




**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

April 12, 2018

**MEMORANDUM FOR:** Barry A. Thom  
Regional Administrator

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

**SUBJECT:** Fisheries Resource Management Plan (RMP) submitted by the  
Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the  
Upper Skagit Indian Tribe, the Skagit River System Cooperative,  
and the Washington Department of Fish and Wildlife Affecting  
Puget Sound Steelhead DPS Under Limit 6 of the Endangered  
Species Act 4(d) Rule (50 CFR 223.203) - DECISION MEMORANDUM

**NATIONAL MARINE FISHERIES SERVICE TRACKING NUMBER: WCR-2017-7053**

**PURPOSE**

The Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, the Skagit River System Cooperative, and the Washington Department of Fish and Wildlife (co-managers), submitted the Skagit River Steelhead Fishery Resource Management Plan (Skagit RMP) for review and determination by NOAA's National Marine Fisheries Service (NMFS) under Limit 6 of the Endangered Species Act (ESA) 4(d) Rule (50 CFR 223.203). The Skagit RMP proposes harvest of natural-origin steelhead returning to the Skagit River terminal (marine and freshwater) management area (Sauk-Suiattle et al. 2016). The Skagit RMP proposes a five-year term for these fisheries. The fisheries described in the Skagit RMP will affect the threatened Puget Sound steelhead Distinct Population Segment (DPS).



## RECOMMENDATION

The NMFS West Coast Region (WCR) Sustainable Fisheries Division (SFD) has evaluated the Skagit RMP and finds that it adequately addresses the criteria established in Limit 6 of the ESA 4(d) Rule and does not appreciably reduce the likelihood of survival and recovery of the Puget Sound steelhead DPS. I recommend that you concur with my approval the Skagit RMP, with the result that ESA Section 9(a)(1) take prohibitions on Puget Sound steelhead would not apply to fisheries implemented in accordance with the approved Skagit RMP and NMFS' letter of concurrence.

## BACKGROUND

On July 10, 2000, NMFS issued a final rule pursuant to ESA section 4(d) (65 FR 42422) to protect 14 Evolutionarily Significant Units (ESUs) of salmon and steelhead listed as "threatened" under the ESA. While NMFS issued separate proposed 4(d) rules for salmon and steelhead in December 1999 and January 2000, respectively, the final rule combines the two proposed rules into one final rule. The Puget Sound Steelhead Distinct Population Segment (DPS) was listed as threatened under the ESA on May 11, 2007 (72 FR 26722). NMFS conducted the required 5 year status reviews in 2001 and 2015 and confirmed the threatened status of the Puget Sound DPS on April 14, 2014 (79 FR 20802). NMFS applied the 4(d) protective regulations to Puget Sound steelhead in 2008 (73 Fed. Reg. 55451, September 25, 2008).

The 4(d) Rule applies the take prohibitions in section 9(a)(1) of the ESA to salmon and steelhead listed as threatened and sets forth specific circumstances when the take prohibitions would not apply, known as 4(d) limits. A central goal of the 4(d) rule is to encourage tribes, state, and local governments to step forward and assume leadership roles in saving these species by providing the means for NMFS to approve these efforts and to limit liability under the ESA. Limit 6 of the 4(d) Rule is used for joint Tribal/State plans developed under *U.S. v Washington* and *U.S. v Oregon* settlement process. For fishery RMPs submitted by the co-managers under Limit 6, NMFS considers the criteria under Limit 4 to assess the plan's adequacy. Limit 4 is the "fisheries harvest activities" limit of the 4(d) Rule and provides that the take prohibitions of ESA section 9(a)(1) do not apply to fisheries harvest activities that adequately address the criteria of that limit and have been approved by NMFS. Under Limit 6 of the 4(d) Rule, NMFS evaluates the plan in a Preliminary Evaluation and Pending Determination (PEPD) and releases it for public review and comment prior to making a final determination.

## DISCUSSION

### *Controversial Issues*

The proposed fisheries in the Skagit RMP are potentially controversial as ESA-listed, threatened natural-origin steelhead will be targeted for Tribal commercial and ceremonial and subsistence harvest, and for catch-and-release recreational harvest. This is the first time a directed catch-and-release fishery would occur on steelhead in the Skagit River since prior to the listing in 2007. NMFS received comments on the proposed fishery from the public during the formal ESA

public comment period on the PEPD. All of the substantive public comments are addressed in the final Evaluation and Recommended Determination document (Attachment 1).

There is no known litigation associated with this RMP. However, since the RMP is proposing direct-take harvest impacts, there is always the potential for controversy and/or litigation.

### *Public Review and Comment*

NMFS published a notice in the Federal Register of the availability of the PEPD for a 30-day public review and comment (December 7, 2017, 82 FR 57729). The comment period closed on January 8, 2018. No requests for extension of the comment period were received.

During the public comment period 121 comments were received, all by email. These came in the form of: individual, unique comments (31); individuals who submitted form-letter communications, some with added comments (87), and letters from fish conservation organizations (3). Four additional emails were received after the public review period had ended—2 form letters and 2 individual comments.

