

CURRENT HABITAT ISSUES

The Habitat Committee (HC) will meet on Friday, June 10, 2011. At this meeting, the HC will discuss ecosystem management, Klamath/Trinity River issues, and other issues. As directed by the Council, a draft letter to the Army Corps of Engineers regarding levee vegetation policies is attached (Agenda Item I.1.a, Attachment 1).

Council Action:

Consider comments and recommendations developed by the HC at its June 2011 meeting.

Reference Materials:

1. Agenda Item I.1.a, Attachment 1: Draft letter to Army Corps of Engineers.
2. Agenda Item I.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
Fran Recht

PFMC
05/19/11



Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Mark Cedergreen, Chairman Donald O. McIsaac, Executive Director

June XX, 2011

Mr. Douglas J. Wade
U.S. Army Corps of Engineers
Attn: CECW-CE
441 G Street, N.W.
Washington, D.C. 20314-1000

Re: Docket number -COE-20 1 0-0007

Dear Mr. Wade:

The Pacific Fishery Management Council (Council) is aware of the Army Corps of Engineers' (Corps) intention to revise its policies on levee vegetation management, and would like to take this opportunity to comment.

The Council was established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (MSA), and has jurisdiction over 119 fish species in managed fisheries off the Washington, Oregon, and California exclusive economic zone. MSA includes provisions to identify, conserve, and enhance Essential Fish Habitat (EFH) for those species regulated under a Council fisheries management plan. The MSA requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH (MSA §305(b)(2)). The Council is also authorized under MSA to comment on and make recommendations for any Federal or State activity that may affect the habitat, including EFH, of a fishery resource under its authority. Furthermore, for activities that the Council believes are likely to substantially affect the habitat of an anadromous fishery resource under its authority, the Council is obligated to provide comments and recommendations (MSA §305(b)(3)).

The Council has recently become aware of actions proposed by the Corps to require removal of vegetation on levees adjacent to thousands of miles of Chinook and coho salmon EFH in Washington, Oregon, Idaho, and California streams (75 FR 6364 (02/09/10)). Numerous salmon populations are listed under the Endangered Species Act (ESA) in these streams where riparian vegetation is vitally important in maintaining productive habitat and sustainable populations. In fact, some of these streams have been designated as critical habitat for these ESA-listed stocks.

The Council is concerned that the implementation of the Corps guidance, i.e., Engineer Technical Letter (ETL) 1110-2-571 - *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures* and associated Draft Policy Guidance Letter (PGL) will have severe impacts to salmon populations and their habitat, including those areas designated as critical habitat. Further, the Council believes these actions require EFH and ESA §7 consultation by the Corps with NMFS. The

Council disagrees with the Corps' apparent perspective that National Environmental Policy Act (NEPA) and ESA review can be made the sole responsibilities of levee owners.

In addition, the Council notes the collaborative efforts to develop and approve regional vegetation management variances in the Seattle and Sacramento Corps Districts. We strongly encourage the Corps to allow for a sufficiently flexible regional approach to levee vegetation management where both public safety and salmon habitat have been protected successfully over the last 30 years.

Finally, it is the Council's understanding that the Corps intends to publish a revised Draft PGL in the Federal Register on, or about, July 31, 2011. The Council requests that the Corps adopt an extended comment period until at least October 15, 2011 to allow for the next Council review opportunity in September.

Thank you for your consideration.

[Signature block]

DRAFT

HABITAT COMMITTEE REPORT

Letter on Army Corps of Engineers Levee Policies

As directed by the Council, the Habitat Committee (HC) submitted a draft letter to the Army Corps of Engineers (Agenda Item I.1.a, Attachment 1) for Council consideration.

Klamath/Trinity Chinook Listing Decision Update

In January 2011, National Marine Fisheries Service (NMFS) received a petition from the Center for Biological Diversity, Oregon Wild, Environmental Protection Information Center and The Larch Company to list Chinook salmon in the Upper Klamath and Trinity river basins as threatened or endangered under the Endangered Species Act (ESA). In April NMFS determined that the petition presented sufficient scientific information to warrant a status review of the species by a biological review team of Federal, state and academic experts in accordance with the ESA.

