# Toward Recovery

Clallam County Response to the Endangered Species Act Listing of and Proposed Listing of Salmonids Species in Puget Sound, the Strait of Juan de Fuca and the Pacific Coast

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# TOWARD RECOVERY

*INTRODUCTION*

This report is a compendium of salmon recovery and ecosystem restoration activities and programs that have occurred, are occurring or will occur in Clallam County. The County's activities are based on cooperative efforts with other individuals and agencies involved in salmon habitat recovery. The report is formatted to fit with NMFS' and USFWS' requirements under the Endangered Species Act (ESA). Clallam County had already identified the protection and conservation of salmon and salmon habitat as being a crucial priority. Many measures had been implemented prior to the direct federal involvement with local salmon recovery progress. Therefore, information contained within this report reviews the autonomous efforts of Clallam County and its cooperators to conserve salmon and salmon habitat, but is framed as a response to the ESA. Without a coordinated responseto the Endangered Species Act, the need for ESA-related project by project review salmon recovery actions or programs would slow recovery efforts and progress. Just as importantly, under the citizen suit provisions of the ESA, if the County can not prove compliance with ESA standards, local jurisdictions face substantial liability and compliance costs. Additionally, there is the potential for a substantial loss of local control or input to the salmon recovery process and other activities (such as natural resource use or development) to the federal government as a result of the recent listings.

Particularly, the report addresses both the recent listings of several salmonid species as *threatened* under ESA and the recognized need to maintain currently healthy stocks that are

showing significant population declines on the north Olympic Peninsula. The geographic area encompassed should include the known or critical habitats for all of the listed populations, and could include the entirety of Clallam and Jefferson Counties. More specifically, the critical habitats for the listed species include: 1) Hood Canal/Strait of Juan de Fuca summer chum found in portions of Hood Canal and the Strait of Juan de Fuca, including all major tributaries to the west of Dungeness Spit, 2) Puget Sound chinook found in the Elwha and Dungeness Rivers, as well as the Strait of Juan de Fuca to the west end of Freshwater Bay, 3) Lake Ozette sockeye found in the Lake Ozette Basin, and 4) bull trout currently known to exist in the Hoh, Elwha, and Dungeness Rivers, as well as in Morse Creek.

In addition to being a response to the ESA, this document serves as a starting point for local, regional, and state-level discussions on identifying actions and activities that are appropriate and necessary to: 1) meet the requirements and goals of the ESA, and 2) conserve existing healthy salmon populations in the future. Consequently, the scope of this report focuses on explaining current ongoing and future activities as they relate to the National Marine Fisheries Service's (NMFS), the federal agency responsible for management of salmon listed under the ESA (See *Background* section of this report for further information on the 4(d) Rule). This document also seeks to make current information available to both field specialists and the general public.

Portions of this text highlighted in gray are excerpts from recent proposed rules published in the *Federal Register*. The *Federal Register* is a publication of the Government Printing Office, which, as a component of the federal rule-making process, publishes the federal government's interpretation of the laws passed by Congress.

## *BACKGROUND*

### *ESA Purpose and Scope*

In May of 1999, NMFS, under the ESA, listed six species of salmonids as *threatened,* three of which are found in various locations across the North Olympic Peninsula. These three species are Hood Canal/Strait of Juan de Fuca summer-run chum salmon, Puget Sound chinook, and Lake Ozette sockeye salmon. Then, in June of 1999, the US Fish and Wildlife Service listed the Puget Sound/Coastal populations of bull trout as threatened.

The purposes of the ESA are:

> "… [T]o provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve these purposes."

In other words, the ESA's purposes are not limited to listing of endangered or threatened species, but also are required to include the conservation of species and their habitats.

### *Section 4(d) of the ESA and "Take Prohibitions"*

Section 4(d) of the ESA specifically provides that regulations shall be issued to provide for the conservation of a species listed as *threatened.* These regulations may include any or all of the orders to stop taking an endangered species. The application of these regulations is automatic under Section 9(a) of the ESA, known as "take prohibitions":

> "Whether take prohibitions or new regulations are necessary is in large part dependent on the biological status of the species and potential impacts of various activities on the species…NMFS concludes that threatened chinook, chum, and sockeye salmon are at risk of extinction primarily because their populations have been reduced by human "take." West Coast populations of these salmonids have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitats, poor hatchery practices, hydropower development, and other causes" (65 *Federal Register* 170 January 3, 2000).

NMFS has procedures for enforcement of these rules, specific to each species. These draft 4(d) rules were published on January 3, 2000. Final rules were published on July 21, 2000 and will take effect on January 8, 2001. The US Fish and Wildlife Service (USFWS) automatically applies the "take prohibitions" from section 9(a) at the time a species is listed as threatened. Therefore, areas of Clallam County are already subject to the permitting regulations under ESA.

The listing of local salmonids as threatened has prompted states, counties, tribes and others to request NMFS to: 1) clarify and provide guidance on what activities may adversely affect salmon, including how to avoid or limit those effects, and 2) apply take prohibitions only where programs or efforts are not able to conserve threatened salmonids. As a result, NMFS has issued a proposal for "limits on take prohibitions" under a 4(d) rule.

*Proposal for "Limits on Take Prohibitions"*

Under this proposal, cities, counties, state and tribal governments, and other organizations would be assured that the programs and activities they either conduct or permit are consistent with ESA requirements to avoid or minimize impacts to threatened salmonids. If those programs and activities sufficiently protected and conserved listed salmonids, additional rules to stop the taking of salmonids would be unnecessary. NMFS would then be able to focus its enforcement efforts on activities and programs that had not yet provided adequate species protection and conservation.

USFWS has published a similar, but not identical, proposal for bull trout, which would allow the preparation of Conservation Enhancement Plans by government or other organizations. If these plans were approved by USFWS, that agency would grant similar protections from liability under the ESA for bull trout. The more detailed proposal by NMFS allowed for 13 different "limits on take" within the 4(d) rule. These limits were for the following types of activities:

> (1) activities conducted in accord with ESA incidental take authorization;
> (2) ongoing scientific research activities, for a period of 6 months;

(3) emergency actions related to injured, stranded, or dead salmonids;
(4) fishery management activities;
(5) hatchery and genetic management programs;
(6) activities in compliance with joint tribal/state plans developed within *United States v. Washington or United States v. Oregon;*
(7) scientific research activities permitted or conducted by the states;
(8) state, local, and private habitat restoration activities;
(9) properly screened water diversion devices;
(10) road maintenance activities in Oregon;
(11) certain park maintenance activities in the City of Portland, Oregon;
(12) certain development activities within urban areas; and
(13) forest management activities within the state of Washington.

Detailed standards for meeting the requirements of the "limits" were provided for *some* of the 13 activities in the proposed rule. For example, in (1) above, some of the limits allowed for continued actual fulfillment of Habitat Conservation Plans, such as the DNR HCP. Other activities, such as (6), were clearly outside the scope of local governments or individual tribes. The final rule deleted (8) and re-titled it "(12)" to MRCI development.

*Approval Process:*

Both NMFS' and USFWS' proposed regulations would be approved by the Regional Administrator of the Agency, which would provide liability protection of local jurisdictions under ESA. The NMFS draft 4(d) rule goes into greater detail of the approval process, which is essentially a federal rulemaking process involving five steps:

(1) Submission of the proposal to NMFS.
(2) Initial approval by the Regional Administrator.
(3) Publication in the *Federal Register* of the proposal and supporting documents.
(4) Allowance of 30 days for public comment.
(5) Approval or disapproval of the proposal by the Regional Administrator, based on comments received from the public.

*Local Efforts to Respond to NMFS "Limits on Take"*

Both Clallam County and the State of Washington commented on the NMFS draft rule. Specifically, both governments addressed the approval process for such proposals and requested that the formal adoption process be modified to allow for state approval, with oversight by NMFS. Given the currently small number of examples of Habitat Conservation Plans, NMFS will, most likely, directly review proposals, even if the approval process changes.

