

HABITAT COMMITTEE REPORT ON CURRENT HABITAT ISSUES

Update on Habitat Factors in Salmon Rebuilding Plans

The Habitat Committee (HC) is continuing to evaluate habitat-related factors contributing to the overfishing status of Sacramento River Fall Chinook and Klamath Fall Chinook. In collaboration with the Science Centers and Salmon Technical Team (STT) representatives, we identified 27 indicators for Sacramento River Fall Chinook to help explain the various impact types for each life stage during the 2012-2020 time period. Each indicator will then be ranked using a stoplight approach (poor, average, good) for its level of contribution to the life stage impact.

The HC will continue to refine the analytical approach with assistance from STT members and subject matter experts and develop a similar approach with indicators tailored to Klamath Fall Chinook. The HC welcomes feedback from the Council at this time and plans to provide a draft analysis at the November Council meeting.

Corps of Engineers Nationwide Permits

The Executive Order (EO) 13921 (Promoting American Seafoods) directs the Corps of Engineers to create two new Nationwide Permits (NWPs) for seaweed mariculture and finfish mariculture.

At the June meeting, the Council directed the HC to prepare comments, but the public notice has not yet been published. Instead, the Corps has issued a pre-publication notice that contains the two new mariculture NWPs. The HC is still on track to prepare the comment letters when appropriate.

The Corps intends to publish the public notice in September. The 60-day comment period does not overlap with the November Council meeting, which would require the Council to use the quick response process.

Finfish Aquaculture in California

The HC continues to track the development of aquaculture permitting off San Diego. On September 9th, NOAA issued a Notice of Intent (NOI) to prepare a [draft environmental impact statement](#) for finfish aquaculture in Federal waters off the coast of San Diego to Pacific Ocean Aquafarms (formerly, Rose Canyon Fisheries). The NOI identifies a site offshore of Long Beach as an alternative for consideration.

Public hearings are scheduled October 14th and 16th. The comment period closes October 26, but the HC does not recommend the Council comment at this time due to time and workload constraints. The Council has commented on Rose Canyon Fisheries in the past, and there will be future comment periods on this project and other upcoming aquaculture permitting processes.

Although NOAA is the lead agency preparing the National Environmental Policy Act (NEPA) document for the Pacific Ocean Aquafarms project, it will not be issuing a permit for the proposed project; permits would be issued by the Army Corps of Engineers and the

Environmental Protection Agency. Under E.O. 13921, National Marine Fisheries Service (NMFS) will be the NEPA lead on future aquaculture projects in Federal waters off the West Coast.

Wind Energy Call Areas in Monterey Bay National Marine Sanctuary

The Monterey Bay National Marine Sanctuary's Advisory Council (MBNMS Advisory Council) met virtually on July 16 and August 21 to hear presentations on the California Energy Commission's (CEC) call for comments on possible additions to the Bureau of Ocean Energy Management Call Areas that have been identified offshore of Morro Bay. The locations presented by the CEC were proposed by the Department of Defense because the Call Areas on the Central Coast were incompatible with military operations. One of the possible new areas is within the southwest corner of the Monterey Bay National Marine Sanctuary.

The MBNMS Advisory Council [approved a letter to the CEC](#) expressing unanimous opposition to such an industrial development inside the sanctuary, citing disturbances to habitat and wildlife, and likely conflict with commercial fishing and shipping among other concerns.

As the process for defining wind call areas for this region continues, the MBNMS Advisory Council expects further consultation and opportunity to comment. It is not yet clear what the process will be, if any, for permitting offshore wind projects in any Sanctuary.

The HC will keep the Council informed if comment is appropriate.

Proposed Policy Change: Critical Habitat Analysis and Exclusion (85 FR 55398)

The U.S. Fish and Wildlife Service (USFWS) is [proposing to amend their regulations](#) related to designating critical habitat under Section 4 of the Endangered Species Act (ESA). Up to this point, 2016 policy and rulemaking was shared by NMFS. However, NMFS is not proposing this same rule change at this time.

The language of the ESA is clear that biological considerations drive the initial step of identifying critical habitat. However, Section 4(b)(2) of the ESA provides the Secretary of the Interior with the authority to exclude any area from a critical habitat designation if the benefits of exclusion outweigh the benefits of inclusion for that area, so long as excluding it will not result in the extinction of the species.

This proposed rule provides the framework for how the USFWS will consider the economic impact, impact on national security, and any other relevant impacts when designating critical habitat. Previous policy dictated that Federal lands are generally not excluded from critical habitat designations; this proposed rule reverses that position, explicitly identifies avoiding administrative costs (e.g., Section 7 consultation) as a benefit of exclusion, and establishes a policy that when the benefits of exclusion outweigh benefits of inclusion those areas *shall* be excluded (rather than *may* be excluded, which is the default position).

Federal Energy Regulatory Commission (FERC) Ruling on Klamath River Dams

On July 16th the FERC issued a ruling that requires PacifiCorp (the owner/licensee of the four lower Klamath Dams) to remain a “co-licensee” of the dams as they are removed. In response, PacifiCorp has issued statements and filed notices with the Commission indicating that the removal of the dams will require additional negotiations beyond the Klamath Hydropower Settlement Agreement. Discussions between the Klamath River Renewal Corporation, PacifiCorp, and others around liability and indemnification are underway. The Council may wish to write a letter to FERC supporting the imperative to remove the lower Klamath River dams in order to restore fish habitat and improve the status of Council-managed and constraining fish stocks. The HC can provide a draft letter for the November BB if the Council desires.

Central Valley Project Improvement Act (CVPIA) Restoration Fund

The Bureau of Reclamation (BOR) is proposing sweeping changes to the CVPIA Restoration Fund. Those changes would, in turn, result in significant changes to CVPIA implementation, as well as to other programs that are supported by the Restoration Fund. In particular, BOR’s proposal includes at least a \$10 million/year reduction in the Restoration Fund, would have far-reaching impacts to Central Valley fish habitat and Council-managed stocks. Restoration Fund reductions of this magnitude would likely significantly impair BOR’s ability to achieve CVPIA restoration goals. BOR is currently evaluating its options and may conduct a NEPA analysis, at which point the Council could provide comment. The HC will continue to track this issue and there may be opportunities for the Council to comment in the future.

Delta Conveyance Project (aka Delta Tunnel)

The State of California is proposing the development of a revised Delta tunnel project with intakes below Sacramento and various configuration options, including a new pumping facility or conveyance of water to existing pumps. The volume of water to be conveyed is not specified at this time but is proposed to be between 3000 and 7500 cfs.

This project would have significant impacts to essential fish habitat (EFH) and Council-managed fisheries due to the diversion of water above the Sacramento-San Joaquin Delta, which would significantly reduce water quality in this important migratory and rearing area and potentially impair juvenile outmigration due to entrainment. The Army Corps of Engineers (Corps) is conducting a NEPA analysis for the Department of Water Resources’ proposed project. Comments are due on October 20. If the Council wishes, the HC can prepare a draft quick-response letter to the Corps noting that it has commented on Delta Tunnel proposals in the past, is aware that any alternatives other than the “no action” alternative would have adverse effects on EFH, and is requesting a copy of the EFH assessment.

Recommended Council Actions

1. Letter to Corps on two Nationwide Permits for aquaculture. Due in November. *Will require the quick response process.*
2. Letter to FERC supporting Klamath Dam removal *for November Briefing book.*
3. Letter to Corps on Delta Conveyance Project. Due October 20. *Will require the quick response process.*

PFMC
09/14/20