




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall Suite 5-100
Sacramento, California 95814

November 22, 2017

MEMORANDUM FOR: Barry A. Thom
Regional Administrator

FROM: Ryan J. Wulff 
Assistant Regional Administrator
for Sustainable Fisheries

SUBJECT: Hatchery and Genetic Management Plans Submitted by Oregon
Department of Fish and Wildlife for the Oregon Coast Region Under
Limit 5 of the Endangered Species Act 4(d) Rule - **DECISION**
MEMORANDUM

Issue

The Oregon Department of Fish and Wildlife (ODFW) submitted Hatchery and Genetic Management Plans (HGMPs) for salmon, steelhead, and trout hatchery programs currently in operation along the Oregon Coast region. The National Marine Fisheries Service (NMFS) evaluated whether the submitted HGMPs meet the requirements of Limit 5 of the Endangered Species Act (ESA) 4(d) Rule, 50 CFR 223.203(b)(5) (65 FR 42422, July 10, 2000, amended June 28, 2005, 70 FR 37160).

Recommendation

NMFS' West Coast Region, Sustainable Fisheries Division (SFD) has evaluated and determined the Oregon Coast HGMPs meet all of the criteria specified in Limit 5 of the ESA 4(d) Rule. The SFD recommends the HGMPs be approved, and that the West Coast Region issue its written concurrence to ODFW, with the specified implementation requirements.

Background

NMFS issued a final ESA 4(d) Rule adopting regulations necessary and advisable to conserve salmon and steelhead listed under the ESA (50 CFR 223.203 (65 FR 42422, July 10, 2000; amended June 28, 2005, 70 FR 37160)). This ESA 4(d) Rule applies the prohibitions enumerated in section 9(a)(1) of the ESA for endangered species to threatened species, but also prescribes specific circumstances when the take prohibitions will not apply to threatened species, which are known as 4(d) limits. On November 14, 2012, NMFS determined the HGMPs submitted by ODFW for the Oregon Coast region were sufficient to proceed with evaluation under limit 5 of



the 4(d) Rule. All of the hatchery programs are ongoing programs and described in detail in each of the HGMPs. The purpose of the programs is to provide recreational and commercial fishing opportunities for hatchery fish while minimizing risks to ESA-listed, natural-origin coho salmon.

The duration of the hatchery programs described in the HGMPs is open-ended. Comprehensive monitoring and evaluation plans will be implemented to assess the performance of the programs in providing hatchery fish for fisheries while minimizing the genetic and ecological risks to ESA-listed coho salmon along the Oregon Coast. Information gained through monitoring and evaluation will be used to assess whether the impacts from the program on listed coho salmon are as expected.

Discussion

Controversial Issues

NMFS is not aware of any legal action taken against hatchery programs included in the proposed action which implicates the programs' effect on ESA-listed species. All of the hatchery programs in operation along the Oregon Coast have been subject to review, evaluation, and adaptive management since the ESA listing of coho salmon beginning in 1997. Reforms under the ESA have occurred, including the termination of most of the hatchery coho salmon programs. For the hatchery programs propagating non-listed species, ODFW has involved key stakeholders and general public in conservation planning efforts for Chinook salmon and steelhead hatchery programs along the Oregon Coast. Additional hatchery management changes were implemented through these efforts, with the latest management plan (i.e. Coastal Multi-species Conservation and Management Plan in 2014) still in effect. Lastly, NMFS' recent evaluation of the proposed action under limit 5 of the 4(d) Rule has also engaged interested parties and generated useful public input. Because of the number of programs and the geographic scope of the area covered, In addition, NMFS also provided public review and comment under the National Environmental Policy Act (NEPA) through an Environmental Impact Statement (EIS). Our EIS evaluated a wider range of affected resources on the human environment including socioeconomics and environmental justice. All of these planning efforts and public involvement processes have informed the public of current hatchery programs and allowed their concerns to be discussed and addressed through our ESA and NEPA evaluations for this project.