Accordingly, this document will be submitted to NMFS, USFWS, and the Governor's Salmon Recovery Office after completion of an initial review by local governments and organizations. Even upon completion, this report will be a starting point for discussion of the relative merits of

the salmon recovery efforts, as well as for discussion of the process used for "Watershed Conservation Planning." Undoubtedly, it will continue to change as the process unfolds.

This document describes County efforts at responding locally to 3 of the "limits": (8), (10), and (12). Those sections are entitled "Watershed Conservation Planning, "Road Maintenance," and "Municipal, Rural, Commercial and Industrial Development," respectively. The "Watershed Conservation Planning" section is structured to consider the broader goals of a Conservation Enhancement Plan, which USFWS is considering for its "special rule," and to meet the goal of ESA: "…[T]o provide a means whereby the ecosystem upon which endangered species and threatened species depend may be conserved."

In the remainder of this report, each of the three above named sections includes the excerpt from the 4(d) rule to which the County has responded or plans to respond. Following these excerpts, tables identify the currently ongoing and future conservation measures that represent the County's efforts to maintain and restore the habitats of threatened salmonids.

*ONGOING AND FUTURE CONSERVATION MEASURES*

**Watershed Conservation Planning**

Since the initial drafting of this document, NMFS has removed the following excerpt from their draft 4(d) rule, leaving it up to state governments to set watershed conservation guidelines. However, it is likely that this framework will be used by USFWS for their listing of bull trout as threatened. Clallam County will be working with the State of Washington to determine appropriate watershed conservation planning. This section of the draft (4) rule was incorporated into the County's response to the ESA and remains a key component in our ESA response and broader critical salmon recovery and ecosystem restoration goals.

"(8) The prohibitions of paragraph (a) of this section (take prohibitions) relating to threatened species of salmonids…do not apply to habitat restoration activities…provided that:

(i) The states of Washington or Oregon certify to NMFS in writing the activity is part of a watershed conservation plan, where:

(A) NMFS has certified to the State in writing that the State's watershed conservation plan guidelines meet the following standards. Guidelines must result in plans that:

(1) Consider the status of the affected species and populations;
(2) Design and sequence restoration activities based upon information obtained from an overall watershed assessment;
(3) Prioritize restoration activities based on information from watershed assessment;
(4) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow,
(5) Provide for effective monitoring;

(6) Use best available science and technology of habitat restoration, use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology or geomorphology;
(7) Assure that any taking resulting from implementation will be incidental;
(8) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable;
(9) Will not result in long-term adverse impacts;
(10) Assure that the safeguards required in watershed conservation plans will be funded and implemented.

(B) The state has made a written finding that the watershed conservation plan, including its provisions for clearing projects with other agencies, is consistent with those state watershed conservation plan guidelines.

(C) NMFS concurs in writing with the state finding."

However, when a species is listed as endangered or threatened, USFWS automatically implements Section 9. The County, then, must respond to both these agencies, which means the County is crafting a response to two separate and differing sections of the ESA. USFWS may create a (4)d rule for bull trout, in a "Notice of Proposed Supplemental Rules," USFWS states:

"…[W]e request specific information and comment from Federal and State agencies, local municipalities and private individuals or organizations on the following:

*Habitat Restoration Activities*

(1) The types of habitat restoration activities we should address under an amendment to the special rule;
(2) The standards or criteria for habitat restoration activities that must be met in order to be exempted from take prohibitions; and
(3) Comments on the nature and scope of minimal monitoring and reporting programs for habitat restoration activities.

*Regulated Activities*

(1) The types of regulated activities we should address in an amendment to the special rule;
(2) The standards or criteria for regulated activities that must be met in order to be exempted from the take prohibitions;
(3) The appropriate components of a CEP or similar plan;
(4) Appropriate monitoring and reporting programs for regulated activities; and
(5) Information on how habitat for the bull trout should be identified and how it should be protected or enhanced."

In the County's attempts to satisfy the requirements of both these agencies, it has set forth both its ongoing conservation measures and future conservation measures (see Table 1 below). Components of a Watershed Conservation Plan that would meet both of the above guidelines can be broken down into 3 elements:

(1) Interlocal agreements for coordination of activities across jurisdictions,
(2) Prior, ongoing and future habitat enhancement and recovery activities, and
(3) Cooperative Watershed and Habitat Restoration Planning Efforts.

The second element should be coordinated with ongoing and prior watershed planning efforts, information sources and recovery plans. Ongoing watershed planning should include specific tasks directed toward salmon restoration and should also further the goals of the ESA. Some of the needs listed in Table 1 below can not be accomplished by Clallam County and its cooperators; other governmental units and agencies would have to become involved before Clallam County could satisfy these measures.

**Table 1. Interlocal Agreements**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Creation of the North Olympic Peninsula Lead Entity Group (1999). | Need: Improved coordination between Clallam County (or a local regional entity), other jurisdictions in Western Washington, Governor's Salmon Recovery Office, NMFS, and USFWS, which is currently inadequate (2000). |
| Creation of the WRIA 18 Initiating Governments for Watershed Planning, which consists of the member governments and entities of the Dungeness River Management Team and the Elwha_Morse Management Team (1999). | Need: Lake Ozette Sockeye Steering Committee currently has no dedicated staff or funds. Further, Lake Ozette recovery planning efforts are hampered by lack of political power, bureaucratic recognition and geographic isolation (2000). |
| Finalizing interlocal agreements for WRIAs 19 and 20 in early 2000. | |
| Creation of the Lake Ozette Sockeye Steering Committee (1999). | |
| Marine Resources Committee (1999). | |

The information in Table 2 below represents the County's response to the second element in the watershed conservation planning guidelines. These guidelines were intended to meet with both NMFS and USFWS requirements:

**Table 2. Habitat Restoration Activities**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Jobs for the Environmental projects—Meadowbrook Creek (1992), 2700 feet bioengineered bank stabilization, McDonald Creek Restoration (1992), Meadow Brook Restoration (1992), Bell Creek Reconstruction (2200 feet) (1996), Morse Creek Estuary Restoration (1996), Tassel Creek Culvert replacement (1996) | Jimmy Come Lately Creek and Estuary Restoration in cooperation with the Jamestown Tribe, WDFW, WDOT, Wa. Dept. of Ecology, USFWS, EPA, Ducks Unlimited, IAC, Clallam Conservation District, (ongoing) |
| Other projects—Matriotti Creek Reconstruction (1993), Bell Creek Estuary Restoration (1999), Bogachiel River streambank stabilization/LWD placement (1995&1996). | Dungeness River Dike reconfiguration:<br><br>Lower River Estuary Restoration, Schoolhouse Bridge Replacement, Corps Dike setback/removal (2002-2005)<br><br>Canyon Creek Dam Removal and Fish Hatchery Dike Setback (2002).<br><br>Standardization of protocols and implementation of a region-wide habitat and restoration project monitoring program (2000). |
| Kincaid Island Dike Removal (1999). | |
| Burlingame Bridge on the Dungeness (1999). | |
| Siebert Creek Bridge on Old Olympic (1998). | |
| LWD jams in the Dungeness and Elwha (1996-2000). | |
| Trust water rights agreement between agricultural water users and Department of Ecology (1998). | |
| Water conservation projects in the Irrigation System of the Sequim Dungenesss Valley (1996-present). | |
| Formation of the Marine Resources Committee implementing the Murray-Metcalf Bill (1999). | |
| Multiple water quality and habitat restoration projects by the Clallam Conservation District in WRIAs 18 and 19, LWD placement by the Makah Tribe in the Sekiu and Clallam Rivers and the Lake Ozette System, Enhancement projects on Bear Creek by the Quileute Tribe, and numerous projects by the Hoh Tribe in the Hoh drainage. | |
| Elwha River Ecosystem Restoration (1995-2030). | |

Table 3 below shows Clallam County's efforts to satisfy half of the third element in their Watershed Conservation Plan. This third element is "Cooperative Watershed and Habitat Restoration Planning Efforts." Because the County has developed plans and committees, both citizen groups and professional groups, to address each of these efforts individually, our response to each will appear in Table 3 and Table 4.

