

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Marine Fisheries Service****Notice of Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities**

AGENCIES: Fish and Wildlife Service, Interior; National Marine Fisheries Service, Commerce.

ACTION: Notice of policy.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) have adopted a policy that will address the conservation needs of species listed, or proposed to be listed, under the Endangered Species Act of 1973, as amended (ESA) while providing for the continuation and enhancement of recreational fisheries. This policy identifies measures the Services will take to ensure consistency in the administration of the ESA between and within the two agencies, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the ESA while enhancing recreational fisheries. This policy meets the requirements set forth in Section 4 of Executive Order 12962, Recreational Fisheries.

EFFECTIVE DATE: July 3, 1996.

ADDRESSES: The complete record pertaining to this action is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 452, Arlington, Virginia 22203 (telephone 703/358-2171).

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (703/358-2171), or Patricia Montanio, Acting Director, Office of Protected Resources, National Marine Fisheries Service (301/713-1401).

SUPPLEMENTARY INFORMATION:**Background**

The ESA specifically charges the Secretaries of the Interior and Commerce with the responsibility to identify, protect, manage, and recover species of plants and animals in danger of extinction. The ESA also specifically identifies the protection and conservation of ecosystems upon which

federally listed species depend as among the legislation's purposes (16 U.S.C. § 1531(1)).

In addition to the ESA, many Federal laws recognize the importance of aquatic resources (e.g., Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act, Anadromous Fish Conservation Act, Federal Water Project Recreation Act, Federal Aid in Sport Fish Restoration Act, National Wildlife Refuge System Administration Act of 1966, Magnuson Fishery Conservation and Management Act, Marine Sanctuaries Act, Coastal Zone Management Act, National Recreation Act of 1962, and National Environmental Policy Act). These laws outline the roles of Federal agencies to protect, restore, and conserve aquatic resources, and to provide for and enhance fisheries and recreational uses; some apply only to activities undertaken, permitted, licensed, or funded by a Federal agency.

Most of North America's aquatic environments and biological communities have been significantly altered by human impacts. Degraded habitats have reduced the capacity of aquatic ecosystems to support former diversity and abundance of native fish and other freshwater species. Degraded and altered habitats are the most frequently cited factors contributing to population extirpation and decline among federally protected endangered and threatened aquatic species. Likewise, losses of suitable aquatic habitats have resulted in significant declines among many native recreational and non-game fish species and other aquatic organisms.

As of May 1, 1996, within the United States, 106 taxa of fish and 57 species of freshwater mussels were on the Federal threatened or endangered species list (50 CFR 17.11 & 17.12). Approximately 36 percent of the fishes, 64 percent of the crayfishes, and 69 percent of the freshwater mussels in the United States are considered imperiled or extinct (data from the National Network of Natural Heritage Programs and Conservation Data Centers and The Nature Conservancy, Eastern Regional Office, Boston, Massachusetts).

The Services recognize that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well-being. Annually, approximately 50 million anglers spend \$24 billion directly on tackle, equipment, food and lodging, and other recreational fishing-related expenses. The total economic output (wholesale, retail, manufacturing, and supply of goods and

services) stimulated by recreational angler spending exceeded \$69 billion in 1991. Those expenditures generated over \$2.1 billion in Federal tax revenues, and provided employment for approximately 1.3 million people nation-wide.

In the past, resource managers may not have understood many of the effects of some management actions on ecosystems to the extent they do today. Habitat alteration and degradation, heavy fishing pressure, and introduction of non-native species often resulted in unexpected negative impacts to other ecosystem components. As today's managers realize more fully the impacts of their actions, they also realize that they must be more cautious in the activities they prescribe in natural ecosystems. The benefits gained by some actions may result in losses to non-target species or habitats. This has led to conflicts between some efforts to conserve native species and their communities, and obligations to maintain and enhance recreational fishing opportunities. These issues have been of particular concern in those instances where the Services' responsibilities for both recreational fisheries and recovery of federally protected species have been in conflict.

The altered condition of many aquatic ecosystems limits their ability to support fish and other aquatic organisms. Successful future management of the Nation's aquatic resources must become more focused on an ecosystem approach to management that recognizes multiple uses of aquatic systems. Management of biological resources must be based on a sound scientific understanding of species' life histories, habitat requirements, and ecosystem processes. Resource managers and administrators must recognize the intrinsic, aesthetic, recreational, and economic importance of these same resources and assess their ability to meet the needs and desires of a variety of interests. Successful future management of aquatic resources requires substantive cooperative partnerships and a willingness to resolve differences among the Services and other Federal agencies, States, Native American governments, and private stakeholders. Such cooperation and problem solving must be based on a framework of mutually recognized concerns and common goals developed by all the stakeholders in a given area.

