



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
7600 Sand Point Way N. E., Bldg. 1
Seattle, WA 98115

DEC 10 2012

MEMORANDUM FOR: Barry Thom
Deputy Regional Administrator

FROM: Robert Turner, Assistant Regional Administrator
Salmon Management Division

SUBJECT: Joint State/Tribal Hatchery and Genetic Management Plans
Submitted by the Lower Elwha Klallam Tribe and the Washington
Department of Fish and Wildlife for Chinook, Coho, Fall Chum
and Pink salmon, and Steelhead Production in the Elwha River,
Washington, Under Limit 6 of the Endangered Species Act 4(d)
Rule (50 CFR 223.203(6)) (65 FR 42422, July 10, 2000) -
DECISION MEMORANDUM

ISSUE

The Lower Elwha Klallam Tribe (LEKT) and Washington Department of Fish and Wildlife (WDFW) (hereafter referred to as “the co-managers”), provided five joint Hatchery and Genetic Management Plans (HGMP) as a resource management plan for supportive breeding of extant, native stock-origin salmon and steelhead populations in the Elwha River watershed. The co-managers provided the HGMPs in August, 2012 as the proposed frameworks through which the tribal and the state jurisdiction will jointly manage salmon and steelhead artificial propagation, while meeting requirements specified under the Endangered Species Act (ESA). The plans were submitted for review and determination by National Marine Fisheries Service (NMFS) that they meet the requirements of Limit 6 of the ESA 4(d) Rule, 50 CFR 223.203(b)(6) (July 10, 2000; 65 FR 42422, as amended June 28, 2012, 70 FR 37160).

RECOMMENDATION

The NMFS Salmon Management Division (SMD) has evaluated the HGMPs (Table 1) and finds that the plans meet all of the requirements specified in Limit 6 of the ESA 4(d) Rule, including the criteria for HGMPs in Limit 5 of the Rule. SMD recommends that these HGMPs be approved, and the Northwest Region issue its written determination on the HGMPs to LEKT and WDFW, provided that the plans are implemented in accordance with the section on implementation terms at the end of this memo.

Table 1. Hatchery and Genetic Management Plans and Primary Program Operators for Salmon and Steelhead Supportive Breeding Programs in the Elwha River Watershed, Submitted by LEKT and WDFW to NMFS under Limit 6 of the ESA 4(d) Rule.

Hatchery and Genetics Management Plan	Program Operator
Elwha Channel Hatchery Chinook Salmon	WDFW
Lower Elwha Hatchery Native Steelhead	LEKT
Lower Elwha Hatchery Coho Salmon	LEKT
Lower Elwha Hatchery Chum Salmon	LEKT
Elwha River Odd and Even Year Pink Salmon	LEKT and WDFW

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). The 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. In August 2012, NMFS received five HGMPs from the Lower Elwha Klallam Tribe (LEKT) and Washington Department of Fish and Wildlife (WDFW) describing Elwha River salmon and steelhead hatchery programs affecting listed Puget Sound Chinook salmon and Puget Sound steelhead in 2012 and beyond. The co-managers submitted the five HGMPs for evaluation by NMFS for compliance with Limit 6 ESA 4(d) Rule criteria.

The supportive breeding programs proposed by the co-managers (Table 1) are described in detail in the HGMPs (LEKT 2012a; 2012b; 2012c; LEKT and WDFW 2012; WDFW 2012). All five programs are on-going, with the WDFW Elwha Channel Hatchery Chinook salmon program implemented since the 1950s, and the tribal programs operating mainly since the mid-1970s. The programs are designed to preserve, and assist in the natural recolonization of remaining, native Elwha River stock-origin anadromous salmon and steelhead populations. The HGMPs would be implemented for conservation purposes over what have been defined as the “preservation” and “recolonization” phases of fish restoration; the initial periods during and after removal of the Elwha River dams when river and estuary habitat, and natural fish productivity, recover from dam removal impacts. **The programs are not proposed for operation during the latter two phases of fish restoration in the watershed – the “local adaptation” and “self-sustaining population” phases.** Program protocols would be applied minimizing potential risks to natural-origin Elwha River Chinook salmon and steelhead populations during these initial two phases of restoration. The programs would assist in the recovery of viable salmon and steelhead populations consistent with the Elwha River Fish Restoration Plan (Ward et al. 2008), and the Shared Strategy for Puget Sound (SSPS) (2005). A recovery plan was developed consistent with the SSPS (Ruckelshaus et al. 2005), and approved by NMFS, to protect and restore salmon runs across Puget Sound.

