

CURRENT HABITAT ISSUES

The Habitat Committee (HC) will meet on Wednesday, March 11, 2009, to discuss Klamath and Columbia River actions, the Marine Life Protection Act and the Federal marine protected area process, the Bradwood Landing Liquified Natural Gas development, and other matters.

Council Action:

Consider comments and recommendations developed by the HC at its March 2009 meeting.

Reference Materials:

1. Agenda Item H.1.b, Supplemental HC Report.

Agenda Order:

- a. Agenda Item Overview
- b. Report of the Habitat Committee
- c. Reports and Comments of Agencies and Advisory Bodies
- d. Public Comment
- e. **Council Action:** Consider Habitat Committee Recommendations

Jennifer Gilden
Stuart Ellis

PFMC
02/19/09

HABITAT COMMITTEE REPORT ON CURRENT HABITAT ISSUES

Klamath Settlement Negotiations

There is an agreement in principle among the Department of Interior, States of Oregon and California, and PacifiCorp to remove the four lower Klamath Dams. Work is being done to finalize the agreement in June. If these dams are removed, over 300 miles of habitat for anadromous fish will be opened up. Funding for removal may be done through a combination of rate payer charges and a bond measure in California. There are still numerous permitting, financial, and Federal Energy Regulatory Commission (FERC) issues that need to be resolved before dam removal could begin. The Habitat Committee (HC) is seeking a presentation from Department of Interior staff in June on the status of the settlement negotiations and restoration planning.

NMFS National Habitat Assessment Improvement Plan

National Marine Fisheries Service (NMFS) is working on a national habitat assessment improvement plan that will provide a foundation for meeting gaps in habitat information needed to contribute to stock assessments, essential fish habitat (EFH), and ecosystem-based fishery management. At some point in the process there will be an opportunity for the Council to be briefed on the plan; the HC encourages the Council to schedule time for such a briefing once a draft becomes available. The plan should provide impetus for new funding and focus for habitat work that supports Council fisheries and ecosystem management.

California Marine Life Protection Act

The HC heard an update on the status of the California Marine Life Protection Act process for the north-central coast of California. Three proposals were developed by a regional stakeholder group, and a Blue Ribbon task force created an alternative proposal incorporating elements of each. However, not all constituents, particularly the local fishing industry, were satisfied with the outcome. All proposals are undergoing further review, including the CEQA (California Environmental Quality Act) process and review by the California Fish and Game Commission to analyze the complex array of regulations included in the proposals. State funding was frozen during the latter part of the north-central process, leaving private funding sources to carry the process. State funding has since been reinstated, yet it is unclear if sufficient funds will be available for monitoring and enforcement. The southern California process is underway, but with limited funding.

Olympic Coast National Marine Sanctuary Management Plan Review Update

The Olympic Coast National Marine Sanctuary (OCNMS) is reviewing its management plan for the first time since 1993, when the original plan was completed. A scoping process for the review of the plan was held in Fall 2008. During this process, the public and Sanctuary partners identified management topics. The Sanctuary Advisory Council was asked to prioritize the 37 discrete topics for further consideration. OCNMS staff will produce a Priority Issue Work Plan that will detail the issues to be addressed in the revised management plan over the next twelve

months. The HC will keep the Council apprised of work plan items that are relevant to Council fishery and habitat issues.

Liquefied Natural Gas (LNG) Developments

The HC heard an update on the Bradwood Landing LNG development and other LNG proposals. Bradwood Landing is upstream from an important rearing area and migration pathway for juvenile salmon. Concerns for this project stem from unscreened ballast water intakes on the LNG tankers, the need to dredge 58 acres for a turning basin for the tankers, large wakes generated from ships, pipeline construction, and increased water temperatures. The project received a license from FERC last fall, followed by several unsuccessful court appeals. Due to the inadequacy of the company's proposed hydrodynamic study and other required products (i.e., ballast water screening), FERC is consulting with NMFS and private contractors to analyze the project's design and implementation. The applicant's final Biological Assessment and EFH consultation is scheduled for late spring of 2009, which may create an opportunity for the Council to comment at its June meeting.

Columbia River Biological Opinion and Interim Management Measures

There was a hearing in Federal Court last Friday on the ongoing litigation over the Columbia River Federal Hydropower system. The Federal government agreed to continue the 2008 spill program. This will provide benefits to out-migrating juvenile fish. The judge will be making a determination of sufficiency of the current Biological Opinion (BO), but not before April. The judge could uphold the BO, but if he does not consider it legally sufficient under the Endangered Species Act (ESA), he has indicated he will not simply remand it back to the action agencies again, but will likely issue orders to implement whatever actions he determines are necessary to make it so.

