

steelhead (*O. mykiss*); Snake River steelhead (*O. mykiss*), Columbia River chum salmon (*O. keta*), and Hood Canal summer-run chum salmon (*O. keta*).

Refer to the following website for NMFS listing status and protective regulations: <http://www.nwr.noaa.gov/1salmon/salmesa/index/htm>

FWS listed species potentially addressed in this action include bull trout (*Salvelinus confluentus*) and any or all unlisted Washington native fish and six stream breeding amphibians.

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. The Services expect to take action on ESA section 10(a)(1)(B) and/or 4(d) Limit submittals expected from the State. Therefore the Services are seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

Section 9 of the ESA and implementing regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Harm is defined by the FWS to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3). NOAA Fisheries' definition of harm includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727, November 8, 1999).

The Services may promulgate rules under section 4(d) of the ESA establishing specific take prohibitions for threatened species that the Services determine to be consistent with the conservation needs of threatened species. Section 10(a)(1)(B) of the ESA provides a mechanism by which both Services may permit take through the issuance of an Incidental Take Permit (ITP). An ITP may be issued for take that could occur incidental to otherwise lawful activities, provided all permit issuance criteria are met, including the requirement that permit issuance would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The applicant for an ITP

must prepare and submit to the Services for approval, a Habitat Conservation Plan (HCP) containing strategies for minimizing and mitigating the impacts of take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure adequate funding will be provided for the HCP. An HCP and associated ITP could cover the threatened bull trout and salmon, plus any endangered and unlisted species that might be affected by the Washington State Forest Practices Rules. In addition, the "No Surprises" rule assures that the Services will not require the commitment of any additional land, water or financial compensation for HCPs that are being properly implemented throughout the term of the HCP and ITP. It is important to note that section 10 is the only ESA mechanism by which take authorization can be granted to non-Federal landowners for take of endangered species. On July 10, 2000, NOAA Fisheries promulgated and published an ESA section 4(d) rule for threatened salmon and steelhead (65 FR 42422). In addition to establishing take prohibitions, the rule provides that certain specified activities or conservation plans may qualify for a limit from the rule's take prohibitions provided that such activities or programs qualify for one of 13 categories known as "limits". Limit 13 of this rule applies to forest management in Washington and specifically relates to non-Federal forest management activities that are at least as protective as the elements of the Forests and Fish Report. The Forests and Fish Report is a document that makes recommendations for improving forest management and timber harvest for the benefit of salmon and aquatic and riparian species. The report was prepared collaboratively by a group of stakeholders from private industry, public interest groups, State and Federal Government agencies, and Tribes. NOAA Fisheries has not yet determined whether the State's Forest Practices Rules as revised by the Forests and Fish report comply with this rule.

FWS has not issued a comparable 4(d) rule, but is considering whether to exempt the take of bull trout that may occur through implementation of the Washington State Forest Practices Rules by adopting a 4(d) rule. A FWS 4(d) rule could be structured to exempt take that might occur as a result of implementing the State regulatory program, provided that the program is consistent with the conservation needs of the species. However, a 4(d) rule can only address take of species listed as threatened. The

Forests and Fish Report addresses some endangered and unlisted species, as well as threatened species.

Because both threatened and endangered species are likely to be affected and because there are alternative methods for meeting the requirements of the ESA, the State is working with both Services to develop one or more proposals.

State of Washington's Programs and Proposals

The Washington State Forest Practices Board was established in 1975 by the Washington State Legislature under the State Forest Practices Act. By law, the board is charged with establishing rules governing forest management activities on non-Federal forest land in the State in order to protect public resources while maintaining a viable timber industry. Those rules, as embodied in the Washington Administrative Code (Title 222 WAC), specifically consider the effects of various forest practices on fish, wildlife and water quality. The Forest Practices Act also requires the Washington Department of Natural Resources to administer and enforce all board-adopted rules on non-Federal forest land. The board adopts Forest Practices rules pertaining to water quality protection after reaching agreement with the director of the Department of Ecology (Ecology) or the director's designee on the board.

Beginning in late 1996, stakeholders determined additional protections should be developed because of the imminent listing of several salmon species in Washington under the Act, and because new information from watershed analyses and other sources indicated riparian protections in place at that time were not adequate for public resource protection. In response, the participants in a stakeholder negotiation process known as Timber, Fish, and Wildlife (TFW) began working on riparian issues and agreed to negotiate collaboratively in an effort to submit a proposal to the Forest Practices Board. Over the course of the negotiations, representatives from Federal agencies and Washington counties joined the effort, and representatives of environmental interests and some Tribes withdrew from the process. The remaining caucuses continued negotiating and went on to write the Forests and Fish Report (April 1999), which ultimately became the basis for new Forest Practices Rules with increased attention to the needs of salmon and other aquatic and riparian species on forest lands. The groups contributing to the development of the report included Federal agencies (FWS,