The duration of the Chinook salmon and steelhead hatchery programs is subject to achievement of population viability triggers established by the Elwha Monitoring Group (EMG 2012) bearing on the status of the listed Chinook salmon and steelhead populations in the recovering Elwha River watershed during the preservation and recolonization phases. Achievement of recolonization phase triggers would necessitate reinitiation of ESA consultation. Comprehensive monitoring and evaluation plans will be implemented to assess the performance of the programs in meeting population viability triggers, and their effects on ESA-listed natural-origin Chinook 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 assumptions of the plan development and analysis remain valid, and whether the objectives of the HGMPs are being accomplished.

DISCUSSION

Controversial Issues

The five supportive breeding programs described in the HGMPs are the subject of current ongoing litigation. Plaintiffs Wild Fish Conservancy have asserted NEPA and ESA claims against NOAA and U.S. Department of Interior (DOI) for failure to consult on the HGMPs, as well as asserting violation of ESA section 9 against DOI and LEKT. The plaintiffs have challenged the continuation of the five programs in the Elwha River watershed as detrimental to recovery of listed salmonids, and will likely challenge the NMFS HGMP decisions regarding the plans when finalized. The five Elwha River salmon and steelhead supportive breeding programs are not new, and all incorporate best management practices and hatchery reforms considered necessary to provide for program operation while minimizing potential risks to ESA-listed species. Given that removal of the Elwha dams has made natural habitat inhospitable for natural-origin fish in the lower Elwha River where salmon and steelhead production has been confined for 100 years, and the term of recovery of river and estuary habitat needed to sustain natural production is highly uncertain, the proposed hatchery programs are widely supported in the regions' salmon management and scientific communities to reduce the risk that salmon and steelhead populations remaining in the Elwha River from becoming extirpated.

Public Review and Comment

On October 16, 2012, NMFS published in the *Federal Register* notification of the availability of its ESA 4(d) Rule proposed evaluation and pending determination for the five joint HGMPs for public review and comment (77 FR 63294). A draft Environmental Assessment (EA), assembled by NMFS to evaluate compliance of any NMFS ESA 4(d) Rule determination regarding the RMP with the National Environmental Policy Act (NEPA), was made available for public review at the same time, as announced in the same notice. The public comment period was open from October 16, 2012, to November 15, 2012. During the public comment period, NMFS received comments from 4 commenters.

None of the comments raised issues that required substantive modification of the NMFS 4(d) or NEPA documents. The comments led to revisions to the documents in some instances to clarify, correct, and refine RMP action description and effects evaluation sections.

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

The Federal action germane to evaluation and determination is NMFS' approval of the HGMPs, based on the NMFS determination of whether or not the hatchery plans meet ESA 4(d) Rule criteria and qualify for limits on section 9 take prohibitions. Included in this consultation is funding of the described hatchery programs by the National Park Service, Bureau of Indian Affairs, and U.S. Fish & Wildlife Service. **The SMD prepared an ESA section 7 biological opinion to evaluate the effects of the action on the listed salmonids (Attachment I). As described in SMD's biological opinion, the approval of the HGMPs is not likely to jeopardize the continued existence of listed Puget Sound Chinook salmon or Puget Sound steelhead, nor result in the destruction or adverse modification of their critical habitat where designated.** Adequate measures are proposed to monitor the performance and effects of the programs, including the viability status of the affected populations, proportion of natural and hatchery fish reaching natural spawning areas, and the survival to adult return of hatchery fish released through the programs. Certification by General Counsel Northwest of their review of the opinion is on file.

The SMD 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, the southern DPS of Pacific eulachon. This determination is described in the biological opinion.

The SMD 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.

The SMD further determined that Hood Canal summer-run chum salmon would not be affected by the Elwha River hatchery programs. The geographic boundaries of the Hood Canal summer-run chum salmon ESU do not include the Elwha River. No summer-run chum salmon population that would potentially be affected by the hatchery programs is present in the Elwha River. The fish produced by the Elwha River hatchery programs represent only a small proportion of the total abundance of salmonids in the Puget Sound marine areas where summer-run chum salmon might be encountered. Given the action area for the proposed actions, the influence of any density-dependent interactions between hatchery and natural-origin salmonids on growth and survival in Puget Sound marine areas included in the action area is likely small, and the degree of impact or level of influence is not discernible given the available science.

