Salmon Fishing vs. Salmon Spawning: Reconciling the Goals of Recovery Planning

Observations on
Salmon as a Resource
and
Salmon as a Wild Animal

Presentation Requested by
The Northwest Power Planning & Conservation Council

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Why this Presentation?

- In October 2004, I presented a paper: "A Look At The Logic Of Salmon Policy."
- The paper urges that selective harvest and terminal fisheries be emphasized (with habitat and other measures) to protect ESA-listed fish during the recovery period.
- The paper drew attention and controversy, as discussions of harvest often do.
- Council staff called me to convey the Chair's request that I speak here today.
- My October paper is in the Council's information packets for this meeting.
- Because of time constraints, my presentation today is shorter and simplified.

Protecting Fish vs. Protecting Fishing

- Before the ESA listings, we protected salmon (or not) as a renewable resource.
  - We focused on who would get to kill the fish and keep the benefits: US v. foreign, commercial v. sport, Tribal v. non-Tribal -- and fishermen v. non-fishermen.

- We can do that again -- once ESA-listed salmon are recovered and de-listed.
  - Recovering salmon to harvestable levels is a shared regional goal.
  - This is also widely accepted as a legal obligation owed the Treaty tribes.
  - Almost no one advocates preserving wild salmon as mere "museum pieces."

- ESA listings change things: they require us to protect the fish, not the fishery.
  - Under the ESA, a listed fish is a wild animal to be protected from human harm.
  - "Recovery to harvestable levels" is a concept foreign to the ESA.
  - The issue becomes what is in the interest of the fish itself -- not those who seek it.
  - Under the ESA, threatened and endangered animals can't be harvested on purpose.
  - This is a key conceptual and substantive issue in recovery planning for salmon. It is not merely a semantic issue of "incidental" v. "deliberate" takings.

For ESA Purposes, Pacific Salmon Differ from Other Animals in Key Respects

- Unlike other fish (or birds, or mammals), the salmon reproduces only once.
  - Once it reproduces, it dies and decays. Then it's not fit for human consumption.

- If we catch and kill it, it dies a virgin, making no contribution to recovery.
  - Recovery is measured by the number of adults that return from the sea and spawn.
  - In our efforts (and spending) to get juveniles to sea, we sometimes overlook this.
  - More juveniles to sea without more adults returning to spawn = no recovery benefit.

- At sea, salmon swim in mixed stocks: ESA-listed fish mingle (and die) w/ others.

- We can use "ESA-friendly" fishing methods, but generally we don't.
  - Terminal fisheries (often Tribal) are managed to spare ESA-listed salmon.
  - Selective fishing -- catch and release -- is also possible with fish marking + right gear.
  - Such measures are potentially very cost-effective for ESA recovery purposes.
  - But high-seas, ocean-intercept, and other mixed-stock fishing still predominates.
  - We should handle harvest differently at least temporarily, while the fish remain listed.

How We Treat Other ESA-Listed Animals

- Most ESA-listed animals were never hunted (e.g., owls, murrelets, snail darters).

- But we stop hunting those that were. Consider the Columbia white-tail deer:
  - Although white-tail deer are abundant generally, this particular population is not.
  - So the once-plentiful Columbia white-tail deer is now ESA-listed.
  - Habitat protection (cover + browse) is key; no one denies its importance.
  - But hunting is strictly prohibited. (And will long remain so, even after de-listing.)
  - Trains and cars kill deer accidentally, yet no one suggests tearing out railroad tracks and highways to protect the deer so that hunters can kill them instead.

- With other depleted fish -- including anadromous ones -- we suspend fishing.
  - Atlantic salmon, striped bass, and others began their recovery once "rested."
  - Cod, rockfish, etc.: without terrestrial factors to blame, we limit or stop the catch.
  - The reality is that overfishing has accounted for most depleted fisheries worldwide.
  - "Rested" stocks usually rebound -- Bristol Bay salmon provide dramatic example.

The Stated Reasons for Sidestepping Harvest in ESA Recovery Planning Don't Add Up.

1. "Harvest is not a significant factor in the mortality of ESA-listed salmon."
   - This is false. Harvest kills many ESA-listed, spawning-ready salmon.
     - Snake River fall chinook: total harvest has ranged from 40-70+ percent of adults.
     - Puget Sound chinook: the catch in Canada increased 36% in 2003 (while Tribes cut back).
     - Snohomish River: County's habitat effort assumes 25% harvest; actual is about 50%.
     - Steelhead: NOAA Fisheries now proposes to triple "incidental take" in Columbia fishery.
   - What matters is (a) the high proportion we harvest, not the absolute number, and (b) that the salmon we harvest (adults) are the only ones able to contribute to recovery.

