

CURRENT HABITAT ISSUES

The Habitat Committee (HC) will meet on Friday and Saturday, October 30 and 31. In September, the Council requested that the HC prepare a letter to the Bureau of Forestry, citing concerns about relaxation of harvest practices, for Council review at this meeting; that letter is Attachment 1 to this agenda item.

In addition, in September the Council discussed sending a letter to the Bureau of Reclamation (BOR), encouraging BOR to reply to NMFS' essential fish habitat recommendations for BOR's Central Valley Project and State Water Project. The Council chose to wait until November to determine whether BOR had replied to NMFS' recommendations, and whether a letter was warranted. As of October 14, the BOR has not responded to NMFS. A draft letter to BOR is Attachment 2 to this agenda item.

At this meeting, the HC heard reports on the Deep Sea Coral Research and Technology Program and the Deep Sea Coral Partnership, and discussed salmon essential fish habitat and overfishing issues; the California Central Valley Biological Opinion; ecosystem-based management; and the National Fish Habitat Action Plan.

Council Action:

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

Reference Materials:

1. Agenda Item E.1.a, Attachment 1: draft letter to the California Board of Forestry on measures to protect salmonids.
2. Agenda Item E.1.a, Attachment 2: draft letter to the Bureau of Reclamation on the Central Valley Biological Opinion.
3. Agenda Item E.1.b, Supplemental HC Report.
4. Agenda Item E.1.d, Public Comment.

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

John Coon
Teresa Scott

PFMC
10/16/09



Pacific Fishery Management Council

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David W. Ortmann, Chairman | Donald O. McIsaac, Executive Director

November X, 2009

Mr. Stan Dixon
Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, California 94244-2460

Dear Chairman Dixon:

The Pacific Fishery Management Council (Council) would like to ~~provide~~ comments on the recently adopted State Board of Forestry and Fire Protection (BOF)'s 2009 Anadromous Salmonid Protection Rules. The Council concurs with National Marine Fisheries Service (NMFS) that further steps are necessary, and development of a Habitat Conservation Plan would be appropriate. As you may be aware, tThe Council is one of eight regional fishery management councils established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 for the purpose of managing fisheries in federal waters. The Council is responsible for fisheries off the coasts of California, Oregon, and Washington, including fisheries for Chinook and coho salmon, and comments on actions that impact essential fish habitat for these fish.

As you may know, there has been a sudden collapse recently in Chinook salmon populations originating in California's Central Valley region. This collapse prompted the Council to recommend, and NMFS to approve, a closure of all commercial Chinook salmon fishing south of Cape Falcon, Oregon in both 2008 and 2009. The state of California also issued a closure on all ocean salmon commercial fisheries in state waters (0-3 miles offshore). These actions have caused severe economic and social hardship to many coastal communities in both California and Oregon. In response to these ocean salmon fishery failures, Congress appropriated \$170 million in disaster relief funds that were distributed in 2008 and 2009 to fishing-related businesses affected by the closures.

In addition to the collapse of Chinook salmon stocks, a decline in many West Coast coho salmon populations has also been observed in recent years. Moreover, due to the overall depressed status of federally listed coho in California, especially with regard to Central California Coastal coho, coho-directed fisheries and coho retention in Chinook fisheries have been prohibited off the coast of California for the commercial and recreational sectors since 1993 and 1995, respectively.

It is clear that no single entity can recover salmon and steelhead in California, and that a unified and well-organized strategy will be necessary to accomplish this goal. In fact, there have been a number of Federal, State, and local laws and policies enacted in support of this effort, including

the NMFS Biological Opinion for the Central Valley Project and State Water Project Operations Criteria and Plan advising fish passage above several dams to avoid jeopardy to Central Valley salmonids, discussions regarding the potential removal of the Klamath Basin dams, and the fishery closures mentioned previously, among others. California's forestlands are critical to the freshwater survival and long term recovery of northern California's salmon and steelhead populations. Decisions by this BOF will have a significant influence on the future of these populations.

