

Proposal for Refinement of the Pacific Fishery Management Council's Salmon Preseason Schedule

Prepared by:

Sustainable Fisheries Division
West Coast Region
National Marine Fisheries Service

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List of Acronyms and Abbreviations

ACL	Annual Catch Limit
CFR	Code of Federal Regulations
COP	Council Operating Procedure
Council	Pacific Fishery Management Council
DOC	Department of Commerce
ESA	Endangered Species Act
FMP	Fishery Management Plan
FR	Federal Register
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OFR	Office of the Federal Register
SDC	Status Determination Criteria
STT	Salmon Technical Team
WCR	NMFS West Coast Region

Salmon Management Scheduling

Summary

The Pacific Fishery Management Council's (Council) current schedule for recommending annual salmon management measures for the ocean salmon fishery does not allow sufficient time for the National Marine Fisheries Service (NMFS) to approve the management measures and implement them through rulemaking prior to the start of fishing. The Council cannot develop the annual management measures earlier in the year, due to the need to consider impacts from fisheries in Alaska and British Columbia in shaping Council fisheries to meet conservation objectives on southern Chinook and coho stocks. This information is not generally available until mid to late March. Many Council-managed fisheries must start the fishing season May 1 due to the migration timing of Chinook stocks and the needs of the co-managers and fishing communities. NMFS West Coast Region (WCR) has developed a possible solution to the problem: scheduling fisheries opening prior to May 16 under the previous year's management measures, as we currently do for salmon fisheries occurring in March and April. This would not change the way state, tribal, and federal managers manage their fisheries, but would provide a mechanism for the Council and NMFS to fulfill their regulatory obligations without interrupting the long-established schedule for West Coast salmon fisheries.

1.0 Introduction

Ocean salmon fisheries off Washington, Oregon, and California are managed under the Council's Pacific Coast Salmon Fishery Management Plan (FMP) and can occur from March through November in any given year, although the annual regulatory season is May 1 through April 30 of the following year. The Council's FMP includes a preseason schedule¹ for setting annual management measures for these fisheries. Following the FMP's schedule, the Council adopts a range of alternatives for annual salmon management measures at the March Council meeting and adopts the final preferred alternative at the April Council meeting. The FMP's schedule also calls for NMFS to publish a rule, with the Secretary of Commerce's decision on approval of the Council's recommendation, in the Federal Register during the first week of May. The annual management measures establish the current year's salmon fishing season and include any fisheries that are anticipated prior to May 1 of the next year (pre-May fisheries). In order to ensure annual measures are consistent with stock abundance forecasts and allowable fishery impacts, pre-May fisheries are subject to modification through inseason action prior to May 1 of the year in which they occur, often at the March or April Council meeting.

In order to approve and implement fisheries that start on May 1, NMFS' final rule approving the Council fishing regime must file with the Office of the Federal Register (OFR) by May 1. Meeting this schedule is challenging due to the amount of work that must be accomplished to complete regulatory and internal clearance requirements in the short time between the Council's transmittal of its annual recommendation in mid- to late April and May 1. NMFS notified the Council at its April 2019 meeting

¹ See *Chapter 9 – Schedule and Procedures for Preseason Modification of Regulations*, in Pacific Fishery Management Council (PFMC). 2016. Pacific Coast Salmon Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, as revised through Amendment 19. 90 p.

that we would be unable to complete the rulemaking by May 1 due to insufficient time to prepare the rulemaking package between the end of the Council meeting and May 1. NMFS also requested that the Council seek a long-term solution to the recurring timing issues for implementing salmon issues.

2.0 Background

The first salmon FMP (42 FR 21415, April 26, 1977) and the first Council-developed salmon management measures (42 FR 21412, April 26, 1977) were implemented in 1977. The May 1 season start date for some salmon fisheries appeared in this first FMP and in the first management measures, and in the second FMP (43 FR29791, July 11, 1978). From 1979 to 1983, the Council and NMFS amended the FMP annually to establish management measures under various schedules; annual management measures were often implemented as “emergency regulations” during this time. The current schedule for setting the salmon season, including the March and April Council meeting schedule, was implemented under the 1984 FMP Framework Amendment (49 FR 43679, October 31, 1984).²

2.1 Challenges Presented by the Current Schedule

NMFS is finding it increasingly challenging to meet our regulatory and clearance requirements within the time constraints of the FMP’s preseason schedule. The current preseason schedule is based around the availability of information to:

- (1) analyze the impacts and performance of the previous year’s fisheries (Annual Review of Ocean Salmon Fisheries, publishes in February),
- (2) develop stock forecasts for the coming season (Preseason Report I, publishes in early March),
- (3) develop alternatives for salmon management for public review (Preseason Report II, publishes after the March Council meeting), and
- (4) develop the final preferred alternative taking into account expected fishery impacts in Alaskan and Canadian fisheries to stocks that are managed under both the Pacific Salmon Treaty and the FMP (Preseason Report III, publishes after the April Council meeting).

