



Endangered Species Act Alert 2002-4

RE: NMFS Releases New Policy On Wild Vs. Hatchery Endangered Species Status
DATE: July 31, 2002

In 2001, the Alsea Valley Alliance was successful in its challenge of the National Marine Fisheries Service's (NMFS) listing of Oregon Coastal coho salmon (*Oncorhynchus kisutch*) under the Endangered Species Act (ESA). The September 2001 ruling by Judge Michael Hogan stated that the ESA does not allow NMFS to list a subset of a population. What NMFS did was list naturally produced segments of this population, but excluded hatchery fish that are also part of the population. Although an appeal to the US Court of Appeals, 9th Circuit has stayed the ruling, (in essence allowing coastal coho to retain their ESA protections until the appeal is resolved), NMFS has circulated a draft Proposed Policy to address the questions brought up by the Alsea case. This Policy document is meant to define the relationship of hatchery (artificially propagated) fish to ESA-listed wild fish.

The Endangered Species Act says that for purposes of listing, a “**species**” can include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” NMFS applies this standard to identify salmon species or “Evolutionarily Significant Units (ESU).” These are a population or populations

- 1) that are reproductively isolated, and
- 2) that represent an important component in the evolutionary legacy of the biological species.

When determining whether and how to list a species, NMFS must determine three things:

- 1) which population or populations constitute a “**species**,”
- 2) the **species**' status and the factors leading to its decline; and
- 3) what protective efforts are occurring and if and how they are mitigating the threats to the **species**.

NMFS has maintained that the current interpretation of the ESA and guidance by Congress has determined an ESU to be “naturally spawning” fish that are in danger of extinction throughout all or a significant portion of their range (**endangered**) or likely to become endangered (**threatened**). They interpret the status of Pacific salmon and steelhead by determining if the naturally spawning fish are self-sustaining in their natural environment. Prior to this Proposed Policy, artificial propagation was usually taken into account as a factor for decline for most endangered and threatened species. Hatchery fish were not included in the ESA listings because their listing:

- 1) would not help provide naturally spawning self-sustaining populations;
- 2) would not allow Tribes and other harvesters to benefit from hatchery production; and
- 3) would significantly increase permitting requirements for stakeholders.

Under the Proposed Policy, 24 of the 26 ESUs would be reevaluated to determine the correct status of hatchery populations. NMFS will now determine which hatchery populations are close enough to be important to the evolutionary legacy of the species. Hatchery populations will be included if they are not overly altered compared to the wild population. NMFS will also include certain hatchery programs as potentially protective efforts if they help promote the self-sustainability of the species. If hatchery populations are considered to be within an ESU, NMFS points out that the ESA does not demand that all populations of a “species” be treated alike. NMFS believes it could still allow harvest of hatchery populations and deny harvest of wild populations.

Additional Resources:

NMFS Policy Draft: <http://www.nwr.noaa.gov/HatcheryListingPolicy/HatcheryListingPolicy.html>

Columbia Basin Bulletin: <http://znetprime.znetsolutions.com/cbb.nsf/cbbView>

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.