

ESSENTIAL FISH HABITAT ISSUES

Situation: The Habitat Committee (HC) will meet Monday, April 7, 2003 to discuss the following topics:

- Federal Energy Regulatory Commission (FERC) relicensing issues
- Klamath/Trinity River flows
- Battle Creek and American River fish kills
- San Francisco Airport expansion
- Essential fish habitat and programmatic environmental impact statements
- Dr. Richard Parrish report on marine reserves

The HC has prepared a letter on 2003 Klamath River flows for Council consideration (Supplemental Attachment 4) and a letter on FERC relicensing (Attachment 1). In addition, the Council received a response to its letter to the U.S. Secretary of Interior on Klamath River flows. That response is attached (Attachment 2). A letter from the Klamath Fishery Management Council to the Department of the Interior is also enclosed for your information (Attachment 3). The HC's complete agenda is provided in Ancillary F.

Council Action:

1. **Consider comments and recommendations developed by the HC at the April meeting.**

Reference Materials:

1. Letter on FERC relicensing (Exhibit D.1, Attachment 1).
2. Letter from U.S. Department of the Interior on Klamath River flows (Exhibit D.1, Attachment 2).
3. Letter from Klamath Fishery Management Council to the U.S. Department of the Interior (Exhibit D.1, Attachment 3).
4. Letter on Klamath River flows (Exhibit D.1, Supplemental Attachment 4).

Agenda Order:

- a. Agendum Overview
- b. Report of the HC
- c. Reports and Comments of Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider HC Recommendations

Jennifer Gilden
Stuart Ellis

PFMC
03/21/03

HABITAT COMMITTEE PROPOSED ACTION FORM

HC Sponsor: Mr. Stuart Ellis

Title of Issue: Comment on Federal Energy Regulatory Commission (FERC) Rule Making

Deadline (if any): 04/21/03

Proposed Action: Send letter to FERC regarding proposed language and issues in rulemaking.

Addressed To:

Ms. Magalie Roman Salas, Esq.
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Description of Issue:

The FERC is engaged in a rule making process that will create a third process for hydropower facility relicensing. This new process is referred to as the "Integrated Process." FERC claims it will increase efficiency in the relicensing process. The HC has expressed concerns as to whether this or the existing processes will provide needed protection for fishery resources.

Description of Regional Significance:

There are hundreds of FERC projects in basins throughout Washington, Idaho, Oregon, and California that are or will be going through relicensing in the next few years. These projects can have significant impacts to Council-managed salmon species.

Potential Adverse Impacts to Essential Fish Habitat?

☒ Yes

☐ No

For Which Species? All salmon species.

Potential Benefits of Proposed Action:

By sending a letter with Council comments, it helps provide FERC with the perspective of the Council and Council family regarding hydropower relicensing issues and the impacts that relicensing will have on ocean salmon fisheries.

Attach draft document for HC consideration.

PACIFIC FISHERY MANAGEMENT COUNCIL

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Portland, Oregon 97220-1384

CHAIRMAN
Hans Radtke

EXECUTIVE DIRECTOR
Donald O. McIsaac

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Draft

Ms. Magalie Roman Salas, Esq.
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Dear Secretary Roman Salas:

Re: Docket No. RM02-16-000

The Pacific Fishery Management Council (Council) is writing to comment on the Federal Energy Regulatory Commission's (FERC) rulemaking procedure for a new licensing process. The Council previously submitted a series of general comments concerning relicensing procedures on December 3, 2002. On March 10, 2003, FERC staff member Mr. John Mudre met with the Council's Habitat Committee and presented the *Public and Tribal Post-NOPR Regional Workshop Document*, containing draft language for the proposed rulemaking. Mr. Mudre indicated it would be appropriate for the Council to comment again. The Council would like to comment on the series of questions presented in the document.

Essential Fish Habitat Consultation Mandate

As mentioned in the previous letter, the Council is concerned that in making its hydropower project relicensing decisions, FERC meets its responsibilities regarding conservation of essential fish habitat (EFH). Such responsibilities include consultation with the Council and National Marine Fisheries Service (NMFS) to assure minimization of acute and cumulative impacts on salmon from hydropower operations.

This EFH consultation mandate will also help FERC assure consistency with its obligations under the 1986 Electric Power Consumers' Act, which requires FERC to take a balanced approach to hydropower project licensing. The Act requires that when deciding whether to issue a license, FERC consider not only the power generation potential of a river, but *give equal consideration to energy conservation, protection of fish and wildlife, and general environmental quality*. This mandate requires FERC to consult with federal, state, and local resource agencies, including fish, wildlife, recreation, and land management agencies, in order to assess the impact of a hydropower project on the environment. We are concerned that new FERC regulations may reduce FERC's obligations to environmental and energy conservation functions and values.

Concern about Multiple Processes

The Council approves of the stated FERC objectives of developing a more efficient and timely licensing process while ensuring licenses provide appropriate resource protections. However, because FERC intends to retain both the traditional and alternative licensing processes and

allow the applicants to choose which process they wish to use, the Council is concerned the hoped-for efficiencies may not be realized. The Council believes a single process that truly ensures fishery and water resources are protected would be best. If FERC insists on multiple processes, stronger language should be inserted in Section 5.f.(5) that indicates FERC will only allow the use of the traditional or alternative licensing process if FERC determines those processes will result in the greatest efficiencies for all participants and the highest level of resource protection. With so many licensing proceedings taking place, it is difficult for the Council and other important stakeholders to effectively engage in the alternative licensing process, because of the large time and resource commitment required. It appears the new Integrated Process may also be difficult for stakeholders. Thus, FERC should carefully weigh each licensing proceeding with respect to the Alternative Process or the Integrated Process and defer to the traditional three-stage consultation process if stakeholders provide evidence the Alternative Process is inappropriate based upon their available resources.

Baseline for Analysis

Even though FERC believes it has the legal standing to mandate the baseline for analysis should be the existing conditions, this appears to be simply a policy choice. It is a poor choice for an agency charged with resource stewardship. The baseline for analysis of a license application should be the pre-project conditions.