The Council’s meeting schedule floats, somewhat, on the calendar. In recent years, 2012-2019, the April meeting has ended as early as April 6 and as late as April 16. The Council has transmitted its proposed regulations for the annual salmon fisheries to NMFS, per Magnuson-Stevens Fishery Conservation and Management Act (MSA) § 304(b)(1), between 8 and 12 days after the April Council meeting, with transmittal dates ranging from April 18 to April 24. What does not change year-to-year is the scheduled May 1 implementation date, which has occurred from 7 to 13 days after the Council’s transmittal date in recent years (see table below), and is the time provided in the schedule for NMFS to approve and implement the annual management measures through publication of a final rule in the Federal Register.

² The preseason salmon management process is also documented in Council Operating Procedure (COP) #10, which was approved by the Council in 1988 and has been revised four times, most recently in 2013. COP #10 is not identical to Chapter 9 of the FMP, but is largely consistent with the schedule in the FMP for adopting annual management measures: <https://www.pcouncil.org/wp-content/uploads/cop10.pdf>

Table 1. Recent timelines for implementing ocean salmon annual management measures recommended by the Pacific Fishery Management Council.

Year	Number of days from end of April meeting to May 1	Council Transmittal of Proposed Regulations		
		Number of days after April meeting	Number of days prior to May 1	Number of days prior to Federal Register publication
2012	25	12	13	14
2013	20	8	12	14
2014	21	11	10	10
2015	15	8	7	11
2016	17	8	9	10
2017	20	9	11	8
2018	20	8	12	12
2019*	15	8	7	12
Average	19	9	10	11

*In 2019, NMFS was not able to approve the Council’s regulations by May 1 and they were effective (and published) on May 6.

Approving and implementing the annual salmon management measures before the scheduled opening of the fisheries (e.g., May 1) is always a high priority for NMFS, NOAA General Counsel, and Department of Commerce (DOC) Office of General Counsel. Through extraordinary effort at all levels to expedite the annual salmon rule, NMFS has averaged 11 days to publish the annual salmon rule after Council transmittal (2012-2019). When compared with an average of 66 days from Council transmittal to publish proposed rules for other salmon rulemakings within that same time period (Table 2), it is clear how unconventional the time to publish the annual salmon management rule has become. NMFS is not suggesting that we need 66 days to approve and publish the annual management measures, rather we provide these examples to provide context to the difficulty of the FMP preseason schedule.

Table 2. Comparison of time to publish the annual salmon management rule versus conventional proposed rules.

Rule	Time to publish after Council transmittal
New reference points for three stocks – proposed rule (2015)	54 days
Harvest Control Rule for Sacramento River Winter-run Chinook salmon – proposed rule (2018)	78 days
Average of the above	66 days
Average for Annual Salmon Management Rule (2012-2019)	11 days

3.0 Transmittal and Publication Schedule

In recent years, as described above, NMFS expedited the annual salmon management rule in an average of 11 days after Council transmittal. However, this process has strained resources beyond what can be sustained; in short, we have been fortunate thus far to meet the May 1 deadline prior to 2019. For a variety of reasons, it is taking more time to approve and implement the Council’s proposed regulations than it has in the past. NMFS estimates that we need 24 days to properly prepare the annual salmon

management rule package and ensure the rule will be in effect on a given date. The WCR and General Counsel Northwest must review and clear the National Environmental Policy Act (NEPA) document, final rule, and other documentation for NEPA and MSA sufficiency, legal compliance, enforcement review, and roll-out planning; we can expedite this review in 7 days. The WCR then sends the package to NMFS Sustainable Fisheries for legal and policy review by NOAA’s Assistant Administrator for Fisheries, DOC Office of General Counsel, NOAA General Counsel (if required), and DOC Policy; this process requires 14 days. NMFS then delivers the final rule to the OFR, where it will take 3-4 days to review, file, and become effective. All of these steps add up to 24 days.