**Table 3. Watershed Planning**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Sequim Bay Early Action Watershed Plan (1990) | WRIA planning under ESHB 2514 for WRIAs 18 (Dungeness and Elwha), 19 (Lyre-Hoko), and 20 (Sol Duc—Hoh) (1999—2003) |
| Dungeness River Comprehensive Flood Hazard Management Plan (1990) | Marine Resources Committee (2000-beyond). |
| Dungeness River Area Watershed Management Plan (1994) | It is expected that entities such as Dungeness River Management Team, Elwha-Morse Management Team, and WRIAs 19 & 20 will be ongoing into the foreseeable future. |
| Dungeness-Quilcene Plan (1994) | **Need: Funding and commitment to continue watershed management efforts in the North Olympic Peninsula's WRIAs.** |
| Port Angeles Area Watershed/Comprehensive Plan (1995) | |
| Marine Resources Committee Planning (1999-future). | |
| Clallam County Comprehensive Flood Hazard Management Plan (1996). | |
| Sol Duc Watershed Analysis (1995) | |
| Dungeness River (USFS Watershed Analysis (1995) | |
| Sequim-Dungeness Groundwater Protection Strategy 1994 | |
| Several Department of Natural Resource Watershed Analyses (1995-present). | |

The second half of the third element of a Watershed Conservation Plan (Habitat Restoration Planning) is outlined in Table 4 below.

**Table 4: Habitat Restoration Planning**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Creation of North Olympic Peninsula Lead Entity Group. Consists of Clallam and Jefferson counties; the Cities of Sequim, Port | Need: Fully integrated (with habitat protection, development, timber harvest, salmon harvest, flood hazard reduction, water |

| | |
|---|---|
| Angeles and Forks; the Jamestown S'Klallam, Makah, Quileute, and Hoh Tribes; and other organizations, such as the North Olympic Salmon Coalition and the Pacific Coast Salmon Coalition. | use, etc) habitat restoration project lists that are prioritized with and across watersheds. |
| The Lead Entity Group creatd a Technical Review Group and a Technical Advisory Group. These groups review project proposals and have completed the Limiting Factors Analyses for WRIAs 18, 19 and 20. | Salmon and trout life history study. |
| Dungeness River Restoration Workgroup, formed in 1996, completed Recommended Restoration Projects for the Dungeness River in 1997. This document has been adopted as policy guidance for river management by the Dungeness River Management Team. | 1999 Hydrologic Assessment of Sequim Dungeness Area. |
| JimmyComeLately Workgroup, formed in 1997, is working toward a model restoration project on JimmyComeLately Creek, which will have application across the Hood Canal summer chum ESU. | Status of marine protected areas. |
| Lake Ozette Steering Committee, comprised of NMFS, Clallam County, Olympic National Park, WDFW, the Makah and Quileute Tribes, and landowners is conducting an analysis of limiting factors within the basin. | |
| | |

*CONCLUSION*

The central focus of the above actions and activities is reliance on watershed planning into the future. In order for watershed planning to be successful, both in terms of recovery of salmon populations and responding to the requirements of the ESA, the watershed planning groups must exist well beyond the planning stage into the implementation and evaluation stages. Only in this way will local jurisdictions and organizations take responsibility for actions that occur in their watersheds. Willingness and ability to take responsibility for local actions that effect local citizens leads to fundamentally better, as well as more integrated, decision making with regard to competing natural resource-based land uses. Such actions would include habitat restoration, habitat protection, development, timber harvest, salmon harvest, flood hazard reduction, water use, etc. Over time, this is the only means to retaining a measure of local control of regional natural resources.

**Municipal, Rural, Commercial and Industrial Development**

The NMFS proposal lists 12 issues that, if satisfied by local governments, will exempt new municipal, rural, commercial and industrial development activities from the ESA Section 4(d) take prohibitions. By satisfying these 12 points, local jurisdictions can demonstrate that they have programs and activities in place, either existing or planned, that protect habitat and populations of threatened salmon. Landowners, potential developers, and the jurisdictions controlling new development will benefit from assurance that their actions, approvals, and maintenance practices are consistent with ESA requirements. They will also be protected from third-party lawsuits that might initiate due to alleged impacts of their activities on threatened species.

This document lists a set of ongoing conservation measures (see Table 5 below) that Clallam County will achieve in order to comply with the ESA, i.e. NMFS' "limit on take prohibitions" and USFWS' 4(d) exceptions. It also establishes long-term conservation measures that Clallam County must implement in order to maintain the exemption and conserve the species and the ecosystems on which they depend. To a large extent, this document relies on existing ordinances and practices; it serves as a summary of conservation standards and measures detailed in any "exemption agreement" to be entered into prior to the effective date of the 4(d) rule, or after reaching agreement with USFWS.

In order to maintain the limit on take, Clallam County will need to conduct the planning and public participation processes necessary to create and implement locally-tailored watershed plans. These plans will establish long-range protections for salmonids in a way that is approved by the community, local jurisdiction, and NMFS. Through watershed conservation planning, participants will discuss the desired future conditions of the watershed and the preservation and restoration efforts needed to achieve those goals.

*NMFS's Standard for ESA Compliance*

The proposed 4(d) rule states that 12 issues must be adequately addressed before NMFS will certify local ordinances governing new urban development, i.e. local Critical Areas Ordinances, Stormwater Ordinances, etc., as ESA-compliant. NMFS has indicated that such policies are also appropriate for rural development. The following excerpts from the NMFS draft 4(d) rule present these issues for local ordinances:

> "A. NMFS concludes that development governed by ordinances that meet the listed principles will address the potential negative impacts on salmonids associated with new development. In such circumstances, adequate safeguards will be in place that NMFS does not find imposition of additional Federal protections through take prohibitions necessary and advisable for conservation of listed salmonids. The [take] prohibitions…do not apply to urban development activities provided that: Such development occurs pursuant to city or county ordinances that NMFS has agreed in writing are adequately

protective…For NMFS to find ordinances…adequate, they must address the following issues in sufficient detail and in a manner that assures that urban developments will contribute to conserving listed salmonids and will result in development patterns and actions that conserve listed salmonids. Many of these issues are derived from Spence, An Ecosystem Approach to Salmonid Conservation (NMFS, 1996) and citations therein. NMFS recognizes that some of these principles require integrated planning for placement of buildings, transportation or stormwater management and that those 12 principles will have to be applied in the context within which the development is to occur, which will differ among major new developments and for small, single lot developments or redevelopments.

1. Avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.
2. Avoid stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed.
3. Require adequate riparian buffers around all perennial and intermittent streams, lakes or wetlands.
4. Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing and placement.
5. Protect historic stream meander patterns and channel migration zones; avoid hardening of stream banks.
6. Protect wetlands and wetlands functions.
7. Preserve the hydrologic capacity of any intermittent or permanent stream to pass peak flows.
8. Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer.
9. Prevent erosion and sediment runoff during construction.
10. Assure that water supply demands for the new development can be met without impacting flow needed for threatened salmonids either directly or through groundwater withdrawals, and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.
11. Provide all necessary enforcement, funding, reporting, and implementation mechanisms.
12. The development complies with all other state and Federal environmental or natural resource laws and permits.

B. The city or county…will provide NMFS with annual reports regarding implementation and effectiveness of the ordinances, including any water quality monitoring information the jurisdiction has available, an aerial photo (or some other graphic display) of each urban development or urban expansion area at sufficient detail to demonstrate the width and vegetative condition of riparian setbacks, success of stormwater retention and other techniques; and a summary of any flood damage, maintenance problems, or other issues.

