



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Merrick J. Burden, Executive Director

May 15, 2023

Representative Boomer Wright
900 Court St. NE, H-372
Salem, Oregon 97301

Re: Oregon House Bill 3382

Dear Representative Wright:

Thank you for your recent request for comment on Oregon House Bill 3382 (HB 3382), which would authorize the ports at Astoria, Newport, Coos Bay, Portland and St. Helens to construct, maintain and improve deep draft navigation channel improvements without demonstrating compliance with state or local land use law. This would apply to activities located within or adjacent to a Federal navigation channel or on land controlled by a port having a property interest served by channel improvements. HB 3382 is focused on and would affect several important state and local environmental review effects, which are briefly summarized below. The Pacific Fishery Management Council's (Pacific Council or Council) authorities apply primarily to Federal actions, and to state activities in certain circumstances, also explained below.

In your letter dated April 1, 2023, you asked if we would be willing to provide some guidance on the potential impacts of by-passing local and state land use laws, and how we may better plan for the best outcome. Regarding how state and Federal processes and impact analyses would change if HB 3382 were to become law, the state and Federal agencies with direct regulatory authority in these matters could better speak to the specific changes that would be likely to occur. Nonetheless, as elaborated below, the Council does express concern about the consequences of waiving environmental review for projects known to impact species that we manage.

Pacific Fishery Management Council Environmental Review Authorities

The Council is one of eight Regional Fishery Management Councils (RFMCs) established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (MSA). The MSA mandates that Federally managed fisheries are to be managed sustainably, and sets forth several [National Standards](#) which guide our management approach. The Pacific Council is responsible for the management of salmon, groundfish, coastal pelagic species, and highly migratory species, and develops policies for these fisheries which ensure sustainability, conserve habitats, maintains ecosystem function, and ensures that communities within Washington, Oregon, California, Idaho, and beyond benefit from the catching, processing, and consumption of West Coast seafood products.

All RFMCs are required to identify and describe essential fish habitat (EFH) for all species managed under a Federal fishery management plan (FMP). EFH is defined as ‘*those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity*’ (50 CFR Part 600 Subparts J & K). Councils must also identify potential adverse impacts to EFH and describe conservation actions to conserve and enhance EFH. Councils may provide such conservation recommendations to state and Federal agencies when actions proposed by those agencies may affect EFH. For anadromous species such as Pacific salmon, Councils must provide conservation recommendations to a Federal or state agency whose actions are likely to substantially affect the habitat of those species.

The EFH implementing regulations include a provision for Habitat Areas of Particular Concern (HAPC) (50 CFR 600.815(a)(8)), which are subsets of EFH based on consideration of whether habitat features are rare, are especially important ecologically, are sensitive to human induced environmental degradation, or whether development activities are likely to stress the habitat. When HAPCs are designated, it triggers additional attention in considering whether measures to minimize harm should be applied, and whether fishing or non-fishing activities should be modified to protect HAPCs. Consistent with the Council’s EFH authorities, the Council may provide conservation recommendations to agencies to avoid or minimize harm.

Recognizing the particular importance of estuaries to fish populations, the Pacific Council has designated substantial portions of Oregon’s marine waters, including estuaries, as EFH for Chinook and coho salmon, groundfish species (such as lingcod, English sole, and rockfish), and coastal pelagic species (such as Pacific sardine and northern anchovies). Further, estuaries are identified as HAPCs for Pacific salmon and groundfish, based on the considerations described above.

Potential impacts from dredging and port maintenance activities

We provide a brief summary of potential impacts from dredging and port maintenance activities and would be happy to provide additional details upon request. Dredging and maintenance of ports and harbors presents a particular concern for the Pacific Council, due to the potential impacts to numerous fish. The removal of bottom sediments during dredging operations can disrupt the entire benthic community and eliminate a significant percentage of the feeding habitat available to fish. Dredging creates turbidity plumes and releases contaminants from suspended sediments that can adversely impact the migration of salmon smolts. Dredging also entrains benthic, epibenthic, and mid-water organisms. Direct and indirect effects of dredging can also result in harm to submerged aquatic vegetation such as eelgrass beds, which are an especially important estuarine habitat feature, providing spawning and rearing areas for salmon and many other species. Although we focus on dredging activities here, other port maintenance activities such as dock construction and repair, and deployment of navigation aids also present potential impacts to important fisheries habitats. Additional information on dredging impacts is included in our Pacific Salmon FMP EFH [Appendix](#), Section 4.2.2.13).

To be clear, the Council recognizes the importance of coastal port infrastructure. Ports and harbors are a vital component of our local fishing industry, they provide important access points for recreational fisheries, and they serve as an important economic driver for many coastal

communities. However, we are concerned about the prospect of waiving adequate environmental review of activities related to constructing, maintaining and improving deep draft navigation channels. Thank you again for the invitation to provide information relevant to HB 3382. Please contact Executive Director, Merrick Burden (Merrick.j.burden@noaa.gov; 503-820-2418) with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Marc Gorelnik". The signature is written in a cursive, flowing style.

Marc Gorelnik
Pacific Council Chair

KFG:rdd

Cc: Pacific Council Members
Correigh Greene
Scott Heppell