

**METRO**

June 14, 1999

Kathryn L. Henton
2129 SE Douglas Place
Gresham, OR 97080

Dear Ms. Henton,

Thank you for the thoughtful, well written outline of your concerns regarding the Kelly Creek Meadows development. I especially appreciate the constructive fashion in which you voiced them.

I plan on attending your meeting on June 22 to listen and answer questions, but I am also obligated to attend a meeting of the Metro Policy Advisory Committee (MPAC) on the same night. I should be able to get to your meeting by around 7 PM. Ironically, a topic of the MPAC meeting is the Urban Growth Report which will be released on June 22nd. That report will guide the Metro Council on how much land needs to be added to the urban growth boundary to meet state law.

I have included a copy of an article I wrote entitled "Metro Myths" which may explain in part why developments such as Kelly Creek Meadows are happening. You have asked some very good questions about the process and I would like to discuss them with you further at your convenience. My direct phone number at Metro is 797-1957, or you can reach me at home at 663-5212.

Sincerely,

Rod Park
Metro Councilor
District 1

RP:cig



METRO

August 3, 1999

The Honorable Donald Robertson
Mayor of the City of Wood Village
2055 NE 238th Drive
Wood Village, OR 97060

Dear Mayor Robertson:

I want to formally congratulate you and the Wood Village City Council for the good work you have been doing and for being first to comply with the region's Urban Growth Management Functional Plan encouraging more efficient use of land, promoting non-auto trips and protecting our air quality.

Please continue to call on me and the Metro staff for any help or input you may require to achieve your goals and objectives for the 2040 Growth Concept Plan.

Once again, I commend you on your accomplishment.

Sincerely,

A handwritten signature in cursive script that reads "Rod Park". The letters are fluid and connected, with a prominent 'R' and 'P'.

Rod Park
Metro Councilor
District 1

RDP:cg

COUNCILOR ROD PARK

600 NORTHEAST GRAND AVENUE
TEL 503 797-1547

PORTLAND, OREGON 97232 2736
FAX 503 797-1793



METRO

November 29, 1999

Alfred Meisner
Cascadian Nurseries, Inc.
13495 N.W. Thompson Road
Portland, Oregon 97229

RE: Title 3 (Clean Water Act) & Goal 5 (Fish and Wildlife Habitat Protection)

Dear Mr. Meisner:

Fred

Thank you for your letter, dated November 17, 1999, regarding Metro's focus on fish and wildlife along streams. I am aware of the salmon hatchery issue, and began reading about it over a year ago while still serving as the nursery representative to the Board of Agriculture. I am also aware of Beaverton School District's plans for the Teufel Nursery property, although I have not talked directly with the Teufel family about their situation.

While I am aware of these two issues which you cited, they are not within the span of Metro's control. I agree with you that the Oregon Department of Fish and Wildlife (ODFW) and the Department of Environmental Quality (DEQ) are very powerful. They both derive their authority from laws and regulations passed by the Federal Government. The ODFW is involved because of the Endangered Species Act, and the DEQ is involved due to the Clean Water Act (as you know from our past experience in the container nursery runoff plan).

I can talk about how Metro plans to respond to the issues you raised in your letter. First, in June 1998, Metro adopted Title 3 (Stream and Floodplain Protection Plan) in response to the mandates of the Clean Water Act. I have included a copy of those regulations. Title 3 is similar to agriculture's SB 1010 program for non-point source pollution. It sets regulations for setbacks and activities along all streams inside the Metro jurisdictional boundary.

Title 3 was reviewed and adopted by the Metro Policy Advisory Committee (MPAC). MPAC then formally recommended that the Metro Council adopt Title 3 regulations. MPAC is made up of local elected officials and citizen appointees, for the purpose of identifying areas of "metropolitan concern" to which the Metro Council must then respond. MPAC advises the Metro Council and passes along recommendations on all issues of metropolitan concern.

This relationship is very beneficial since local cities and counties will actually establish and administer any regulations adopted by the Metro Council. Currently, Title 3 regulations are being adopted by the local jurisdictions at varying rates depending upon the jurisdiction's complexity and available resources. Adoption of Title 3 regulations should be completed by October 2000.

As under SB 1010, Title 3 can only be used to enforce the Clean Water Act. It cannot be extended to regulate habitat issues. This is where Goal 5 of the State of Oregon land use laws comes into play. The Metro region, as well as all cities and counties in Oregon, is required to inventory all the natural habitat areas under its jurisdiction. It is then required to adopt regulations to protect those areas.

Complicating the issue further is the recent listing of certain salmon species as threatened under the Federal Endangered Species Act. We do not know what the National Marine Fisheries Services (NMFS) will require in the way of setbacks from streams and rivers, or what other measures may be required.

NMFS has indicated that it does not consider Metro's draft proposal, which was developed by Metro's Water Resources Policy Advisory Committee (WRPAC), to be acceptable. In its initial draft, WRPAC proposed limited development in areas up to 175 feet from each side of streams and wetlands. NMFS has indicated that it will not allow any development within 200 feet or more of streams and wetlands.

Your question was, "What can we do to make sure this issue goes away. 350' on each side of a river or stream . . . is not acceptable." The honest answer is, I don't know. What I can tell you is this: the laws to protect the environment exist in the Federal and State Governments.

Environmental groups regularly file, and win, lawsuits to require enforcement of those laws. As you may recall, the container nursery runoff program was a direct response to a lawsuit filed against DEQ for not enforcing the Clean Water Act on the Tualatin River. Serious consideration is being given to the removal of four dams on the Columbia River for the protection of salmon.

The public protection of the environment is being placed on the backs of private landowners. I do not believe this is being done on purpose, it is simply because they own most the land to be protected. I have a personal philosophy that when a private individual is asked to do something on behalf of the public, it is up to the public to make that person whole again. This is a philosophy I carry into my work at Metro, and which I try to implement in public policy.

