UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sustainable Fisheries Division F/NWR2
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Seattle, WA 98115-0070

MAR 4 2005

TO: D. Robert Lohn,
Regional Administrator

FROM: Steve Freese, Steve Freese
Acting Assistant Regional Administrator

SUBJECT: A joint tribal and state Puget Sound chinook salmon harvest resource management plan submitted under Limit 6 of a section 4(d) rule of the Endangered Species Act (ESA) – DECISION MEMORANDUM.

I request your concurrence with our determination on the Puget Sound Chinook Harvest Resource Management Plan.

BACKGROUND

On March 18, 2004, the Puget Sound Treaty Tribes and the Washington Department of Fish and Wildlife (WDFW) provided a jointly developed resource management plan to NMFS, Northwest Regional Office. The resource management plan, titled the "Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component," dated March 1, 2004 (hereafter referred to as the RMP), provides the framework within which the tribal and state jurisdictions would jointly manage all salmon and gillnet steelhead fisheries that may impact listed chinook salmon within the greater Puget Sound area. The PSTT and the WDFW (co-managers) propose that the resource management plan be in effect from May 1, 2004, through April 30, 2010[1]. We evaluated the RMP pursuant to the protective regulations promulgated for Puget Sound chinook salmon under Limit 6 of a section 4(d) rule of the Endangered Species Act (ESA) (hereafter referred to as the ESA 4(d) Rule). The ESA 4(d) Rule provides limits on the application of the take prohibitions, i.e., take prohibitions would not apply to the plans and activities set out in the rule if those plans and activities adequately address the criteria outlined in the ESA 4(d) Rule.

The RMP provides a framework for fisheries management measures affecting 23 chinook salmon populations. Twenty-two populations are within the Puget Sound Chinook Salmon ESU, and one population (the Hoko River) is located in the western portion of Strait of Juan de Fuca. The

[1] A biological opinion issued by NMFS on June 10, 2004 is effective through April 30, 2005. Therefore, our determination of the RMP under the ESA 4(d) Rule will only address May 1, 2005 to April 30, 2010 of the proposed duration of the co-managers' RMP for Puget Sound fisheries potentially affecting listed Puget Sound chinook salmon.

populations within the ESU are consistent with those preliminarily defined by the Puget Sound Technical Recovery Team (TRT). For harvest management purposes, the RMP distributes the 23 populations among the 15 management units.

The RMP proposes the implementation of limits to the cumulative directed and incidental fishery-related mortality to each Puget Sound chinook salmon population or management unit. The RMP's limits to the cumulative fishery-related mortality are expressed as: (1) a rebuilding exploitation rate; (2) an upper management threshold; (3) a low abundance threshold; and (4) a critical exploitation rate ceiling. The RMP also contains a comprehensive monitoring and evaluation plan, which will allow for the assessment of: fishing-related impacts on hatchery and naturally spawning chinook salmon populations; the abundance of hatchery and naturally spawning fish for each of the identified management units; the effectiveness of the fishing regimes and general approach; and the regulatory compliance. This information will be used to assess whether impacts on listed fish are as predicted pre-season and as anticipated in our evaluation. In addition, information from the monitoring programs will eventually be used to develop rebuilding exploitation rate objectives for those management units where data is currently limited.

A notice was published in the *Federal Register* announcing the availability of the Proposed Evaluation and Pending Determination on the RMP for public review and comment on April 15, 2004 (69 FR 19975) for 30 days. Three commenters provided comments during the public comment period. We reviewed the comments received and discussed the substantive issues with the co-managers. Several of the comments were addressed and reflected in our final Evaluation and Recommended Determination, but no changes were required of the RMP. Attachment 1 summarizes the public comments received and our responses.

CONCLUSIONS

In conducting our evaluation (Attachment 1) and resultant determination for the RMP, we took into account (1) the criteria outlined in the ESA 4(d) Rule; and, (2) federal trust responsibilities to treaty Indian tribes. In assessing the biological criteria of the 4(d) Rule, we considered the recommendations of the TRT such as the TRT's preliminary recommendation that any ESU-wide recovery scenario should include at least two to four viable chinook salmon populations in each of five geographic regions within Puget Sound, depending on the historical biological characteristics and acceptable risk levels for populations within each region.

Based on the analysis presented in the attached Evaluation and Recommended Determination of a Resource Management Plan, we found that the RMP's management objectives, in combination with other ongoing habitat and hatchery efforts, would provide adequate protection for each of the five regions of the ESU and that the RMP's addressed the criteria outline in the ESA 4(d) Rule. Therefore, we concluded that implementation of the RMP from May 1, 2005 through April 2010 would not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU in the wild.

As required in section (b)(6)(v) of the ESA 4(d) Rule, on a regular basis, we will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then we will identify to the co-managers ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, we will publish notification in the Federal Register announcing our intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which we will make a final determination whether to withdraw the limit so that take prohibitions would then apply to the RMP. In reconsidering our determination, we recognize the co-managers' adaptive management process outlined in the RMP. Consistent with an adaptive management approach, a change in the exploitation rate or rates proposed in the RMP will not be considered grounds to re-initiate this consultation as long as the change in the exploitation rate or rates are within the risk criteria we used in our evaluation. The risk criteria are those we used to derive the rebuilding exploitation rates (e.g., Did the percentage of escapements less than the critical threshold value increase by less than five percentage points relative to the no-fishing baseline *and either* (b) Does the escapement at the end of the 25-year simulation exceed the viable threshold at least 80 percent of the time *or* (c) Does the percentage of escapements less than the viable threshold at the end of the 25-year simulation differ from the no-fishing baseline by less than 10 percentage points). Additionally, a change in the escapement goal or goals proposed in the RMP will not be considered grounds to reconsider our determination as long as the change in the escapement goal or goals are based on the best estimates of the productivity and capacity of the system. In making this determination, we will review the change in the exploitation rate or escapement goal and document its findings.

