

Salmon Recovery

Under Attack



How the Bush Administration's Proposal
Undermines Critical Habitat in the Northwest

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Executive Summary

In November 2004 the Bush Administration proposed to remove longstanding protections for rivers and streams identified as essential to the recovery of imperiled salmon and steelhead in the Pacific Northwest. The proposal would fundamentally alter the course of salmon recovery under the federal Endangered Species Act (ESA), which recognizes that protecting habitat is a foundation of species recovery.

The authors of the ESA in 1976 wrote:

“If the protection of the endangered and threatened species depends in large measure on the preservation of the species' habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitat.”

U.S. Fish and Wildlife Service data indicates that species with critical habitat designation under the ESA are more than twice as likely to be improving than those without.

Salmon are at risk of extinction because so much of their historic habitat has been lost to industry, agriculture, dam construction, pollution and unchecked sprawl. Recovery depends on restoring the health of rivers, streams, estuaries and shorelines where salmon once lived, yet the Administration would eliminate protection for these currently unoccupied habitats.

The proposal would also remove critical habitat protection under the ESA in favor of federal and state plans and policies that were never intended to recover salmon, such as the Northwest Forest Plan, the Oregon Plan for Salmon, and forest plans in Washington and California. The Administration's proposal would also exempt protection for the entire mainstem of the Columbia River, the heart of Northwest salmon country.

What's at Stake for the Pacific Northwest

Because they range from stream to ocean, and mountain to coast, the health of salmon and their habitats is a bellwether of regional environmental health. Healthy rivers and marine shorelines are a foundation of quality of life in the Pacific Northwest. The North Santiam River for example provides the City of Salem, Oregon's capital, with safe and healthy drinking water that requires only minimal treatment.

Eliminating protection for vital feeding, rearing and spawning grounds threatens to undermine recovery efforts throughout the region, where salmon are an important economic engine for coastal and rural inland communities. For example, a recent study found that the re-emergence of robust salmon and steelhead fisheries in Idaho would generate \$540 million in economic activity in the state annually.

Undermining the Endangered Species Act

The proposal for critical salmon habitat is part of a broader scheme by the current Administration and its allies to dismantle the Endangered Species Act. Legislation introduced by Congressman Dennis Cardoza (D-CA) in April 2005 threatens critical habitat designation for all species currently protected under the ESA.

The Cardoza bill mirrors the Administration's proposal for salmon by blocking protection of habitats currently unoccupied, but essential to recovery, and by exempting areas covered by state and federal plans and polices that were never intended to replace ESA critical habitat protections. The Cardoza and Administration approach would fundamentally undermine the recovery goal of the ESA by attempting to manage species at the brink of extinction rather than seek to establish well-distributed viable populations.

In his 1990 book *The Good Rain*, author Timothy Egan writes: “The Pacific Northwest is simply this: wherever the salmon can get to.” If that's the case, the region is shrinking fast. Indeed, as salmon runs dwindle, we risk losing the very qualities that make the region a special place to live.

Introduction

Salmon and steelhead in the Pacific Northwest are in trouble. So are the places where they live and the communities that rely on them.

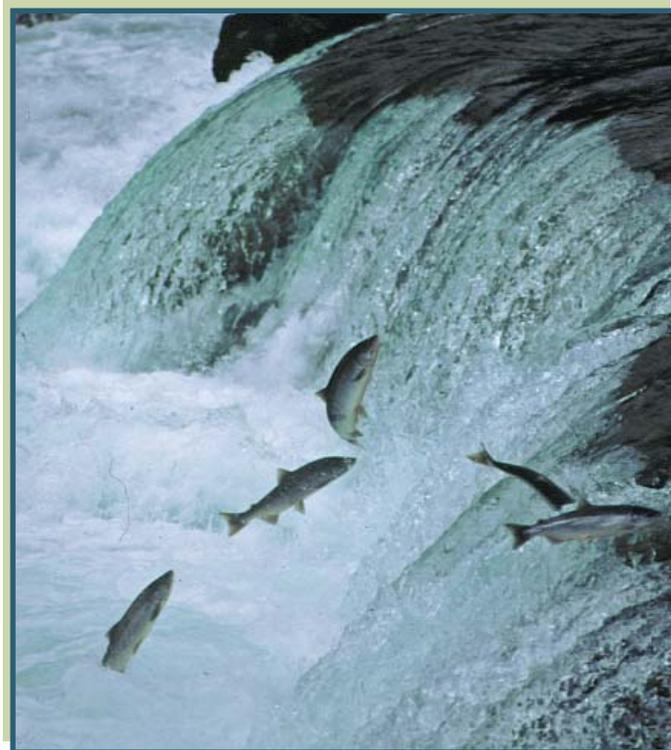
The iconic species of the region have been extirpated from countless miles of former habitat, and where they do remain, they have been dramatically reduced in diversity and number. Scores of runs are extinct, and twenty-six distinct population segments are currently listed as threatened or endangered under the federal Endangered Species Act (“ESA”). Recovering these imperiled anadromous fish is among the greatest natural resource challenges of our time, and our descendants will judge us by our success or failure.

While the reasons that salmon and steelhead are facing extinction are many, the past and continuing destruction of their fresh-water habitat is today the chief culprit. These fish—which breed and rear in fresh water, spend most of their adult lives in the ocean, and then return to the streams where they were born to spawn and die—are challenged at virtually every turn by human activities. Countless hydroelectric dams have turned once-wild rivers into polluted reservoirs; clearcuts and grazing choke streams with sediment; water already in short supply is funneled out of streams for crops and lawns; and floodplains and wetlands are paved over for stripmalls and subdivisions. Absent a dramatic rethinking of our relationship with these habitats, our efforts to recover salmon and steelhead to self-sustaining numbers will not succeed.

That’s why a recent proposal from the Bush Administration to significantly reduce the protections for the most important habitat for ESA-listed species

has caused so much dismay here.¹ The move represents a dramatic step backwards in our efforts to protect and recover what’s left of the species that sustained the Lewis and Clark Expedition and helped build the Pacific Northwest.

How did we get to this point? Most of the habitat for distinct populations² of listed salmon previously had been protected under the law’s “critical habitat” provisions.³ Those protections were significant, and included virtually all accessible or potentially accessible habitat and adjoining riparian areas. In 2002, the National Association of Homebuilders filed a lawsuit challenging most of those protections on technical legal grounds. Rather than defend the habitat protections, the Administration settled the case in 2002 and eliminated the existing critical habitat protections for most populations.⁴



(Galen Rowell/Mountain Light)

The current proposal, which was released in November 2004, is offered as a substitute to that former, more generous habitat protection plan. In the proposed rule, the National Marine Fisheries Service (NMFS), the federal agency charged with overseeing protection of aquatic species, proposes to dramatically reduce the amount of protected habitat for 19

populations that had lost their protections in the industry settlement. The proposed rule is a radical restructuring of the approach used previously by NMFS in designating critical habitat. The end result is a proposal that eliminates a significant portion of the habitat previously considered essential for the mere survival of these highly imperiled stocks.

This dramatic rollback of habitat protection occurs in three steps:

- ◆ First, NMFS considered only currently occupied stream reaches as eligible for inclusion in the critical habitat designation and removed streamside habitat from protection;

- ◆ Second, NMFS proposes to eliminate protection from millions of acres of eligible lands that are covered by a sweeping list of federal and state land management plans that are not designed to protect salmon;
- ◆ Finally, NMFS proposes to even further reduce protection of remaining habitat based upon flawed economic balancing that ignores the economic benefits of protecting salmon and their habitat.

Once all these exclusions and exemptions are added together, virtually nothing is left to protect.

This paper shows how the Administration’s proposed critical habitat rollback hurts people in the region who rely on salmon and functioning habitat. The focus of the paper is on people and places that will be harmed if the proposal becomes law. Simply put, salmon and salmon habitat matter. This paper shows how people in the region—commercial and recreational fishermen, Indians, businesses, political leaders and citizens—rely on salmon and functioning habitat for their economic and cultural livelihoods. For far too long, these voices have been ignored, in favor of a narrow set of commercial interests.

Chapter 1 Why Habitat Protection for Salmon and Steelhead is so Critical

The Endangered Species Act, passed in 1973, provides a safety net for animals and plants on the brink of extinction. In enacting the ESA, Congress formally recognized that habitat loss threatened more species than any other cause. One of the ESA’s chief goals is the restoration of sufficient habitat to recover imperiled species. The authors of the bill made it very clear that critical habitat was to be the cornerstone in meeting this objective.

It is the Committee’s view that classifying a species as endangered or threatened is only the first step in insuring its survival. Of equal or more importance is the determination of the habitat necessary for that species’ continued existence. . . . If the protection of the endangered and threatened species depends in large measure on the preservation of the species’ habitat, then the ultimate effectiveness of the Endangered Species Act will depend on the designation of critical habitat.⁵



Hood River, Oregon (Galen Rowell/ Mountain Light)

Accordingly, the law requires that at the same time that a species is listed as either threatened or endangered, the agency identify and designate the habitat that the species needs to survive and recover. The ESA mandates that a federal agency cannot take any action that will “jeopardize” a listed species or “adversely modify” its critical habitat.⁶ If a federal agency proposes an action that may impact a listed species, the ESA requires the federal agency to consult with the expert wildlife agency (NMFS in the case of anadromous fish) before taking the action. If NMFS concludes that an action will either jeopardize a species or adversely modify its designated habitat, the action cannot go forward without modification.

