

HABITAT COMMITTEE REPORT ON CURRENT HABITAT ISSUES

Klamath Dam Removal Update

The Klamath Dam removal project continues on track toward removal of the four lower Klamath dams beginning in January 2023. The Klamath River Renewal Corporation, the entity charged with dam removal, recently completed and submitted its biological assessment to the National Marine Fisheries Service and U.S. Fish and Wildlife Service. The biological assessment is now being analyzed by the Services in preparation for issuing their formal biological opinions, and the Federal Energy Regulatory Commission (FERC) application process is now complete. FERC's scheduling order for the final National Environmental Policy Act process, the only major permitting process remaining before formal FERC decision on dam removal, is expected within the next few months. All relevant FERC and other documents, including detailed implementation plans, are available at www.klamathrenewal.org under the tab "Resources" then "Regulatory."

Klamath Solicitor General Opinions

On January 14, 2021, then-Secretary of Interior David Bernhardt and the Solicitor General's office (legal counsel for the Bureau of Reclamation) issued two Solicitor's Opinions that stated that stored water in Upper Klamath Lake should be used only for agriculture (the Klamath Irrigation Project) and thus could not be used for Endangered Species Act (ESA) management or tribal trust purposes in support of lower Klamath River salmon runs.

Solicitors' Opinions serve as guidance for Interior policies. Therefore, these Opinions have strong implications for instream flows for salmon throughout the West, running directly counter to prior case law and Federal water policy, and undercutting established tribal water rights.

In response to the Solicitors' Opinions, the Bureau of Reclamation issued a guidance document in January 2021 titled "Reassessment of U.S. Bureau of Reclamation Project Operations to Facilitate Compliance with Section 7(a)(2) of the Endangered Species Act." Together these documents could greatly reduce the ESA-required minimum flows that are essential for survival of downriver ESA-listed Southern Oregon/Northern California coho salmon. These flows also support non-listed fall- and spring-run Chinook salmon in the Klamath Basin. Such a reduction in flows could drive these already weakened stocks toward extinction.

Based on these problematic Opinions, the Klamath Irrigation District recently filed suit, claiming that *any* stored water released to the lower Klamath River for salmon was in violation of their Oregon water rights. They are requesting cessation of any releases downriver from Upper Klamath Lake that are above current drought-level inflows to Klamath Lake.

The Hoopa Valley and Yurok Tribes have both requested that Secretary Deb Haaland rescind these opinions, as they abrogate tribal treaty rights. Pacific Coast Federation of Fishermen's Associations and the Yurok Tribe are also suing to overturn these Opinions as flying in the face of multiple ESA requirements as well as tribal water rights that support Klamath River salmon runs.

The Habitat Committee (HC) recommends that the Council develop a letter requesting that Interior Secretary Haaland withdraw these two Solicitor’s Opinions and the subsequent guidance document, in light of clear legal precedents that support lower Klamath River tribal water rights, as well as in-river water obligations which are necessary to support the Klamath River’s salmon runs under the ESA and other case law.

Should the Council support such a letter, the HC is ready to assist with its production. Due to the timing of current litigation, using the fast-track process for this letter would be preferable.

Offshore wind energy

Efforts to plan and develop offshore wind energy sites on the California Coast have been met with both support and some recent skepticism by the public and in the California legislature. At a recent public meeting held for fishermen by the California State Lands Commission on proposed wind pilot projects off Vandenberg Air Force Base, a primary message from the attendees was that the two proposed projects, in relatively shallow waters, are in unsuitable locations to represent any future commercial work. In the California legislature, AB 525, a bill requiring agencies to craft a strategic plan to achieve a goal of at least 10 GW of offshore wind installations by 2040, with an interim target of 3 GW by 2030, has been pulled due to concerns that these targets constitute a procurement mandate for offshore wind energy.

In Oregon, OR HB3375 and HB3391 have been introduced in support of offshore wind. These bills were discussed in the Legislative Committee. Both establish a goal of planning for development of three gigawatts of commercial-scale floating offshore wind energy projects in Federal waters off Oregon by 2030.

OR HB3391 would require Oregon Department of Fish and Wildlife to adopt a program to help commercial and sport ocean fishing industries avoid conflicts with offshore wind.

New HC member

Beginning in June, Matt Goldsworthy will replace acting member Eric Chavez representing the NOAA Fisheries West Coast Region.

Summary of recommended actions:

- **The HC recommends a fast-track letter from the Council requesting that Interior Secretary Haaland withdraw the two Solicitor’s Opinions on Klamath water use.**

PFMC
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