



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD625]

Notice of Availability of a Draft Environmental Impact Statement for the Issuance of an Incidental Take Statement under the Endangered Species Act for Salmon Fisheries in Southeast Alaska Subject to the 2019 Pacific Salmon Treaty Agreement and Funding to the State of Alaska to Implement the 2019 Pacific Salmon Treaty Agreement.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; availability of a draft environmental impact statement; request for written comments

SUMMARY: A Notice of Intent to prepare this draft environmental impact statement (DEIS) was published in the **Federal Register** on October 4, 2023. This DEIS is prepared pursuant to the National Environmental Policy Act (NEPA) to assess the environmental impacts associated with NMFS issuing an incidental take statement (ITS) under section 7 of the Endangered Species Act (ESA) that would exempt take of threatened or endangered ESA-listed species by participants in Southeast Alaska (SEAK) salmon fisheries that are subject to the 2019 Pacific Salmon Treaty (PST) Agreement. This DEIS also assesses the environmental impacts of NMFS funding grants to the State of Alaska (State) to monitor and manage the SEAK salmon fisheries and salmon stocks subject to the 2019 PST Agreement. If warranted, NMFS would issue an ITS, consistent with requirements of the ESA, as part of a consultation on two agency actions related to the 2019 PST Agreement, including the funding to the State. That consultation would conclude with the issuance of a biological opinion (BiOp) that evaluates the effects of

those agency actions on ESA-listed species and critical habitat. This DEIS directly responds to a court order and analyzes the effects of the proposed issuance of an ITS for those two agency actions.

DATES: NMFS requests comments on this DEIS. All comments must be received by 11:59 p.m. Eastern Time on [*insert date 45 days after date of publication in the Federal Register*].

ADDRESSES: This document is available on the National Marine Fisheries Service Alaska Region website at:

<https://www.fisheries.noaa.gov/resource/document/environmental-impact-statement-issuance-incident-take-statement-salmon> and at *<https://www.regulations.gov>* by entering docket number "NOAA-NMFS-2023-0152" in the search bar.

You may submit comments on the DEIS identified by NOAA-NMFS-2023-0152 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *<https://www.regulations.gov>* and enter NOAA-NMFS-2023-0152 in the Search box. Click the “Comment” icon, complete the required fields and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Herrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Susan Meyer. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record, and will generally be posted for public viewing on *<https://www.regulations.gov>* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS

will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kelly Cates, telephone: 907-586-7221; email: *kelly.cates@noaa.gov*; or Bridget Mansfield, telephone: 907-586-7221; email: *bridget.mansfield@noaa.gov*.

SUPPLEMENTARY INFORMATION:

This EIS directly responds to court orders to provide decision-makers and the public with an assessment of the environmental, economic, and social impacts of alternative approaches to the issuance of an ITS under Section 7 of the ESA that would exempt take of threatened or endangered ESA-listed species by participants in SEAK salmon fisheries that are subject to the 2019 PST Agreement.

Pacific Salmon Treaty and SEAK Salmon Fishery Management

The PST provides a framework for the management of salmon fisheries in the U.S. and Canada and regulates the salmon fisheries that occur in the ocean and inland waters of Oregon, Washington, British Columbia, the Yukon, and southeast Alaska, and the rivers that flow into these waters. The PST established fishing regimes that set upper limits on intercepting fisheries, defined as fisheries in one country that harvest salmon originating in another country, and sometimes include provisions that apply to the management of the Parties’ non-intercepting fisheries as well. The overall purpose of the regimes is to accomplish the conservation, production, and harvest allocation objectives set forth in the PST. These objectives are designed to prevent overfishing, provide for each country to benefit from production originating in its waters, avoid undue disruption of existing fisheries, and reduce interceptions to the extent practicable.

Each Party to the PST must implement the fisheries management framework domestically. Salmon fisheries in both Federal and state waters off SEAK are managed consistent with the 2019 PST Agreement. For Federal fisheries occurring in the Exclusive

Economic Zone (EEZ) off the coast of SEAK, the U.S. does this through implementation of provisions of the Magnuson-Stevens Fishery Conservation and Management Act and the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP). The FMP establishes two management areas, the East Area and the West Area with a border at Cape Suckling. In the East Area, the FMP delegates management of the commercial troll and sport salmon fisheries that occur in the EEZ to the State and prohibits commercial salmon fishing with net gear in the EEZ.

NMFS does not manage the salmon fisheries that occur in state waters (internal waters and marine waters from shore to 3 nautical miles (approximately 6 kilometers) offshore) of SEAK. The State of Alaska Department of Fish and Game (ADF&G) manages salmon troll, net, personal use, and sport fisheries subject to the PST's conservation, production, and harvest allocation objectives in state waters. The SEAK commercial salmon fisheries occurring in state waters include troll, purse seine, drift gillnet, and set gillnet fisheries. The State's management of salmon fisheries, including harvest monitoring, stock assessment, and transboundary river enhancement necessary to implement the 2019 PST Agreement, is partially funded through Federal grants dispersed by NOAA.

