

CHAPTER 9

Implementation

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Federal Assurances

I. ESA Requirements and Potential for Regulatory Certainty

When species are listed under the Endangered Species Act (ESA), federal agencies are required to ensure that any actions they fund, permit or carry out are not likely to jeopardize the species' continued existence or destroy or adversely modify its critical habitat. Federal agencies must consult with the listing agency (NOAA Fisheries or U.S. Fish and Wildlife Service) regarding actions they take that "may affect" the listed species or its critical habitat. Actions that may affect but are "not likely to adversely affect" the species undergo an informal consultation, while those that are likely to adversely affect the species or its critical habitat must undergo more lengthy formal consultation. The ESA also prohibits the "take" of listed species, either through section 9 (for endangered species) or through section 4(d) (for threatened species). The take of a listed species can occur as a result of many of the everyday activities carried out in a watershed, resulting in an ESA violation.

Although there is no requirement to implement recovery actions, there are risks if actions are not taken promptly to improve the conditions for salmon. For example, if habitat continues to degrade and the status of salmon continues to decline, the species could be downgraded to an endangered status which could result in more restrictions on current activities and more costs for recovery.

Private citizens, landowners, businesses and local governments can all be affected by the federal consultation requirement or the ESA prohibition of take. For example, ESA consultations can affect the time it takes to issue a permit, fund a project, or complete an action when a federal agency is involved. Consultation might also affect the conditions on a permit or funding, or the manner in which a project is completed.

In Puget Sound, a consortium of watershed groups, local, state, tribal and federal governments developed this draft recovery plan for ESA-listed salmon and bull trout. Commitments to implement the plan will be developed by the end of 2005. In exchange for those commitments, local, state, tribal and other interested parties want to know what support they can expect from NOAA Fisheries and the U.S. Fish and Wildlife Service. The extent to which a party might receive regulatory relief, or assurances against take liability, will depend on the extent to which that party commits to taking certain specific actions.

II. Interests for Federal Certainty and Regulatory Relief

Addressing the uncertainty and legal liability created by the ESA mandates is important to the future of many activities ranging from farming to forest management, rural and urban development, and road maintenance and other community improvements. Interested parties want to know that the development of, and most importantly,

implementation of a salmon recovery plan will achieve salmon recovery, and help reduce the legal and regulatory uncertainty for activities necessary to support our human population. They also hope that effective plan implementation will lead to a reduction in the cost of ESA compliance and the risk of third party lawsuits.

People working across Puget Sound share the perspective that the money provided from the federal and state governments while important will be inadequate to recover salmon without resources committed from local governments, business, and other private parties. Without incentives for working on recovery, local governments and the private sector will find it difficult to do more than just comply with the law.

III. Ability to Provide Federal Certainty

The ability of the federal agencies to provide certainty and regulatory relief is based on several factors:

1. The comprehensiveness, level of detail and scientific certainty of results proposed in a recovery plan,
2. Comprehensiveness and certainty of commitments for implementation,
3. Demonstrated progress in implementation of actions called for in the plan, and
4. Improved status/trends for populations listed under the ESA.

Like climbing the rungs on a ladder, the more progress that is made toward achieving the four criteria, the higher the level of certainty or regulatory relief that could be offered. At the time of the anticipated adoption of the plan by the federal agencies, the factors mentioned above will only be partially met. It is anticipated that the plan will actively evolve over time and that substantial progress could be made on all four factors over the first years of implementing the plan.

IV. Initial Steps for Federal Certainty

The general recommendation is to provide a staged progress review and the provision of assurances over the next ten years for the whole region, individual watersheds and specific sectors of the region. Some individual sectors or watersheds may be further along than others in their understanding and commitment to address the threats to the salmon and they should be rewarded with additional assurances. This proposal includes a conservation agreement for the whole region and individual watershed/sector assurances.

Regional Conservation Agreement

Upon the adoption of the Puget Sound recovery plan by the federal services, an agreement is recommended between the federal agencies and the State of Washington for the conservation and recovery of the salmon. "Conservation agreements" are not specific to the ESA but provide a means to formalize commitments that could support implementation of the plan.

