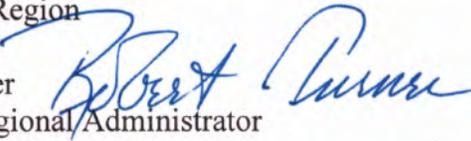




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
Sustainable Fisheries Division
510 Desmond Drive SE, Suite 103
Lacey WA, 98503

June 9, 2016

MEMORANDUM FOR: William W. Stelle, Jr.
Regional Administrator
West Coast Region

FROM: Robert Turner 
Assistant Regional Administrator
Sustainable Fisheries Division

SUBJECT: Hatchery Genetic and Management Plans Submitted by Oregon
Department of Fish and Wildlife For Chinook and Coho Salmon and
Steelhead Production in the Sandy River, Oregon, Under Limit 5 of the
ESA 4(d) Rule (50 CFR 223.203(5)) (July 10, 2000; 65 FR 42422) --
DECISION MEMORANDUM

ISSUE

The Oregon Department of Fish and Wildlife (ODFW) submitted four Hatchery Genetic and Management Plans (HGMPs) for the artificial propagation of salmon and steelhead in the Sandy River, Oregon. On August 1, 2013, ODFW provided the HGMPs for review and determination by the National Marine Fisheries Service (NMFS) that they 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

The NMFS Sustainable Fisheries Division (SFD) has evaluated the HGMPs, and finds that the HGMPs (Table 1) meet all of the criteria specified in Limit 5 the ESA 4(d) Rule. SFD recommends that these HGMPs be approved, and that the West Coast Region issue its written concurrence with the HGMPs to ODFW, provided that they are implemented in accordance with the section on implementation terms at the end of this memo.



Table 1. Hatchery and Genetic Management Plans for Chinook and Coho Salmon and Steelhead Production in the Sandy River, Submitted by ODFW to NMFS under Limit 5 of the ESA 4(d) Rule.

Program
Sandy Hatchery Spring Chinook Salmon
Sandy Hatchery Coho Salmon
Sandy Hatchery Summer Steelhead
Sandy Hatchery Winter Steelhead

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, and also prescribes specific circumstances when the prohibitions will not apply, which are known as 4(d) limits. On June 16, 2011, NMFS received four HGMPs from ODFW, describing hatchery programs that release salmon and steelhead into the Sandy River, affecting Lower Columbia River (LCR) Chinook salmon, LCR coho salmon, Columbia River (CR) chum salmon, and LCR steelhead in 2011 and beyond. These four HGMPs were determined to comply with the criteria under Limit 5 of the ESA 4(d) Rule on September 28, 2012. Subsequently, on August 1, 2013, ODFW submitted updated HGMPs reflecting changes to the hatchery programs that were not considered in the previous consultation and 4(d) determination. These changes triggered reinitiation of the consultation and a determination that the four updated HGMPs submitted for evaluation by NMFS are in compliance with Limit 5 ESA 4(d) Rule criteria.

The programs specified in the HGMPs (Table 1) are described in detail in the HGMPs. All four programs are on-going programs. The programs are designed to meet mitigation responsibilities related to impacts from development in the Sandy River and Columbia River basins by providing hatchery fish to support fishing opportunities while minimizing potential risks to natural-origin spring Chinook salmon, coho salmon, and winter steelhead populations, consistent with Oregon's and NMFS' Lower Columbia River Recovery Plans for Salmon and Steelhead (Recovery Plans).

The duration of each hatchery program is open-ended. Comprehensive monitoring and evaluation plans will be implemented to assess the performance of the programs in increasing adult fish returns, and their genetic and ecological effects on ESA-listed natural-origin salmon and steelhead. Information gained through monitoring and evaluation will be used to assess whether the impacts of the programs on listed fish are as expected. Review of the HGMPs by NMFS and the co-managers will occur annually to evaluate whether the objectives of the HGMPs are being accomplished.

DISCUSSION

Controversial Issues

The four programs described in the 2011 HGMPs were the subject of litigation. Plaintiffs Native Fish Society asserted National Environmental Policy Act (NEPA) and ESA claims against NMFS for failure to consult on the HGMPs and associated Mitchell Act funding, as well as asserting ESA section 9 claims against ODFW. The plaintiffs challenged the continuation of hatchery programs in the Sandy Basin as detrimental to recovery of ESA-listed salmonids, and challenged the HGMP decisions. The U.S. District Court on March 14, 2013, denied a preliminary injunction motion that would have shut down the Sandy River hatchery programs, holding instead that the hatchery programs were successfully reversing past practices that resulted in excess straying. In an earlier ruling, the court had ruled that NMFS' environmental review and ESA biological opinion did not adequately explain why NMFS believed approving the Sandy River hatcheries was consistent with the recovery of salmon and steelhead in the basin. In the March 2013 opinion, the court held that NMFS' views were largely proven correct by recent data from 2013 salmon returns, and consequently the environmental reviews could be fixed by further explanation, rather than the sweeping changes proposed by plaintiffs. The exception involved coho salmon, where straying of hatchery adults increased in 2013. The court ordered ODFW to reduce its upcoming juvenile hatchery releases by a third, pending further review of revised HGMPs.