C. Prior to determining that city or county ordinances…are adequate, NMFS will publish notification in the *Federal Register* announcing the availability of the ordinances…for public review and comment. The comment period will be not less than 30 days. If new information indicates the need to modify ordinances…that NMFS has previously found adequate, the city [or] county…will work with NMFS to draft appropriate amendments and NMFS will…determine whether the modified ordinances…are adequate. If at any time NMFS determines that compliance problems or new information shows that the ordinances or guidelines are not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU, NMFS will notify the jurisdiction. If the jurisdiction does not make changes to respond adequately to the new information, NMFS will publish notification in the *Federal Register* announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

D. NMFS approval of ordinances shall be a written approval by NMFS…Regional Administrator.

In addition, USFWS provides the following direction in the announcement of a 'special rule for bull trout' (November 10, 1999):

"We are also considering amending the special rule to exempt other land and water management activities from the take prohibitions of the Act when they are conducted in accordance with enforceable regulations that provide substantial protection for bull trout. Activities considered for coverage under the amended special rule would be non-Federal activities, and would be implemented under locally prepared, Service-approved, Conservation Enhancement Plans (CEPs). Activities that would be exempted under a special rule could involve some level of impact, but would have to fall within an overall framework that would contribute to the conservation of the species… We see an opportunity for State agencies and county and local governments (collectively referred to as the Jurisdictions) to provide substantial protection for bull trout. Jurisdictions could utilize their authorities to implement existing regulations, or promulgate new regulations that comply with the provisions of the Act. The Jurisdictions would enforce those regulations covering a variety of land and water management activities. A few of these existing authorities include growth management acts, shoreline management acts, State environmental policy acts, timber harvest regulations, and instream construction and water discharge permits. The benefit of an amended 4(d) rule to these Jurisdictions is that it provides an expedient process for obtaining generic approval in advance of ongoing and proposed actions requiring compliance with the take prohibitions of the Act. The amended 4(d) rule would provide take coverage and cost savings to thousands of small land owners, and others, who are conducting activities that may take bull trout. Once established, it is anticipated that Jurisdictions could obtain generic Service approval for State and local regulated activities faster than through the section 10(a)(1)(B) process for habitat conservation plans (HCPs)."

**Ongoing & Future Conservation Measures**

Local governments' current regulations, policies and practices further the efforts to conserve and protect salmon. The "Ongoing Conservation Measures" (see tables) detail Clallam County's effective measures, which can be implemented now under current regulations, policies and/or budget. "Future Conservation Measures" (see tables) may also include activities to which local jurisdictions have committed; these activities, such as watershed planning and habitat recovery efforts, are currently underway

The following tables also include "Future Conservation Measures." Clallam County is committed to pursuing and implementing these activities, based, in part, on ongoing assessment needs. The citizens of this county are strongly committed to the conservation and protection of salmon; thus, we have full faith that future conservation measures will be implemented as predicted by our local government.

The following portion of this document, much of which appears in tables, represents Clallam County's proposed actions. These actions will be effective during the watershed planning process of site-specific watersheds. This section also outlines major future conservation measures that jurisdictions will undertake, and specifically addresses each of the 12 principles of the proposed 4(d) rule as appears earlier in this document.

## Issue 1. Avoid inappropriate areas, such as unstable slopes, wetlands, areas of high habitat value and similarly constrained sites.

Table 6 below sets forth efforts the County currently has in effect as regards the use of "inappropriate areas" as defined above, as well as its plan for future efforts.

**Table 6. Avoidance of Inappropriate Areas**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Clallam County Shoreline Master Program (1989) | Update clallam County Shoreline master Program and Shoreline code for conformance with the Critical Areas Code and ESA (2001) |
| Clallam County Interim Critical Areas Ordinance (1992) | |
| County-wide Planning Policies (1993) | |
| Clallam County Comprehensive Plan and sub-area Plans (1995) | |
| State Wetland Integration Strategy Report (1997) | |
| | |
| Clallam County Shoreline Code Amendment (1997) | |
| Clallam County Critical Areas Code (1999) | |
| Critical Areas GIS Mapping and Updates | |

| | |
|---|---|
| (1992, 1995, 1999, 2000 | |
| Dungeness River Greenway Planning (1994) JimmyComeLately Restoration related acquisition | |
| Jamestown S'Klallam, WDFW, and IAC acquisition projects throughout Jamestown U&A | |
| Completion of Clallam County acquisition policy (2000) | |

## Issue 2. Avoid stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed.

Table 7 below sets forth the County's interim conservation standard with regard to the second principle of the proposed 4(d) rule. Particularly, NMFS has further defined this standard as follows:

"Preserve, or move stream flow patterns (hydrograph) closer to the historic peak flow and other hydrograph characteristics of the watershed. Through a combination of reduction of impervious surfaces, runoff detention, and other techniques development can achieve that purpose within its portion of the watershed. Other development design characteristics, stormwater management practices and buffer requirements will prevent sediment and other pollutants from reaching any watercourse." (NMFS)

**Table 7. Stormwater**

| Interim Conservation Standard | Future Conservation Standard |
|---|---|
| Adoption of 1992 Washington Department of Ecology Stormwater manual for areas within the jurisdiction affected by Critical Areas Code | Promulgation of clearing and grading code, (2000) |
| Clallam County Critical areas Code (1999) (Aquatic Habitat Conservation Area and Wetland Buffers, variance requirements to maintain watershed hydrology and stormwater recommendations). | Adoption of County-wide stormwater standards (Assumes State Standards meet NMFS/USFWS requirements) (2001) |
| WRIA 18, 19, 20 Limiting Factors Analysis describing stormwater effects by stream basin. (1999,2000) | Changes SEPA checklist to minimize stormwater impacts from residential development (2000) |
| Rural Road Design Standards to minimize impervious surface (1999-2000) | |
| Prepare Clallam County Erosion Control and | Further integrate Comprehensive Planning |

| | |
|---|---|
| Stormwater Brochure and Standards for small parcels (2000) | with Watershed Planning to minimize stormwater impacts. |

## Issue 3. Require adequate riparian buffers around all perennial and intermittent streams, lakes, or wetlands.

Table 8 below addresses the third principle of the proposed 4(d) rule as regards "riparian buffers" and Clallam County's efforts to incorporate NMFS standards locally. NMFS has outlined the importance of these buffers and has set probable restrictive needs as follows:

"Because of the intensity of disturbance in surrounding uplands, riparian buffers are at least as critical in urban areas as in rural areas. Without adequately vegetated riparian set-backs, properly functioning conditions including temperature control, bank stability, stream complexity and pollutant filtering cannot be achieved. All existing native vegetation must be retained because of its importance in maintaining bank stability, stream temperature, and other characteristics important to water quality and fish habitat. Prevent destruction of existing native vegetation prior to land use conversions. Where the area contains non-native vegetation, maintained lawn, or is cropped, add or substitute native vegetation within the riparian set-back to achieve a mix of conifer, deciduous trees, understory and ground covers must be planted. To the extent allowed by ownership patterns, the development set-back should be equivalent to greater than one site potential tree height (approximately 200 ft or at least to the break in slope for steep slopes) from the outer edge of the channel migration zone on either side of all perennial and intermittent streams, in order to protect off-channel high flow rearing habitat and allow full stream function. Within that set-back the first 50 ft should be protected from any mechanical entry or disturbance, structures,or utility installations, and should be dominated by mature conifers groundcovers. Disturbances should be minimized." (NMFS), together with some hardwoods and a vigorous, dense understory of native plants. This inner buffer should also be protected from high-impact recreational use and any trails should be of natural, permeable materials. The inner buffer provides multiple values, including root systems for bank stability. The outer 100-plus ft of set-back should be entirely in native vegetation (not in maintained lawn) with a mix of conifer, deciduous trees, understory and groundcovers. Disturbances should be minimized." (NMFS)

**Table 8. Riparian Buffers**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| State Wetland Integration Strategy Report (1995) | Integration of Limiting Factors Analysis with Watershed Planning under 2514 (2000-2004) |
| Clallam County Critical Areas Code (1999)<br><br>• Class 1 Fish and Wildlife Habitat Conservation Areas (Habitat Management Plan Required within 200' of Critical | Update Clallam County Shoreline master Program and Shoreline Code for conformance with the Critical Areas code and ESA (2001) |

| | |
|---|---|
| habitat for Threatened/Endangered Species)<br>• Restoration of degraded buffers required<br>• Aquatic Habitat Conservation Area Buffers<br>• Wetland Buffers and Wetland Variance Criteria<br>• Geologic Hazard (Channel Migration Hazard, Ravine, Marine Bluff) protection standards, buffers and Variance Criteria. | |