Response to Request for Specific Comments

Regarding the specific requests for comments in Appendix B:

1. ¶48. The pre-Application Document should include study plans that include analysis of both passage and screening in cases where none currently exist. The document should also include study plans that address any needed information required to obtain state water quality certification. The document should address potential cumulative impacts of projects throughout a basin. Existing fish passage conditions should be analyzed and strategies devised to improve passage conditions where necessary. Wherever fishes are blocked from historic habitat, reintroduction measures should be evaluated and implemented. Such measures include installing fishways, trapping and hauling, shutting down projects, and removing dams. Mitigation should also be evaluated as an alternative.
2. ¶66. In principle, the cost of a study should indeed be justified relative to the value of the information provided. However, there are not only economic costs to the licensee to consider, but also economic and non-economic costs to fishery resources that may be dramatically undervalued in this consideration.
3. ¶90. The Council generally supports the positions of the commenters in Paragraphs 89-91, including the states of California and Oregon concerning the dispute resolution process.
4. ¶105. The deadline for filing for water quality certification should not be moved to a later date.
5. ¶163. License applicants should be encouraged to include a non-binding statement on whether or not they intend to engage in settlement negotiations.
6. ¶172. The Integrated Process should apply to original licenses.
7. ¶181. It would be appropriate for dispute resolution panels to make recommendations regarding related resources such as fisheries or aquatic resources.
8. ¶184. It is appropriate that participants be permitted to make new information gathering or study requests following the updated status report. This is appropriate, because the status report may raise issues that were not foreseen originally.

9. ¶185. It is appropriate that the parties file written comments on the potential applicants status reports prior to the required meeting. This would be important to maintain a clear record of issues and should reduce miscommunication.
10. ¶187. It is appropriate to file a draft license for comment to allow all interested parties access to the process.
11. ¶190. It would be more appropriate for FERC to work with the other federal and state agencies to determine the appropriate point for them to provide preliminary terms and conditions rather than dictating it at a set point in the process.
12. ¶191. See previous comment.
13. ¶198. For the integrated process to work efficiently, it needs to be sensitive to the needs and abilities of state and federal agencies charged with water and fishery resource protection to participate in the process and fulfill their legal mandates concerning water quality certification and resource protection.
14. ¶207. Yes, binding dispute resolution can encourage collaboration prior to the dispute.
15. ¶211. Ensuring the proper studies are carried out as early as possible will do the most to ensure a streamlined process.
16. ¶212. It is not appropriate to allow license applicants to submit draft environmental analyses with the license application under the traditional process, because of the timeline for public participation.
17. ¶223. The Council agrees that project boundaries should be required for all licenses and exemptions.

The Council appreciates this opportunity to comment. We appreciate your attention to our concerns and suggestions.

Sincerely,

Draft

Hans Radtke, Ph.D.
Chairman



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

Exhibit D.1
Attachment 2
April 2003

RECEIVED

MAR 17 2003

PFMC

Hans Radtke, Ph.D.
Chairman, Pacific Fishery
Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220-1384

MAR 11 2003

Dear Dr. Radtke:

Thank you for your letter regarding the fish kill in the Lower Klamath River last fall. We apologize for the delay in this response, but hope the following information is helpful to you.

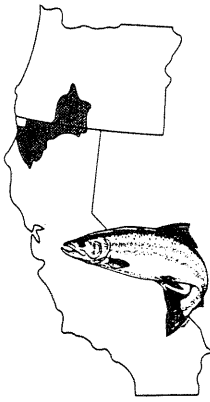
Estimates indicate that approximately 30,000 adult fish died in the Lower Klamath River, below the point where the Trinity River joins the Klamath, primarily fall-run Chinook salmon, but including endangered Coho salmon, and steelhead trout. We share your concerns about the damages done to the resource, the economy and the cultural observances attached to this valuable fish resource. The Department continues to utilize the information provided through years of cooperation among the California Department of Fish and Game, the U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration Fisheries, and tribal officials to evaluate this unprecedented resource loss.

The Department is awaiting the completion of a report from the U.S. Fish and Wildlife Service on the fish kill. In addition, a Final Report from the National Academy of Sciences providing an assessment of the environmental parameters critical to the survival and recovery of listed fish species in the Klamath Basin and of the Biological Opinions under which the Bureau of Reclamation operated the Klamath Project last year, and under which it continues to operate in 2003, is expected within the next several months. The findings of these reports, along with the information provided in a report completed by the California Department of Fish and Game, will assist the Department in its continuing responsibilities in the Klamath Basin. Of course, we cannot be specific at this time with respect to the recommendations that will be proffered by these studies. Your concerns and the concerns of many other constituents have been taken into consideration, however, in establishing the protocols for water resource management of the Klamath Basin.

Your interest in this important resource management matter is greatly appreciated.

Sincerely,

Sue Ellen Wooldridge
Deputy Chief of Staff and Counselor



Klamath Fishery Management Council

Working to Restore Anadromous Fish in the Klamath River Basin

1829 S. Oregon Street, Yreka, California 96097

Tel: (530) 842-5763/Fax: (530) 842-4517

March 12, 2003

California Commercial
Salmon Fishing Industry

California Department
of Fish and Game

California Offshore Sport Fishery

Hoopa Valley Indian Tribe

Klamath In-River Sport Fishery

National Marine Fisheries Service

Non-Hoopa Indian Representative

Oregon Commercial
Salmon Fishing Industry

U.S. Department
of Fish and Wildlife

Pacific Fishery Management
Council

U.S. Department of the Interior

Secretary Gale Norton
United States Department of the Interior
1849 C Street, N.W.
Washington D.C. 20240

Subject: Klamath River flows

Dear Secretary Norton:

The Klamath Fishery Management Council wishes to express our concern regarding the flows that will be released this year from the Bureau of Reclamation's Klamath Irrigation Project. We view it as imperative that the Project be operated during the 2003 water year to provide adequate flows to sustain healthy populations of all anadromous salmonids.