In the past, the U.S. Fish and Wildlife Service and NMFS interpreted the jeopardy and adverse modification standards to have identical meaning. As a result, only very rarely did the designation of critical habitat make a significant difference in the outcome of an ESA consultation. This resulted in increasing resistance from the agencies to designate critical habitat in the first place.

However, the courts have repeatedly confirmed that this interpretation of the law was wrong. Most recently the Ninth Circuit Court of Appeals ruled that the duty to avoid adverse modification of critical habitat is stricter than the duty to avoid jeopardy to listed species.⁷ Why? Because Congress intended critical habitat to provide enough habitat for the species not just to survive but to recover. Regrettably, the recovery function of critical habitat was largely ignored in the salmon habitat proposal.

Simply put, the goal of the ESA is recovery.⁸ Congress did not pass this law simply to keep listed species limping along on the edge of extinction. Indeed, such a concept is largely foreign to science, as a species that continues to persist on the edge is at greater risk of extinction as time goes by. Rather, the ultimate objective of the ESA is to have listed species improve to the point where they can be removed from the endangered species list. Critical habitat is a crucial component of this goal. In fact, according to a report by the National Academy of Sciences, the most effective way to protect a species is to protect the places where they live.⁹

Critical habitat is also important because it provides for the protection of habitat that is currently unoccupied but nonetheless necessary for a species' recovery. (The issue of unoccupied habitat in the context of the salmon proposal is given more attention in Chapter 2.) Critical

habitat can, and in some circumstances must, be designated in areas that are not currently occupied by a species. If a federal action is proposed in such an area, the law requires the agency to ensure that the project will not set back the species' prospects for recovery, regardless of the immediate impacts to the species.

Critical habitat designation also provides important educational benefits and informational tools to local governments, businesses and property owners. As the courts have long recognized, the designation of critical habitat puts everyone in society on notice that an area in question is important to the recovery of a listed species and may require special management attention. It can assist in promoting uniform and consistent recovery efforts. It helps people and wildlife by focusing attention, whether for protection or for recovery, on the areas that endangered species need the most.



Bob Johnson

Profile Bob Johnson

Recreational Fisherman

“For Washingtonians, sport fishing is part of our cultural heritage, a wonderful opportunity to bond with family and friends.”

When Bob Johnson retired in 2003 after 23 years at the Boeing Company, he was looking forward to time on his fishing boat more than just about anything else. Thanks to stringent restrictions on salmon fishing in Puget Sound, however, his boat spends a lot of time up on blocks. Most years, he doesn't put it in the water until July.

“For Washingtonians, sport fishing is part of our cultural heritage, a wonderful opportunity to bond with family and friends,” says Johnson. “I think of it as ‘second paycheck’ that represents the unique quality of life here that is inseparable from a healthy environment.”

Recreational fishing is also big business. A 2001 U.S. Fish and Wildlife Study revealed that sport fishing in Washington generated \$1.6 billion in economic benefit and 16,000 family wage jobs. Sport fishing in Washington provided \$67 million to the state treasury and millions more in federal income tax. There were 12.8 million fishing days in Washington that year. And

that's with salmon and steelhead runs that are so sharply depressed that fishing is tightly controlled and opportunities few, meaning that that the economic benefit of a restored salmon fishery would be enormous.

“I've worked hard and paid my dues, and I abide by all the restrictions that are placed on fishing,” continues Johnson. “But the federal government has to hold up its end of the bargain and follow its own laws by protecting enough habitat so salmon here can recover.” That's why the current critical habitat proposal—which ignores unoccupied habitat and exempts lands covered by measures like the Northwest Forest Plan and Washington state rules—gives him heartburn.

“Recreational fishermen like me spend money on boats, gear, gas, and food,” says Johnson. “But if there's no fish to catch, then I have to stay home.”

A recent scientific study found what conservation groups have long suspected: species with critical habitat designated are declining less, and recovering more, than species without it.¹⁰ That's why salmon advocates, local jurisdictions, tribal governments, and countless individuals across the region have opposed the current proposal to dramatically roll back critical habitat for salmon and steelhead in the Pacific.

Chapter 2 Places Where Salmon Once Returned Could be Lost Forever

Removing protection for unoccupied habitat means places salmon once lived will lose important protections they should have. With only marginal exceptions, the critical habitat proposal includes no unoccupied habitat for any listed salmon species. These places have been identified as critical to the recovery of salmon.

Habitat once used by salmon may be unoccupied today because of dikes, dams, or other barriers, or because the species' numbers have fallen so sharply that they just can't be found there anymore. But it certainly doesn't mean this habitat is not important. To the contrary, in many instances, currently unoccupied habitat is absolutely necessary to get species recovered and delisted. Failing to protect that habitat is short-sighted.

In the previous critical habitat designation, all river reaches that were accessible to listed salmon or steelhead were designated as critical habitat, regardless of whether they were used today. Even more importantly, the areas above smaller barriers such as culverts or push-up dams that were physically inaccessible—but that could be made accessible with a modest effort—were included in the habitat designation.

The new proposal trades this broad protective umbrella on important habitat and potential recovery areas for a far more stingy fig leaf. The shift, however, appears to flatly violate the law. The ESA specifically says that unoccupied habitat must be included if it is "essential for the conservation of the species."¹¹ And some of the places that have been cut off from salmon are unquestionably essential for the conservation of the species. For example:

The Skagit River

Vital Washington Estuary Habitat Would Lose Protection

The Skagit is Puget Sound's biggest river, flowing from the high glaciers of North Cascades National Park through broad lowland valleys and some of the region's most fertile farmland. A cornerstone of the recovery for all of Puget Sound, it is the only remaining river in the region that still maintains relatively healthy populations of coho, sockeye, chum, and steelhead, and so still provides some opportunities for recreational, commercial, and tribal fishing. The Skagit is also crucial habitat for Puget Sound chinook salmon, which is now so severely depressed here that it is listed as threatened under the ESA. In fact, according to many experts in the region, the Skagit is the keystone to recovering chinook in Puget Sound. And the key to recovering Chinook in the Skagit is returning them to mostly unoccupied habitat in the estuary.

"We won't restore wild chinook in the Skagit until we can restore juveniles to the historic estuary, which they've been blocked from for years," says Eric Beamer, a staff biologist for the Skagit River System Cooperative, the science and policy arm for local Tribal governments. Beamer has spent the last 12 years studying salmon populations in the estuary where the Skagit River enters Puget Sound, and his research points



Estuary where the Skagit River meets Puget Sound (NOAA)

to one inescapable conclusion: that without restoring chinook to some of their former habitats at the mouth of the river, recovery will be all but impossible. Decades ago, settlers built dikes that turned wetlands and marshes into

farms, and blocked fish from accessing these important rearing spots. These actions today provide perhaps the most identifiable barriers to recovery. "About 75% of the historic estuary is unavailable to salmon today," continues Beamer.

In other words, today there are significant portions of the historic Skagit estuary which are currently unoccupied by salmon, because they've been blocked from entering

these areas. Juvenile salmon need estuary habitat to find food and protection from predators in order to grow to an adequate size prior to entering the ocean. If the region is serious about its commitment to recovering chinook, the science is quite clear: salmon will have to regain access to some of these unoccupied rearing areas. Remarkably, however, the Skagit estuary has been excluded from the Puget Sound chinook critical habitat proposal.

Malibu Creek

Southern California Salmon Stronghold at Risk

Far on the other end of the West Coast from the Skagit, a few dozen endangered Southern California steelhead

struggle up Malibu Creek each year to spawn. It may be hard to imagine steelhead still thriving on the cusp of sprawling Los Angeles, but Malibu Creek steelhead would have a fighting chance if they could get past the Rindge Dam. Built in 1926, the dam cuts off over 86% of the potential spawning habitat for the creek. Before its construction, over a thousand steelhead spawned and reared here. Now, just a handful do. Without that habitat, it seems unlikely that these numbers will improve much.

“Providing passage above Rindge Dam opens up six miles of additional habitat in Malibu Creek, which is triple what we have now. With this habitat we could see anywhere from twenty to seventy times more steelhead,”



Joel Kawahara

Profile Joel Kawahara

Commercial Fisherman

“When you have a good fish year, the improvements are reflected in the local economy.”

Growing up, Joel Kawahara, like many a Northwest kid, went salmon fishing with his dad. Now, as a full-time commercial fisherman, you can't help but think those early trips must have made quite an impression on him. He started commercial fishing in the 1970s, and only stopped for a six-year period when he worked at Boeing. The Boeing work, however, wasn't satisfying and he soon returned to making a living from the sea.

In the off-season Joel can be found making repairs to his 42-foot troller, the Karolee. But in May, with repairs complete and his boat fully-stocked, he will head out to the sea with high hopes for a productive season. Joel fishes in the waters off of Washington, Oregon, California or Alaska. His location-of-choice depends, as it does for most fishermen, on where he can optimize his catch.

