

Chapter 9

Southern Resident Killer Whales

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Chapter 9

Southern Resident Killer Whales

9.1 Current Rangewide Status

The Southern Resident killer whale DPS consists of three pods, identified as J, K, and L pods. In this section, the status of the Southern Resident killer whales throughout their range is summarized. Although the entire Southern Resident DPS has potential to occur in the coastal waters at any time during the year, occurrence is more likely during November to May when Southern Residents are only occasionally found in the inland waters of Washington State. The information on the rangewide status of the species is generally representative of the status of the species in coastal waters. The final recovery plan for Southern Residents was issued in January 2008 (NMFS 2008j). This section summarizes information taken largely from the recovery plan, as well as new data that became available more recently. For more detailed information about this population, please refer to the Final Recovery Plan for Southern Resident Killer Whales, which can be found on the internet at www.nwr.noaa.gov.

9.1.1 Status and Trends

Although there is little information available regarding the historical abundance of Southern Resident killer whales, two methods have been used to estimate a historical population size of 140 to 200. The minimum estimate (~140) is the number of whales killed or removed for public display in the 1960s and 1970s added to the remaining population at the time of the captures. The maximum estimate (~200) is based on a recent genetic analysis of microsatellite DNA (NMFS 2003e).

At present, the Southern Resident population has declined to essentially the same size that was estimated during the early 1960s, when it was considered as likely depleted (Olesiuk et al. 1990) (Figure 9.1-1). Since censuses began in 1974, J and K pods have steadily increased their sizes. However, the population suffered approximately a 20% decline from 1996-2001, largely driven by declines in L pod. There have been recent increases in the population from 2002-2006 indicating that L pod's decline may have ended, however such a conclusion is premature. The 2007 census counted 87 Southern Resident killer whales, 25 in J pod, 19 in K pod and 43 in L pod.

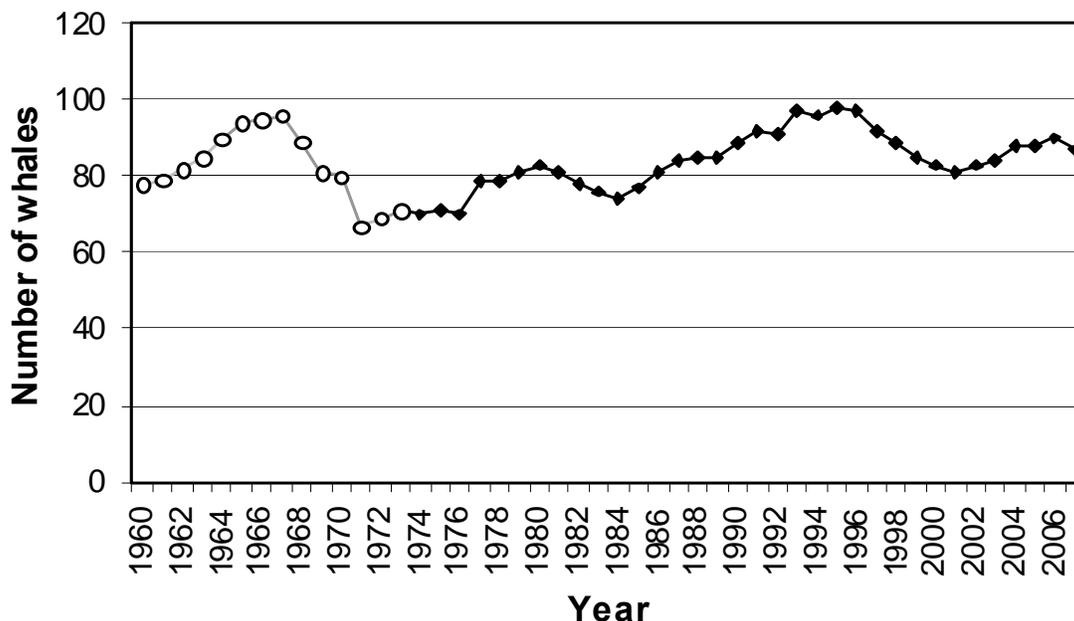


Figure 9.1-1. Population size and trend of Southern Resident killer whales, 1960-2007. Data from 1960-1973 (open circles, gray line) are number projections from the matrix model of Olesiuk et al. (1990). Data from 1974-2007 (diamonds, black line) were obtained through photo-identification surveys of the three pods (J, K, and L) in this community and were provided by the Center for Whale Research (unpubl. data) and NMFS (2008j). Data for these years represent the number of whales present at the end of each calendar year except for 2007, when data extend only through October.

9.1.2 Listing status

The Southern Resident killer whale Distinct Population Segment (DPS) was listed as endangered under the ESA on November 18, 2005 (NMFS 2005d). The final rule included information on the population decline in the 1990s and identified several potential factors that may have caused the decline or may be limiting recovery. These are: quantity and quality of prey, toxic chemicals which accumulate in top predators, and disturbance from sound and vessel traffic. The rule also identified oil spills as a potential risk factor for this species. Southern Residents are designated as “depleted” and “strategic” under the Marine Mammal Protection Act (MMPA) (NMFS 2003e). Critical habitat for the Southern Resident killer whale DPS was proposed on June 15, 2006 (NMFS 2006l) and the final designation of critical habitat was published November 29, 2006 (NMFS 2006c). Critical habitat includes approximately 2,560 square miles of inland waters in three specific areas: 1) the Summer Core Area in Haro Strait and waters around the San Juan Islands; 2) Puget Sound; and 3) the Strait of Juan de Fuca. Southern Resident critical habitat does not occur in the coastal waters, and is therefore not considered further in this consultation.

9.1.3 Range and Distribution

Southern Residents are found throughout the coastal waters off Washington, Oregon, and Vancouver Island and are known to travel as far south as central California and as far north as the Queen Charlotte Islands, British Columbia (Figure 9.1-2).

Figure 9.1-2. Geographic Range (light shading) of the Southern Resident Killer Whale Population. Reprinted from Wiles (2004).



Southern Residents are highly mobile and can travel up to 86 miles (160 km) in a single day (Erickson 1978, Baird 2000). To date, there is no evidence that Southern Residents travel further than 50 km offshore (Ford et al. 2005). Although the entire Southern Resident DPS has potential to occur in coastal waters at any time during the year, occurrence is more likely during November to May.

Southern Residents spend the majority of their time from late spring to early autumn in inland waterways of Washington State and British Columbia (Strait of Georgia, Strait of Juan de Fuca, and Puget Sound) (Bigg 1982, Ford et al. 2000, Krahn et al. 2002) (Figure 9.1-3). Typically, J, K and L pods arrive in May or June and spend most of their time in the core area of Georgia Basin and Puget Sound until departing in October. K and L pods also make frequent trips to the outer coasts of Washington and southern Vancouver Island during this time, which generally last a few days (Ford et al. 2000).

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Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1976				J,K									
1977													
1978			J,K										
1979											J,K		
1980													
1981				J,K									
1982						J,K				J,K			
1983										J,K	J,K		
1984						J,K							
1985						J,K							
1986					J,K								
1987										J,K	J,K	J,K	
1988					J,K								
1989			J,K							J,K	J,K	J,K	
1990													
1991					J,K					J,K			
1992													
1993					J,K								
1994										J,L			
1995													
1996										J,K	J,K		
1997										J,L	J,L	J,K	
1998											J,K		
1999													
2000													
2001													
2002			J,K,L?										
2003												J,K	
2004					J,L	J,L						J,K	
2005		J?			J,L								
2006	J?												
2007	none					J,L							
	Only J Pod present		Two pods present, as indicated				J, K, and L pods present				Data not available		

Figure 9.1-3. Monthly occurrence of the three Southern Resident killer whale pods (J, K, and L) in the inland waters of Washington and British Columbia, 1976-2005. This geographic area is defined as the region east of Race Rocks at the southern end of Vancouver Island and Port Angeles on the Olympic Peninsula. Pods were recorded as present during a month if they were sighted on at least one day (Hanson 2008).