The Klamath Fishery Management Council (KFMC) is an advisory committee created by the Klamath River Basin Fishery Resources Restoration Act (PL-99-552) to provide recommendations to state, federal, and tribal agencies regarding the management of Klamath River fisheries resources. The KFMC is composed of representatives of federal, state, and tribal resource agencies, as well as representatives of freshwater and ocean fishing groups. The decline of Klamath River Basin Fisheries resources is of great concern to the KFMC. At the recent symposium of the American Association for the Advancement of Science, the Klamath Basin was identified as one of three regions in North America where the exceptional diversity of fish species is threatened by habitat destruction. The operation of the Project is a key component in maintaining the spawning and migration habitats in the mainstem Klamath River necessary to support populations of salmon and other anadromous species. Ocean fisheries along the Pacific Coast from Cape Falcon to south of San Francisco are managed to control the harvest of Klamath River fall chinook. Therefore, the Project directly affects Tribal and non-Tribal fishing communities along several hundred miles of coast along the Pacific Ocean.

Several times during the past year, Bureau of Reclamation staff have noted that during 2002 the Project was operated consistent with the National Marine Fisheries Service's Biological Opinion on the effects of the ten year operations plan on listed species. At the February 19, 2003, meeting of the Klamath Basin

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MAR 17 2003

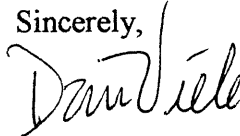
PFMC

Fisheries Task Force, Sue Ellen Wooldridge indicated that the Project would continue in 2003 to be operated in accordance with the Biological Opinion. As you know, the Opinion pertains only to coho salmon; other species, such as chinook salmon, which suffered the heaviest mortality in the fish die-off this past September, have habitat needs that differ from coho salmon.

Flows over Iron Gate Dam are currently about one third of levels identified in the draft Hardy Phase II Report for a dry year. We make the comparison not to insist on the Hardy flow levels, but to illustrate the inadequacy of current flows. We understand that the Bureau of Reclamation will purchase 50,000 acre feet of water from farmers willing to forego irrigation in 2003, at a cost \$4 million. We urge you to take all necessary steps to ensure that this additional water is allowed to flow past Iron Gate Dam for its intended purpose.

We appreciate that the decisions you face in allocating water in a basin such as the Klamath, where competing demands far exceed the supply, are difficult and controversial. However, we believe that the agricultural economies of the Upper Klamath Basin have been developed by the Klamath Project at the expense of the Klamath Basin fish resources, as well as the river and coastal economies which depend upon them. We urge you during your tenure as chair of the Klamath Basin Federal Working Group, to lead the development of long-term solutions that will ensure a balanced policy for utilizing the resources of Klamath Basin water; one that considers the ecological, economic, and cultural effects of Project operations beyond the local interests for which the Project was originally designed. We request that the Project be operated during 2003 to provide adequate flows for all life stages of anadromous fish that inhabit the Klamath River.

Sincerely,



Daniel Viele
Chairman

cc: Secretary of Commerce
Senator Feinstein
Senator Wyden
Senator Smith
Senator Boxer
Congressman Walden
Congressman Thompson
Congressman Herger
Congressman DeFazio
Pacific Fishery Management Council

HABITAT COMMITTEE PROPOSED ACTION FORM

HC Sponsor: Mr. Michael Rode

Title of Issue: Letter on 2003 Klamath Flow Management

Deadline (if any): April 2003 Council meeting

Proposed Action: Letter for Council signature

Addressed To: Secretary Gale Norton
Secretary of the Interior

Description of Issue:

The U.S. Bureau of Reclamation is proposing to operate the Klamath Project under "dry water year" criteria that will result in lower flows in the Klamath River in 2003 than occurred in 2002. Last year, near record low flows were implicated as a major factor resulting in the largest adult salmon fish kill ever recorded on the Klamath River. This letter requests that the U.S. Department of Interior reconsider the Klamath Project 2003 Operations Plan and provide flows in 2003 that will support all life history phases of all anadromous fish species. The Council approved a detailed letter to Secretary Norton at the November 2002 meeting in which it made a number of recommendations to remedy the ongoing Klamath flow crisis. To date, none of the recommendations have been implemented. Previous letters have been sent by the Council on June 1, 2000 (Lone to Babbitt) regarding Klamath River flows and on January 10, 2000 (Lone to Babbitt) regarding Trinity River flow issues.

Description of Regional Significance:

Low flows in the Klamath and Trinity Rivers have been major factors in reducing the quality and quantity of anadromous fish habitat in the Klamath River Basin and have contributed greatly to the depressed status of its coho and chinook salmon populations. These depleted populations have been a constraining factor in the management of ocean fisheries from Cape Falcon, Oregon to south of San Francisco and tribal and recreational fisheries of the Klamath Basin.

Potential Adverse Impacts to EFH?

☒ Yes

☐ No

For Which Species? All anadromous species, including Southern Oregon/Northern California Coastal coho and Klamath chinook salmon. [any specific species of concern?]

Potential Benefits of Proposed Action:

The letter will ensure the Council's opinions on the 2003 Klamath Project Operations Plan and the Hardy Phase II flow study are presented to the U.S. Department of the Interior.

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1. Reinitiate ESA, Section 7 consultation as soon as possible (DOI and DOC)
2. Reinitiate coho and Chinook salmon EFH consultation (DOI and DOC)
3. Establish a flow management advisory committee as soon as possible (DOI)
4. Complete the SEIS and implement the Trinity River ROD in a timely fashion (DOI)
5. Provide the Council opportunity to comment on the EIS for the Klamath Project Long-Term Operations Plan (DOI)
6. Finalize the Hardy Phase II Report and incorporate its flow recommendations in future consultation and Klamath Project operations plans (DOI).

In summary, the Council recommends that the Klamath Project be operated to provide the flows necessary to support all life history stages of all anadromous fish species of the Klamath River. While relief for the lower Klamath may be provided in the form of augmented Trinity River flows, the potential for disastrous fish kills extends to the middle and upper reaches of the Klamath, well above the confluence of these two rivers. Please provide for our review a copy of the final Klamath Project 2003 Operations Plan.