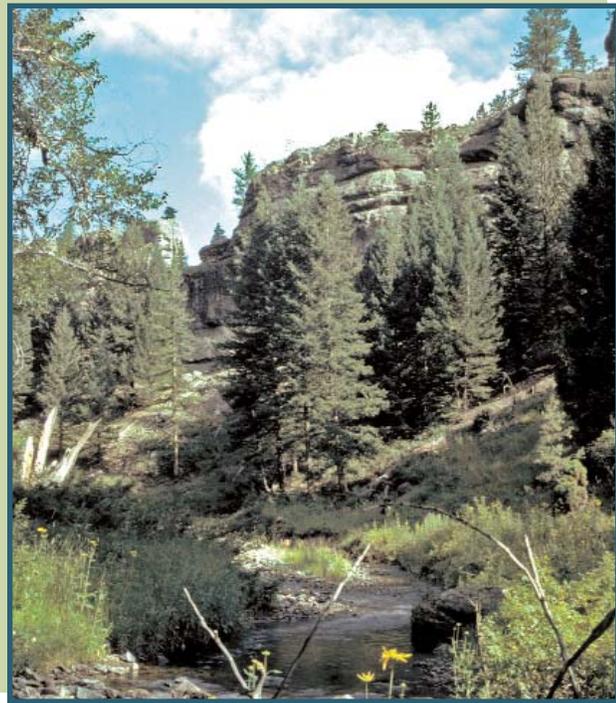
Joel is concerned about the impact the current critical habitat proposal will have on his livelihood. He feels that the current proposal does not adequately address the importance of habitat. “Habitat loss is the most important factor that has reduced salmon populations,” he said. “Recovery doesn't have a silver bullet, but critical habitat

is an important component that needs to be protected if salmon are to recover. The health of the riparian area is reflected in the health of the salmon runs.”

Essentially, degraded habitat means degraded runs. And Joel can't help but feel that the proposed policy will have negative impacts on fish populations. “The current critical habitat proposal offers no plan to recover salmon beyond the levels of the last five years,” he said. “If you look at the fish counts for Washington for recreational, commercial and tribal fisheries, the numbers have dropped by 90% since 1975. For me and other fisherman, that translates to 90% of income that is gone, all due to habitat loss,” he said.

Joel was also quick to point out that healthy fish runs have positive economic benefits up and down the West Coast. Not only do the fishermen benefit, but so do marina owners, boat supply stores, and the other businesses that support fishermen. As Joel said, “When you have a good fish year, the improvements are reflected in the local economy.”

says Mark Abramson, the Team Manager for Malibu Creek. “The habitat above the dam is the best available spawning habitat in the watershed.” However, Malibu Creek above Rindge dam is not included in the agencies’ proposal. The exclusion is particularly remarkable, as NMFS’ own review team highlighted the importance of this habitat to preventing the extinction of the steelhead.



Healthy riparian areas are crucial for preserving water quality (BLM).

Streamside Protection Throughout the Pacific Northwest Would Fall by the Wayside

The new proposal also eliminates critical habitat protection for riparian areas: the areas of land next to streams occupied by salmon and steelhead. This is a dramatic turnaround from the old rule, which extended protection to this area based on the functions that it provided, like shade, sediment, and organic matter. The new proposal eliminates this buffer protection, proposing only to include the stream itself up to the high-water line—an essentially arbitrary cutoff with no grounding in the science of habitat relationships or fish biology. Not surprisingly, what happens in streamside and floodplain areas is just as important for water quality and for river species as what happens in the stream. For example, a federal judge recently found that development in floodplains was reducing the availability of habitat for the Puget Sound chinook and contributing to polluting runoff.¹² There’s no question that this streamside habitat is important for salmon. The proposal ignores this science and doesn’t even try to explain this new interpretation.

So what is the practical effect of leaving out riparian areas and currently unoccupied but high quality potential habitat behind dams or other barriers from the critical habitat designation? For starters, it means that federal agencies charged with issuing licenses and permit conditions for these dams won’t have to ask the tough questions about whether recovery is possible without changes to those structures. It also means that habitat degrading activities in important but presently unoccupied areas—wetlands fills, timber sales, or highway construction—could be approved without any regard to the potential effects on listed species’ prospects for recovery. In fact, without critical habitat designation, the ESA’s duties may not even be triggered for federal agency activities that destroy important but currently inaccessible habitat. Finally, such an omission sends the wrong signals that we can continue to degrade, rather than restore, these important areas. Instead of taking a precautionary and responsible view towards this high quality habitat, the proposal would have the result of making recovery even harder than it is today.

In short, there isn’t any scientific dispute that unoccupied areas are “essential for the conservation” of listed salmon and steelhead in the Pacific Ocean. In the future we will need these areas to restore extirpated salmon populations. Malibu Creek and the Skagit River are just two places that, as a result of this proposal, may never see salmon return.

Chapter 3 Existing Federal Land Management Plans Cannot Replace Critical Habitat

The Bush Administration proposes to exclude from critical habitat designation all salmon-bearing streams on lands covered by federal land management plans that they claim provide adequate protections for fish. This would mean that the 13 populations of salmon that find habitat on federal lands would not have critical habitat designated for them as required by the ESA. Rather, the government claims that these plans provide enough habitat protection to salmon and steelhead and that critical habitat designation is simply not required. There are several serious problems with this approach. First, the government’s approach assumes that these management plans are adequate to ensure that listed salmonids survive and recover, the standard which critical habitat is supposed to meet. However, as discussed below, that assumption is flat wrong. Second, the ESA does not allow the agencies to ignore

their duty to designate critical habitat as long as there is some other kind of “plan” in place. In fact, the same approach has been tried before in other places but consistently struck down by the courts. Congress intended critical habitat to be the yardstick by which such plans are judged, not a replacement for specific land management plans. While there are a few proposed exclusions for federal lands, we focus here on one of them: the Northwest Forest Plan.

Northwest Forest Plan

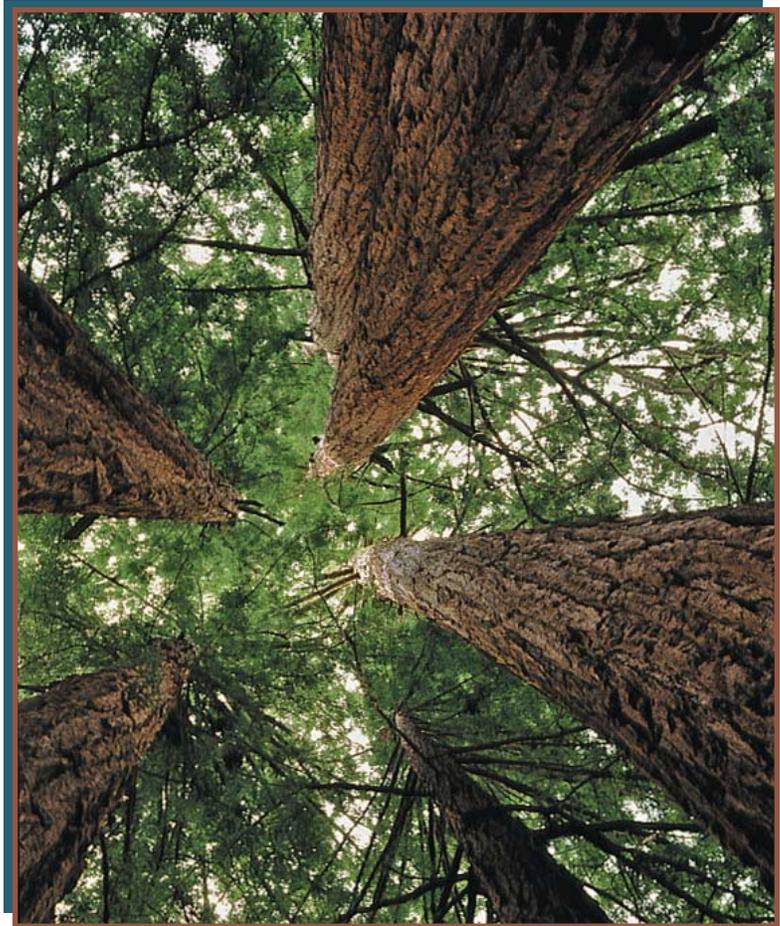
The Northwest Forest Plan (“NFP”) has a long and rocky history in the region. In 1987, in response to the unchecked clearcutting on public lands throughout the Pacific Northwest, lawsuits were filed in Washington and Oregon to enforce basic environmental laws to protect fast-disappearing ancient forests. In ruling after ruling, the courts found that the federal government—in the form of the Forest Service and BLM—had violated its responsibilities to protect these forests. As a result, timber sales on federal lands in Washington and Oregon were temporarily halted. In 1994, in an effort to bring an end to the timber wars, the Clinton Administration adopted the NFP. This plan uses a series of reserves designed to ensure the survival of old growth-dependent species like the northern spotted owl. Since 1994, the NFP has governed the management of 24 million acres of public land in Washington, Oregon, and northern California.

Aquatic Conservation Strategy

Not Intended to Replace Critical Habitat

The NFP includes a set of guidelines, known as the Aquatic Conservation Strategy (“ACS”) that are intended to protect salmon. However, the ACS was never intended to replace critical habitat designation. The ACS is subject to flaws in implementation and funding, and has recently been significantly weakened to allow more logging. These considerations confirm the wisdom of designating critical habitat in areas already covered by the ACS.

