

APPENDIX E: ASSURANCES

Assurances Available Under the Endangered Species Act

The Endangered Species Act (ESA) prohibits take (killing or injuring or significantly altering the habitat) of species listed by the federal government as threatened or endangered. To avoid prosecution for take, the ESA allows the following three alternatives to seek authorization for incidental take that might occur in the course of otherwise lawful activities.

ESA Section 4(d) – Includes Limits on Take Prohibitions

This section prohibits take of listed species without specific written authorization. It also sets limits on (exceptions to) take prohibitions. Limits are for programs or activities (or criteria for future programs or activities) for which the National Marine Fisheries Service (NMFS) will not apply the take prohibitions because NMFS has determined that these programs or activities minimize impacts on threatened salmon enough that additional protections are not needed. For Puget Sound Chinook salmon, NMFS offered 13 limits. The following are most relevant to the watershed-based salmon habitat planning that WRIA 8 is undertaking.

Limit No. 8 – Habitat Restoration Limits

Habitat restoration is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat processes or conditions and that would not be undertaken but for its restoration purpose. Projects should be based on watershed-scale analysis and conservation plan and, where practicable, a sub-basin or basin-scale analysis and plan. The state must certify in writing that the watershed conservation plan has been formulated in accordance with state guidelines that have been approved by NMFS. The guidelines are generally similar to what is required of a proponent of a habitat conservation plan under Section 10. The Washington Department of Fish and Wildlife has developed an outline for regional salmon recovery plans. The Salmon Recovery Funding Board has adopted guidance for lead entity strategies for salmon habitat restoration and protection priorities. However, at this time, the state has not submitted either of these or any other proposal to NMFS for approval as state guidelines. Nor has the state indicated it will take on the responsibility and liability of certifying plans.

Limit No. 10 – Routine Road Maintenance

The Tri-County Road Maintenance program has been approved by NMFS under this limit. Many (27?) local governments have submitted formal applications to NMFS to qualify. Many others (15?) are looking to implement the program without formal application.

Limit No. 12 – Municipal, Residential, Commercial, and Industrial Development and Redevelopment (MRCI)

Individual cities, counties, and regional governments can seek written review and agreement from NMFS that ordinances or plans governing MRCI development and redevelopment will conserve listed species. NMFS has 12 considerations that evaluate whether the ordinance or plan will:

- 1) Avoid development on constrained sites such as unstable slopes and wetlands;
- 2) Prevent stormwater discharge impacts on water quality and quantity and stream flow;
- 3) Protect riparian areas well enough to attain or maintain properly functioning conditions
- 4) Avoid stream crossing wherever possible and where crossings must be provided, minimize impacts;
- 5) Protect historic stream meander patterns and channel migration zones; avoid hardening stream banks and shorelines;

- 6) Protect wetlands, wetland buffers, and wetland functions;
- 7) Preserve the ability of permanent and intermittent streams to pass peak flows;
- 8) Stress landscaping using native vegetation to reduce the need to water and to apply herbicides, pesticides, and fertilizer;
- 9) Prevent erosion and sediment run-off;
- 10) Ensure that demands on water supply can be met without affecting flows needed by salmon;
- 11) Provide mechanisms for monitoring, enforcing, funding, reporting, and implementing program;
- 12) Comply with other state and federal environmental and natural resource laws and permits.

ESA Section 7 – Consultation on Federal Permits and Federally Funded Activities

Activities conducted or authorized by federal agencies or that receive federal funding need to be reviewed by NMFS through a consultation process that will limit liability for take provided the activities are conducted according to the terms and conditions of the written incidental take statement. Generally this is done project by project, although work has been undertaken to develop programmatic consultations by project type.

ESA Section 10 – Incidental Take Permit and Agreement with Federal Government

Permits may be issued for research, activities that enhance a species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. Habitat conservation plans are developed that describe activities and how the proponent will minimize and mitigate for any incidental take. The proponent and NMFS negotiate and sign an agreement for a specified length of time that sets forth what activities are covered under the incidental take permit. Multi-jurisdictional habitat conservation plans have been negotiated, but more study will be needed to determine if any have actually been successfully implemented. Bob Lohn, NMFS Region Manager, has mentioned the possibility of a short-term (five years) habitat conservation plan, but no program for this proposal has yet been circulated or approved.