HABITAT COMMITTEE REPORT ON ESSENTIAL FISH HABITAT ISSUES

The Habitat Committee (HC) met on Monday, September 9, 2002. The HC also heard a report from Ms. Cathy Tortorici of the NMFS Habitat Conservation Division about the proposed Columbia River channel deepening project, describing the project consultation history and the upcoming essential fish habitat (EFH) consultation on the deepwater disposal site. Ms. Tortorici also answered Habitat Committee members' questions about the project. The HC also discussed the following items:

Items Needing Council action

Columbia River dredging letter: the HC discussed a draft letter on Columbia River dredging (Exhibit B.1, Attachment 1) and made some edits based in part on information provided by NMFS at the meeting held on Monday. These edits are highlighted in the attached version. The comment period for the supplemental draft environmental impact statement (DEIS) ends September 15.

Other Items

Klamath flow issues: in mid-summer, the U.S. Bureau of Reclamation (USBR) reclassified the water year in the upper Klamath Basin from below average to critically dry and reduced flows at Iron Gate Dam to levels below Federal Energy Regulatory Commission (FERC) license required minimums. In mid-August, releases were approximately 670 cubic feet per second (cfs), compared to the FERC minimum of 1,000 cfs; and on September 8, the flow at Iron Gate Dam was 762 cfs compared to the FERC minimum of 1,300 cfs. FERC minimum flows have previously been characterized by state, tribal, and federal biologists as inadequate to restore Klamath River anadromous salmonids. In contrast, the USBR has made full deliveries of water for irrigation to the Klamath project area during the entire 2002 agricultural season. Past flow studies have shown such low flows will adversely impact a number of anadromous fish species and their habitat. Of immediate concern is these low flows will not adequately provide for adult fall chinook upstream migration and spawning. USBR has not yet consulted with NMFS on the effects of Klamath project operations on Chinook salmon EFH. NMFS has provided a 2002 biological opinion (BO) sanctioning operation of the Klamath project for the next 10 years resulting in flows that mimic the lowest flows attained during the 1990-1999 period, thus putting the Klamath River in a perpetual state of drought. Additionally, the USBR is preparing an EIS for the long-term operation of the Klamath project that seems designed to make these conditions permanent. The HC will prepare a draft letter addressing the NMFS 2002 BO and other Klamath flow issues for Council consideration at the October/November meeting.

FERC letter: on May 13, 2002, the Council sent a letter to FERC regarding FERC's hydro project relicensing system. At the June Council meeting, the Council requested staff to follow up on the letter. In late August, Council staff faxed the letter to Mr. Vince Yearick at FERC at his request. Mr. Yearick responded on September 4 to say FERC will be responding to the letter; no timeframe was given. FERC employees attributed the delay in responding to the fact that the letter did not focus on any particular hydropower project, so it was unclear who should respond.

In addition, on September 4, 2002 Council staff spoke with Mr. Kerry Griffin at the NMFS Habitat Division. Mr. Griffin says that NMFS concurs with most, if not all, of the points made in the Council's letter to FERC, and these concerns are high priorities for his division.

On Friday, September 13, FERC is expected to publish a Federal Register notice requesting public comment on a new process to determine what regulations are needed for licensing of nonfederal hydropower projects. This public comment period is expected to end December 6. FERC will hold a series of regional forums in October and November, and again in March and April, for this purpose. The final rule will be published in August 2003.

The HC recommends the Council provide additional comments as part of this process, and will provide a draft letter for consideration at the October meeting. The HC will be identifying a number of specific FERC relicensing projects for comments, focusing on those with particularly high impact on Council-managed species.
Hanford Reach stranding summary: the HC heard an update from the U.S. Fish and Wildlife Service (USFWS) on stranding studies in the Hanford Reach, which should provide better information on the effects of hydropower operations on upriver bright chinook. Work has been initiated through funding from the USFWS and the State of Alaska, but additional funding is still needed. The HC strongly endorses these studies.

Fishing gear: The HC heard an update on the EFH EIS work as it relates to describing fishing gear used in the Pacific region. The description will be made available to the Council at a later date.

PFMC
09/10/02
Draft

Colonel Richard Hobernicht
U.S. Army Corps of Engineers
Portland District
PO Box 2870
Portland, OR 97208

Dear Colonel Hobernicht:

The Pacific Fishery Management Council (Council) is one of eight regional fishery management councils established by the Magnuson Fishery Conservation and Management Act (Magnuson-Stevens Act) of 1976 for the purpose of managing fisheries 3-200 miles offshore of the United States of America coastline. The Pacific Council is responsible for fisheries off the coasts of California, Oregon, and Washington.

On October 22, 1999, the Council sent the Army Corps of Engineers (USACE) a letter that included a number of comments and recommendations regarding the lower Columbia River dredging proposal being considered at that time (attached). These comments and recommendations are still relevant to the current Columbia River Channel Improvements Project proposal. We would like to review our 1999 letter in light of the current proposal.

Our comments and recommendations from the 1999 letter include discussions of the eight following topics:

**Develop an Ocean Disposal Site Task Force:** In its original plan, the USACE committed to forming a taskforce of stakeholders to develop a management plan for the ocean disposal sites for dredging spoils. In the first 20 years of the project, a portion of the 14.4 million cubic yards of dredge material will be placed in the lower estuary as ecosystem restoration mitigation if funding is and acceptable locations are secured. Since there is no certainty about funding mitigation restoration projects, this material, as well as all maintenance dredge spoils, may all end up in the ocean. The task force needs to deal with either contingency. However, while this task force was apparently formed, the parties involved never signed a Memorandum of Understanding (MOU). We recommended a MOU be developed and signed by all relevant parties before the final deepwater disposal site is designated. This would increase the task force’s ability to work effectively and would ensure that all parties clearly understand the process. We support the continuation of the task force in order to deal with unresolved marine disposal issues, including siting and ongoing management. The task force must be given clear authority to steer such decisions.

