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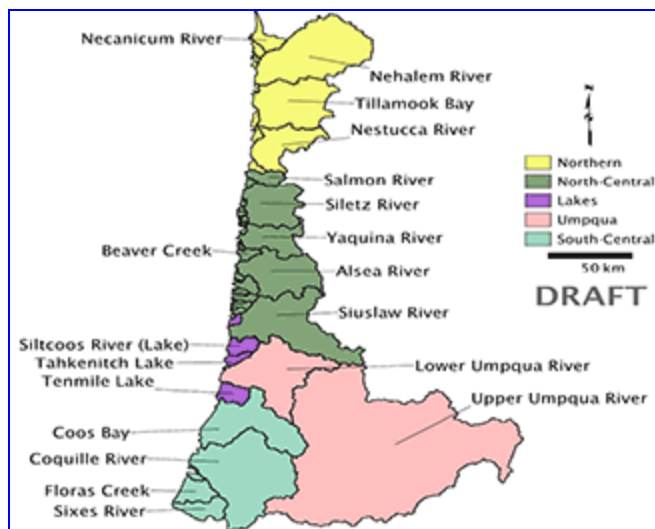
8. SALMON: Feds must reconsider endangered species status of coho, judge rules (10/11/2007)

Arthur O'Donnell, *Land Letter* editor

Rejecting appeals by the National Marine Fisheries Service and the Oregon state government, U.S. District Court Judge Garr King this week upheld a July ruling from a federal magistrate requiring a new science-based decision on whether to restore Endangered Species Act protections for Oregon coast coho salmon.

The terse ruling offered no interpretation or analysis, simply stating, "This court ADOPTS the Findings and Recommendation of Magistrate Judge Stewart dated July 13, 2007 in its entirety." In that decision, Stewart found that state and federal agencies ignored the best available science when deciding to delist coho ([Land Letter](#), July 19).

The case is part of the long-running salmon saga in the Pacific Northwest that has resulted in "on-again, off-again" protections for Oregon coho, noted Earthjustice attorney Jan Hasselman. Earthjustice represented a coalition of commercial fishing groups and environmental organizations that challenged NMFS's reversals on the listing status for coho based on species viability assessments offered by Oregon. "What our clients want is a functioning habitat so there are fish to catch," Hasselman told *Land Letter*.



This map illustrates Oregon's many river systems where wild coho salmon return from the Pacific Ocean to spawn. Click on map for larger version. Courtesy of NOAA/NMFS.

In her July ruling, Stewart wrote, "NMFS has twice proposed to list the Oregon coast coho salmon as a threatened species under the ESA, but has twice withdrawn the proposed listing at the urging of the state of Oregon." Initially, the decision to keep the fish off the threatened list was based on state promises of voluntary conservation, but the federal judges rejected that in a case that eventually reached the 9th U.S. Circuit Court of Appeals in 2004.

More recently, NMFS again reversed course and withdrew its listing proposal. Based on a reported spike in coho numbers in 2000, Oregon biologists posited that while its population fluctuated, the fish is inherently resistant to extinction and does not need ESA protections, an argument that the federal agency incorporated into its decisionmaking process. "As a result," Stewart explained, "of 27 salmon and steelhead populations in the Pacific Northwest and California, the Oregon coast coho is the only population not currently listed under the ESA."

counted in 2000, the returning populations are now hovering at more than 100,000. "We're a long way from the spike we saw in 2000," Hasselman said.

Though there are more spawning coho counted in Oregon now than there were in the early 1970s, the spike reported in 2002 appears to have tapered off. From some 230,000

Chris Frisell, senior staff scientist for the Pacific Rivers Council, said in a statement, "Oregon coast coho are still on life support, and recovery depends on protecting and restoring the rivers and streams these fish depend on."

The July ruling rejected the Oregon viability assessment as not being based on best available science and found sufficient evidence that the coho population was less healthy than the state contended. She concluded, "Since the evidence supporting listing was even stronger in January 2006 when NMFS withdrew the listing than when the proposed listing was issued in June 2004, NMFS had no legitimate reason to abandon its proposed listing" of the fish as threatened. "This is not a situation in which the court should defer to the NMFS's resolution of conflicting scientific evidence."