The SMD also analyzed the effects of the actions on Essential Fish Habitat (EFH) under the Magnuson-Stevens Act; the EFH analysis is included in Attachment I. The SMD 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 actions are not likely to adversely affect

Pacific salmon EFH. There will be minimal disturbance of vegetation, and negligible harm to Pacific salmon spawning and rearing habitat, and to water quantity and water quality. What small effects on EFH might occur as a result of facility operations on Elwha River habitat would be adequately addressed by the steps described in the HGMPs. Because NMFS has found that the action is not likely to adversely affect EFH, there is no statutory response requirement.

Evaluation of HGMPs under the ESA 4(d) Rule

Attachment 2 is NMFS' evaluations of whether the HGMPs meet all of the requirements specified under Limit 6 of the ESA 4(d) Rule for salmon and steelhead. The NMFS SMD determined that the HGMPs provided by LEKT and WDFW meet all of the requirements in Limit 6 of the ESA 4(d) Rule.

Evaluation of NMFS' Proposed Determination under NEPA

The SMD determined that, for purposes of complying with the National Environmental Policy Act, an EA was sufficient to evaluate NMFS' proposed determination, and the Deputy Northwest Regional Administrator concurred. Accordingly, SMD drafted an EA that considered the effects of the proposed action on the human environment, also evaluating the effects of closing the programs (no hatchery programs on the Elwha River).

As detailed above, the EA was made available for public comment. Comments were received, many of them from the plaintiffs in the litigation. Many of the comments were directed at the HGMPs and the proposed program operations themselves, and others were specifically directed at the EA. NOAA addressed the comments on the EA, as reflected in the final version of the EA itself and in our responses to comments appended to the final EA. The SMD prepared a Finding Of No Significant Impact (FONSI). The EA and FONSI were reviewed by NOAA's Office of Program Planning and Integration. The final EA, with changes from the draft EA marked, and the FONSI are provided as Attachment 3.

Implementation Terms

The five joint HGMPs include performance standards and indicators designed to identify, monitor, and evaluate the benefits and risks associated with the supportive breeding programs, and progress in achieving population viability status triggers identified for listed Chinook salmon and steelhead for the two phases of restoration spanning the duration of the proposed supportive breeding actions. **Monitoring actions proposed to evaluate the performance indicators are identified in sections 1.10 and 11.0 of the HGMPs.** NMFS supports the collection and the reporting of the results of the identified monitoring and evaluation activities to determine the performance and effects of the supportive breeding actions. Of particular importance are monitoring and evaluation actions addressing hatchery-related impacts on natural-origin populations, and identification of the viability status of affected listed salmon and steelhead populations in the Elwha River. **These actions include, but are not limited to:**

- **annual monitoring of the annual abundance, timing, distribution, and origin of listed Chinook salmon and steelhead adults escaping to the Elwha River watershed above and**

below the dam sites using methods sufficient to provide estimates of the status of the natural- and hatchery-origin components of the population, proportions of the population by origin escaping to the river above and below the dam sites, relative contribution of natural- and hatchery-origin fish to natural spawning, and the effects of supportive breeding actions in meeting restoration objectives

- total number of adult salmon of other species escaping to spawn naturally
- the number of adult fish escaping to the hatcheries and/or removed from the mainstem Elwha River for use as broodstock each year
- the total number of juvenile fish by species released at each hatchery location each year

In particular, LEKT and WDFW 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 for hatchery actions specified in subparagraphs 5(ii) and 5(iii) of Limit 5 of the ESA 4(d) Rule, and are applied to hatchery actions under Limit 6.

(1) Monitor the abundance, diversity, spatial structure, and productivity status of Elwha River Chinook salmon and steelhead populations relative to population viability parameter triggers identified in the Monitoring and Adaptive Management Plan for the Elwha Restoration Project (EMG 2012) for each restoration phase to guide decisions regarding transition between the preservation, recolonization, and local adaptation phases of fish restoration, and responsive adjustment or phase out of supportive breeding actions for the listed species.

