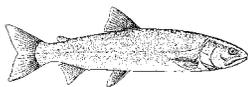


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# INTEGRATING SALMON CONSERVATION PLANS AND THE 4(d) RULE

The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) listed Puget Sound chinook salmon and coastal-Puget Sound bull trout, respectively, as “threatened” species under the Endangered Species Act (ESA) in 1999. It is also expected that, soon after their listing, these agencies will prohibit the “take” of these species (i.e. killing or harming them, including degradation of their essential habitat), though this is not guaranteed. If take is prohibited, any action proposed by any party that is likely to cause take will require federal approval. Take prohibitions on Puget Sound chinook would make a wide range of economic and other activities in the region subject to potentially costly and time-consuming federal review. Federal and local authorities want to avoid the prospect of such a massive slow-down to the local economy, while meeting the goal of preserving and recovering local salmon runs. They plan to do this through protective measures enacted under a “4(d) rule” and Watershed Resource Inventory Area (WRIA) Salmon Conservation Plans.

## *What is a “4(d) Rule”?*

After the federal government lists a species as “threatened” it is required to issue a rule under Section 4(d) of the ESA that specifies the protective measures necessary for that species. This “4(d) rule” commonly includes a statement that any take is prohibited. This statement is the element of 4(d) rules that brings the most extensive legal consequences to non-federal parties. Without it, these parties are affected by the listing only when their activities involve federal funding or a federal mandate or permit. Assuming take prohibitions are enacted, the 4(d) rule may also specify actions that are exempt from the prohibition by specifying conditions that minimize and mitigate the degree to which those actions harm the threatened species. A 4(d) rule may also specify actions that are not exempt from legal sanctions related to take of the species. The decision to list a species usually indicates that existing protective measures are substantively inadequate or are inadequately implemented. Therefore, we can expect that under a 4(d) rule protections for a species would be more strict and enforcement more consistent than was the case before a species was listed.

## *What Are “WRIA Salmon Conservation Plans”?*

WRIAs are defined under state regulations; they generally follow watershed boundaries of major river or lake systems, such as the Snohomish and Green Rivers. These WRIAs include neighboring Puget Sound coastal areas as well. Watersheds are generally considered an appropriate ecological and administrative level for prioritizing land use and other decisions affecting salmon habitat. Because of this, local governments in the Puget Sound area-in cooperation with state, tribal governments, and others are organizing by watershed to develop Salmon Conservation Plans to protect salmon. These plans will dovetail with harvest and hatchery policies generated by the State and Tribal governments who have legal authority over these policies. Though NMFS will make some judgments of what is needed to protect chinook salmon on a Puget Sound-wide basis, it will also evaluate these Salmon Conservation Plans for their own adequacy, particularly as they relate to habitat. If NMFS determines that a particular plan meets the conservation requirements of the ESA, it may incorporate elements of that plan into a 4(d) rule that protects against lawsuits filed under the ESA.