To this end, the Council commends the BOF for the October 7, 2009 unanimous adoption of permanent riparian rules for the protection of anadromous salmonids. The newly adopted rules are a milestone for both the BOF and these iconic species, but more work remains to be done. Moving forward, the Council requests that the BOF address the outstanding issues raised in NMFS' letters to the BOF from June, September and October of 2009. The items that need to be addressed include:

- (1) Take action to assure unauthorized take or harm does not occur and work to establish no-take rules (as exist for northern spotted owls or marbled murrelets), or
- (2) Reinitiate discussions between the California Natural Resources Agency and NMFS that began in 2006 to develop a section 10(a)(1)(B) California State Forestry Habitat Conservation Plan (HCP) that authorizes incidental take of salmon and steelhead. The Washington State HCP has proven to be beneficial to salmonids and to Washington's forest landowners, and California can use it as a model.

Without these steps, salmonids are still at risk of harm, and landowners remain subject to discretionary timber harvest plan reviews and ESA take enforcement actions by NMFS.

The Council wishes to acknowledge the October 7, 2009 unanimous BOF adoption of permanent rules for riparian zones specifically for the protection of anadromous salmonids on forestlands. Moving forward, the Council encourages the BOF to extend these rules to address outstanding issues raised in NMFS' letters to the BOF over the last several years (such as impacts of roads, cumulative effects, watershed analyses, and adaptive management).

In addition, the Council requests the BOF advance forest management practices that address the freshwater needs of listed salmon and steelhead, and take immediate action to assure unauthorized take or harm does not occur to federally listed salmonids. Specifically, the BOF should develop "no take" rules as exist for northern spotted owls or marbled murrelets, or move forward on the creation of a section 10(a)(1)(B) statewide permit or a California State Habitat Conservation Plan, with NMFS, that authorizes incidental take of salmon and steelhead under the Endangered Species Act (ESA).

Since the BOF's riparian rules are neither "no take" rules or rules secured under a Habitat Conservation Plan, landowners can still be subject to discretionary timber harvest reviews and ESA take enforcement actions by NMFS. California Resources Secretary Mike Chrisman initiated discussions between the State and NMFS regarding a Habitat Conservation Plan in 2006. The Council would like to see these discussions continue, since such a plan would create a

~~mechanism to protect both landowners and salmonids, and set the stage for a comprehensive monitoring and adaptive management process, as modeled by Washington State.~~

Thank you for your consideration. If you have any questions, please contact our Executive Director, Donald McIsaac, at 503-820-2280.

Sincerely,

<SIGNATURE BLOCK>

cc: Governor Arnold Schwarzenegger, Sacramento
Don Koch, CDFG, Sacramento
Sonke Mastrup, CDFG, Sacramento
Neil Manji, CDFG, Sacramento
John McCamman, CDFG, Sacramento
Mark Stopher, CDFG, Redding
Tony Morton, NMFS, Long Beach
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David W. Ortmann, Chairman
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November X, 2009

Mr. Donald Glaser
Regional Director
Mid-Pacific Region
U.S. Bureau of Reclamation
2800 Cottage Way, MP-3700
Sacramento, California 95825-1898

Dear Mr. Glaser:

The Pacific Fishery Management Council (Council) is concerned that the Bureau of Reclamation (Reclamation) has to date failed to respond to the Essential Fish Habitat (EFH) recommendations provided by the National Marine Fisheries Service (NMFS) regarding Reclamation's long-term operations of the Central Valley Project, operated in coordination with ~~and the~~ State Water Project (Operations).

Fall and late fall-run Chinook salmon stocks from the Central Valley have historically comprised the vast majority of the ocean salmon harvest south of Cape Falcon, Oregon to the Mexico border. Unfortunately, their populations have decreased dramatically in recent years, prompting the Council to recommend, and NMFS to approve, unprecedented ocean salmon fishery closures along the coasts of California and Oregon. These fishery closures have had severe socio-economic repercussions for many coastal communities in California and Oregon that rely on the opportunity to harvest those salmon stocks.

The Council was given an update in September regarding the biological opinion and conference opinion and EFH analysis for your Operations. The Council was briefed on NMFS' conclusions that Operations are likely to jeopardize the continued existence of the Endangered Species Act (ESA)-listed Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon (among other ESA-listed species).

The Council manages fisheries for these winter-run and spring-run salmon and is deeply concerned about their health. Because the Council is required to protect these stocks, which intermingle with healthier stocks in the ocean, their ESA listings restrict other fisheries. The Council is pleased that Reclamation has provisionally accepted NMFS' reasonable and prudent alternative (RPA) and is beginning to work with NMFS to implement these critical measures. Such work needs to be pursued with vigor to rebuild these stocks.