For example, in the mid-1990s, the federal courts blocked scores of timber sales in the NFP region because of concerns about salmon impacts. The agencies had declared such sales—which included controversial old-



(Galen Rowell/Mountain Light)

growth clearcuts near prime salmon habitat—consistent with the ACS. The courts disagreed, finding that the agencies had ignored important information and that fish could be seriously harmed by the sales.¹³ This kind of questionable administrative implementation raised significant questions in the public’s mind and illustrated that the ACS alone cannot ensure the survival and recovery of salmon.

Ironically, at the same time that the Bush administration is arguing that the NFP should replace critical habitat protections under the Endangered Species Act, it is aggressively weakening the NFP. In March of 2004, the agencies changed the ACS to allow more habitat destroying projects to occur in the NFP area.¹⁴ The changes included removal of the core requirement that logging and other activities be conducted in a manner that protects aquatic habitat and keeps the watershed on the path to recovery. Now logging can proceed without considering the impact to species or the watershed as a whole, and the mechanisms that identify and curtail destruction of salmon habitat from cumulative effects of activities were eliminated. These changes have severely weakened the ability of the NFP to protect salmon habitat. The exclusion of lands covered by the NFP from critical

habitat designation, along with the rollback of the ACS now means that timber sales that were previously blocked because of their risks to salmon may now move ahead. The protection of salmon habitat across the forested landscape is sorely needed if salmon are going to recover in the Northwest. The removal of critical habitat protection for salmon-bearing streams located on land covered by the Northwest Forest Plan has huge negative implications and it is anticipated that a number of timber sales that adversely impact salmon habitat will now likely move forward.

Wind River Basin

Steelhead Habitat Excluded from Protection

Located in the Gifford Pinchot National Forest, in an area covered by the NFP, the Wind River is a stronghold for threatened steelhead and chinook salmon. Its headwaters begin on the slopes of the Cascade Mountains and flow across southern Washington to the Columbia River. In the late 1990s the U.S. Forest Service proposed to cut 13 million board feet from over 400 acres of old-growth forest in the Wind River. It was blocked because it did not conform to the ACS.

Now, the weakening of the ACS and the absence of critical habitat designation in this area lowers the bar and would allow the Forest Service to proceed with the sale without a thorough analysis of the sale's impacts. The Washington Department of Fish and Wildlife has already declared the steelhead trout the most imperiled run in the lower Columbia River. With annual surveys showing numbers in the mere forties, the Wind River steelhead is already facing imminent extinction. The sale could inflict considerable harm on these stocks by increasing sediment and instream flow to harmful levels. Should the timber sale go forward, the steelhead's last remaining hopes of recovery will be all but extinguished.

Umpqua River

Coho Habitat Excluded from Protection

The Umpqua River originates high in Oregon's Cascade Mountains and descends through the Coast Range before meeting the Pacific Ocean. The town of Roseburg, Oregon lies near the confluence of the North and South Umpqua Rivers. Situated at the crux of these two tributaries, Roseburg offers visitors a unique opportunity to catch a salmon in one of the most stunningly beautiful places of the Pacific Northwest. People come to Roseburg from around the world to fish the

famous North Umpqua River for salmon and steelhead. Unfortunately, without habitat protection the world-famous salmon and steelhead for which the area is known may soon disappear. The legendary Oregon Coast coho salmon is already threatened with extinction and proposed for protection under the ESA. Other species, including chinook, steelhead, and coastal cutthroat, are not yet federally listed but remain at a fraction of historic numbers. Much of the Umpqua basin is scarred by clear-cut logging and roadbuilding. The failure to protect this once wild habitat—old growth forests, floodplains, and headwater streams—has been a chief cause of their decline. For example, even though the Umpqua runs through a significant amount of publicly owned forest that should be protected, the federal government continues to promote controversial clear-cut logging projects on the last scraps of old-growth forest left in the region.

NMFS proposes to exclude from critical habitat designation all salmon-bearing streams on lands covered by federal land management plans that they claim provide adequate protections for fish, will have a tremendous impact on the salmon populations that rely on the Umpqua for healthy habitat to survive.

In the end, NMFS is proposing to put the fate of imperiled Northwest salmon and steelhead at the mercy of federal land management plans that were not designed with the protection and recovery of salmon and their habitat in mind. Allowing NMFS to impose such extraordinary risk on salmon and steelhead throughout Washington, Oregon, California and Idaho will have enormous consequences for salmon populations throughout the region.



Young coho salmon (USFWS)



Den Callaghan

Profile

Jim Van Loan

Owner, Steamboat Inn, Roseburg, Oregon

“Practices that harm the river, harm me and other businesses that rely on the river to draw in visitors.”

If you want to hear an earful, ask Jim Van Loan about the Soda Springs Dam. He has plenty to say about it. As the owner of the Steamboat Inn in Roseburg, Oregon, for the last 30 years, he has observed first-hand how the dam has affected important fish habitat in the North Umpqua River in southern Oregon. “This river has outstanding water quality and because a large part of it flows through public lands, salmon and steelhead should thrive here. But that dam has had a tremendous impact on habitat quality and availability of cobble needed for spawning.” says Jim.

The Soda Springs dam is the lowermost of eight dams within the larger North Umpqua Hydroelectric Project. At 77 feet, it is the second highest dam on the project, but it generates only a small fraction of the projects total energy output. The location of the dam causes a substantial part of the project’s adverse effects on salmon, inundating one of the most important mainstem spawning areas, and reducing the supply of spawning gravels to downstream habitats.

Because this project is located primarily on national forest land, the Federal power Act requires that the hydropower license contain terms and conditions set by the Forest Service for project relicensing. The current proposal to exclude from critical habitat designation lands covered by the Northwest Forest Plan could mean that harmful projects such as this one could continue to operate, despite their impacts on salmon.

“The conservation community would like to see the Soda Springs Dam removed,” says Jim. “This would result in improved spawning habitat for salmon.” This view is supported by the watershed analysis prepared in connection with the relicensing of the North Umpqua Hydroelectric Project which identified that removing the Soda Springs dam would be the highest priority action to improve the inter-connection of fish habitat and restore the natural hydrological integrity of the North Umpqua River. Based on that conclusion biologists from the Forest Service and the U.S. Fish and Wildlife Service recommended that the dam be removed as a condition of relicensing the project.

Many of Jim’s guests stay at the inn because of its proximity to the river. In fact, so many come specifically to fish for steelhead, that the inn has its own fly shop, specializing in the type of equipment needed for the North Umpqua. The river is famous as the home of some of the most challenging steelhead fishing in the world. “My guests come to fish and enjoy the river. I am concerned that the proposal to not designate critical habitat and instead rely on the Northwest Forest Plan to protect salmon in this watershed will result in further degradation to the river. Practices that harm the river, harm me and other businesses that rely on the river to draw in visitors.” And that is a steep price to pay.

Chapter 4

Columbia and Snake Rivers: Removing Protection from the Heart of Northwest Salmon Country

Of all the proposed “exclusions” from the critical habitat proposal, perhaps the most astonishing one is the mainstem of the Columbia and Snake Rivers, the core

artery in one of the world’s great river systems. Historically, over 16 million salmon and steelhead moved through the Columbia and Snake Rivers on their way to spawning grounds as far as 900 miles from the sea. Today, thanks chiefly to the construction of numerous dams throughout the basin, wild runs limp along at a fraction of their historic numbers. In the Snake Basin, for example, every single population of anadromous fish is either listed under the ESA or extinct.

And the evidence shows that some very strong measures—like partially removing some dams—will be needed there to turn things around.

Even so, the proposed rule seeks to exempt the entire mainstem¹⁵ of these rivers from critical habitat designation. The justification for this startling proposal is that federal dams on the river are already “managed through an unprecedented cooperative effort” among federal agencies, and that the operation of these dams “would have no effect on designated critical habitat.” And in an example of extremely convoluted reasoning, NMFS further claims that critical habitat would simultaneously provide no benefit for the species while imposing great potential costs on hydropower generation. The proposal contradicts NMFS’ own scientific review team, which assigned the highest biological values to migration corridors like the Columbia/Snake mainstems and noted that it would be “illogical” to forgo protection of mainstems while protecting upstream spawning habitats.¹⁶

Excluding Mainstem Protection Will Negatively Effect Salmon

Simply put, the claim that operation of the dams has “no effect” on salmon habitat is false. Snake River species have to pass through eight massive dams on their way to and from spawning areas, and the vast majority of juveniles don’t survive the trip.¹⁷ According to Robert Heinith, the Hydro Program Coordinator for the Columbia Inter-Tribal Fish Commission (“CRITFC”), dams destroy spawning and rearing habitat, increase water temperatures to lethal levels, provide ideal conditions for salmon predators, and kill and injure adults and juveniles as they pass through turbines and screen bypass systems. In fact, conditions in the river are so deadly that many summer juveniles are loaded on to trucks and barges and driven to the ocean.

“Columbia fish are in real trouble, and we only have a few more years to fix the problems with dams before we start to see some of the remaining populations slide down

the path toward extinction,” says Heinith. The federal government’s own analysis of salmon listed under the ESA indicates that despite recent good ocean conditions that have increased hatchery stock returns, naturally produced, listed stocks are still far from meeting even interim recovery targets. In some case listed stocks would need a seven fold increase in natural survival rates just to meet these interim targets. In the past 10 years, an average of only 44 adult sockeye headed to spawning grounds in Idaho passed Lower Granite Dam, and in four of those ten years, returns were in single digits. In 1992, only one sockeye—an unfortunate male nicknamed “Lonesome Larry”—made it back. Dams on the mainstem Snake and Columbia bear primary responsibility for this sad state of affairs.