2. "We don't target ESA-listed salmon in our sport or commercial harvest."
   - This is an example of misleading jargon and a lack of candor in public discourse.
   - We do target the abundant salmon with which the ESA-listed salmon swim.
   - Doing so "hammers" the weak, ESA-listed fish in the mixed stock fisheries.
   - This is very different from targeting the abundant salmon stocks selectively.

In Mixed Stock Fishing, Targeting Abundant Salmon Effectively Targets ESA-Listed Ones

"Mid-Century the situation regarding Chinook and other salmon in Washington, Oregon, and Idaho can be characterized as natural habitat being degraded by logging, irrigation, and especially hydroelectric dams, with natural production conveniently replaced by hatcheries. Meanwhile, mixed stock fisheries targeted abundant hatchery fish and over-harvested natural stocks. The seemingly inevitable result was that wild stocks were depleted or destroyed, with many of those remaining being listed under the Endangered Species Act (ESA). This in turn generated massive fishery closures, including valuable ocean troll and sport fisheries which only a few decades before caught hundreds of thousands of Chinook (and millions of coho) annually.

"This crisis led to enormously expensive programs to recover the natural stocks. Hydropower, irrigation, logging, and environmental degradation of watersheds in particular came under close scrutiny and control. Understandably, this led to much dissent and finger pointing."

-- *Excerpt from an undated Congressional briefing paper*
(emphasis added)

The Stated Reasons for Sidestepping Harvest in ESA Recovery Planning Don't Add Up (cont'd).

3. "Our treaties with Canada and Northwest Tribes mean we can't limit harvest."
   - The fact that treaties exist should be a starting point for analysis, not the end.
   - First, not all salmon fishing is treaty-protected; far from it.
     - Recovery would be faster and less costly if non-treaty fishing were suspended and/or "reinvented" in an ESA-friendly manner (e.g., made selective) during recovery period.
     - This would be true even if we left treaty harvest undisturbed and unaffected.
     - Note that non-treaty harvest takes fish from treaty Tribes, so using the treaties to justify non-treaty fishing is illogical -- perhaps even cynical.
   - For treaty-protected harvests, the issue is: *Can we make them more ESA-friendly?*
     - We have the technology, know-how, funds -- and incentive. (Some Tribes lead the way.)
     - Terminal fisheries, selective fisheries (marking + sorting), catch and release fishing.
     - Since abundant stocks may currently be under-harvested in mixed stock fisheries (to protect the weak stocks), selective harvest should yield bigger harvests, too.
   - Fin-clipping or other mass marking techniques, combined with gear changes, could protect ESA-listed fish in many fisheries. Yet who supports it? Who opposes it?

The Stated Reasons for Sidestepping Harvest in ESA Recovery Planning Don't Add Up (cont'd).

4. "Harvest has been restricted too much already. It's time for others to sacrifice."
   - At one level, this just proves the adage "Where you stand depends on where you sit."
     - Widespread perception is that serious harvest reform is neglected in recovery planning.
     - Ratepayers, taxpayers, landowners think they're paying to save the fish, not the fishery.
     - Fishing has suffered -- yes. But this happens worldwide with overfished/depleted stocks.
   - At another level, this claim ignores the wild animal status of ESA-listed fish.
     - Once ESA-listed, animals aren't treated as economic resources any more; they're protected.
     - The allowed harvest of other ESA-listed animals is zero, pending recovery and de-listing.
     - To an ESA-listed salmon, dying at a fisherman's hands is no better (and may be worse) than dying at an earlier point in the salmon's life cycle. Harvested salmon do not aid recovery.
   - At yet another level, however, part of the claim is true: more fish could be harvested.
     - Salmon as a whole are plentiful. Some abundant stocks are now under-fished.
     - The fateful combination: ESA listing of weak stocks + continued mixed stock fishing.
     - By clinging to non-selective, mixed-stock fishing methods, we deny fishermen a lot of fish.

The Stated Reasons for Sidestepping Harvest in ESA Recovery Planning Don't Add Up (cont'd).

5. "We can control habitat, but not harvest -- only the Federal gov't can do that."
   - This is heard most often from local governments taking steps for ESA recovery.
     - Even for them, it is not entirely true: more a matter of will than of power.
     - Local governments could assure harvest's inclusion in recovery planning by insisting on it.
     - After all, local governments are now taking the heat (and suits) on ESA habitat measures.
     - They could say, "There's no ESA point in our spending millions, and getting sued, to save spawning habitat if you the Federal gov't don't take steps to get more adults back to spawn."
   - The States can't duck responsibility: they co-manage harvest and "sit at the table."
   - And the claim is not true for (a) the Federal government itself, or (b) the Council.
     - Federal agencies could enforce the ESA for listed salmon as they do for other listed species.
     - This includes Agriculture, Customs, etc. (Think what they'd do to halt trade in ocelots.)
     - The Council can directly impact BPA spending to develop/implement selective fishing.
     - BPA could fund research to (for example) calibrate harvest to ocean conditions.
     - The Council also has a key voice in recovery plans: will harvest be integrated or not?

