

HABITAT COMMITTEE REPORT

Lower Klamath River Fall Flows for Fall-run Chinook Salmon

The Habitat Committee (HC) received a status update from HC member Mike Orcutt on Lower Klamath River Fall Flows. He reported that the Bureau of Reclamation executed and released a Finding of No Significant Impact on August 6, 2013, describing plans to begin releasing augmentation flows from Lewiston Dam the morning of August 13, 2013.

Westlands Water District and the San Luis and Delta Mendota Water Authority immediately filed a request for Preliminary Injunction with the Federal Eastern District Court, and on August 13, the Court issued a Temporary Restraining Order (TRO) enjoining against the releases. Releases were reduced to the summer minimum later that day. The TRO was later extended through August 23, and was the subject of a hearing held August 21 and 22.

At the conclusion of the hearing, the Court vacated the TRO, and augmentation flows were resumed the morning of August 25, 2013 (coupled with a flow increase to support the Hoopa Valley Tribe Boat Dance Ceremony) and are expected to continue through September 21, 2013. The remainder of the case will be taken up on an as yet undetermined date. At this point it appears that this action will require the release of an additional approximately 20,000 acre-feet of water from storage.

As of this writing, the HC has heard no reports of disease outbreaks.

Columbia River Treaty

The HC received a status report from Bill Tweit (WDFW) on the ongoing review of the Columbia River Treaty between the United States and Canada. Mr. Tweit is a technical member of the Sovereign Review Team. Draft regional recommendations for the Columbia River Treaty are currently scheduled for release for public comment on September 20, 2013. Final regional recommendations are scheduled to be transmitted to the Department of State in November of 2013. The State Department will formulate its Treaty negotiation recommendations and present those recommendations to Canada by December 2014. There are three alternatives under treaty review: maintain the treaty as written, terminate the treaty, or modernize (update) the treaty.

Fishery benefits of the current Treaty would be enhanced under a Treaty that is modernized to explicitly support ecosystem function and more formally takes into consideration current federal legal obligations such as the Clean Water Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Salmon Treaty and Columbia River Fishery Management Agreement (treaty fishing rights). This is especially important in light of expanded population growth within the Basin and the increased stressors that climate change brings.

If the Treaty is terminated,

- flows are likely to decrease in the summer and winter and increase in the spring, reducing juvenile fish survival especially for summer migrants (fall Chinook),
- flooding risks are likely to increase,
- the Columbia River plume and estuary saltwater intrusion rates would also be affected.

If the Treaty is modernized for ecosystem function,

- spring flows, summer flows and dry year flows could be enhanced providing benefits to juvenile fish survival and overall increases to smolt-to-adult returns,
- more stable reservoir levels would benefit resident fish survival, and
- estuary salt water intrusion rates could be better managed.

The public comment period for the draft regional recommendations may not extend into the timeframe for the next Council meeting. **Therefore, the HC recommends that the Council direct staff to draft a letter that includes high level comments on the draft recommendations. The letter should be sent prior to the regional review team's submittal to the Department of State in November.** Those high level comments should include a strong recommendation to “modernize” the Treaty to:

- include ecosystem function as a third primary purpose of the Treaty, co-equal with power generation and flood control
- add a third U.S. entity (along with the Bonneville Power Authority and the Army Corps of Engineers) responsible for ecosystem function consideration such as the Council for Environmental Quality or the Department of Interior, or their designee.

Wind Energy

At the June meeting, the HC briefed the Council on the Department of Energy's (DOE) Request for Information on “Research priorities for assessing environmental effects of wind energy development off the continental U.S.” **The Council directed the HC to compose a letter to DOE which highlights West Coast issues. The draft letter is included in the Briefing Book (F1a, Attachment 1).**

The HC also briefed the Council on a potential opportunity to participate on the Bureau of Ocean Energy and Management's (BOEM) Oregon Intergovernmental Task Force. This was strongly supported by the Groundfish Advisory Subpanel. The Council discussed interest in this taskforce, but seemed uncertain about which taskforce to engage in. The Council did not specifically direct the HC to draft a letter to BOEM asking for participation; however, based on the Council's initial interest and the relevance of this particular taskforce, and the fact that this initial project may be setting a precedent for future energy development projects on the West Coast, **the HC drafted a letter to BOEM on the Council's behalf, should the Council wish to pursue this opportunity (F1a, Attachment 2).**

The HC also learned about new developments in Wind Energy Development in the Pacific Ocean. Principle Power, Inc. submitted a lease application to BOEM in May, formally launching commercial wind energy development on the West Coast. BOEM was expected to publish a Request for Competitive Interest in the Federal Register soon after Labor Day. The Lease application is available from BOEM's website (<http://www.boem.gov/State-Activities-Oregon/>), which includes a map of the proposed lease area off Oregon and their suggested permitting timeline for development. BOEM's Oregon Taskforce is an integral part of BOEM's review and leasing process, and it behooves the Council to seek participation on the taskforce at its earliest convenience.