Late summer and early fall movements of Southern Residents in the Georgia Basin have remained fairly consistent since the early 1970s, with strong site fidelity shown to the region as a whole. However, presence in inland waters in the fall has increased in recent years (NMFS 2008j). It is uncertain whether potential variability in sighting effort over time has contributed to this trend. During early autumn, Southern Residents, and J pod in particular, expand their routine movements into Puget Sound, likely to take advantage of chum and Chinook salmon runs (Osborne 1999). During late fall, winter, and early spring, the ranges and movements of the Southern Residents are less well known.

Sightings through the Strait of Juan de Fuca in late fall suggest that activity shifts to the outer coasts of Vancouver Island and Washington (Krahn et al. 2002).

The Southern Residents were formerly thought to range southward along the coast to about Grays Harbor (Bigg et al. 1990) or the mouth of the Columbia River (Ford et al. 2000). However, recent sightings of members of K and L pods in Oregon (in 1999 and 2000) and California (in 2000, 2003, 2005, 2006 and 2008) have considerably extended the southern limit of their known range (NMFS 2008j). There have been 40 verified sightings or strandings of J, K or L pods along the outer coast from 1975 to present with most made from January to May. These include 16 records off Vancouver Island and the Queen Charlottes, 11 off Washington, four off Oregon, and nine off central California. Most records have occurred since 1996, but this is more likely because of increased viewing effort along the coast for this time of year. Sightings in Monterey Bay, California coincided with large runs of salmon, with feeding witnessed in 2000 (Black et al. 2001). L pod was also seen feeding on unidentified salmon off Westport, Washington, in March 2004 during the spring Chinook run in the Columbia River (M. B. Hanson, personal observation, as cited in Krahn et al. 2004).

9.1.4 Life history

Southern Resident killer whales are a long lived species, with late onset of sexual maturity (review in NMFS 2008j). Females produce a low number of surviving calves over the course of their reproductive life span (5.4 surviving calves over 25 years) (Olesiuk et al. 1990, Bain 1990). Mothers and offspring maintain highly stable social bonds throughout their lives, which is the basis for the matrilineal social structure in the Southern Resident population (Bigg et al. 1990, Baird 2000, Ford et al. 2000). Groups of related matrilineal form pods. Three pods – J, K, and L, make up the Southern Resident community. Clans are composed of pods with similar vocal dialects and all three pods of the Southern Residents are part of J clan.

Southern Resident killer whales are known to consume 22 species of fish and one species of squid (Scheffer and Slipp 1948, Ford et al. 1998, 2000, Ford and Ellis 2006, Saulitis et al. 2000). A long-term study of resident killer whale diet identified salmon as their preferred prey (97 percent of prey consumed during spring, summer and fall) (Ford and Ellis 2006). Feeding records for Southern Residents suggest that diet resembles that of the Northern Residents, with a strong preference for Chinook salmon (78 percent of identified prey) during late spring to fall (Hanson et al. 2005, Ford and Ellis 2006). Chum salmon (11 percent) are also taken in significant amounts, especially in autumn. Other species eaten include coho (5 percent), steelhead (*O. mykiss*, 2 percent), sockeye (*O. nerka*, 1 percent), and non salmonids (e.g., Pacific herring and quillback rockfish [*Sebastes maliger*] 3 percent combined). Chinook were preferred despite the much lower abundance of Chinook in the study area in comparison to other salmonids (such as sockeye), presumably because of the species' large size, high fat and energy content, and

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year-round occurrence in the area. Killer whales also captured older (i.e., larger) than average Chinook (Ford and Ellis 2006).

Researchers are expanding the sample size for Southern Residents and collecting additional fecal samples for analysis to address the potential biases of scale sampling. In inland waters from May to September, Southern Residents' diet consists of approximately 88% Chinook (Hanson et al. 2007a). These studies also confirmed a shift to chum salmon in fall. Little is known about the winter and early spring diet of Southern Residents. Early results from genetic analysis of fecal and prey samples indicate that Southern Residents consume Fraser River-origin Chinook, as well as salmon from Puget Sound, Washington and Oregon coasts, the Columbia River, and Central Valley California (Hanson et al. 2007b). As further data are analyzed, they will provide information on which specific runs of salmon the whales are consuming in certain locations and seasons.

There are no fecal or prey samples or direct observations of predation events (where the prey was identified to the species) when the whales are in coastal waters. Although less is known about diet preferences of Southern Residents off the Pacific coast, it is likely that salmon are also important during late fall and winter when Southern Residents more predictably occur in coastal waters. Chemical analyses support the importance of salmon in the year round diet of Southern Residents (Krahn et al. 2002, 2007). Krahn et al. (2002), examined the ratios of DDT (and its metabolites) to various PCB compounds in the whales, and concluded that the whales feed primarily on salmon throughout the year rather than other fish species. Krahn et al. (2007) analyzed stable isotopes from tissue samples collected in 1996 and 2004/2006. Carbon and nitrogen stable isotopes indicated that J and L pods consumed prey from similar trophic levels in 2004/2006 and showed no evidence of a large shift in the trophic level of prey consumed by L pod between 1996 and 2004/2006.

Researchers have estimated the energy requirements of killer whales and caloric values for salmon to calculate the number of fish needed per day. Salmon differ significantly in size across species and runs, and prey preference among salmon would affect annual consumption rates. Fewer salmon per day would be required from a larger preferred prey species such as Chinook salmon. NOAA Fisheries provides an estimate of the biological requirements of Southern Residents using the best available information on metabolic needs of the Southern Resident population and the caloric content of salmon (NMFS 2008k).

9.2 Environmental Baseline

Because the entire listed entity is found in the coastal waters during some portion of the year, the status of the species in this area is the same as the range-wide status of the species, described above. The following discussion summarizes the conditions in coastal waters that are known to affect the likelihood that Southern Resident killer whales will survive and recover in the wild. The small size of the population increases the level of concern about any risks to Southern Resident killer whales (NMFS 2008j).

Natural Mortality

Seasonal mortality rates among Southern and Northern Resident whales are believed to be highest during the winter and early spring, based on the numbers of animals missing from pods returning to inland waters each spring. Olesiuk et al. (2005) identified high neonate mortality that occurred outside of the summer field research seasons. At least 12 newborn calves (9 in southern community and 3 in northern community) were seen outside the summer field season and disappeared by the next field season. Additionally, stranding rates are higher in winter and spring for all killer whale eco-types in Washington and Oregon (Norman et al. 2004). Southern Resident strandings in coastal waters include three separate events (1995 and 1996 off of Northern Vancouver Island and the Queen Charlotte Islands, and 2002 offshore of Long Beach, Washington State), and the causes of death are unknown (NMFS 2008j).

In recent years, sighting reports indicate anecdotal evidence of thin killer whales returning to inland waters in the spring. For example, in March 2006 a thin female from the Southern Resident population (L54) with a nursing calf was sighted off Westport, WA. The sighting report indicated she had lost so much blubber that her ribs were showing under the skin (Cascadia Research 2008).

Prey Availability

Salmon, particularly Chinook salmon, are the preferred prey of Southern Resident killer whales in inland waters of Washington State during spring, summer and early fall. Chemical analyses support the importance of salmon in the year round diet of Southern Residents. Based on the best available information, Southern Residents may equally prefer Chinook salmon in inland and coastal waters. This analysis therefore focuses on effects of the Prospective Actions on Chinook abundance in coastal waters. Focusing on Chinook provides a conservative estimate of potential effects of the Prospective Action on Southern Residents within coastal waters. The total abundance of all salmon and other potential prey species is difficult to quantify, but is orders of magnitude larger than the total abundance of Chinook in coastal waters.

When prey abundance is low, killer whales may spend more time and energy foraging than when prey abundance is high, with the potential for fitness consequences including reduced reproductive rates and higher mortality rates. Ford and Ellis (2006) correlated

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coastwide reduction in Chinook abundance (Alaska, British Columbia, and Washington) with decreased survival of resident whales (Northern and Southern Residents), but changes in killer whale abundance have not been linked to changes in salmon stock groups.

