



Pacific Fishery Management Council

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Dan Wolford, Chairman | Donald O. McIsaac, Executive Director

April 16, 2012

U.S. Army Corps of Engineers
Attn: CECW-CE, Tammy Conforti
441 G Street, N.W.
Washington, D.C. 20314-1000

Re: Docket number -COE-2010-0007

Dear Ms. Conforti:

The Pacific Fishery Management Council (Council) has followed, with concern, the proposal by the U.S. Army Corps of Engineers (Corps) to reduce vegetation tolerance on levees adjacent to thousands of miles of salmon essential fish habitat (EFH) in Washington, Oregon, Idaho, and California. As you are aware, many salmon populations are also listed under the Endangered Species Act (ESA) in these streams. Both EFH and critical habitat designations call for the conservation of riparian vegetation due to the vital role it plays for salmon in maintaining productive habitat, including moderating water temperatures, reducing fine sediment, and providing cover and food resources.

The Council commented on a previous draft of the Policy Guidance Letter on levee vegetation (PGL)¹, and appreciates the opportunity to provide comments on the most recent draft of the PGL². The Council was established by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and has jurisdiction over fisheries in Federal waters off Washington, Oregon and California. The MSA includes provisions to identify, conserve, and enhance EFH for species regulated under Council fisheries management plans. 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,³ and requires the Council to comment on those activities that are likely to have a substantial impact on the habitat, including EFH, of salmon under its authority.

¹ 75 FR 6364 (2/09/10)

² 77 FR 9637 (2/17/12)

³ MSA §305(b)(2)

The Council is concerned that the policies outlined in the Draft PGL will further impair salmon populations and their habitats due to the strong restrictions contained in the Engineer Technical Letter (ETL) 1110-2-571 - *Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures*.

The draft PGL will seriously limit levee vegetation under the ETL umbrella. Where vegetation is permitted, restrictions on the size, root characteristics, and density greatly diminish its potential to shade streams or form and maintain in-stream salmon habitat. While the primary goal of the PGL and ETL is to ensure public safety, the Corp's own Engineer Research and Development Center researchers have noted that neither document is supported with robust science and engineering principles, especially with regard to streams and rivers of the West Coast where levee and riverine characteristics differ significantly from Mid-west and East Coast systems (see Dunbar et al. 2011 and Corcoran et al. 2010). As identified in these Engineer Research and Development Center reports, significant research gaps remain in characterizing vegetation risks and benefits. In many situations, vegetation has been observed to benefit levee stability (Dunbar et al. 2011 and Corcoran et al. 2010). Clearly, more research is needed in order to develop appropriate standards for West Coast levees. Such standards may provide more opportunity to maintain salmon habitat and safety.

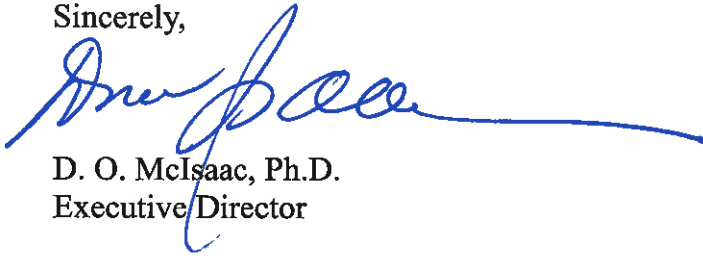
Additionally, under the MSA, actions taken by the Corps in adopting the ETL and subsequent PGL require EFH consultation with NMFS. Moreover, ESA consultations are required with NMFS and the US Fish and Wildlife Service. Therefore, because the Corps is implementing these nationwide policies, the Council believes that it is the Corps' responsibility, rather than the individual levee owners, to conduct an EFH consultation to avoid violating the MSA. The Council formally requests a response from the Corps on why consultation under MSA has not yet occurred.

The Council reiterates its previous comments (attached for reference) to develop and authorize acceptable levee standards and variances at the Corp's District or Division level, rather than in Washington D.C., as currently proposed. It is unclear that variances to the ETL will conserve and maintain salmon EFH or avoid jeopardy for listed species without such an approach. While the scientific literature suggests that long-term salmon protection will improve by moving levees further away from rivers and streams, there has been progress in recent years in developing safe levees with vegetation benefits to salmon in the Sacramento and Seattle Districts. The Council believes the continuing work in these districts can provide a model for developing both safe levees and future habitat for salmon.

To reiterate, although we note some improvements from previous versions, the Council is concerned that adoption of the PGL fails to adequately protect Council-managed species under MSA. We strongly encourage the Corps to consult with the Federal Services (NMFS and US Fish and Wildlife Service) prior to administering the levee vegetation management program. The Council looks forward to your response regarding meeting EFH obligations and consulting with NMFS.

Thank you for the opportunity to provide comment on the revised PGL.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. O. McIsaac", with a long horizontal flourish extending to the right.

D. O. McIsaac, Ph.D.
Executive Director

JDG:kam

References:

Corcoran, M.K., J. F. Peters, J.B. Dunbar, J. L. Llopis, F.T. Tracy, J.L. Wibowo, J.E. Simms, C.E. Kees, S.K. McKay, M.E. Glynn, B.A. Robbins, R.C. Strange, M.T. Schultz, T.E. Berry, C.D. Little, L.T. Lee, J.U. Clarke, and J.C. Fischenich. 2010. *Effects of Woody Vegetation on Levees Volume IV of IV: Summary of Results and Conclusions*. Final Report – DRAFT. US Army Corps of Engineers, Engineer Research and Development Center. 23pp.

Dunbar, J.B., E.R. Gore, and M.K. Corcoran. 2011. *Trip Report: Site Visit to Examine Woody Vegetation on Levees in the U.S. Army Corps of Engineers, Walla Walla District*. US Army Corps of Engineers, Engineer Research and Development Center. 42pp.