As Metro works through the Goal 5 habitat issues to comply with state and federal laws, I will be striving to see this direction fostered in public policy. I have

Mr. Alfred Meisner
November 29, 1999
Page 3 of 3

already begun exploring the possibility of conservation easement tax credits and other policies which will help even out the burden of protecting the environment.

Please feel free to contact me as Metro continues its work on these very difficult issues. I have enclosed the preliminary draft of the Goal 5 work. Under the current work schedule, Metro should soon start its public hearings on the draft. We hope NMFS will publish its preliminary 4(d) rule (guideline for takings) in December of this year. Everyone will be then be in a better position to evaluate what will be required to meet the Federal guidelines.

Sincerely,

A handwritten signature in cursive script that reads "Rod Park".

Rod Park
Metro Councilor District 1

Encl.: Title 3
Goal 5 preliminary draft

cc: OAN

RP:sm

Agency outlines ideas to aid fish, save dams

Painful and costly alternatives to breaching include cutting fishing and enforcing restrictions that would protect tributaries

By JONATHAN BRINCKMAN
THE OREGONIAN

The federal government raised the stakes in the Northwest's thorniest environmental debate Tuesday, outlining painful and costly alternatives for saving

Snake River salmon without removing dams.

Among the most drastic options: sharp cuts in commercial and sport salmon fishing; unprecedented restrictions on logging, grazing and development to protect tributaries and streams; and a shift away from reliance on hatchery production.

Taken together, such steps could rival or exceed the \$1 billion cost of breaching four federal dams on the lower Snake.

The salmon recovery options are set

out in a report the National Marine Fisheries Service released Tuesday during Portland news conference.

Tribal leaders and conservationists reacted swiftly. By targeting fish harvest and habitat improvements, the federal government is ducking responsibility for its role in the decline of salmon and steelhead trout populations, they said.

"This is a gun raised directly at the heart of tribal fisheries," said Tim Weaver, an attorney representing the Yakama Nation, one of four tribes with treat-

Please see **SALMON**, Page D7

Salmon: Users look at causes, cures for declining fish runs

Continued from Page D1

rights to Columbia River Basin salmon. "It's ridiculous."

"This isn't about science; it's about politics," said Diane Valentine of Save Our Wild Salmon, a conservation group that has called for breaching the dams. "All they are doing is putting more options on the table as another excuse to delay a decision on the dams."

But Bruce Lovelin, executive director of the Columbia River Alliance, said it was past time to shift attention from breaching dams to other causes of declining salmon runs. The four dams generate 5 percent of the region's electric power and provide slack water for barging as far inland as Lewiston, Idaho.

"A regional food fight will probably begin as people start defending their own turf," said Lovelin, who represents industrial river users. "But it's important that other areas where salmon are dying also come to the table."

Will Stelle, regional director of the fisheries service, said the nine federal agencies that drafted the report, known as the 4H Paper, were describing the region's alternatives but not recommending which to pick. "The only game plan here is to lay out the choices and try to stimulate honest debate in the region," Stelle said.

The options range from modest efforts that would improve fish habitat to breaching the four lower Snake River dams: Ice Harbor, Lower Monumental, Little Goose and Lower Granite.

In April, the fisheries service said breaching the dams would be the surest way to save Snake River salmon runs from extinction and ensure their recovery. But Stelle's remarks and the scientific findings released Tuesday indicate the fisheries service is shifting away from that position.

Stelle said a new fisheries service analysis concluded that breaching the dams would not get Snake River spring/summer chinook off the path to extinction. Restoring their habitat would have far greater effect, Stelle said.

The best choices for aiding Snake River fall chinook would be to breach the dams or cut harvests, he said. That's because fall chinook spawn in the Snake itself, not in its tributaries.

Tribal representatives said they would oppose tribal harvest limits. The tribes, which have called for breaching the dams, stopped commercial harvests of summer chinook in 1964 and spring chinook in 1977.

"The experiment of us cutting harvest for spring/summer chinook has been under way for 30 years and hasn't worked to restore the salmon," said Charles Hudson, a spokesman for the Columbia River Inter-Tribal Fish Commission, which represents four tribes with treaty rights to Columbia Basin

SAVING SNAKE RIVER FISH

The federal government released a report Tuesday that outlines options for each of the four H's that affect survival of salmon and steelhead trout in the Columbia River Basin: habitat, harvest, hatcheries and hydropower. Federal officials said they are not recommending specific actions but are seeking only to stimulate regional discussions about what to do for salmon. Here are the options:

HABITAT

Option 1: Make modest improvements to protect and restore salmon and steelhead trout habitat, primarily through increased federal coordination and more federal spending.

Option 2: Increase the efforts of state, tribal and local governments. Increase federal spending on habitat improvements, particularly by tying the money to water-quality compliance efforts.

Option 3: Increase regulation by federal agencies on nonfederal land if state and local governments are unable to ensure that they will undertake adequate habitat restoration programs.

HARVEST

Option 1: Implement the recently completed Pacific Salmon Treaty with Canada, which calls for reducing ocean fishing. Hold in-river harvests of salmon and steelhead at 1999 levels, with modest increases if fish populations rise.

Option 2: Implement the international treaty and hold in-river harvest rates at the 1999 level until salmon recovery goals are reached.

Option 3: Implement the treaty, reduce harvests to crisis levels for 10 years and then shift to Option 1 or 2.

HATCHERIES

Option 1: Continue the current mix of hatchery production, which aims to provide fish for sportfishing and commercial catches and to help boost stocks of wild fish.

Option 2: Continue production for commercial and sport harvests but increase hatchery production of wild stocks.

Option 3: Substantially decrease production for harvest while increasing production of wild stocks.

HYDROPOWER

Option 1: Continue efforts to improve the hydroelectric system by, for example, installing better screens to keep young fish from being killed in the dams' turbines.