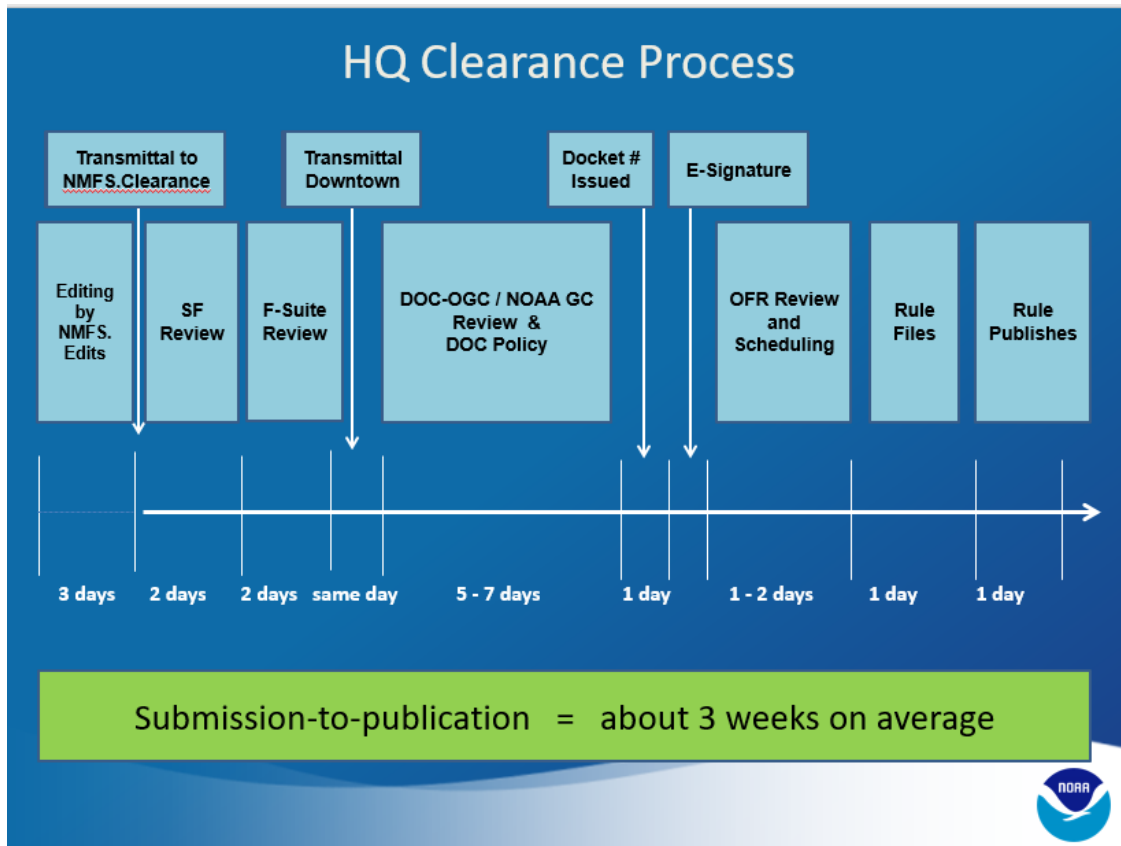


Figure 1. Diagram of the rule clearance process timeline for NOAA’s National Marine Fisheries Service.

Meeting this 24-day requirement will require an adjustment to either the Council schedule or the start of the salmon regulatory year, or both. The table below provides examples of the transmittal dates NMFS would require to meet specific OFR filing dates (i.e., the date the salmon rule can be made effective).

Table 3. Examples of hypothetical dates for Council transmittal of recommendation and the resulting filing date, based on a 24-day schedule for NMFS.

Hypothetical Council Transmittal Date	Anticipated OFR Filing Date
April 7	May 1
April 12	May 6
April 17	May 11
April 22*	May 15

*Since 2012, Council transmittal has occurred on or before April 22 in all years except 2015 and 2019.

4.0 Possible Solution

The schedule outlined in Table 3 does not provide enough time for the regulatory process under the current preseason schedule. A similar problem with the limited fisheries that occur prior to May 1 was resolved by setting those pre-May fisheries in the prior year’s rule, an approach that has been in place since at least 1994 (59 FR *no page number available*, May 4, 1994). Because salmon fisheries are closed unless open (50 CFR 660.405(b))³, including language for the pre-May fisheries, essentially as a placeholder, allows the Council flexibility to consider those fisheries at the following March Council meeting and determine if fishery impacts can be supported. Impacts from pre-May fisheries are not calculated in the year in which the placeholder language is included in the rule, but rather in the year the fishery would occur, and any reductions in those fisheries that may be needed are implemented as inseason action. The WCR is proposing a possible two-part solution to the current scheduling problem.