The agencies that manage the dams, energy, and water—the Army Corps of Engineers, the Bonneville Power Administration, and the Bureau of Reclamation—have struggled to find ways to comply with the ESA’s mandate to protect and recover these valuable stocks. In 1993, a federal judge threw out their ESA plan (called a biological opinion, or “BiOp” for short), saying that the agencies were tinkering around the edges when the “situation literally cries out for major overhaul.”¹⁸

Ten years later, history repeated itself when another federal judge threw out their revised plan because it

imposed extraordinary risk to the species by relying on speculative and uncertain actions by others to compensate for the enormous mortality imposed by the hydrosystem.¹⁹ Instead of fixing these problems, the Bush Administration recently put out a revised plan that so radically guts the ESA that 16 fishing and conservation groups, four sovereign Indian nations and the

States of Oregon and Washington have joined forces to have it overturned in court.

Despite the serious problems with the plans themselves, the federal agencies have largely failed to implement them properly, leading to even greater mortality to imperiled salmon populations. For example, when low snowpack conditions in the Columbia collided with



Large hydroelectric dam along the Columbia River (US Army Corps of Engineers).

Enron's energy speculators in California in 2001, the agencies simply declared a "power emergency" and cancelled some of the most protective measures required under the plan. In-river survival for some stocks plunged to the single digits.²⁰ And in the summer of 2004, the agencies rolled out yet another plan to increase power generation at the expense of salmon. A federal

judge blocked it, noting that salmon and steelhead were already in a "deficit situation" that called for more protection, not less.²¹ Funding has fallen far short of demands, and agencies have failed to properly implement key provisions in the plans for several years running.²²



Jeremy Five Crowns

Profile Terry Courtney, Jr.

Member, Warm Springs Tribe, Oregon

"The Indian's health and wealth depends on the fish."

Terry Courtney, Jr. is a member of Warm Springs Tribe and lives on the Tribe's 640,000 acre reservation in central Oregon. The Cascade Mountains flank the reservation on the west, and the Deschutes River forms the reservation's eastern border.

Terry has always lived in Warm Springs. As a child he was taught to hunt and fish. He also grew up digging roots and picking berries with his grandmother. His elders taught him to take only what he needed.

The Deschutes River is home to spring Chinook, fall Chinook, and steelhead. Tribal members fish with traditional dip nets and set nets from wooden scaffolding along the river at locations that are handed down from generation to generation. In that location, a family will set up its platform from year to year. Terry has fished along the Deschutes since 1970.

Terry began fishing in 1963 when he was in his late 20s. An older gentleman taught him how to fish certain areas and how to get along with others. He was the first in his family to fish from the platforms along the Deschutes River.

According to Terry, when the buttercup flower arrives, that signals that fish are in the Columbia River. In May, when the Indian celery appears and the accompanying

Celery Festival occurs that means that the fish are at the Sherars Falls. Salmon have traditionally been a large part of the Indian diet. "The Indians' wealth and health depends on the fish," said Terry.

In 1969, Terry learned how to make fishing nets. His uncle, who used to fish at Celilo Falls (a traditional fishing site that was flooded when the Dalles Dam was completed.) taught him how to make the sides of the nets, but he had to teach himself how to sew the net up and hang it from the hoop. The first net took him one and a half months to make. The same net now only takes two days. Today, he teaches tribal members how to make both dip nets and set nets.

Terry feels strongly that habitat is essential for salmon recovery. "Salmon need as much habitat as possible. Logging, mining, dams and irrigation have all decreased available high-quality habitat. Protection of all parts of the ecosystem is important to protect salmon stocks. Mother Nature flooded streams with fish, which feed other fish in the stream, birds, bears, eagles and coyotes. Salmon are essential to the health of the ecosystem."

Leaving Out the Mainstem Does Not Make Sense

If critical habitat is the “yardstick” by which we measure whether agencies are complying with the ESA when they operate dams or take other actions, why does it make sense to leave the mainstem out of the critical habitat proposal? The answer is simple: it doesn’t. “As the Ninth Circuit recently emphasized, critical habitat plays a key role in protecting recovery of species protected under the ESA,” says Dan Rohlf of Lewis and Clark Law School and an expert on the ESA. “Eliminating proposed critical habitat in the mainstem indicates that the Administration is seeking to avoid modifying dam operations—or the dams themselves—in order to contribute to salmon recovery efforts.” In other words, without critical habitat in the mainstem, we never get to ask the question of whether salmon and steelhead can recover without changing the configuration of the dams. That’s precisely the question the administration wants to avoid.

Moreover, operation of the dams is only one of countless activities in the Columbia and Snake mainstems that adversely impact salmon. Water withdrawals, highway construction, development, grazing and timber operations all chip away at the fragile habitat throughout the Columbia, yet are largely ignored in the hydrosystem plan. Failing to designate critical habitat in the mainstem gives these activities a “free ride” to continue without complying with the ESA. It also sends the wrong message that this crucial habitat corridor deserves something less than the highest levels of protection.

There is no question that the mainstem of the Columbia and Snake River are of crucial importance to several runs of listed salmon and steelhead. NMFS’ claim that that they are not “critical” doesn’t even pass the red-face test.

Chapter 5 Voluntary State Land Management Plans Are Not a Substitute for Critical Habitat Protection

The Bush Administration proposal would remove protection for critical salmon under the ESA in favor of state land management plans that were never intended to recover salmon. Remarkably, NMFS does not explain whether these plans are adequate to act as surrogates for critical habitat. These plans, which in many cases fail to provide even rudimentary protections for fish (let alone enough to allow them to recover), cover vast portions of the Pacific Northwest.

The Oregon Plan for Salmon and Watersheds

Since 1997, the Oregon Plan for Salmon and Watersheds has governed the management of around 7 million acres of land in Oregon. In fact, that year Oregon proposed the plan as an alternative to listing coastal coho salmon under the ESA. However, a federal court ruled that the plan was insufficient to replace ESA listing for coho. The court concluded that because Oregon’s habitat protections were inadequate, and the plan established only a voluntary system lacking guarantees that adequate protections would be implemented, that “[t]here is simply no rational basis for the NMFS to assume that Oregon will adopt any, much less adequate, habitat measures.”²³ The coho was listed as a “threatened” species the following year.

NMFS is trying to rewrite this history. The government proposes to exclude all lands within the range of the Oregon Coast Coho population from critical habitat designation claiming that the Oregon Plan provides adequate protection. The claim is based more on politics than science. In fact, it’s a dramatic flip-flop from NMFS’ own position up until a few months ago. As recently as December 9, 2004, NMFS officials acknowledged the inadequacy of the Oregon Plan to protect listed fish, stating: “NMFS Fisheries does not consider the current rules governing timber harvests on non-Federal lands within Oregon to be sufficiently protective of watersheds, riparian, and stream habitat functions.”²⁴ Five days later in the proposed rule NMFS had a completely different take on the Oregon Plan, in stating that the primary reason for excluding Oregon Coast Coho habitat from critical habitat designation lies “in the voluntary conservation efforts undertaken by the State of Oregon and its citizens...Under the Oregon Plan, very substantial improvements have occurred, and are expected to continue to occur. . . [.]”

The Oregon Plan Relies on Inadequate Measures That Will Not Protect Salmon

The Oregon Plan relies heavily on the adequacy of current laws and regulations governing forestry and agriculture to protect salmon habitat. However, the very laws and regulations that are meant to give the Oregon Plan some bite are themselves seriously defective. For example, current forestry regulations allow clearcutting on steep slopes and along fish-bearing streams and leave inadequate buffers. Both of these practices increase sediment loading to streams and rivers and seriously degrade water quality and fish habitat. As a result of these sub-par regulations, more than 3000 miles of streams on private forestlands in Oregon are out of

Profile

Brent Estep

Owner, Mackay Wilderness River Trips,
Ketchum, Idaho



Earthjustice

“These communities can be revived with a recreational economy and salmon are the number one thing that would improve the economic viability of these towns.”

Brent Estep, owner of Mackay Wilderness River Trips, grew up in Stanley, Idaho. He recalls many days in his youth spent fishing on the Salmon River with his father and grandfather. “You could look across the river and see salmon by the hundreds just laying out there in the water. In just one day you could catch a whole string of fish,” said Brent. “Now a person is lucky to see a fish. It is not remotely close to what it once was or what it should be.”

Brent turned his love for the outdoors into a full-time job. He has been a river outfitter for 20 years and now guides trips down the Middle Fork of the Salmon and Main Salmon Rivers, and on the Snake River through Hell’s Canyon. This allows him to introduce others to the beautiful wilderness Idaho has to offer and that he loves so much. The only thing missing are the salmon.

Brent feels strongly that the current proposal is just another attempt by the federal government to avoid its duty under the ESA to protect and restore salmon runs in the Columbia and Snake Rivers. Since the lower four dams were put in on the Snake River, Brent has watched the fish runs significantly diminish and the quality of the river change. “Spending billions of dollars to mitigate the impact of the dams on salmon is a waste of taxpayer dollars. The only thing that will bring the fish back is to remove the dams. The current proposal to exclude mainstem habitat from ESA protection is clearly an attempt to allow federal agencies to continue operating the dams instead of removing them.”

