APPENDIX G: EXCERPTS FROM THE GOVERNOR'S "EXTINCTION IS NOT AN OPTION"

The Governor's Extinction is not an Option states:

State Environmental Regulations

There are currently limited state regulations relative to fish habitat or water quality on private agricultural lands. In Chapter I. A Sense of Urgency we listed several laws and regulations dealing with agricultural practices. Some of the regulatory programs, such as the Hydraulic Code, the Water Code and Water Resources Act, the Dairy Nutrient Management law, the Shorelines Management Act, state water quality standards, and some local ordinances, impact agricultural activities.

There are, however, limited requirements within the laws and regulations for enforcement; a good example is the limitation on enforcing state water quality standards on agricultural nonpoint sources pollution. In addition, most agencies, in particular the Department of Ecology, have few resources for enforcement. (See Enforcement Chapter V. B. for further discussion of enforcement strategy.) Enforcement strategy identifies the need to significantly increase staffing levels for Department of Ecology (water resources and water quality programs), Fish and Wildlife (Hydraulic Code), and grants to local government to enhance their enforcement capabilities. The legislature in 1999 provided some funding. The "Early Action Plan" outlines how and where the resources will be used.

The Statewide Strategy to Recover Salmon makes a strong commitment to developing a

Credible nonpoint enforcement and compliance strategy for the state as well as enforcing existing state environmental laws. A key regulatory driver is the fear of sanctions from the federal government or fear of regulatory impacts of ESA (i.e. loss of ability to divert water for irrigation) and CWA and fear of citizen lawsuits that can be brought under ESA and CWA.

Default Actions

The Statewide Strategy to Recover Salmon calls for agencies to use collaborative, incentive based approaches when working with private and other governmental parties to achieve salmon recovery. It also calls for "default actions" in areas where no effort is being made to recover salmon or where performance measures are not being met after a reasonable period of time. For the agricultural strategy, if no significant progress is made after three years the state will seek new authority to ensure salmon protection in agricultural areas.

Three years into the implementation of the salmon strategy an analysis will be conducted to determine if the voluntary, incentive-based approach has been successful. The following three questions need to be answered to determine the success or failure of the strategy:

1) How successful was the strategy in priority areas as measured by percent?

Implementation of conservation practices.
2) How long will it take to achieve full implementation if there are resource issues, and is the timeframe acceptable?
3) What is the cost/benefit ratio for the strategy in priority areas?
There are two initial default triggers for the agricultural strategy. 1) If the strategy is not supported by the majority of the agricultural leadership in the state; or 2) if the NRCS MOU process is not successful in developing standards acceptable to the National Marine Fisheries Service which are then incorporated into the NRCS Field Office Technical Guides.
At the end of three years all options will be considered; however, several regulatory options have been discussed. A final decision will not be made until default is imminent. The options being considered are summarized below:
1) A comprehensive Agricultural Practices Act. This would be modeled after the Forest Practices Act where the standards and best management practices would be in rule.
2) Require mandatory farm plans and implementation of state approved conservation practices in areas where fish or other species have been listed as threatened or endangered under the ESA or as critical or depressed by the state and in areas where CWA water quality standards are not being met. This approach should have the flexibility to allow its use in areas where voluntary implementation is not successful.
3) Develop a State Riparian Standards Act. This would require mandatory implementation of state approved riparian standards statewide or in areas where fish have been listed under the ESA or as critical or depressed by the state. This approach should also have the flexibility to be targeted at areas where voluntary efforts are not working.
4) Use the Growth Management Act and the Shoreline Management Act as tools to implement the Agricultural Strategy. The state would ask local government to adopt specific regulations or practices, such as those resulting from the NRCS MOU, and use their regulatory authority to implement them. The state would be proactive in its role in
Administering the Shoreline Management Act and ensure that revised Master Program Guidelines address salmon issues. The state would not ask for relief under the ESA for those counties, which did not respond to the request."

Extinction is not an Option also states:

The strategy also relies on a commitment by the state to enforce existing environmental laws and regulatory programs. It includes better tracking and accountability than in the past and calls for monitoring and adaptive management. Benchmarks will be set to measure success, and if they are not met within three years the state will seek new authority from the Legislature to ensure salmon protection in agricultural lands. P IV-42