On June 7, 1995, President Clinton issued Executive Order 12962, Recreational Fisheries. That order requires Federal agencies, to the extent permitted by law and where practical and in cooperation with States and

Tribes, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. Among other actions, the order requires all Federal agencies to aggressively work to promote compatibility and reduce conflict between administration of the ESA and recreational fisheries.

Summary of Comments and Recommendations

The Services' draft policy on this subject was published on December 13, 1995 (60 FR 64070) and public comment was invited. The Services reviewed all comments received, and suggestions and clarifications have been incorporated into this final policy text. The following describes the comments received and the Services' responses.

The Services received 28 letters of comment from individuals and organizations on the draft policy. Twenty three letters of comment were supportive. Four letters were critical of aspects of the policy. One letter stated no position on the draft policy. The major issues raised and the Services' responses are identified and discussed below.

Issue: The draft policy does not explicitly assert the authority of the ESA and the specific obligations of Federal agencies, including the Services, to conserve and recover Federally listed species. The primary emphasis of the draft policy appears to be on moderating ESA conservation mandates.

Services' Response: Appropriate clarifications of the Services' ESA responsibilities were made in the text of the policy.

The Services do not intend that this policy diminish or abrogate Federal agency responsibilities under the ESA. This has been stated at the beginning of the Policy. The Services recognize that the primary goal of the ESA is "conservation," defined as: "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." The Services and other Federal agencies are aware of their responsibilities "[to] utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of endangered species and threatened species [.]"

Section 4 of the Executive Order 12962 directed the Services to develop this policy. Section 4 of E.O. 12962 also instructs all Federal agencies to "aggressively work to identify and

minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973." The Services will meet, within the requirements of the ESA, such challenges with the intent to resolve conflicts without disadvantage to either conservation of listed species or recreational fisheries interests.

Issue: By developing this policy the Services have singled out recreational fishing interests for favorable treatment relative to administration and implementation of the ESA. Other interests affected by implementation of the ESA should be offered similar opportunities for development of formal policy.

Services' Response: The Services have developed guidance, position statements, and policies, and are developing rulemakings to reduce conflicts associated with administration of the ESA among a broad range of interests. These include the Administration's "Ten Principles for Federal Endangered Species Act Policy," a series of guiding tenets within the Departments of the Interior and Commerce to provide a fair, cooperative, and scientifically sound approach to the management of Federally listed species recovery. They include such policies as the Services' joint policies on peer review (59 FR 34270); information standards (59 FR 34271); recovery plan participation (59 FR 34272); the Services' ecosystem approach (59 FR 34273); and effectively enhancing the role of State agencies in ESA activities (59 FR 34274). Additional policies and handbooks, addressing such issues as habitat conservation planning and incentives for private landowners to become involved in conserving listed species are being developed. The Services, singularly or jointly, also have developed numerous Memoranda of Understanding or Agreement, and other instruments with other Federal agencies, States, local governments, and private entities to cooperatively conserve and recover listed species. These provide flexibility to a number of interests and enhance opportunities for affected interests to participate in administration and implementation of the ESA.

This policy comes at the direction of Section 4 of Executive Order 12962. Development of this policy is appropriate because issues that involve Federally listed aquatic species and conservation of aquatic habitats, including recreational fisheries issues, are national in scope. In some instances these issues are international. This policy does not alter any ESA obligations, but does minimize

administrative problems and maximizes management communications.

Issue: The draft policy would extend fishery goals beyond recovery of threatened and endangered fish stocks and seek higher population levels to support sustainable recreational fisheries.

Services' Response: This policy would not extend fishery goals under the ESA beyond recovery criteria as identified in recovery plans. However, fisheries managers will continue to seek sustainable recreational fisheries, with or without this policy.

Issue: The draft policy focuses too much on habitat issues, thereby failing to present a balanced and accurate account of the various factors that have contributed to the decline of our Nation's fisheries resources. Natural environmental factors also have played a role in fish population declines.