Additionally, numerous habitat restoration projects will be implemented in 2009 under the Columbia Basin Accords process. Additional habitat restoration projects will be funded through the Bonneville Power Administration over the next 10 years.

Navy draft EIS for Northwest Range Training Complex

The HC wants to make the Council aware of the Navy's draft environmental impact statement (EIS) for the Northwest Range Training Complex. The Navy intends to expand training operations and is soliciting input from the public and government entities on their draft EIS. The Navy extended the comment period 30 days to March 11, 2009 because of the lack of public and agency awareness about this draft EIS. For the Councils' information, NMFS Northwest Region and Olympic Coast National Sanctuary submitted comments to NMFS Headquarters to be forwarded to the Navy. Oregon Department of Fish and Wildlife is submitting comments directly to the Navy (Agenda Item H.1.b, Attachment 1), describing concerns regarding potential impacts to sensitive marine habitats, fish species and fisheries resulting from munitions debris, sinking of decommissioned ships, contaminated hazardous materials, bioaccumulation of depleted uranium, sonar impacts on forage fishes, entanglement and/or displacement of trawl gear, potential closure areas, and the unspecified spatial extent of training area. Also included are suggestions for an adaptive management plan, a stakeholder group and consideration of the West Coast Governor's agreement on Ocean Health.

The website for the Navy EIS is at <http://www.nwtrangecomplexeis.com/NtrcCommentForm.aspx>.

Gold Dredging in California

The HC heard comments from Jim Hie, Conservation Representative on the Salmon Advisory Subpanel, concerning suction dredge gold mining in West Coast rivers with anadromous fish. California Department of Fish and Game (CDFG) issues permits for recreational suction dredge gold mining and has promulgated regulations intended to protect fish. The controversy stems from CDFG allegedly failing to enforce their regulations, resulting in a series of lawsuits by Klamath Basin tribes, the Pacific Coast Federation of Fishermen's Associations, and other plaintiffs. Recreational mining groups have pursued counter suits concerning tribal fishing in the Klamath Basin. California State Senator Patricia Wiggins has introduced legislation to ban suction dredge mining in California in response to the situation (Agenda Item H.1.b, Attachment 2).

The HC believes that the evidence contained in the Karuk Tribe's petition for administrative rulemaking (Agenda Item H.1.b, Attachment 3) indicates that suction dredge gold mining has deleterious effects to Klamath and Sacramento Rivers fall Chinook EFH, as well as to critical habitat for Southern Oregon/Northern California coho. In light of the recent failures of Klamath and Sacramento fall Chinook runs, the HC strongly recommends that the Council prepare EFH comments directed to CDFG on the effects of gold dredging on Klamath and Sacramento River fall Chinook. These comments should be prepared by the April or June Council meeting. The HC also encourages the Council to urge NMFS to consider any possible Federal nexus to gold dredge permitting in all river systems supporting ESA-listed salmonids.

The HC intends to invite representatives from CDFG and Klamath Basin Indian Tribes to the April HC meeting to present further clarifying information concerning the effects of suction dredge mining on both Chinook and Coho salmon in rivers where this mining occurs.

PFMC
03/12/09



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

Office of the Director
3406 Cherry Avenue, NE
Salem, OR 97303
503.947.6044
FAX 503.947.6042
TTY 503.947.6339
www.dfw.state.or.us

March 11, 2009

Naval Facilities Engineering Command Northwest
Attention: Mrs. Kimberley Kler – NWTRC EIS/OEIS
1101 Tautog Circle, Suite 203
Silverdale, WA 98315-1101



Dear Mrs. Kler:

The Oregon Department of Fish and Wildlife (ODFW) has reviewed the Navy's Draft EIS/OEIS for the Northwest Range Training Complex, and we have several comments and recommendations to offer. Our comments are directed to potential impacts on natural resources (i.e. marine plants, invertebrates, and fish), commercial and recreational fishing interests, non-fishing recreation interests (e.g., whale watching), and the public safety of ocean users within both State and Federal waters directly offshore of Oregon. We defer commenting on marine mammals and birds to our federal counterparts (NMFS and USFWS) that have jurisdiction over these species. The following are our comments, in no particular order:

