers. They are considering using recreational economic data to justify continued operation, maintenance of general navigation and moorage facilities, and identify necessary improvements

to these projects to better meet the growing recreational use needs. A study of those effects is underway on the Oregon Coast this summer. The final results of this study should be of interest to the entire Council.

It is our hope that the Council will take into account the positive effects the recreational coho fishery has on all coastal communities—not just Newport—when you make final decisions about setting the ocean coho season. On behalf of the entire Port Commission, I ask that you consider our input, and we remain ready to discuss this issue with you and the Council at any time.

Thank you in advance for your consideration and response.

Sincerely,



Don Mann
General Manager

CC: Port of Newport Board of Commissioners:

Bob Jacobson

David Jincks

Don Mathews

Mark Fisher

Rob Halverson

Lincoln County Board of Commissioners

The Honorable Mark Jones, Mayor, City of Newport

Ken Armstrong, Oregon Public Ports Association



AUG 31 2001

**Don Lindly
County Commissioner**

Courthouse, Room 110
225 W. Olive Street
Newport, Oregon 97365
(541) 265-4100
FAX (541) 265-4176

August 29, 2001

Mr. Donald O. McIsaac
Executive Director
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220-1384

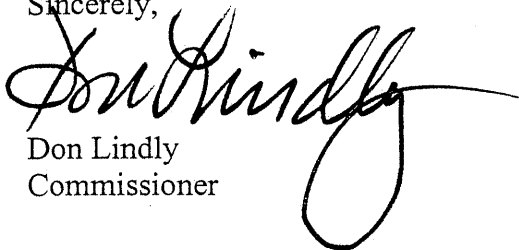
Dear Mr. McIsaac:

The Recreational Coho Salmon Fishery has a significant impact on the economy of our county, beyond the City of Newport.

Recreational marinas, recreational vehicle parks, charter operators, marine supply outlets, restaurants and lodging businesses up and down the coast have all benefited from this important fishery.

With the small quota increases of the past three recreational coho seasons, local businesses have felt a very positive impact. It is our sincere hope that the council will take into account this impact in making decisions about future ocean coho seasons.

Sincerely,



Don Lindly
Commissioner

DL:jd

c: Don Mann, Manager
Port of Newport
BOC Chair Karen L. Gerttula
Commissioner Jean Cowan



UPDATE OF ONGOING FISHERIES

Situation: A summary of the management events for the 2001 salmon season (updated through August 31) is contained in Exhibit F.2.a. Through August 22, there have been 12 inseason management conferences to adjust fisheries. The most recent conference involved transferring 20,000 adipose clipped coho from the North of Cape Falcon, non-Indian commercial troll fishery quota to the Leadbetter Point to Cape Falcon recreational fishery quota.

Mr. Dell Simmons, Chair of the Salmon Technical Team (STT), will provide detailed effort and harvest data for salmon fisheries through the end of August in his report to the Council (Supplemental STT Report F.2.b).

Council Task:

1. Discuss issues relevant to inseason management of salmon fisheries.

Reference Materials:

1. Sequence of Events in Ocean Salmon Fishery Management, January through August 31, 2001 (Exhibit F.2.a, Sequence of Events).
2. Status Report of the 2001 Ocean Salmon Fisheries off Washington, Oregon, and California (Exhibit F.2.b, Supplemental STT Report).
3. Written public comment from Don Mann (Exhibit F.2.d, Public Comment).

PPMC
07/02/12

PACIFIC FISHERY MANAGEMENT COUNCIL

7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

CHAIRMAN
Jim Lone

EXECUTIVE DIRECTOR
Donald O. McIsaac

Telephone: 503-326-6352
Fax: 503-326-6831
www.pcouncil.org

August 20, 2001

Ms. Donna Darm
Acting Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE, BIN C15700
Seattle, WA 98115-0070

Dear Ms. Darm:

This fall the Council will be completing its annual cycle of review of new and changing salmon methodologies to be used for the 2002 season. The models slated for review are as follows:

- The new Klamath Ocean Harvest Model
- The coho cohort analysis project. This project is expected to result in a new data base for the coho Fishery Regulatory Assessment Model.
- Modifications of the chinook FRAM to incorporate selective fisheries for Puget Sound.

Please note that Council Operating Procedure 15 states:

The appropriate management entities are expected to provide background information on procedures and data bases for methodologies undergoing full review, as well as early notification and documentation of anticipated changes in procedures for methodologies not under full review in a particular year. Entities are responsible for ensuring that materials they submit to the SSC and Council are technically sound, clearly documented and identified by author. Documents should receive internal entity review before being sent to the Council. **To provide adequate review time for the SSC, materials must be received in the Council office at least three weeks before scheduled review meetings.** [emphasis added]

At its April meeting, the Council adopted the Scientific and Statistical Committee (SSC) report on salmon methodology reviews for the coming year and encouraged those responsible for the methodologies to submit needed information to the Council in a timely manner this fall.

