

CURRENT HABITAT ISSUES

The Habitat Committee (HC) will meet on Friday, April 9, 2010. At this meeting, the HC will discuss California Central Valley water issues, the salmon essential fish habitat review process, Western Straits of Juan de Fuca coho habitat issues, critical habitat for leatherback sea turtles, and other matters. In addition, the HC has prepared a draft letter on the Bureau of Reclamation's actions regarding the Central Valley Project Improvement Act (CVPIA) (Attachment 1).

Council Action:

Consider comments and recommendations developed by the HC at its April 2010 meeting.

Reference Materials:

1. Agenda Item E.1.a, Attachment 1: Draft letter on the Bureau of Reclamation/CVPIA.
2. Agenda Item E.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

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03/23/10



Pacific Fishery Management Council

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

April XX, 2010

Honorable Ken Salazar, Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Salazar:

This letter concerns a matter of utmost urgency.

As you are aware, the Sacramento River fall-run Chinook salmon resource, the backbone of salmon fisheries off the coasts of California and Oregon south of Cape Falcon, has failed despite severe fishing restrictions in recent years. The collapse of this stock, and the resulting curtailment of offshore salmon fishing, has put unprecedented stress on fishing communities up and down the West Coast, resulting in a declaration of economic disaster and subsequent disaster relief funding for West Coast fishing communities. The Pacific Fishery Management Council is charged with reviewing the status of the essential fish habitat affecting this stock and, as appropriate, providing recommendations for restoration and enhancement measures¹.

In March, the Council received a report from our Habitat Committee informing us of what appears to be a clear violation of the intent of Congress concerning the use of federal Central Valley Project water intended for the rebuilding of California's Central Valley salmon stocks.

Title 34 of Public Law 102-575, the Central Valley Project Improvement Act (CVPIA) of 1992, at Section 3406(b)(2), directs the Secretary of the Interior to dedicate 800,000 acre-feet of Central Valley Project (CVP) water yield to the implementation of the fish and wildlife purposes and measures authorized by the CVPIA. Paramount among the purposes and measures is the rebuilding of Central Valley salmon stocks through a CVPIA Anadromous Fisheries Restoration Program.

The CVPIA specifically envisioned that this Program should double the Valley's salmon runs by 2002, largely by applying the 800,000 acre-feet of CVP water budget yield provided by Section

¹ The Magnuson-Stevens Fishery Conservation and Management Act (MSA) (as amended by the Sustainable Fisheries Act) requires fishery management plans to "describe and identify essential fish habitat..., minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat" (§303(a)(7)). The MSA defines essential fish habitat as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity."

3406(b)(2) to assure juvenile salmon safe passage on their emigration through the San Francisco Bay-Delta estuary to the sea. Maintaining safe downstream passage conditions is key to rebuilding Sacramento fall Chinook, and dedication of CVPIA storage for this purpose is one of few tools available to managers to provide immediate improvements in survival and rebuilding of this important stock.

In 2006 the White House Office of Management and Budget (OMB) noted the disparity between Congress' Central Valley salmon doubling objective and the actual condition of the Valley's salmon resource. OMB recommended that a comprehensive review of the salmon doubling program be undertaken by the responsible agencies, the Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service. That review, using a panel of independent scientists, was performed in 2008.

The resulting report, Listen to the River: an Independent Review of the CVPIA Fisheries Program (December 2008), reveals that Reclamation has, contrary to Congress' direction, used up to 400,000 acre-feet of CVP storage for upstream Central Valley salmon restoration measures, but, in each case, withdrew all of that water at the CVP's Delta pumps, rather than using it to assure safe passage for juvenile salmon through the Delta to the sea.

These disturbing findings appear to have been ignored by the Central Valley water managers. In practice, this means that the will and intent of Congress has been neglected by Reclamation.

Reclamation is obligated by the CVPIA to promote the health of the Central Valley ecosystem for the benefit of fish and wildlife that rely on water—particularly anadromous fish. It appears that Reclamation believes it is meeting its obligations by conducting fish habitat restoration projects that will do little for enhancement of flows, especially in the short-term. The result of this approach for Central Valley salmon is the decline of the Sacramento River fall-run Chinook, and the devastating effects of this decline on West Coast fishing communities. Reclamation should adopt the directive of the CVPIA to include fish and wildlife protection, restoration, enhancement, and mitigation as project purposes having equal priority with power generation, irrigation, and domestic water uses. Further, Reclamation should measure the success of fish and wildlife programs in biological terms, consistent with the goals of the CVPIA.

The Council urges the Department of Interior to investigate this matter further and to urge Reclamation to use the CVPIA Section 3406(b)(2) water budget in the way that Congress intended—to help rebuild Central Valley salmon stocks. This action will be a significant step forward in restoring salmon resources in the Central Valley and helping fishing communities move toward economic recovery.

We look forward to hearing from you on this matter, and to working together with all fishery and Central Valley water user interests to address this critical issue in a positive manner.

Sincerely,

David Ortmann, Chair

cc: Dr. Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration

Hon. David J. Hayes, Deputy Secretary
Department of the Interior

Hon. Michael L. Connor, Commissioner
Bureau of Reclamation

Hon. Grace Napolitano

Mr. Donald Glaser, Regional Director, Bureau of Reclamation

HABITAT COMMITTEE REPORT

Bureau of Reclamation Letter

In March, the Council directed the Habitat Committee (HC) to compose a letter for the Council on the Bureau of Reclamation's (BOR) water management practices regarding Sacramento Bay/Delta Chinook salmon as it relates to the Central Valley Project Improvement Act (CVPIA) of 1992, Section 3406(b)(2). This law clearly mandates that 800,000 acre-feet of Central Valley Project water be directed specifically to restore depleted Sacramento River fall-run Chinook salmon. The BOR has neglected to meet this mandate by diverting all 800,000 acre-feet of water out of the Delta for non-salmonid purposes. The HC drafted a letter with the intent of bringing this issue to light, as directed by the Council.