The availability of prey to Southern Resident killer whales is affected by a number of natural and human actions. Details regarding baseline conditions of those Chinook salmon in the Columbia River basin that are listed under the Endangered Species Act are described in Chapters 8.2 (Snake River fall Chinook), 8.3 (Snake River spring/summer Chinook), 8.6 (Upper Columbia River spring Chinook), 8.10 (Lower Columbia River Chinook), and 8.13 (Upper Willamette River Chinook) sections of the SCA. The baseline also includes Chinook ESUs that are not ESA-listed, notably the typically abundant Hanford Reach fall Chinook ESU and the Mid-Columbia spring Chinook ESU. Adult salmon are also affected by fisheries harvest in fresh and marine waters. In addition, climate effects from Pacific decadal oscillation and El Niño/Southern oscillation conditions and events cause changes in ocean productivity which can affect natural mortality of salmon, as described in more detail in Chapter 5 (5.7 Large-scale Environmental Variation). Predation in the ocean also contributes to natural mortality of salmon. Salmonids are prey for pelagic fishes, birds, and marine mammals.

Based on the best available information regarding diet composition for Southern Residents killer whales (which suggests that Chinook salmon are their preferred prey), their metabolic needs, and the caloric content of salmon, NOAA Fisheries estimates that the Southern Resident population (based on 2007 population size and structure) could need approximately 221,000 Chinook on an annual basis in coastal waters of their range (NMFS 2008k). Based on estimates derived from fisheries catch and escapement data over the past decade, there may be approximately 3.5 million adult Chinook salmon available in the coastal range of Southern Residents (NMFS 2008k). This estimate includes estimated annual reductions in prey availability from fisheries harvest in coastal waters. However, this estimate is likely to vary on an annual basis due to a combination of factors including ocean conditions and harvest management decisions (implementing the regulations for ocean salmon fisheries include ESA section 7 consultation).

Another factor that could affect the number of salmon required is the size of individual Chinook. NOAA Fisheries is not able to assess the potential differences in biomass of individual Chinook available to Southern Residents, and thus relies on abundance estimates as a proxy measure (as in past consultation, i.e., NMFS 2006m). Southern Resident killer whales consume both natural and hatchery salmon (DFO unpubl. data). There is no information available suggesting that Southern Residents would be affected differently by consuming natural or hatchery salmon (i.e., no known differences in size, energy content, contaminant level, or behavior or location in the ocean).

Prey Quality

Contaminants enter fresh and marine waters and sediments from numerous sources, but are typically concentrated near populated areas of high human activity and industrialization. As discussed in the Status of the Species section above, recent studies have documented high concentrations of PCBs, DDTs, and PBDEs in killer whales (Ross et al. 2000, Ylitalo et al. 2001, Reijnders and Aguilar 2002, Krahn et al. 2004). Harmful contaminants are stored in blubber; however, organochlorines can be released from the blubber and become redistributed to other tissues increasing risk of immune or reproductive effects during weight loss from reductions in prey (Krahn et al. 2002).

As top predators, when killer whales consume contaminated prey they accumulate the contaminants in their blubber. When prey is scarce, killer whales metabolize their blubber and the contaminants are mobilized. In addition, nursing females transmit large quantities of contaminants to their offspring. Chinook salmon contain higher levels of some contaminants (i.e., PCBs) than other salmon species (O'Neill et al. 2005). Only limited information is available for contaminant levels of Chinook along the west coast (i.e., higher PCB and PBDE levels may distinguish Puget Sound-origin stocks, whereas higher DDT-signature may distinguish California origin stocks; Krahn et al. 2007). Adult Chinook that originate from the Columbia River may accumulate contaminants through development and growth in the freshwater and marine environment, and become a source of contaminant loading if consumed by Southern Residents.

Vessel Activities and Sound

Commercial shipping, ferry operations, military vessels and recreational vessels occur in the coastal range of Southern Residents; however, the density of traffic is lower in the coastal compared to inland waters of Washington State and British Columbia. Several studies in the inland waters of Washington State and British Columbia have linked interactions of vessels and Northern and Southern Resident killer whales with short-term behavioral changes (Kruse 1991; Williams et al. 2002a, b; Foote et al. 2004, Bain et al. 2006). Although the potential impacts from vessels and the sounds they generate are poorly understood, these activities may affect foraging efficiency, communication, and/or energy expenditure through their physical presence, increased underwater sound level, or both. Collisions of killer whales with vessels are rare, but remain a potential source of serious injury and mortality. There are no known incidents of Southern Resident collisions with vessels in coastal waters, however, very few stranded killer whales are recovered and there are stretches of unpopulated coastline where stranded whales would not be reported.

Vessel sounds in coastal waters are most likely from large ships, tankers and tugs. Most sound generated by large vessels is a source of low frequency (5 to 500 Hz) human-generated sound in the world's oceans (NRC 2003). While ships generate some broadband noise in the hearing range of whales, the majority of energy is below their peak hearing sensitivity. Such vessels do not target whales, move at relatively slow

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speed and are likely detected and avoided by Southern Residents. It is difficult to precisely quantify or estimate the magnitude of the risks posed by commercial whale watching and recreational vessels in coastal waters; however, weather conditions in the Pacific Ocean in winter limit these activities. The risk to Southern Residents is less in coastal waters than within the inland waters of Washington State and British Columbia, where traffic levels are higher and a greater proportion of traffic may target whales (whale watching and recreational vessels).

Non-Vessel Sound

Anthropogenic (human-generated) sound in coastal waters within the range of Southern Residents is generated by other sources besides vessels, including oil and gas exploration, construction activities, and military operations. Natural sounds in the marine environment include wind, waves, surf noise, precipitation, thunder, and biological noise from other marine species. The intensity and persistence of certain sounds (both natural and anthropogenic) in the vicinity of marine mammals vary by time and location and have the potential to interfere with important biological functions (e.g., hearing, echolocation, communication).

Sound from in-water construction activities could potentially occur through permits issued by the Army Corps of Engineers under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 and by the State of Washington under its Hydraulic Project Approval (HPA) program. Several consultations on federal projects in the coastal range of Southern Residents have been conducted and conservation measures have been included to minimize or eliminate potential effects to marine mammals. Sound, such as sonar generated by military vessels also has the potential to disturb killer whales in coastal waters.

Oil spills

Oil spills have occurred in the coastal range of Southern Residents in the past, and there is potential for spills in the future. Oil can be discharged into the marine environment in any number of ways, including shipping accidents, refineries and associated production facilities, and pipelines. Despite many improvements in spill prevention since the late 1980s, much of the region inhabited by Southern Residents remains at risk from serious spills because of the heavy volume of shipping traffic and proximity to petroleum refining centers in inland waters. Numerous oil tankers transit through the coastal range of Southern Residents throughout the year. The magnitude of the risks posed by oil discharges in this area is difficult to precisely quantify or estimate.

The long-term effects of repeated ingestion of sub-lethal quantities of petroleum hydrocarbons on killer whales are not well understood. In marine mammals, acute exposure to petroleum products can cause changes in behavior and reduced activity, inflammation of the mucous membranes, lung congestion, pneumonia, liver disorders, and neurological damage (Wursig 1990 and Geraci 1990). In addition, oil spills have the

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potential to adversely impact habitat and prey populations, and, therefore, may adversely affect Southern Residents by reducing food availability.

Scientific Research

Most of the scientific research conducted on Southern Resident killer whales occurs in inland waters of Washington State and British Columbia. In general, the primary objective of this research is population monitoring or data gathering for behavioral and ecological studies. In 2006, NOAA Fisheries issued scientific research permits to seven investigators who intend to study Southern Resident killer whales. Research activities are typically conducted between May and October in inland waters. However, some permits include authorization to conduct research in coastal waters.

In the biological opinion NOAA Fisheries prepared to assess the impact of issuing the permits, we determined that the effects of these disturbances on Southern Residents were likely to adversely affect, but not jeopardize the continued existence of, the Southern Resident killer whales (NMFS 2006n). The annual authorized takes by harassment of Southern Residents under these permits totaled 1,935 non-invasive takes (e.g., surveys and photo-identification); 70 takes from biopsy, tagging, or breath sampling; and 820 takes due to unintentional harassment, although actual anticipated takes are substantially lower. While most of the authorized takes would occur in inland waters, a small portion of this disturbance is part of the baseline in the coastal range of Southern Residents.

Activities Outside U.S. Jurisdiction

The Southern Resident killer whales are highly migratory and may transit in and out of the waters of the United States and the high seas. NOAA Fisheries does not presently have information to assess the impact on Southern Residents of scientific research or boating activities within Canadian jurisdictional waters. NOAA Fisheries included information on Canadian fisheries within the coastal range of Southern Residents using the same methods to quantify U.S. fisheries in this area (NMFS 2008k).

