

## CURRENT HABITAT ISSUES

The Habitat Committee (HC) will meet on Thursday and Friday, April 7-8, 2011. At this meeting, the HC will hear a presentation from the Bureau of Reclamation on Central Valley water issues. The HC will also discuss ecosystem management, groundfish and salmon essential fish habitat, U.S. Army Corps of Engineers levee vegetation management, and other issues.

### **Council Action:**

- 1. Consider comments and recommendations developed by the HC at its March 2011 meeting.**

### **Reference Materials:**

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

### **Agenda Order:**

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

Jennifer Gilden  
Joel Kawahara

PFMC  
03/22/11



## United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825-1898

IN REPLY  
REFER TO:  
MP-400  
WTR-1.10

MAR 17 2011

RECEIVED

MAR 22 2011

PFMC

Donald O. McIsaac, Ph.D.  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, OR 97220-1384

Subject: Pacific Fishery Management Council, Habitat Committee Meeting

Dear Dr. McIsaac:

I apologize for the time it has taken to respond to your December 1, 2010, letter. Thank you for the invitation to address the Habitat Committee's meeting, as extended in your December 1, 2010, letter. We hope to confirm the nature and logistics of a meeting in the weeks ahead, so we can best meet your organization's expectations. We have addressed your questions below:

Background: First, we believe that it is useful to provide context on Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA). The Department of the Interior's implementation of CVPIA Section 3406(b)(2) has continued to evolve since CVPIA was adopted in 1992. The ongoing evolution is due in part to court decisions regarding the implementation of CVPIA Section 3406(b)(2) and the changing regulatory environment. The Department currently implements b(2) in accordance with our May 9, 2003, Decision on Implementation of Section 3406(b)(2) of the CVPIA, the December 17, 2003, Guidance for Implementation of Section 3406(b)(2) of the CVPIA, and the various court rulings concerning (b)(2).

Generally, fishery actions that predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2) count towards the up to 800,000 acre-feet of Central Valley Project (CVP) water dedicated annually under b(2). The Department has the discretion to refrain from accounting for actions that do not predominantly contribute to the primary purpose of CVPIA Section 3406(b)(2) as (b)(2) actions. Fishery actions required to meet pre-CVPIA requirements are not considered CVPIA 3406(b)(2) actions. CVP operations that have been considered 3406(b)(2) actions in recent years include actions taken to comply with State Water Resources Control Board Water Rights Decision 1641 (D-1641), the National Marine Fisheries Service's June 2009 biological opinion (NMFS BiOp), the U.S. Fish and Wildlife Service's December 2008 biological opinion (FWS BiOp), and interim operational remedies imposed by the District Court in 2007 for the protection of delta smelt, have been creditable towards the 800,000 acre-feet.

1. “How, specifically, is BOR using b(2) water (or other tools) under the Central Valley Project Improvement Act (CVPIA) to improve conditions for smolts emigrating from their natal streams to the ocean?”

Reclamation utilizes (b)(2) water for all life stages of chinook salmon and also for Central Valley steelhead. Reclamation uses (b)(2) water to supplement flows on CVP streams to improve habitat conditions and also to minimize flow fluctuation impacts. CVPIA 3406(b)(2) water has been used to meet flow requirements for the American River, minimum flow requirements for the Stanislaus River, and to provide springtime pulse flows on the Stanislaus River. In recent years, Delta export reductions have also been considered as (b)(2) actions during critical periods of smolt emigration.

- a. “Will additional flows be utilized in the upcoming outmigration period (December 2010-June 2011) to improve in-river conditions?”

In the December 2010 to June 2011 period, Reclamation anticipates that CVPIA (b)(2) water will be able to supplement flows on all of the CVP-controlled streams. This includes the American River, Sacramento River, Clear Creek, and Stanislaus River. The actual volume of water, however, is uncertain and will depend on real-time conditions, the regulatory environment during that period, other uses of (b)(2) resources, and the availability of b(2) resources.

- b. “The Council is particularly concerned about the flow and temperature requirements of smolts transiting the Delta. What volume of water is allocated and when is it delivered to assist safe passage?”

Reclamation cannot effectively operate the CVP to control water temperatures in the Delta, but there are actions that can be taken to help protect smolts. To improve Delta-flow patterns, Reclamation coordinates with the fishery agencies to modify operations of the Delta Cross Channel Gates in the fall and winter. Flow requirements at Old River and Middle River in the Delta also improve Delta-flow circulation in the December through June period.

Reclamation releases the volume of CVP water necessary to meet all water rights and regulatory requirements including D-1641, the NMFS BiOp, FWS BiOp, and CVPIA. This total volume varies from year to year.

- c. “Does the BOR collect data to assess the effectiveness of BOR water management measures? Are adaptive management procedures in place to allow changes to enhance effectiveness?”

Both Reclamation and the U.S. Fish and Wildlife Service (Service) collect data to assess the effectiveness of water management actions. This data is analyzed by technical groups within each agency and within the multi-agency Water Operators Management Team in order to adaptively address our water management measures.

2. “How is BOR implementing the reforms outlined in the 2008 independent review of the CVPIA fisheries program? We are interested in learning about the initiatives/projects that

respond to this review and receiving a status update on each, a project contact, and a projected completion date.”

