

## Updated Schedule for New Hatchery Listing Policy and Pacific Salmon & Steelhead Status Review Updates

August 22, 2002

### ~ Background ~

The *Alsea Valley Alliance v. Evans* decision (*Alsea* decision) has led the National Marine Fisheries Service (NOAA Fisheries) to reevaluate how it treats hatchery fish in Endangered Species Act (ESA) listing determinations. Although the U.S. Court of Appeals for the Ninth Circuit granted intervenors-appellants an emergency motion to stay the judgement in the *Alsea* decision, thus reinstating Oregon Coast coho as a threatened species under the ESA, the interpretive issue raised by the *Alsea* decision has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date.

During October of 2001, NOAA Fisheries received several petitions to delist 15 ESUs of Pacific salmon and steelhead. In a *Federal Register* notice published on February 11, 2002, the agency issued its determinations to accept these petitions and to initiate status review updates for 14 of the petitioned ESUs. Furthermore, the agency elected to conduct status review updates for an additional 11 ESUs and reaffirmed its commitment to review its policy on the treatment of hatchery salmon and steelhead populations in ESA status reviews and listing determinations (hatchery listing policy). The status review updates were to be initiated as soon as possible following the completion of the hatchery listing policy to provide guidance on the proper consideration of hatchery populations in ESA status reviews and listing determinations.

NOAA Fisheries initially projected proposing a new hatchery listing policy in spring of 2002, and publishing a final policy by September 2002. To ensure that the policy is based on the best and most accurate scientific information available, NOAA Fisheries has conducted an extensive review of the ESA congressional record and the scientific literature pertinent to the consideration of artificial propagation in ESA listing decisions. The discussion and resolution of complex technical and policy issues arising from this review have delayed the development and proposal of the new hatchery listing policy. This tardiness has consequently hindered the status review updates. Below is a revised schedule for the hatchery listing policy and status review updates.

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### **New Hatchery Listing Policy for Pacific Salmon and Steelhead**

#### Summary:

The *Alsea* decision rejected NOAA Fisheries' policy of excluding hatchery populations from listing protection even though they were determined to be part of the same ESU as listed naturally-spawned populations. The new hatchery listing policy is intended to more clearly articulate how the agency will consider hatchery salmon in evaluating the risk of extinction for Pacific salmon and steelhead ESUs, and in making subsequent listing determinations under the ESA. The new policy will ensure (consistent with the *Alsea* decision) that when the agency lists an ESU, it lists the entire ESU – whether it includes hatchery populations, naturally spawned populations, or both.

#### Schedule:

- The new hatchery listing policy will be formally proposed to the public in a notice to be published in the *Federal Register* by October 2002.
- Following a public comment period, NOAA Fisheries intends to finalize the policy and publish it as a final rule in the *Federal Register* in April 2003.

#### Public Input and Comment:

A 60-day public comment period, including public meetings, will commence with the publication of the proposed policy in October 2002.

### **Status Review Updates for Petitioned ESUs**

#### Summary:

While the *Alsea* decision affected only one ESU, the interpretive issue raised by the ruling has the potential to affect nearly all of the agency's West Coast salmon and steelhead listing determinations made to date. Updated listing determinations will be made consistent with the new hatchery listing policy, discussed above.

#### Schedule:

- Compilation and preliminary analysis of the best available scientific information is ongoing and will be completed in time for review by a team of NOAA Fisheries' scientists in January 2003.
- NOAA Fisheries will take the findings of the scientific review, after considering the efforts being made to protect the species, and propose updated listing determinations for the 25 ESUs in June 2003.
- Following public comment on the proposed listing status updates, NOAA Fisheries will make final updated listing determinations for the 25 ESUs by June 2004.

#### Public Input and Comment:

A 60-day public comment period, including public meetings, will be opened with the publication of the proposed listing status updates in June 2003.