4.1 Part 1: Expand upon the pre-May concept

While some ocean salmon fisheries (e.g., commercial troll north of Cape Falcon, Oregon) open annually on May 1, other salmon fisheries open as early as mid-March; however, these pre-May fisheries constitute a relatively small portion of the annual catch (less than five percent) and effort in the Council’s salmon fisheries. As mentioned above, pre-May fisheries are set the previous year, with the caveat that they can be adjusted (reduced) through inseason action at the March Council meeting in response to new stock forecasts and anticipated fishery effort. In the past decade (2010-2019), the Council and NMFS have taken inseason action every March and/or April to adjust the pre-May fisheries to remain consistent with conservation objectives.

The WCR proposes expanding the pre-May concept to encompass early May fisheries, as well. Under this plan, fisheries opening earlier than May 16 would be set in the previous year’s rule with the caveat that they could be modified by inseason action at the March or April Council meeting of the year those fisheries would occur. As is current practice with the pre-May fisheries, the STT would not calculate fishery impacts until the March and April Council meetings of the year the early May fisheries are planned to occur, when projections of abundance and anticipated fishing effort would be available. Inseason action would be taken prior to May 1 to make any adjustments necessary (e.g., dates, landing limits) prior to implementing the “early May” fisheries (this would not, however, prevent additional

³ Code of Federal Regulations. 50 CFR 660.405(b): The fishery management area is closed to salmon fishing except as opened by this subpart or superseding regulations or notices.

inseason actions from being taken during the season as needed). These changes would be reflected in the annual rule, as is currently done for pre-May fisheries, as well as published as inseason action.

For example, pre-May fisheries for 2020 that were announced in the 2019 rule were not analyzed for impacts during the 2019 preseason process, but will be analyzed in March 2020 to determine if these pre-May fisheries should proceed as announced or if they should be modified or cancelled through inseason action.

Example of language for a 2020 pre-May fishery announced in the 2019 rule:

In 2020, the season will open March 15 for all salmon except coho. Chinook minimum size limit of 28 inches total length. Gear restrictions same as in 2019. This opening could be modified following Council review at its March 2020 meeting.

The WCR is recommending defining “early May” fisheries as those occurring May 1 through May 15, as fishery impacts increase substantially later in May.

4.2 Part 2: Set a Council Transmittal Deadline

The WCR further proposes that the Council amend the preseason schedule in Chapter 9 of the FMP to set a date certain by which the Council will transmit their annual recommendation to allow NMFS 24 days to meet the necessary filing date (see, for example, Table 3 above). As mentioned above in section 2.1, Council transmittal has occurred between April 18 and April 24 in recent years (2012-2019). An implementation date of May 15 would require Council transmittal no later than April 22 (see Table 3, above). The Council has generally been able to transmit by April 22; in recent years only 2015 and 2019 were transmitted later (April 24). Therefore, the Council may have to consider the timing of the April Council meetings or the timing of final action at the April Council meetings to meet the required transmittal date for the desired implementation date; e.g., transmittal by April 22 would correspond to an implementation date (i.e., effective date for the final rule) of May 15. Again, see Table 3, above.

4.3 Which fisheries would be affected

Most salmon fisheries in the Commercial, Recreational, and Treaty Indian sectors have had openings in early May in the past decade. The table below assumes a definition of “early May” as May 1 through 15.

Table 4. Council-area salmon fisheries open days in early May (i.e., between May 1 and May 15) in the past decade (2010-2019) and those which commonly have pre-May fisheries.