Option 2: Substantially increase investment in physical improvements to the hydropower system, such as devices to help salmon get past dams.

Option 3: Breach the four federal dams that block salmon passage on the lower Snake River in southeastern Washington: Ice Harbor, Lower Granite, Little Goose and Lower Monumental. Earthen portions of the dams would be removed, allowing the river to flow freely around them.

—Source: National Marine Fisheries Service

salmon. "There is nothing to suggest it will work this time."

Stelle said after the news conference that the fisheries service would recommend against breaching the dams only if it thought other steps the region takes would be sufficient to save salmon. "What we choose to do in the habitat area very much affects what we will have to do in dam removal," he said.

In Washington, members of Congress and their staffs were briefed on the federal document in a closed-door meeting. Afterward, several said the report raised as many questions as it answered and laid the foundation for a lengthy legal and political battle over fish recovery efforts.

"We aren't even at the kickoff yet," said Rep. Peter DeFazio, D-Ore.

The fisheries service is to make a recommendation to Congress by spring whether breaching the dams is the best option. Congress would make the final decision.

But DeFazio and others expect

the fisheries service's recommendation to be postponed for several years as scientists gather more information.

The report released Tuesday did not calculate the cost of saving salmon without breaching dams. Those numbers will come in a follow-up document to be released in December.

Conservationists think the costs of restoring habitat or cutting fish harvests will be much greater than the cost of breaching dams.

"When it comes down to it, what kind of economic sacrifices are people willing to make?" said Jeff Curtis, Western conservation director of Trout Unlimited. "The region can afford dam breaching. Can it afford the alternatives?"

♦
Jim Barnett of The Oregonian's Washington, D.C., bureau contributed to this report.

You can reach Jonathan Brinckman at 503-221-8190 or by e-mail at jbrinckman@news.oregonian.com.

Protecting wild coho salmon

State agency deserves praise for preventing surplus hatchery fish from thwarting salmon-protection plans

Most scientists now agree that the traditional salmon hatchery, which was designed to support and rebuild sport and commercial fisheries, harms wild fish and may contribute to extinction of imperiled species.

Last week, a state Circuit Court judge in Newport accepted the scientific consensus and preserved, at least for the moment, the Oregon Department of Fish and Wildlife's wild-fish policy.

All Oregonians who want to see the state succeed in its strategy to save imperiled salmon, and thus avoid costlier Endangered Species Act-imposed consequences, should be thrilled about the judge's decision in this case.

If the court had ruled in favor of the Pacific Legal Foundation's request to stop the agency from killing some 3,000 hatchery coho expected to return to the Alsea River's Fall Creek hatchery, then Oregon's wild salmon protection plan would unquestionably collapse.

The alternatives to preventing adult hatchery fish from overwhelming the dwindling returns of wild coho are costly. Besides, such actions as total fishing moratoriums and crackdowns on livestock grazing and forest practices on private lands won't work if the hatchery fish are allowed to compete with the smaller wild fish for food and space.

Agency biologists argue that hatchery fish reared at Fall Creek are genetically unsuitable to assist wild coho recovery, nor are they adaptable to life in the wild. The broodstock for the hatchery was taken from the wild in the 1950s, but from a variety of watersheds spread throughout the region. Genetically, they are not the same fish.

Recognizing that, the vast majority of fish biologists have concluded that in-breeding of factory fish with those

spawned in the wild would severely weaken the wild fish.

Indeed, three scientific panels have concluded that hatchery programs have adverse effect on wild populations.

Despite this mounting scientific evidence about conventional hatcheries, some sport and commercial fishing groups — and more recently, the Pacific Legal Foundation — continue to challenge the science with the mythological assumption that a fish is a fish is a fish.

The Oregon Department of Fish and Wildlife believes that hatchery fish can play a role in the restoration of depressed populations of wild fish. Maybe so, but considerable caution should be exercised in developing and implementing such strategies.

Northwest tribes are encouraged by results of some modern hatchery supplementation projects, in which the eggs of wild salmon are used to jumpstart a line of hatchery fish from the same native stream. Many scientists remain skeptical of this approach, too, because notably few of these hatchery supplementation projects have shown indications of being a success. For supplementation, the jury is still out.

But, as the Lincoln County Circuit Court Judge Robert J. Huckleberry confirmed last week, the scientific consensus is clear about the Fall Creek hatchery and other hatchery practices like it.

State fisheries officials could have buckled under the pressure they received from the fishing industry and land-owner groups to keep Fall Creek hatchery open. They ought to be praised, not villified, for their scientifically justified decision to dispose of thousands of unneeded hatchery coho salmon before the fish do further damage to the Alsea River Basin wild runs.

Snake fish runs at crucial time, U.S. paper says

Drastic action is needed if this region is to keep dams standing and help salmon and steelhead trout survive, the report concludes

By JONATHAN BRINCKMAN
THE OREGONIAN

Snake River salmon and steelhead trout are unlikely to survive as species unless agencies and citizens in the Northwest take painful steps to save them, the federal government says in a document to be released today.

Snake River salmon could be saved without breaching dams, an action under consideration by the National Marine Fisheries Service, the report states. But saving salmon without breaching will require significant changes in human activity throughout the Columbia Basin, including reductions in fishing and stringent controls on logging, grazing and development.

"These analyses confirm that major changes must be made" if salmon are to be saved, says the document, obtained Monday by The Oregonian. "Making those changes will require the governments and peoples of the Pacific Northwest to confront tough choices."

The report is called the 4H paper, because it examines fish harvest, hatcheries, habitat and hydropower operations in the Northwest. The report's conclusions amount to issuing the region a tough choice: Either make the expensive, widespread changes that help salmon or lose the Snake River dams.