The Reasons to Deal with this Issue in ESA Recovery Planning are Compelling

- The science is clear: a harvested salmon can't spawn, thus can't aid recovery.
  - In ESA recovery terms, everything spent on a listed fish that's harvested is wasted.
  - Recovery is about getting spawning pairs back to their native streams alive.

- We have the ability to make harvest more selective and ESA-friendly.
  - Many sports fishermen have "catch and release" experience already.
  - Commercial fishing techniques can be adapted to catch-and-release, too.
  - With fin-clipping or other marking techniques, abundant hatchery fish can be targeted for harvest while ESA-listed (and other unmarked) fish are released.
  - Terminal fisheries, too, can be highly selective (as some Tribes have shown).

- We can afford to pay for it, including compensation where warranted.
  - We already pay a lot for less direct recovery measures. We can pay for these.

- Recovery (plus the Council and Mr. Ruckelshaus) challenge us to re-invent what we do on land. Surely we can re-invent how we harvest salmon at sea.

The Reasons to Deal with this Issue in ESA Recovery Planning are Compelling (cont'd)

- The ethical issues involved are practical ones, too.
  - Recovery -- its costs, and the habitat measures it compels -- require public support.
  - The public believes these measures and costs are to protect the fish, not the fishery.
    - Consider how often someone charges "The salmon are about to become extinct."
  - If ESA recovery measures, such as hydro operations and habitat improvement, have the practical effect of improving salmon harvest rather than salmon recovery, the public is very largely being deceived, and its sentiments taken advantage of.
  - This suspicion or belief explains much resistance to costly recovery measures.
  - Resistance will only grow if harvest issues are not addressed squarely and openly in ESA recovery planning.
  - Besides ethical obligations to the public, we have ethical obligations to the salmon. To meet these, while it remains ESA-listed, we should try harder to spare it at sea.

- We have non-ESA tools to increase harvest abundance, and resume treating salmon as a resource instead of a wild animal, once ESA recovery is achieved.
  - Besides treaties, these include the fish & wildlife provisions of the NW Power Act.

What Recovery Plan Route & Destination Should We Desire?

In addition to habitat and hydropower measures:

- Emphasize terminal fishing and "re-invent" ocean intercept fishing as selective harvest, based on fin-clipping or other mass marking + gear changes.
- Get more spawning pairs of ESA-listed adult salmon back to home streams.
- Increase harvest of abundant stocks by targeting them selectively.
- Use these methods to help meet Treaty obligations, NW Power Act fish provisions, license obligations, etc. -- not just the ESA.
- Assure the public that ESA recovery dollars really do help more ESA-listed adult salmon return to spawn.
- Assure consumers that wild salmon they eat are not threatened or endangered.
- Assure stores & restaurants that the same is true for wild salmon they sell.
- Assure sport, commercial, and Tribal fishermen that the same is true for fish they catch and kill.

Eric Redman

Eric Redman, 56, is a life-long Seattle resident who practices energy and environmental law with Heller Ehrman White & McAuliffe LLP. He was educated at Harvard College, Oxford University (as a Rhodes Scholar), and Harvard Law School.

Redman began working on salmon issues as an aide to Sen. Warren G. Magnuson in the 1960s and 70s. From 1975 through 1984, he represented Bonneville's industrial customers in negotiating, drafting, lobbying, implementing, and litigating the Northwest Power Act. He served as lead draftsman for the power side on the Ad Hoc Power-Fish Committee that wrote the Act's fish and wildlife provisions. In the mid-1990s he advised BPA customers on salmon and steelhead matters.

He currently represents Lewis County PUD on salmon and steelhead matters at the Cowlitz Falls Project, the facility that made possible the re-introduction of free-spawning ESA-listed chinook salmon and steelhead in the upper reaches of the Cowlitz River. He is also responsible for his firm's *pro bono* representation of Fish First and Friends of the East Fork on a major salmon habitat protection effort on the East Fork of the Lewis River in Washington.

A catch-and-release fly fisherman, Redman is a member of the Atlantic Salmon Federation, Fish First, and the Advisory Board of the Methow Conservancy. Outside the U.S., he has worked on habitat preservation for the Rio Futaleufu in Patagonia, and helped introduce catch-and-release fishing for Atlantic salmon on Russia's Kola Peninsula. He has written about recreational salmon fishing for the *Washington Post* and *Forbes FYI* magazine.

He is currently involved in forming the Salmon Spawning & Recovery Alliance, an organization devoted to helping adult ESA-listed Pacific salmon return to spawn.