A restored fishery would be a tremendous benefit to Idaho’s tourism industry. The opportunity to regularly outfit fishing trips would allow Brent, and other recreation-dependent businesses to tap into the economy of recovery. Brent’s current operating season consists of rafting trips during the months of June, July, and August. The addition of the fishing season would double the season length with trips occurring in March and April, and again in September and October.

Recently, Brent and others experienced just what that would be like. In 2001 unusually favorable Northwest weather and ocean conditions combined to boost adult salmon returns in Idaho. That fishery alone generated \$90 million to the local economy. “It gave us locals who depend on the tourist industry a taste of what it would be like for Idaho to have a restored fishery to depend on,” said Brent.

“The exclusion of the mainstem Columbia and Snake Rivers from critical habitat designation takes away the one bright spot that the rural community has to look forward to in their economy. A lot of rural Idaho towns have been driven to extinction by extraction industries they have historically relied upon. These communities can be revived with a recreational economy and salmon are the number one thing that would improve the economic viability of these towns. Leaving critical habitat designation in place for the Columbia and Snake River benefits salmon and Idaho.”

compliance with water quality standards.²⁵ Similarly, agricultural practices remain largely unregulated in Oregon and agricultural operations are categorically exempt from many of Oregon's water pollution control laws.²⁶ Relying heavily on these inadequate rules means that listed salmon and steelhead will continue their march toward extinction. "These defects make it impossible for the Oregon Plan to protect coho critical habitat areas," says Glen Spain, Northwest Regional Director of the Pacific Coast Federation of Fishermen's Associations.

Spain is not alone in his analysis. Several federal agencies have repeatedly found that the Oregon Plan will not protect salmon and steelhead. In 2001, NMFS, the Environmental Protection Agency and U.S. Fish and Wildlife characterized the evidence as "overwhelming" in finding that "the forest practices on private lands in Oregon contribute to widespread stream temperature problems and degraded salmonid habitat conditions" and that a "substantial body of scientific literature demonstrat[es] that Oregon forest practices likely adversely affect water quality and threatened species of salmonids. . . [.]"²⁷

State Budget Outlook Bodes Ill for Oregon Salmon Plan

In addition, leaving the health of salmon to the state can only work if the states have enough money to promote and enforce recovery. However, Oregon is in the midst of a financial crisis and is not in a position to properly fund salmon restoration efforts in accordance with the Oregon Plan. Salmon protection has to compete with defunded schools, prisons, and public services for rapidly diminishing funding pools. Federal protection of these lands as critical habitat is thus essential to assure these ESA-listed salmon and steelhead populations are in fact at least minimally protected in the absence of unfunded state protections.

Washington and California Forest Plans Are No Substitute

Similarly, NMFS proposes to exclude from the designation of critical habitat areas covered by state forest practices regulations in Washington and in California. In Washington, non-federal forest land management is governed under the 1999 Forests and Fish Report. The rules adopted under this report regulate forestry practices on 9.1 million acres of state and private lands in Washington. "Washington's Forest and Fish Report was developed as a political compromise between federal and state agencies and the timber



Soil erosion from clearcutting chokes waterways (Peter Bahls).

industry, and does not adequately protect the listed ESUs," says Toby Thaler of the Washington Forest Law Center. Similarly, California's timber rules are not considered adequate to ensure the protection and recovery of salmon and steelhead there.

Snake River Basin Adjudication Does Not Protect Salmon

NMFS also proposes to exclude from designation of critical habitat all private and state timber lands covered by the term sheet in the Snake River Basin Adjudication (SRBA) in Idaho. The SRBA is an ongoing formalization of water rights held by farmers, hydropower companies and cities throughout Idaho. It appears that only the non-federal timber lands are under consideration for exclusion, but the scope of the proposed exclusion is vague and only offers limited information. This exclusion would affect the Snake River Steelhead population.

While SRBA does outline a forest practices program for landowners who chose to enter into the agreement, the plan is voluntary. "Abandoning critical habitat protection in exchange for these voluntary measures makes no sense," says Tom Stuart, who runs a small business in Stanley and is active in salmon protection efforts in Idaho. "Salmon and steelhead in the Snake basin are crucial to central Idaho's rural economies and to the health of our environment. Critical habitat protection will help us recover the Idaho's salmon as well as its rural communities."



John Farmer

Profile Jesse Hayes

Owner, Hayes Oyster Company,
Tillamook Bay, Oregon

“Habitat protection doesn't just help salmon and other wildlife, it keeps people like us in business.”

Jesse Hayes, owner of Oregon's oldest oyster farm, is frustrated. The Hayes Oyster Company, in Tillamook Bay, Oregon, doesn't just have to deal with taxes, competition and customer preferences like any other business. It faces constant bay closures—the result of bacteria from dairy runoff and heavy sedimentation from a century of forest clearcutting that buries oysters in muck. The result is a once-successful business now barely hanging on.

For over half a century, and as recently as the late 1980s, the Hayes Oyster Co. produced more oysters than the rest of the State combined. The Company employed 30 to 40 people year-round. “These folks bought houses, cars, sent their kids to college,” says Hayes. Thanks to the relentless degradation of Tillamook Bay from poor land use practices, however, that number has dwindled to just a handful today. “Being closed up to 100 days a year precludes many business opportunities.”

Hayes' grandfather planted the first oysters in Oregon in 1928 when his successful salmon, crabbing and clam business began dying due to habitat destruction from aggressive clear-cutting. As a child, Hayes remembers walking home from school along Tillamook Bay, and even at low tide could walk out on the hard rocky bottom to the waters edge—a perfect environment for oyster culture and the rich variety of indigenous aquatic species. Today, because of the sediment influx from decades of poor logging practices, he sinks up to his knees.

A 1996 national study showed that Tillamook Bay has lost over 80% of its volume and fish habitat because of logging. And today, it is being logged again. Twice a day, during the low tides, only two very shallow channels remain for the rivers to travel through the Bay to the Pacific. Salmon must travel these same channels, which provide no place to rest, hide or escape waiting predators.

“The Tillamook can get ten feet of rain a year. When it rains hard, the rivers bleed and bleed,” says Hayes. According to Hayes, streamside buffers simply can't prevent the massive inflow of sediment coming off of clear-cuts on the watersheds steep slopes.

Hayes also has to deal with a local dairy industry that generates 500,000 tons of waste per year—some of which winds up in the Bay. “Whenever it rains a couple of inches, the Oregon Department of Agriculture had to close the Bay for shellfish harvesting for five days minimum.” With up to 100 days of closures a year, the oyster industry has to regularly close its doors too. Hayes is and has been active in many efforts over the years to protect, preserve and restore the Bay by imposing stricter standards on logging and dairy activities, only to see them fail. “We have spent around twenty million dollars on studies and plans, in the end our water quality has not improved.”

One of those plans, the Oregon Plan, is now being proposed a substitute for critical habitat protection. According to Jesse, the Oregon Plan falls far short of imposing strict enough standards to protect water quality, fish habitat—and his business. “Habitat protection doesn't just help salmon and other wildlife, it keeps people like us in business,” concludes Hayes. “My family's company was once a proud pillar of this community and a sustainable source of food and income. Thanks to the government's refusal to take habitat seriously, we're barely keeping our head above water.”

Poor forest practices are not the only threat this species faces in Idaho. The effects of other threats such as grazing, water withdrawals, and development must also be taken into account. Such activities do not fall under the purview of the SRBA term sheet, which does not address these harmful land and water management practices.

The exclusion of lands covered by ineffective state plans from critical habitat designation leaves a gaping hole in the landscape that is detrimental to salmon recovery. Subjecting imperiled stocks that depend upon that habitat to such risk would be a step backwards in recovery.

Chapter 6 Healthy Salmon Habitat Benefits People and Communities

Dozens of studies have firmly established what people here have long understood: the protection and recovery of salmon, and the habitat on which they rely, is good economics for the Northwest. Salmon and steelhead populations support vibrant recreational and commercial fisheries that already generate enormous economic activity here. Studies consistently show that these benefits would skyrocket if fish populations could be restored. Moreover, protecting salmon habitat provides an economic boost in a variety of other ways: providing clean drinking water, generating tourism and recreational dollars, and increasing property values.

