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Salmon Shell Game

Suddenly the feds can't tell wild salmonids from obese, stump-finned hatchery clones

By Ted Williams

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I have a Brittany; my son has a German shorthair; my cousin has a Newfoundland. What's more, there are hundreds of thousands of these domestic canids in households all across the United States. Genetically, they are "no more than moderately divergent" from gray wolves, as the policy works at National Oceanic and Atmospheric Administration (NOAA) Fisheries-formerly the National Marine Fisheries Service-like to say, whatever that means. In any case, dogs can hybridize with gray wolves and produce fertile offspring. Ergo: gray wolves are no longer endangered.

This is precisely the logic behind a Bush administration policy, released May 28, 2004, proclaiming that Pacific salmon and steelhead trout of hatchery origin can count as wild fish when determining if an ESU (evolutionarily significant unit) needs protection. NOAA Fisheries gets to decide whether the genetics of a hatchery stock are less than or more than moderately divergent from the whole ESU. With no tool for making such a determination and no definition of "moderately" or "divergent," the agency then decrees whether a hatchery stock should be excluded or included. Under the new policy, hatchery fish included in an ESU are counted in assessing population status.

The policy is a return to the thought processes of the early 20th century when huge federal hatcheries were going to provide all the "mitigation" needed for mega-dams built without adequate fish-passage. As a cure for dwindling salmon runs, hatcheries were as effective as leaches for anemia. Hatchery fish, selected for everything wild fish are not, survived badly. Those that returned suppressed wild fish and spread diseases and defective genes. To make sure hatcheries were full, crews harvested eggs and milt from the first fish that returned, thereby eliminating later runs. Even non-fishermen know that, in the Pacific Northwest, hatcheries are the second biggest factor-after the dams that spawned them-in suppressing salmon and steelhead. Can it be that the Bush administration hasn't heard this?

No. The policy was lobbied for by logging, power, livestock, and agribusiness interests who, for years, have tried every possible way to get threatened and endangered salmon and steelhead stocks delisted so they can destroy and pollute habitat with impunity. Nothing, until now, has worked. But this brilliant ruse renders habitat obsolete-just keep mass-producing hatchery fish, and there's no need for unobstructed rivers shaded by forests in which water flows all year.

"Hatchery salmon are just as good as so-called 'wild' salmon," explains the Pacific Legal Foundation-the Seattle-based property-rights outfit representing special interests in lawsuits and petitions for delisting. "Pacific salmon are not at risk. Millions of fish from each of the five Pacific salmon species are flourishing from Alaska to California. The fact that you can buy salmon for \$3.99 a pound in your local supermarket should make that pretty clear."

The new federal policy is the brainchild of attorney Mark Rutzick who, before Bush hired him as legal advisor to NOAA Fisheries, had led the timber industry's crusade to get salmon and steelhead delisted by redefining hatchery fish as wild fish. Last March Rutzick met in Washington, DC with Pacific Legal Foundation attorney Russell Brooks, counsel for Rutzick's former industry in a 2001 case in which US District Court judge Michael Hogan ruled that NOAA's exclusion of hatchery fish from the listed Oregon

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coastal coho ESU was arbitrary and capricious. Since then, the administration has repeatedly stated that this decision forced the new policy.

But the decision did no such thing. All Hogan said was that if you include hatchery fish in a threatened or endangered ESU, you must list the whole ESU. He didn't say anything about having to include hatchery fish. Hogan ruled that, if the Bush administration so chose, it could separate wild and hatchery fish and list only the former. Another option the administration had would have been to appeal. After all, the Endangered Species Act plainly states that threatened and endangered species must be protected in their "natural habitat."

The Hogan decision precipitated a blizzard of petitions from industry to delist the Oregon coastal coho and 14 other stocks. A coalition consisting of 16 organizations, including Trout Unlimited and American Rivers, countered with petitions to list just the wild fish in these 15 stocks, since Hogan had ruled that this was perfectly permissible. The upshot was a lengthy review by NOAA Fisheries. In 2002 the agency did the right thing, what it had always done: It agreed to count only wild fish. But, after intense pressure from special interests, it flip-flopped.

In March 2004, almost a month before the new policy was made public, six of the nation's foremost fisheries scientists exposed the Bush administration's manipulation and suppression of data. These scientists had been hand-picked by NOAA to serve on its independent Recovery Science Review Panel. In the spring of 2003 NOAA asked them to determine research needs on hatchery issues and advise it concerning how those issues affected recovery for 27 threatened and endangered salmon and steelhead stocks. NOAA liked their advice on research needs. However, when the scientists informed it that hatcheries were not a solution but part of the problem, NOAA told them that this part of the answer wasn't acceptable for a government publication.