Hans Radtke, Ph.D.
Chair

cc: Secretary of Commerce
Senator Feinstein
Senator Boxer
Senator Wyden
Senator Smith
Congressman Thompson
Congressman Herger
Congressman DeFazio
Congressman Walden
Governor Gray Davis
Governor Ted Kulongoski
Sue Ellen Wooldridge
William T. Hogarth
California Secretary for Resources Mary Nichols
CDFG Director Robert Hight
Mr. Kirk Rodgers

PACIFIC FISHERY MANAGEMENT COUNCIL

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CHAIRMAN
Hans Radtke

EXECUTIVE DIRECTOR
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Draft

Ms. Magalie Roman Salas, Esq.
Office of the Secretary
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888 First Street NE
Washington, DC 20426

Dear Secretary Roman Salas:

Re: Docket No. RM02-16-000

The Pacific Fishery Management Council (Council) is writing to comment on the Federal Energy Regulatory Commission's (FERC) rulemaking procedure for a new licensing process. The Council previously submitted a series of comments concerning new licensing rulemaking procedures on December 3, 2002. We reiterate those comments here. On March 10, 2003, FERC staff member Mr. John Mudre met with the Council's Habitat Committee and presented the Public and Tribal Post-NOPR Regional Workshop Document containing draft language for the proposed rulemaking, and indicated it would be appropriate for the Council to comment again. The Council would like to comment on the series of questions presented in the document.

Essential Fish Habitat Consultation Mandate

As mentioned in our previous letter, the Council is concerned that in making hydropower project licensing rulemaking decisions, FERC must meet its responsibilities regarding conservation of essential fish habitat (EFH). Such responsibilities include consultation with the National Marine Fisheries Service (NMFS) to assure minimization of acute and cumulative impacts on salmon and other anadromous fish from hydropower operations and structural configurations as well as provide a detailed response to Council comments on FERC actions.

This EFH mandate will also help FERC assure consistency with its obligations under the 1986 Electric Consumers' Act and the 1980 Northwest Power Act, which require FERC to take a balanced approach to hydropower project licensing. These Acts require that when deciding whether to issue a license, FERC consider not only the power generation potential of a river, but *give equal consideration to energy conservation, protection of fish and wildlife, and general environmental quality.* This mandate requires FERC to consult with federal, state, and local resource agencies and Indian Tribes, including fish, wildlife, recreation, and land management agencies, in order to assess the impact of a hydropower project on the environment. We are concerned that new FERC rules may reduce FERC's obligations to environmental and energy conservation functions and values.

Concern about Multiple Processes

The Council supports the FERC stated objectives of developing a more efficient and timely licensing process while ensuring that licenses provide appropriate resource protections. However, because FERC intends to retain both the traditional and Alternative Licensing processes and allow the applicants to choose which process they wish to use, the Council is concerned that the efficiencies hoped for may not be realized. The Council believes that a single licensing process that fosters consistency and truly ensures that fishery and water resources are protected would be best. If FERC insists on multiple processes, stronger language should be inserted in Section 5.f.(5) that indicates that FERC will only allow the use of the traditional or Alternative Licensing Process if FERC, after soliciting appropriate input from states, tribes and federal fishery agencies, determines that those processes will result in both the greatest efficiencies for all participants and the highest level of resource protection. With so many licensing proceedings taking place, it is difficult for the Council and other important stakeholders to effectively engage in the Alternative Licensing Process, because of the inordinate time and resource commitment required. It appears that the new Integrated Process may also be difficult for stakeholders. We strongly urge you to incorporate the following concerns:

- The tribes and state fishery agencies are not allowed to participate in formal study dispute resolution procedures as now included under the traditional process. The integrated alternative must allow state fishery agencies and tribes to be full parties in such procedures.
- There are no explicit rules that direct which licensing alternative should be used and when or how the decision to choose one or the other is rendered. FERC should fully incorporate the recommendations of the tribes, states and federal agencies when considering which alternative should be adopted.
- The FERC Commission should decide on which process is adopted, not FERC staff.
- Timelines for key filings or decisions are much too short.
- There is no certainty as to how state and tribal environmental regulations, including 401 Clean Water Act certification, will be integrated into the rulemaking structure.
- The consultation structure with tribal sovereigns is not specified. Early consultation is important.
- Cumulative effects analysis is not developed and/or adequately addressed in the alternative.
- Only two years of studies are specified. In many cases, this is not adequate to obtain sufficient environmental and socioeconomic information, including environmental justice, necessary for adequate environmental review.

FERC staff should present the FERC Commission with alternatives for rulemaking, including the adoption of a single alternative that incorporates the needs of tribes, states and federal fisheries agencies.

Our most critical concern involves the baseline for pre-project analysis. Even though FERC believes it has the legal standing to mandate that existing conditions should be the baseline for analysis, this appears to be a poor policy choice for an agency charged with resource stewardship. Pre-project conditions should be the baseline for analysis of a license application.

Response to Request for Specific Comments

Regarding the specific requests for comments in Appendix B:

