

CHAPTER 2

Recovery Planning Framework

Since drafting the following sections of the Snake River Recovery Plan, NOAA Fisheries has renamed the Snake River Steelhead Evolutionary Significant Unit (ESU) the Snake River Steelhead Distinct Population Segment (DPS). The other species are still referred to as ESUs. Rather than change the terminology now and further delay distribution of these sections, NOAA Fisheries is distributing these draft sections with the ESU designation. The next draft will contain the DPS designation.

Recovery planning is guided by the statutory language of the ESA, several policies jointly published by the FWS and NMFS, and various court decisions. It is informed by various other federal laws and treaties. There are no specific regulations, however, regarding recovery. Although NMFS is ultimately responsible for creating and adopting salmon recovery plans, these plans will be successful only if they are developed in partnership with those who have the interest, responsibility, and authority to implement them.

2.1 All Hs, All Stakeholders

Support from state, tribal and local governments, other federal agencies, and all other interested parties (the “stakeholders”) is key to achieving recovery, and the actions must come from all the sectors—all the “H’s”—habitat, hydro, harvest, and hatcheries. For example,

- Fishery managers need to manage harvest to reduce impacts upon, and to protect naturally produced salmon and steelhead.
- Hatchery managers need to manage their programs to reduce impacts upon, and to help conserve listed species.
- Cities, counties, tribes, local watershed and estuary stakeholder groups, and federal and state land managers need to work together to develop local watershed and subbasin plans and to protect and restore stream habitat and watershed health.
- Hydropower system managers need to improve salmon survival in the migration corridor.

Multiple agencies also need to work together to develop greater coordination and integration across programs that affect salmon, steelhead and their habitats. Public education and communication are crucial. Fortunately, many efforts toward salmon recovery are already underway. In this recovery plan, ongoing conservation efforts are recognized and additional actions that may be needed from each sector are identified.

2.2 Recent History

Following the listing of Snake River sockeye salmon as an endangered species on November 20, 1991 and the listing of Snake River spring/summer and fall Chinook as

threatened on April 22, 1992, NMFS appointed a Snake River Salmon Recovery Team to assist in the development of a recovery plan for Snake River salmon. In May 1994, this team (known as the Bevan Team, after its chairman, the late Donald Bevan) submitted its final recommendations to NMFS. NMFS used these recommendations to formulate the Proposed Snake River Salmon Recovery Plan, which was published in March 1995. At that time, NMFS solicited comments on the Proposed Plan from all interested parties in the public and private sectors. A Draft Snake River Salmon Recovery Plan was then prepared, August 8, 1997, taking into account the substantive comments received from states, tribes, federal agencies, and the general public during the public comment period. The Snake River Steelhead ESU was listed as threatened on August 18, 1997. The 1997 Recovery Plan was never finalized, as a decision was made to base recovery planning more on local participation and locally produced planning elements.

In the Columbia Basin, a technical document from the Federal Caucus, *The Conservation of Columbia Basin Fish: Final Basinwide Salmon Recovery Strategy (2000)* (<http://www.salmonrecovery.gov/strategy.shtml>) (informally called “the All-H paper”) provides recovery strategies and actions to be implemented basin-wide, while subbasin plans and ESA recovery plans are being prepared. Although the All H paper provides a general overarching recovery strategy, it is superceded by this current, more specific recovery plan.

2.3 Formal and Informal Guidance

The Endangered Species Act and a number of policies, court decisions, and other federal laws set the general parameters for salmon recovery planning.

2.3.1 The Endangered Species Act

Section 4(f) of the ESA addresses the development and implementation of recovery plans. The following are the key provisions of this section of the Act:

- 4(f)(1) - Recovery plans shall be developed and implemented for listed species unless “ . . . such a plan will not promote the conservation of the species”
- 4(f)(1)(A) - Priority is to be given to “. . .species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity.”
- 4(f)(1)(B) - Each plan is to include:
 - “(i) a description of such site-specific management actions as may be necessary to achieve the plan’s goal for the conservation and survival of the species;
 - (ii) objective, measurable criteria which, when met, would result in a determination . . . that the species can be removed from the list; and,

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.”