Brian Gorman, a spokesman for the fisheries service, made the challenge explicit Monday. He said that either the Northwest states get serious about protecting the rivers and streams used by salmon — their habitat — or the fisheries service might be forced to recommend the dams be breached.

"This is decision time for the region," he said. "What we do will depend on what the states do."

Please see **FISH**, Page B14

Fish: Report termed a 'wake up call'

Continued from Page B1

Conservationists lauded the 4H paper for its frank assessment of the poor state of Columbia Basin salmon. But they criticized the federal government for not recommending that dams be breached or that federal land be better protected.

The 4H paper, at this point only partly complete, is drafted by nine federal agencies whose responsibilities include Columbia Basin salmon. The effort is led, however, by three agencies: The U.S. Army Corps of Engineers, which owns and operates federal dams; the Bonneville Power Administration, which sells electricity generated at federal dams; and the National Marine Fisheries Service, responsible for salmon listed under the Endangered Species Act.

"I've got to give NMFS credit for saying the extinction risk is so

strong that the status quo is simply not an option and for saying we need bold, prompt action," said Chris Zimmer, a spokesman for Save Our Wild Salmon, a Seattle-based conservation group.

"This is a wake up call to the region. What NMFS fails to do is deliver a plan that is bold and prompt."

Don Sampson, executive director of the Columbia Inter-Tribal Fish Commission, said the federal government needs to face up to the damage that dams wreak upon salmon, and also federal lands management that hurts fish.

The commission, representing four tribes with treaty rights to Columbia salmon, has called for the four dams to be breached. Sampson said the federal government has no right to suggest that salmon can be saved if tribal harvests are stopped.

"To let the federal government

get themselves off the hook is wrong," Sampson said Monday. "It is unbelievable to me that they can put proposals on the table that don't even meet the law."

The 14-page document, scheduled for release in Portland, is a partial draft written after the fisheries service conducted an analysis of three of the 12 stocks of Columbia Basin salmon and steelhead listed under the Endangered Species Act. A complete 4H paper, which considers all 12 stocks, is to be released in mid-December.

Public hearings on the final document and others analyses will be held in January, February and March. The fisheries service will recommend in May whether the dams should be breached.

"This is to get the debate started," Gorman said. "Nobody knows what the response will be to the release of this paper and to the release of the full 4H paper."



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
525 NE Oregon Street
PORTLAND, OREGON 97232-2737

Dear Interested Parties:

When nine species of salmon and steelhead in Washington and Oregon were listed as threatened or endangered under the Endangered Species Act (ESA) on March 16, 1999, the total number of such listings on the west coast came to twenty-three. Listings of anadromous salmonids now encompass heavily populated areas such as Portland and Seattle, as well as many mid-size and smaller local jurisdictions throughout the West Coast. In response to these listings, the National Marine Fisheries Service (NMFS) has received numerous inquiries from local governments regarding their responsibilities and liabilities under the ESA, as well as questions about what steps they can take to protect and restore salmonid habitat and populations.

Attached is a working document entitled "The ESA and Local Governments: Information on 4(d) Rules"; it was developed by NMFS' Northwest and Southwest Regions to address some of these questions. We welcome comments and suggestions on how to strengthen or improve this information as we continue working closely with local governments and other interested parties to develop an effective conservation strategy for the region's salmonids.

We thank you for your interest in the ESA and the recent listings of salmon and steelhead species throughout the region and look forward to working with you. If you have comments, questions, or suggestions regarding the attached information (or any other ESA issues related to salmonids), please direct them to the regional contact people listed in the attached document.

Sincerely,

Donna Darm
Assistant Regional Administrator
Protected Resources Division



The ESA and Local Governments: Information on 4(d) Rules

National Marine Fisheries Service Northwest Region



May 7, 1999

Thank you for your interest in the Endangered Species Act (ESA) and the recent listings of salmon and steelhead species throughout the Pacific Northwest. There are many ways that local governments can help protect and recover these important resources. NMFS is interested in working with local and regional groups to develop programs that protect listed species and their habitats and would like to recognize those programs under the ESA where possible. This pamphlet contains information on "4(d) rules," an ESA mechanism for protecting threatened species, and a means by which local governments can obtain assurance that activities they authorize or conduct are permissible under the ESA. NMFS plans to update this information regularly; we are interested in your feedback on its usefulness and would like to hear your ideas for additional information we can provide to local governments.

What is a "4(d) Rule?"

A "4(d) Rule" establishes protective regulations that apply to a species listed as threatened under the Endangered Species Act (ESA). These rules are one of the mechanisms through which a local government (or other government entity or private party) may obtain assurance that activities it authorizes or conducts are legally permissible under the ESA and consistent with the conservation of listed species.

Under the ESA, a species may be listed as either *endangered* ("in danger of extinction throughout all or a significant portion of its range" ESA §3[6]) or *threatened* ("likely to become endangered within the foreseeable future throughout all or a significant portion of its range" ESA §3[19]). The ESA treats species designated as *endangered* slightly differently from species designated as *threatened*. For *endangered* species, certain prohibitions against killing or harming the species go into effect immediately upon listing (i.e., section 9 prohibits "take"—see below, under "What is 'Take' of a Listed Species?"). For species listed as *threatened*, section 4(d) of the ESA provides that the National Marine Fisheries Service (NMFS)—or the U.S. Fish and Wildlife Service (USFWS) in the case of species under its jurisdiction—shall issue regulations deemed necessary and advisable to provide for the conservation of the species."

These protective regulations for *threatened* species may include any or all of the ESA section 9 prohibitions that apply automatically to protect *endangered* species. In addition, they may contain specific proscriptions or exceptions instead of, or in addition to, the general prohibitions against harming or killing a listed species. Thus, a 4(d) rule can be used to "except" certain activities from the section 9 prohibitions so long as the programs adequately protect the listed species.

