

## HABITAT STEERING GROUP REPORT TO THE COUNCIL

Upon consultation with the Executive Director, the Habitat Steering Group felt it was appropriate to change its name to the Habitat Advisory Board (HAB).

The HSG discussed new members and hope the Council has selected a new sportfishing representative.

Mr. Paul Heikkila was elected Chair for 2002. Mr. Stuart Ellis was elected Vice Chair.

We will provide comments on groundfish rebuilding plans, marine reserves, and highly migratory species management during those agenda items (F.3.b, D.1.c, and G.2.c, respectively).

### **Habitat Issues**

**Federal Energy Regulatory Commission (FERC) Letter.** The Council received a draft letter to the FERC, which is included in their briefing books. The HSG heard the states' staff, as well as staff from NOAA General Counsel, would like additional time to review the letter. Therefore, the HSG requests that the Council not finalize the letter until the April meeting. We do not think the letter will change dramatically in substance, but HSG members felt the letter could be strengthened and clarified in some areas.

**Draft Habitat Areas of Particular Concern (HAPC) Process Document.** The HSG has a subgroup participating in this process. If the Council's direction is otherwise, they should inform us. Our April meeting, in large part, will be dedicated to the HAPC process.

We would like to encourage the Council to use the description of fishing gear impacts developed by the Southeast Council as a model for a version to be included in the groundfish fishery management plan (FMP). The Southeast Council contracted with the Gulf States Marine Fisheries Commission to develop the document.

**NMFS Sued on Essential Fish Habitat (EFH) Rule.** Several clients of Perkins Coie, LLP have filed suit against NMFS in the U.S. District Court for the District of Idaho to challenge the EFH final rule. The plaintiffs are Idaho County (Idaho), Valley County (Idaho), Okanogan County (Washington), Alaska Forest Association, Intermountain Forest Association, and National Association of Home Builders. They make claims under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Administrative Procedures Act, National Environmental Policy Act (NEPA), and Regulatory Flexibility Act, the gist of which is an allegation that NMFS exceeded its authority and did not adequately consider effects on non-fishing entities. They ask the court to enjoin NMFS from implementing the EFH designations and consultation requirements until the agency has issued revised final regulations complying with the Magnuson-Stevens Act, Administrative Procedures Act, NEPA, and Regulatory Flexibility Act; and has approved amendments to FMPs in conformance with those revised final regulations. Under the Magnuson-Stevens Act, NMFS has 45 days to file its response.

**EFH Final Rule.** The final regulations for implementing the EFH provisions of the Magnuson-Stevens Act were published in the *Federal Register* on January 17. The final rule replaces an interim final rule that has been in effect since January 1998. The rule makes some changes to the regulations based on thousands of written public comments and almost four years of experience implementing EFH through the interim rule. The revised regulations provide clearer standards for the councils to use in identifying EFH, additional guidance to help councils evaluate whether fishing activities may adversely affect EFH, and clearer procedures for federal agency consultations with NMFS on actions that may impact EFH. The final rule became effective February 19, 2002 and can be assessed at the Southwest Region's website: <http://swr.nmfs.noaa.gov/efh.htm>.

**San Francisco International Airport (SFO) Runway.** The airport's Environmental Impact Review/Environmental Impact Statement (EIR/EIS) work on the proposed new runway configuration alternatives has slowed since September 2001, but they are clearly moving forward with their studies. SFO is scheduled to send its first comprehensive draft report to a panel on April 16 organized by NOAA's National Ocean Service. This panel will consist of hydrologists, fish and wildlife experts, and water quality experts. NMFS will have input through a fish ecologist sitting on the Panel. This first report would deal only with the new BX-6 runway option (proposed 659 acre fill) and will include all the hydrology, water quality, and biology studies. The Science Panel will probably convene in late May to discuss this report. In early July, SFO is scheduled to send a combined comprehensive report to the Science Panel covering all the proposed alternatives. The Science Panel will reconvene in September to hold its final set of meetings and conduct a Public Forum announcing the panel's results. The EIR/California Environmental Quality Act process and the EIS/NEPA process are moving along parallel tracks, but on a slightly different time schedule with the EIR moving slightly ahead of the EIS. The Southwest Region actively participates in monthly meetings hosted by SFO and is closely monitoring what preferred alternative SFO will select and the types and amounts of habitat mitigation proposed.

**Klamath Flow Issues.** Mr. Michael Rode gave a fairly extensive overview of current Klamath flow issues, including the final Biological Assessment recently submitted by the Bureau of Reclamation and the National Academy of Sciences Interim Report, and a recent public meeting held in Medford, Oregon. The Biological Assessment is proposing a ten-year Klamath Project operations plan that will result in Klamath River flows no greater than the minimum flows that occurred during the 1990-1999 period. Given our greatly increased understanding of anadromous salmonid habitat/flow relationships on the Klamath, this is a great step backwards. The HSG decided to develop a draft letter as soon as possible for the Council to review in April or possibly June.

PFMC  
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