- 4(f)(2) - To assist in the development and implementation of recovery plans, the Services [NMFS and USFWS] may appoint recovery teams, which are not subject to the requirements of the Federal Advisory Committee Act (FACA).
- 4(f)(4) - Prior to approval of a recovery plan, the Services must “. . . provide public notice and an opportunity for public review and comment. . .” and “. . . consider all information presented during the public comment period prior to approval of the plan.”
- 4(f)(5) - Prior to implementation of a recovery plan, the Services must “. . .consider all information presented during the public comment period. . .”
- 4(h)(4) - the Services shall establish, and publish in the Federal Register, agency guidelines that include “. . . a system for developing and implementing, on a priority basis, recovery plans. . .”

2.3.2 Recovery Policies

NMFS and the USFWS are working on a jointly produced Recovery Handbook. In the meantime, NMFS' Interim Endangered and Threatened Species Recovery Planning Guidance (October 2004) sets the guidelines used for the current salmon recovery plans. This Interim Guidance updates and supercedes the Interagency Cooperative Policy on Recovery Plan Participation and Implementation Under the Endangered Species Act (59 FR 34272; FWS and NMFS 1994c), and incorporates the following four joint policies:

- Interagency Cooperative Policy for Peer Review in Endangered Species Activities (59 FR 34270; FWS and NMFS 1994a)
- Interagency Cooperative Policy on Information Standards Under the Endangered Species Act (59 FR 24271; FWS and NMFS 1994b)
- Interagency Cooperative Policy for the Ecosystem Approach to the Endangered Species Act (59 FR 34274; FWS and NMFS 1994d)
- Interagency Cooperative Policy Regarding a the Role of State Agencies in Endangered Species Act Activities (59 FR 34275; FWS and NMFS 1994e)

2.3.3 Harvest Management

Columbia River Basin salmon are harvested in ocean, mainstem, and tributary fisheries. Ocean fisheries are managed under the Pacific Salmon Treaty (PST) and Pacific Fisheries Management Council, and by NMFS (for listed species). Mainstem fisheries are managed by the Oregon/Washington Interstate Compact [CHECK] below Bonneville Dam and by the continuing jurisdiction of the Federal District Court of Oregon in *U.S. v. Oregon*.

U.S. v. Oregon

U.S. v. Oregon is an ongoing court case that places management of Treaty Indian and non-Indian fisheries in the Columbia River Basin (including the Snake River Basin) under the jurisdiction of the United States District Court for the District of Oregon.

In 1968 the federal government filed suit on behalf of the four Columbia River treaty tribes (the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce tribe, and the Confederated Bands and Tribes of the Yakama Nation), challenging the State of Oregon's regulation of off-reservation fishing. The court's decision was that, in general, the state must seek to regulate tribes by the least restrictive means consistent with necessary conservation measures (*U.S. v. Oregon*, 769 F.2d 1410 [9th Cir. 1985]); that the tribes must have a fair opportunity to take their fair portion of fish, which is defined as 50 percent of harvestable fish from each run passing through usual and accustomed places, by reasonable means; and that the states may regulate accustomed Indian fishing stations where the interests of conservation justify (*U.S. v. Oregon*, 718 F.2d 299 [9th Cir. 1983]).

The parties to *U.S. v. Oregon* are the states of Oregon, Washington, and Idaho, the United States, the four member tribes of the Columbia River Inter-Tribal Fish Commission (i.e. the four Columbia River Treaty Tribes), and the Shoshone-Bannock Tribes. According to settlement agreements forged under the court's jurisdiction, these co-managers annually coordinate the development of fisheries for the upcoming year. They monitor the run sizes and catches throughout the fishing seasons and make recommendations to their respective agencies concerning harvest effort and regulations.