Incorporating such "exceptions" into a 4(d) rule is advantageous to both NMFS and local governments. Activities carried out in accordance with 4(d) rule exceptions can help protect threatened species and their habitats while relieving local governments from liability for "take" that occurs incidentally to those activities. NMFS also anticipates that any activity included as a 4(d) rule exception will likely be incorporated into ESA Recovery Plans for listed salmonid species.

NMFS is interested in working with local jurisdictions (and other interested parties) to develop programs that protect endangered and threatened species and their habitats and to recognize such programs through 4(d) rule exceptions or other ESA mechanisms.

What is "Take" of a Listed Species?

The ESA makes it illegal for any person subject to the jurisdiction of the United States to *take* any species of fish or

wildlife that is listed as *endangered* (ESA §9[a][1]). This prohibition applies within the United States and its territorial waters as well as on the high seas. The term *take* is defined in the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct" (ESA §3[19]). It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any species that has been taken illegally (ESA §9[a][1]).

The term "harass" is defined as an intentional or negligent act that creates the likelihood of injuring wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns such as breeding, feeding, or sheltering (50 CFR 17.3). "Harm" is an act that either kills or injures a listed species. Such an act may include habitat modification or degradation that significantly impairs essential behavioral patterns such as breeding, spawning, rearing, migrating, feeding, or sheltering and results in death or injury to a protected species (proposed at 50 CFR 217.12, existing at 50 CFR 17.3).

Any government body authorizing an activity that specifically causes take may be found to be in violation of the section 9 take prohibitions. For example, authorizing the use of an herbicide that is directly linked to mortality of a listed species, de-watering a stream in a manner or at a time that has the effect of preventing migration, or permitting construction to occur in such a way and at such a time that sedimentation significantly impairs salmon survival might be construed as take. As a practical matter, the more direct the connection between what the government entity authorizes and the injury to the species, the more likely that the government entity could be held responsible for take.

It is important to note that the ESA does not prohibit all take but allows the permitting of an acceptable amount of take, including a certain amount of take that is "incidental" to otherwise lawful activities.

What activities carried out or overseen by local governments are likely to lead to "take"?

A wide range of land and water planning and permitting activities carried out by local governments can adversely affect or "take" listed species. While it is not feasible to list comprehensively every local government activity that might lead to take, it is possible to provide some general guidance on the kinds of activities most likely to result in take.

NMFS and the USFWS have a policy to identify, to the extent known at the time a species is listed, specific activities considered likely to result in take. As indicated in the *Federal Register* "Notice of Threatened Status for Two ESUs of Steelhead in Washington and Oregon" (64 FR 14517), such activities include, but are not limited to:

1. Destroying or altering the habitat of listed salmonids (through activities such as removal of large woody

debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow).

2. Discharging or dumping toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed salmonids.
3. Violating federal or state Clean Water Act discharge permits.
4. Applying pesticides and herbicides in a manner that adversely affects the biological requirements of the species.
5. Introducing non-native species likely to prey on listed salmonid species or displace them from their habitat.

Some of the activities carried out or authorized by local governments that have a high likelihood of affecting salmonid habitat include the following:

- Planning, zoning, and development permitting
- Erosion and sediment control
- Floodplain management
- NPDES permit implementation
- Water use
- Stormwater discharge
- Wastewater discharge
- Road and bridge construction and maintenance
- Pesticide, herbicide, fertilizer, and other chemical use
- Riparian area protection, alteration, or development
- Wetland protection, alteration, or development
- Estuarine shorelands protection, alteration, or development

It is important to note that many of the above activities—depending upon how they are carried out—may have either adverse or beneficial effects on listed species.

By comprehensively assessing local government activities, it is possible to determine their potential to affect anadromous salmonids. This could be accomplished by working through the above list (or a list of all local government activities), identifying how the activity could affect anadromous salmonids, assessing the relative likelihood of the effect, and weighing the potential for the local government to influence those effects.

How can programs be submitted to NMFS for consideration as an exception under a 4(d) rule?

For NMFS to consider an activity or program for an exception under a 4(d) rule, the following information and analysis are desirable:

- A description of the activity or program being proposed, the geographic area within which the proposed action/program will apply or be carried out, and the jurisdiction or entity responsible for overseeing the action/program.

A description of the listed species and habitat that will be affected by the action. This information should include fish distribution and abundance in the affected area and a description of the type, quantity, and quality of habitat in the affected area.

A description of the environmental baseline. This information should describe existing conditions of water quality, habitat access, riparian areas, stream channels, flow, and watershed indicators such as total impervious area and any existing high quality habitat areas.

A description of the anticipated short-term and long-term impacts of the action on the species (including all life-cycle stages) and its habitat. This description should include both positive and negative impacts and describe how any adverse impacts will be avoided, mitigated, or minimized.

A description of the certainty of implementation of the program or action. For example, what commitment has been made to carry out the action or program? Are the legal authorities necessary to carry out the program in place? Is funding for implementation available and adequate? Is staffing available and adequate? What is the schedule for implementation? If the program is currently being implemented, what is the record of implementation and effectiveness to date?

A program for monitoring both the implementation and effectiveness of the action or program and time frames for conducting monitoring and submitting reports.

An adaptive management approach, as necessary, that uses monitoring information as needed to change actions so as to accomplish objectives.

How does NMFS make decisions on what can be included in a 4(d) rule?

NMFS analysis of a proposed exception for a 4(d) rule involves defining the biological requirements of the listed species; evaluating the relationship of the existing environmental baseline conditions to the species' current status; determining the effects of the proposed or continuing action on the listed species; and determining whether the species can be expected to survive with an adequate potential for recovery under the effects of the proposed or continuing action, taking into account the environmental baseline conditions and effects of other actions.

In assessing the impacts of a proposed action or program on a species' freshwater or estuarine habitat, NMFS considers the following factors:

- Will the action or program degrade existing habitat processes or functions?

