

## HABITAT COMMITTEE REPORT ON HABITAT ISSUES

The Habitat Committee discussed a number of issues of interest to the Pacific Fishery Management Council (Council).

**National Marine Fisheries Service Recommends \$106.1 Million through Pacific Coastal Salmon Recovery Fund** - Under its Pacific Coastal Salmon Recovery Fund, the [National Oceanic and Atmospheric Administration is recommending \\$106.1 million](#), including \$34.4 million from the Bipartisan Infrastructure Law and \$7.5 million from the Inflation Reduction Act, to fund state and tribal salmon recovery programs and projects across the West Coast. Funding for 16 new and continuing programs and projects will support conservation efforts in California, Oregon, Washington, Idaho, and Alaska. Application for unallocated funding varies by state and program.

**Wetlands Protections Removed from Clean Water Act** - The Environmental Protection Agency (EPA) and Department of the Army issued a final rule on August 29 amending the definition of protected "waters of the United States" in response to the Supreme Court's May 2023 decision which narrowed the scope of the Clean Water Act (CWA) and the agency's ability to regulate waterways and wetlands. The Supreme Court's decision reversed its 2006 decision that set the standard for wetland protection; that a wetland has a "*significant nexus*" with a major waterway, such as subsurface connectivity or waters separated by dikes and levees. The decision removes the significant nexus test from consideration when identifying tributaries and other waters as federally protected. The EPA has amended the definition of protected waters to include only streams, oceans, rivers and lakes, and wetlands with a "*continuous surface connection* to major waterways." Effective immediately, more than half of previously regulated wetland acreage and thousands of miles of small streams are no longer regulated under the CWA. Of note, state regulations related to wetland protection remain in place. Regardless, the implications for habitat protection for salmon are of special concern.

The EPA and the Corps of Engineers will host a series of public webinars in September 2023 to provide updates on the definition of "waters of the United States." While the webinars have reached registration capacity, the agencies will post a recording of the webinar to the EPA's website. The agencies also plan to host listening sessions this fall with co-regulators and stakeholders, focusing on identifying issues that may arise outside this limited rule to conform the definition of "waters of the United States" with the *Sackett v. EPA* decision. <https://www.epa.gov/wotus/listening-session-presentations>

### **Columbia River**

**Columbia Basin Mediation** - The [Federal Mediation and Conciliation Service](#) (fmcs.gov) is leading mediation for parties working to find long-term and durable solutions to restoring salmon populations in the Columbia River basin while honoring Federal commitments to Tribal Nations, delivering affordable and reliable clean power, and meeting the many resilience needs of regional stakeholders. The Mediation process included a stay in litigation among parties to a decades-long

lawsuit around operations of the Federal dams on the Snake and Columbia River to discuss solutions balancing dam operations and salmonid recovery. The parties were granted an additional 60-day pause (see [motion to stay](#)) in litigation (new deadline, October 31, 2023) to continue discussions around potential solutions. The HC will continue to track this issue.

**Lower Columbia River Dredge Material Management Plan (DMMP) 20-year update** - The HC briefed the Council on the DMMP in November, noting that the Corps has determined that in-river dredge material disposal sites are nearing capacity, and that new disposal sites and strategies are needed for the next 20-year DMMP. The draft environmental impact statement (EIS) was anticipated in late September of 2023. However, the draft EIS is now anticipated to be completed in December 2023. The HC will continue to monitor EIS development and the opportunity to provide comments. Timing could require implementation of the quick response process.

**Hells Canyon Hydro Relicensing** – The timeline for Federal Energy Regulatory Commission’s completion of a supplemental EIS for the Hells Canyon Hydro Project, evaluating Idaho Power’s project proposal and alternatives, remains unknown. The HC will continue to monitor EIS development and the opportunity to provide comments. Timing could require implementation of the quick response process.

PFMC  
09/09/23