- We request that the Final EIS denote exactly what the inshore boundary is for each proposed training exercise so that we can better determine impacts to our State interests. In the Draft EIS, it was very difficult overall to determine how far inshore particular training exercises would occur. For most Naval exercises in the PACNW OPAREA, the EIS does not explicitly state what the inshore boundary of training exercises would be (notable exceptions are the sinking exercises, air-to-air missile exercises, the Portable Undersea Tracking Range submarine exercises), therefore we must assume that they may occur as far inshore as the coastline. It is therefore our understanding that the following activities may occur inshore in all State waters: anti-submarine tracking exercises, extended echo ranging (i.e. tracking) exercises, surface ship tracking exercises, submarine tracking exercises, and electronic combat exercises.
- We request that the Navy provide specific density estimates for expended training debris (e.g., ordnance, cannon shells) on the seafloor in the Final EIS so that we can adequately assess potential impacts to natural resources. The assumption in the Draft EIS of an even distribution of expended items throughout the PACNW OPAREA is not realistic. To address this issue, the Navy should provide density estimates for seafloor debris generated by dividing the number of each type of expendable used in a training exercise by the average (and minimum) surface area over which the training exercise takes place – not the entire PACNW OPAREA. For example, if 4,000 cannon shells with depleted uranium were used in an

exercise that covered 10 square nautical miles, then the density for this expendable type would be 400 shells per square mile per exercise. The density estimates for individual training exercise could then be averaged into an overall mean. We could then gauge whether the possibility exists for significant accumulation of expended items and their associated pollution.

- We strongly recommend that the Navy reconsider its position that it will not restrict training exercises in time or space in order to avoid sensitive habitats, species, and fisheries. The marine environment offshore of Oregon has numerous areas of high-value habitats (both permanent and seasonal), Essential Fish Habitat, Habitat Areas of Particular Concern, Marine Reserves (proposed), and important fishing grounds. These areas include, but are not limited to, Stonewall Bank, Heceta Bank, Daisy Bank, Nehalem Bank, and Astoria Canyon. These areas can be identified by consulting with resource managers, marine scientists, conservationists, and commercial and sport fishing representatives. We encourage the Navy to collaborate with these entities (through a workshop?) to arrive at a reasonable and mutually acceptable arrangement.
- Because of the significant safety risk to trawlers from submarine operations, we advocate that the Navy engage in direct dialogue with the trawling community and co-develop a mutually acceptable warning system that will alert trawlers when submarines are operating in the same area.
- We are concerned about debris from training exercises interfering with fishing operations. There is both a safety concern for trawlers that could bring up unexploded ordnance or toxic materials, and a concern about physical damage to fishing gear or lost fishing time dealing with debris caught in trawl nets. A dialogue with fishing representatives could help resolve some of these issues, and it would be worthwhile to explore the utility of successful models of industry communication with our diverse fishing fleet (e.g., the Oregon Fishermen's Cable Commission; see <http://www.ofcc.com/>).
- We are very concerned about contamination of the marine environment and living resources (and possible bioaccumulation up the foodweb) by hazardous materials present in Navy-generated marine debris (e.g., missiles, cannon shells, bombs), which would increase significantly under the Navy's preferred alternative. Because contamination is such an important potential effect of Navy activities, we recommend a more thorough treatment of this topic in the Final EIS. For example, we find it inadequate that only two studies, one of which was from 1974, were cited in support of the conclusion that depleted uranium contamination was inconsequential in marine environments.

- We request that the Navy elaborate on how the existing and proposed increased debris generated from training activities will be (or has been) addressed by the Interagency Marine Debris Coordinating Committee.
- We request that the Navy develop a reporting system to communicate to stakeholders and the public about the type, general location, and quantity of marine debris generated from training activities on a periodic (e.g., annual) basis.
- We request more detailed information about the decommissioned ships under consideration for the sinking exercises (e.g., size, type, contamination type and level). Although ships will be cleaned to EPA standards, it seems likely that decommissioned ships may remain highly contaminated and disposing these ships in the marine environment may not be appropriate. We are particularly concerned about the potential that ships from the “Mothball Fleet” in San Francisco Bay will be sunk during these exercises.
- We encourage the Navy to consult with State and Federal resource management agencies (e.g., ODFW, NMFS) about siting where vessels will be sunk during the sinking exercises. This collaboration would be important in order to avoid high-value habitats and minimize impacts to natural resources.
- We request that the Navy significantly expand the EIS chapters on socioeconomic and public safety considerations (e.g., estimate potential fishing revenue losses and the number of unexploded ordnance expected to end up on the seafloor). The EIS focused on the socioeconomic impacts to Washington State, and we would like to see a similar analysis of potential socioeconomic impacts to Oregon, particularly for the fishing industry.
- We strongly oppose the continued use of ammunition containing depleted uranium in our offshore waters because of: 1) the known hazardous properties of depleted uranium, 2) the unknown biological and ecological effects of this substance in the marine environment, and 3) unrealistic estimates by the Navy of the density of spent shells on the seafloor.
- We support the use of tungsten-based cannon shells instead of depleted uranium-based shells.
- We request that the Navy address how they are attempting to balance the competing demands of the actions proposed in the West Coast Governor’s Agreement on Ocean Health (e.g., clean coastal waters, healthy ocean and coastal habitats) with the pollution and potential impacts associated with Naval exercises.