Services' Response: The Services intend to continue to address all factors contributing to the decline of listed species, rather than focusing on one particular factor, such as habitat degradation. For example, NMFS recommends in its draft Snake River Salmon Recovery Plan that mortality due to harvest, hydropower operations, habitat degradation, hatchery practices, and other sources be reduced. Both Services recognize that typically, no one sector is responsible for the recovery of a species. The Services also acknowledge that factors beyond human control, such as El Nino events, have contributed to the decline of various species or stocks. Since these latter factors are beyond human control, the Services must act to reduce mortalities caused by factors which can be controlled.

Issue: The draft policy could be used to allow, or even promote, the direct or indirect taking of listed or proposed species of fish.

Services' Response: The policy would not change the ESA in any way. The Services still intend to evaluate actions that may adversely affect listed or proposed species and recommend actions to avoid the risks of jeopardy to the continued existence and recovery of these species. Where ESA requirements conflict with recreational fisheries, the Services will try to identify measures to resolve these conflicts within the requirements of the ESA. Incidental take permits, if issued, would be granted only when the actions considered would not be likely to jeopardize an affected species' continued existence or its recovery. For proposed species, Federal agencies will still be required to confer on federal actions that would be likely to jeopardize them. Direct takes

are only authorized for research and enhancement purposes, and, for threatened species, in a conservation plan under section 4(d) of the ESA.

Issue: The policy is vague or lacks specific focus.

Services' Response: The purpose of this policy is to provide guidance and direction for the resolution of existing or potential conflicts between the ESA and recreational fishing interests. Conflicts or potential conflicts may touch on a variety of constituents, societal and economic interests, geographic and biological issues, as well as political considerations. As discussed above, the issues associated with this policy are quite variable. In order to provide the intended guidance in these matters, while allowing adaptive solution-finding approaches to evolve, the policy framework must be broad thus retaining opportunities for innovation and flexibility. The policy objectives are to develop workable goals and objectives understood by Federal agencies, States, Tribes, recreational anglers, and any other interested parties. The Services' believe that this document meets those needs.

Issue: Use of the terms "stakeholders" and "partner" does not clearly define the intended parties.

Services' response: Both Services intend that the use of the terms "stakeholders" and "partners" is not reserved for recreational fishing interests. As used in this policy, these terms are intended to include conservation groups, local government organizations, land and water users, power consumers, and others affected by the ESA and recreational fisheries issues or having interest in these issues. The Services will pursue a policy of participatory inclusion rather than of limitation or exclusion.

Issue: Policy point 2.C calls for management practices "that are consistent with recovery objectives and compatible with existing recreational fisheries." Existing recreational fisheries in this region [Pacific Northwest] often rely heavily upon releases of hatchery fish, a known impediment to wild fish recovery, and may need to be extremely curtailed or even closed in order to prevent further declines in wild fish populations.

Services' Response: Both Services recognize that efforts to restore or save a native species or particular population necessary to recovery may involve decisions which may be biologically sound but which may be unpopular among constituents. This policy does not preclude such decisions. However, it is the purpose of this Policy to seek ways to resolve issues in such a way as

to reduce conflicts between administration of the ESA and recreational fisheries by avoiding conflicts when possible and attenuating the unpopularity of decisions that cannot be avoided.

Issue: Point 2.D calls on Federal agencies to "identify priorities for the restoration of aquatic habitats needed to conserve and recover" imperiled fish while working "concurrently to support increased recreational fishing opportunities to the maximum extent possible." Such a statement presupposes that increasing "recreational fishing opportunities to the maximum extent possible" would not be an issue in recovery efforts. We believe the opposite to be true.

Services' Response: The Services have made changes to the policy text to clarify the Services' intent. The qualifier in the draft policy, "to the maximum extent possible" acknowledged that there could very well be conflicts with recovery, but that the Services will do the best they can to accommodate recreational fishing.

Issue: Point 2.F calls for "coordinating the reintroduction of listed species into former habitats with recreational fisheries interests."

Recovery of wild salmonids is going to happen because of habitat availability, rather than on an experimental basis at the whim of user groups whose interest is in avoiding the presence of a listed species.

Services' Response: Part 2.F identifies the Services' intention to involve all affected or interested parties in the recovery process. This is consistent with the Services' policy on recovery planning.

Issue: Point 2.G calls for evaluating proposed introductions of non-indigenous species or hybrids based upon, among other things, "recreational fisheries and other socio-economic objectives." These potential "concerns" are not a logical, appropriate or legal basis for such proposed introductions.

Services' Response: The purpose of this section is to acknowledge that there are additional principles of sound fisheries management that also will be considered, as well as other guidance, policies and legal responsibilities, when considering introduction of non-native aquatic species to aquatic systems.