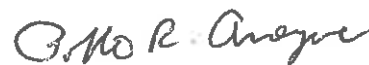
Reclamation and the Service have met regularly since the issuance of the 2008 independent review of the CVPIA fisheries program. While we do not necessarily concur with all conclusions and recommendations within the independent panel’s report, we believe that the substantive issues raised by the panel have merit and we are taking action to improve the effectiveness of our program. More specifically, we acknowledge that to date the component CVPIA fishery programs have not been carried out in an integrated manner and that the program would benefit by a more scientifically based, decision-making process. We had hoped to be further along, but have found that in order to address the program weaknesses, significant organizational adjustments within both our organizations are needed. This has come at a time when major issues and legal proceedings affecting the California Bay-Delta have demanded our attention. We will endeavor to provide more specific status and contact information such as you request when we address the Habitat Committee.

3. “Is b(2) water being used in a manner that will maintain the natural variability inherent in the flow regime? Such changes to the flow regime are critical cues to returning adults. Can you provide more details on adult-specific measures?”

The in-stream flow requirements contained in the NMFS BiOp for the American River, Clear Creek, and Stanislaus River reflect some variability inherent in a natural flow regime. The Stanislaus River and Clear Creek in-stream flow requirements include flows to attract adult salmon and also pulse-flow periods that are scheduled around natural events. Generally, those types of fishery actions predominantly contribute to the primary purpose of CVPIA 3406(b)(2) and count towards the up to 800,000 acre-feet of water available each year.

Once again, I apologize for the time it has taken to respond to your letter and the length of our response, but issues raised in your letter are inherently complex and not easily addressed in a concise manner. Once again, thank you for the invitation to address the Habitat Committee at a future meeting. We will firm up plans to attend a meeting and will identify the best person to address the Habitat Committee based upon your needs.

Sincerely,



Donald R. Glaser  
Regional Director

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## HABITAT COMMITTEE REPORT

### U.S. Army Corps of Engineers Levee Vegetation Policy

The Habitat Committee (HC) reviewed and discussed the Army Corps of Engineers' (ACE) nationwide policy requiring removal of most vegetation from levees. There are two issues of concern here: 1) the Engineering Technical Letter (ETL) which provides guidelines for landscape planting and vegetation management at levees; and 2) the Policy Guidance Letter (PGL) that provides a variance process for exemptions from vegetation standards for levees.

The policy changes are a response to the Hurricane Katrina disaster. A draft PGL was published in the Federal Register in 2010. It rescinded existing variances because the standard by which variances would be approved was changed. This would result in levee owners removing vegetation required by RPAs or losing their Federal Flood Insurance Program protections.

The ETL is in conflict with Endangered Species Act (ESA) protections, and could adversely affect EFH. ACE and levee owners have negotiated variances to accommodate Reasonable and Prudent Alternative (RPA) requirements for vegetation. King County (Washington) Flood District and flood districts in the Central Valley of California have had variances to accommodate ESA RPA requirements. Local, state, Federal, Congressional, tribal, and nongovernmental entities have been urging ACE to change the PGL to retain regional authority over variances. In addition, three 60-day notices of intent to sue have been filed over this issue.

ACE is issuing a second draft on July 31 and expects to publish a final PGL on September 30, 2011. **The HC recommends drafting comments requesting that ACE initiate an EFH consultation on the policies. HC also recommends asking ACE for an extension to the comment period** to allow incorporation of information from the ACE Engineering Technical Review Committee report on levee vegetation. Such a letter could be developed for the June Council meeting.

### Bureau of Reclamation/(b)(2) Water

The Habitat Committee heard a presentation from Mr. Paul Fujitani, Operations Manager for the Bureau of Reclamation's Central Valley Operations office, in response to the December 2010 letter sent by the Council and Bureau of Reclamation's (BOR) March 2011 response. Mr. Fujitani partially answered the questions posed in the letter and discussed how the (b)(2) water was used to benefit fisheries. However, he was unable to respond to the second question from the Council letter regarding necessary reforms outlined in the 2008 "Listen to the River" report requested by OMB, despite BOR's indication that more specific information would be forthcoming at this meeting.

The HC learned that (b)(2) water allocated for fish and wildlife is not necessarily passed through the Delta to the bay. It can be allocated in the upper portion of the basins and then directed to other non-fish-related uses. This is a major concern, given the recent collapse of Sacramento River fall Chinook, and Delta conditions being identified as a major contributing factor to the

decline. The BOR is using the (b)(2) water to meet site-specific regulatory requirements, rather than addressing ecosystem function throughout the system from the headwaters to the bay. The HC was unable to tell from the presentation how (b)(2) allocations upstream relate to (b)(2) accounting at the Delta pumps. **The HC requests that Council staff write a letter to the BOR asking them to address the questions that have not been answered.** The HC plans to invite representatives of the BOR and U.S. Fish and Wildlife Service to follow up on this in September.

PFMC  
04/09/11

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## SALMON ADVISORY SUBPANEL REPORT ON CURRENT HABITAT ISSUES

The Salmon Advisory Subpanel (SAS) has received the Habitat Committee Report, Agenda Item D.1.b, Supplemental HC Report. The SAS is struck by the disconnect between the Army Corp of Engineers' (ACE) view of managed waterways as efficient conduits of water and containers of peak flows as contrasted by fisheries managers' view of waterways as ecosystems that provide essential fish habitat. The SAS would join with and reinforce the Habitat Committee recommendation that the Council request that the ACE initiate Essential Fish Habitat consultation on the policies and ask the ACE for an extension to the comment period to account for incorporation of the ACE Engineering Technical Review Committee Report on Levee Vegetation.

The SAS is concerned that the Council's initial letter to the Bureau of Reclamation (BOR) regarding the Central Valley Project Improvement Act (CVPIA) was not adequately addressed. The SAS requests that the Council direct the Habitat Committee continue to seek clarification from BOR on Reclamation's plan to fully implement the CUPIA.

PFGC  
04/09/11