## Issue 4. Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing and/or placement.

Table 9 below describes County ongoing and future measures as regard "stream crossings," which applies to the fourth principle of the proposed 4(d) rule. NMFS has further defined standards of this principle as follows:

"One method of minimizing stream crossings and disturbances is to optimize transit opportunities to and within newly developing urban areas. Consider whether potential stream crossings can be avoided by access redesign. Where crossings are necessary, minimizing their impacts by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the 100-year flood and associated debris, and meet with WDFW criteria; assuring regular monitoring and maintenance over the long term; and prohibiting closing over of any intermittent or perennial stream. WDFW's Fish Passage Design at Road Culverts, March 3, 1999 provides an excellent framework for action." (NMFS)

**Table 9. Stream Crossings**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Clallam County Comprehensive Plan and sub-area Plans (1995) | Update Clallam County Shoreline Master Program and Shoreline code for conformance with the Critical Areas Code and ESA (2001) |
| Clallam County Critical Areas Code (1999)<br>• New road crossings of a typed stream requires a variance from code.<br>• Rural Road Standards (2000-2001) | Hoko-Ozette Road (Johnson Creek). |
| WRIA 18, 19, 20 Limiting Factors Analysis describing road/culvert effects by stream basin (1999,2000) | |
| Ongoing infrastructure projects such as the Jimmycomelately Bridge, Burlingame and | |

| | |
|---|---|
| Schoolhouse Bridges on the Dungeness and culvert replacement such as Jamestown Road (Cassalary Creek), Spath road (Mattriotti Creek), Whitcomb-Diimmel Road (Tassel Creek), Nordstrom and Wasankari Roads (Salt Creek), and | |

## Issue 5. Protect historic stream meander patterns and channel migration zones; avoid hardening of stream banks.

Table 10 below shows the future and ongoing actions of Clallam County to "protect historic stream meander patterns" pertinent to the fifth principle of the proposed 4(d) rule. NMFS has set a minimum standard of development design along streams as follows:

"All development should be designed to allow streams to meander in historic patterns of channel migration. Adequate riparian buffers linked the channel migration zone should avoid need for bank erosion control in all but the most unusual situations. Rip-rap blankets or similar hardening techniques are not allowed, unless bioengineering solutions are impossible because of particular site constraints. Habitat elements such as wood, rock, or other naturally occurring materials must not be removed from streams. WDFW's "Integrated Streambank Protection Guidelines, June, 1998" provides sound guidance, particularly regarding mitigation for gravel recruitment and channel complexity lost through streambank hardening." (NMFS)

Because NMFS failed to mention the importance of nearshore habitat and shorelines protection in the draft 4(d) rule, and because Clallam County has an unusually high proportion of nearshore and shoreline habitats along and within its geographical boundaries, the County chose to address this principle in its own plans, ordinances, and codes. Particularly, the Bank Stabilization standards in the Critical Area Code and the Update of the Shoreline Master Program and Code address marine shorelines. NMFS received numerous comments on this omission from their rule, though, in fairness, the current level of knowledge regarding the management of the nearshore marine environment is limited. More studies are needed regarding management of these areas to conserve salmonid habitat and prey species for salmon.

**Table 10. Stream Meander Patterns**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Clallam County Critical Areas Ordinance (1999)<br>• Channel Meander Hazards<br>• Bank Stabilization Standards | Update Clallam County Shoreline Master Program and Shoreline code for conformance with the Critical Areas Code and ESA (2001) |
| Update Dungeness River Comprehensive Flood Control Management Plan (2000) | Reconfiguration of Dungeness River Corps Levee (2000-2006) |

| | |
|---|---|
| FCAAP Funded Channel Meander Zone Mapping &Information Project (2000-2001) | |
| Kincaid Island Dike Removal Project (2000) | |
| Mapping of hardened marine and Freshwater shorelines in WRIA 18, 19, and 20 Limiting Factors Analysis | |

## Issue 6. Protect wetlands and wetlands functions.

Table 11 below explains Clallam County's ongoing and future efforts to "protect wetlands" at the standard of the draft 4(d) rule, particularly the rule's sixth principle. NMFS expands on its intent "to protect" as follows:

"Protect wetlands and the vegetation surrounding them to maintain wetland functions. Design around wetlands for their positive habitat, water quality, flood control, and groundwater connection values, providing adequate buffers. Retain all existing natural wetlands." (NMFS)

**Table 11. Wetlands**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| State Wetland Integration Strategy Report (1995) | Watershed Planning under ESHB 2514 to maintain hydrology of watersheds (1999-2005) |
| Clallam County Critical Areas Code (1999)<br>• Landscape and Watershed-based Functional Assessment Unique to Clallam County Wetlands<br>• Restoration of degraded buffers required<br>• Wetland Buffers and Wetland Variance Criteria<br>• Critical Areas GIS Mapping and Updates (1992, 1995, 1999, 2000)<br>• EPA-funded Wetland function Educational Project (2000) | Update clallam County Shoreline Master Program and Shoreline Code for conformance with the Critical Areas Code and ESA (2001) |

## Issue 7. Preserve the hydrologic capacity of any intermittent or permanent Stream to pass peak flows.

The efforts by Clallam County to "preserve hydrologic capacity" as pertains to the seventh principle of the draft 4(d) rule, are guided by standards and policies contained in Table 12 below. NMFS sets minimum standard requirements for local governments as follows:

"Local ordinances should assure that, at a minimum, the Flood Management Performance Standards of Title 3 of Metro's Urban Growth management Functional Plan are applied to all development in urban expansion areas, together with any other steps needed to protect hydrologic capacity. In combination with the buffer or set-back provisions above, this means that for new, large developments, fill or dredging should never occur unless in conjunction with a necessary stream crossing." (NMFS)

**Table 12. Hydrologic Capacity**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Clallam County Critical Areas Code (1999)<br><br>• Adoption of 1992 Washington Department of Ecology Stormwater manual for areas affected by Critical Areas Code.<br>• Aquatic Habitat Conservation Area Protection Standards<br>• Geologic Hazard Protection Standards | Creation of clearing and grading code, (2000) |
| | Adoption of county-wide stormwater standards (2001) |
| | Cooperation with City of Sequim in Stormwater Planning for Bell Creek Basin (2001-2003) |

## Issue 8. Landscape to reduce need for watering and application of herbicides, ` pesticides and fertilizer.

Table 13 below shows the County's efforts to comply with the eighth principle of the draft 4(d) rule. NMFS gives limited, but specific, direction on landscape plans, as follows:

"Plans must include techniques local governments will use to encourage planting with native vegetation, reduction of lawn area, and reduced water use. These steps will contribute to water conservation and ultimate reduction of fertilizers, pesticides, herbicides that may contribute to water pollution." (NMFS)

**Table 13. Landscape**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Clallam County Critical Areas Code (1999)<br><br>• Adoption of 1992 Washington Department of Ecology Stormwater manual for areas affected by Critical Areas code<br>• Buffer Standards for all Critical Areas | Creation of clearing and grading code, (2000) |
| Prepare Clallam County Erosion control and Stormwater Brochure and Standards for small parcels (2000) | Adoption of county-wide stormwater standards (2001) |
| | Change SEPA checklist to encourage reduced impervious surfaces, retention/planting of native vegetation (2000) |
| | Watershed Planning under ESHB 2514 to maintain hydrology of watersheds (1999-2005) |

## Issue 9. Prevent erosion and sediment runoff during construction.

Clallam County's efforts to "prevent erosion" as specific to the draft 4(d) rule's ninth principle is contained in Table 14 below. NMFS' directives include:

"Prevent discharge of sediments by assuring that at a minimum the requirements of Title 3 of Metro's urban Growth Management Functional Plan are applied in large scale urban developments." (NMFS)