1. ¶48. The pre-Application Document should include study plans that include analysis of flows to restore essential fish habitat. State-of-the art passage facilities should be considered in cases where no passage currently exists. The document should also include study plans that address any needed information required to obtain state water quality certification. The document should address potential cumulative impacts of projects throughout a basin, as is done in the NEPA and ESA consultation processes. Existing fish passage conditions should be analyzed and strategies devised to improve passage conditions where necessary. Whenever fishes are blocked from historic habitat, reintroduction measures should be evaluated. Such measures include installing fishways, trapping and halting, shutting down projects, and removing dams. Mitigation should also be evaluated as an alternative. The potential positive and negative effects of hatchery mitigation on wild fish stocks should be investigated.
2. ¶66. In principle, the cost of a study should indeed be justified relative to the value of the information provided.
3. ¶90. The Council generally supports the positions of the commenters in Paragraphs 89-91, including the states of California and Oregon, concerning the dispute resolution process.
4. ¶105. The deadline for filing for water quality certification should not be moved to a later date.
5. ¶163. License applicants should be encouraged to include a non-binding statement on whether or not they intend to engage in settlement negotiations.
6. ¶172. The Integrated Process should apply to original licenses.
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8. ¶184. It is appropriate that participants be permitted to make new information gathering or study requests following the updated status report. This is appropriate because the status report may raise issues that were not foreseen originally.
9. ¶185. It is appropriate that the parties file written comments on the potential applicants status reports prior to the required meeting. This would be important to maintain a clear record of issues and should reduce miscommunication.
10. ¶187. It is appropriate to file a draft license for comment to allow all interested parties access to the process.
11. ¶190. It would be more appropriate for FERC to work with the other Federal and State agencies to determine the appropriate point for them to provide preliminary terms and conditions rather than dictating it at a set point in the process.
12. ¶191. See previous comment
13. ¶198. For the integrated process to work efficiently, it needs to be sensitive to the needs and abilities of state and federal agencies charged with water and fishery resource protection to participate in the process and fulfill their legal mandates concerning water quality certification and resource protection.
14. ¶207. Yes, binding dispute resolution can encourage collaboration prior to the dispute.
15. ¶211. Ensuring that the proper studies are agreed to by all of the licensing parties and implemented as early as possible will do the most to ensure a streamlined process.
16. ¶212. It is inappropriate to allow license applicants to submit draft environmental analyses with the license application under the integrated process because of the timeline for public participation.
17. ¶223. The Council agrees that project boundaries should be required for all licenses and exemptions.

Ms. Magalie Roman Salas, Esq.

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Page 4

The Council appreciates this opportunity to comment. We appreciate your attention to our concerns and suggestions.

Sincerely,

Draft

Hans Radtke, Ph.D.
Chairman

JDG

REPORT OF THE HABITAT COMMITTEE

The Habitat Committee (HC) met on Monday, April 7, 2003 and discussed the following topics.

Klamath and Trinity River Issues

The HC received a report regarding Klamath and Trinity River flow issues. The U.S. Bureau of Reclamation is proposing to operate the Klamath Irrigation Project in 2003 under "dry water year" criteria that will result in flows lower than occurred in 2002, when the largest adult salmon fish kill ever recorded on the Klamath occurred in September. Proposals have been put forth to augment flows in the lower Klamath River during late August and early September by increasing Trinity River releases at Lewiston Dam, but these suggestions have not yet been approved. These flow increase proposals do not consider that flows will not be enhanced at all for the 140-miles of the Klamath River above the mouth of the Trinity or that flows are inadequate to sustain anadromous fish species for the rest of the year in all areas of the Klamath River. The HC has prepared a draft letter to the U.S. Secretary of the Interior, Gale Norton, regarding Klamath River flow issues for Council consideration (see Exhibit D.1, Supplemental Attachment 4).

The Trinity Record of Decision (ROD) is presently the subject of litigation in the *Westlands* lawsuit, filed by the Westlands Irrigation District and two municipal utility districts regarding implementation of the Trinity ROD. The court has issued its final ruling that allows 18 months for the Department of the Interior to complete a supplemental environmental impact statement (July 9, 2004). Second, regarding the 2003 water year, the court has conditionally allowed up to 50,000 acre-feet of water for relief in the lower Klamath River and has reaffirmed its December 10, 2002 ruling capping flows to a "dry-year" designation at 452,600 acre-feet. Finally, the court has denied the Hoopa Valley Tribe's request for a stay pending appeal. (The Hoopas are requesting that water be delivered according to the water year type.) The Tribe and other parties will be appealing this ruling of the Eastern District Court to the 9th Circuit Court of appeals.

Recent California Fish Kills

The HC received a report regarding fish kills on Battle Creek, Butte Creek, and the American River; all tributaries to the Sacramento River.

The Battle Creek situation involved an 85% incidence of prespawning mortality when approximately 400,000 fall chinook salmon returned to a four-mile reach of Battle Creek below Coleman National Fish Hatchery. This section of stream can typically only support approximately 35,000 to 40,000 spawners. The fish died of natural causes, but did not have an opportunity to spawn.

Butte Creek contains the largest of three remaining natural populations of state and federally-listed spring chinook salmon. Spawning surveys in 2002 estimated that 3,341 adult springers died during the summer months out of a total population of 12,216. It is believed the mortalities were caused by large numbers of fish being crowded into holding areas that were subjected to continuously high water temperatures. Average daily water temperatures were higher than in previous years, peaking at over 76F by mid-July and remaining high through August. The spring chinook runs have increased dramatically in size since restoration programs have begun in the watershed. From 1967 to 1991 they averaged 360 adults; from 1995 to 2001, the run has averaged 6,737 adults.

Flows were increased from 4,000 to 5,600 cubic feet per second (CFS) on the American River on February 10, 2003, to meet Sacramento/San Joaquin Delta water quality (salinity) standards. In the process, side channels became accessible and were used by listed steelhead for spawning and newly emerged fall chinook salmon fry for rearing. Subsequent decrease in flows to 2,000 CFS by the end of February resulted in observed dewatering of steelhead redds and stranding of chinook fry. The magnitude of mortality from this event is unknown. The American River Operations Group will approach the Cal Fed

Environmental Water Account to ask for funds to purchase water that may alleviate this problem. The HC will investigate further to see if Council letter support may assist in this effort.

Salmon Net Pens

Mr. Paul Engelmeyer of the Salmon Advisory Subpanel (SAS) distributed a report on salmon net pens created by the David Suzuki Foundation. The report outlines the effects of ocean salmon farming on wild salmon and habitat, including the use of hormones and antibiotics, the effects of which are not carefully monitored. There are eight active salmon farms in Puget Sound, and many in British Columbia. Recently, a collapse of pink salmon stocks in northern British Columbia was traced to probable contamination by sea lice due to the high density of fish farms in the area. Despite these drawbacks, Canada is planning to increase production of farmed salmon, despite proven escapes and spawning of non-native Atlantic salmon. Council-managed salmon from Oregon and Washington waters pass through Canadian waters, and there are risks of disease transfer that may be associated with net pen management.

Potential expansion into ocean waters could affect other species in addition to salmon. Other fish farms have experimented with farmed halibut, white sea bass, and blackcod.