Summary of the Environmental Baseline

Southern Resident killer whales are exposed to a wide variety of past and present state, federal or private actions and other human activities in their coastal range as well as federal projects in this area that have already undergone formal section 7 consultation, and state or private actions that are contemporaneous with this consultation. All of the following activities discussed in the above section are likely to have some level of impact on Southern Residents when they are in coastal waters of their range.

Reductions in food availability, increased exposure to pollutants, and human disturbance have all been identified as potential threats to killer whales in Washington and British Columbia (Ford and Ellis 1999, 2005; Ford et al. 2000; Baird 2001; Krahn et al. 2002, 2004; Taylor 2004, Wiles 2004). Researchers are unsure about which threats are most significant to the Southern Resident population. Although the three primary factors are identified as prey availability, environmental contaminants, and vessel effects and sound,

none have been directly linked to or identified as the cause of the recent decline of the Southern Resident killer whales (Krahn et al. 2002). There is limited information on how these factors or additional unknown factors may be affecting Southern Resident killer whales when in coastal waters in winter. For reasons discussed earlier, it is possible that two or more of these factors may act together to harm the whales. The small size of the population increases the level of concern about all of these risks (NMFS 2008j).

9.3 Effects of the Prospective Actions on Southern Resident Killer Whales

The potential effects of the Prospective Actions on Southern Resident killer whales relate to prey availability. Contamination (prey quality) is not an issue because the effects of the Prospective Actions do not include the introduction of contaminants into freshwater. Chapter 2 of the SCA defines the federal actions aggregated in the SCA, or Prospective Actions, which include:

- Operation and configuration of the Federal Columbia River Power System (FCRPS) as described in the 2007 FCRPS Biological Assessment (Corps et al. 2007b) and the mainstem effects of 11 Reclamation irrigation projects (Corps et al. 2007b, Appendix B-1-7), as modified by NOAA Fisheries' RPA for the FCRPS (described in Chapter 4 of the FCRPS Biological Opinion (NMFS 2008a)).
- Operation and Maintenance of 12 Irrigation Projects in the Upper Snake (described in Reclamation's 2007 Upper Snake Biological Assessment (USBR 2007)).
- NOAA Fisheries' § 10(a)(1)(A) Transportation Permit issued as part of NOAA Fisheries' FCRPS Opinion.
- NOAA Fisheries' participation in the 2008-2017 *U.S. v. Oregon* Management Agreement (hereafter, "2008 *U.S. v. Oregon* Agreement") concerning particular Columbia River fisheries related activities as described in Chapter 2 of NOAA Fisheries' Biological Opinion for that Agreement.
- Federal Action Agencies' funding of all FCRPS mitigation hatchery programs.

Most of the direct effects of the Prospective Actions occur within the freshwater system and plume of the Columbia River; effects experienced by Southern Residents in the coastal area are indirect. The Prospective Actions may affect the abundance of killer whale prey in the ocean. Changes in prey abundance would affect the entire population of Southern Resident killer whales. The best available information indicates that salmon are the preferred prey of killer whales year round, including in coastal waters (Status of the Species), and that Chinook are the preferred salmon species. Prey abundance is a

concern for killer whales both in the near and long term. To survive in the near term, killer whales require regular supplies of adult Chinook prey in the ocean, and to recover over the longer term, killer whales require abundant Chinook stocks coast-wide, likely including stocks from the Columbia River (Status of the Species). This analysis considers the short-term (less than ten years) and long-term (ten years and longer) effects of the Prospective Actions described above.

9.3.1 Effects of Hydro and Associated Actions on Southern Resident Killer Whales

Short-Term Effects

The hydro and associated actions combined include operation and configuration of the FCRPS, federal water management in the Upper Snake, and federal actions to improve habitat, reduce predation and fund hatcheries. Included in the hatchery funding is a commitment to review and reform (as needed) future hatchery operations. No details are proposed regarding hatchery reform, and NOAA Fisheries expects that future hatchery production, including reforms, will be subject to additional future consultation when detailed actions are proposed. In the interim, the Prospective Action is to continue funding hatchery operations at current levels.

Effects of Artificial Production

The Prospective Actions include continued funding for artificial propagation of Chinook salmon, which produces killer whale prey. Action agency (BPA, Corps and Reclamation) funding accounts for approximately 50 percent of the Chinook smolts released above Bonneville Dam (Jones 2008). This analysis also assumes that current levels of funding and production will continue over the short term.

For returns prior to 2007, the proportion of hatchery-origin Chinook passing Bonneville Dam ranged between 50 and 80 percent for individual stocks of Chinook from the Columbia River (PCSRF 2007). Since 2000, Chinook hatchery returns to Bonneville Dam represented approximately 70 percent of the total Chinook run, on average (Turner 2008). If the Prospective Actions produce approximately 50% of all returning hatchery Chinook above Bonneville Dam, and all hatchery Chinook combined represent approximately 70% of the Chinook returns at Bonneville, approximately 35% of the total annual return of Chinook above Bonneville Dam can be attributed to the Prospective Actions.

Effects of Hydrosystem Operations

The operation and configuration of the FCRPS causes mortality of migrating juvenile Chinook, which in turn results in fewer adult Chinook in the ocean and reduced prey availability, compared to an absence of dam-related juvenile mortality. For purposes of determining whether the Chinook prey base for killer whales is adversely affected by the proposed action, it is not necessary to precisely quantify the mortality resulting from the hydrosystem operations (as distinguished from other causes), so long as it can be

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reasonably concluded that the decrease in the prey base for killer whales resulting from hydrosystem operations is less than the increase in the prey base resulting from the hatchery programs funded by the action agencies.

The effect of the hatchery programs is to increase by 35% the number of Columbia and Snake River Chinook originating above Bonneville Dam and available to the killer whales. In order for any decrease caused by the hydrosystem to exceed this increase, the hydrosystem would have to cause a 35% or greater reduction in the total number of Columbia and Snake River Chinook available to killer whales. For the reasons discussed below, it is unlikely that the hydrosystem results in a 35% or greater reduction in the killer whale prey base.

Many factors cause mortality to juvenile salmon as they migrate to the ocean. Natural mortality occurs from predators, competition for food, and disease. Human actions unrelated to the hydrosystem, such as the diking and filling of wetlands, road construction and maintenance, and introduction of pollutants can increase mortality in that part of the migration corridor that is within the hydrosystem. And the “bare existence” of the dams, as well as the operation of the dams, also causes juvenile mortality.

Although we have relatively good estimates of the overall level of mortality experienced by juvenile Chinook as they move through the hydrosystem, available information does not enable us to partition the overall level of mortality among the various potential causes. Attempts to allocate mortality have not been notably successful. Most recently, in *National Wildlife Federation v. NMFS*, CV 01-640-RE (D. OR. May 26, 2005) the Court rejected NOAA Fisheries’ attempt to partition the sources of mortality. The Court directed the federal agencies to focus instead on the actions needed to bring ESA-listed salmon to recovery. Thus, the analysis in other parts of this opinion does not attempt to estimate how many fewer ESA-listed salmon are present as a result of the operating the hydrosystem.

To assure that the effects of the hydro operations in the Prospective Action on the killer whale prey base will not outweigh the benefits to that prey base resulting from the hatchery programs funded as part of that action, NOAA Fisheries compared the percent increase in adult Chinook from the hatchery actions to the total mortality rate for juvenile Chinook passing through the hydrosystem, regardless of cause. This comparison is a very conservative approach since only a portion of these mortalities are, in fact, the result of the hydro operations being consulted upon.

As further described in other portions of this biological opinion dealing with ESA-listed salmon (SCA, Hydro Modeling Appendix), the estimated average survival for spring/summer Chinook passing through the area of the hydrosystem under the proposed action varies from about 67% (for both in-river migrating and transported juveniles from

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Lower Granite to Bonneville Dams, assuming a “D” value of 0.709) to more than 95% (passing 1 dam). More than 85% of adult spring/summer Chinook returning to the Columbia and Snake Rivers come from fish that pass 4 dams or fewer dams, which have a survival rate of 73 to over 95%. Thus, for spring/summer Chinook, the total mortality, regardless of cause, is less than 35% (That is, the total survival through the hydrosystem is greater than 65%).