**Table 14. Erosion and Sediment**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Adoption of 1992 Washington Department of Ecology Stormwater manual for areas affected by Critical Areas Code | Promulgation of clearing and grading code, (2000) |
| Clallam County Critical Areas Code (1999) (Aquatic Habitat conservation Area and Wetland Buffers, variance requirements to maintain watershed hydrology and stormwater recommendation. | Adoption of county-wide stormwater standards (Assumes State Standards meets NMFS/USFWS requirements) (2001) |
| WRIA 18, 19, 20 Limiting Factors Analysis describing stormwater/sedimentation effects by stream basin. (1999-2000) | Change SEPA checklist to minimize stormwater impacts from residential development (2000) |
| Rural Road Design Standards to minimize impervious surface (1999-2000) | Complete Forest Practices (conversion) MOU with DNR (2001) |
| Prepare Clallam County Erosion Control and Stormwater Brochure and Standards for small parcels (2000) | Further integrate Comprehensive Planning with Watershed Planning to minimize stormwater impacts (Ongoing) |

## Issue 10. Assure that water supply demands for the new development can be met without impacting flow needed for threatened salmonids either directly or through groundwater withdrawals, and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

Clallam County's ongoing and future actions as apply to the tenth principle of the draft 4(d) rule are specified in Table 15. Particularly, the County responds to "water supply demands" through its watershed plans, assessments and projects, as well as through entities that manage specific watersheds within county jurisdiction.

It should be noted that regulation of water withdrawal from ground or surface waters is within the regulatory control of the Washington State Department of Ecology. However, regulation of water *diversions* (for the presence and adequacy of fish screens) is the responsibility of the Washington State Department of Fish and Wildlife. Locally, current watershed planning councils focus on the issue of water conservation and supply in WRIAs 17, 18, 19 and 20. Combined, these WRIAs represent all watersheds contained within Clallam County.

**Table 15. Water Supply Demands**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Sequim Bay Early Action Watershed Plan (1990) | It is expected that entities such as Dungeness River Management team, Elwha-Morse Management Team, and WRIAs 19 & 20 will be ongoing into the foreseeable future. |
| Dungeness River Area Watershed management Plan (1993) | |
| Dungeness-Quilcene Plan (1995) | |
| Sequim,-Dungeness Groundwater Protection Strategy (1994) | |
| Dungeness River Water Conservation Projects (1996-present) | |
| Sequim-Dungeness Hydrogeologic Assessment (1995-1999 | |
| WRIA planning under ESHB 2514 for WRIAs 18 (Dungeness and Elwha), 19 (Lyre-Hoko), and 20 (Sol Duc) (1999-2003) | |

## Issue 11. Provide all necessary enforcement, funding, reporting, and implementation mechanisms.

Table 16 refers to Clallam County's addition of both water quality monitoring measures and personnel to perform those monitoring functions suggested by the eleventh principle of the draft 4(d) rule. NMFS sets general standards in the following excerpts from the rule:

"Identify a commitment to and the responsibility to regularly monitor and maintain detention basins and other management tools over the long term, and to adapt practices as needed based on monitoring results."

"Provide all enforcement, funding, monitoring, reporting, and implementation mechanisms needed to assure that ultimate development will comply with the ordinances."

"The city or county…will provide NMFS with annual reports regarding implementation and effectiveness of the ordinances, including any water quality monitoring information the jurisdiction has available, an aerial photo (or some other graphic display) of each urban development or urban expansion area at sufficient detail to demonstrate the width and vegetative condition of riparian set-backs, success of stormwater retention and other techniques; and a summary of any flood damage, maintenance problems, or other data issues." (NMFS)

**Table 16. Enforcement**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Addition of 2 Code Compliance Officers to Clallam County Department of Community Development (2000) | Formulation of monitoring strategy during watershed planning and habitat restoration processes andin approval of this plan by NMFS, USFWS and the Governor's Salmon Recovery Office (2000-2006) |
| Clallam County Streamkeepers Program for water quality, habitat and benthic invertebrate monitoring (1997-present | |
| Watershed plan related water quality monitoring (1991-present) | |
| Well monitoring database (1997-present) | |

## Issue 12. The development complies with all other state and Federal [sic] environmental or natural resource laws and permits.

Table 17 shows Clallam County's addition of personnel and management act requirements in fulfillment of the twelfth principle of the draft 4(d) rule. NMFS does not further define the role of local government on this principle.

In fact, the proposed 4(d) rule is contradictory on this point. In the text explaining the rule, this requirement is linked to principle eleven above, and requires a jurisdiction to have the enforcement and tracking ability to ensure development complies with the plan, i.e. this document in its final format. In the text of the proposed rule itself, this requirement is put forth without any explanation of intent, and the scope of the requirement is huge. Because of this lack of specificity, what NMFS expects from this requirement is difficult to interpret. Practically, it is impossible for any jurisdiction to certify to NMFS that any particular development, regardless of scale, meets with "all other state and Federal [sic] environmental or natural resource laws and permits."

**Table 17. Development Complicity**

| Ongoing Conservation Measures | Future Conservation Measures |
|---|---|
| Addition of 2 Code Compliance Officers to Clallam County Department of Community Development (2000) | Formulation of monitoring strategy during watershed planning and habitat restoration processes and in approval of this plan by NMFS, USFWS and the Governor's Salmon Recovery Office (2000-2006) |
| GMA requirements for consistency (approved water source) prior to issuanceof building permits (1993) | Better coordination across jurisdictions, especially cities and counties Washington Department of Fish and Wildlife, Washington Department of Ecology, US Army Corps of Engineers, and NMFS and USFWS themselves. |

## Road Maintenance

The proposed standards in the 4(d) rule fall into three general areas:

1. The setting of regional standards for road maintenance. Washington State Department of Transportation has been in negotiations with NMFS and USFWS in regards to these standards.
2. The scheduling and means of tracking training for road crews to implement these standards.
3. The developing of a "guidebook" for road maintenance that is specific to given road segments, i.e. scheduling the maintenance of ditches at times that would cause the least damage to aquatic resources, culvert maintenance schedules, management restrictions around wetlands adjacent to the road, etc.

The proposed 4(d) rule identifies the road maintenance issues that must be addressed before NMFS will certify such local activities as ESA compliant. The following excerpts from the 4(d) rule present these road maintenance issues:

"A. The take prohibitions…do not apply to road maintenance activities provided that:

1. The activity results from routine road maintenance activity by…county or city employees that complies [sic] with the Oregon Department of Transportation's Maintenance Management System Water Quality and Habitat Guide (June, 1999).
2. Neither pesticide and herbicide spraying not ODOT dust abatement are included within this exception, even if in accord with the state's guidance.
3. Prior to implementing any changes to the 1999 Guide, the ODOT will provide NMFS a copy of the proposed change for review and approval as within this exception.

B. Prior to approving any change in the 1999 Guide, NMFS will publish notification in the Federal Register [sic] announcing the availability of the draft changes for publicreview and comment. Such an announcement will provide for a comment period on the draft changes of not less than 30 days.

C. Any city or a county in Oregon desiring its routine road maintenance activities to be within this exception first enters a memorandum of agreement with NMFS committing to apply the management practices in the guide, detailing how it will assure adequate training, tracking, and reporting, including how it will control and narrow the circumstances in which a practice will not be followed because it is not 'feasible,' 'practical,' or 'possible' and describing in detail any dust abatement practices it requests to be covered.

D. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. With a full-time staff person at NMFS dedicated to coordination and communication with ODOT staff on a regular basis and participation in monthly and quarterly review meetings, NMFS is assured of regular feedback on how the program is operating. That feedback will provide information on the frequency and nature of any deviations from the practices specified in the Guide….Finally, through annual reporting of external complaints and their outcomes, ODOT will identify needed 'modifications of, or improvements to' any of the minimization/avoidance measures and has committed to making changes to the measures as necessary. Likewise, ODOT will incorporate changes reflecting new scientific information and new techniques and materials. If the program does not achieve its goals, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat not supporting population productivity levels needed to conserve the ESU. If…the ODOT program to no longer provide sufficient protection for threatened salmonids, NMFS shall notify ODOT. If ODOT does not make changes within a mutually determined time period to respond adequately to the new information, NMFS will publish notification in the Federal Register [sic] announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

E. NMFS' approval of city or county programs following the ODOT program, or of any amendments, shall be a written approval by NMFS' Northwest Regional Administrator.