Public Review and Comment

From December 10, 2013, to January 9, 2014, NMFS provided the four HGMPs for public review and comment (78 FR 74116, December 10, 2013). On March 11, 2015, a draft environmental assessment (EA) was made available for public review. The public comment period was open from March 11, 2015, to May 11, 2015 (80 FR 12806, March 11, 2015). During the public comment period, NMFS received comments from 1 commenter on the draft EA. The comments received did not result in substantive changes to the EA.

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 NMFS' determination of whether or not the plans meet ESA 4(d) Rule criteria and qualify for limits on section 9 take prohibitions. The SFD prepared an ESA section 7 biological opinion to evaluate the effects of the action on the listed salmonids (Attachment 5). As described in SFD's section 7 analysis, the approval of the HGMPs is not likely to jeopardize the continued existence of listed LCR Chinook salmon, LCR coho salmon, or LCR steelhead, or result in the destruction or adverse modification of their critical habitat. In previous years, the programs were responsible for excessive straying and potential genetic and ecological impacts, but, through the development of new HGMPs in 2011, which were refined in 2013, adequate measures are described to monitor and allow for the control of the proportion of hatchery fish reaching natural spawning areas, the effect of weirs and other facility structures on migration corridors, and the status of the

affected populations. Certification of the opinion by General Counsel—Northwest Section is on file.

The 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, Columbia River chum salmon or the southern distinct population segment (DPS) of Pacific eulachon. This determination is described in the biological opinion.

The SFD determined that the proposed action would have no effect on southern resident killer whales, because the number of fish released by the programs represents a very small proportion of the salmonids that could serve as prey for killer whales. Similarly, the proposed action would have no effect on Steller sea lions; Steller sea lions are present in the lower Columbia River, but they congregate to feed just below Bonneville Dam, which is upstream of the mouth of the Sandy River. In the area of the lower Columbia River where Steller sea lions and Sandy River salmon and steelhead may co-occur, fish produced by the proposed hatchery programs represent only a small proportion of the fish available as prey for Steller sea lions.

The SFD further determined that no other ESA-listed salmon or steelhead in the Columbia River would be affected by the Sandy River hatchery programs. SFD has prepared a Final Environmental Impact Statement to Inform Columbia River Basin Hatchery Operations and the Funding of Mitchell Act Hatchery Programs (FEIS), which was incorporated by reference into the EA. The fish produced by the Sandy River hatchery programs in comparison to total production of hatchery origin fish in the Columbia River Basin as evaluated in the FEIS represents only a small proportion of the total number of salmonids in the mainstem Columbia River, Columbia River estuary, and near-shore Pacific Ocean, where they would co-occur. As we considered in the biological opinion and the FEIS, when determining the action area for the proposed action, the influence of density-dependent interactions between salmonids on growth and survival is likely small, and the degree of impact or level of influence is not discernible given the available science.

The 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 5. The SFD determined that the effects of the action on EFH are likely to be within the range of effects considered in the ESA portion of the opinion, and concluded that the proposed action is not likely to adversely affect Pacific salmon EFH. There will be minimal disturbance of vegetation, and negligible harm to spawning and rearing habitat, and to water quantity and water quality. What small effects on EFH might occur as a result of facility operations or transitory impacts on the migration corridor would be adequately addressed by the steps described in the HGMPs. Because we have found that the action is not likely to adversely affect EFH, there is no statutory response requirement.

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

Attachments 1 through 4 are NMFS' evaluations of whether each of the HGMPs meets all of the requirements specified under Limit 5 of the ESA 4(d) Rule for salmon and steelhead. The SFD

determined that the HGMPs provided by ODFW meet all of the requirements in Limit 5 of the ESA 4(d) Rule.

Evaluation of NMFS' Proposed Determination under NEPA

The SFD determined that, for purposes of complying with NEPA, an EA was sufficient to evaluate NMFS' proposed determination, and the Deputy Regional Administrator concurred. Accordingly, SFD drafted an EA that considered the effects of the proposed action on the human environment, also evaluating the effects of closing the programs (the No-action alternative).