Several (17) of the individual, unique comments received were fully supportive of the proposed Skagit River steelhead fisheries, with the commenters noting that the Skagit River steelhead population is robust and can sustain directed fishing pressure. The majority of the comments (101), were more cautiously supportive, recognizing that the Skagit steelhead were generally healthy and could sustain harvest, but urged discretion in our review to ensure that the proposed fisheries are assessed using the best, and most recent, science available, even at the expense of no fishery for the 2017-18 steelhead season. The majority of the comments in this category were individual submissions of a form-letter (87). Comment letters from two conservation organization were also part of these comments. These submissions specifically raised concerns over the higher harvest levels proposed in the plan for larger run sizes (up to 25% harvest at abundances >8,001 steelhead) and concerns about whether the Skagit RMP would adequately manage for the diverse run-timing and life-history of the Skagit steelhead populations. Many of these comments offered recommendations for how the recreational fishery could or should be regulated under the plan. In early 2018, WDFW held a series of public meetings to receive the public's input on regulations for the recreational fishery proposed in the Skagit RMP.

A small number of comments received were unsupportive of the proposed RMP approval, including comments from two individuals and one conservation organizations, which requested we not approve the Skagit RMP. These commenters expressed their opinion that the plan does not adequately address the criteria under the ESA 4(d) Rule, Limit 6, and that there should be an expanded public review process to develop a more adequate plan. These commenters also pointed to deficiencies in the information and analysis in the RMP and PEPD and supported their comments by supplying several scientific sources they recommended we review and incorporate.

SFD thoroughly reviewed and considered all of the substantive comments received from the public and the additional literature and studies submitted. This review of new information and data informed SFD's analysis, in its biological opinion, but did not lead to any changes to the Skagit RMP, as submitted, or to SFD's determination that the plan adequately addresses the 4(d), Limit 6

criteria. A section summarizing and responding to the substantive comments received during the public comment period on the PEPD is included as part on the final evaluation document (Attachment 1).

#### *Evaluation of the RMP under the ESA 4(d) Rule*

Attachment 1 is SFD's evaluation of whether or not the RMP adequately addresses all of the requirements established under Limit 6 of the ESA 4(d) Rule for Puget Sound steelhead. The SFD has determined that the Skagit RMP submitted by the co-managers adequately addresses all of the requirements (criteria) in Limit 6 of the ESA 4(d) Rule and will not appreciably reduce the likelihood of survival and recovery of the Puget Sound steelhead DPS.

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

NMFS' determination of whether or not the Skagit RMP meets the ESA 4(d) criteria, and thus qualifies for limits of the section 9 take prohibitions, is the Federal action which triggers review under both the ESA and the Magnuson-Stevens Act. The SFD prepared an ESA section 7 biological opinion to evaluate the effects of the proposed Skagit RMP on the listed Puget Sound steelhead DPS (Attachment 2). As described in SFD's section 7 analysis, including the assessment of monitoring and reporting actions included in the RMP, the approval of the RMP is not likely to jeopardize the continued existence of listed Puget Sound steelhead or adversely modify critical habitat.

The SFD also analyzed the effects of the proposed Skagit RMP on Essential Fish Habitat (EFH) under the Magnuson-Stevens Act (Attachment 2). The SFD determined that the effects of the proposed action on EFH are not likely to adversely affect Pacific salmon EFH, in this case Chinook, coho, and pink salmon EFH. This decision memorandum constitutes NMFS' statutory response requirement regarding its own recommendations on EFH conservation recommendations.

#### *Evaluation of NMFS' Proposed Determination under NEPA*

SFD prepared an Environmental Assessment and determined that there is no significant impacts from the proposed action. The document describing this assessment and determination is included as Attachment 3.

#### *RMP Effects on the Likelihood of Puget Sound Steelhead Survival and Recovery*

To be consistent with Limit 6 of the 4(d) Rule, the Secretary of Commerce (Secretary) must determine pursuant to 50 CFR 223.203(b)(4) that the fisheries described in the RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound steelhead DPS. Biological analyses supporting a determination that the Skagit RMP will not appreciably reduce the likelihood of survival and recovery of the listed Puget Sound steelhead are presented in SFD's analysis documents (Attachments 1-3) and summarized here.

### *RMP Effects*

The goal of the Skagit RMP is to provide steelhead fisheries opportunities for the Skagit River Treaty Tribes and for recreational fishers, in a manner that is conservative at higher run sizes and increasingly so at lower run sizes. For a period of five years, the Skagit RMP would implement annual steelhead fisheries in the Skagit terminal management area consistent with the impact limits, management framework, and monitoring requirements, as described in the RMP. The Skagit RMP utilizes an abundance-based, stepped harvest regime to apply harvest rates, based on the annual forecasted run size. These stepped rates start at a 4 percent total allowable harvest rate for runs less than 4,000 adult steelhead; increase to a 10 percent total allowable harvest rate for runs between 4,001 and 6,000 adults; increase to a 20 percent total allowable harvest rate for runs between 6,001 and 8,000; and increase to the highest proposed total allowable harvest rate of 25 percent for runs greater than 8,001 adults.