The HC would like to invite an expert to speak to the HC in June on the effects of invasive Atlantic salmon on Council-managed salmon runs and the ecosystem effects of net pens. The discussion will focus on potential effects to essential fish habitat (EFH) and risks to the genetic integrity of ESA-listed salmon stocks. This could potentially be a joint meeting with the SAS. The HC also suggests the Council also hear a presentation on this issue. Dr. Ian Fleming is one potential candidate for such a presentation.

The HC will keep the Council updated on this issue and may be developing a position statement in the near future.

Federal Energy Regulatory Commission Letter

The Federal Energy Regulatory Commission Letter (FERC) is engaged in a draft rulemaking process that will result in an additional process for hydropower facility re-licensing. This will result in three possible processes that licensees may undertake. FERC is accepting comments on this rulemaking process until April 21. The draft letter (Exhibit D.1, Supplemental Revised FERC Letter) is an initial attempt to provide a recommendation for the Council to provide comments. The HC reviewed the draft FERC letter contained in the Briefing materials. The attached version of the draft letter contains the results of the HC discussions. The major revisions are shown as underlined.

The HC also discussed the need for a timeline of FERC projects, so the HC and the Council can effectively track and influence these issues.

Marine Reserves

The HC discussed the report by Dr. Richard Parrish of the National Marine Fisheries Service that was included in the briefing book for the March Council meeting. The HC believes the report represents a good starting point for considering directions for Phase II of the Council's deliberations on marine reserves. It builds on work conducted during Phase I of the Council's marine reserve considerations and applies marine reserve concepts that have been developed over the past four or five years. Each concept includes the current Cowcod and California Rockfish Conservation Areas and the other 2003 groundfish closures. Dr. Parrish discusses the importance of using some of these areas as future reference sites. Reference or "control" sites are important in order to learn the effects of marine reserves, but it will take a significant amount of time for detectable changes in these areas to be observed. Therefore, the HC believes the establishment of research sites, at a minimum, should take place in the near future. Because the Parrish white paper presents a conceptual framework for what a network of

marine reserves might look like, the HC also feels it would be constructive to see what this network would look like if it was extended to include Oregon and Washington.

The HC believes that more study of Parrish's recommendations needs to be undertaken. It is possible that such a study could be incorporated into the SSC's upcoming white paper on marine reserves. The HC suggests that Dr. Parrish make a presentation at the next HC meeting in June. Perhaps this could be a joint presentation with the SSC.

National Fisheries Conservation Center Proposal

The HC understands that a representative of the National Fisheries Conservation Center (NFCC) presented the NFCC's proposal to the SSC today. The HC believes the workshop proposed by the NFCC is an opportunity to better integrate marine reserve design with existing fishery management tools and examine whether different marine reserve objectives can be integrated into the same design. For example, the sanctuaries are interested in ecosystem biodiversity, while the Council is interested in fisheries goals. Are there "one design fits all" marine reserve designs that meet both these objectives? The HC believes this workshop could start moving the dialogue in this direction and looks forward to hearing the SSC's perspective on the workshop.

The HC also heard brief updates on the Programmatic Environmental Impact Statement, habitat mapping efforts, gear description efforts, and efforts to reduce power plant entrainment at Potrero and Morro Bay power plants.

PFMC
04/08/03

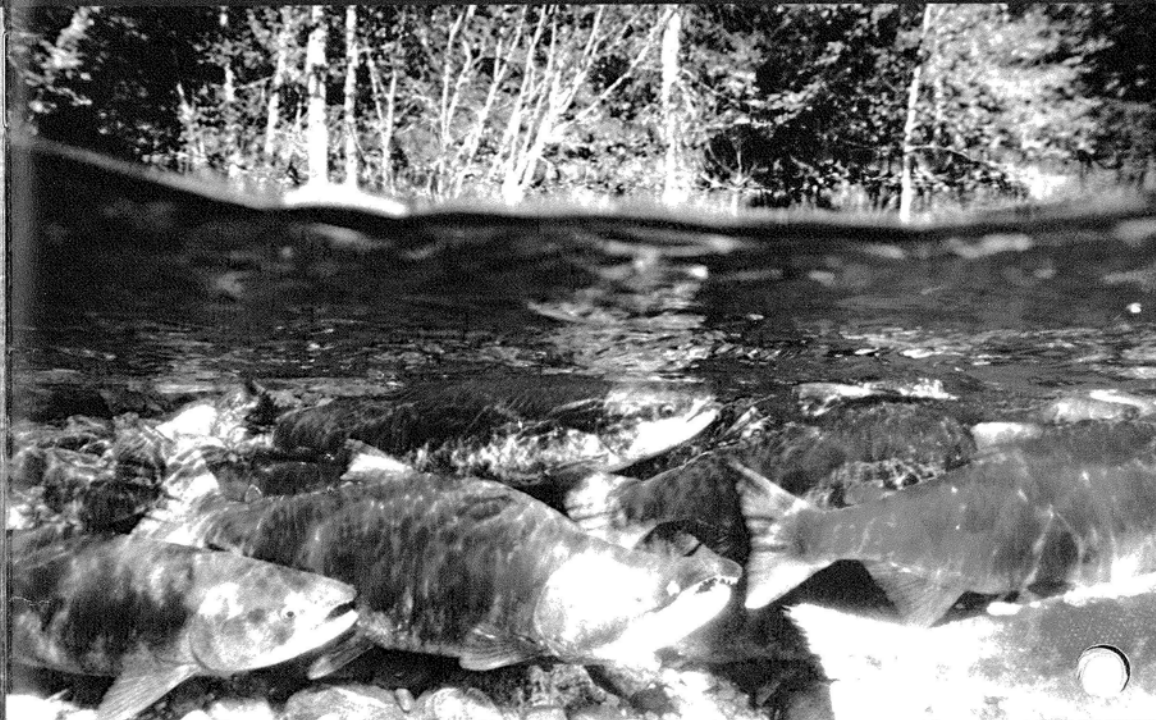
"There is a fire in water. There is an invisible flame, hidden in water, that creates not heat but life. And in this bewildering age, no matter how dark or glib some humans work to make it, wild salmon still climb rivers and mountain ranges in absolute earnest, solely to make contact with that flame."