As part of the review, NMFS asked the public to submit data and information pertaining to this species and its habitat to assist in completing the status review. That information is due on June 13, 2011. The decision on whether or not to list this species will be made by January 28, 2012. If the fish are listed, a proposed rule will be published in the Federal Register requesting public comment on the proposed listing and any proposed critical habitat.

Klamath Dam Removal

A draft Environmental Impact Statement (EIS)/Environmental Impact Report regarding the removal of four dams from the Klamath River and the Klamath Basin Restoration Agreement is expected to be released within the next few months; a draft is currently being reviewed by the co-managers. It is likely that the 60-day public comment period for the draft EIS will be open during the November Council meeting. At the Council's direction, the HC can draft a letter for the Council to consider at the November meeting, consistent with the Council's previous call for dam removal and associated habitat restoration. The HC may also ask a Department of the Interior/Bureau of Reclamation representative to give us an update on the EIS at our September meeting. The California Public Utilities Commission (PUC) recently approved PacifiCorp's request for a surcharge to California customer rates to assist with dam removal costs per the Klamath Hydroelectric Settlement Agreement. This follows the Oregon PUC's agreement to do the same.

Washington Habitat Conservation Plan

The HC was briefed by Washington Department of Fish and Wildlife (WDFW) on the status of three Halibut Conservation Plans (HCPs) proposals in two Washington state agencies. An HCP details conservation measures to minimize and mitigate impacts from managed activities on public lands. These conservation measures are designed with the help of U.S. Fish and Wildlife Service and NMFS, and once approved would allow WDFW and Department of Natural Resources (DNR) to receive incidental take permits for species listed under the Endangered

Species Act. Unlisted species would also be protected under the HCP. The draft HCPs cover management activities on state lands and waters for WDFW and the DNR, and in-water permit processes for WDFW. All three HCPs cover Council-managed species and forage fish populations.

DNR's Aquatic Lands HCP is nearing completion and will then be submitted for Federal review. The HCP will apply to more than 2.6 million acres of aquatic lands (lakes, rivers, and tidelands). Covered activities include overwater structures, and shoreline development activities on state lands.

Under WDFW's draft HCP, 900,000 acres within 32 State Wildlife Areas are proposed for incidental take coverage. This HCP is now undergoing Federal review.

WDFW's second HCP proposal includes protection strategies under a programmatic in-water permit process, the Hydraulic Project Approval (HPA). Covered activities include water crossing structures, marine shoreline development activities, and habitat restoration activities in freshwater and marine habitats. A first draft of the HCP is expected in December 2011.

Final Ruling on the Columbia River Biological Opinion (Redden Decision)

A final opinion on the Columbia River Biological Opinion is expected soon, and may have far-reaching effects on West Coast fisheries.

National Aquaculture Policy

On June 9, 2011, NOAA announced the release of final national aquaculture policies issued by the U.S. Department of Commerce and NOAA. These policies establish a framework to guide Commerce and NOAA's actions and decisions on aquaculture and to provide a national approach for supporting sustainable aquaculture. More information is available at http://aquaculture.noaa.gov/us/aq_policies.html. The HC has not reviewed the final policy to determine whether the Council's concerns were specifically addressed.

NOAA Fisheries also announced the development of a National Shellfish Initiative in partnership with the shellfish industry. NMFS will also implement the Gulf of Mexico Fishery Management Plan for Aquaculture, which includes the regulatory infrastructure needed for offshore aquaculture development in the Gulf. The current NOAA Aquaculture Program will become the Office of Aquaculture at NOAA Fisheries.

Council Action Items:

- Finalize the draft letter to the Army Corps of Engineers on levee vegetation removal.
- Determine whether the HC should prepare a letter on the draft EIS for Klamath dam removal when it becomes available.