Issue: Point 2.H calls for adjusting recovery strategies to "minimize adverse effects on recreational fisheries." Recovery strategies need not consider impacts to recreational fisheries by law.

Services' Response: This section addresses a need for the appropriate entities to evaluate recovery activities and recreational fishing activities to

assess their status and effects upon recovery. If issues are identified which are unnecessary impediments to the restoration or enhancement of recreational fisheries, they should be corrected to the extent that this is possible. The Services however, do not intend that necessary recovery strategies or tasks be modified to minimize impacts on recreational fisheries. The shared and cooperative evaluation of recovery needs and concurrent examination of recreational fishing activities are vital elements for avoiding and resolving conflicts and establishing mutually agreed strategies and goals.

Issue: Point 2.I calls for coordinating reintroductions of Federally listed species with activities needed to enhance recreational fisheries, specifically as they relate to using historical ranges (watersheds) of wild species for the benefit of recreational fishing. Such a policy contradicts the ESA.

Services' Response: The text in the final policy has been modified. However, the policy does not contradict the ESA. This policy section addresses the need for assessments regarding potential habitat use by both listed species and recreational fisheries species. Recreational fishing is not always the cause of decline, nor are recreational fishing activities necessarily an inherent threat to listed aquatic species.

Issue: Point 3. The Services * * * will provide the public with a better understanding of recreational fisheries by * * * This point illustrates our concern over this policy's treatment of the ESA and species recovery.

Services' Response: The Services continue to support educational outreach toward recreational anglers on issues of endangered and threatened species recovery.

Issue: Point 3.A "Involving the public in identifying opportunities to enhance recreational fisheries." This point does not reflect the importance of the scientific knowledge contained in recovery plans.

Service Response: The intent of section 3.A is to acknowledge the significant role that non-governmental organizations and individuals can play in achieving the goals of listed species recovery and this policy.

Issue: 3.C "Assisting to identify and provide * * * comparable alternative recreational opportunities when existing recreational fishing opportunities are altered or curtailed to meet objectives for conservation of Federally listed or proposed species." Comparable recreational opportunities as some sort of mitigation for species recovery is not

a requirement of the ESA, and in specific instances could be quite counterproductive.

Service Response: This policy statement addresses a situation where a species' continued existence could be in danger due to a recreational fishery or associated activity. It may be possible that a different fishery could be established which would not threaten the existing fishery. Possibly a new fishery could be established elsewhere, or a degraded fishery improved as a replacement.

The statement of one respondent that recovery cannot be made compatible with recreational fishing in every instance and location may well be true. However, the purpose of the Policy is to affirm that the Services will approach each instance with an open-minded approach to resolve such conflicts in a manner acceptable to all parties, using innovative methods where necessary, and within the requirements of the ESA.

Issue: The policy should direct the Services to develop a framework plan or action plan for implementation that would address such items as how the Services will specifically "encourage management actions * * * or support management practices * * *"

Services' Response: The Services agree that the Policy will be effective only when they take action to implement it. The Services have identified implementation mechanisms and will pursue those that are expeditious and appropriate.

Policy

The Services recognize the primary responsibility of State and Tribal governments for the protection and management of fish, wildlife, and plant resources within their jurisdictions. The Federal government, however, has public trust responsibilities and statutory responsibilities to conserve endangered and threatened species listed under the ESA and, to that extent, this policy does not diminish or abrogate that responsibility particularly as it applies to section 6 (Cooperation With the States), section 7 (Interagency Cooperation), section 9 (Prohibited Acts), and section 10 (Exceptions). This policy is to affirm the Services' intent to minimize and resolve conflicts between implementation of the ESA and activities to enhance recreational fishery resources and recreational fishing opportunities. This will be accomplished through cooperative partnerships with other Federal agencies, State and local governments, Tribal governments, recreational fisheries interests, conservation organizations, industry, and other

interested stakeholders. Activities to be undertaken by the Services with respect to implementation of the ESA include the following:

1. The Services will increase efforts to develop mutually accepted goals and objectives among the involved Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries communities, and other interested entities for the conservation of listed species by:

A. Ensuring consistency in ESA implementation between and within the Services;

B. Promoting cooperative interaction with other Federal agencies, States, Tribal governments, conservation organizations, and recreational fisheries stakeholders at appropriate organizational levels in implementing the ESA;

C. Promoting collaboration and information sharing among Federal agencies, States, Tribal governments, conservation organizations and recreational fisheries stakeholders;

D. Coordinating with all affected stakeholders, partners, and interested parties throughout the decision-making processes on federally listed species issues that may affect recreational fisheries; and

E. Improving and increasing efforts to inform both Federal and non-Federal entities of the requirements of the ESA with particular reference to sections 6, 7, 9, and 10 of the ESA.