ESA Section 7 Consultation

Attachment 3 is our consultation with ourself on our action of making a determination on the RMP. We concluded that the proposed Federal action is not likely to jeopardize the continued existence of the Puget Sound Chinook Salmon ESU, or result in the destruction or adverse modification of designated critical habitat.

Essential Fish Habitat (EFH)

We also reviewed the potential effects of its ESA 4(d) Rule determination on EFH for Pacific chinook salmon (Attachment 3). Based on the reason discussed in the attached EFH consultation, we concluded that the proposed Federal actions would not adversely affect designated EFH for chinook salmon.

National Environmental Policy Act (NEPA)

Attachment 4 is the Record of Decision for the Final Environmental Impact Statement (FEIS) Puget Sound Chinook Harvest Resource Management Plan.

U.S. *Fish and Wildlife Species (USFWS) Consultation*

The USFWS determined that the effects of the incidental take in the non-treaty salmon fisheries "are not likely to jeopardize the continued existence of the marbled murrelet." The non-treaty fisheries proposed under the RMP are consistent with those addressed in the 2001 biological opinion. In a ten-year biological opinion issued in 2004, the USFWS determined that the effects of the incidental take in the treaty salmon fisheries "are not likely to jeopardize the continued existence of the marbled murrelet." The treaty fisheries proposed under the RMP are consistent with those addressed in the 2004 biological opinion.

In our biological assessment which initiated consultation with USFWS, we had concluded that since the proposed fisheries would be consistent with the USFWS ESA section 4(d) rule, take prohibitions do not apply to the proposed fisheries with respect to bull trout. We also concluded that other listed species under USFWS jurisdiction that might occur within the action area would not be adversely affected by the implementation of the RMP. The USFWS responded with a Letter of Concurrence on December 10, 2004.

CONTROVERSIAL ISSUES

(1) High Exploitation Rates: There may be some controversy regarding the magnitude of the exploitation rates proposed under the RMP. However, the approach used by the co-managers to derive the RMP's recovery exploitation rate ceilings are generally conservative, requiring high probabilities of recovery and survival of the populations, factoring in data and environmental uncertainty. In the attached evaluation of the RMP, we found that the RMP's recovery exploitation rates are generally consistent with NOAA Fisheries' risk criteria. These same risk criteria were used to reach "no jeopardy" determinations in previous ESA consultations for fisheries affecting listed salmon stocks.

(2) Minimum Fishery Regime Exploitation Rate: The RMP imposes critical exploitation rate ceilings, through the use of a minimum fishery regime, when abundances fall below critical abundance thresholds. For some populations, there may be concern that the RMP's critical exploitation rate ceilings may not be sufficiently protective when abundances are at critical levels. The RMP's low abundance thresholds are generally conservative, often substantially set at a higher level than the independently derived critical thresholds developed by NOAA Fisheries Service for Puget Sound chinook salmon populations or through application of genetic VSP guidelines. Escapements for many depressed stocks have stabilized or increased in recent years under similar exploitation rates, and the co-managers have demonstrated a willingness to apply further restrictions in the fisheries when such restrictions would benefit listed populations.

(3) Canadian Fisheries: The management of Canadian fisheries is outside the jurisdiction of the co-managers. However, depending on the management unit, Canadian fisheries on average, can account for the majority of the total fishery-related mortality. The proportion of fishery-related mortality on individual populations within the ESU by Canadian fisheries has recently ranged

from 4.5 percent for the population in the White River Management Unit to 75.7 percent for populations in the Nooksack Management Unit. The level of Canadian fisheries is an important consideration in anticipating potential impacts into the future. In modeling the Canadian fisheries, the impacts similar to fisheries in 2003 were used to represent the lower range of anticipated impacts. Maximum harvest levels allowed under the Pacific Salmon Treaty were modeled to represent the upper range of impacts associated with Canadian fisheries. This proposed evaluation used the modeling based on the maximum harvest levels under the Pacific Salmon Treaty as the most likely to occur within this range. Thus the impacts from the Canadian fisheries were taken into account in developing our determination.

(4) Litigation: The completion of a biological opinion and FEIS on our federal action of making a determination on the 2004-2009 RMP under Limit 6 of the 4(d) Rule satisfies the terms of our settlement agreement with the Washington Trout.

RECOMMENDATION

The RMP has been evaluated, pursuant to 50 CFR 223.209 (Tribal Rule) and the government-to government processes therein. As described above, all of the necessary administrative and biological requirements have been met for the approval of the co-managers' RMP for Puget Sound fisheries potentially affecting listed Puget Sound chinook from May 1, 2005, through April 30, 2010. Based on the analysis presented in the attached Evaluation and Recommended Determination of a Resource Management Plan, we recommend a determination under 50 CFR 223.203(b)(6) that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound Chinook Salmon ESU.

I concur _____ 3/4/05
Date

I do not concur _____ _____
Date

Cc: F/NWR2 - Dygert, Bishop,
F/NWR - Hawe
GCNW – Bancroft
F/NWR1 – Walton, Jones

Attachments:

Attachment 1: Evaluation and Recommended Determination of a Resource Management Plan, dated January 27, 2005.
Attachment 2: Public Comments and Responses
Attachment 3: The Endangered Species Act (ESA) Section 7 Consultation / Magnuson-Stevens Act Essential Fish Habitat (EFH) Consultation: Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component - ESA section 4(d) Decision / Determination.
Attachment 4: Record of Decision for the Final Environmental Impact Statement, Puget Sound Chinook Harvest Resource Management Plan.