The HC realizes that the tone of the letter may appear strong in places, and does not wish to disrupt interagency cooperation; however, the HC feels it is important to be assertive on this issue, given the status of Sacramento Fall Chinook.

Landscape Conservation Cooperatives

The Habitat Committee received a briefing on Landscape Conservation Cooperatives (LCCs) from Brad Thompson of the U.S. Fish and Wildlife Service. LCCs are applied conservation science partnerships between the U.S. Fish and Wildlife Service (FWS), U.S. Geological Survey (USGS), and other Interior Department bureaus, as well as other federal agencies, states, tribes, nongovernmental organizations, universities and stakeholders within a geographically defined area.

LCCs provide scientific and technical support for understanding and addressing climate change impacts at a "landscape" scale—the entire range of an identified priority species or groups of species. They support biological planning, conservation design, prioritizing and coordinating research, and designing species inventory and monitoring programs. LCCs also have a role in helping partners identify common goals and priorities to target the right science in the right places for efficient and effective conservation. By functioning as a network of interdependent units rather than independent entities, LCC partnerships can accomplish a conservation mission no single agency or organization can accomplish alone.

The initial federal LCC investment for FY2010 will be \$25 million. Three of the nation's twenty-one planned LCCs will encompass geographic areas that support Council managed species: the California Landscape Conservation Cooperative, the North Pacific LCC, and the Great Northern LCC. The combined geographic extent of these three LCCs extends from southern California to Alaska and includes the drainage basins of the North Pacific Ocean.

The HC will continue to track the development of the LCCs and **we recommend that the Council consider having a presentation on these cooperatives.** For an overview of the Cooperatives, visit: <http://www.fws.gov/science/shc/lcc.html>.

Wave Energy

The HC discussed the status of the Reedsport OPT Wave Energy Park off Reedsport, OR. As background, OPT has had a FERC preliminary permit to explore wave energy development at the Reedsport site since 2007. The Council provided written comments to FERC at that time. This permit expired in January 2010, prompting OPT to file for a full license, which triggered FERC to begin the environmental assessment (EA) process.

On March 1, 2010 FERC published a scoping document to solicit public and agency comment on the scope of the issues that FERC should address in the EA. The deadline for comments is May 10, 2010. Given the Council's meeting schedule, the Council does not have opportunity to comment on the scoping document and the related license application, although the HC feels that some of the comments presented to FERC and OPT in its November 2007 letter are still relevant.

As part of scoping, FERC is specifically soliciting information on the geographic and temporal scope of the analysis, including cumulative effects, identifying significant environmental issues, other EAs and studies, identification of other agency resource plans, and future project proposals in the project area. FERC is required to consider consistency with federal and state comprehensive plans, and is requesting agencies to submit all relevant management plans. The scoping document currently includes only the salmon fishery management plan (FMP). **The HC suggests that the Council submit its remaining FMPs to FERC.**

In addition, FERC will issue a "notice of Ready for Environmental Analysis" in July, and a final EA will be issued in August (there will be no draft EA). **The Council could direct the HC to prepare comments on issues of concern for the June meeting.**

OPT has been engaged in a settlement agreement process with agencies and stakeholders to address issues prior to the EA. The HC notes that the following issues are not addressed in the settlement agreement, and could be addressed in the potential June letter:

- FERC should consider the implications of the project's full buildout of 100 power buoys occupying an area of 1 x 3 miles.
- Electromagnetic field (EMF) ranges for Northwest species (sharks, green sturgeon, Chinook and coho salmon, Dungeness crab) that may be affected by EMF have not been determined, so it will be difficult to determine actual impacts to these species.
- Study control areas should be located outside of the future 100-buoy buildout location.

Salmon Overfishing Report

The Habitat Committee discussed the ongoing Western Strait of Juan de Fuca Coho habitat review and the recently assigned Sacramento Fall Chinook habitat review.

The Western Strait of Juan de Fuca habitat review is nearing a review draft stage. Hydrologic conditions pertinent to brood years 2002 - 2005 are being incorporated, and marine and estuary conditions sections are being distilled to focus on the brood years and range of sub-adult coho.

The report authors on the Habitat Committee will coordinate with the STT on the STT's conclusions – for example that low marine survival was the most likely cause of the failure of

this stock to meet escapement goals for the years 2005, 2006 and 2007. The basis for this conclusion was smolt and adult accounting, and did not include marine ecosystem reports.

The schedule for completion of this document is to have an internal deadline of May 1 for a review draft to be shared with STT, and a late May deadline to prepare a draft for the June briefing book.

Concerning the Sacramento Fall Chinook habitat review, **the HC recommends a coordination meeting between the April and June Council meetings** to be attended by the principle authors from STT and HC. The HC is aware of the importance and timeliness of the overfishing review, and we believe a coordinating meeting is in order.

Summary

To summarize, the HC is requesting input from the Council on the following items:

- The Bureau of Reclamation letter (approve/disapprove/edit).
- Council presentation on Landscape Conservation Cooperatives.
- Proposed letter on the Reedsport wave energy project (HC would draft for the June meeting).
- Submission of FMPs to FERC as part of Reedsport project scoping.
- Proposed joint HC/STT meeting to begin the process of the Sacramento Fall Chinook habitat review.

PFMC
04/10/10