Spring/summer Chinook primarily spawn and rear in tributaries and enter the Snake and Columbia Rivers as yearling smolts that use the area of the hydrosystem primarily as a migratory corridor. Thus, the high level of natural mortality that occurs to all salmon in the egg-to-smolt stage has already taken place before the spring Chinook enter the hydrosystem. For fall Chinook, the reverse is true.

Fall Chinook spawn and rear principally in the mainstem of the Snake and Columbia Rivers. Regardless of whether they originate in the wild or from a hatchery, fall Chinook move through the system primarily as smaller, sub-yearling fish. Due to their size, such fish are more vulnerable to predation and other natural mortalities. This loss is exacerbated by the increased time that sub-yearlings spend rearing in shallow-water habitat as they move through the migratory corridor. Many of these losses would occur regardless of whether the fall Chinook were migrating through a hydrosystem or in a natural river.

Since fall Chinook losses from natural causes are considerably greater than the spring/summer Chinook losses during the downstream migration, it is no surprise that the estimated survival rates for fall Chinook passing through the hydrosystem are considerably lower than those for spring/summer Chinook, but combined these rates exceed 65%. The survival rate¹ for those passing through 8 dams is approximately 33%; for 4 dams survival is about 54%; and for 1 dam survival is approximately 85%.² Less than 3% of the fall Chinook adults originate from locations that are above more than 8 dams. About 29% (primarily the Hanford Reach run) pass through 4 dams, and about 68% of the fall Chinook adults (primarily hatchery production) originate above only 1 dam. When the survival rate is weighted based on the percentage of the fall Chinook found in each group, the overall weighted average survival of fall Chinook passing through the hydrosystem is approximately 74% $[(3\% * 33\%) + (29\% * 54\%) + (68\% * 85\%)]$.

¹ The implementation of the Prospective Actions should substantially improve the survival of migrating fall Chinook salmon. However, NOAA Fisheries does not attempt to estimate quantitative improvements for fall Chinook salmon from these actions due to complications arising from the expression of multiple life-history strategies.

² Juvenile fall Chinook survival estimates are calculated based on per km survival estimates from McNary tailrace to John Day tailrace (1999 – 2002 migrations, June 19 to July 23 releases) using information presented in Williams et al. 2005 (Table 39). The average of these data is 76.7% over a 123 km reach, or a survival rate of nearly 0.998 / km. The entire FCRPS reach is about 512 km, the Bonneville to McNary reach is about 287 km, and Bonneville dam and reservoir is about 73 km in length.

Because the overall losses occurring within the area of the hydrosystem to both spring/summer and fall Chinook are less than 35%, the hatchery production contained in the Prospective Actions more than mitigates for losses to the killer whale prey base, regardless of the source of loss.

The above assessment does not take into account the increased productivity and survival due to habitat and predator programs, which, if included, would show a further increase in the prey base for killer whales. Additionally, there are more hatchery and natural Chinook salmon available to Southern Resident killer whales from Columbia River stocks than is apparent from returns to Bonneville Dam. Recent estimates of ocean abundance (estimated by extrapolation from fisheries catch data) indicate approximately 1,000,000 adult Chinook originate from Columbia River stocks (NMFS 2008k, CTC 2007, ODFW and WDFW 2007). Although there is large annual variability in adult Chinook returns to the mouth of the Columbia River, returns from 1980 to 2007 indicate a slight positive trend, with average abundance of approximately 800,000 Chinook (Corps et al. 2008a).

Long-Term Effects

Salmon analyses presented in the SCA indicate that Prospective Actions including actions that affect the operation of the hydrosystem, tributary and estuary habitat, harvest, predation (tern, pike minnow and marine mammal), hatcheries, and RM&E overall have positively affected and will continue to positively affect the survival and recovery of the listed entities of salmon and steelhead. These analyses consider whether a sufficient number of populations within specific Major Population Groups (MPGs) will survive (i.e., low 24-year extinction risk) and trend toward recovery (i.e., improved average returns-per-spawner, median population growth rate, and abundance trend) to indicate that a specific MPG trends toward recovery (more details available in SCA, Chapter 7).

As discussed in SCA Section 8.1.5 (Effects of Hatchery Programs), while hatchery Prospective Actions (the Action Agencies' obligation to fund hatcheries) are important steps to reducing risk and assuring the long-term viability of these ESUs, at present the hatchery reform process is underway and it is not possible to quantify results or expect that benefits of these reforms are "reasonably certain to occur," and therefore was not part of the basis for conclusions. The Prospective Actions include implementation of hatchery reform (described in RPA 39) pending completion of separate ESA consultations (target completion dates: November 2009 to June 2010; SCA Section 5.5.1). Thus, hatchery effects from the Prospective Actions were assumed as constant from present until future adoption of hatchery reforms as the result of these separate consultations.

Over the long term, the abundance of Columbia River Chinook, and thus of Southern Resident killer whale prey, may be affected by climate change. The Prospective Actions

include monitoring of climate effects on salmonids and mechanisms to synthesize, update, and modify implementation to respond to new information regarding the effects of climate change on listed salmonids (SCA Section 7.1.2.1).

The analysis in the SCA concludes that listed Chinook ESUs, and all other listed salmonid ESUs/DPSs in the Columbia River Basin, are expected to survive with an adequate potential for recovery, and the Prospective Actions are not likely to jeopardize the continued existence of these ESUs. Additionally, the Prospective Actions will not adversely modify the designated critical habitat of these and all other listed ESUs/DPSs addressed, and critical habitat is expected to remain functional (or retain the ability to become functional) to serve the intended conservation role in the near and long term. These conclusions were derived after reviewing the effects of the Prospective Actions, the effects of the environmental baseline, and any cumulative effects presented in the salmon analyses. The long-term recovery of listed Columbia River salmon is a benefit for Southern Resident killer whales in the long term.

The potential harmful effects of artificial production on long-term fitness of salmon populations are discussed in the SCA Appendix, Hatchery Effects Report. Specifically, hatcheries can negatively affect population viability by reducing abundance, productivity, spatial distribution and/or diversity of natural-origin fish (described in McElhany et al. 2000). Table 3 of the SCA Appendix, Hatchery Effects Report, identified risks or threats to population viability for Chinook ESUs, including isolated hatchery practices or non-indigenous hatchery broodstock and/or the influence of strays, in combination with a high proportion of hatchery fish in the population can increase the risks to productivity and diversity. The Prospective Actions contemplate future hatchery reforms intended to address harmful effects of hatchery production on the long-term fitness of the naturally spawning fish. Detailed information is not presently available to evaluate long-term effects of a continuation of current hatchery production on Chinook availability, or of reforms to hatchery operations. Thus, an analysis of long-term effects of the hatchery funding contemplated in the Prospective Actions is not possible at this time and will be considered in separate future consultations when detailed information is available.

9.3.2 Effects of Harvest Actions on Southern Resident Killer Whales

Prospective Actions include the 2008 *U.S. v. Oregon* Agreement, which includes some take of hatchery- and natural-origin Chinook salmon. The terminal fisheries do not directly affect Southern Residents, as the fisheries occur after the fish have returned to the river and are no longer available to the whales in the ocean.

Short-Term Effects

Since the majority of fish available for in-river harvest are hatchery fish, the majority of salmon caught will be hatchery salmon. Although the harvest action is constrained by take limitations on natural-origin salmon, some are incidentally caught. Even with the

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proposed harvest levels on Chinook, most hatchery programs are expected to meet or exceed escapement goals (SCA Chapter 8), and thus will continue to operate at full production with no effect on the future availability of hatchery Chinook in the ocean. In-river harvest of natural-origin fish reduces the number of adults returning to the spawning grounds, and consequently could reduce the number of offspring in the following generation. Such a reduction could in turn reduce the number of adult Chinook available as prey to killer whales in the ocean.

