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Contact: Brian Gorman
(206) 526-6613

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FEDERAL AGENCY UNVEILS INNOVATIVE E.S.A. SALMON RULES

Saying it was instituting the most significant innovation in how the Endangered Species Act is implemented since it began listing West Coast salmon in 1991, NOAA's National Marine Fisheries Service today unveiled its 4(d) rules to protect 14 populations of salmon and steelhead from California's Central Valley to Washington's Puget Sound.

"These new rules are both fish friendly and people friendly," said William Stelle, head of NOAA Fisheries' Northwest regional office in Seattle, one of two fisheries regions responsible for applying the rules.

"They reflect our twin commitments to protect the fish and to provide powerful incentives for local conservation efforts," he added.

Today's rule prohibits activities that harm or kill salmon populations listed as "threatened" under the ESA. "All these populations are in serious decline. These protections are required by the law and needed by the fish. It's that simple," Stelle said.

However, a new approach in these final rules exempts certain state or local conservation efforts from the so-called "take" prohibition, that is, the provision in the federal ESA law that forbids "taking" or harming these fish or their habitat.

"These exemptions will reduce red tape, appreciably cut back the need for ESA-related permits for activities covered by approved conservation plans, and create powerful incentives for state or local conservation programs which can benefit the fish enormously," Stelle said.

NOAA Fisheries must issue so-called 4(d) rules, named after the section of the ESA that authorizes them, after it has made an official listing of "threatened." Once a federal listing has been made, all federal activities must immediately come into compliance with the agency's fish-protection measures. However, until 4(d) rules are in place, there is no similar fish protection for non-federal actions.

Without such regulations, according to the fisheries service, only a fraction of the activities on the 160,000 square miles that is home to these 14 populations of salmon and steelhead would be affected, leaving some watersheds without safeguards for the fish.

The agency's traditional approach to salmon protection was to issue 4(d) rules that simply had what is called a "take" prohibition that strictly prohibited "take" or harm to protected fish or their habitat. But because there were no specific rules spelling out what "take" might be, developers, foresters and others whose activities might hurt fish frequently had to describe their proposed actions in detail and await a federal permit on a case-by-case basis, with no guarantee that what they were proposing would be approved.

The "take" prohibition in the new rules contain two types of exceptions. One covers those existing programs that NOAA Fisheries has specifically approved, like routine road maintenance programs in Oregon's Department of Transportation or Washington state's forest practices.

The second type includes general categories of programs that NOAA Fisheries may exempt in the future if a state or local entity chooses to submit a proposal for approval. The rule describes these types of activities – like urban or municipal development, scientific research or harvest and hatchery management -- and specifies the criteria by which those activities will be evaluated.

Finally, today's rules contain guidance on what category of activities are most likely to cause some harm or injury to listed fish, like irrigation diversions that dry up spawning and rearing habitats or construction activities in a stream that crush salmon nests during spawning season.

"Our approach to enforcing these rules will be based upon old-fashioned common sense and good science," Stelle said.

"We'll look to those harmful activities that clearly kill salmon, like bulldozers in streams with spawning salmon, and we'll look to other federal, state or local conservation efforts to address more marginal activities that may, nonetheless, have cumulative effects on the listed fish and their habitats," Stelle said.

Because the approach is so new and the rules so detailed, NOAA Fisheries said it will embark on a series of workshops in California, Oregon and Washington beginning in July to explain the new approach to citizens. The rules themselves, except for those provisions applying to steelhead, won't go into effect until December. The provisions applying to steelhead, which are essentially identical to those governing chinook, coho, chum and sockeye, will become effective September 8, 2000, because their schedule is governed by a court order. Salmon ESUs effective date is January 6, 2001.

The new rules were preceded by proposed rules, which were discussed at 25 public hearings in California, Washington, Oregon, Idaho and were the subject of more than 6,500 public comments.