The conservation agreement would acknowledge that the Puget Sound recovery plan with its implementation commitments is the agreed upon approach for achieving recovery by the State and the Federal Services. The conservation agreement would identify key measures that would be monitored for success, the process for adapting to new information and the initial milestones over a ten-year period where progress and results would be evaluated. The agreement would also state the intention of the state and federal agencies to jointly pursue funding for local communities if a watershed or sector is implementing the plan. They will also consider how their enforcement powers and other tools can be used to provide incentives for implementing the plan. The agreement could be used in the event of third party lawsuits by identifying the recovery plan as the recommended approach to recovery in the case of legal action.

The conservation agreement would identify review points at specific time intervals; three, five and

ten years. At each review point, progress would be evaluated for each watershed, fish population and the evolutionarily significant unit. Based on the four factors mentioned in the previous section, the federal agencies would determine if additional assurances or regulatory relief could be provided.

Watershed and Sector Specific Assurances

Federal assurances can provide a significant benefit to local watershed interests and individual sectors of the community by streamlining the permit process and providing upfront certainty for permit requirements. Currently the actions that may require consultation under the Endangered Species Act, that are important for participating local jurisdictions include:

- a. Erosion control bank protection
- b. Dike and levee maintenance
- c. Fish passage projects, e.g., culvert replacements
- d. In-stream restoration, e.g., engineered log jams, side channel restoration
- e. Riparian restoration
- f. Docks and piers in fresh and marine waters
- g. Installation of watercraft lifts

Once the recovery plan is adopted, the federal services could formally initiate a process to evaluate the potential for general programmatic permits to cover as many of the above actions as possible. The conditions for favorable consideration of a general programmatic permit would be compliance with the implementation schedule for the watershed plan, adoption of regulations consistent with the plan and an on-going monitoring program.

Implementation Schedule

Puget Sound Salmon Recovery Plan Draft Implementation Schedule		
Near-term (July 2005 to July 2007)		
Watershed Groups/Entities	Watershed Groups work with Shared Strategy, TRT and others to develop an adaptive management and monitoring program that is integrated at the watershed and regional scale.	July 05-Dec 05
Watershed Groups/Entities	Obtain and confirm commitments by decision makers and responsible entities to implement actions consistent with their authority and responsibility.	July 05-Dec 06
Watershed Groups/Entities	Preserve future options for restoration in priority areas where needed.	July 05-July 06
Co-Managers and Watershed Groups/Entities	Work together to develop and refine integration of habitat, harvest and hatchery goals and strategies.	Jul 05-Jul 06
Puget Sound Counties and Cities planning under GMA	Update CAO's, (local watershed chapters and recovery plan can serve as best available science); coordinate with stormwater manual, clearing and grading, and zoning programs.	Jul 05-June 06
Shared Strategy*	Develop, refine, and complete regional (Puget Sound ESU-scale) adaptive management and monitoring program; coordinate with watershed AMM programs and the regional nearshore strategy.	July 05-Dec 05
Shared Strategy and its successor*	Coordinate the design and implementation of a regional communication and fundraising campaign to build support for salmon recovery efforts and enable implementation.	July 05-Dec 06 and ongoing
Shared Strategy and its successor*	Coordinate a pilot project in cities or counties to evaluate the effects of existing protection programs and their contribution to salmon recovery; identify gaps in programs, and develop and implement locally acceptable solutions based on a combination of voluntary, incentive and regulatory programs.	Jul 05-Dec 06
Shared Strategy/Regional Finance Leadership Group*	Refine and complete detailed salmon recovery funding plan; begin fundraising according to the current strategy.	July 05-Dec 06
Forests and Fish Policy Group and Shared Strategy successor*	Establish regular communication structure to coordinate activities between forestry managers and watershed habitat managers.	Jan 06-Jul 06
WA Dept. of Ecology	Integrate the recommendations in this Plan with the Oil Spill Response Program.	2005
WA Dept. of Ecology	Design program to establish flows for salmon recovery.	July 05-July 06
WA Dept. of Ecology	Issue Phase I and II Municipal stormwater permits consistent with this Plan.	Jul 05-June 06
WA Dept. of Ecology	Implement protection and restoration strategies in nearshore-marine areas prone to low dissolved oxygen levels, high water temperatures, and contamination.	Jul 05 and ongoing
NOAA	Coordinate the development of a multiple ESU-scale adaptive management and monitoring program that integrates the Puget Sound approach.	Dec 05-Dec 07
NOAA	Determine results expected for salmon recovery from the implementation of the U.S. Ocean Action Plan	2006