*Existing and On-going Conservation Efforts*

Clallam County's response to this portion of the draft 4(d) rule is to convene a regional work group (DOT Olympic Region and Clallam, Jefferson, Mason, and Grays Harbor Counties) in June 2000. This group will review and amend the DOT standards for maintenance and will develop a region-wide training and tracking process, which DOT will likely lead.

With its GIS system and geographic framework process, Clallam County will be developing road segment specific maintenance guides, beginning in those areas where listed stocks are most effected. Probably, this process will take several years to complete and will require the commitment of substantial funds. Clallam County is currently seeking funding for a new, more detailed topographic data layer to simplify this task.

*Towards Recovery*

Salmon, probably more so than most other species , are intimately adapted to both the local freshwater and nearshore environments they inhabit and the larger-scale oceanic environments , that represent a portion of their life-history. Recovery of salmon populations and the ecosystems they inhabit will require large scale and local actions that are as intimately linked to watersheds as the salmon themselves.

On a regional scale, the requirements for salmon recovery and ecosystem restoration are simple : understanding the habitat conditions within our local watersheds; understanding how salmon populations are related to each other and to those habitat conditions; and how actions by individuals and organizations effect those relationships. The northern Olympic Peninsula contains an incredible geographic, biologic, and ecological diversity. The task of salmon recovery on the northern Olympic Peninsula is,therefore, complex, and requires more sustained and coordinated efforts, and presents more unique challenges than similar efforts in other areas of the State. The recent listing of four species that occur on the northern Olympic Peninsula, more listings than in any other area of the State, is a direct reflection of this diversity and complexity. This document cites numerous actions, programs, reports, studies, and recommendations undertaken by the County and its cooperators. A full and complete understanding of the scope of salmon recovery efforts that have taken place and will take place would require that all of these documents be included or attached to this document. The collective size of these documents (besides being a monumental task to a reader) prevents their inclusion in this document. As further understanding is gained, the information and complexity of the "problem" will grow.

A keystone to salmon recovery in Clallam County is the dependence on local watershed management committees to implement salmon recovery programs and actions. It is at this scale that the information gathered is most useful, and feedback is most direct. It is also at this scale that salmon recovery will have the best chance of success. Linking local actions to larger scale actions, including the requirements of the Endangered Species Act, is not the sole responsibility of Clallam County or its cooperators. The federal and state agencies must show willingness to allow flexibility in their own actions, and in actions that are undertaken by local groups. Clallam County hopes that this document is a first step toward recovery, trust and cooperation between all citizens and levels of government.

# General Habitat Management Plans and Guidance for Threatened Species of Salmonids in Clallam County

4/11/00

The guidance/recommendations incorporated in this document are subject to change in the future, when additional scientific information becomes available or specific direction is received from the listing agencies (National Marine Fisheries Service (NMFS) or US Fish and Wildlife Service (USFWS)). The need for additional information in the marine shoreline environment is especially acute, as the relationship between certain development activities and habitat quality is poorly understood. Given these uncertainties, this document is intended to provide minimum requirements for a Habitat Management Plan, and as a starting point for professionals who will be preparing such plans.

Class I Wildlife Habitat Conservation Areas are defined within the Clallam County Critical Areas Code as "Within 200-feet or equivalent to critical habitat designations for threatened or endangered species under the federal Endangered Species Act, or Washington State law". On Feb. 16, 2000 NMFS published final rule designating "critical habitat" for the following "threatened" species – Puget Sound Chinook, Hood Canal-Strait of Juan de Fuca Summer Chum, and Lake Ozette Sockeye. The Critical Habitat designations included areas which are currently inhabited by the species such in Jimmycomelately Creek, the Dungeness River, the Elwha River, the Ozette River, Lake Ozette and tributaries, and the Strait of Juan de Fuca from the eastern County line to the western head of Freshwater Bay. On March 17, 2000, these critical habitat designations became effective, and Clallam County began regulation of these areas as Class 1 Wildlife Habitat Conservation Areas. Regulated development activities which occur within or adjacent to (200 feet landward from the Ordinary High Water Mark (OHWM)) Class I Wildlife Conservation Areas require the preparation of a Habitat Management Plan pursuant to the requirements of the Clallam County Critical Areas Ordinance.

The guidance outlined below serves as recommended Habitat Management Plans for minor new development (i.e. predominantly single family residences) proposed adjacent to Class 1 Wildlife Conservation Areas. Adherence to specific elements outlined below will satisfy the requirements for a Habitat Management Plan. Departure from the guidance outlined below, or major new development (land divisions, commercial or industrial development or clearing in excess of an acre) will require preparation of a site-specific Habitat Management Plan by a private consultant.

*General Habitat Management Plans*

The locations within the County which currently are classified as Class I Wildlife Conservation Areas for the threatened salmonids listed above occur in both the marine and freshwater environments. The preparation of a Habitat Management Plan will be different in depending upon the environmental conditions in the local area. The following guidance is specific to the

general types of environments which can be found within the present Class I Wildlife Habitat Conservation Areas in the County. It should be noted that the standards outlined below will in many cases be less stringent than required in other parts of the Critical Areas Code, or in other portions of County Code. For instance, building setbacks from the top of a Marine Bluff will also need to meet the standards of the Shoreline Code and the Building Code; Channel meander hazards (a Geologic Hazard Area under the Critical Areas Code) are in many locations farther than 200 feet from the OWHM, development in these areas would not be allowed without a Variance from the standards of the Critical Areas Code.

**Marine Shorelines** –

Top of Marine Bluff –

1) Permanent structures are located at least one site potential tree height (125-180 feet) from the top of the bluff or 200 feet from the OHWM . Native vegetation within this zone should be retained.
2) Where native vegetation is not present, it should be replanted and restored when it is possible and safe to do so.

Toe of Marine Bluff – (total distance from base of bluff to OHWM less than 200 feet)

1) The amount of clearing and grading is the minimum necessary, and is located such that the need for future bulkheading is eliminated. Mitigation measures could include reworking of existing bulkheads to form a more "natural" beach environment, or beach nourishment.
2) Proposed developments in these areas will require the preparation of a geotechnical report and a Variance (Public Hearing before the County's Hearing Examiner) from the Geologic Hazard Protection standards of the Critical Areas Code in addition to the Habitat Management Plan.

Low Angle Bluff – This type of shoreline is mostly restricted to areas of Sequim Bay and other protected waters along low energy marine shorelines. These areas generally can fully support coniferous species of trees and a normal forest understory.

1) Development is located more than one site potential tree height (125-180 feet) from the shoreline. These areas will also likely require preparation of a geotechnical report if located on the slope itself.

Low Bank or No Bank Littoral Beaches – These areas are located at Diamond Point, parts of interior Sequim Bay, the Jamestown/Jamestown Beach/Seashore Lane/3 Crabs road shoreline, the mouth of Morse Creek, and areas east and west of the Elwha River. The primary cause of habitat disruption on these types of shorelines, which are characterized by annual beach erosion and deposition cycles, is the construction/maintenance of marine bulkheads. Development should be located well landward of the OHWM to prevent the need for bulkheading in the future.

Typically this means location of new development well back from the primary beach berm, and retention of the native vegetation (usually beach rye) on the beach berm or primary dune.

1) Development is located landward of the start of tree cover where tree cover is present. In areas where tree cover is not present, development should be located 50 feet landward from the landward edge of the primary beach dune.
2) Proposals for reconstruction of existing bulkheads should include consideration of beach nourishment, alternative design of the bulkhead, or removal of the bulkhead. A coastal geologist or engineer must be consulted in proposals for construction or maintenance of marine bulkheads. The implementation of the Habitat Management Plan should be monitored no less than every 5 years. Monitoring can include site visits and remote sensing data/use of the County Geographic Information System.