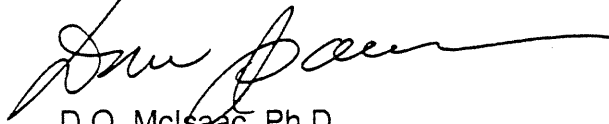
An update on the salmon methodology review process is on the agenda for the September Council meeting. At that time it would be helpful if you could identify any model changes you anticipate, other than those already slated for review. Additionally, for this agenda item please plan on notifying the Council if any of the models slated for review will not be ready on time for the SSC.

Ms. Donna Darm
August 20, 2001
Page 2

We expect the SSC may hold its review meeting as early as mid October, therefore agencies should plan on submitting needed documentation no later than the close of business September 20.

Thanks for your cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "D.O. McIsaac", written over a horizontal line.

D.O. McIsaac, Ph.D.
Executive Director

JLS:kla

Identical letters also sent to: Mr. Phil Anderson
Mr. Burnie Bohn
Mr. LB Boydston
Ms. Donna Darm
Mr. Jim Harp
Ms. Rebecca Lent
Mr. Jerry Mallet

c: Mr. Larry Lavoy
Mr. Pat Patillo
Council Members
Salmon Technical Team
SSC Salmon Subcommittee

UPDATE ON SCIENTIFIC AND STATISTICAL COMMITTEE METHODOLOGY REVIEW

The Scientific and Statistical Committee (SSC) Salmon Subcommittee and the Salmon Technical Team will hold a joint meeting on October 23 and 24, 2001 to review the Klamath Ocean Harvest Model (KOHM) and the coho Fishery Regulation Assessment Model (FRAM) recalibrated with data from the coho cohort analysis project. We will not review the chinook FRAM, because no changes were submitted. The SSC requests that authors preparing the KOHM and coho cohort analysis provide all documentation to the Council and directly to the reviewers by October 9, 2001.

The recalibrated coho FRAM and revised KOHM may be ready for use to set the 2002 seasons. If these models are used in 2002, they must be approved at the November 2001 Council meeting.

PFMC
09/11/01

UPDATE ON SCIENTIFIC AND STATISTICAL COMMITTEE METHODOLOGY REVIEW

Situation: Each year, the Scientific and Statistical Committee (SSC) completes a methodology review to help assure that new or significantly modified methodologies employed to estimate impacts of the Council's salmon management use the best available science. This review is preparatory to the Council's adoption, at the November meeting, of all proposed changes to be implemented in the coming season, or, in certain limited cases, of providing directions for handling any unresolved methodology problems prior to the formulation of salmon management options the following March. Because there is insufficient time to review new or modified methods at the March meeting, the Council may reject their use if they have not been approved the preceding November.

At its April 2001 meeting, the Council established the priority of methodologies to be reviewed by the SSC. These priorities are identified in a reminder letter sent out to the responsible agencies in August 2001 (Attachment 1). The SSC Salmon subcommittee will likely meet in mid- to late-October to complete its review.

Council Guidance:

1. Determine whether or not it is likely that methodologies scheduled for review will be ready on time for the SSC salmon subcommittee meeting.
2. Encourage the agencies and tribes to identify all proposed methodology changes that may affect the 2001 salmon season in order to allow Council consideration no later than the October/November Council meeting.

Reference Materials:

1. Letter to the agencies from Dr. Donald O. McIsaac dated August 15, 2001 (Exhibit F.3.a, Attachment 1)

PFMC
8/14/01

EXCERPT FROM THE PACIFIC COAST SALMON PLAN (2000)

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 rebuilding 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.

PPMC
08/16/01

QUEETS RIVER COHO STATUS REVIEW

Situation: The failure to achieve spawning escapement goals for three consecutive years triggers an overfishing concern under Amendment 14 to the *Pacific Coast Salmon Plan* (implemented September 2000). The Salmon Technical Team (STT) is responsible for determining the status of such a stock and developing recommendations for management measures to ensure the stock is not overfished. The Habitat Steering Group (HSG) is responsible for reviewing the status of essential fish habitat (EFH) for the stock and making recommendations for any needed restoration and enhancement measures. Attachment 1 contains an excerpt from Amendment 14 which details the overfishing concern procedures.

Natural spawning escapements of Queets coho did not fall within the range established as the maximum sustainable yield goal in Amendment 14 (5,800-14,500) for 1997-1999. In addition, the preseason projection for 2000 indicated the stock would again fall short of the established goal. With that information at its June 2000 meeting, the Council requested Washington Department of Fish and Wildlife and the Quinault Indian Nation to take the lead in assembling pertinent data to help the STT complete an assessment of Queets coho by September 2001.

Since the November Council meeting, estimates for the 2000 spawning escapement of Queets coho and abundance projections for 2001 have become available. The current estimates demonstrate that the 2000 return was greater than expected and was within the goal range (8,100 wild and supplemental adults). The 2001 return is expected to be sufficient to also meet the spawning escapement goal this year.

As requested by the Council, the STT has proceeded with developing a draft stock assessment which is currently under review by the Washington co-managers. The STT will brief the Council on the status of the report and the schedule for its expected completion.

Council Task: Provide comments and guidance as necessary to direct the completion of the STT stock assessment.

Reference Materials:

1. Excerpt from the *Pacific Coast Salmon Plan* (2000) (Exhibit F.4, Attachment 1).

PPMC
08/28/01