

Attachment 4

4(d) RULE EVALUATION AND RECOMMENDED DETERMINATION

SANDY RIVER SUMMER STEELHEAD PROGRAM

HGMP SUBMITTED BY: Oregon Department of Fish and Wildlife (WDFW)

AFFECTED AREA: Sandy River Basin, Oregon.

AFFECTED ESU/DPS:

	Listing Status Determination	Critical Habitat Designation	Protective Regulations
Chinook salmon (<i>Oncorhynchus tshawytscha</i>)			
Lower Columbia River Chinook Salmon	June 28, 2005; 70 FR 37160	September 2, 2005; 70 FR 52630	June 28, 2005; 70 FR 37160
Coho Salmon (<i>Oncorhynchus kisutch</i>)			
Lower Columbia River Coho Salmon	June 28, 2005; 70 FR 37160	[not yet designated]	June 28, 2005; 70 FR 37160
Steelhead (<i>Oncorhynchus mykiss</i>)			
Lower Columbia River Steelhead	January 5, 2006; 71 FR 834	September 2, 2005; 70 FR 52630	June 28, 2005; 70 FR 37160
Chum Salmon (<i>Oncorhynchus keta</i>)			
Columbia River Chum Salmon	June 28, 2005; 70 FR 37160	September 2, 2005; 70 FR 52630	June 28, 2005; 70 FR 37160
Pacific Eulachon (<i>Thaleichthys pacificus</i>)			
Southern Distinct Population Segment	March 18, 2010; 74 FR 13012	October 20, 2011; 76 FR 65324	October 20, 2011; 76 FR 65324

4(d) RULE LIMIT: Final 4(d) Rule Limit 5

**NMFS Tracking
Number:** WCR-2014-300

DATE: May 31, 2016

EVALUATION

The Oregon Department of Fish And Wildlife (ODFW) submitted a Hatchery and Genetics Management Plan (HGMP) for the Sandy River Summer Steelhead Program on August 1, 2013 along with three other HGMPs as part of a submittal requesting concurrence that the HGMPs satisfy criteria under Limit 5 of the 4(d) Rule.

The Final Endangered Species Act (ESA) 4(d) Rule for the Lower Columbia River Steelhead Distinct Population Segment (DPS) states that the prohibitions of paragraph (a) of the rule (50 C.F.R. 223.203(a)) do not apply to activity associated with artificial propagation programs provided that the following elements of the rule are met.

(5)(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria

National Marine Fisheries Service (NMFS) will approve an HGMP if it meets the specific criteria specified in 50 CFR 223.203(b)(5)(i), and conditions in 50 CFR 223.203 (b)(5)(ii)-(vi) of the Final ESA 4(d) Rule for Lower Columbia River Steelhead (June 28, 2005; 70 FR 37160). The following is an evaluation of whether the submitted HGMP meets these criteria and conditions.

5(i)(A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results.

Goals, performance objectives (standards), and performance indicators for the Sandy River Summer Steelhead Program are clearly stated in sections 1.7, 1.9, and 1.10, respectively, of the HGMP submitted for the program (ODFW 2013). The Sandy River Summer Steelhead Program is in place for harvest augmentation. The primary goal of the Sandy River Summer Steelhead Program is to produce 75,000 summer steelhead smolts for release into the Sandy River to provide hatchery adults for harvest in the Lower Columbia River and Sandy River recreational fisheries while minimizing unintended risks to naturally producing populations.

The primary objectives of the Sandy Hatchery, as outlined in the Sandy Hatchery Operations Plan (ODFW 2015), are:

- Objective 1: Foster and sustain opportunities for sport, commercial, and tribal fishers consistent with the conservation of naturally produced native fish.
- Objective 2: Contribute toward the sustainability of naturally produced native fish populations through the responsible use of hatcheries and hatchery-produced fish.
- Objective 3: Restrict the introduction, amplification, or dissemination of disease agents in hatchery produced fish and in natural environments by controlling egg and fish movement and by prescribing a variety of preventative, therapeutic and

disinfecting strategies to control the spread of disease agents in fish populations in the state.

Objective 4: Minimize adverse ecological impacts to watersheds caused by hatchery facilities and operations.

Objective 5: Communicate effectively with other fish producers, managers and the public.

