

Five Counties Salmonid Conservation Program

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October 1, 2006

Mr. Rod McInnis, Regional Administrator
NOAA-National Marine Fisheries Service
Southwest Region
501 West Ocean Blvd., #4200
Long Beach, CA 90802-4213

Subject: Submittal of Five Counties Salmonid Conservation Program's Road Maintenance Manual under Limit No. 10, section 4(d) of the Endangered Species Act (ESA)

Dear Mr. McInnis:

The Five Counties Salmonid Conservation Program (5 C) hereby submits to the Southwest Region of the National Marine Fisheries Service (NMFS) the 5 C's Water Quality and Stream Habitat Protection Manual for County Road Maintenance in Northwestern California Watersheds (Manual). The 5 C Program is requesting approval from NMFS that the 5 C Manual meets the limitation criteria (see enclosure) set forth in 50 C.F.R. 223.203(b)(10)(i)-(v), which were promulgated pursuant to Section 4(d) of the Endangered Species Act (ESA).

We are aware that Section 4(d) of the ESA authorizes the Secretary of Commerce, in cooperation with the affected states, to "issue such regulations as he deems necessary and advisable to provide for the conservation" of threatened species. In the Pacific Coastal region, NMFS promulgated a 4(d) rule for 14 of the threatened Evolutionarily Significant Units (ESUs) of salmon and steelhead on July 10, 2000 (65 FR 42422). On January 9, 2002 (67 FR 1116), NMFS promulgated a 4(d) rule for an additional 4 threatened ESUs of salmon and steelhead. These rules were accompanied by a set of "limits" on the application of the ESA section 9 take prohibitions. These limits were only for specified categories of activities that were determined to contribute to conserving listed salmon and steelhead species. One of these 13 limit categories -- Limit 10 -- pertains to routine road maintenance (RRM) programs. The 2005 amendments to the 4(d) rule (June 28, 2005, 70 FR 37160) apply revised take prohibitions and a modification of the 13 limits promulgated in 2000 to all threatened Pacific salmonids.

Under Limit 10, the effects of RRM activities on threatened salmonids (listed at 50 C.F.R. 223.102) conducted by a state, city, county or port can be excluded from the prohibitions Section 9(a)(1) of the ESA. In order for the Section 9(a)(1) take prohibitions to not apply to RRM activities, NMFS must find that the activities meet the criteria enumerated at 50 C.F.R. 223.203(b)(10)(i)-(v). In particular, NMFS cites the Oregon Department of Transportation's (ODOT), "Routine Road Maintenance - Water Quality and Habitat Guide" (Guide, ODOT 1999) as a model under Limit 10. NMFS indicated in its formal comments how the ODOT program

“greatly improves” protections for listed fish that might be affected from a range of RRM’s “by minimizing the activities’ impacts on streams”.

As a result of the ODOT Guide’s comprehensive content, the agency found it not necessary or advisable to apply the “take prohibitions” under the ESA to RRM activities conducted by employees or agents of ODOT or other entities if their program complies substantially with that contained in the ODOT Guide or has been determined to meet or exceed the protections provided by the ODOT Guide [50 C.F.R. § 223.203(b)(10)(i)]. This specific exception was provided for in the July 10, 2000 (65 FR 42422) rule under the ESA’s Section 4(d), which is one of the legal means for local government to continue actions that could result in an incidental take of a threatened species. NMFS encourages counties to follow the ODOT example: ***“Any jurisdiction wanting its routine road maintenance activities to be within this exception to ESA’s take prohibition must first commit in writing to apply management practices that provide protection equivalent to or better than those provided by the ODOT guide.”*** [50 C.F.R. 223.203(b)(10)(i)]

Del Norte County and Trinity County made this commitment when each County Board of Supervisors adopted the 5 C Manual by resolution (see attached). In Humboldt, Mendocino, and Siskiyou counties, the director of each Department of Public Works /Transportation has adopted the 5 C Manual as departmental policy. The 5 C Manual’s practices are substantially similar to, or exceed the protective impact of, the ODOT Guide in protection of the listed species, based on the information in the attached package.

We are hereby committing to apply the management practices described in the 5 C Manual. We look forward to your determination in the near future that the routine road maintenance program described in our application package is consistent with the conservation of the habitat of the listed salmonids, in accordance with 50 CFR 223.203(b)(10)(ii). We also appreciate the dedication of your staff in working with 5 C to develop this program and application.


Sincerely,



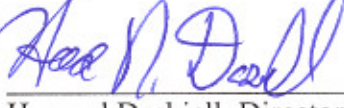
Mark Lancaster, Director 9/26/06
Date
Five Counties Salmonid Conservation Program



Tom Mattson, Director 9/26/06
Date
Humboldt County Public Works Department



Brian McDermott, Director 11/1/06
Date
Siskiyou County Public Works Department



Howard Dashiell, Director 10/31/06
Date
Mendocino County Department of
Transportation



Carl Bonomini, Director 10/3/06
Date
Trinity County Department of Transportation



Ernst Perry, Director 11/03/06
Date
Del Norte County Community
Development Department

cc: Irma Lagomarsino, Arcata Field Office Supervisor

Attachments

Application Package for Limit 10, section 4(d) ESA