In 1988, the court adopted the Columbia River Fishery Management Plan (CRFMP), which set guidelines for fisheries and artificial production in the basin. Various management agreements have been negotiated by the parties since the CRFMP expired in 1999. The current 2005-2007 Interim Management Agreement for Upriver Chinook, Sockeye, Steelhead, Coho, and White Sturgeon covers all Columbia River harvests through the end of December 2007 and includes production and supplementation measures with regard to various stocks.

2.3. 4 Other Federal Laws

In addition to the ESA, there are six other federal laws that are particularly important to developing and implementing recovery plans, assembling the Administrative Record, and addressing "openness in government." These laws are:

- The Lower Snake River Compensation Plan (LSCRCP) authorized by Congress as part of the Water Resources Development Act of 1976 (90 Stat. 2917). A major element of the authorized plan was a program to design and construct fish

hatcheries to compensate for some of the losses of salmon and steelhead adult returns caused by the dams. Recovery planning must take into account the compensation functions of hatcheries.

- The Freedom of Information Act (FOIA; 5 U.S.C. 552), enacted in 1966, provides that any person has the right to request access to federal agency records or information.
- The Federal Advisory Committee Act (FACA; 5 U.S.C., App.), enacted in 1972, controls the growth and operation of the "numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government."
- The Administrative Procedures Act (APA; 5 U.S.C. 551-59, 701-06, 1305, 3105, 3344, 5372, 7521), passed in 1946, clarifies the process of making regulations, and allows greater accessibility and participation by the public in the rulemaking process.
- The National Environmental Policy Act (NEPA; 42 U.S.C. s/s 4321 et seq.), passed in 1969, assures that all branches of government give proper consideration to the environment prior to undertaking any major federal action that significantly affects the environment.
- Paperwork Reduction Act (44 U.S.C. 3501-20), enacted in 1995, minimizes the burden that federal paperwork imposes on the public and improves the quality and use of federal information.

2.3.5 Summary

In summary, with respect to recovery planning, we have statutory and other requirements imposed by either policy or court decisions. This statutory, policy, and judicial guidance requires specific elements to be included in a plan and incorporates standard elements into the process of drafting plans (consultation, quality data, public participation etc.). Within these constraints, there is still considerable latitude to develop recovery plans appropriate to each species and region.

2.4 Relationship to other ESA mandates

Although recovery plans are not enforceable, the ESA clearly envisions them as the central guidance for each species' recovery process. Recovery plans should also guide federal agencies in fulfilling their obligations under section 7(a)(1) of the ESA, which calls on all federal agencies to "utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species..." In addition to outlining proactive measures to achieve a species' recovery, the plans provide a context and framework for implementation of other provisions of the ESA, such as section 7(a)(2) consultations on federal agency activities, development of Habitat Conservation Plans or Safe Harbor agreements under section 10, special rules for threatened species under section 4(d), or the creation of experimental populations in accordance with section 10(j).

In addition, court decisions regarding implementation of the ESA can affect recovery plans. For example, several recent court decisions have focused attention on the delisting criteria requirement in the ESA. These court cases have stressed the importance of including delisting criteria in all recovery plans (Sonoran pronghorn case - *Defenders of Wildlife v. Babbitt*, 130 F.Supp.2d. 121 [D.D.C. 2001]) and addressing the five listing factors (threats) in the delisting criteria (Grizzly bear case - *Fund for Animals et al. v. Babbitt et al.*, 903 F.Supp. 96 and Sonoran pronghorn case). Increased scrutiny of recovery plans is likely, and these court cases must be taken into account when developing recovery plans.