Fishery	Area	Years open in early May	Pre-May fisheries
Non-Indian Commercial Troll	U.S./Canada border to Cape Falcon	All	No
	Cape Falcon to Humbug Mountain ¹	All	Yes
	Humbug Mountain to Oregon/California border	All, except 2017	Yes
	Oregon/California border to Humboldt South Jetty	2013, 2018	No
	Humboldt South Jetty to Horse Mountain	None (closed)	No
	Horse Mountain to Point Arena	2015	Yes
	Point Arena to Pigeon Point	2011-2016	No
	Pigeon Point to Point Sur ²	All, except 2010	No
Recreational	Point Sur to U.S./Mexico border ²	All, except 2010	No
	U.S./Canada border to Cape Falcon	None	No
	Cape Falcon to Humbug Mountain	All, except 2010	Yes
	Humbug Mountain to Oregon/California border	2011, 2012, 2013, 2014	No
	Oregon/California border to Horse Mountain	2011, 2012, 2013, 2014	No
	Horse Mountain to Point Arena	2010-2012, 2014, 2016, 2017	Yes
	Point Arena to Pigeon Point	All, except 2017-2019	Yes
	Pigeon Point to Point Sur ²	All	Yes
Treaty Indian	Point Sur to U.S./Mexico border ²	All	Yes
	Washington	All	

¹In 2017: Cape Falcon to Florence South Jetty.

²In some years, the areas from Pigeon Point to Point Sur and from Point Sur to the U.S./Mexico border are combined into one management area.

This change would only apply to approximately two weeks out of several months of fishing (depending on the date we decide to use to demarcate “early May”). Therefore, we do not expect this early-May placeholder to encompass a large percentage of annual catch. The STT estimates that, on average, ten percent of overall annual Council-area salmon catch (all species and sectors) occurs from March through mid-May (see Appendix B).

5.0 Schedule and Tasks to Change the Effective Date

Future April Council meetings have been scheduled through 2022. These dates do not provide NMFS with the needed 24 days to file a final rule with the OFR by May 1, including in 2020 (see Table 5, below). NMFS recommends working toward a solution as soon as possible. NMFS recommends amending the FMP to establish a new schedule. NMFS also recommends that the Council consider avoiding scheduling April meetings that lead to a transmittal date that does not provide NMFS with 24 days to approve the Council’s proposed regulations and file the final rule with the OFR (see Tables 3 and 5) and set a date certain for transmittal.

Table 5. Future April meetings that have been scheduled.

Meeting Date	Anticipated Council Transmittal (assume 9 days)	Days from Transmittal to May 1	Days from Transmittal to May 15
April 3-10, 2020	April 19, 2020	12	26
April 6-13, 2021	April 22, 2021	9	23
April 6-13, 2022	April 22, 2022	9	23

5.1 FMP Amendment

Any modification of the preseason schedule would require an amendment of the FMP. This should not, however, be a factor in the decision to modify the preseason schedule. The FMP would also benefit from a new amendment to address issues and changes that have arisen in recent years, for example:

- new status determination criteria (SDC) that were adopted in 2015, including a new annual catch limit (ACL) (80 FR 19564),
- coho salmon allocation issues that were tabled from Amendment 17, and
- revision of north of Cape Falcon allocation language to allow flexibility and reduce reliance on emergency rules.

5.1.1 Timeline for an Amendment

Once the Council decides to amend an FMP, the process involves three Council meetings, meetings do not have to be consecutive, to develop and adopt the amendment.⁴ Therefore, it is possible to complete an amendment within a year; however, an 18-month schedule might be more reasonable. Given the requirement of three Council meetings to adopt an FMP amendment and the associated NEPA and rulemaking requirements, an FMP amendment to the preseason schedule would not be in place for 2020.

5.1.2 How to address 2020?

Assuming it is not practicable to complete an FMP amendment in time for the 2020 management measures, what options are available to us?

5.2 Council Operating Procedures

Council Operating Procedure #10 details the Preseason Salmon Management Process. This would have to be updated.

5.3 Council Meeting Schedule and Agenda for April

The Council will have to consider out-year planning of April meetings in tandem with an amended preseason schedule to satisfy NMFS' 24-day requirement post-transmittal.

⁴ Council Operating Procedure #11 Plan Amendment Cycles describes the Council's process for amending an FMP: <https://www.pcouncil.org/wp-content/uploads/cop11.pdf>.

6.0 Issues Raised

6.1 Quota fisheries

The Council would likely have to develop a protocol or possibly amend inseason management procedures in section 10.2(1) of the FMP to address how quota fisheries would be addressed under this proposal.

Example of possible language in the annual management measures:

Hypothetical example of language for setting early-May fisheries:

In 2021, Commercial salmon fisheries north of Cape Falcon will open May 1, under a quota that is set at the April 2021 Council meeting to keep fishery impacts within the requirements of the FMP and the Endangered Species Act. Chinook minimum size limit, landing, and gear restrictions the same as in 2020. This opening could be modified following Council review at its April 2021 meeting.