ESA Consultation and Litigation History

In response to the 2019 PST Agreement, NMFS consulted under section 7 of the ESA on three actions:

- Delegation of management authority over salmon fisheries in the SEAK EEZ to the State of Alaska on the basis of new information regarding the effects of the action and the contemporary status of impacted ESA-listed species;
- Federal funding through grants to the State of Alaska for the State's management of commercial and sport salmon fisheries and transboundary river enhancement necessary to implement the 2019 PST Agreement; and,

- Federal funding of a conservation program to support critical Puget Sound Chinook stocks and Southern Resident Killer Whales (SRKW) related to the 2019 PST Agreement, one component of which included funding of a prey increase program for SRKW.

The Federal funding of the conservation program to support Puget Sound Chinook stocks and SRKW was a separate action from the two Federal actions related to the SEAK salmon fisheries (delegation and funding). In 2019, NMFS completed the consultation and issued the 2019 BiOp and ITS. In the 2019 BiOp, NMFS concluded that the actions were not likely to jeopardize the continued existence of any of the ESA-listed species and that the actions were not likely to destroy or adversely modify designated critical habitat for any of the listed species. NMFS issued an ITS in the 2019 BiOp for take associated with the Federal actions related to the SEAK salmon fisheries, compliance with which would exempt participants in these fisheries from the ESA's prohibition on the incidental take of threatened and endangered species.

In 2020, the Wild Fish Conservancy (WFC) filed a lawsuit in the U.S. District Court for the Western District of Washington challenging the 2019 BiOp (*Wild Fish Conservancy v. Quan*, No. 2:20-CV-417-RAJ-MLP (W.D. Wash.)). WFC alleged NMFS violated the ESA and NEPA. On August 8, 2022, the district court found that NMFS violated both the ESA and NEPA (*Wild Fish Conservancy v. Quan*, No. 2:20-CV-417-RAJ-MLP, 2021 WL 8445587 (W.D. Wash. Sept. 27, 2021), report and recommendation adopted, No. 2:20-CV-417-RAJ, 2022 WL 3155784 (W.D. Wash. Aug. 8, 2022)).

With respect to NEPA, the court concluded NMFS failed to conduct a NEPA analysis for the issuance of the ITS with the 2019 BiOp. The court also concluded that NMFS failed to conduct adequate NEPA analysis for the adoption of the prey increase program. The court remanded to the agency to address its conclusions regarding these NEPA, as well as the ESA, deficiencies.

As part of its effort to address the court's orders on remand, NMFS intends to conduct a new ESA section 7 consultation on the effects from the federal actions related to the SEAK salmon fisheries (delegation and funding), and if warranted, would issue a new ITS as part of that consultation. Compliance with a new ITS would exempt participants in the SEAK salmon fisheries under the 2019 PST Agreement from the ESA's prohibition on the incidental take of threatened and endangered species.

Draft Environmental Impact Statement

This DEIS responds specifically to the court order with respect to the stated failure to prepare an analysis pursuant to NEPA for the issuance of the ITS for the SEAK salmon fisheries. This DEIS analyzes the effects of a reasonable range of alternatives for the proposed issuance of a new ITS.

In light of the nexus between the court's orders on the ESA and NEPA deficiencies and in light of NMFS's ongoing disbursement of funds to the State, this EIS also evaluates the effects of the following actions under consultation:

- NMFS's delegation of management authority over salmon fisheries in the EEZ in SEAK to the State of Alaska under the Salmon FMP; and
- Federal funding through grants to the State of Alaska for the State's management of commercial and sport salmon fisheries and transboundary river enhancement necessary to implementation of the 2019 PST Agreement. This is also a second proposed action considered as a component of the alternatives.

Ultimately, this DEIS provides an assessment of the environmental, economic, and social impacts of the SEAK salmon fisheries in federal and state waters, even though none of the federal actions directly authorize the fisheries, because NMFS expects these impacts to occur from the operation of the salmon fisheries in SEAK that are prosecuted pursuant to the 2019 PST Agreement, facilitated by proposed Federal funding of grants to the State under the 2019 PST Agreement, and proposed to be exempted from liability for

incidental takes of ESA listed species through the issuance of a new ITS.

Since the primary Federal action here—the issuance of the ITS—would exempt incidental take of ESA-listed species that occur in compliance with the ITS, the DEIS focuses on effects to those species (both ESA-listed salmon and ESA-listed marine mammals). In addition, the DEIS also analyzes the impacts of the SEAK salmon fisheries on non-ESA-listed salmon, marine mammals, habitat, seabirds, greenhouse gas emissions and climate change. The DEIS also analyzes the impacts of the alternatives on fishery participants, communities, and Alaska Native tribes.

NMFS is also preparing a separate EIS for the expenditure of Federal funding to for the prey increase program for SRKW (88 FR 54301, August 10, 2023). For more information about that EIS, see <https://www.fisheries.noaa.gov/action/review-prey-increase-program-southern-resident-killer-whales>.

Authority: 16 U.S.C. 1801 et seq.

Dated: January 23, 2024.

Everett Wayne Baxter,

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National Marine Fisheries Service.