So, publicly complaining about being censored, the scientists published their findings in the respected, peer-reviewed journal *Science*. "Hatchery fish usually have poor survival in the wild and altered morphology, migration, and feeding behavior," they wrote. "On release, hatchery fish, which are typically larger, compete with wild fish. Their high local abundance may mask habitat degradation, enhance predator populations, and allow fishery exploitation to increase, with concomitant mortality of wild fish. The absence of imprinting to the natal stream leads to greater straying rates, and that spreads genes not adapted locally. Also, hybrids have poor viability, which may take two generations to be detected... Much evidence exists that hatcheries cannot maintain wild salmon populations indefinitely."

Less than a month later, with impeccable timing, someone leaked a one-page summary of the new policy to the *Washington Post*, which published it on April 28. Industry and agribusiness moguls were ecstatic. Washington Association of Wheat Growers lobbyist Gretchen Borck, for example, opined to Reuters that salmonid extinction had its good points: "I applaud the people that are trying to save species that are endangered. But it might be good that we don't have dinosaurs now. We've gotten oil from the dinosaurs. If we had preserved the dinosaur, we wouldn't have that oil. Hopefully this will get us a breather from environmental lawsuits."

Also celebrating were Indian tribes, among the most rapacious exploiters of salmon and steelhead, regardless of origin. In an interview with the Associated Press, Charles Hudson, spokesman for the Columbia Intertribal Fish Commission, was quoted as saying: "If you talk about other endangered stock-antelope, condor, for example-they've long used trapping, transporting and artificial reproduction to restore them. For some strange reason salmon have not been allowed that flexibility."

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But anglers, fisheries biologists (including many at NOAA), environmentalists and commercial fishermen were aghast. Scientists from NOAA's Recovery Science Review Panel vented in a May 24th telephone press conference sponsored by Trout Unlimited. "They [NOAA scientists] had no idea what the policy announcements were going to be," said Dr. Russell Lande, of the University of California at San Diego. "It came as a complete surprise to them and they actually had to send a list of questions to the policy branch."

Dr. Ransom Myers, of Dalhousie University in Halifax, also a panel member, said that if the policy is not withdrawn, "it's only a matter of time before salmon stocks presently listed are delisted and habitat critical for their long-term survival is eliminated."

Conservation groups like American Rivers quickly weighed in. "Hatcheries aren't habitat," said Rob Masonis, the organization's northwest regional director. "When you remove protections for endangered salmon, you also remove key protections for the rivers they inhabit. This could lead to lower water quality and further degradation of streamside forests, and it could hurt communities and businesses that rely on healthy rivers. Hatchery-reared replacements will never substitute for wild salmon runs since the need for hatcheries indicates a broken river ecosystem."

Bill Bakke of the Native Fish Society summed it all up with: "Politics trumps science."

Remarked Kaitlin Lovell of Trout Unlimited: "This policy circumvents the most basic tenets of the Endangered Species Act and effectively lets the federal government off the hook for any responsibility to recover salmon and healthy rivers and streams."

The National Wildlife Federation's Jan Hasselman accused the Bush administration of "deliberately blurring the important distinctions between wild and hatchery-raised salmon [and] trying to loosen safeguards designed to protect salmon habitat and clean water in the Northwest." Glen Spain of Pacific Coast Federation of [commercial] Fishermen's Associations charged NOAA with "trying to redefine reality" and "turning conservation biology on its head."

Newspapers around the country also pummeled the White House. "The Bush administration has now found a novel way around these [Endangered Species Act] inconveniences," editorialized The New York Times. "A new policy on counting fish, its practical effect would be to eliminate the distinction between wild salmon and hatchery salmon, which can be churned out by the millions. This sleight of hand would instantly make wild salmon populations look healthier than they actually are, giving the government a green light to lift legal protections for more than two dozen endangered salmon species as well as the restrictions on commerce that developers and other members of President Bush's constituency find so annoying."

Oregon Governor Ted Kulongoski, condemned the "bleeding in" of hatchery fish to ESUs and explained that his state was committed not just to more fish but to "water quality, stream banks, and "the general quality of the watershed."

Sen. Maria Cantwell (D-WA) voiced concern that the administration was abandoning science and law in favor of "political expediency" and that the new policy would plunge the region "into uncertainty and conflict through protracted litigation." Rep. Mike Thompson (D-CA) accused the White House of concocting a "recipe for disaster" and ignoring "the scientific experts as well as the citizens whose livelihoods will be affected." And he helped draft a letter of protest, signed by 76 members of Congress, which rebuked the President and his staff for reneging on "repeated statements that they

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want to use the best science and resources in all natural resource policy decisions."

If, as has been suggested, the White House leaked the policy on purpose to "test the water," it got some compelling results. The public firestorm elicited a NOAA announcement that it would not, as it had promised just two weeks earlier, "propose relisting at least 25 species [sic]." At least not right away.

Crocodile tears gushed from the policy's ghost writers, most notably the Pacific Legal Foundation, which vowed to sue the administration. "We'll let them justify to a judge how they think hundreds of thousands of fish are threatened with extinction," Russell Brooks told the press. Timothy Harris, general counsel of the Building Industry Association of Washington, which is suing NOAA in hope of getting delistings, called the failure to immediately delist "a step backwards" and recycled the old industry and administration untruth that the Endangered Species Act requires hatchery and wild fish to be considered as the "same species."