— David James Duncan, *A Prayer for the Salmon's Second Coming*



www.richardgrost.com

Salmon Plan Report Card



The Federal Plan to Restore Salmon and Steelhead in the Columbia & Snake River Basin: Year Two

Exhibit D.1.d

Supplemental Public Comment

April 2003

Joel Kawahara



With a combined membership of over 6 million, Save Our Wild Salmon (SOS) is a nationwide coalition of conservation organizations, commercial and sportfishing associations, businesses, river groups, and taxpayer advocates working collectively to restore healthy and abundant wild salmon to the rivers and streams of the Pacific Northwest.

For more information about Save Our Wild Salmon or the contents of this report please contact:

Save Our Wild Salmon
2031 SE Belmont Street
Portland, OR 97214
phone: 503-230-0421
fax: 503-230-0677
www.wildsalmon.org



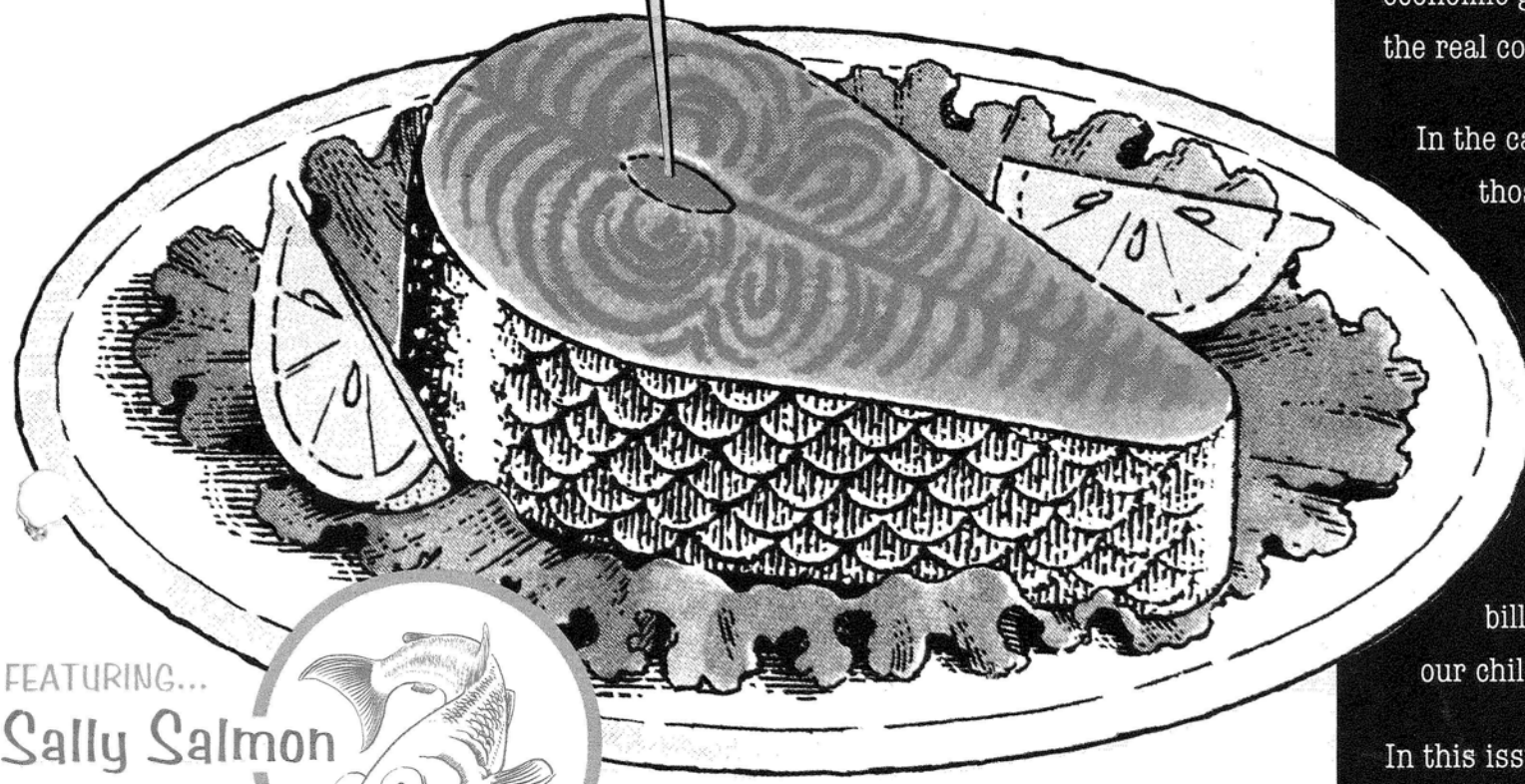
YEAR 2
2001 2002 2003 2004 2005

What lurks behind that farmed salmon steak?

Exhibit D.1.d
Supplemental Public Comment
April 2003

\$3.99/pound

Toxins & Dye:
No Extra Charge



FEATURING...

Sally Salmon



She's a WILD fish!

Feedlot salmon vs. wild salmon

Do you eat salmon? Lots of doctors are recommending it. But there's more to salmon than meets the eye. If you haven't seen the word "wild" at the market or on the menu, the salmon you're eating is probably farmed. Farmed salmon are raised in floating feedlots in Chile, Canada, Europe, and the United States. And that spells trouble. For you, for wild salmon, and for the oceans.

How can a food be so inexpensive in the supermarket but so costly both to our well-being and to the environment? It's because the economic groundrules hide the real costs.

In the case of farmed salmon, those rules allow raw sewage to pour into coastal waters, and fatal epidemics to spread from farmed to wild fish. Meanwhile, the industry dodges the bill, leaving you, me, and our children to pick up the tab.

In this issue of SectionZ:

The Hidden Costs of Farmed Salmon



ecotrust

Take it from here...

SECTION Z

Just Ask: "Is it WILD?"

Know what you are eating. When ordering salmon, ask if it's wild. And remember: if it's Atlantic, odds are it's farmed. The following restaurants and markets feature wild salmon. Support their efforts to bring you the best.

