



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC768

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the Tribal Resource Management Plans (Plans) submitted by the Confederated Tribes of the Umatilla Indian Reservation, the Shoshone-Bannock Tribes, and the Nez Perce Tribe to NMFS pursuant to the limitation on take prohibitions for actions conducted under the Tribal Rule of section 4(d) for salmon and steelhead promulgated under the Endangered Species Act (ESA). The Plans specify fishery management activities in the Oregon and Washington portions of the Snake River basin. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to the ESA Tribal 4(d) Rule for salmon and steelhead that implementing and enforcing the Plans will not appreciably reduce the likelihood of survival and recovery of ESA-listed salmon and steelhead.

DATES: The final determination on the Plan was made on July 2, 2013.

ADDRESSES: National Marine Fisheries Service, Salmon Management Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño at (206) 526-4655, or e-mail: Enrique.Patino@noaa.gov.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (Oncorhynchus tshawytscha): threatened, naturally produced and artificially propagated Snake River spring/summer.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Snake River Basin.

Background

The Nez Perce Tribe (NPT), the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), and the Shoshone-Bannock Tribes (SBT) each submitted a Tribal Resource Management Plan for harvest of Snake River spring/summer Chinook salmon in the Imnaha and Grande Ronde subbasins for review under the Tribal 4(d) rule.

Activities described in the Plans include tribal fisheries for hatchery-origin and natural-origin Chinook salmon using population-specific abundance-based harvest rate schedules, which incorporate conditions for the conservation and restoration of salmon stocks. The management objective is for the NPT, the CTUIR, and the SBT to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of listed Chinook salmon. The proposed Plans provide the framework through which Tribal salmon fisheries can be implemented while meeting requirements specified under the ESA.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for Tribal Plans adopting regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the

Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule for Tribal Plans applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to fishery harvest activities if the fisheries are managed in accordance with a Tribal Plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids.

As specified in the Tribal 4(d) Rule, before the Secretary makes a decision on a Tribal Plan, the public must have an opportunity to review and comment on the pending determination. NMFS made the proposed evaluation and pending determinations available for public review, and the final evaluation and determinations reflect consideration of comments received.

Discussion of the Biological Analysis Underlying the Determination

The management objective is for the tribes to conduct fisheries in a manner that does not appreciably reduce the likelihood of survival and recovery of listed Chinook salmon and steelhead. The Plans include provisions for monitoring and evaluation to assess fishing-related impacts on Snake River spring/summer Chinook salmon. The Plans utilize a harvest rate with five tiers based on predicted adult abundance of each of the affected populations. The majority of the harvest is anticipated to come from hatchery-origin stocks. The Plans also describe a process to guide coordination of fishery design and implementation between the agencies implementing fisheries in the action area. The Plans include provisions for monitoring and evaluation to assess fishing-related impacts on Snake River spring/summer Chinook salmon. Performance indicators

include dam, weir, and redd counts, harvest estimates, and escapement with respect to escapement goals.

The tribes intend to engage in ceremonial and subsistence harvest of both hatchery and natural-origin spring/summer Chinook salmon. Annually, the tribes would issue season regulations detailing the timing and season regulations for tributary fisheries consistent with these long-term Plans. Under the Plans, the tribes would manage all Chinook salmon fisheries to achieve escapement objectives using population-specific, abundance-based harvest rate schedules to limit ESA take according to year-specific adult escapement abundances. As a result, weaker populations will sustain less harvest and, as the number of predicted adults increase, the number of fish escaping to the spawning grounds will also increase.

To achieve their conservation objectives, the Plans employ a number of key strategies as part of their harvest conservation measures, including: (1) fishery-related redistribution of the conservation burden historically borne by fisheries; (2) use of threshold points to restrict the take of ESA-listed fish; and (3) application of a sliding scale approach to determine appropriate ESA take limits on critically low runs as well as on healthier runs at levels that may not slow recovery.

The Plans include provisions for annual reports that will assess compliance with performance standards established through the Plans. The monitoring and evaluation described in the Plans will focus on two primary performance indicators: adult and juvenile abundance, and the overall assessment of abundance and productivity measures for each population. Reporting and inclusion of new information derived from research, monitoring, and evaluation activities provides assurance that performance standards will

be achieved in future seasons.

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on two of the Plans for public review and comment on August 11, 2011 (76 FR 49735). The proposed evaluation and pending determination and an associated draft environmental assessment were available for public review and comment for 30 days. NMFS received comments from the Oregon Department of Fish and Wildlife, the CTUIR, and the NPT. Subsequently, NMFS received an updated TRMP from the NPT, addressing management of NPT fisheries in the Grande Ronde and Imnaha Rivers. NMFS published notice of its proposed evaluation and pending determination on the NPT Plan for public review and comment on January 23, 2013 (78 FR 4835), also for 30 days. No comments were received.

A detailed summary of the comments and NMFS' responses is also available on the Salmon Management Division website. Based on its evaluation and recommended determinations and taking into account the public comments, NMFS issued its final determination on the three tribal fishery Plans.

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) Rule (50 CFR 223.209) states that the ESA section 9 take

prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: July 17, 2013.

Angela Somma, Chief, Endangered Species Division, Office of Protected Resources,
National Marine Fisheries Service.

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