The Department of Energy has funded nine demonstration projects for offshore wind energy development. Three of these may be selected to jointly receive an additional \$47 million in support.

Columbia River BiOp

This Monday, September 9, a new draft version of the Columbia River Hydropower Biological Opinion (BiOp) was released by NMFS for “sovereign” review. The 2008/2010 BiOp was remanded by the Court to the lead Federal agencies on August 2, 2011, with instructions on how it should be reconsidered.

There were a number of key concerns that the Court had identified in the earlier BiOp. One was uncertainty regarding the implementation and benefit of habitat measures in the BiOp. In addition, the Court had repeatedly ordered additional spill, as an interim measure, that went beyond BiOp levels. Many technical issues were also raised.

Two members of the Habitat Committee have taken a cursory look at the revised BiOp, noting that the Court-ordered spill for summer migrants (fall Chinook) is not included. Ironically, on the same day the draft BiOp was released, 63,870 adult fall Chinook crossed Bonneville Dam, breaking previous records. In essence, the September 9 draft proposes a hydro system that will reduce protections that these adults benefited from as juveniles (due to Court-ordered spill). This will make in-river conditions less hospitable for their progeny.

The draft BiOp also lacks provisions for evaluating the survival benefits of increased experimental spill. However, it appears to include some additional habitat measures, especially in the lower river. However, funding for these measures is not assured.

NMFS is asking for review of the draft BiOp by October 7 and aims to finalize the draft by Jan 1, 2014. **This is an opportunity for Council comment, although the time frame for comment is extremely short.**

The HC recognizes that there may be numerous issues within the draft BiOp that the Council would be interested in commenting on, but given the short time frame and the lack of adequate time for review, the HC focused on the spill aspects of the BiOp. If the Council did decide to write a letter, the following points could be included.

1. Reject the action agencies' proposal to cut off spill in the Snake River after August 1. The summer spill program since 2005 has been a huge success for fall Chinook, as demonstrated by this week's returns over Bonneville Dam.
2. Reject the action agencies' and NOAA's proposal to allow annual decision-making on a spring spill cutoff (May 7-21). Spill should continue all spring season in all water years.
3. Test the efficacy of higher spill levels to increase smolt-to-adult return rates (this is adapted from the recent PFMC recommendation to the Northwest Power and Conservation Council).

Criteria and Process for Nominating New Sanctuaries

On June 28, 2013, NOAA's Office of National Marine Sanctuaries (ONMS) published a proposed rule in the Federal Register (FR) providing notice that ONMS is re-initiating a process to nominate new national marine sanctuaries. Public comments were solicited on the proposed rule, and the comment period closed on August 27, 2013.

ONMS is proposing a two-step process, with the first stage being receiving comments on criteria ONMS will use to consider sites that would be nominated as national marine sanctuaries in the future. The twelve criteria proposed by ONMS include present and potential uses of an area (including commercial and recreational fishing and subsistence uses), negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development, among other things. Once those criteria are finalized, ONMS would open the second step in the process - a mechanism for community groups to nominate areas they believe meet these criteria and warrant protection as a national marine sanctuary.

Re-initiating this process was an action in President Obama's implementation plan for the National Ocean Policy, released April 16, 2013. In addition, numerous community groups around the country have expressed interest in new sanctuary designations and reactivation of the sanctuary nomination and designation process.

The FR notice does not request public comment on existing (already designated) sanctuaries. The FR notice makes it clear that this is a first step of many before a nominated location would move towards designation. Public comment was requested on the nomination process, not the designation process, which is a separate process. ONMS is in the process of reviewing submitted comments and formalizing a Final Rule identifying the final nomination criteria and process. The Final Rule is expected sometime in the beginning of the 2014 calendar year.

Summary

In summary, this HC report proposes four letters for Council consideration:

1. Letter with high-level comments on the draft U.S.-Canada Columbia River Treaty. The letter should be sent prior to the regional review team's submittal to the Department of State in November. (Proposed by HC)
2. Letter to the Department of Energy highlighting West Coast offshore wind energy issues. (Agenda Item F1a, Attachment 1). (Directed by Council)
3. Letter to the Bureau of Ocean Energy Management requesting membership on the Oregon Intergovernmental Task Force (Agenda Item F1a, Attachment 2).
4. Letter to NMFS commenting on the draft Columbia River Biological Opinion; deadline is October 7.

PFMC
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