Spring and fall run Chinook are likely to be affected differently by the prospective harvest actions because of differences in their life histories. Spawning habitat for natural-origin Snake River fall Chinook is fully seeded, and Upper River Brights are above escapement goals. Spawning habitat for fall stocks below Bonneville dam, with few exceptions, is also fully seeded, because of stray hatchery fish. Thus harvest of fall run Chinook is not expected to result in a decrease in the number of offspring in the subsequent generation. In contrast, spring returns of natural-origin Chinook, particularly for upriver stocks, tend to be under-seeded. The prospective harvest action manages take of natural-origin upriver Chinook using a sliding scale, and can result in take levels from 5.5 to 17 percent of natural-origin Chinook. Generally, the level of take can be characterized as 10 percent natural-origin from these ESUs. This analysis makes the conservative assumption that in some cases available spawning habitat will be under-seeded, and that a further reduction may occur as a result of the harvest of natural-origin Chinook. That reduction would be proportional to the allowable harvest rate.

Overall, Chinook returns are approximately 30 percent natural-origin fish (70 percent hatchery), whereas upriver spring Chinook are approximately 12 and 32 percent natural-origin for runs returning to spawn above Priest Rapids Dam on the Columbia River and to the Snake River, respectively (average return, 2003 to 2007). On average, the return of natural-origin Chinook to the mouth of the Columbia River from these stocks combined is approximately 30,000 (average return, 2003 to 2007). The 10 percent take that can be expected from the harvest action is therefore approximately 3,000 natural-origin Chinook.

A conservative assumption is that spawner-to-spawner rates are on the order of one-to-one. Given this assumption, the annual return to the river mouth would be 3,000 additional Chinook had there been no fishing. Approximately 3,000 Chinook represents less than 1 percent of the Chinook stocks available to Southern Residents in the ocean that originate from the Columbia River (~1,000,000 Chinook; NMFS 2008k, CTC 2007, ODFW and WDFW 2007) or that return to the mouth of the Columbia River annually (~800,000 Chinook; Corps et al. 2008a).

Long-Term Effects

Over the long term, reductions in naturally spawning spring Chinook could compound. This could reduce Chinook available for killer whale prey in the year in which the

reduction was realized and over the long term if it increased the extinction risk of the listed Chinook stocks. As discussed above, the SCA concludes that the combination of Prospective Actions in all areas is likely to ensure the survival, and maintain the long-term potential for recovery, of the listed Chinook ESUs.

9.4 Cumulative Effects

Cumulative effects are those effects of future tribal, state, local or private activities, not involving Federal activities, reasonably certain to occur within the action area (50 CFR 402.02). For the purpose of the Southern Resident killer whale analysis, this area is the coastal range of the species. Future Federal actions will be reviewed through separate section 7 consultation processes.

Future tribal, state and local government actions will likely be in the form of legislation, administrative rules, or policy initiatives and fishing permits. Activities are primarily those conducted under state, tribal or federal government management. These actions may include changes in ocean policy and increases and decreases in the types of activities that currently occur, including changes in the types of fishing activities, resource extraction, or designation of marine protected areas, any of which could impact listed species or their habitat. Government actions are subject to political, legislative and fiscal uncertainties. These realities, added to the geographic scope, which encompasses several government entities exercising various authorities, and the changing economies of the region, make analysis of cumulative effects speculative. A Final Recovery Plan for Southern Resident Killer Whales was published January 24, 2008 (NMFS 2008I). Although state, tribal and local governments have developed plans and initiatives to benefit marine fish species, ESA listed salmon, and the listed Southern Residents, they must be applied and sustained in a comprehensive way before NOAA Fisheries can consider them “reasonably certain to occur” in its analysis of cumulative effects. Details regarding cumulative effects of Chinook salmon in the Columbia River are described in Chapter 8 sections of the SCA for each ESU affected.

Private activities are primarily associated with commercial and sport fisheries, construction, and marine pollution. These potential factors are ongoing and expected to continue in the future, and the level of their impact is uncertain. For these reasons, it is not possible to predict beyond what is included in SCA Chapter 8 whether future non-Federal actions will lead to an increase or decrease in prey available to Southern Resident killer whales, or have other effects on their survival and recovery.

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Chapter 10

Green Sturgeon of the Southern DPS

- 10.1 Status of the Species**
- 10.2 Effects of the Proposed Action**

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Chapter 10

Green Sturgeon of the Southern DPS

Purpose

This Chapter provides discusses the status of green sturgeon (*Acipenser medirostris*) and estimates the effects of the proposed action on them. Much of this information was provided by the Action Agencies in the form of a biological assessment on April 18, 2008 (Corps et al. 2008).

10.1 Status of the Species

10.1.1 Listing

Upon completion of a status review, NOAA Fisheries determined that green sturgeon comprise two DPSs that qualify as species under ESA: 1) a northern DPS, consisting of populations in coastal systems from the Eel River, California northward, that was determined to not warrant listing; and 2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known spawning population in the Sacramento River (Adams et al. 2002). The southern distinct population segment (DPS) of green sturgeon was listed as threatened under the ESA by NOAA Fisheries on April 7, 2006 (NMFS 2006d). Take prohibitions via section 4(d) of the ESA have not yet been promulgated, nor has critical habitat yet been designated for the southern DPS, although both actions are expected to occur in 2008.

10.1.2 Life history

Green sturgeon are the most marine-oriented of the North American sturgeon species. Juveniles of this species are able to enter estuarine waters after only one year in freshwater. During this time, they are believed to feed on benthic invertebrates, although little is known about rearing habitats and feeding requirements. Green sturgeon are known to range in nearshore marine waters from Mexico to the Bering Sea, and are commonly observed in bays and estuaries along the west coast of North America, including the Columbia River (NMFS 2008m). McLain (2006) noted that Southern DPS green sturgeon were first determined to occur in Oregon and Washington waters in the late 1950s when tagged San Pablo Bay green sturgeon were recovered in the Columbia River estuary. The proportion of the Southern relative to Northern DPS is high (~ 67-82%, or 121 fish, of 155 fish sampled) (Israel and May 2007). Aggregations of adults occupy the lower Columbia River and estuary, up to the Bonneville Dam, primarily during summer months (WDFW and ODFW 2002, Moser and Lindley 2007). Beamis and Kynard (1997) suggested that green sturgeon move into estuaries of non-natal rivers to feed. Information from fisheries-dependent sampling suggests that green sturgeon only

occupy large estuaries during the summer and early fall in the northwestern United States. Green sturgeon are known to enter Washington estuaries during summer (Moser and Lindley 2007). There is no evidence of spawning in the Lower Columbia. Green sturgeon in the Lower Columbia River are most likely feeding, but, to date, all stomachs examined (n>50) have been empty (Rien as cited in Grimaldo and Zeug 2001).

10.1.3 Status/Population Trend

Quality data on current population sizes and trends for green sturgeon is non-existent. Lacking any empirical abundance information, Beamesderfer et al. (2007) recently attempted to characterize the relative size of the Sacramento-San Joaquin green sturgeon population (Southern DPS) by comparison with the Klamath River population (Northern DPS). Using Klamath River tribal fishery harvest rate data and assuming adults represent 10% of the population at equilibrium, they roughly estimate the Klamath population at 19,000 fish with an annual recruitment of 1,800 age-1 fish. Given the relative abundance of the two stocks in the Columbia River estuary based on genetic samples, they speculate abundance of the Sacramento population may equal, or exceed the Klamath population estimate. Collectively, Beamesderfer et al. (2007) estimate abundances of the various green sturgeon populations may be larger than previously thought due to seasonal high abundances in the Columbia River, Willapa Bay, and Grays River estuaries and other coastal tributaries, historical high harvest in different areas at different times, and a significant portion of each population likely remains in the ocean at any given time.

10.1.4 Key Limiting Factors for Green Sturgeon

The principal factor in the decline of the Southern DPS is the reduction of the spawning habitat to a limited section of the Sacramento River (NMFS 2006d). The potential for catastrophic events to affect such a limited spawning area increases the risk of the green sturgeon's extirpation. Insufficient freshwater flow rates in spawning areas, contaminants (e.g., pesticides), bycatch of green sturgeon in fisheries, potential poaching (e.g., for caviar), entrainment of juveniles by water projects, influence of exotic species, small population size, impassable migration barriers, and elevated water temperatures in the spawning and rearing habitat likely also pose threats to this species (NMFS 2006d).