6.2 Analysis of impacts on ESA-listed species

Analysis of the impacts of fisheries regimes on ESA-listed species, including salmon stocks, will continue to be conducted as it has been at the March and April Council meetings, with results published in Preseason Reports II and III. Any adjustment to pre-May and early-May fisheries would be done through inseason action at the March or April Council meetings to ensure fisheries meet the requirements of the ESA and the FMP. There would, essentially, be no change in how fisheries are analyzed.

6.3 Management of inside/outside fisheries

Management of these fisheries would remain, as it has been, within the realm of the co-managers. This proposal would not change how these fisheries are managed, it only provides a regulatory placeholder so traditional May 1 fisheries can proceed as scheduled upon agreement by the co-managers.

7.0 Conclusion

The current preseason schedule in the Salmon FMP does not allow sufficient time for NMFS to authorize the Council's annual ocean salmon regulations. Specifically, NMFS requires 24 days from the date the Council transmits its proposed regulations for annual salmon fisheries to the date the regulations need to be effective in order to provide certainty that the regulations will be in place at the start of the season and avoid what occurred in 2019. NMFS has proposed a possible solution to this scheduling issue that would, essentially, extend the pre-May placeholder strategy into the middle of May. This schedule change would require an FMP amendment to be developed and adopted by the Council over three Council meetings, plus the 95-day amendment approval process through notice-and-comment rulemaking.

If the Council adopts this strategy, and if we move the effective date to May 15, the final rule for annual management measures developed subsequent to the FMP amendment would have to file with the OFR by May 15. To meet a May 15 filing date, the Council would have to transmit its annual proposed regulations by April 22 each year, this could affect the Council meeting schedule or the agenda for taking final action at the April Council meeting in some years.

Because it is not realistic to amend the FMP in time for 2020, NMFS will work with the Council to consider what options are possible for the 2020 ocean salmon management measures.

Appendix A. Proposal to Modify the Schedule under Amendment 17

In 2012, the Council considered modifying the schedule for April Council meetings and the start of the salmon regulatory year as part of a suite of actions proposed for FMP Amendment 17. The proposal would have, beginning in 2014, moved the April Council meeting from the first or second week of April to the third full week in April and changed the start of the salmon regulatory year from May 1 to May 15 (fisheries for May 1-14 would be handled as the pre-May fisheries currently are). This proposal was presented to the states of Washington, Oregon, California, and Idaho in a letter from NMFS (Turner 2012¹). The purpose of this proposal was twofold:

- (1) to accommodate the North of Falcon process, which cannot be finalized before the catch ceilings for northern fisheries in Alaska and Canada are determined, and
- (2) to provide more time for NMFS to complete the regulatory process to approve annual salmon management measures and file the rule with the OFR.

At the September 2012 Council meeting, the Council considered the suite of actions being proposed for Amendment 17. The states of Washington and Oregon did not support the schedule change proposal, citing difficulty in revising the states' schedules for establishing and publishing regulations (PFMC 2012²). The Council voted unanimously to move forward with the suite of actions for Amendment 17, minus the schedule change proposal.

¹ Turner, R. 2012. Letter from Bob Turner, NMFS to the Fish and Wildlife Directors for Washington, Oregon, California, and Idaho, dated June 7, 2012, advising them of a proposed schedule change for salmon management and inquiring as to whether this change would impact the states' ability to develop and implement conforming regulations

² PFMC. 2012. Minutes of the 215th Session of the Pacific Fishery Management Council, September 14-18, 2012. http://www.pcouncil.org/wp-content/uploads/FINAL_June_2012_Minutes.pdf

Appendix B: Fishery Impacts prior to mid-May

Currently, pre-May fisheries harvest under five percent of total annual salmon catch. The STT has reviewed the past eight years of catch data, and determined that an average of ten percent of total catch occurred prior to mid-May, including pre-May catch (catch in commercial, recreational, and treaty tribal fisheries).

Table B-1. Percentage of annual catch that occur prior to mid-May (2011-2018).

Year	Salmon catch prior to mid-May (number of fish)	Annual salmon catch (number of fish)	Percent of annual salmon catch by mid-May
2011	26,724	320,835	8%
2012	79,107	645,825	12%
2013	69,537	792,659	9%
2014	111,198	915,675	12%
2015	57,569	527,526	11%
2016	28,050	221,577	13%
2017	19,777	281,321	7%
2018	11,517	326,070	4%
Average for 2011-2018:			10%