However, the Council has learned that Reclamation has yet to respond to the EFH conservation recommendations that were provided by NMFS. These recommendations include (1) general recommendations from Appendix A of Amendment 14 to the Pacific Coast Salmon Fishery

Management Plan, (2) the habitat-based actions within the RPA from the Opinion, and (3) the specific conservation recommendations for fall- and late fall-run Chinook salmon in the Central Valley system.

The Magnuson-Stevens Fishery Conservation and Management Act section 305(b)(4)(B) and 50 CFR 600.920(k) requires Reclamation to provide a written response to EFH conservation recommendations within 30 days of their receipt. It requires the response to include a description of measures to avoid, mitigate, or offset the adverse impacts of the activity. Furthermore, if the measures are inconsistent with the EFH conservation recommendations, Reclamation must provide NMFS an explanation of the reasons for not implementing those recommendations. The reasons must include the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

The Council believes the EFH conservation recommendations contained in the Opinion include measures necessary to reestablish populations of Chinook salmon, and especially the fall- and late fall-runs, in the Central Valley. The Council urges Reclamation to comply with its statutory and regulatory obligation to respond to NMFS' EFH conservation recommendations and to implement them fully. The Council believes this would be an important step in providing sustainable populations of Chinook salmon in the Central Valley.

Thank you for considering our concerns. Please feel free to contact Council Executive Director Don McIsaac if you have any questions.

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HABITAT COMMITTEE REPORT

Board of Forestry Letter

The Habitat Committee (HC) reviewed the draft letter to the California Board of Forestry (Agenda Item E.1, Attachment 1). Some suggested changes to make the letter more timely have been highlighted in the attached version. The HC recommends the Council approve and send the revised letter to the Board of Forestry.

Bureau of Reclamation Letter

The HC reviewed the draft letter to the Bureau of Reclamation (Agenda Item E.1, Attachment 2) and made a minor change that is highlighted in the attached version. The HC recommends the Council approve and send the revised letter to the Bureau of Reclamation.

Queets/Strait of Juan De Fuca Coho Overfishing Report

The HC is still waiting on direction from the Salmon Technical Team as to how we can contribute to this process.

Report on Deep Sea Coral Research

The HC received a presentation from Dr. Tom Hourigan of NMFS' Office of Habitat Conservation on NOAA's Deep Sea Coral Research and Technology Program (DSCRTP). The Program has been active in the South Atlantic region, and beginning in FY 2010 will begin a three-year research program on the West Coast, with an initial meeting planned for January in Portland to identify priorities. Recent changes to the Magnuson-Stevens Act have allowed discretionary authority by fishery management councils to protect deep sea corals and sponges. Dr. Hourigan solicited involvement in the process by Council staff and the Habitat Committee for the following reasons:

- To inform the five-year essential fish habitat (EFH) review
- To describe deep-sea coral locations for potential discretionary deep sea coral zones
- To address petitions for conservation
- To contribute to Sanctuary planning
- Because the Pacific region contains extensive gorgonian and black coral resources

The HC also notes that the information gathered by the DSCRTP would better inform the ecosystem fishery management plan process.

Update on Central Valley Biological Opinion

The HC received an update on the Central Valley Biological Opinion. Within the last two months, the five-agency team has met twice. NMFS has reminded the BOR of its obligations regarding EFH, and has made BOR aware that a letter regarding outstanding issues may be coming from the Council. Although BOR has not yet responded to NMFS' EFH conservation recommendations, they have begun implementing the reasonable and prudent alternatives (RPAs).

A draft Trinity River Division (TRD) Biological Opinion was submitted to the Center for Independent Experts for peer review, and NMFS is currently considering and integrating their comments. The revised draft is expected to be available for public review in early 2010.

National Fish Habitat Action Plan

The HC received a briefing on the National Fish Habitat Action Plan (NFHAP). In part modeled after the North American Wetlands Conservation Act, the NFHAP would establish regional partnerships and leverage project funding for fish habitat conservation. Legislation has been introduced that would provide \$75 million annually to fund this endeavor.