Still, the strategy of the special interests and the administration was successful and clear. Suddenly it's possible to use hatchery fish to write off habitat, to replace wild water and wild watersheds with concrete raceways. The administration can announce delistings anytime it feels like doing so-which, obviously, won't be before the election. But if there's a second Bush term, the heat will be off, and the administration and its allies will be free to start picking apart trout and salmon habitat.

The likely scenario is that the White House will secretly encourage lawsuits from the Pacific Legal Foundation, then settle in favor of industry or mount token defenses, lose on purpose, and refuse to appeal. That's been its consistent game plan for unraveling other environmental laws-the Clean Water Act, for example. Dr. Robert Paine, of the University of Washington, another member of the Recovery Science Review Panel, explains: "I think that NOAA Fisheries will do as they've said; they're not going to delist some big fraction of these stocks. The implication of that, is it will set into action an increased series of lawsuits by the people who initially pushed the Hogan decision through. . . . Then [the administration] is off the hook in terms of responsibility."

American Rivers' Masonis and Trout Unlimited's Lovell are especially worried about a part of the administration's proposal that the angling community hasn't picked up on-counting resident rainbow trout as steelhead. Already NOAA Fisheries has proposed downlisting the endangered Upper Columbia steelhead whose population, it alleges, "includes resident rainbow trout."

"Our fears turned out to have been well founded," says Masonis about the administration's latest fiction that, just because the DNA happens to look the same to bureaucrats who lack the technology to read it anyway, a rainbow is a rainbow is a steelhead.

"A grape is also a grape," Dr. Robert Behnke of Colorado State University, the world's leading authority on trout, once wrote me in response to Wisconsin's claim that there's no difference between a coaster and a resident brookie. "One species of grape (*Vitis vinifera*) is used in virtually all wine made in the world-reds, whites, best and worst. The grape-is-a-grape point of view is the most simplistic and would save money for wine drinkers, because the cheapest wines would be the same quality as the most expensive wines. I wouldn't want some of the managers you quote selecting wine for me or, for that matter, being in charge of fisheries programs where subtle genetic differences that may not show up in genetic analysis can be important."

"If there are lots of resident rainbows, the administration assumes they'll just turn into steelhead and

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replenish the population," says Masonis. "There's potential here, too, to use hatchery fish to escape listings."

Lovell worries about the "enormous implications" for anglers-who may be prevented from fishing for resident rainbows, which no sober scientist would claim require listing-and for all manner of truly imperiled fish and wildlife that may be denied protection simply because, in segments of their range, they sometimes hybridize with close relatives. At risk of being written off, for example, are any number of cutthroat races, which interbreed with rainbows or other cutts.

"NOAA Fisheries doesn't have the genetics for almost 99 percent of these wild fish," Lovell says. "So when it applies [the new ESU criteria] it uses a whole bunch of 'proxies'-what kind of brood stock did you use, have you been using the same hatchery population, what are your release strategies; are your fish coming back at different times than wild fish?"

Last February more than 60 scientists, including 20 Nobel laureates and 19 recipients of the National Medal of Science (awarded by the President), provided irrefutable evidence that this salmon shell game is merely business as usual for the Bush administration. The scientists' report, entitled "Scientific Integrity in Policy Making: An Investigation into the Bush Administration's Misuse of Science," charges the administration with "distorting scientific data and suppressing scientific analysis in numerous policy areas, including environmental protection" and "repeatedly censoring and suppressing reports by its own scientists, stacking advisory committees with unqualified political appointees, disbanding government panels that provide unwanted advice, and refusing to seek any independent scientific expertise." One of many examples offered by the scientists was the suppression of an EPA study revealing the dangers of eating mercury-contaminated fish, this at a time when the administration was pushing a major revision of the Clean Air Act that would permit certain coal-fired power plants and refineries to increase pollution. [See "Anglers and Air Pollution," March 2004.]

The Orwellian transformation of hatchery salmonids into "wild" ones is odd policy if, as Mr. Bush and his people profess, they are committed to fish and fishing. While the president isn't into trout or salmon, he has rhapsodized about the joys of going bassing with Ray Scott and bluefishing in his father's cigarette boat. The vice president gushes about fly-fishing for trout in Wyoming. And Bush's interior secretary, Gale Norton-James Watt's old protégé at the Mountain States Legal Foundation-offers the following: "Fly fishing conjures images of grace, to be sure, but its mastery requires patience and commitment. Less well known, however, and deserving of far greater recognition, is the vital role fly fishers have played and continue to play in conservation in the United States."

Norton, an accomplished abuser of science herself, at least has it right about fly fishers. But she might have added this, perhaps in a note to Trout Unlimited and its allies: "The most vital part of that vital role has been to expose and hold accountable elected officials who sacrifice, for short-term profit, wild salmonids and the water and land that sustains them."