Performance standards and indicators included to enumerate intended results, and to measure the program's success or failure in attaining those results, are described in sections 1.9 and 1.10 of the HGMP. To summarize, the categories of performance indicators include: (1) Legal Mandates; (2) Harvest and Socio-Economic Effectiveness; (3) Life History Characteristics; (4) Ecosystem Function; and (5) Operation of Artificial Propagation Facilities. Each of these include performance standards, their associated indicators, and how these indicators will be monitored and evaluated (section 1.10 of the HGMP).

ODFW will implement the monitoring and evaluation programs identified in the HGMP, and additional items provided in the letter of concurrence, as described below and based on the Incidental Take Statement (ITS) (NMFS 2014), and will compile the results in annual reports. Monitoring and evaluation program results will be used by the co-managers, together with NMFS, to adjust the HGMP as necessary to meet plan performance standards.

5(i)(B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled “Viable Salmonid Populations” (NMFS 2000).

The ESA 4(d) Rule (June 28, 2005; 70 FR 37160) states that an HGMP must use the concepts of viable and critical thresholds as defined in the NMFS Viable Salmonid Population (VSP) document (McElhany et al. 2000). Application of these VSP concepts is needed to adequately limit takes of listed salmonids as broodstock to specified populations thresholds or circumstances for the protection of the species. Listed salmonids may be purposefully taken for broodstock purposes only if: the donor population is currently at or above the viable threshold and the collection will not impair its function; the donor population is not currently viable but the sole objective is to enhance the propagation or survival of the listed ESU; or the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow attainment of viable status for that population.

The Willamette/Lower Columbia Technical Recovery Team (WLC-TRT) determined minimum abundance thresholds (MATs) for the Oregon Lower Columbia fall/spring Chinook salmon, chum salmon, and coho salmon populations in the Sandy River (McElhany et al. 2007). The WLC-TRT established MAT values for both “critical” (very high risk of extinction) and “viable” (low risk of extinction) status. The MAT values for “critical” status for the Sandy populations of Chinook salmon, coho salmon, and steelhead were 400, 1,800, and 425 respectively. The

“viable” abundance levels defined for Chinook salmon, coho salmon, and steelhead are 800, 3,300, and 750 respectively.

The MAT values identified by the WLC-TRT were used in the status assessment conducted as part of developing the Lower Columbia River Conservation and Recovery Plan for Oregon Populations of Salmon and Steelhead (Oregon’s Recovery Plan) (ODFW 2010), and the NMFS’ ESA Recovery Plan for LCR salmon and steelhead listed under the ESA (NMFS 2013). The status assessment found that the Sandy coho salmon population was below the “critical” MAT at 1,800. The assessment found the Sandy late fall Chinook salmon population was above the “viable” level at 1,764, whereas the fall Chinook salmon and spring Chinook salmon populations were below the viable level, but above the “critical” level respectively at 144 and 714. The Sandy winter steelhead assessed abundance (674) is above the critical level, but below the viable level (ODFW 2010). Spring Chinook salmon escapement for 2014 was above the viable level at 1,491 natural-origin adults, as well as for winter steelhead at 3,249 natural-origin adults. Coho salmon returns were above the viable level at 5,942 natural-origin adults but the other two cohorts are still below the viable level (NMFS 2014). The natural-origin winter steelhead population will not be used in the broodstock for the summer steelhead program and thus the program would not impair the function of the Sandy River winter steelhead population.

5(i)(C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities.

The goal of the Sandy River Summer Steelhead Program is primarily to support recreational fisheries and thus would not meet the criteria under Limit 5 of the 4(d) rule, and the rule would not apply because summer steelhead are not endemic to the Sandy River Basin.

5(i)(D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

The HGMP includes detailed protocols pertinent to ensuring that the program is operated in a manner consistent with the health of the fish reared and appropriate to minimize adverse effects outside the hatchery.

Fish Health: Protocols addressing fish health, including fish health maintenance and hatchery sanitation procedures applied during broodstock collection, mating, fish incubation, and rearing are detailed in sections 7.7, 8.3, 9.1.7, 9.2.7, and 10.9 of the HGMP. Fish health monitoring measures are also provided in the annual Sandy Hatchery Operation Plan (ODFW 2015).

Broodstock Collection: Broodstock collection protocols are presented in HGMP sections 6 and 7. Hatchery summer steelhead will be collected from adults returning to the Foster Dam trap at the South Santiam Hatchery.

