

## HABITAT COMMITTEE REPORT ON HABITAT MATTERS

The Pacific Fishery Management Council's (Council) Habitat Committee (HC) met November 15, 2021, to discuss several issues, including marine planning, Nordic Aquafarms, changes in groundfish management, and other issues.

### **California Central Valley Spring- and Winter-run Chinook Salmon Issues**

Widespread drought brought additional and unanticipated stresses on salmon runs within the San Francisco Bay Delta, exacerbating already serious irrigation diversion stresses, and creating very high mortalities under the water quality and flow standards of the existing 2019 Biological Opinions (BiOps). Temperature-dependent salmon mortalities resulting from the 2019 BiOps this summer included roughly 75 percent loss of all incoming Endangered Species Act (ESA) listed winter-run Chinook spawners before they could spawn and a large die-off of ESA-listed Central Valley spring-run Chinook. Winter-run Chinook out-migrating juvenile survival rates were depressed into the single digits, with total loss assessments not yet complete.

The 2019 BiOp under which Central Valley Project irrigation was managed in 2021 has been challenged in court in two major cases (*PCFFA, et al. vs. Raimondo* [US Dist. Court, Eastern Cal., Case No. 1:20-cv-00431] and *Cal. Natural Resources Agency vs. Raimondo* [US Dist. Court, Eastern Cal., Case No. 1:20-cv-00426]). The current Administration, however, on October 1, 2021, formally withdrew the 2019 BiOps, and has reinitiated consultation. The parties to these lawsuits are now negotiating over what interim operations measures will be implemented in the upcoming years until the new consultation can be completed.

**Klamath Salmon Fishery Updates:** The Klamath dam removal project continues on track toward physical dam removal by January 2023. The Federal Energy Regulatory Commission National Environmental Policy Act Draft Environmental Impact Report (EIR) is still expected out in February 2022. Various upper Klamath Basin water right conflicts that threatened to curtail ESA-mandated salmon flows in the lower river this past summer have been consolidated in *Yurok Tribe, PCFFA, et al. vs. Bureau of Reclamation* (US Dist. Ct. of Northern California, Case No. 3:19-cv-04405), with efforts underway to resolve these water allocation conflicts before the next irrigation season.

Klamath River Trinity spring-run Chinook were listed as “threatened” under the California Endangered Species Act (CESA) on June 16, 2021. However, a Federal ESA-listing petition for this stock was denied on August 17, 2021, as not warranted because of insufficient genetic and/or behavioral differences compared to far more abundant Klamath fall-run Chinook to be deemed a separate evolutionarily significant unit. As previously directed by the Council, the HC will begin preparing comments when the EIR is available. Depending on the timing of the public comment window, **the Council may need to approve** the letter via the quick response process, ahead of the March 2022 Council meeting.

### **Nordic Aquafarms**

Staff from Nordic Aquafarms (Marianne Naess, Eric Heim, David Noyes, Nick King) presented an update on the status and intended operations parameters of the proposed salmon aquaculture facility in Humboldt County, CA. The HC had previously expressed concerns about the potential to induce or exacerbate harmful algal blooms, disease transmission, fish escapement, wild fish entrainment, and the volume of freshwater needed for the operation. Nordic spoke to these concerns in their presentation and pointed to the Draft EIR, to be published in December 2021, for more information and analysis. The intent of the project is to construct a fully enclosed, full life cycle Atlantic salmon rearing facility to meet the needs of the “local” domestic market. Biosecurity (escaped fish), water quality impacts, and water sourcing were discussed. Nordic representatives said that as proposed, the current assessment indicates that nutrient impacts will be well below current Clean Water Act requirements and that water use is well within capacity and lower than water use of the previous facility. Multiple safeguards will be in place to prevent both escape of reared fish and reduce the probability of disease or parasite introduction to the facility or escapement of diseases and parasites from the facility. As previously directed by the Council, the HC will begin preparing comments when the EIR is released. Depending on the timing of the public comment window, **the Council may need to approve** the letter via the quick response process, ahead of the March Council meeting. Additional comment and project review opportunities will be available for permits that will follow the California Environmental Quality Act process.

### **Columbia River Clean Water Act litigation**

Northwest Sportfishing Industry Association, Natural Resources Defense Council, and Columbia Riverkeeper filed a motion to intervene in the State of Washington’s court case to uphold the State’s Clean Water Act Section 401 Certifications that require the Federal government to manage its hydropower dams on the Columbia River and lower Snake River to reduce heat pollution and protect salmon.

The case is significant as it is the first time that Washington State has exercised its Clean Water Act authority and set temperature pollution limits on the Columbia River and lower Snake River dams. The U.S. Army Corps of Engineers (Corps) appealed Washington State’s temperature limits on the dams. In its appeal, the Corps argues that the State has overreached its authority in setting limits on river temperature to protect salmon. The Pollution Control Hearings Board upheld Washington’s authority to regulate heat pollution from the Dams.

### **Southern California Oil Spill Update**

The HC received an update from Jenna Driscoll (California Department of Fish and Wildlife Office of Spill Prevention and Response) regarding the pipeline P00547 incident response of October 3, 2021, off Huntington Beach in the Southern California Bight. Current information indicates an anchor of a larger ship dragged the pipeline situated from Platform Ellie to Huntington Beach causing damage to the pipeline. At a minimum, approximately 25,000 gallons of oil was released. A Natural Resources Damage Assessment website for the incident is being developed. For more information see <https://socalspillresponse.com/>.

## National Marine Sanctuary updates

### A. Monterey Bay National Marine Sanctuary Final Management Plan Documents

On November 15, 2021, the National Oceanic and Atmospheric Administration (NOAA) released the final management plan, final environmental assessment, and a [final rule](#) (86 FR 62901), which includes minor changes to the regulations of Monterey Bay National Marine Sanctuary. The new management plan includes proposed strategies and action plans for conservation and management of the sanctuary's resources over the coming decade. The regulatory changes reflect input from the Sanctuary Advisory Council and the public.

The regulatory changes will allow additional options for protection and restoration of beaches and other coastal areas. NOAA also made changes to improve access for motorized personal watercraft users and to reduce disturbance of sensitive resources. The regulations will become effective 30 days after the rulemaking is published in the *Federal Register*. Additional information and the final documents may be viewed on the Monterey Bay National Marine Sanctuary [management plan review website](#).

### B. Proposed Designation of Chumash Heritage National Marine Sanctuary

NOAA's Office of National Marine Sanctuaries invites the public to participate in the designation [process](#) for the proposed [Chumash Heritage National Marine Sanctuary](#) on the central coast of California. The Northern Chumash Tribal Council (NCTC) submitted the sanctuary nomination in July 2015, and NOAA is considering sanctuary designation to protect the region's important marine ecosystem, maritime heritage resources, and cultural values of Indigenous communities. Three virtual meetings to gather public comments on the notice of intent are scheduled in December 2021 and January 2022, with **public comments due January 10, 2022**. [Supplemental Informational Report 9](#) includes additional information and details of the virtual public meetings and public comment information.

In summary, the HC makes two action recommendations:

- 1. Draft a letter for Council consideration on Nordic Aquafarms EIR (may require quick response process, depending on the comment period timing)**
- 2. Draft a letter for Council consideration on Klamath Dam removal EIR (may require quick response process, depending on the comment period timing)**

The Habitat Committee appreciates the Council's consideration of this report.

PFMC

11/16/2021