2. The Services will encourage participation of other Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries stakeholders, and other interested parties in developing, implementing, and reviewing actions identified in approved recovery plans for listed species by:

A. Involving other Federal agencies, States, Tribal governments, conservation organizations, recreational fisheries stakeholders, and other affected or interested parties in recovery planning and implementation;

B. Encouraging proactive management and habitat conservation, restoration, and enhancement projects on public and private lands and waters to conserve federally listed or proposed aquatic species and to support similar measures to prevent further decline of species and loss of habitat to preclude the need to list additional species under the ESA;

C. Supporting management practices that are consistent with recovery objectives and compatible with existing recreational fisheries;

D. Identifying priorities for the restoration of aquatic habitats needed to conserve and recover federally listed and proposed species and, concurrently, to support increased recreational fishing opportunities to the extent possible;

E. Encouraging management actions that protect and conserve aquatic habitats, ecological processes and the diversity of aquatic communities;

F. Coordinating the reintroduction of listed species into former habitats within the species' historical range with other Federal agencies, States, Tribal governments, and other interested or affected entities, including recreational fisheries stakeholders;

G. Evaluating the potential impacts of proposed introductions of non-indigenous species or hybrids in drainages supporting federally listed or proposed species. Such introductions must be based on management plans incorporating genetics considerations, disease control, ecological principles, and listed species recovery objectives, as well as recreational fisheries and other socio-economic objectives;

H. Ensuring the effectiveness of actions taken to recover listed species and manage recreational fisheries by periodically evaluating conservation and recovery strategies and, where possible, adjusting those actions to minimize adverse effects on recreational fisheries;

I. Eliminating unnecessary recovery based restrictions affecting recreational fisheries. Priority will be given to cooperatively reviewing recovery based restrictions affecting recreational fisheries in areas currently unoccupied but within known historical range of listed species.

J. Encouraging States to increase their participation in listed aquatic endangered, threatened, and proposed species recovery through section 6 grants; and

K. Assisting the States and Tribal governments in meeting their recreational fishing goals.

3. The Services, in cooperation with other Federal agencies, State and local governments, Tribal governments, non-governmental organizations, and recreational fisheries stakeholders will provide the public with a better understanding of the relationship between conservation and recovery of federally listed and proposed species and recreational fisheries by:

A. Informing the fishing and non-fishing public about the ESA. Such efforts will include, but not be limited to, addressing topics such as the incidental take of listed species, the use of ESA 4(d) rules, habitat conservation planning, and other adaptive conservation tools;

B. Involving the public in identifying opportunities to enhance recreational fisheries while providing for the conservation of federally listed species, and in identifying and implementing solutions to aquatic systems degradation; and

C. Assisting to identify and provide, contingent on appropriations and other constraints, comparable alternative recreational angling opportunities when existing ones are altered or curtailed to meet objectives for conservation and recovery of federally listed or proposed species.

4. To meet particular mandates to conserve federally endangered, threatened, or proposed species while providing and enhancing recreational fishery resources and fishing opportunities, the Services will:

A. Work with the recreational fisheries community in evaluating accomplishments, including those of the Services, toward meeting the prescriptions of this policy; and

B. Restore and enhance aquatic habitats to conserve Federal endangered, threatened, and proposed species and increase recreational fishing opportunities consistent with agency missions, authorities, and initiatives.

Scope of Policy

This policy applies to all pertinent organizational elements of the Services and includes all efforts funded, authorized, or carried out by the Services relative to recreational fisheries and implementation of the ESA.

Author/Editor

The editors of this policy are David Harrelson of the Fish and Wildlife Service's Division of Endangered Species, Bob Batky of the Fish and Wildlife Service's Division of Fish Hatcheries, and Marta Nammack of the National Marine Fisheries Service's Endangered Species Division.

Authorities

Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544), Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j), Fish and Wildlife Coordination Act (16 U.S.C. 661-667e), Federal Water Project Recreation Act (16 U.S.C. 460 (L)(12)-460(L)(21)), Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777k),

Anadromous Fish Conservation Act (16 U.S.C. 757a-757g), Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1862), National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

Dated: May 14, 1996.

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Dated: May 20, 1996.

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