10.1.5 Harvest Effects

In the past, take of green sturgeon may have occurred from direct harvest in sport and commercial fisheries and from catch and release mortality in commercial fisheries. In the more recent years, the take of green sturgeon in the Columbia River was incidental to fisheries directed at white sturgeon. The numerous management actions implemented by the states of Oregon and Washington since 1994 to control white sturgeon harvest also reduced harvest of green sturgeon, including a reduction of impacts to the listed Southern DPS. The reduced catch of green sturgeon in recent years is believed to be the result of

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these collective management actions by the states resulting in lower catch, and is not considered indicative of lower abundance of the stock (TAC 2008).

Incidental take of green sturgeon primarily occurs during the early-fall (August) and late-fall (September-November) seasons, concurrent with peak abundance of green sturgeon in the lower Columbia River. Sturgeon angler effort and catch in the estuary increased steadily during the 1990s and peaked in 1998 when anglers made 86,400 trips and caught 30,300 white sturgeon, or 73% of the total catch below Bonneville Dam (TAC 2008). Since 1989, all fisheries affecting lower Columbia River white sturgeon have been managed for Optimum Sustainable Yield (OSY) to provide sustainable broodstock recruitment and ensure the overall health of the white sturgeon population. Beginning in 1996, the states formally adopted a three-year Joint State management agreement based on OSY to guide Columbia River sturgeon fisheries and management decisions. Although the majority of the tenets within the current Joint State sturgeon management agreement focus on white sturgeon, a few objectives specific to benefit green sturgeon management were also included. Beginning July 7, 2006, and in response to the ESA listing of the Southern DPS, retention of green sturgeon in the commercial fisheries was disallowed (TAC 2008). Beginning in January 2007, the states changed the regulations in the recreational fishery to also disallow retention of green sturgeon (TAC 2008). The delay in the implementation of non-retention requirements in the recreational fishery were related to the prescribed process for changing sport regulations and the need for a concurrent public education process.

Harvest of green sturgeon has declined from an average of 1,388 fish annually during 1991-2000 to 154 fish per year since 2001 due to changes in regulations and season structure (Table 10.1-1). During 1996-2006, an average of 61 green sturgeon were harvested in the recreational fishery (Table 10.1-1). During 1996-2006, anglers released an average of 7 green sturgeon annually (2.7 sub-legal, 3.1 legal, and 1.3 over legal-sized) (TAC 2008). With the listing of the Southern green sturgeon DPS, the states took additional emergency action to disallow retention of green sturgeon during commercial fisheries beginning in July 2006, when the ESA listing became effective. During the remainder of 2006, the states started a public awareness and education process so that the sport fishing community would be better able to recognize the differences between white and green sturgeon. The states also disallowed retention of green sturgeon in the recreational fishery starting in 2007 (TAC 2008).

Table 10.1-1. Lower Columbia River Green Sturgeon Catch, 1991-2007

Green Sturgeon						
Year	Sport	Commercial				Total
		Winter	Summer	Early Fall	Late Fall	
1991	22	4	--	2	3,180	3,208
1992	73	10	--	1,750	400	2,233
1993	15	1	--	--	2,220	2,236
1994	132	1	--	--	240	373
1995	21	--	--	--	390	411
1996	63	1	--	--	610	674
1997	41	2	--	1,474	138	1,655
1998	73	0	--	743	151	967
1999	93	2	--	508	279	882
2000	32	0	--	568	636	1,236
2001	50	4	--	338	--	392
2002	51	7	--	--	156	214
2003	52	1	--	11	27	91
2004	29	1	--	6	51	87
2005	119	0	38	32	21	210
2006	70	16	0	--	--	86
2007						0

10.1.6 Other Effects in the Environmental Baseline

In addition to these harvest effects on green sturgeon, the general discussion of the environmental baseline in Chapter 5 of the SCA, and in the further discussions in Chapters 8.2 through 8.14, also apply and inform these decisions.

10.2 Effects of the Prospective Actions

10.2.1 Effect of Prospective Harvest

Prospective take of green sturgeon would occur from catch and release mortalities in non-Indian recreational and commercial fisheries. Green sturgeon are not known to occur upstream of Bonneville Dam and would not be impacted by treaty Indian fisheries (TAC 2008). Prospective fishing regulations in Washington and Oregon for commercial and recreational fisheries would prohibit retention of green sturgeon. However, there may be a minor level of green sturgeon retained in recreational fisheries due to misidentification by anglers.

The estimated total prospective take of green sturgeon associated with recreational fisheries is expected to be less than those of past years (due to the implementation of non-retention regulations put into effect in January 2007) (TAC 2008). Take would be limited to post-release mortalities and a few fish retained due to misidentification. Post release mortality from hook and line recreational fisheries is unknown, but it is reasonable to expect hook and line mortality to be something less than the post-release mortality assigned to commercial fisheries (i.e. 5.2%). Because the prospective fisheries are similar than for the period of 1996-2006, it is estimated that a total of 67 (1995-2006 average handled + average released) green sturgeon will be handled annually in recreational fisheries conducted in the Columbia River. Of the fish handled, 80% (54) will be from the Southern DPS (TAC 2008). Of those released, some (5.2%) may suffer post-release mortality. Therefore, the total annual take of Southern DPS green sturgeon associated with prospective recreational fisheries in the lower Columbia River is estimated to be 3 fish (TAC 2008, Table 31).

Similarly, it is estimated that a total of 74 green sturgeon will be handled annually in commercial fisheries conducted in the Columbia River (TAC 2008). Of the handled fish, 80% (59) will be from the Southern DPS. Of those released, an estimated 5.2% may suffer post-release mortality. Therefore, the total annual take of Southern DPS green sturgeon associated with future lower Columbia River commercial fisheries is estimated to be 3 fish ($59 * 0.052 = 3$) (TAC 2008). Overall, the estimated total lethal take of green sturgeon of the Southern DPS associated with harvest under the Prospective Action would be approximately 6 fish annually (TAC 2008).

10.2.2 Hydrosystem Effects

- Green sturgeon only encounter the effects of the FCRPS between Bonneville Dam and the Columbia River plume, including the Columbia River estuary.
- Adults are known to be found in this portion of the action area only during late summer and fall. At this time, operation of the FCRPS has a small effect on streamflow (e.g. flows

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are decreased about 15 kcfs (9%) in August and are increased 5 kcfs or about 5% in September. Such minor flow effects would have unmeasurable effects on benthic fish species such as green sturgeon.

- Larger effects of the FCRPS in the occupied portion of the action area, such as changes in the habitat characteristics of the Columbia River estuary, are unlikely to have substantial effects on green sturgeon because adult green sturgeon tend to use deepwater habitats. No spawning or juvenile rearing is known to occur in the Columbia basin.
- Green sturgeon are bottom (benthic) feeders and are not known to rely on salmonids as a prey base.

Chapter 11

Memoranda of Agreement

11.1 Effects of the Memoranda of Agreement with Tribes and States

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Chapter 11

Memoranda of Agreement

11.1 Effects of the Memoranda of Agreement with Tribes and States

A two-year collaboration between the federal agencies, tribes, and states was an integral part of the remand process. The Action Agencies used the results of this collaboration extensively in the development of their Biological Assessment and Comprehensive Analysis. After those documents were prepared and submitted to NOAA Fisheries on August 21, 2007, discussions between the Action Agencies and individual tribes and states continued. As the result of these continued discussions, Memoranda of Agreement (MOAs) were developed between the three federal action agencies, four tribes, and two states in the time period between the release of the draft Biological Opinion and the completion of this final Biological Opinion.¹

Since these MOAs were finalized rather late in the process, there has not been sufficient time to fully describe and numerically quantify the effect of the measures proposed in them, nor to insert each of the measures contained within these MOAs into the appropriate specific sections of this opinion so that they could be considered in context. However, there has been adequate opportunity to review the proposed measures to determine the effects, whether they are consistent with the requirements of the Endangered Species Act, and to provide at least a qualitative characterization of the benefit likely to result from their implementation.

The Action Agencies developed an addendum to their FCRPS and Upper Snake BAs and Comprehensive Analysis (Corps et al. 2008b), including updating the description of the proposed action and biological effects analysis, to reflect the actions and commitments made in the MOAs. This assessment is based on that addendum.