**Monitoring and Baseline Data:** In our October 1999 letter we requested an additional assessment of the biological and physical characteristics of the proposed ocean dumpsites be
undertaken. The USACE proposal to collect baseline data during or after the project is inadequate. We recommend baseline data be collected before the project begins, and existing datasets from other agencies be examined to see if they can serve as part of the baseline data. **Dungeness Crab:** We recommended clamshell dredges be used in estuarine areas to reduce the entrainment of Dungeness crab, which are important prey for Council-managed groundfish species. This recommendation has apparently been ignored. Why is the USACE planning on using suction dredging when there are alternatives that will reduce impacts to economically and ecologically important species? The cost savings to the USACE for using suction dredging will end up being paid by the fishing industry. This is unfair. **Contaminants:** We recommended the USACE add specific information or a preliminary ecological risk assessment to the final Environmental Impact Statement (FEIS) to define conditions in the Columbia River that would either support or negate sediments as the source for transfer of contaminants such as PCBs. While the Sustainable Ecosystem Institute addressed toxins to some degree in a report commissioned by the USACE and other agencies involved in the process, they did not address sub-lethal effects such as effects on behavior (including predator avoidance) or physiological effects (such as estrogens and estrogen-mimicking compounds that can alter sexual development of aquatic species). These sub-lethal effects may compromise stock viability. Effects on human health from increased toxins in the water column were not considered. We still believe our initial recommendation is valid. **Year Round Dredging:** We requested the timing of in-water work be considered to minimize impacts to Council-managed resources. Such timing has not been sufficiently considered. Dredging in the channel and turning basins will occur continuously until project completion, and maintenance dredging will occur from November to February. Some effort needs to be made to allow dredging to stop during certain times of the year, especially when critical stocks of juvenile fish are migrating through dredging areas. **Mitigation:** The current Biological Opinion does not require mitigation for ocean impacts, and we feel the USACE’s commitment to mitigation is suspect, because there is no guaranteed funding of mitigation activities in the project budget. In our letter, we recommended the Corps commit to mitigation and form a group of agencies and stakeholders to determine the specifics of the mitigation package. We continue to believe mitigation should be guaranteed or the project should be halted. Mitigation should not depend on hoped-for future funding. The lack of consideration of mitigation for ocean impacts is inappropriate and adversely affects many Council-managed species. **Forage Fish:** We recommended dredging be done around the Lewis River only between January 1 and June 1, and only with a clamshell dredge to protect juvenile smelt. We continue to believe this. However, there has been no commitment to do this by the USACE, and NOAA Fisheries does not require it in the Biological Opinion. Again, methods are available to minimize adverse effects to important species; and again, the cost savings to the USACE for using suction dredging will end up being paid by the fishing industry. This is not fair. **Essential Fish Habitat:** We recommended the FEIS for the proposed project be revised to ensure impacts to the EFH of the Columbia River, Columbia River Estuary, and marine ecosystems are minimized to the greatest extent possible. The EFH information in Exhibit I of the Supplemental EIS makes many unsupported statements and draws conclusions that reflect no impact on EFH for groundfish. Specific surveys must be conducted in the area on a year-round sampling basis to determine fish community structure and habitat use of Council-managed groundfish species by life stage and season. Without this
information, an adequate EFH Assessment of impacts to Council-managed species, their forage, and other ecosystem impacts is impossible.

In addition, the current EFH consultation for salmon clearly states, "... the proposed action may adversely affect the EFH for chinook and coho salmon species." NOAA Fisheries also has stated,

"While NMFS understands that the proposed dredging and disposal Impact Minimization Measures and Best Management Practices identified in Chapter 3 of the 2001 BA conservation measures described in the will be implemented by the Corps, it does not believe that these measures are sufficient to address the adverse impacts to EFH described above. However, the Conservation Measures outlined in Section 10 of this Opinion and all the reasonable and prudent measures and Terms and Conditions outlined in Section 12 of this Opinion are generally applicable to designated EFH for chinook and coho salmon and address these adverse effects. Consequently, NMFS recommends that they be adopted as EFH conservation measures."

The conservation measures in Chapter 10 relate to suggestions (not requirements) to implement a number of studies and monitoring activities, a suggestion to release pipeline-dredged materials into as deep of water as possible, and a suggestion to work with the Columbia River Treaty Tribes. None of these will provide any direct benefit to EFH, and most of the tribes' comments have not been considered. Similarly, the reasonable and prudent alternatives (RPAs) and Terms and Conditions in Section 12 include references to minimizing take, but do not explain how EFH will be protected. While they require the implementation of the dredging and disposal Impact Minimization Measures and Best Management Practices identified in Chapter 3, NOAA Fisheries has stated these are inadequate to address EFH impacts. Section 12 also requires the establishment of monitoring programs (some of which may monitor effects on habitat) and indicates adaptive management may be used. However, Section 12 neither requires nor indicates how EFH impacts will be minimized.

In summary, we feel the EFH salmon consultation is inadequate to meet the intent of the Magnuson-Stevens Act, overlooks important issues. The USACE should identify specifically what it intends to do to minimize the adverse effects on EFH that NOAA Fisheries says may occur. We believe there should be a re-initiation of the EFH consultation, because of the inadequacies of the current salmon consultation.

Further, the information for the pending groundfish and coastal pelagics EFH consultation is insufficient to conduct a proper EFH Assessment.

Thank you for the opportunity to comment on this important matter.

Sincerely,

DRAFT

Hans Radtke
Chairman