Common Myths About the National Marine Fisheries Service's (NMFS) 4(d) Rules for Threatened West Coast Salmon & Steelhead

Myth #1: NMFS is imposing regulations that have not been needed in the past.

Absolutely wrong. There is nothing novel about NMFS imposing Endangered Species Act (ESA) take prohibitions ("4(d) rules") for threatened salmonids. NMFS has already promulgated 4(d) rules for four other threatened salmon populations: Snake River fall and spring/summer chinook salmon in April 1992; Central California coast coho salmon in October 1996; and Southern Oregon/Northern California coasts coho salmon in May 1997. What is "new" about these June 2000 rules (which address14 populations of threatened West Coast salmon and steelhead) is their potential to create powerful incentives for local "home-grown" programs in place of federal take rules. The new approach will reduce red tape, eliminate the need for ESA-related permits for covered activities, broaden significantly the scope of conservation efforts for the fish, and vastly increase peoples' flexibility in complying with the ESA.

Myth #2: NMFS is requiring 200-foot "no touch" buffers on all streams.

Completely fallacious. The 4(d) rule does not require a 200-foot streamside buffer. The reference to such a buffer in NMFS' proposed 4(d) rule was meant to serve as a guidance for entities assessing their impacts on riparian zones in the context of the 4(d) rule's urban development limit. This limit was crafted specifically for cities, counties and regional governments that plan and have authority for urban development. It does not address agricultural or other non-urban practices.

In the urban growth limit, NMFS sought to underscore the importance of assessing the health of existing riparian zones. These zones provide critical life support functions for salmon, such as food, shade and streambank stability. The protection and restoration of riparian zones, especially in urban areas, is a common-sense starting point in any salmon recovery effort. Trees are a primary feature of most riparian zones. As a *general* guide, NMFS noted that a distance equal to the height of the tallest tree that can grow on that site (known as the site-potential tree height and often found to approximate 200 feet) is a good starting point for beginning a 4(d) assessment under the urban development limit. However, the agency noted that land ownership patterns would alter the actual extent of the riparian zone. Different jurisdictions will need to tailor their riparian and wetland management actions to match local needs and conditions.

Myth #3: The 4(d) rule will impose generic agricultural standards on farmers, such as fencing livestock out of all streams.

Utterly incorrect. This 4(d) rule does not impose conservation practices or standards on the agricultural community. However, it does invoke general prohibitions on taking or harming threatened salmon and steelhead across rural and urban landscapes. The rule includes 13 limits on these prohibitions that are opportunities - not requirements - for assuring that actions are not liable under the ESA. These exemptions address activities ranging from hatchery management programs to routine road maintenance practices, but do not include specific agricultural activities. Farmers should evaluate their practices, and modify them if needed, to ensure that their activities do not result in death or injury of threatened salmonids.

Many entities, including agricultural interests, have expressed a strong preference for standards developed at the local level, rather than one-size-fits-all standards. The 4(d) rule was written to foster local interest and support tailor-made programs. NMFS is ready to work with

any interested entity in forging such standards. On the issue of agricultural practices in particular, NMFS is working with a number of agricultural groups to explore conservation practices that might contribute to salmon and habitat conservation. The agency is hopeful that these discussions will yield further details on appropriate conservation practices that could be addressed in future 4(d) rulemaking.

Myth #4: The 4(d) rule will shut down development in urban areas or farming in rural areas.

Totally false. Although some development-related activities may need to be modified to avoid harming listed salmonids, nearly all ESA-related actions reviewed by NMFS ultimately proceed in a way that balances development with conservation needs. The final 4(d) rule will put in place the ESA prohibition against causing death or injury of threatened salmon and steelhead. To abide by this prohibition and to reduce ESA liability associated with take, government entities, businesses and citizens should evaluate their practices and modify them, if needed. Entities and individuals that plan and implement urban development activities, and farmers may need to modify their actions as a result of this self-assessment process. It may result in changes for urban development activities and farm practices, or the need for some entities to obtain ESA permits that balance management practices with salmon conservation needs. NMFS will work with entities and individuals to provide technical information and guidance about ESA options.

Myth #5: The 4(d) rule will regulate the daily behavior of citizens, including how much energy they consume, how far they can travel, and how they maintain their gardens.

Altogether erroneous. The 4(d) rule does not impose such specific restrictions, although few would argue that many daily human behaviors have had a cumulative impact on depressed salmon runs. Unfortunately, the proposed 4(d) rule caused confusion about which activities can result in take and what actions will be priorities for enforcement. NMFS has revised the take guidance section of the final rule to focus on those activities that are very likely to injure or kill salmonids. NMFS has also clarified its enforcement priorities. Harm can result from significant habitat modification or degradation where it actually kills or injures protected species by significantly impairing essential behavior patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. After conducting self-assessments to determine whether activities are likely to "take" a listed species, individuals or entities have several choices of action. They may choose to adjust their programs to avoid take, or pursue ESA coverage through a Section 10 permit, a Section 7 consultation with federal agencies, or through a limit under the 4(d) rule.

Myth #6: NMFS made little effort to provide public hearings on the proposed rule and failed to engage the affected public.

Very misleading. NMFS held 25 public hearings to solicit comments on the proposed 4(d) rules: 7 in Washington, 8 in Oregon, 3 in Idaho, and 7 in California. During the 65-day public comment period, NMFS received 1,146 written comments from federal, state, and local government agencies; Indian tribes; non-governmental organizations; the scientific community; and individuals. Many people provided oral testimony at the public hearings. NMFS held three workshops for state and local government officials; in Olympia and the Tri-Cities in Washington, and in Salem, Oregon. More than 150 city, county and state jurisdictions participated in these workshops.

Although this was an unprecedented undertaking, NMFS recognizes that these rules are novel and complicated. Some time is needed for regulated parties to understand them better. NMFS has balanced these considerations by adopting a final rule that provides a "cooling-off"

period - 60 days for steelhead ESUs and 180 days for salmon ESUs - which should provide a reasonable period before they become effective.

Myth #7: Natural phenomena like poor ocean conditions and predation are the real causes for declining salmon and steelhead populations.

Not true. While environmental conditions have always played a role in these species' productivity, their current threatened status cannot be totally explained by natural cycles in ocean and weather conditions. Salmon predators like sea lions and terns have co-evolved with salmon and steelhead and, while they do kill them, are not considered a major factor in the current widespread salmon declines. NMFS has concluded that threatened chinook, coho, chum, sockeye, and steelhead are at risk of extinction primarily because their populations have been reduced by human "take" resulting from harvest, past and ongoing destruction of freshwater and estuary habitats, hydropower development, hatchery practices, and other causes. While natural cycles in productivity are to be expected, human-induced take has exacerbated these cycles and placed some populations at extreme risk of extinction.