



October 8, 2019

Via Email and hand-delivery

Ad Hoc Southern Resident Killer Whale Workgroup
Attn: Jeromy Jording, Workgroup Co-chair
National Marine Fisheries Service
West Coast Region, Sustainable Fisheries
1201 Northeast Lloyd
Portland, OR 97232
jeromy.jording@noaa.gov

Re: Ad Hoc Southern Resident Killer Whale Workgroup Draft Risk Assessment

Dear Mr. Jording,

The Center for Biological Diversity, Wild Fish Conservancy, and Raincoast Conservation Foundation submit the following comments on the Ad Hoc Southern Resident Killer Whale Workgroup draft Risk Assessment.

As a preliminary matter, we appreciate that the National Marine Fisheries Service (“NMFS”) has acknowledged that the Workgroup formed due to NMFS’s reinitiation of consultation under the Endangered Species Act to reconsider ocean salmon fisheries’ impacts on the endangered Southern Resident killer whales in light of the fact that “substantial new data has recently become available about the importance of Chinook salmon as prey for the Southern Residents.”¹ The Workgroup is NMFS’s effort to work closely with the Pacific Fishery Management Council (“Council”) to inform the agency’s consultation to ensure no jeopardy to the Southern Resident killer whales, its resulting biological opinion, and its new National Environmental Policy Act analysis. The Workgroup does not supplant NMFS’s independent duty as the action and expert agency to ensure that the actions it authorizes (including the Pacific salmon fisheries) do not jeopardize the Southern Resident killer whale using the best available science.

The Workgroup set out to conduct a review of the Pacific salmon fisheries and their effects on Southern Resident killer whales and report recommendations back to the Council at its November 2019 meeting. From these recommendations, the Council would select a preferred alternative to submit to NMFS that would form the basis for the agency’s consultation and

¹ See Purpose and Goals <https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/southern-resident-killer-whales-and-fisheries-interaction#for-more-information>; see also Ad Hoc Workgroup Terms of Reference, Agenda Item F.3.a. (April 2019).

biological opinion. The Council would also base its recommended 2020 ocean salmon fishery management measures on this preferred alternative.

The Workgroup (which includes representatives from West Coast tribes; the states of California, Oregon, Washington, and Idaho; the Council; and NMFS's West Coast Region, Northwest Fisheries Science Center, and Southwest Fisheries Science Center) issued a draft Risk Assessment on September 11, 2019 in an attempt to describe the relationship between Southern Resident killer whale demographic metrics and coastal Chinook abundance. The draft Risk Assessment noted that the model it developed and its initial results need more work and did not yet yield statistically significant results. It highlighted key uncertainties associated with Chinook salmon abundances, Chinook stock distributions (particularly in the winter and spring months), changes in Chinook salmon size and age structure, and distribution of Southern Resident killer whales. It concluded that:

[g]iven the lack of statistical significance, the results should be interpreted with caution. Nevertheless, in almost all cases the fitted relationships were of the expected sign (i.e. survival and fecundity increased with increasing Chinook abundance while occurrence of peanut-head decreased with increasing Chinook abundance). This was true in all cases excluding time lags and waters south of Cape Falcon.²

Some of our main concerns about this draft Risk Assessment and recommendations moving forward include:

- Southern Resident killer whales are critically imperiled, with three more individuals lost and presumed dead since NMFS and the Council formed this Workgroup.
- Multiple studies conducted since NMFS's last biological opinion in 2009 reaffirm and illuminate three major drivers of decline, one of which is prey availability.
- We are concerned that some Workgroup members would like to use the lack of statistically significant results in the draft Risk Assessment to support doing nothing. The results (or lack thereof) of the draft Risk Assessment should not be misconstrued to indicate that there is no relationship between Southern Resident killer whales and salmon and thus no relationship between Pacific salmon fisheries and orcas and no need for protective measures. NMFS and the Workgroup cannot rely on any perceived lack of perfect data, data gaps, or uncertain data to support inaction.
- Since NMFS last consulted on the fisheries' impacts on orcas in 2009, it has acknowledged that new science has illuminated the essential relationship between these orcas and Chinook salmon. Under the Endangered Species Act, Southern Resident killer whales get the benefit of the doubt, not the burden of proof. The question is what will NMFS and the Workgroup recommend and do in light of the existing scientific evidence and the precarious state of Southern Resident killer whales.
- It appears that while the Workgroup's compilation of existing data was useful, its statistical analysis was not because of the available data sets. The Workgroup could analyze existing fisheries and Southern Resident killer whale data in other ways to

² Draft Risk Assessment at 17.

provide insight on the orca-salmon and fisheries relationships and guidance on potential risk minimization measures. In the meantime, the Workgroup could also develop a workplan for getting to better data sets and a more informative statistical analysis in the future.