Public Review and Comment

There have been several opportunities for the public to be involved in our evaluation of the submitted HGMPs under limit 5 of the 4(d) Rule. Public review and comment on all of the HGMPs and public scoping on NMFS' development of an EIS under NEPA occurred for 60 days beginning January 15, 2016 (81 FR 2197). During that initial period of public review, NMFS received several comments directed at the contents of the HGMPs that were forwarded to ODFW to consider in finalizing their HGMPs. Other comments, directed at the scoping of the EIS, were taken into account during the drafting of the EIS. Public review and comment then occurred on NMFS' draft EIS for 60 days beginning August 26, 2016 (81 FR 58924). Comments received were addressed as appropriate in preparing the final EIS. Comments on the specific HGMPs were again forwarded to ODFW for consideration. The final EIS was released on June 9, 2017

(82 FR 26791), which included a 30-day cooling off period. NMFS received comments on the final EIS during this cooling-off period and our responses to these comments are included as an appendix to the Record of Decision (ROD) for the EIS.

Consultation with Tribes

There are no plans or conditions set within federal court proceedings, including memorandums of understanding, court orders, or other management plans, that direct operation of the proposed hatchery programs along the Oregon Coast with respect to tribal harvest. Prior to the release of the HGMPs and EIS for public review and comment, SFD and the WCR Tribal Liaison reached out to five Native American tribes advising them of our evaluation under the ESA through tribal notification letters and conference calls. Tribal interest in the project was low and no written comments from tribal organizations were received throughout our evaluation of the HGMPs.

Evaluation of the HGMPs under the ESA 4(d) Rule

Attachment 1 is NMFS' evaluation of whether the HGMPs meet all of the requirements specified under Limit 5 of the ESA 4(d) Rule. SFD determined that the HGMPs provided by ODFW meets all of the requirements in Limit 5 of the 4(d) Rule.

Evaluation of Federal Actions under the ESA Section 7 and the Magnuson-Stevens Act Essential Fish Habitat

The federal action subject to evaluation is NMFS' approval of the HGMPs, based on the determination of whether or not the plans meet ESA 4(d) Rule criteria and qualify for limits on section 9 take prohibitions. Because NMFS' approval of the plans is a federal action, NMFS needs to comply with section 7(a)(2) of the ESA before completing its approval. Accordingly, SFD prepared an ESA section 7 biological opinion to evaluate the effects of the action on listed coho salmon (Attachment 2). As described in the SFD's section 7 analysis, the approval of the HGMPs is not likely to jeopardize the continued existence of listed coho salmon in the Southern Oregon/Northern California Coast or Oregon Coast Evolutionarily Significant Units (ESUs), or result in the destruction or adverse modification of their critical habitat. Certification of the biological opinion by General Counsel is on file.

SFD also considered the potential effects of the proposed action on other ESA-listed species. We determined that the proposed hatchery activities may affect, but are not likely to adversely affect, Pacific eulachon, Southern green sturgeon, and Southern Resident killer whale, or these species' critical habitat. This determination is described in the biological opinion.

SFD also analyzed the effects of the action on Essential Fish Habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act. The EFH analysis is included in Attachment 2. The SFD determined that the proposed action is not likely to adversely affect Pacific salmon EFH. There will be no disturbance of vegetation and water quantity, and negligible effects on migration and rearing habitat and water quality. Because we have found that the action is not likely to adversely affect EFH, there is no statutory response requirement. No EFH for other species is expected to be affected.

Evaluation of NMFS' Proposed Determination under NEPA

An EIS (Attachment 3) was developed for our evaluation of the submitted HGMPs that includes five alternatives, including the proposed action/preferred alternative of approving ODFW's HGMPs. All of the effects of the No-action alternative, Proposed action/Preferred action alternative, and a range of production alternatives (reducing and terminating hatchery production) on the human environment were evaluated.

As detailed above, the EIS was made available for public review and comment. All comments were considered and reviewed with necessary modifications made to the final EIS. Staff from West Coast NEPA and General Counsel reviewed all NEPA documents and provided policy guidance. The Record of Decision was signed November 1, 2017.