Under the ESA, NMFS is required to consider the economic pros and cons of designating an area as critical habitat. An otherwise eligible area may be excluded from a critical habitat designation in the narrow circumstances where NMFS affirmatively finds that the benefits of

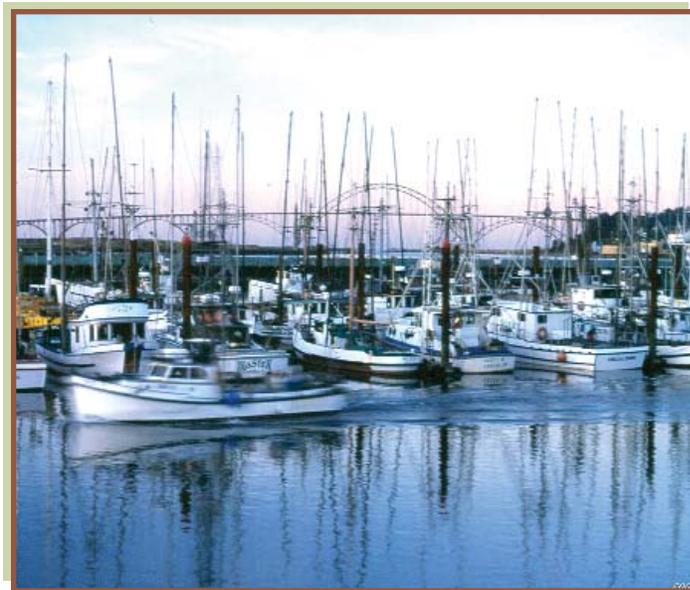
designation are outweighed by their costs. Perhaps not surprisingly, the current proposal utilizes economic analysis to propose even further narrowing the extent of critical habitat protection. That analysis is so fundamentally flawed that it cannot be used as foundation for decisions to exclude areas from designation.

There are two major problems with the economic study NMFS uses to justify further exclusions. It grossly overstates the economic impact of designation, and then almost completely ignores the many benefits of protecting salmon and their habitat.

First, NMFS makes sweeping but wholly unsupported claims about the potential costs of designating critical habitat for salmon. For example, it pegs the cost of protecting the mainstem Columbia and Snake Rivers alone at over half a billion dollars, a number it later concedes cannot be justified. It arrives at these numbers through a variety of transparent gimmicks that render the results largely meaningless. For example, most of the costs it attributes to critical habitat alone will occur regardless of the designation, as a result of the ESA listings and other regulations. Moreover, NMFS consistently uses the highest possible estimates of impacts, even where the data suggests the impacts will be much more modest.

Perhaps more egregiously, NMFS almost completely ignored the many benefits of conserving salmon and their habitat, claiming that there were not studies or data available. “NMFS’ assertion that there are no previous studies and no data it could have used to quantify the economic benefits of protecting salmon habitat makes a mockery of decades of economic research on this issue,” says Ernie Niemi, an economist who has studied this issue extensively. Niemi

provided the government with an extensive representative list of such studies that showed literally billions of dollars in economic benefits from protecting and restoring salmon habitat. “Numerous studies have been done to quantify the benefits of recovery salmon, but NMFS simply ignored them.” For example:

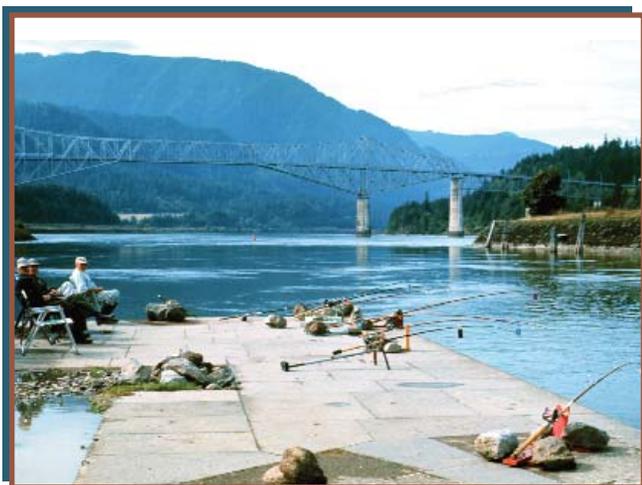


Fishing fleet in Newport, Oregon (Nancy Lynne).

Commercial Fishing

A vital asset for coastal communities

A review of data for commercial fisheries along the coasts of Washington, Oregon and California found the harvest benefits of the 2003 commercial season alone to be approximately \$40 million.²⁸ Another study found that fully restoring salmon to the Columbia basin alone could generate up to \$507 million annually and as many as 25,000 jobs.²⁹ Glen Spain, who represents the Pacific Coast Federation of Fishermen's Associations, finds the government's evidently willful ignorance of these numbers deeply troubling. His organization represents about 2,000 small and medium-sized fishing families coastwide, people whose livelihoods depend on protecting salmon habitat. "What about the impacts to coastal communities across the region from restoring this habitat and recovering the fishery? Those benefits simply don't exist as far as this proposal is concerned," Spain said.



Recreational fishing along the Columbia (NOAA).

Recreational Fishing

An economic engine in rural Idaho

Similarly, a recent study concluded that a restored recreational fishery in Idaho would be a significant boon to local economies. The study found that the re-emergence of a robust salmon and steelhead fishery would generate \$540 million in economic activity annually.³⁰ Small communities in rural areas, like Stanley, Idaho, would stand to receive the bulk of these benefits—the beneficial impact of angler spending in Stanley alone is about \$14 million. "Stanley is a tourist-based economy," says Steve Barnard, a local resident. "A restored fishery would be a huge boost for the local economy. It is heartbreaking to see perfect habitat here that is ideal for fish that don't show up."

Oregon's North Santiam River

Safeguarding Salem's water quality

Salmon habitat also has a significant economic value apart from its contributions to salmon. Protected habitat invites bird-watchers, recreationalists, and protects water quality for consumption. The North Santiam River is a perfect illustration. Draining from the western slope of the Cascades, the North Santiam meanders largely through federal and state lands before meeting up with the Willamette River. Not only does the river provide a home for salmon and steelhead, but it also provides other significant benefits to the community, such as irrigation water, and places to swim and play. But perhaps most importantly, the North Santiam provides a safe and healthy source of drinking water for the City of Salem. Because the upstream watershed is relatively intact, that water is clean and requires little treatment before being distributed to the community.

Puget Sound

Healthy streams equal a high quality of life

Similarly, protection of salmon habitat in rapidly developing communities like Puget Sound has yielded great economic benefits: both in terms of increased property values and in terms of quality of life. Even though the development community has fought ESA protections throughout the region, they recognize this too. In a video produced for a state-led salmon recovery effort, Sam Anderson, Executive Director of the Master Builders Association of King and Snohomish County, said this: "The reality is that the consumers in the Pacific Northwest want good salmon runs. They want restored, clean, healthy salmon habitat and the overall positive of that is that it creates for homebuyers an amenity they like, which frankly adds value." Conversely, allowing unrestrained sprawl in once functioning salmon habitat may make a quick buck for developers, but ultimately undermines communities and reduces property values. Not surprisingly perhaps, none of these issues are even mentioned, even while NMFS proposes to eliminate critical habitat protection in rapidly urbanizing places like the Sammamish basin.

In short, it's not just that the economic analysis performed by NMFS failed to properly balance the economic describe benefits of protecting salmon habitat—it ignored them completely. In light of this glaring omission, its decision to reduce protections even further based on its economic considerations is bad news for the region.



Terry Lavender

Profile Terry Lavender

Community Leader, Redmond, Washington

“The return of the salmon each year brings the whole community together and makes this such a special place to live.”

Terry Lavender, a property manager for a local medical building, has lived near Bear Creek in Redmond, Washington for 26 years. A fourth-generation Washingtonian, she grew up in a neighborhood that was later razed to make way for the Seattle airport. She devotes virtually all of her spare time to making sure that the community she now calls home escapes a similar fate.

Bear Creek is a tributary of the Sammamish River on the rapidly growing east side of Lake Washington near Seattle. Several species of salmon—including Puget Sound chinook listed as threatened under the ESA—still manage to make it up Bear Creek to spawn, but only because of the hard work of citizens and local officials who have insisted on strong habitat protections in this quickly developing area. The result? Despite a decade of some of the strictest development restrictions in all of Puget Sound, property values here are skyrocketing. Real estate advertisements heavily emphasize creek frontage or proximity to protected areas.

“I’ve met almost all of my neighbors because of the salmon,” says Terry. “The return of the salmon each year brings the whole community together and makes this such a special place to live.”

However, the critical habitat proposal for Puget Sound chinook omits protection for Bear Creek. In fact, the entire Sammamish basin is to be left out of the designation, despite its clear importance for salmon and the decades of citizen efforts to restore the habitat here. The justification for this omission is purportedly economic: the proposal claims that the benefits of including Bear Creek and its environs as critical habitat are not worth the cost.

“What troubles me is that they didn’t look at any of the benefits of protecting salmon, natural areas and clean water. There’s no question that the work we’ve accomplished so far has done wonders for property values, not to mention the quality of life here. Bear Creek is a special—and valuable—place to live because salmon still return here.”

What’s more, with this current proposal Terry and many others feel like the federal government is walking away from a commitment to protect and restore salmon runs in these areas, a commitment that citizens and local officials have dedicated countless hours to over the years. “After so much work by so many people to develop a plan that gets us moving in the right direction, the federal agency suddenly tells us that protecting this area is not important. I feel like we’ve been betrayed.” In fact, a state-led watershed steering committee, which includes representatives of 27 jurisdictions, recently wrote the Administration asking them to restore these proposed cuts.

“Without critical habitat designation, it becomes harder to build the political will, and find the necessary funding, to do the important work of protection and restoration. If they considered the benefits of protecting these urban areas, they would certainly find that its worth doing. Leaving Bear Creek out of the critical habitat designation is a giant step backwards.”

