

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 092706C]

**Notice of Intent To Conduct Public Scoping and To Prepare an Environmental Impact Statement Related to the Washington Department of Natural Resources Aquatic Lands Habitat Conservation Plan**

**AGENCY:** Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; scoping meetings, request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) advise interested parties of their intent to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare an Environmental Impact Statement (EIS) related to a permit application from the Washington Department of Natural Resources (WDNR) for the incidental take of species listed under the Endangered Species Act. The permit application would be associated with the WDNR's Aquatic Lands Habitat Conservation Plan.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates. Written comments should be received on or before December 8, 2006.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for meeting locations.

All comments concerning preparation of the EIS and the NEPA process should be addressed to: Jo Ellen Henry, FWS, 510 Desmond Drive, SE., Suite 102, Lacey, WA 98503, facsimile number 360-753-9518; or John Stadler, NMFS, 510 Desmond Drive, SE., Suite 103, Lacey, WA 98503, facsimile number 360-753-9517. Submit electronic comments to [WADNRAquaticlandsHCP.nwr@noaa.gov](mailto:WADNRAquaticlandsHCP.nwr@noaa.gov). In the subject line of the electronic mail, include the document identifier: Washington DNR Aquatics HCP EIS.

**FOR FURTHER INFORMATION CONTACT:** Jo Ellen Henry, FWS, telephone 360-753-7766; or John Stadler, NMFS, telephone 360-753-9576.

**SUPPLEMENTARY INFORMATION:** Five public scoping meetings are scheduled

from 7 to 9:30 p.m. for the following dates and locations:

(1) October 24, 2006; at the Student Union Building, Spokane Falls Community College, 3410 West Fort George Wright Drive, Spokane, WA 99224-5288.

(2) October 25, 2006; at the Student Union Building, Central Washington University, 400 East University Way, Ellensburg, WA 98926.

(3) November 1, 2006; at the Main Branch, Public Library, 210 Central Avenue, Bellingham, WA 98225.

(4) November 7, 2006; at the Cowlitz County Public Utility District Office, 961 12th Avenue, Longview, WA 98632.

(5) November 8, 2006; at the National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, WA 98115.

**Statutory Authority**

Section 9 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1538) and implementing regulations prohibit the taking of endangered species. The term "take" is defined under the ESA (16 U.S.C. 1532(19)) as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is defined by FWS regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). NMFS' definition of "harm" includes significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, or sheltering (64 FR 60727, November 8, 1999).

Section 10 of the ESA and implementing regulations specify requirements for the issuance of incidental take permits (ITPs) to non-Federal applicants for the take of endangered and threatened species. Any proposed take must be incidental to otherwise lawful activities and must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In addition, the applicant must prepare a habitat conservation plan (HCP) describing the impact that will likely result from such taking, what steps will be taken to minimize and mitigate the impacts of the take, the funding available to implement such steps, alternatives to such taking, and the reason such alternatives are not being implemented.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their

proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the Services' environmental review. Alternatives considered for analysis in an EIS may include variations in the scope of covered activities; variations in the number of covered species; variations in the location, amount, and type of conservation; variations in permit duration; or a combination of these elements. In addition, the EIS will identify potentially significant direct, indirect, and cumulative effects on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental issues that could occur with the implementation of the applicant's proposed actions and alternatives. For potentially significant impacts, an EIS may identify avoidance, minimization, or mitigation measures to reduce these impacts, where feasible, to a level below significance.

**Background**

An EIS for the WDNR HCP would analyze the potential issuance of two ITPs, one by NMFS and one by the FWS. To obtain an ITP, the applicant must prepare an HCP that meets the issuance criteria established by the ESA and Service regulations (50 CFR 17.22(b)(2), 17.32(b)(2), and 222.307). Should a permit or permits be issued, the permit(s) may include assurances under the Services' "No Surprises" regulations.

Approximately 2.4 million acres in Washington are state-owned aquatic lands managed by the WDNR, that include tidelands, shorelands, and bedlands. Nearly all of the freshwater and marine bedlands, approximately 30 percent of the tidelands, and approximately 70 percent of the shorelands of the navigable lakes and rivers in Washington are under state ownership. The WDNR authorizes a wide variety of activities undertaken by individuals, businesses, and government entities, and conducts activities on state-owned aquatic lands, such as derelict vessel removal, control of aquatic nuisance species, identification and management of areas for conservation or restoration, designation of aquatic reserves, and aquaculture of shellfish and finfish.