(2) Mark and/or tag all hatchery-origin juvenile salmon and steelhead released each year through the hatchery programs as described in the HGMPs to allow for the differentiation of hatchery- and natural-origin juvenile and adult fish in the natural environment, assessment of hatchery program effects on listed fish, and monitoring and evaluation of program performance in meeting population preservation and recolonization objectives.

(3) Maintain on-station releases of juvenile salmon and steelhead, consistent with abundance levels described in the proposed HGMPs, as the primary hatchery fish release strategy applied during the preservation and recolonization phases. Upstream transport and release of natural spawning of adult fish will be applied as the secondary hatchery fish release strategy during the preservation phase, and the tertiary strategy, behind spontaneous natural escapement and spawning by returning adult fish, during the recolonization phase.

(4) Annually report numbers, pounds, dates, tag/mark information, locations of artificially propagated fish releases, results of monitoring and evaluation activities that occur within the hatchery environment, and adult return numbers by fish origin to any naturally spawning area and to the hatchery program. Reports shall also include any analyses of fisheries harvest rate impacts, including impacts associated with Chinook salmon marking strategies; analyses of scientific research data; any problems that may

have arisen during conduct of the authorized activities; a statement as to whether or not the activities had any unforeseen effects; and steps that have been and that will be taken to coordinate the research or monitoring with that of other researchers.

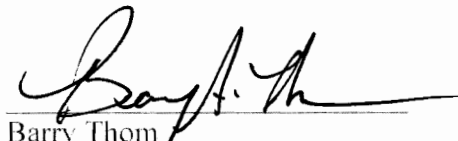
Consistent with subparagraph 5(vi) of Limit 5 of the ESA 4(d) Rule, it is NMFS' intent to regularly communicate with LEKT and WDFW regarding the effectiveness of the HGMPs in meeting performance standards, including the program's effect on listed salmon and steelhead abundance, diversity, spatial structure and productivity and survival. All reports, as well as all other notifications required through the 4(d) determination, should be submitted to NMFS, attention to:

Tim Tynan
Production and Inland Fisheries Branch
Salmon Management Division
NOAA Fisheries – Northwest Region
510 Desmond Drive, Suite 103
Lacey, Washington 98503

SUMMARY

SMD concludes that the joint HGMPs provided by LEKT and WDFW for Elwha River Chinook salmon, steelhead, coho salmon, fall chum salmon, and pink salmon meet all of the requirements for HGMPs under Limit 6 of the ESA 4(d) Rule. As described above, all of the necessary administrative and biological requirements have been met for the approval of the co-managers' HGMPs. SMD recommends that the supportive breeding programs described by the joint HGMPs qualify for limitation of take prohibitions pursuant to Limit 6 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. SMD recommends that you concur with the implementation of the HGMPs.

I concur with your recommendation to approve LEKT's and WDFW's implementation of the Elwha River Chinook salmon, steelhead, coho salmon, fall chum salmon, and pink salmon HGMPs, provided the plans are implemented in accordance with the section on Implementation Terms described above.


Barry Thom
Deputy Regional Administrator

12/10/12
Date

I do not concur with your recommendation to approve LEKT's and WDFW's implementation of the Elwha River Chinook salmon, steelhead, coho salmon, fall chum salmon, and pink salmon HGMPs.

Barry Thom
Deputy Regional Administrator

Date

cc (w/ attachments): Sharon Houghton (file number: NWR-2012-9426)
Tim Tynan

(w/o attachments): Bob Turner
Rob Jones
Robert Bayley

Attachment 1: 4(d) rule Limit 6 Evaluation and Recommended Determination Document
Attachment 2: Section 7 Biological Opinion, including EFH and DQA analyses
Attachment 3: Finding of No Significant Impact/Environmental Assessment
Attachment 4: Responses to Public Comments

Literature Cited

- EMG (Elwha Monitoring Group). 2012. Monitoring and Adaptive Management Plan** for the Elwha Restoration Project. Lower Elwha Klallam Tribe, National Marine Fisheries Service, Olympic National Park, U.S. Fish and Wildlife Service, U.S. Geological Survey, Washington State Department of Fish and Wildlife. U.S. Fish and Wildlife Service. Lacey, Washington. 103p.
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WDFW (Washington Department of Fish and Wildlife). 2012. Hatchery and genetic management plan - Elwha Channel Hatchery Chinook salmon subyearlings and yearlings. Fish Program, Washington Department of Fish and Wildlife. Olympia, Washington. 46p.