- We have significant concerns about the potential impact of active mid-frequency sonar activities on cetacean populations, many of which are ESA-listed species. While these species are not regulated by the State of Oregon, they are important to the State ecologically, economically (e.g., whale watching), and aesthetically. We strongly request that the Navy consider mitigation steps that would minimize the overlap in space and time between Naval activities and cetacean concentrations (e.g., seasonal or area closures).
- We request a more in-depth analysis of the potential effects of mid-frequency sonar on fishes that occur offshore of Oregon, particularly those species known or suspected hearing specialists (e.g., herring, anchovy, sardine, bathypelagic species including Myctophids). There appears to be significant uncertainty regarding the effects of mid-frequency active sonar on fishes, especially for hearing specialists such as Clupeids and deep-sea species that inhabit the deep scattering layer. The ecological ramifications of lethal and sublethal effects on forage species and species in the deep scattering layer could be significant, and should be addressed. In the long-term, we suggest that the Navy fund more scientific studies to investigate the effects of mid-frequency sonar on fishes.
- In light of our numerous recommendations that highlight the need for communication between the Navy and stakeholders, we recommend that the Navy facilitate the creation and maintenance of a stakeholder group for the purpose of engaging in two-way dialogue about issues of concern, giving and receiving feedback, and dispensing of information. The Navy should consider assigning a liaison to facilitate such a group and maintain open channels of communication with stakeholders.
- We strongly recommend that the Navy incorporate a detailed adaptive management plan in the EIS, especially since the results of this process will remain in effect indefinitely. Inclusion of an adaptive management plan would be very useful if, for example, natural resources are affected more than anticipated by Navy exercises, or if new scientific information indicates that effects may be greater than originally anticipated.

There are several errors (or potential errors) in the EIS that should be addressed:

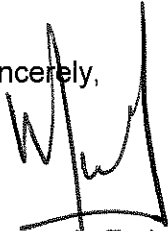
- Scorpionfishes, searobins, and sculpins are given as example family descriptions for both the Scorpaenidae and Triglidae in table 3.7-4 on page 3.7-19.
- There is an apparent error in the EIS on page 3.7-22 that states fishes in the order Scorpaeniformes (e.g., rockfishes) are thought to have poor hearing ability because they lack a swimbladder. However, these species *do* have

swimbladders, so it is unclear if the assumption of poor hearing is valid for this group.

- It was unclear where some of the fishery values came from, e.g. \$39 million for miscellaneous invertebrates in 2007, which is an apparent error.

Thank you for providing us the opportunity to contribute comments on this project. We appreciate the Navy's commitment to maintaining and enhancing our national security, and the open and detailed treatment of potential impacts in the Draft EIS. We respectfully request that our comments and recommendations are given due consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Manny A. Farinas', written over a horizontal line.

Manny A. Farinas
Acting Deputy Director

cc: Roy Lowe, Newport Field Office, USFWS
Cathy Tortorici, Branch Chief, NOAA
Bob Bailey, Ocean and Coastal Services, DLCD
Louise Solliday, Director, DSL
Tim Wood, Director, OPRD
Dick Pedersen, Director, DEQ
Dave Fox, Marine Resources Program, ODFW
Ed Bowles, Fish Division Administrator, ODFW
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SALMON ADVISORY SUBPANEL REPORT ON CURRENT HABITAT ISSUES

The Salmon Advisory Subpanel (SAS) supports the Habitat Committee recommendation for the Council to develop comments on the effects of gold dredging activities on salmon Essential Fish Habitat.

PFMC
03/12/09