



Endangered Species Act Alert 2000-18

RE: 4(d) Rules for Salmon Take Effect Today
DATE: January 8, 2001

The 4(d) rules recently developed by the National Marine Fisheries Service (NMFS) to protect listed salmon go into effect today. Issued to protect seven runs of threatened chinook, coho, chum and sockeye salmon in the Pacific Northwest, the 4(d) rules make it a federal violation to harm these species or their habitat. Such violations could result in penalties of tens of thousands of dollars, and criminal charges could also apply.

The same set of rules took effect for listed steelhead in September. The rules prohibit “take” of listed fish by anyone, not just federal entities or projects with a federal link or “nexus”. With only 18 enforcement agents for the Northwest Region, however, NMFS plans to target “egregious” activities that are causing harm to fish, and expects to rely upon complaints to target its investigations. Development activities that cause streambank erosion, unauthorized diversions of water from streams, and disturbance or removal of gravel from spawning grounds are among the types of activities that are likely to draw enforcement actions.

Lawsuits against the rule from both sides are in the works. Developers and builders’ associations have challenged the rationale for the listings of salmon, while environmental groups say the rule does not go far enough to protect threatened fish. From the environmental side, lawsuits are likely to be aimed at local governments that do not take action to protect fish habitat in sensitive areas.

The 4(d) rule allows for other entities, including local governments, to develop their own plans to avoid “take” of listed fish. If approved by NMFS, these plans provide local governments with some assurance that they are in compliance with the ESA, and shelter them from enforcement actions. Many local governments in the region are working to develop and submit such plans.

For more information:

Fish Rules in Effect Today:

http://news.statesmanjournal.com/single_article.cfm?i=18213

After All Talk, Salmon Rules Begin Today:

<http://TheSunlink.com/news/2001/january/0108salmonrulesb.html>

Fish Worries Stall Work on Bridge (Clackamas County, Oregon):

http://www.oregonlive.com/news/index.ssf?news/oregonian/01/01/lc_41bridge03.frame

A Citizen’s Guide to the 4(D) Rule:

<http://www.nwr.noaa.gov/1salmon/salmesa/4ddocs/citguide.htm>

Need More Information?

If you have questions or comments about this ESA Alert, please contact Megan Callahan Grant (mcallahan@parametrix.com), ESA Program Policy Analyst, who can direct them to the appropriate specialist.