- Will the action or program contribute to the restoration of degraded habitat processes or functions?

Some specific examples of local government activities or programs and associated issues are:

Stormwater discharge. Stormwater discharge can adversely affect water quality and the hydrograph of the watershed. These effects can be mitigated by reducing hardened surfaces, detaining runoff, and preventing sediment and other pollutants from reaching any watercourse.

Riparian protection areas. Adequately protected riparian areas are key to maintaining watershed processes and functions. Because of the intensity of disturbance in surrounding uplands, riparian protections are at least as critical in urban areas as in rural areas. Riparian areas with adequate amounts of mature, native vegetation are essential for controlling temperature, maintaining bank stability and other components of stream structure, filtering pollutants, and providing other characteristics important to water quality and fish habitat.

Stream crossings. Stream crossings can harm watershed processes and functions by disrupting fish passage, creating sedimentation problems, modifying channels, and changing drainage patterns. One way to minimize stream crossings and associated disturbances is to direct development to certain locations. Where crossings are necessary, their impacts can be minimized by using bridges instead of culverts, sizing bridges to a minimum width, designing culverts to pass at least the 100-year flood, ensuring regular and long-term monitoring and maintenance, and not closing over any intermittent or perennial stream. The Washington Department of Fish and Wildlife-Habitat and Lands Environmental Engineering Division—Guidelines for Fish Passage Design at Road Culverts; a Design Manual for Fish Passage at Road Crossings, October 7, 1998, and the Oregon Department of Fish and Wildlife-Habitat Conservation Division—Guidelines and Criteria for Stream Road Crossings, provide excellent frameworks for making decisions on culverts and road crossings.

Stream meander patterns and channel migration zones. Residential and commercial development and other types of land use activities can result in modification of stream and river channels through road construction, filling of wetlands, encroachment on riparian areas and floodplains, relocation of channels, and construction and maintenance of ditches, dikes, and levees. These highly modified channels generally provide poor habitat for fish. Development can be designed to allow streams to meander in historic patterns. Adequate riparian zones linked to the channel migration zone avert the need for bank erosion control in all but the most unusual situations. In such situations, bank erosion can be controlled through vegetation or carefully bioengineered solutions. Habitat elements such as wood, rock, or other naturally occurring material should not be removed from streams.

Wetlands and wetland functions. Wetlands control sediment delivery to streams, mitigate pollutants, and help maintain the natural hydrograph. Development planning that maintains existing wetlands can protect the habitat, water quality, flood control, and groundwater connection values of wetlands.

Landscaping. Careful landscaping can help conserve water and reduce demands for flow that compete with fish needs, in addition to reducing the use of fertilizers, pesticides, and herbicides that may contribute to water pollution.

Erosion control. Suspended and deposited sediments can suffocate salmon eggs incubating in stream gravels, degrade fish respiration, eliminate places for salmon to hide from predators, and change the productivity of aquatic insects. Construction of buildings and roads without adequate sediment controls may increase sediment loading to streams by several orders of magnitude.

Implementation, monitoring, maintenance, enforcement, and reporting. Mechanisms—including funding and legal authority—for implementation, monitoring, maintenance, enforcement, and reporting need to be adequate to assure that development will comply with approved policies, ordinances, and permitting procedures.

What other mechanisms are available for local government compliance with the ESA?

Section 10 of the ESA provides another mechanism for NMFS to permit taking when it is the incidental result of carrying out an otherwise lawful activity. Applicants for an Incidental Take Permit must submit a Habitat Conservation Plan (HCP) to NMFS. The HCP must identify the impact of any taking associated with activities covered by the plan and identify steps that will be taken to monitor, minimize, and mitigate impacts. For more information on HCPs, see the publication entitled "Habitat Conservation Plans and the Incidental Take Permitting Process," available on the U.S. Fish and Wildlife Service web site, at <http://www.fws.gov/r9endspp/hcp/hcpplan.html>, or speak with one of the NMFS contact people listed below.

Section 7 of the ESA requires that federal agencies consult with NMFS on activities they authorize, fund, or carry out to ensure that such activities are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitat. Such activities include federally funded projects such as road construction, stormwater management, rural and urban development, and many other activities conducted, permitted, or funded by federal agencies.

How do I get additional information?

For information on....
Puget Sound

Contact:
Elizabeth Babcock
206-526-4504
Elizabeth.Babcock@noaa.gov

Upper Columbia Basin	Mike Grady 360-753-6052 Michael.Grady@noaa.gov
Mid-Columbia Basin	Danny Consenstein 206-526-4506 Danny.Consenstein@noaa.gov
Lower Columbia River and SW Washington	Rob Jones 503-230-5429 Rob.Jones@noaa.gov
Willamette Basin	Patty Dornbusch 503-230-5430 Patty.Dornbusch@noaa.gov
Oregon Coast	Patty Dornbusch 503-230-5430 Patty.Dornbusch@noaa.gov
California Coast	Greg Bryant 707-441-3684 Greg.Bryant@noaa.gov

Additional References

The references below may provide additional information on the impacts local government activities have on salmon habitat. Some of the following documents may be available from the NMFS contacts listed above. Please also visit the NMFS Northwest Region Web Site at <http://www.nwr.noaa.gov> for additional information on listed species, including *Federal Register* notices, species maps, status reviews, and fact sheets.

Beak Consultants Incorporated. 1998. "Assessment of City of Portland Activities for Potential to Affect Steelhead." Beak No. 74008.701. Prepared for City of Portland, Oregon. September 15, 1998.

National Marine Fisheries Service. "Coastal Salmon Conservation: Working Guidance for State Conservation Plans," September 15, 1996. (Available from National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232 or 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802)

National Marine Fisheries Service. 1996. "Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act." (Available from National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232 or 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802)

National Research Council. 1995. *Upstream: Salmon and Society in the Pacific Northwest*. National Academy Press: Washington, D.C.