Deltas and Estuaries – Maintenance of tidal flux and flow patterns is essential to the proper functioning of these areas as fish and wildlife habitat and to reduce flood damage to adjacent properties or structures.

1) Development is located outside of the floodplain wherever possible (as required in the Frequently Flooded Areas chapter of the Critical Areas Code) and deposition of fill eliminated.
2) Development should be located at least one site potential tree height from the OHWM or edge of the wetland, and native vegetation retained between the development and the OHWM or wetland edge.

Rivers and Creeks –Most rivers and creeks are currently bounded by either Channel Meander Hazard or other Geologic Hazards (i.e. ravines). Development in these areas will require the preparation of geotechnical reports according to the standards listed at CCC 27.12.820 in the Critical Areas Code. In general, those areas which are not bounded by a geologic hazard area have had the riparian zones reduced or eliminated by past land-use practices. In these areas the buffers should be restored, and development located at least one site potential tree height from the OHWM. Construction of new dikes, levees or bulkheads will generally occur within Channel Meander Hazards associated with riverine systems. These types of developments will require a Variance (Public Hearing before the County's Hearing Examiner) from the Critical Areas Code and will require the preparation of a geotechnical report in addition to a Habitat Management Plan.

1) Development is located outside of the jurisdictional area if possible given lot dimensions. All native vegetation should be retained within site potential tree height of the OHWM.
2) Where the native vegetation no longer exists within one site potential tree height, native tree cover is re-established.
3) Reconstruction of existing dikes, levees, and bulkheads incorporates large woody debris and vegetation (and meet the standards for Stabilization and Relocations defined in the Critical Areas Code). Use of WDFW's Integrated Streambank Protection Guidelines is recommended.

General Requirements:

The implementation of the Habitat Management Plan should be monitored no less than every 5 years. Monitoring can include site visits and remote sensing data/use of the County Geographic Information System.

1) Clallam County will be allowed to monitor compliance with the Habitat Management Plan into the future. Before entering onto the property for monitoring of compliance with the plan or the success of any vegetative plantings, Clallam County shall give the landowner 2 weeks written notice.

**Adherence to the Habitat Management Plan** – As required in the Critical Areas Code:

"Any property on which a development proposal is submitted shall have filed with the Clallam County Auditor: 1) a notice to title of the presence of the critical area or buffer, 2) a statement as to the applicability of this chapter to the property, and 3) a statement describing possible limitations on actions in or affecting such areas or buffers as approved by the Administrator. Clallam County shall record such documents and will provide a copy of the recorded notice to the property owner of record. Development proposals which are also defined as normal repair and maintenance of existing structures or developments, including but not limited to: roof repair, interior remodeling, wood stove permits, etc., and on-site sewage disposal systems repairs or replacement, are exempt from this requirement. Applies to: Wetlands, Aquatic Habitat Conservation Areas, Class I Wildlife Conservation Areas, Landslide Hazards, and Frequently-flooded areas."(CCC 27.12.320.4)

For Class I Wildlife Conservation Areas, the notice to title includes a statement that "A Habitat Management Plan has been formulated for this parcel and is on file with the Clallam County Department of Community Development. All development on this parcel shall occur in accordance with the provisions of the Habitat Management Plan."
This will ensure that departure from the requirements of the Habitat Management Plan will be a violation of County Code. In addition, final approval of any development undertaken pursuant to a Habitat Management Plan shall not be given if any provisions of the plan are not adhered to. Final approval will not be given until such time as a mitigation plan for the effected habitat is prepared, approved by the County, and implemented.

*Privately Prepared Habitat Management Plans*

For major new development, or for development proposals which require departure from the general plans listed above, a Habitat Management Plan must be formulated by a qualified biologist and submitted for the County to review and approval. The standard for approval by the County is that "no net loss of wetland or critical habitat results". Development proposals which will result in a net loss of critical habitat will require a Variance from the standards of the Critical Areas Code.

The standards for preparation of a Habitat Management Plan are defined in the Critical Areas Code as follows:

## C.C.C. 27.12.830 HABITAT MANAGEMENT PLAN

1. This report shall identify how the development impacts Class I or II Wildlife Habitat Conservation Areas. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations (1991) may serve as guidance for this report or bald eagle protection rules outlined in WAC 232-12-292, as now or hereafter amended.

2. The Habitat Management Plan shall contain a map prepared at an easily readable scale, showing: the location of the proposed development site; the relationship of the site to surrounding topographic, water features, and existing and/or proposed building locations and arrangements; a legend which includes a complete legal description, acreage of the parcel, scale, north arrows, and date of map revision.

3. The Habitat Management Plan shall also contain a report which describes the nature and intensity of the proposed development; an analysis of the effect of the proposed development, activity or land use change upon the wildlife species and habitat identified for protection; and a plan which identifies how the applicant proposed to mitigate any adverse impacts to wildlife habitats created by the proposed development.

4. This plan shall be prepared by a person who has been educated in this field and has professional experience as a wildlife biologist. For minor new development proposals, the Department of Community Development may complete the plan unless the applicant wishes to employ a qualified professional at the applicant's expense. Where this plan is required for the protection of eagle habitat, the eagle habitat management plan shall normally be prepared by the Department of Fish and Wildlife as required under the Bald Eagle Management Rules.

Specifically, if the proposed development activity will have an effect on the habitat identified for protection, the “mitigation” sequence for the plan is defined in the next two sections:

## c.c.c. 27.12.840 Mitigation plan - GENERAL REQUIREMENTS

1. The applicant shall identify and describe why those regulated uses and activities are not and cannot be consistent with the provisions of this chapter and shall describe how impacts shall be mitigated.

2. The applicant shall mitigate impacts to critical areas by doing one or more of the actions listed below in order of preference:

    a. Avoiding the impact altogether by not taking a certain action or parts of actions. This may be accomplished by selecting a reasonable alternative that does not involve impacts to critical areas or buffer impacts; applying reasonable mitigation measures, such as drainage and erosion control, alternative site planning, and/or using best available technology.

    b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts. This may be accomplished in one of the following methods, or through other methods as deemed appropriate: selecting a reasonable alternative that avoids most critical area impacts; applying reasonable mitigation measures, such as drainage and erosion control, preservation of critically important plants and trees, limitation of access to critical areas, seasonal restrictions on construction activities, phased development, and/or establishment of buffers.

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment for unavoidable impacts. This may be done by reestablishing critical area functions and buffers on-site which have been lost by alterations or activities.

d. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments for unavoidable impacts. This may be done by intentionally creating critical area functions and buffer at another location where none currently exist, improving existing wetlands and wetland buffers at another location, or otherwise providing a substitute wetland resource at another location as compensation for any unavoidable adverse wetland impacts.

3. The Review Authority shall determine whether identified impacts can be first avoided and secondly minimized. For any impacts to critical areas that are determined to be unavoidable and necessary, the Review Authority shall determine whether such impact should be rectified or compensated. The Review Authority shall affirm that no net loss of wetland or critical habitat results.

4. Critical area impacts can be mitigated if mitigation measures would not result in an extraordinary hardship and denial of reasonable use of the property.

## C.C.C. 27.12.850 AQUATIC AND WILDLIFE HABITAT CONSERVATION AREAS - SPECIAL REQUIREMENTS

1. Mitigation plans for impacts to wildlife habitat conservation areas shall be prepared by a biologist with professional experience in mitigation plan design, implementation, and monitoring. Where this plan is required for the protection of eagle habitat, the eagle habitat management plan shall normally be prepared by the Washington State Department of Fish and Wildlife, as required under the Bald Eagle Management Rules. The Washington Department of Wildlife Priority Habitat and Species Management Recommendations, dated May 1991, may serve as guidance for preparing mitigation plans to protect Wildlife Habitat Conservation Areas.

2. Possible mitigation measures to be included in the report, or required by the Review Authority, could include, but are not limited to:

a. Establishment of buffer zones;

b. Preservation or restoration of critically important plants and trees, or other affected areas;

c. Limitation of access to habitat areas;

d. Seasonal restriction of construction activities; and

e. Establishing phased development requirements and/or a timetable for periodic review of the plan.