2.5 Use of Existing Information and Efforts

There are a variety of existing forums in the habitat, hydropower, harvest and hatchery sectors. These forums have been working to develop actions and programs that can contribute to recovery. It is important to recognize and make use of these forums, most of which have their own unique mandates and authorities. For example, in the habitat sector, key forums include regional recovery boards and watershed councils, whose constituents have substantial opportunity and authorities pertaining to habitat. In the harvest sector, the parties to *U.S. v. Oregon* and the Pacific Salmon Treaty have authorities to allocate fisheries' impacts within harvest rates set by NMFS. In the hatchery sector, the states, tribes and federal agencies have numerous programs designed to enhance fisheries and to promote conservation of listed species. These, too, are regulated by NMFS under the ESA. In the hydropower sector, there has been an extensive regional effort to increase survival of fish as they pass through the hydrosystem. Improvements have focused on both the operation and configuration of the Federal Columbia River Power System (FCRPS). It is very important that recovery plans integrate the work of these forums. Institutional frameworks for implementing recovery need to foster relationships between these forums.

Actions in this recovery plan will be based in part on subbasin assessments and subbasin plans developed for individual watersheds in the Columbia Basin by local watershed councils and planning groups under direction of the Northwest Power and Conservation Council. Subbasin plans developed through the NPCC process will be "rolled up" into this plan for the Four Snake River ESUs to address the needs required to restore the listed species.

In addition to these subbasin planning groups, state programs support salmon recovery. The Washington Governor's Salmon Recovery Office and the Snake River Salmon Recovery Board have developed, implemented, and funded major recovery efforts in their state. Oregon has organized watershed councils through the Governor's Watershed Enhancement Board (GWEB) to coordinate salmon recovery activities and is working to integrate the Oregon Plan for Salmon and Watersheds with other recovery efforts. All three states in the Snake River Basin also maintain model watershed and watershed focus programs to coordinate watershed restoration activities. The Upper Salmon Basin Watershed Project and the Clearwater Focus Program operate in Idaho, while the Grande

Ronde Model Watershed Program works in eastern Oregon. Finally, the Asotin Creek Model Watershed Project and the Tucannon Model Watershed Project operate in Washington. All of these model watershed groups are involved in the subbasin planning process. Products produced by these groups were used in developing this recovery plan for the Snake River ESUs.

2.6 Scientific Basis for Current Recovery Plans

A salmon recovery plan must be based upon a strong science foundation that describes the biological viability of salmon populations and identifies the key threats and factors limiting production of the species. The viability assessments and identification of threats and limiting factors need to be meaningful at the scale of the “evolutionarily significant units” (ESUs).

Further, the ESA clearly states that one of its purposes is to “... provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved ...” (16 U.S.C. 1531 et seq., § 2(a)). The role of the ecosystem is stressed further in the Interagency Cooperative Policy for the Ecosystem Approach to the Endangered Species Act (FWS and NMFS 1994d). Wherever possible, recovery plans should focus on the broader approach to improving the listed species’ health, by working to ensure the health of its habitat and ecosystem functions, rather than the narrower approach of single species management. In keeping with the ESA’s directive, this plan focuses not only on the listed species themselves but also on restoring their habitats as functioning ecosystems.

2.7 The Role of Policy in Delisting Decisions

[Additional section? Queried or suggested by Rob Walton.]

2.8 Funding, Research, Monitoring, and Evaluation

NMFS intends for this recovery plan to provide the basis for federal and nonfederal funding entities to develop a coordinated and prioritized funding strategy. To facilitate implementation, NOAA intends to provide streamlined regulatory assurances for actions that are undertaken to implement recovery.

Research, monitoring, and evaluation are of the utmost importance in guiding action and providing information on the effectiveness of actions so that adjustments can be made. Federal, state, and local entities monitor for various purposes and do not necessarily basic data that could be used by all parties. These organizations are currently working on ways to increase the effectiveness and efficiency of monitoring.

The challenges of salmon recovery are immense, particularly in the face of increasing human populations and heavy demand for precious resources, such as sufficient clean water. Recovery efforts will be most effective if we are able to monitor the benefits and

costs of our actions, tackle the hard issues, and adjust our actions as we learn from experience (adaptive management).