Spence, B.C., et al. 1996. "An Ecosystem Approach to Salmonid Conservation." TR-4501-96-6057. ManTech Environmental Research Services Corp., Corvallis, OR. (Available from National Marine Fisheries Service, 525 NE Oregon Street, Suite 500, Portland, OR 97232.)

I HEREBY CERTIFY THAT THE FOREGOING
IS A COMPLETE AND EXACT COPY OF THE
ORIGINAL THEREOF.

Rebecca V. Shoemaker, Archivist
Clerk of the Metro Council

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING)	ORDINANCE NO 98-730C
ORDINANCE NOs. 96-647C AND NO. 97-)	
715B, TO AMEND TITLE 3 OF THE)	Introduced by Councilors Naito and McLain
URBAN GROWTH MANAGEMENT)	
FUNCTIONAL PLAN, AND AMEND)	
THE REGIONAL FRAMEWORK PLAN,)	
APPENDIX A, AND ADOPT THE)	
TITLE 3 MODEL ORDINANCE AND)	
WATER QUALITY AND FLOOD)	
MANAGEMENT MAPS)	

WHEREAS, the Regional Growth Goals and Objectives -
Objective 12 identifies the need to manage watersheds to protect, restore
and ensure to the maximum extent practicable the integrity of streams,
wetlands, and floodplains.

WHEREAS, Ordinance No. 96-647C, the Urban Growth
Management Functional Plan (UGMFP), adopted November 21, 1996,
delayed implementation of Title 3 of the UGMFP until Metro adopted a
Model Ordinance to demonstrate one method of implementing Title 3, and
Water Quality and Flood Management Area maps.

WHEREAS, Ordinance No. 97-715B, the Regional Framework
Plan, adopted December 18, 1997, incorporates the UGMFP at
Appendix A. The Regional Framework Plan is awaiting acknowledgment
before the Land Conservation and Development Commission.

WHEREAS, the Water Resources Policy Advisory Committee
(WRPAC), during 1997, drafted a Model Ordinance and maps to comply
with Title 3, Section 6 of the UGMFP. WRPAC released a preliminary
draft of the proposed Model Ordinance and maps in August 1997, and a
revised draft on September 4, 1997. The proposed Model Ordinance was
then forwarded to the Metro Policy Advisory Committee (MPAC) and the
Metro Technical Advisory Committee (MTAC) for review.

WHEREAS, WRPAC and MTAC formed a joint subcommittee to
further refine the Model Ordinance and maps and consider amendments to
the UGMFP, Title 3, Sections 1-4, and Sections 6 and 7. The joint
subcommittee met twice per month beginning September 26, 1997 and
ending December 19, 1997. The joint subcommittee forwarded proposed
amendments to Title 3, dated December 30, 1997, to WRPAC and MTAC.
The same proposed amendments were released for public comment prior

PRELIMINARY DRAFT

**DEVELOPMENT OF MEASURES TO CONSERVE,
PROTECT AND RESTORE RIPARIAN CORRIDORS IN
THE METRO REGION**

"STREAMSIDE CPR"

OCTOBER 1999

Prepared by

METRO GROWTH MANAGEMENT SERVICES



METRO



November 17, 1999

Rod Park
Park's Nursery
2100 SE 282nd Avenue
Gresham, OR 97080-9013

RE: Metro focus on fish & wildlife along streams.

Dear Mr. Park,

Did you read the final outcome or watch the news last week? Salmon hatchery fish from a private salmon hatchery on the Oregon coast were not allowed to be released in the wild, the courts ruled. ODFW (Oregon Dept. of Fish & Wildlife) felt this would be harmful. Possibly (inbreeding) in native salmon (steelhead) could result. Many of those involved with this issue also made a statement, the reason it would be good to keep certain salmon steelhead species on the endangered list is, it would give much power to ODFW and keep government control over rivers, streams and the property adjacent to streams and rivers in their control. Therefore destroying the private hatchery fish is in their interest.

We know politics and the environmentalists DEQ and ODFW are very powerful agencies, especially when we are dealing with endangered species.

This brings me to 900 miles of streams in the Portland area. According to the article In the October 21, 99 Oregonian, enclosed, Metro is considering a 350' swath along streams to protect fish and wildlife. This is government at its prime! Take control of private land. Do we, you and I, farmers, nurserymen, private land owners have anything to say in this? And really, WE have nothing to say, we can go to court, but we will lose when endangered species are involved.

We can bring it before a vote of the people, but again most likely we will lose. Government can and will use tax dollars to oppose us. We are always in a minority, because most people do not own property along rivers and streams. We, farmers, forestry and nurserymen are the bad guys who don't care about the environment?



We farmers and nurserymen supported you because you are a farmer and nurseryman, a landholder. We know you as a "common sense, Yes/No, kind of person."

QUESTION: What can we do to make sure this issue goes away. 350' on each side of a river or stream and I am sure this will expand to tributary creeks and drainage channels. Eventually they will also be included. **THIS IS NOT ACCEPTABLE!!**

The 25' on each side, 50' total, is the maximum we can live with, as is now law in the Tualatin Basin and Metro area. This CPR plan (Conserve, Protect and Restore) is reasonable. **The 350' is not!**

Government has too much power and authority already. As a case in point, I enclose the article on Teufels property. The School Board voted to proceed with a condemnation resolution on 20 acres of Teufel's land. The School Board doesn't have the money to build the school and who knows, they might have to wait 5 or 10 years. In the mean time they use their power of eminent domain and tell the Teufels, we own your property, now you're out!

As you note I also include the OAN on these issues.

And I like your comments on Metro's proposed 350' wide riparian corridor in the Portland Metro area.