Startup funding for a west coast FHAP for marine and estuarine habitats has been supplied by U.S. Fish and Wildlife Service with support from NMFS. Fran Recht of PSMFC is the designated staff to convene an initial meeting of regional partners and to develop regional priorities for marine and estuarine habitats.

Because of the overlap with Council-managed species and the update of salmon EFH and the ecosystem-based management plan development process, it would be helpful to have Council staff track this effort.

PFMC
10/31/09

Subject: [Fwd: Extension petition on Reclamation's California SWRCB Ap. #18115 Black Butte]
From: "pfmc.comments" <pfmc.comments@noaa.gov>
Date: Mon, 21 Sep 2009 08:25:58 -0700
To: Jennifer Gilden <Jennifer.Gilden@noaa.gov>, Chuck Tracy <Chuck.Tracy@noaa.gov>

Subject: Extension petition on Reclamation's California SWRCB Ap. #18115 Black Butte
From: Mike Barkley <mjbarkl@comcast.net>
Date: Sun, 20 Sep 2009 21:52:57 -0700
To: pfmc.comments@noaa.gov

Hello,

I understand the Sacramento River watershed is crucial to chinook in the west. In that watershed at one time Stony Creek was one of the finest salmon spawning grounds. Reclamation has dammed chinook into extinction on Stony Creek. Reclamation has filed for a 40 year extension on the crucial water right on Stony Creek. I see an opportunity to restore chinook in this process.

Please see NFMS BiOp at
http://swr.nmfs.noaa.gov/sac/myweb8/BiOpFiles/2008/final_revised_Stony_Creek_BO-GC_edits_FINAL_Tucker.pdf

and, for instance, testimony by Judge Purkitt (also former State Senator, and head of the California Democratic Party for much of the 1920s) at <http://www.mjbarkl.com/fish.htm> p. 484 - he does not name the species but email with one fish expert leans towards chinook.

The 3 major reservoirs on Stony Creek make the stream somewhat unique, because for the main stem of each reservoir there is an undammed parallel tributary separated from that stem by very low hills. This makes bypass canals physically doable. Reclamation has asked for long extensions on all of its Central Valley Project Permits, which I would suspect has placed a tremendous burden for response on the various Fishery agencies and advocacy groups. With a short deadline there's not much time to prepare a proper protest.

I am planning on asking California SWRCB for the following mitigation & settlement term to compensate for the cumulative effect of Reclamation damming chinook into extinction on Stony Creek (Glenn/Tehama/Colusa Counties), Ap 18115, 40-year extension protests due 10/03/2009:

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2. Restore the anadromous fish runs on Stony Creek and tributaries except for Little Stony Creek: fund, engineer, construct and operate lined fish migration bypass canals of sufficient width, depth and flow:

- 1) from the confluence of Little Stony and Big Stony around Stony Gorge down through Briscoe Creek watershed and back to Stony Creek,
- 2) from Julian Rocks through an excavated notch in the hill between Stony and the Hambright Creek watershed and thence to the South Diversion Dam forebay.

Add chillers, feeders, oxygenators, and temperature and chemical testers at strategic locations on the canals and streams; add fish ladders around the Tehama-Colusa Canal CHO dam or dams, the North Diversion Dam, the South Diversion Dam, and Rainbow Diversion Dam; properly screen all diversions; replace private diversions in the watershed with fish-friendly diversions; add public access monitoring roadways to all fish facility locations and for the length of the bypass canals; annually restore a discrete channel between Black Butte and the Sacramento River; water saved by this mitigation will not be charged against Reclamation's allocation(s).

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Could you ask your anadromous people if this is feasible? I have asked others but not received a response. Because of the Angle Decree, Stony Creek is already in the jurisdiction of U.S. District Court Judge Lawrence Karlton, whose decisions requiring Reclamation to restore Salmon on the San Joaquin are legendary. As a land & water rights owner on Stony Creek I have standing in addition to my environmental advocacy interests. All I need to do is present the issues properly during the preparatory stages such as this protest in order to have a shot at restoring chinook on Stony Creek.

Thanks in advance & best wishes,

--Michael J. Barkley, 161 N. Sheridan Ave. #1, Manteca, CA 95336
209/823-4817 mjbarkl@inreach.com Californian Bar #122433

Extension petition on Reclamation's California SWRCB Ap. #18115 Black Butte.eml

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