Broodstock Spawning: Broodstock spawning protocols are described in section 8 of the HGMP. The Sandy River Summer Steelhead Program production is part of the larger South Santiam Summer Steelhead Program (Stock – 24), the broodstock goal is 864 adults, which will be spawned at a 1 male to 1 female ratio. Spawning and incubation will occur at the South Santiam Hatchery.

Rearing and Release of Juveniles: The juvenile summer steelhead rearing and release protocols are presented in HGMP sections 9 and 10. Eyed-eggs will be transported to the Oak Springs Hatchery and Bonneville Hatchery where they will be incubated and hatched. Juveniles will be reared to approximately 4.5-6 fish per pound and transported to the Sandy Hatchery. The summer steelhead smolts will be acclimated in the adult holding ponds at the Sandy Hatchery and voluntarily released.

Deposition of Hatchery Adults: Plans for the disposition of surplus hatchery adult summer are addressed in HGMP section 7.5. Surplus hatchery adults will be provided to food banks, recycled to the lower river for additional angling opportunities (prior to July 31) or disposed in a sanitary landfill.

Catastrophic Risk Management: Catastrophic risk management strategies applied through the program to minimize the risk of fish loss are described in HGMP sections 5.8, 9.17, 9.2.10, 10.10, and 10.11. In particular, section 5.8 describes back-up systems, and risk aversion measures applied to minimize the likelihood for catastrophic fish loss resulting from equipment failure, water loss, flooding, disease transmission, or other events. Impacts on listed species from a potential catastrophic loss would not occur because natural-origin adults are not collected for broodstock.

5(i)(E) The HGMP evaluates, minimizes, and accounts for the propagation programs’ genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

The HGMP clearly describes adequate measures intended to evaluate, minimize, and account for the program’s effects on natural populations. The Sandy River Summer Steelhead Program’s effects on listed natural salmon and steelhead populations are evaluated and accounted for in section 2 of the HGMP (“Program Effects on ESA-listed Salmonid Populations”). Measures implemented to minimize adverse genetic, ecological, and demographic effects on listed fish are included within each section describing the fish production components of the proposed program (HGMP sections 4.2, 5.8, 6.2.4, 6.3, 7.2, 7.9, 8, 9.1.7, 9.2.10, 10.11, and 11.2).

Genetic Effects: As discussed in our Biological Opinion (NMFS 2014), the primary impact of the summer steelhead program on the natural-origin winter steelhead population is from hatchery summer steelhead spawning naturally. The rearing and release at the Sandy Hatchery is designed to have all of the hatchery summer steelhead home back to the hatchery to minimize the potential for them to spawn naturally. To achieve the Oregon’s Recovery Plan (ODFW 2010) and NMFS’

delisting goals (NMFS 2013), the proportion of the naturally spawning winter steelhead population consisting of hatchery summer steelhead must be less than 5 percent. The acclimation and release of the summer steelhead from the Sandy Hatchery, and monitoring activities will confirm whether the goal continues to be met.

Ecological Effects: Measures implemented to minimize disease transfer effects on listed natural populations are described in sections 7.7, 9.3, 9.16, 9.17, 9.27, 10.9, and 11.1. The program will affect the other listed species present in the Sandy River through ecological interactions. The effects of competition and predation are minimized through the acclimation of the summer steelhead at the Sandy Hatchery, the size at release, and the location of hatchery below the majority of the spawning and rearing habitat in the Sandy River Basin.

5(i)(F) The HGMP describes interrelationships and interdependencies with fisheries management.

Sections 3.1, 3.2, and 3.3 of the HGMP address the relationship of the winter steelhead program with fisheries management. As described in the HGMP, the hatchery program is consistent with the Fisheries Management and Evaluation Plan for Lower Columbia River Steelhead in Oregon Freshwater Fisheries of the Lower Columbia River Tributaries Between the Pacific Ocean and Hood River (ODFW 2003) and with the Recovery Plan (ODFW 2010). Summer steelhead recreational fisheries in the lower Columbia River and in the Sandy River are selective for hatchery steelhead only. The fisheries allow for the retention of hatchery adults only, requiring that all unmarked, natural-origin steelhead be released.

5(i)(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection and domestication.

