

constitutes recovery for each population. The Teams next provide guidance on the numbers and distribution of recovered populations that would constitute a healthy ESU, as well as guidance on the status of populations that will not be recovered but still have a role to play in overall ESU health.

NMFS also seeks input on the best methods for evaluating the conservation value of potential critical habitat areas. NMFS is interested in information relevant to monetizing the conservation value of an area, or to ranking the conservation benefits in an ordinal manner. Finally, NMFS is seeking input on what approaches would allow it to determine if excluding an area from designation will result in the extinction of the species.

Determining Economic and other Relevant Impacts

Section 4(b)(2) of the ESA requires the Secretary to consider the "economic impact, and any other relevant impact," of designating a particular area as critical habitat. During the information-gathering phase, NMFS seeks information regarding the economic benefits of excluding an area from the critical habitat designation and the economic benefits of including an area as part of the critical habitat designation. In keeping with the guidance provided by the Office of Management and Budget (2000, 2003), NMFS seeks information that would allow it to monetize these effects to the extent possible, as well as information on qualitative impacts to economic values. NMFS is also seeking information on any other impacts of designating critical habitat.

The Appropriate Geographic Scale for Weighing the Benefits of Exclusion and Benefits of Inclusion

There are thousands of miles of rivers and streams presently occupied by listed salmon and steelhead in OR, WA, ID, and CA. Before designating any "particular area" as critical habitat NMFS must balance the benefit of excluding that area against the benefit of including it in the designation (ESA section 4(b)(2)). To manage this task, streams and rivers must be grouped in a manner that allows for meaningful analysis. As discussed in more detail above, salmon populations tend to divide along watershed boundaries. Through the mapping efforts of the U. S Geological Survey (USGS), watersheds can be mapped across most of the salmon and steelhead range at a fairly fine scale, relative to the broad distribution of the species. NMFS seeks

input on the relevance of using watersheds as a unit of analysis for the balancing test. In some cases it may be useful to consider habitat units at a finer scale than the watershed, for example where an economic impact or a conservation benefit can be isolated to a stream or river segment. NMFS therefore also seeks input on approaches to isolating impacts of designation at a finer scale than the watershed.

Process and Schedule

In response to a complaint filed by the Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, the Center for Biological Diversity, the Oregon Natural Resources Council, the Pacific Rivers Council, and the Environmental Protection Information Center alleging NMFS's failure to timely designate critical habitat, NMFS recently filed with the D.C. District Court an agreement resolving that litigation and establishing a schedule for designation of critical habitat. The schedule provides for submission by June 30, 2004 to the **Federal Register** for publication the proposed rule(s) designating critical habitat for those of the 20 ESUs that are included on the list of threatened and endangered species as of June 30, 2004. Additionally, the schedule provides for submission by January 18, 2005 to the **Federal Register** for publication the final rule(s) designating critical habitat for the 20 ESUs that are included on the lists of threatened and endangered species as of January 18, 2005. The District Court approved the agreement on September 12, 2003.

As described in current agency regulations (50 CFR 424.16), NMFS anticipates that the proposed rulemaking will contain text detailing the proposal, a summary of the data used and its relationship to the proposal, a summary of factors affecting the species and/or critical habitat, citations of pertinent information sources, a map of the critical habitat, an economic report, and an explanation of a 4(b)(2) process and any areas proposed for exclusion. To the maximum extent practicable, the proposal will also include a brief description and evaluation of those activities (whether public or private) that, in the opinion of the Secretary, if undertaken, may adversely modify the critical habitat, or may be affected by the designation. Products to be made available to the public at this step also include access to maps depicting the areas proposed for designation and relevant agency biological and economic analyses supporting the rulemaking. NMFS also will provide the requisite comment

period and opportunity for public hearings on the proposed rule.

In addition to publication in the **Federal Register**, NMFS will provide the critical habitat proposal to, and invite comments from, affected states and counties (and equivalent jurisdictions) and scientific organizations as well as any federal agencies, tribal governments, local authorities, or private individuals or organizations known to be affected by the proposed rule. The agency will also publish a summary of the proposed rule in a newspaper of general circulation in affected areas. In accordance with a joint NMFS/FWS policy published on July 1, 1994 (59 FR 34270), NMFS will also seek the expert opinions of at least three appropriate and independent specialists. The purpose of such review is to ensure that the critical habitat designations are based on scientifically sound data, assumptions, and analyses. NMFS will send these peer reviewers copies of the proposed rule (and other documentation as needed) immediately following publication in the **Federal Register**. The agency will invite each peer reviewer to comment independently, during the public comment period, on the proposed designations and will specifically identify and address all peer review comments in the final rule.

In accordance with the Secretarial Order on American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act, NMFS will coordinate with Federally recognized American Indian Tribes on a Government-to-Government basis to determine how to make critical habitat assessments in areas that may impact Tribal trust resources.

NMFS will review all information received during the comment period as well as any new information identified after publishing the proposed designations. If changes are warranted, the agency will document the bases for the revisions and include this rationale as part of the administrative record for critical habitat designations.

Per current agency regulations at 50 CFR 424.18 and 424.19, NMFS anticipates that the final designations will be published in a **Federal Register** notice containing the complete text of the rule, a summary of the comments and recommendations received in response to the proposal (including input from public hearings and peer reviewers), summaries of the data on which the rule is based and the relationship of such data to the final rule, and a description of any conservation measures available under the rule. The final rule will: summarize