Sincerely,

Alfred Meisner
Pres/Owner.

cc: OAN
Oregonians in Action

AM/cm/Park

Metro puts focus on fish, wildlife along streams

A new proposal calls for protected corridors as wide as 175 feet along both sides of 900 miles of waterways

By R. GREGORY NOKES
THE OREGONIAN

If a staff proposal is approved, Metro would significantly extend barriers to home building and other development along 900 miles of streams to protect fish and wildlife in the Portland area.

Riparian corridors as wide as 175 feet could be protected along both sides of streams, while allowing for exceptions where property owners couldn't otherwise develop their land. The extent of the protected area is subject to change as a final plan is developed.

"Any proposed program will

avoid the takings issue, the intent being that no lot may become unbuildable due to the application of these measures," according to an initial plan draft. Takings refers to depriving property owners of the use of their land without compensation.

However, "in no case" would new development or clearing be allowed within 50 feet of the water, says the Streamside CPR plan developed by Metro's planning staff. CPR is an acronym for "conserve, protect and restore."

The new plan would be in addition to another recently approved plan, known simply as Title 3, that generally bars new development for 50 feet along stream banks. Although they have similar goals, Title 3 focuses on water quality, while the new plan would focus on fish and wildlife.

And if that isn't confusing

enough, Metro and local governments are still waiting for the National Marine Fisheries Service to outline needed protection for threatened salmon and steelhead trout, which could require even more stringent protection for streams.

The Streamside CPR plan is an effort to comply with a provision of Oregon's land-use regulations known as Goal 5. Presented Tuesday to Metro's Growth Management Committee, it is subject to change after comment from Metro committees and local governments. There will also be public hearings before final adoption by the Metro Council, now scheduled for May or June of next year.

Local governments would be given flexibility to implement the plan that is finally approved.

Rosemary Furfey, the chief Metro planner on the project, said that while Metro could focus on

streams that are known fish habitat, the planning group wants to include all streams within the regional government's jurisdiction.

"Our recommendation is that all riparian corridors be regarded as regional resources as fish and wildlife habitat, regardless of condition," Furfey said. The plan would include voluntary measures to revegetate and restore damaged stream banks.

But Portland area home builders may have the same objections to the new plan they have had to Title 3, which they are challenging in state courts.

Kelly Ross, an official of the Home Builders Association of Metropolitan Portland, said the group hasn't seen the complete proposal, but his initial impression is that it's "applying blanket standards for what may be a very diverse range of sites and circumstances throughout the region."

"It's conceivable it could have large impacts on the developable land inventory," Ross said.

However, Mike Houck, urban naturalist for the Audubon Society of Portland, who was consulted during preparation of the plan, praised the effort, which he said had been promised for "four to five years." He urged rapid implementation, unlike Title 3, which he said has been moving too slowly.

"We are at our wit's end over the incremental nature of this process," Houck said. "Development goes apace, and we are losing resources we are trying to protect."



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School board will force land sale



STEVEN NEHL/THE OREGONIAN

The Beaverton School Board decided Monday night that a portion of the Teufel Nursery Inc. property, a family business that has been based in Portland's West Hills since 1890, should become the site of one, and possibly two, schools. The Teufels, who, according to school district officials, had not been willing to talk about selling land for a school, must now negotiate with the district.

Beaverton and Teufels talks could result in agreement rather than condemnation

By LAURA GUNDERSON
THE OREGONIAN

BEAVERTON — The Beaverton School Board voted unanimously Monday to force Teufel Nursery Inc. to sell up to 20 acres of its extensive Cedar Mill property for a future school.

School district officials had presented the board with a condemnation resolution Nov. 8 after several months of trying to negotiate a sale with the Teufel family, said Jack Orchard, attorney for the Beaverton School District.

"You've got to look at how you're going to create a place for all these kids," said Yvonne Katz, school superintendent. "This board had to set in motion our future."

The Teufel family has declined comment and did not attend the Monday night meeting.

The district plans to build at least one school on the property, along Northwest Barnes Road

near 114th Avenue, to serve the 1,254 students that district demographers predict will arrive with the Teufel and neighboring Peterkort developments.

The Teufels' attorney has said the family wants to use the land for its wholesale nursery business as long as possible, but the property is slated to hold 1,946 homes.

The Teufels' 107-acre nursery, a family business based in Portland's West Hills since 1890, falls within the boundaries of the Cedar Mill town center — an area Washington County has earmarked for increased retail development and housing density.

The Teufels and the district, neither of which have estimated a value for the property, still could reach an agreement as negotiations and an appraisal continue in the condemnation process. That happened two years ago when Beaverton last tried to condemn land to build Scholls Heights Elementary.

Schools and other governments in Oregon have the power of eminent domain, which allows them to take private property for a public purpose after compensating the owner. Unless the parties can agree, the price is set in court.

Although the board's action forces the Teufels into a discussion, district officials say they want to keep an amiable relationship. Because the district doesn't have the money to build immediately, an agreement could allow the nursery to continue using the land until the development begins, said Steve Ladd, assistant superintendent for school support.

School officials say turning to condemnation is a last resort. But their counterparts in other Portland-area districts say it could be a bellwether for high-growth areas, where property values are rising.

"The issue for the community to think about is whether growth and development should provide

for our schools," said Chuck Meyer, board chairman. He and district officials said they looked for other options but have not found affordable or buildable property. "This is a good place for a school, on land that accommodates a school. That is why we have to look at using it."

Hillsboro, the state's fifth-fastest growing district, and Gresham-Barlow have not had to use their condemnation rights. Portland Public Schools hasn't been through the process since the mid 1970s, said Darlene McDonald of the Portland Public Schools.

Cedar Mill residents, who have fought their community's designation as a town center, are pleased with the board's decision.

"The buzz word today is 'livable community,'" said Carol Gearin, a member of the Citizens Participation Organization 1, which represents the area. "For that, we must think of green space, parks and at the very least, a school."