Several species of fish, birds, marine mammals, and other species that use habitat on state-owned aquatic land have been listed as threatened, endangered, species of concern, or candidate species by Federal or state

governments. Federally threatened or endangered species within the proposed HCP area include the bald eagle, marbled murrelet, western snowy plover, bull trout, killer whale, and several species of salmonids.

The species under consideration for coverage in the HCP include the brown pelican (*Pelecanus occidentalis*), bald eagle (*Haliaeetus leucocephalus*), marbled murrelet (*Brachyramphus marmoratus*), bull trout (*Salvelinus confluentus*), western snowy plover (*Charadrius alexandrinus nivosus*), western toad (*Bufo boreas*), Columbia spotted frog (*Rana luteiventris*), northern leopard frog (*Rana pipiens*), western pond turtle (*Clemmys marmorata*), black tern (*Chlidonias niger*), common loon (*Gavia immer*), harlequin duck (*Histrionicus histrionicus*), Dolly Varden (*Salvelinus malma*), Chinook salmon (*Oncorhynchus tshawytscha*), chum salmon (*O. keta*), coastal cutthroat trout (*O. clarkii clarkii*), coho salmon (*O. kisutch*), pink salmon (*O. gorbuscha*), sockeye/kokanee salmon (*O. nerka*), steelhead (*O. mykiss*), and killer whale (*Orcinus orca*).

The draft HCP to be prepared by WDNr in support of the ITP applications will describe the impacts of take on proposed covered species and propose a conservation strategy to minimize and mitigate those impacts to the maximum extent practicable. With assistance from the Services, WDNr will develop habitat conservation measures for fish and wildlife and their associated habitats. The Services are responsible for determining whether the HCP satisfies the ESA section 10 permit issuance criteria.

Under NEPA, a reasonable range of alternatives to the proposed project must be developed and considered in the Services' environmental review. The Services have identified the following preliminary alternatives for public evaluation during the scoping period:

**Alternative 1: No Action**—Under this alternative, ITPs would not be issued by the Services and the HCP would not be approved. WDNr would continue managing and leasing state-owned aquatic lands in accordance with current practices, and no specific management strategies would be implemented to ensure compliance with the ESA. The WDNr would not conduct a direct evaluation under the ESA of the effects of its management actions, nor would it consider the cumulative effects of its activities.

**Alternative 2: Proposed Alternative**—Development of an HCP and issuance of ITPs by FWS and NOAA authorizing covered activities in freshwater, marine,

and estuarine environments, provided all legal requirements are met. A preliminary list of activities under consideration for coverage includes: aquaculture of finfish and shellfish; complex, water-dependent activities (such as marinas, shipyards, and terminals); overwater structures; public access; log booming and storage; commercial sand and gravel removal; and small-scale mining.

**Alternative 3: Development of an HCP and issuance of ITPs by each agency** limiting covered activities to those in marine and estuarine environments, provided all legal requirements are met. The activities, species, and area covered under this alternative would generally be a subset of those included under Alternative 2, and the HCP would focus on those species most likely to be affected.

Additional project alternatives may be developed based on input received from the public scoping process.

#### Request for Comments

The primary purpose of the scoping process is for the public to assist the Services in developing the EIS by identifying important issues and alternatives related to the applicant's proposed action. The scoping meetings will allocate time for presentations by the Services and WDNr, followed by informal questions and discussions. Written comments from interested parties are welcome to ensure that the full range of issues related to the proposed permit request is identified. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices listed in the **ADDRESSES** section of this notice. The Services request that comments be specific. In particular, we request information regarding: Direct, indirect, and cumulative impacts that implementation of the proposed HCP or other alternatives could have on endangered and threatened and other covered species, and their communities and habitats; other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; funding issues; existing environmental conditions in the plan area; other plans or projects that might be relevant to this proposed project; permit duration; maximum acreage that should be covered; specific species that should or should not be covered; specific aquatic lands that should or should not be covered; and

appropriate minimization and mitigation efforts. NMFS and FWS estimate that the draft EIS will be available for public review by January 2008.

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), other applicable Federal laws and regulations, and applicable policies and procedures of the Services. This notice is being furnished in accordance with 40 CFR 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS.

#### Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Jo Ellen Henry, FWS, at 360–753–7766 or John Stadler, NMFS, at 360–753–9576. To allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding the applicant's proposed action is available in alternative formats upon request.

Dated: October 4, 2006.

**David J. Wesley,**

*Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.*

Dated: September 28, 2006.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

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**BILLING CODE 4310–55–P; 3510–22–P**

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## COMMODITY FUTURES TRADING COMMISSION

### Notice of Meeting; Sunshine Act

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

#### Sunshine Act Meetings

**TIME AND DATE:** 2 p.m., Thursday, October 26, 2006.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.