As detailed above, the EA was made available for public comment. One set of comments were received addressing the proposed hatchery program operations and the EA. These comments were addressed within the EA with minor changes. During litigation, the Court identified that an EIS on the operation of the proposed hatchery programs in the Sandy River Basin might be appropriate for analyzing effects on the human environment. In the EA, we incorporated the analysis of the Mitchell Act FEIS, particularly with respect to the cumulative effects section. We compared the effects of the proposed action in the Sandy River Basin with those effects evaluated in the FEIS for hatchery operations in the entire Columbia River Basin, and determined that the effects of the proposed action were similar to or lower than those effects evaluated in the larger FEIS, concluding that an additional EIS for the Sandy River Hatchery programs would not be necessary. The EA, as modified after the public comment period, was reviewed by NOAA's Office of Program Planning and Integration, and their comments were addressed in the final EA. The SFD prepared a Finding of No Significant Impact (FONSI). The final EA, with changes from the draft EA marked, and the FONSI are provided as Attachment 6, as are the NMFS responses to comments received.

Implementation Terms

The HGMPs detail performance standards and indicators designed to evaluate the benefits and risks associated with the hatchery programs. The monitoring necessary to evaluate these performance indicators is detailed in section 1.10 of the HGMPs. We support the collection and the reporting of the results of the monitoring and evaluation activities, and in particular those indicators that evaluate impacts on natural-origin populations. These include, but are not limited to, the monitoring of the number of fish handled, frequency of trap operation, and the number of mortalities observed in the adult collection trap for both hatchery and natural-origin fish of each species; the number of natural-origin fish passed above the hatchery; the final disposition of hatchery adults collected at the hatchery or at the weirs; and the proportion and distribution of hatchery salmon and steelhead spawning naturally. In particular, ODFW must comply with the following implementation terms in operating the programs described in the HGMPs. These terms respond to monitoring, take accounting, and reporting regulations specified in subparagraphs 5(ii) and 5(iii) of Limit 5 of the ESA 4(d) Rule.

- (1) Comply with actions necessary to ensure that requirements regarding the proportion of hatchery fish in the naturally spawning population—as described in the HGMPs and the

Recovery Plans—are met (i.e., annually less than 10 percent for spring Chinook salmon and winter steelhead, and less than 5 percent for coho salmon and summer steelhead).

- (2) Spawning ground surveys must be conducted sufficient to verify that the proportion of hatchery fish in the naturally spawning population requirements continue to be met.
- (3) Monitor and report annually on the effects of handling at weirs and observations of undue delay at weirs and altered spawning distribution.
- (4) All hatchery fish returning to the hatchery or a weir must be removed unless being recycled for fisheries as described in the winter steelhead and summer steelhead HGMPs.

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 performance standards, including the program's effect on listed salmon and steelhead productivity and survival.

All reports, as well as all other notifications required in the permit, should be submitted to NMFS at:

Rich Turner
NMFS – West Coast Region
Sustainable Fisheries Division
1201 N.E. Lloyd Boulevard, Suite 1100
Portland, OR 97232

SUMMARY

SFD concludes that the HGMPs provided by ODFW for the Sandy Hatchery spring Chinook salmon, coho salmon, winter steelhead, and summer steelhead programs meet all of the requirements for an HGMP under Limit 5 of the ESA 4(d) Rule. As described above, all of the necessary administrative and biological requirements have been met for the approval of ODFW's HGMPs. SFD recommends that the artificial propagation programs described by the ODFW HGMPs qualify for take limitations under 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. SFD recommends that you concur with the implementation of the HGMPs.

1. I concur with ODFW's implementation of the Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead HGMPs, provided that they are implemented in accordance with the section on implementation terms described above.



June 17, 2016

William W. Stelle, Jr.
Regional Administrator

Date

2. I do not concur with ODFW's implementation of the Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead HGMPs.

William W. Stelle, Jr.
Regional Administrator

Date

Attachment 1: Evaluation and Recommended Determination Document – Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead HGMPs

Attachment 2: Evaluation and Recommended Determination Document – Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead

Attachment 3: Evaluation and Recommended Determination Document – Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead

Attachment 4: Evaluation and Recommended Determination Document – Sandy Hatchery spring Chinook salmon, coho salmon, summer steelhead, and winter steelhead

Attachment 5:

Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion, Section 7(a)(2) Not Likely to Adversely Affect Determination, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation – Sandy River Spring Chinook Salmon, Coho Salmon, Winter Steelhead, and Summer Steelhead Hatchery Programs. NMFS Consultation Number: WCR-2014-300.

Attachment 6: Environmental Assessment and Finding of No Significant Impact: Determination that the Hatchery and Genetic Management Plans for Sandy River Programs Submitted by the Oregon Department of Fish and Wildlife Satisfy the Endangered Species Act Section 4 (d) Rule under Limit 5

cc: (w/o attachments; electronic only)

SFD: Rob Jones, Rich Turner, Robert Bayley, Sharon Houghton

GCNW: Chris Fontecchio

File copy, PCTS 2011/02491