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## Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

National Marine Fisheries Service (NMFS) Evaluation of the 2010-2014 Puget Sound  
Chinook Harvest Resource Management Plan under Limit 6 of the 4(d) Rule

Impacts of Programs Administered by the Bureau of Indian Affairs that Support Puget  
Sound Tribal Salmon Fisheries

Salmon Fishing Activities Authorized by the U.S. Fish and Wildlife Service in Puget Sound

NMFS' Issuance of Regulations to Give Effect to In-season Orders of the Fraser River  
Panel

NMFS Consultation Number: F/NWR/2010/06051

Action Agency: National Marine Fisheries Service (NMFS)  
Bureau of Indian Affairs (BIA)  
US Fish and Wildlife Service (USFWS)

### Affected Species and Determinations:

Species	Status	Is Action Likely to Adversely Affect Species or Critical Habitat?	Is Action Likely to Jeopardize the Species?	Is Action Likely to Destroy or Adversely Modify Critical Habitat?
Puget Sound Chinook Salmon ( <i>Oncorhynchus tshawytscha</i> )	Threatened (reaffirmed)	Yes	No	No
Puget Sound Steelhead ( <i>O. mykiss</i> )	Threatened	Yes	No	No
Puget Sound/Georgia Basin Rockfish (Sebastes spp.)	Threatened Endangered	Yes	No	No
Southern Resident killer whales ( <i>Orcinus orca</i> )	Endangered	Yes	No	No
Steller sea lions ( <i>Eumetopias jubatus</i> )	Threatened (reaffirmed)	No	No	No
Green Sturgeon ( <i>Acipenser medirostris</i> )	Threatened	No	No	No
Pacific eulachon ( <i>Thaleichthys pacificus</i> )	Threatened	No	No	No

NMFS concludes that the following reasonable and prudent measures are necessary and appropriate to minimize the impacts from the proposed action on the Southern Resident killer whales.

1. Prior to the start of the fishing season, NMFS, in consultation with the co-managers, will assess whether the expected abundance of Chinook salmon is consistent with the extent of take authorized in the Incidental Take Statement.
2. NMFS, in consultation with the co-managers, will estimate the observed abundance of Chinook, as defined under Amount or Extent of Take, using postseason information as it becomes available.
3. Harvest impacts shall be monitored using the best available measures. Although NMFS is the federal agency responsible for carrying out this reasonable and prudent measure, in practical terms, it is the co-managers that monitor catch impacts.
4. All conservation measures that are part of the proposed action shall be implemented by NMFS in the period specified. NMFS will consult with the co-managers and the Canadian government to implement these measures, as necessary.

In order to be exempt from the prohibitions of section 9 of the ESA, NMFS must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. NMFS shall confer with the affected co-managers to ensure that the expected preseason abundance of Chinook salmon falls within the range of extent of take specified in the Incidental Take Statement.
2. NMFS shall confer with the affected co-managers to account for the catch of the fisheries based on postseason reporting and assessment (as described in Section 7 of RMP) as the information becomes available. The information will be used to assess consistency with the extent of take specified in the Incidental Take Statement.
  - 3a. The co-managers shall monitor catch using measures and procedures that provide reliable accounting of the catch of Chinook.
  - 3b. NMFS, in cooperation with the affected co-managers, shall monitor the catch and implementation of other management measures at levels that are comparable to those used in recent years. The monitoring is to ensure full implementation of, and compliance with, management actions specified to control the fisheries within the scope of the action.
  - 3c. NMFS, in cooperation with the affected co-managers, shall ensure that any commercial vessel owner or operator participating in the fishery complies with 50 CFR 229.6 and reports all incidental injuries or mortalities of marine mammals that occur

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during commercial fishing operations to NMFS (or in the case of tribes, voluntary reports). "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported.

4. NMFS will implement all conservation measures that are part of the proposed action in a timely manner, as specified by the time line for completion in the conservation measures.

We provide the following two reasonable and prudent measures with this incidental take statement for the ESA-listed rockfish DPSs considered in this opinion:

1. Bycatch of yelloweye rockfish, canary rockfish and bocaccio within the Puget Sound/Georgia Basin DPSs shall be monitored using best available measures.
2. Derelict fishing gear impacts on yelloweye rockfish, canary rockfish and bocaccio within the Puget Sound/Georgia Basin DPSs shall be minimized and monitored using best available measures.

Terms and conditions to implement the reasonable and prudent measures for rockfish:

1. NMFS, in cooperation with BIA, the USFWS, the state and tribes, shall monitor and estimate the annual bycatch of ESA-listed rockfish at the same levels of effort as used in recent years. Co-managers shall report bycatch estimates of ESA-listed rockfish to NMFS on an annual basis.
2. NMFS, in cooperation with BIA, the USFWS, the state and tribes, shall minimize take and monitor the number of derelict fishing nets that occur on an annual basis by:
  - a. *Derelict Gear Reporting.* Requiring all derelict gear lost in marine waters of the Action Area to be reported to appropriate authorities within 24 hours of its loss.
  - b. *Derelict Gear Accounting and Location.* Recording the total number and approximate locations of nets lost in marine waters of the Action Area (and subsequently recovered) on an annual basis. The information will be assessed postseason, and NMFS, in collaboration with the co-managers, shall compile a summary of the information by December 31 each year.
  - c. *Derelict Gear Prevention.* The BIA, USFWS and NMFS, in collaboration with the state and tribes, shall continue to conduct outreach and evaluate technologies and practices to prevent the loss of commercial fishing nets, and systems to track nets upon their loss, to better aid their retrieval and other measure necessary to prevent and track lost gear.

## 2.9 Conservation Recommendations

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, or regarding the development of information (50 CFR 402.02). NMFS believes the following conservation recommendations are consistent with these obligations, and therefore should be implemented by the NMFS, BIA and USFWS.

We provide the following conservation recommendations for the conservation of ESA-listed Puget Sound steelhead.

1. The BIA, USFWS and NMFS, in collaboration with the affected states and tribes, should evaluate possible improvements in gear technologies and fishing techniques (including the feasibility of selective and non-retention methods) that would reduce mortality of listed species.
2. The BIA, USFWS and NMFS, in collaboration with the affected states and tribes, should continue to improve the quality of information gathered on ocean rearing and migration patterns to improve the understanding of the utilization and importance of marine areas to Puget Sound steelhead.
3. The BIA, USFWS and NMFS, in collaboration with the affected states and tribes, should continue to improve the quality of information gathered on freshwater inshore migration of steelhead including the use of estuarine areas in Puget Sound.

We provide the following conservation recommendations for the conservation of ESA-listed rockfish.

*Rockfish Habitat and Abundance and Spatial Structure Surveys.* The BIA, USFWS and NMFS, in collaboration with the state and tribes, should:

1. Support benthic habitat and fish abundance surveys within each of the major basins of the ESA-listed rockfish DPSs.
2. Support survey and removal efforts for derelict fishing gear in marine areas within the Action Area.
3. Support research on ESA-listed rockfish larval dispersal and recruitment mechanisms.

*Marine Reserves/Rockfish Conservation Areas.* The BIA, USFWS and NMFS, in collaboration with the state and tribes, should investigate the development of a system of marine