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Puget Sound Salmon Recovery Plan Draft Implementation Schedule		
Midterm (2005 to 2015)		
Watershed Groups/Entities and other responsible agencies	Evaluate the effects of existing protection programs and their contribution to salmon recovery; identify gaps in programs and develop and implement locally acceptable solutions based on a combination of voluntary, incentive and regulatory programs; coordinate protection actions at the sub-basin or appropriate scale to ensure levels of protection needed for salmon recovery are met.	2005-2010
Watershed Groups/Entities	Implement watershed 10-year fresh and marine water strategies, actions, and adaptive management and monitoring programs	2005-2015
Watershed Groups/Entities and regional nearshore experts	Conduct further technical assessments as needed to help determine nearshore-marine restoration priorities and actions; build public support for nearshore restoration actions.	2005-2015
Watershed Groups/Entities and regional nearshore experts	Develop prioritized list of nearshore restoration actions based on local analysis and the regional nearshore chapter's sub-basin analysis.	2005-2015
Watershed Groups/Entities and regional nearshore experts	Refine Puget Sound strategies and actions based on different assumptions for ocean conditions.	2005-2015
Watershed Habitat Managers	Coordinate and sequence habitat restoration actions consistent with H-Integration strategy.	ongoing
Co-managers	Implement provisions of CRMP for Chinook (harvest and hatchery components) to integrate activities with improvements to VSP parameters at watershed and regional scale.	ongoing
Co-managers and Watershed Habitat Managers	Continue to enhance H-integration strategies and move further down the H-Integration continuum over time.	2005 and ongoing
Co-managers and Watershed Habitat Managers	Monitor H-Integration results; adjust strategies and management practices according to new information.	ongoing
Puget Sound Counties and Cities	Update Shoreline Masters Program to incorporate new state shoreline guidelines; local watershed chapters and recovery plan can serve as best available science; coordinate with stormwater manual, clearing and grading, and zoning programs.	2005-2012
Shared Strategy and its successor*	Encourage local, state, tribal and federal agencies to grant permits, and develop and manage programs and actions in the context of processes, ecosystems and population specific viability needs noted in the plan (e.g. granting or developing hydraulic project approvals, habitat conservation plans, programs that support aquacultural practices, and granting permits under the CWA and Rivers and Harbors Act)	ongoing
Shared Strategy and its successor*	Encourage and coordinate regional and watershed education and incentive programs that focus on habitat areas that are intact and providing significant benefits to salmon.	ongoing
WA Dept. of Ecology	Complete TMDL's for prioritized WRIA's	2005-2010
WA Dept. of Ecology	Work with watershed groups to identify flow-related problems that limit salmon recovery and identify "recovery flows" to support salmon recovery; consider relationship between freshwater flows and the nearshore-marine waters; develop and implement instream flow protection and enhancement programs to prioritize, fund and solve instream flow deficiencies related to salmon recovery.	2005-2015
NOAA	NOAA will participate in the Pacific Salmon Treaty negotiations at the next available opportunity and, without presupposing results, will encourage the use of all available methods in fishery planning that reduce impacts to listed salmon and provide important harvest opportunities	2007-2010
Long-term (2014 and beyond)		
Watershed Groups/Entities; Regional nearshore experts; and Shared Strategy successor*	Refine and/or develop protection and restoration program beyond ten years and implement actions necessary to reach recovery goals	2014 and ongoing

* The Shared Strategy facilitated plan development with watershed groups, state, tribal, and federal agencies. It is currently funded through December 31, 2005. By the end of the year, the region will determine the organization/s that will lead implementation functions for the region.