Chapter 7

The Need for a Strong Endangered Species Act

Salmon and Other Endangered Species Need Critical Habitat Protections

Unfortunately, salmon are not the only targets of this attack on critical habitat protection by the current Administration. Since it arrived in 2001, the Administration has been working steadily to dismantle the critical habitat provision of the Endangered Species Act. Although previous Administrations had resisted designating critical habitat, this is the first one that has advocated in Congress to weaken or eliminate it. For example, in 2002, the Administration successfully advocated for legislation to exempt from critical habitat designation all military training lands controlled by the Department of Defense.

This Administration is also the first to develop a systematic campaign to exclude large numbers of acres deemed important to species recovery from final critical habitat designations. In 2002, an attempt to insulate itself from lawsuits concerning failure to designate critical habitat, the Department of Interior began inserting language into all critical habitat decisions that critical habitat protection has no value to listed species. At the same time, it began arguing that critical habitat protections placed such enormous burdens on the economy that such protections should be eliminated on cost-benefit grounds.

In a June 2004 report, the National Wildlife Federation analyzed all critical habitat designations prepared by the Bush Administration to date, and found that 50 percent of the habitat areas recommended by Service biologists had been excluded from final critical habitat designations by Administration officials. The rationale for denying protection to these habitats shifted over time. In 2001, the

Administration generally claimed that other protection measures were more effective; only 1 percent of exclusions were based on cost. By 2003, 69 percent of exclusions were based on the rationale that protection is too costly.³¹

Although the Administration seeks to place heavy emphasis on the costs of critical habitat protections, it has never developed a consistent methodology for quantifying costs and benefits of habitat conservation. In at least two cases, involving the Topeka shiner and bull trout, analysis of the benefits of habitat conservation was deleted from the final critical habitat designation. Since that time the Administration has chosen simply to ignore the benefits of habitat protection and to focus exclusively on costs. On January 13, 2005, the Interior Department released a guidance suggesting that it is improper for FWS staff to analyze the benefits of critical habitat designation.³²



(Galen Rowell/ Mountain Light)

The Administration has repeatedly claimed that the critical habitat program is broken due to lawsuits filed by conservation groups. However, the cause of litigation filed by conservationists—the Administration's persistent refusal to follow the law's clear requirements concerning designation and protection of critical habitat—can easily be addressed if the Administration so chose.

Species by species, the Administration's critical habitat decisions have slowly eroded the protection of species that are the least capable of bearing the brunt of such an assault. These species are listed precisely because they are facing the imminent threat of extinction. We should be affording them the greatest protection possible. Instead, right now, the Administration and its allies are working to further weaken protection of all endangered species.

The Potential Impact of Current Legislation

This year in Congress legislation has been introduced by Rep. Cardoza (D-CA) that poses a significant threat to critical habitat protection for all species protected by the Endangered Species Act. The legislation, H.R. 1299, includes sweeping changes that will virtually eliminate critical habitat designation for species, including:

- ◆ Leaving the designation of habitat protection to the discretion of the Secretary of Interior—someone who has already stated that critical habitat is unnecessary;
- ◆ Changing the Endangered Species Act’s definition of critical habitat from one that focuses on achieving recovery of a species to one that attempts to manage species at the brink of extinction;
- ◆ Restricting critical habitat to that which is necessary to avoid “jeopardizing the continued existence of a species,” whereas current law requires that both occupied and unoccupied habitat essential for the recovery of a species be protected;
- ◆ Limiting habitat protection to areas “determined by field survey data to be occupied at the time of critical habitat designation.” This approach could preclude the designation of areas used infrequently or intermittently by a species such as one that follows a broad migration pattern, but that are important to the recovery of the species.

The legislation also attempts to substitute a wide range of programs that frequently provide less protection to a species than designated critical habitat does. When critical habitat is designated, federal agencies with proposed activities in that habitat must consult with expert wildlife agencies concerning the impacts of the project on the habitat and potentially modify the project to address the species’ needs. Under the bill, this consultation duty would not apply in areas covered by habitat conservation plans, incidental take permits, or State, Federal or Tribal land conservation or species management programs that the Secretary believes provides substantially equivalent protection as critical habitat.

Viewed in this proper context, it is clear that the current proposal to exclude state and federal lands and unoccupied habitat from salmon critical habitat designation is just one more step toward the current Administration’s goal of weakening the ESA. Should the proposed rule and legislation go forward it will create a large hole in the safety net that has helped hundreds of species recover from the brink of extinction. We cannot let this happen.



¹ 69 Fed. Reg. 74572 (Dec. 14, 2004) (Pacific Northwest); 69 Fed. Reg. 71880 (Dec. 10, 2004) (California).

² Distinct populations of listed salmon are referred to as Evolutionarily Significant Units or "ESUs". In order to qualify as an ESU a population must: 1) be reproductively isolated from other populations units of the same species, and 2) represent an important component of the evolutionary legacy of the biological species.

³ 65 Fed. Reg. 7764 (Feb. 16, 2000).

⁴ National Ass'n of Home Builders v. Evans, No. 1:00-CV-02799 CKK (D.D.C. April 30, 2002); 68 Fed. Reg. 55900 (Sept. 29, 2003) (vacating existing critical habitat).

⁵ House Committee on Merchant Marine and Fisheries, H.R. Rep. No. 887, 94th Cong. 2nd Sess. at 3 (1976) (emphasis added); see also 124 Cong. Rec. S21,575 (July 19, 1978) ("[T]he designation of critical habitat is more important than the designation of an endangered species itself.").

⁶ Examples of federal actions include operating dams or water projects, funding highways, permitting timber sales or grazing activities, or authorizing wetlands fills.

⁷ Gifford Pinchot Task Force v. Evans, 378 F.2d 1059 (9th Cir. 2004).

⁸ 16 U.S.C. § 1531(b) ("The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved . . ."). The term "conserved" is defined by statute to mean "the use of all methods and procedures while are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.") 16 U.S.C. § 1532(3).

⁹ National Academy of Sciences. 1995. Science and the Endangered Species Act.

¹⁰ Taylor, M.F., Kieran Suckling and Jeffrey J. Rachlinski. 2003. The Effectiveness of the Endangered Species Act: A Quantitative Analysis. *Bioscience*, 55(4):360-367.

¹¹ 16 U.S.C. § 1532(5).

¹² National Wildlife Federation v. Federal Emergency Management Agency, 345 F. Supp.2d 1151 (W.D. Wash. 2004).

¹³ See Pacific Coast Federation of Fishermen's Assoc. v. National Marine Fisheries Serv., 71 F. Supp.2d 1063 (W.D. Wa. 1999), *aff'd*, 253 F.3d 1137 (9th Cir. 2001).

¹⁴ 69 Fed. Reg. 22486 (April 26, 2004).

¹⁵ The mainstem refers to the primary course of the river; tributaries are not included.

¹⁶ 69 Fed. Reg. at 74584.

¹⁷ Endangered Species Act - Section 7 Consultation Biological Opinion: Operation of the Columbia River Power System ad 19 Bureau of Reclamation Projects in the Columbia Basin F/NWR/2004/00727 (Nov. 30, 2004), at 5-30.

¹⁸ Idaho Dept. of Fish & Game v. NMFS, 850 F. Supp. 886, 900 (D. Or. 1993).

¹⁹ National Wildlife Federation v. NMFS, 254 F. Supp.2d 1196 (D. Or. 2003).

²⁰ Save Our Wild Salmon, Salmon Plan Report Card: The Federal Plan to Restore Salmon and Steelhead in the Columbia & Snake River Basin (Issued in 2001 and 2002); Salmon Plan Report Card: Four Year Summary (2004)

²¹ NWF v. NMFS, Opinion and Order, CV 01-640-RE (D. Or. July 29 2004).

²² See note 20.

²³ Oregon Natural Resources Council v. Daley, 6 F. Supp.2d 1159 (D. Or. 1998).

²⁴ Endangered Species Act Section 7 Formal Conference and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation, Broken Buck Timer Sale, Bureau of Land Management, Umpqua River Subbasin (#17100303), Douglas County, Oregon, page 56.

²⁵ DEQ Report

²⁶ OAR §340-041-0028(12)(f).

²⁷ Letter to Oregon Department of Environmental Quality and Department of Forestry from NMFS, Environmental Protection Agency, and U.S. Fish and Wildlife Service (Feb. 28, 2001).

²⁸ Niemi, Ernie. 2005. Comments on the Draft Economic Analysis of Critical Habitat Designation for Pacific Salmon and O. mykiss, Prepared by EcoNorthwest, March 2005.

²⁹ Institute for Fisheries Resources, The Cost of Doing Nothing: The Economic Burden of Salmon Declines in the Columbia River Basin (Oct. 1996).

³⁰ Reading, D.C. 2005. The Potential Economic Impact of Restored Salmon and Steelhead Fishing in Idaho, Prepared by Ben Johnson Associates, Inc., February 2005.

³¹ Uimonen, P. and Kostyack, J., Unsound Economics: the Bush Administration's New Strategy for Undermining the Endangered Species Act (NWF 2004).

³² See Lessons Learned in Recent CH Rules (January 13, 2005) (requiring that FWS staff note at the outset of critical habitat designation rules that "designation of critical habitat provides little additional protection to most listed species, while consuming significant amounts of scarce conservation resources" and further requiring that "[a]ny discussions regarding potential benefits from critical habitat . . . must be consistent with other portions of the document.").



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