Implementation Terms

Each of the HGMPs includes performance standards and indicators that evaluate the implementation of the hatchery programs. Monitoring and evaluation actions, which NMFS determined are adequate and appropriate, are proposed in the HGMPs to assess the performance of the hatchery program in meeting fishery augmentation goals and the genetic and ecological effects of the hatchery programs on natural salmonids. These actions are summarized in Section 1.10, and are further described in Section 11.0 of the HGMP ("Monitoring and Evaluation of Performance Indicators").

Additionally, NMFS describes specific implementation and reporting requirements in the concurrence letter to ODFW, as called for in Limit 5 of the ESA 4(d) Rule [50 CFR 223.203(b)(5)(J)]. These requirements specify that ODFW is to continue the implementation of the hatchery programs consistent with the approved HGMPs. If any changes are proposed in the future, ODFW must first notify NMFS in writing and receive our concurrence on the proposed change. SFD will evaluate whether or not any proposed change is consistent with the effects previously analyzed on ESA-listed coho salmon. Review of the coho salmon hatchery programs by NMFS and ODFW will occur annually to evaluate whether the objectives of the HGMPs are being accomplished. Formal reporting by ODFW for these coho salmon programs will occur every three years.

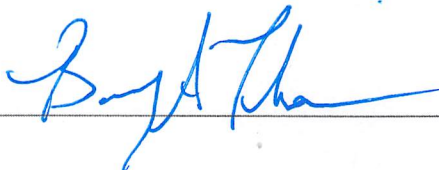
Consistent with subparagraph 5(vi) of Limit 5 of the ESA 4(d) Rule, it is NMFS' intent to communicate regularly with ODFW regarding the effectiveness of the HGMPs in meeting the performance standards, including the program's effect on listed coho salmon.

Summary

NMFS West Coast Region SFD concludes the HGMPs submitted by ODFW for Oregon Coast hatchery programs meet all of the requirements of Limit 5 of the ESA 4(d) Rule, and therefore qualify for the application of Limit 5 of the 4(d) Rule, provided that they are implemented in accordance with the implementation terms and reporting requirements described in NMFS' letter of concurrence. As described above, all of the necessary administrative and biological requirements have been met to allow NMFS' approval of ODFW's HGMPs. SFD recommends that you concur with the implementation of the HGMPs.

Concurrence

I recommend you concur with my recommendation to approve ODFW's HGMPs for the Oregon Coast region, provided the plans are implemented in accordance NMFS' concurrence letter.

1. I concur:  Date: 11/30/2017
2. I do not concur: _____ Date: _____

Cc: (w/ attachments)
SFD: Sharon Houghton (File Number: NWR-2012-9539)
Allyson Purcell
Lance Kruzic
GC-NW: Chris Fontecchio

Attachment 1: 4(d) rule Limit 5 Evaluation and Recommended Determination Document for the Oregon Coast HGMPs

Attachment 2: Endangered Species Act Section 7 (a)(2) Biological Opinion, Section 7(a)(2) Not Likely to Adversely Affect Determination, and Magnuson-Stevens Fishery Conservation and Management Act Consultation— National Marine Fisheries Service (NMFS) Evaluation of ODFW’s Hatchery and Genetic Management Plans for 10 Hatchery Facilities in Operation along the Oregon Coast under Limit 5 of the Endangered Species Act Section 4(d) Rule. NMFS Consultation Number: WCR-2012-9539

Attachment 3: Final Environmental Impact Statement to Analyze Impacts of NOAA’s National Marine Fisheries Service Proposed Approval of the Continued Operation of 10 Hatchery Facilities for Trout, Salmon, and Steelhead Along the Oregon Coast, as Described in Oregon Department of Fish and Wildlife Hatchery and Genetic Management Plans Pursuant to Section 4(d) of the Endangered Species Act

Attachment 4. Record of Decision for the Final Environmental Impact Statement to Analyze Impacts of NOAA’s National Marine Fisheries Service Proposed Approval of the Continued Operation of 10 Hatchery Facilities for Trout, Salmon, and Steelhead Along the Oregon Coast, as Described in Oregon Department of Fish and Wildlife Hatchery and Genetic Management Plans Pursuant to Section 4(d) of the Endangered Species Act