- It is unclear whether the Workgroup has sought input on its questions and the draft Risk Assessment from the prominent scientists who have extensively researched and published on Southern Resident killer whales and prey availability, including for example Drs. Sam Wasser, Cathryn Clarke Murray, John Ford, Robert Lacy, and Antonio Veles-Espino. We suggest that it do so.
- The workgroup “is focused exclusively on addressing the impacts of PFMC-area ocean salmon fisheries through tools or conservation measures that apply to those fisheries. The workgroup will not consider other fisheries or other threats to the Southern Residents, which NOAA Fisheries’ West Coast Region and its partners are addressing separately.”³ We do not think this is justifiable given the scientific evidence of the importance of analyzing the primary cumulative threats to this species together.⁴
- The workgroup has not yet started to identify or evaluate management alternatives, conservation measures, or management tools to limit the potential impacts of ocean salmon fisheries on Southern Resident killer whales. There are actions that the Council and NMFS can take to reduce risk and adverse effects to orcas.
- NMFS and the Workgroup should be focused on crafting management responses that prioritize the dietary requirements of these highly imperiled orcas. Coastal Chinook salmon abundance during non-summer months and salmon returns to spawning areas are vitally important to the orcas’ successful survival and reproduction.
- We urge you to start now to consider management actions that could increase the immediate accessibility of Chinook (particularly 4-5+ year old salmon) for Southern Resident killer whales throughout their range and minimize risks to the orcas. Measures the Workgroup could consider include adjusting fishing effort by time and place, establishing size limits for catch, increasing foraging success by decreasing acoustic and physical disturbance to the orcas, establishing an abundance threshold or salmon allocation for the Southern Resident killer whales, and adding adaptive management measures to the Pacific Salmon Plan and annual authorizations that reflect current data on Southern Resident killer whale and salmon status, needs, and risks.

Our organizations supported this Workgroup’s creation to evaluate the risks that Pacific ocean salmon fisheries pose to these salmon-dependent orcas. It is critical that any “key uncertainties” and lack of data on Chinook and Southern Resident killer whales are not used to

³ Purpose and Goals, <https://www.fisheries.noaa.gov/west-coast/marine-mammal-protection/southern-resident-killer-whales-and-fisheries-interaction#for-more-information>.

⁴ See, e.g. Murray, C.C., Hannah, L.C., Doniol-Valcroze, T., Wright, B., Stredulinsky, E., Locke, A., and R. Lacy. 2019. Cumulative Effects Assessment for Northern and Southern Resident Killer Whale Populations in the Northeast Pacific. DFO Can. Sci. Advis. Sec. Res. Doc. 2019/056. x. + 88 p.; Lacy, R.C., R. Williams, E. Ashe, K.C. Balcomb III, L.J.N. Brent, C.W. Clark, D.P. Croft, D.A. Giles, M. MacDuffee, and P.C. Paquet. 2017. Evaluating anthropogenic threats to endangered killer whales to inform effective recovery plans, Scientific Reports 7: 14119, DOI:10.1038/s41598-017-14471-0.

delay much-needed recovery actions, further pushing these highly imperiled orcas towards extinction. Instead, these knowledge gaps counsel for precautionary action now along with further research and revisited management approaches in the future to ensure that protected species are not driven to extinction while we wait for more certain data. Our ultimate goal is full recovery of both wild salmon and Southern Resident killer whale populations, which cannot afford any further delay.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Teel Simmonds". The signature is fluid and cursive, with the first name "Julie" being the most prominent.

Julie Teel Simmonds, Senior Attorney
Center for Biological Diversity, Oceans Program
(619) 990-2999
jteelsimmonds@biologicaldiversity.org

cc: Ms. Robin Ehlke, robin.ehlke@noaa.gov