



Endangered Species Act Alert 2000-10

**RE: Take Prohibitions for SW Washington/Columbia River
Coastal Cutthroat Trout**

DATE: July 20, 2000

The U.S. Fish and Wildlife Service (USFWS) has issued proposed take prohibitions for coastal cutthroat trout, which will take effect *if* USFWS decides to list coastal cutthroat as threatened in October of this year.

But wait—how can FWS issue take prohibitions for a species that isn't even listed yet?

This recent action highlights one difference between the two Services—National Marine Fisheries and U.S. Fish and Wildlife—in administrative procedure related to listing species under the ESA and issuing rules to protect them.

The approach used by National Marine Fisheries Service in recent chinook salmon listings was two-phased. First, NMFS published notice of the proposed listing, then acted on the proposal and listed the species as threatened. Second, NMFS applied certain Section 9 take prohibitions to the threatened species using Section 4(d) rules.

The Fish and Wildlife Service uses a slightly different approach. Coastal cutthroat trout were proposed for listing as “threatened” under the Endangered Species Act in April of 1999. In April of 2000, citing scientific uncertainty, the USFWS delayed their final listing decision on coastal cutthroat until October of 2000. On July 14, USFWS clarified that Section 9 take prohibitions will automatically go into effect for the species if the listing is finalized in October. The notice also provides guidance about what activities would, and would not, violate Section 9 protections (see attachment). Therefore, if USFWS decides to list coastal cutthroat as threatened this fall, take prohibitions will be finalized along with the listing, rather than later, as in the NMFS model (although USFWS will still have the option of issuing a 4(d) rule later).

An earlier ESA Alert (2000-4) addressed coastal cutthroat trout in the Columbia River and Southwest Washington. Please refer to it for more information about coastal and westslope cutthroat trout listing deliberations.

Help Spread the Word

Parametrix project managers are encouraged to share this information with clients who may be interested in, or affected by, ESA listings and issues. Additional questions should

be addressed to Megan Callahan Grant (mcallahan@parametrix.com), ESA Program Policy Analyst, who can direct them to the appropriate specialist.

ATTACHMENT: Take Guidance for Coastal Cutthroat Trout

Actions Unlikely to Violate Section 9 Take Prohibitions:

- Actions conducted in accordance with an incidental take permit
- USFWS-approved conservation efforts
- Planting of riparian native vegetation
- Installation of riparian fencing and off-channel livestock watering facilities
- Placement of structures to limit human access to cutthroat habitat (such as gates, fences, signs, etc.)
- Operation and maintenance of fish screens on water diversions that meet NMFS' Juvenile Fish Screen Criteria for Pump Intakes
- Installation, operation and maintenance of screens off the main stream channel (which meet certain criteria for screens and bypass structures)
- General maintenance of existing structures (such as homes and other buildings) that are close to a stream corridor outside of the stream channel (not including impacts from sediment, chemicals, removal of streamside vegetation, and other activities that may degrade riparian areas and streambanks)
- Lawful use of State, county, city and private roads (not including road maintenance, grading, effects of stormwater from roads, or culverts that block fish migration)

Actions Likely to Violate Section 9 Take Prohibitions:

- Take of coastal cutthroat without a permit or other authorization from USFWS
- To possess, sell, deliver, carry, transport, or ship illegally taken coastal cutthroat trout
- Introduction of nonnative fish species that compete or hybridize with, or prey on, coastal cutthroat trout
- Activities that destroy or alter coastal cutthroat trout habitat, including (but not limited to):
 - dredging
 - channelization or diversion
 - removal of riparian vegetation
 - in-stream vehicle operation or removal of streambed material
 - grading unimproved roads
 - road maintenance activities such as side-casting into riparian zones or waterways
 - failure to control stormwater from roads or to maintain failing culverts
 - installation of culverts that block fish migration
- Discharge, release, or dumping of toxic chemicals, silt, or other pollutants into waters supporting coastal cutthroat trout
- Destruction or alteration of stream, riparian, estuarine or lakeshore habitat and adjoining uplands of waters supporting coastal cutthroat by timber harvest, grazing, mining, hydropower development, road construction, habitat restoration or other activities