At the Restaurant:



Bread & Ink Café • Café Azul • Clarke's • Compass World Bistro • Daily Café • Genoa • Gino's Restaurant & Bar • Higgins • In Good Taste • Lucere • Oritalia • Paley's Place • Papa Haydn • Serratto • South Park • Wildwood • William's on 12th

At the Market:



• Food Front
• Nature's
• New Seasons Market
• Whole Foods
• Zupan's

You can be sure that it's wild when you **buy direct** from West Coast fishermen. Visit www.SalmonNation.com for a selection of online ordering picks that come to you fresh off the boat.

Where's Your Wild Salmon Come From?

Average yearly harvests of chinook, coho, and sockeye: 1995-2001

Perhaps you've heard about the difficulties that salmon face in places along the West Coast. What you may not know is that many rivers teem with salmon, filling spawning beds and fishing nets alike. The salmon fisheries in Alaska, for example, haul in more than 700 million pounds a year and have been certified as well-managed and sustainable by the Marine Stewardship Council, an independent international organization.

Seven-year average harvests of chinook, coho, and sockeye, the three species most often found at markets and restaurants, are shown here. Two other species — pink and chum — are more often used for canning or smoking. When included, their harvests double the total catch.

One further note: Some wild-caught salmon are actually spawned in hatcheries and then released to roam the oceans — a practice that, for genetic and other reasons, worries some fishery biologists but can help to bolster a run while restoration work continues.

Future salmon abundance depends on preserving healthy runs and restoring endangered ones. The key lies in strengthening our ties to this land and cherishing its millennia-old relationship between people and salmon. And that — deliciously — includes eating them.

Learn more online at www.SalmonNation.com



Call for Mandatory Labeling of Farmed and Wild Salmon

When farmed salmon are labeled, they'll be fakers no more. Buried deep in the 2002 Farm Bill is a little known requirement that labels must "distinguish between wild fish and farm-raised fish." Industry interests are attempting to weaken this proposal. We have until April 2003 to send our comments to the US Department of Agriculture. Let them hear from you.

➔ Email your comments to William Sessions, USDA Associate Deputy Administrator, at william.sessions@usda.gov.

➔ Also, see the action alert from the Institute for Agriculture and Trade Policy at www.iatp.org/fish.



Get Salmon Farming Out of the Oceans

The health of our oceans and wild fish is being sacrificed to subsidize salmon farming. Moving the farms to enclosed ponds would force the industry to pay more of the true costs of farming, leveling the economic playing field for coastal fishing communities.

➔ Visit the Coastal Alliance for Aquaculture Reform online at www.FarmedAndDangerous.org to send a message to key industry representatives.

Don't Let the FDA Allow Genetically Engineered Salmon



While not on anyone's dinner table just yet, GE salmon is just a pen stroke away. Aqua Bounty Farms has applied to the Food and Drug

Administration for permission to market genetically engineered salmon, which would be the first GE livestock on the market. We should not be part of this experiment.

➔ Learn more and send your feedback to the FDA online at www.SalmonNation.com, www.TheCampaign.org/gefish, and www.gefish.org.

What's the Big Idea?

Experts are rethinking our relationship to the natural world:

"We assumed we could control the biological productivity of salmon and 'improve' upon natural processes... We assumed we could have salmon without rivers."
—Jim Lichatowich

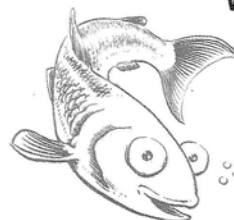


SCIENTISTS

"Our inability to centrally plan economies should inspire more humility among the planetary managers who would centrally plan the ecosystem."
—Herman Daly



ECONOMISTS



"Real salmon jump waterfalls"

Learn more online at www.SectionZ.info

Making our economy safe for people and nature

The blessings of the free market have won endless praise. But wait a second. If Adam Smith's "invisible hand" is so deft, why are problems like climate disruptions and ever-widening wealth gaps so clearly visible?

We can change all that by rethinking some of our basic assumptions. Let's start by recognizing that the "economy" is but a part of the larger "ecology." The result will be more prosperous lives for all of us.

The science is there, the economics is there, and we need you there, too.

Learn more:

www.SectionZ.info

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Seattle, WA 98115

April 7, 2003

Dear Chairman Radke and Mr. Copps:

Oceana appreciates the work and the process the National Marine Fisheries Service (NMFS) and the Pacific Fishery Management Council are undertaking in the development of the Essential Fish Habitat Environmental Impact Statement (EFH EIS). As part of this process, it is critical that all relevant habitat data be brought forward to the public and be directly used to develop alternatives that prevent and mitigate the adverse impacts of fishing on essential fish habitat. This is crucial for the continued viability of our West Coast fisheries.

In the North Pacific region, we have worked extensively with NMFS and the North Pacific Fishery Management Council to develop a management alternative that protects habitat while maintaining vibrant fisheries. A seafloor habitat protection alternative was developed by Oceana and presented by Oceana and The Ocean Conservancy. With support from the fishing community, the North Pacific Fishery Management Council has adopted Oceana's alternative for the Aleutian Islands region for inclusion in their EFH EIS. The Oceana Approach contains the following elements:

- ◆ Compilation and analysis of habitat data and fishing effort data;
- ◆ Allowance of trawling only in specific open areas to maximize protection of EFH while minimizing economic impacts on the fishing industry;
- ◆ Enforcement of bycatch caps on benthic habitat indicators;
- ◆ Initiation of comprehensive research, mapping, and monitoring, including local knowledge; and
- ◆ Expansion and improvement in observer coverage, with the requirements of electronic logbooks and vessel monitoring systems.

Oceana, in collaboration with Mark Powell of The Ocean Conservancy, will develop the same approach as a comprehensive habitat protection alternative for waters off California and the Pacific Northwest to be considered for inclusion in the Pacific EFH EIS. We look forward to working with you to obtain all relevant habitat and fishery information to develop this alternative that will substantially protect essential fish habitat while maintaining vibrant fisheries.

Sincerely,

Jim Ayers
Oceana, Pacific Regional Director