The HGMP describes the facilities that would be used to properly operate the program, and there are adequate facilities available to accomplish all of the program's objectives. Natural-origin summer steelhead are not used for broodstock and are not native to the Sandy River Basin. Facilities and water sources used to collect and hold hatchery broodstock, incubate eggs, and rear and release juvenile fish are described in sections 4 and 5 of the HGMP. The summer steelhead smolts are reared at other facilities outside the Sandy River Basin. The use of the weir at the Sandy Hatchery to collect and remove hatchery adults, and the use of in-basin and out-of-basin facilities will maximize the survival of progeny such that fishery mitigation goals can be achieved while avoiding hatchery-influenced selection on the natural-origin population.

5(i)(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU.

The HGMP describes appropriate and sufficient methods to monitor and evaluate the program and its effects on ESA-listed species within the Sandy River Basin. Winter steelhead spawning ground surveys in the Sandy River Basin would consist of carcass recovery and redd counts.

Monitoring of spawning winter steelhead has been conducted by ODFW in the Sandy River periodically since 2004 (Jacobsen et al. 2014). The project uses methods developed by ODFW on the Oregon Coast and is designed to assess the yearly status and trend, presence of hatchery fish, and distribution of winter steelhead spawners within the basin. Winter steelhead abundance would be based on counts of redds instead of live or dead fish. Selected sites would be visited approximately every 14 days from February through May to generate a total redd count. The proportion of hatchery spawners would be based on a combination of live counts and recovered carcasses observed within survey sites. Steelhead carcass recoveries are rare, and as a result live observations are the primary data source for hatchery stray estimates. Live observations in the Sandy River have been below the levels needed to accurately depict the distribution of hatchery steelhead due to high turbidity and high flows that make viewing difficult. To improve the accuracy of the estimates of the proportion of hatchery winter steelhead naturally spawning, ODFW proposes to increase the frequency of site visits to twice every 14 days. As evaluated in our Biological Opinion (NMFS 2014), this would be expected to increase the number of observations used to estimate the proportion of hatchery fish spawning naturally. As required in the ITS, ODFW will also conduct surveys in the lower Sandy River to monitor the emigration of hatchery salmon and steelhead juveniles, to determine if adverse ecological interactions are occurring. The only period that there is the potential for summer steelhead spawning overlapping with natural-origin winter steelhead is the month of February, observations during this month will be used to estimate the proportion of hatchery summer steelhead in the naturally spawning population.

ODFW proposes to monitor the recolonization of coho salmon and winter steelhead in Cedar Creek above the Sandy Hatchery. Monitoring in Cedar Creek would be coordinated with the U.S. Forest Service and Portland Water Bureau efforts to monitor coho salmon and steelhead smolt production throughout the Sandy River Basin. The study is intended to detect increases or declines in abundance and productivity of smolts at the basin scale and to provide useful data at the scale of individual tributaries to guide restoration efforts. This juvenile monitoring along with all the monitoring and evaluation activities described above will provide adequate and timely information on the effects of the hatchery programs on ESA-listed species to assure proper evaluation of all successes and risks as described.

5(i)(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

As explained in sections 1.9, 1.10, and 11 of the HGMP, mechanisms are included for evaluating monitoring data, and using results to adjust the program as needed to improve program performance or reduce any adverse effects on listed fish. If the proportion of hatchery summer steelhead spawning naturally continues to exceed the 10 percent goal identified in the HGMP Oregon's Recovery Plan (ODFW 2010), and NMFS' Recovery Plan (NMFS 2013), additional adaptive management actions identified in the HGMP would be considered.

5(i)(J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements.

If the Regional Administrator or his deputy determine that the HGMPs should be approved, NMFS will prepare a letter to ODFW concurring with the implementation of the HGMP, and providing implementation terms described in the NMFS determination memorandum for the HGMP, consistent with item 5(ii), below.

5(i)(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

There are presently no Federal Court proceedings with continued jurisdiction over tribal harvest allocations within the Sandy River Basin or affected by the HGMP (see section 3.2 of the HGMP).

(5)(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in the NMFS letter of concurrence.

Projected annual take levels for listed fish by life stage (juvenile and adult) quantified (to the extent feasible) by the type of take resulting from the hatchery program (e.g. capture, handling, tagging, injury, or lethal take) are reported in section 2.2.3 of the HGMP. The need to regularly provide this information, and information regarding the implementation and effectiveness of the HGMP, was identified in the ESA section 7 biological opinion (NMFS 2014) and are listed here; these implementation and reporting requirements will be included in any NMFS determination memorandum for the program:

- Results of spawning surveys to determine timing, abundance, and distribution of Sandy Hatchery spring Chinook and coho salmon and Sandy Hatchery winter and summer steelhead that spawn naturally;
- Results of spawning surveys to determine timing, abundance, and distribution of natural-origin salmon and steelhead in the Sandy River Basin;
- Number of fish encountered at each weir including species, origin (hatchery or natural-origin), life-stage, timing of encounter, condition, and any mortalities;
- Estimates of weir rejection and handling mortalities, by species, for each weir in the Sandy River Basin;
- Numbers of fish released, release dates and locations, and tag/mark information;
- Results of juvenile outmigration monitoring;
- The ODFW will provide an estimate of take and other program performance information to NMFS by January 31st of each year.