SFD has analyzed the Skagit RMP's proposed abundance-based, stepped harvest regime, along with the conservation measures proposed in the plan. We have concluded that the Skagit RMP would provide effective protection to the Skagit River steelhead populations based on viability salmonid population parameters, in terms of overall abundance and productivity, as well as the diversity and spatial structure of the individual populations (i.e., the DIPs) within the Skagit River basin. The Skagit RMP would be providing for the proposed harvest opportunities while not appreciably slowing the population's achievement of viable function.

### *Implementation and Reporting Requirements*

Criterion I(iv) of the 4(d) Rule, Limit 4 requires that NMFS provide written concurrence with the RMP and specify implementation and reporting requirements (if any). NMFS' determination on the Skagit RMP depends upon implementation of all of the monitoring, evaluation, and reporting tasks or assignments included in the RMP to assess impacts on the ESA-listed Puget Sound steelhead DPS, and that such tasks shall be conducted as described in the Skagit RMP.

The Skagit RMP details the performance indicators for the subject fish populations and fishery indicators. The fish population indicators and the fishery indicators are described in the attached evaluation and recommended determination (ERD) document (Attachment 1). These will be monitored and evaluated on an annual basis. The co-managers must submit a post-season report to NMFS on or before November 30, annually, and must include biological and fishery information from the previous season and an assessment of how the fisheries performed with respect to the objectives and limits established in the RMP. The Skagit co-managers are also required to provide to NMFS, prior to the fishery opening but no later than December 15, annually, an assessment of the fisheries proposed for the upcoming season and how the RMP objectives will be met. These annual reports will be submitted to: Sustainable Fisheries Division, NMFS, 7600 Sand Point Way Northeast, Seattle, WA 98115.

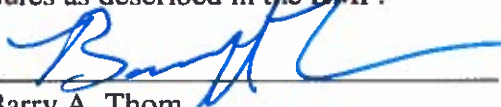
In addition to the annual reporting and review requirements, described above, the RMP states that the co-managers will conduct and submit to NMFS a comprehensive review of the RMP after the fourth fishing year to evaluate whether the fisheries and the Skagit River steelhead are performing

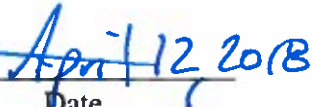
as expected. The comprehensive reviews will allow management assumptions to be further verified and allow new information or findings to be incorporated into the Skagit RMP. The comprehensive review will include the determinations from formal recovery planning efforts and by the Puget Sound Steelhead Technical Recovery Team.

**SUMMARY AND RECOMMENDATION**

The NMFS West Coast Region's SFD concludes that the RMP for the Skagit River steelhead Treaty and non-treaty fisheries, provided by the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, the Skagit River System Cooperative, and the Washington Department of Fish and Wildlife adequately addresses all of the criteria under Limit 6 of the ESA 4(d) Rule and; therefore, the fisheries implemented pursuant to this RMP would not appreciably reduce the likelihood of survival and recovery of the Puget Sound steelhead DPS. As described above, all of the necessary administrative and biological requirements have been met for NMFS' concurrence with the Skagit RMP. The Skagit RMP describes management actions that will provide for meaningful harvest opportunities while also providing protection of ESA-listed species in Puget Sound. The SFD recommends that the Skagit RMP be approved under Limit 6 of the ESA 4(d) Rule, that the necessary concurrence letter (Attachment 4) be sent to the individual Skagit co-managers, and that ESA take prohibitions do not apply to fisheries implemented in accordance with the Skagit RMP's own implementation and reporting measures. The SFD recommends that you concur with the implementation of the Skagit RMP.

I concur with the approval of the Skagit River Steelhead Fishery Resource Management Plan submitted by the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, the Skagit River System Cooperative, and the Washington Department of Fish and Wildlife, provided that it is implemented in accordance with the implementation and reporting measures as described in the RMP.

  
\_\_\_\_\_  
Barry A. Thom  
Regional Administrator

  
\_\_\_\_\_  
Date

I do not concur with the approval of the Skagit River Steelhead Fishery Resource Management Plan submitted by the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, the Skagit River System Cooperative, and the Washington Department of Fish and Wildlife.

\_\_\_\_\_  
Barry A. Thom  
Regional Administrator

\_\_\_\_\_  
Date

Attachment 1: Evaluation and Recommended Determination Document  
Attachment 2: Section 7 Biological Opinion  
Attachment 3: NEPA Memo  
Attachment 4: Concurrence letter to Skagit River Co-management agencies  
cc: (w/out attachments)

GCNW: Lynch, Stanley, Beale, McNulty  
WCR: Dixon, Wilson, Bishop, Dygert, Wulff