The MOAs provide a ten year commitment to specific actions selected because of their targeted fishery benefits. Some actions provide additional survival benefits for listed fish beyond what was considered in the draft Biological Opinion, both to aid in gap filling and

¹ There are separate Agreements between the Action Agencies and:

1. Three Treaty Tribes and the Columbia River Intertribal Fish Commission
 - Confederated Tribes of the Umatilla Indian Reservation
 - Confederated Tribes of the Warm Springs Reservation
 - Confederated Tribes and Bands of the Yakama Nation
 - Columbia River Inter-Tribal Fish Commission
2. Confederated Tribes of the Colville Indian Reservation
3. State of Idaho
4. State of Montana

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to provide an additional survival cushion. Some are new actions or clarifications of actions in the draft Biological Opinion that provide additional provisions for implementation of fish and wildlife actions over the ten years of the RPA. All are specific and binding commitments. The MOAs focus especially on ESA-listed salmon and steelhead, but proposed actions for non-listed fish, such as lamprey and non-listed salmon, are also included.

The MOAs also include future actions that will need to undergo additional, site-specific environmental compliance/reviews, prior to their implementation. As those actions are better defined, NOAA Fisheries will provide ESA reviews as appropriate for these future projects.

We note that all of the agreements specifically provide that all activities undertaken pursuant to the MOAs must be in compliance with the Endangered Species Act. Although NOAA Fisheries does not now have sufficient information to quantitatively determine the specific effect of such future actions, by virtue of this express provision, none of these future actions will be implemented unless and until it has been determined, after due consultation, that the particular action will be carried out in such a manner as to not jeopardize ESA-listed species and not adversely modify critical habitat.

Further, the MOAs represent the commitment of the particular tribes, states and CRITFC for their active participation in the work of implementing the FCRPS RPA. This has the potential to contribute to the efficiency, effectiveness and success of the actions called for in the RPA and these MOAs. The non-federal partners each have significant knowledge and experience with the listed salmon and steelhead species that will augment the federal implementation actions.

Overall, we conclude that the actions contained in the proposed MOAs are consistent with the requirements of the Endangered Species Act, that many of them will have a beneficial effect on the ESA-listed species that are the focus of this opinion. In some instances, the benefits are substantial. In some instances the benefits are either difficult to quantify at this point or are likely to be positive but not likely to be substantial, and in some instances the proposed action is not likely to affect the listed species.

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NOAA Fisheries' specific findings are as follows:

Hydrosystem Actions

- Measure: Clarification of performance standards and metrics, including the use of the 96%/93% performance standards for spill/bypass operations and the consideration of delay and spill passage efficiency as part of performance.

Finding

Beneficial effect. These provisions are consistent with other requirements of this opinion and will further assure compliance with the performance standards.

- Measure: The identification of John Day operation at MOP (minimum operating pool) as a potential contingency action if performance is not on track as part of the 2016 comprehensive review.

Finding

No biological effect likely during the term of this opinion.

- Measure: Revised transportation operations to increase survival benefits for Snake River steelhead compared to the BA, as modified by the draft BiOp, subject to continued performance review.

Finding

Significant beneficial effect. This provision has been incorporated in the proposed FCRPS operations analyzed in this opinion and its benefits are reflected in the analysis.

- Measure: A more conservative fish trigger for cessation and re-initiation of summer spill during August at Snake River Projects. This includes dropping from 1000 fish collected to 300 fish collected for spill cessation and 1000 fish collected to 500 fish collected for re-initiation of spill.

Finding

No adverse effect, potential for beneficial effect. This provision has been incorporated in the proposed FCRPS operations analyzed in this opinion and its benefits are reflected in the analysis.

- Measure: Additional details on the parties' efforts to evaluate and improve dry-year operations.

Finding

No adverse effect, potential for beneficial effect. This provision will improve adaptive management under this opinion and may lead to better flow management in dry years.

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- Measure: Additional details on the parties' efforts to evaluate summer draft at Lake Roosevelt.

Finding

No adverse effect. This measure may lead to better use of available storage to benefit migrating juveniles of all ESUs and to benefit resident fish.

- Measure: Additional details on the parties' efforts to improve water management flexibility through improved forecasting.

Finding

No adverse effect, potential for beneficial effect. This measure may lead to additional flow management options to benefit listed ESUs.

- Measure: Additional details regarding coordination on Canadian water negotiations.

Finding

No adverse effect.

- Measure: An expanded lamprey program, with dam operations and actions consistent with the needs of listed fish.

Finding

No adverse effect. Potentially beneficial to pacific lamprey, a species that is currently in low abundance.

- Measure: Reasonable operations for non-listed fish, with priority for ESA-listed fish in case of conflicts.

Finding

No adverse effect. Some potential benefit for listed ESUs by reducing conflict and increasing regional support for hydro operations needed to protect ESA-listed fish.

Habitat Actions

As identified in the Revised Addendum, the MOAs specify 84 individual habitat projects designed to address limiting factors for salmon and steelhead. All of these habitat actions are consistent with RPA 35 of this Opinion. NOAA Fisheries is unable to determine at this time which of these projects are in addition to actions that the Action Agencies might otherwise have taken. At this stage, we also do not have full details regarding the proposed projects. NOAA Fisheries therefore is unable to characterize the incremental benefit of these actions but have determined that they will address factors limiting the survival and recovery of listed ESUs.

All of these actions have beneficial effect. They are relatively widely distributed in the Columbia River Basin, and target some of the most important limiting factors for

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individual populations. Some of these projects have the potential to have significant beneficial effect for specific populations and would be expected to contribute measurably to the survival and recovery of that population.

Hatchery Actions

Hatchery actions numbered 1-9 in Attachment C will have beneficial effects for specific ESUs. Actions 2, 3, and 7 will have significant beneficial effects. These actions were already identified in the Draft Biological Opinion and those benefits are reflected in the analysis in the opinion. Action 1, reconditioning of Snake River steelhead kelts, was not included in prior analyses and will have a significant beneficial effect on that ESU. The proposed action and analysis in this opinion has been modified to reflect this action, and its benefits are assumed in the analysis.

Hatchery actions 10-17 are not directed toward ESA-listed ESUs. Because of the conditions that the parties have placed on their implementation, they are not expected to have adverse effects on the listed ESUs. They are likely to have a significant beneficial effect on the fulfillment of federal trust and treaty obligations, which is an appropriate and important factor so long as ESA requirements are met.

Tribal Conservation Law Enforcement Actions

While these actions have been characterized in the Revised Addendum as a means of reducing potential illegal take of ESA-listed salmon and steelhead, we believe that the benefits are likely to be more extensive. Based on our experience with the NOAA Fisheries Enforcement officers, we believe that effective conservation law enforcement helps reduce certain types of habitat degradation and increases public awareness and encourages voluntary conservation efforts in addition to deterring harvest violations.

This action will have beneficial effect, and may have substantial beneficial effect, for all upper river and mid-Columbia ESUs: Snake River steelhead; Snake River Spring Chinook; Snake River Fall Chinook; Upper Columbia Spring Chinook; Upper Columbia steelhead; Mid-Columbia River steelhead. A selective fisheries pilot project will also be implemented in the Upper Columbia.

Research, Monitoring and Evaluation

The MOAs include actions to address Biological Opinion priorities and to monitor on-the-ground implementation effectiveness and to address critical uncertainties. Items 1-4 are already included in this opinion. Items 5-12 are in addition to the research, monitoring, and evaluation specifically identified in this opinion. Those items are expected to have a beneficial effect by furthering understanding and implementation effectiveness. No attempt has been made to quantify the extent of this effect.

Conclusion

The Tribal and State MOAs make commitments of operations and funding that, in general, will have beneficial effects for ESA-listed fish and, in some instances will have significant beneficial effects. They will also provide benefits to non-listed fish.

NOAA Fisheries concurs with the Summary of Effects found in Part IV of the Revised Addendum. NOAA Fisheries agrees that the hydro, habitat, and hatchery actions contained in the MOAs, as described and conditioned, are expected to be positive or neutral to the listed salmon and steelhead that are the subject of this consultation. The MOAs provide a commitment of resources for these future improvements. Collectively, the effect of the MOA actions is to provide additional biological benefits compared to the draft BiOp for the affected ESUs, particularly for Upper Columbia spring Chinook and steelhead; Snake River spring/summer Chinook fall Chinook, and steelhead; and Mid-Columbia steelhead.

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