(5)(iii) The state confers with NMFS on a regular basis regarding intended collection of listed broodstock to ensure congruity with the approved HGMP.

The program does not propose to take listed steelhead for broodstock, and summer steelhead are not native to the Sandy River Basin.

(5)(iv) Prior to final approval of an HGMP, NMFS will publish notification in the Federal Register announcing its availability.

As specified in the ESA 4(d) Rule (70 FR 37160, June 28, 2005), NMFS publishes notice of the receipt of HGMPs in the *Federal Register* prior to any final approval for a period of 30 days announcing their availability for public review and comment. HGMPs were available for public access through the NMFS West Coast Region website (www.westcoast.fisheries.noaa.gov) or upon written request to the NMFS Sustainable Fisheries Division, 2101 NE Lloyd Blvd, Suite 1100, Portland, Oregon 97232-2737. The public comment period was held from December 10, 2013 to January 9, 2014 (78 FR 74116, December 10, 2013). During the public comment period, NMFS received comments from 1 commenter on the draft HGMPs: the comments received did not state that the HGMPs were not in accordance with the criteria under Limit 5 of the 4(d) Rule but did provide their opinions on the environmental effects of the proposed hatchery programs on ESA-listed species and designated critical habitat. NMFS considered these comments in the development of the Biological Opinion (NMFS 2014) and in responses to comments received on the Draft Environmental Assessment (NMFS 2016). No modifications to the HGMPs were required as a result.

(5)(v) NMFS approval of a plan shall be a written approval by NMFS West Coast Regional Administrator.

If the determination is made that the HGMP meets all of the criteria specified under Limit 5 of the ESA 4(d) Rule, NMFS will document that determination in a decision memorandum. NMFS will then issue a letter to ODFW signed by the NMFS West Coast Regional Administrator or his deputy to indicate that take prohibitions under section 9 and applicable ESA 4(d) Rule will not apply to hatchery activities conducted in accordance with the HGMP, and with any implementation terms described above.

(5)(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids.

It is NMFS' intent to regularly monitor and evaluate the effectiveness of the HGMP in meeting agreed performance standards, including the program's effect on listed salmon and steelhead productivity and survival. The HGMP is designed to supplement the fisheries while supporting the recovery of the listed salmon and steelhead populations in the Sandy River. Adult return abundance, broodstock removal impacts, propagated juvenile fish health and survival, annual fish release levels, and monitoring and evaluation results will be evaluated by NMFS to

determine whether listed fish conservation needs are being met. NMFS will identify means by which the HGMP should be adjusted in the event that the program falls short of listed fish protection and conservation requirements. The need for annual HGMP review will be included as an implementation term in any decision memorandum issued for the HGMP by NMFS.

Processing of Public Comments Received

As required in (5)(iv) of section 223.203 of the ESA 4(d) Rule, before an HGMP can be approved or amended, the public must have had an opportunity to review and comment on the HGMP. The public comment period was held from December 10, 2013 to January 9, 2014 (78 FR 74116, December 10, 2013). NMFS considered the opinions expressed by the Commenter in the development of the Biological Opinion (NMFS 2014) and in responses to comments received on the Draft Environmental Assessment (NMFS 2016). No modifications to the HGMPs were required as a result of the comments received.

RECOMMENDED DETERMINATION

As evaluated above and in our Biological Opinion (NMFS 2014), it is the determination of the Sustainable Fisheries Division (SFD) that the HGMP for the Sandy River Summer Steelhead Program provided by ODFW meets the criteria established for an HGMP under Limit 5 of the 4(d) Rule. The SFD recommends that the West Coast Regional Administrator concur with the HGMP, and that the artificial propagation, monitoring and evaluation, and research actions be implemented in accordance with the approved HGMP and NMFS' letter of concurrence.

Literature Cited

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