

HABITAT COMMITTEE REPORT ON CURRENT HABITAT ISSUES

Central Valley Project

The Habitat Committee (HC) discussed proposed and pending regulatory actions in the California Central Valley. The HC is concerned that many of these actions will have a detrimental impact to Council-managed fisheries, and **recommends that the Council develop comments on these proposed changes by the June 17, 2019 deadline** for the Biological Opinion.

The HC heard a presentation from Doug Obegi, senior water attorney at the Natural Resources Defense Council, on the Bureau of Reclamation (BOR) Biological Assessment (BA) on the Central Valley Project/State Water Project (CVP/SWP) and 2019 Central Valley operations conditions and forecasts.

The BA proposes significant changes to CVP operations. Initial modeling by BOR, using National Marine Fisheries Service (NMFS) models, indicates that the proposed changes could result in up to twice the maximum level of mortality of winter-run Chinook salmon necessary to prevent the stock from declining. The HC is aware that these changes could also result in significant deleterious impacts to harvested stocks.

The CVP facilities include Shasta Dam, Oroville Dam, Trinity Dam, and the pumping facilities that supply water to the California Central Valley via the California Aqueduct. BOR has removed Trinity Dam operations from the Biological Assessment, and analyses of diversions from the Trinity will not be included in the Biological Opinion (BiOp). NMFS was directed to produce a BiOp on the revised operations under an expedited time frame, which limits the peer review process. The proposed changes include, among other things:

- Eliminating requirements to consult with NMFS before issuing initial allocations of water to CVP contractors. This requirement is currently in place to ensure that early allocation decisions do not drain cold water storage to manage downstream temperatures for salmon.
- Eliminating the carryover storage requirements that help ensure there is water in storage at the end of the year to maintain water temperatures and water supply for subsequent potential dry years.
- Eliminating April and May pumping restrictions and the Fall X2 action that protects Delta habitat, resulting in a 50 percent increase in pumping for those months and likely impacting fall run migrations.
- Delaying water temperature plans until May, after the BOR has already begun draining Shasta reservoir for contract deliveries.
- Eliminating requirements to provide fish passage above Shasta Dam.

Each of these proposed actions could result in significant mortality to listed and non-listed salmonids.

There is currently no comment docket for the BA, but the Council is encouraged to submit comments to BOR, NMFS and State Water Resource Control Board at this time, prior to NMFS releasing its BiOp. Following the NMFS BiOp, there will be a National Environmental Policy Act (NEPA) review process, but the timeline is currently unknown. The comment letter should encourage peer review of the analyses, highlight that the proposed changes to CVP operations are likely to weaken protections not only for winter and spring runs but also for Council-managed fall and late fall runs, and urge improvements in temperature management to promote survival across all stocks.

Proposed Rule Changes to Coastal Zone Management Act Federal Consistency Process

NOAA's Office for Coastal Management issued an Advanced Notice of Proposed Rulemaking (ANPR) soliciting input on ways to streamline the Coastal Zone Management Act (CZMA) Federal Consistency Process. The notice is focused on oil/gas activities and offshore renewable energy, and is directed at the regulated community. However, as the notice states, this action could "result in a proposed rule that includes numerous regulatory modifications that could apply to other types of federal actions." This proposed rule change will likely have serious consequences for the protection of marine resources and coastal economies.

Under the current Federal Consistency regulations, each phase of an oil/gas project must be "fully consistent" with the state's Coastal Zone Management Plan, and a separate consistency review process is required for each phase. If the state objects to any phase there would be separate objection/appeal processes. The ANPR is soliciting input on ways to limit the time and scope of the appeal review process to provide more predictability of outcome for the applicant.

The comment period closes April 25. The west coast states will be sending a tristate letter signed by the three governors, and will also be signatories on a letter from the Coastal States Organization. Additionally, the Coastal Zone Management Programs of the California Coastal Commission and the Oregon Department of Lands, Conservation and Development are planning to send comments.

Because of the urgency of the issue, the HC recommends that the Council consider raising the issue with the Council Coordinating Committee for comment on behalf of all regional fishery management councils now. The HC will continue to track this issue and report back when additional proposed rulemaking or comment periods occur.

Oregon Dept. of Transportation Beaver Policies

The Final Recovery Plan for Oregon Coast Coho Salmon contains many references to the importance of beaver in providing coho habitat. The recovery plan suggests both regulatory and non-regulatory approaches to assure the recovery of beavers and their dams and ponds. The plan notes, "Beaver provide considerable help in providing this connection and in maintaining proper watershed functioning in Oregon coast streams."

However, beaver management "in the field" is not consistent with scientific understanding of beaver (ODOT) contributions to habitat for threatened coho. Coho and their habitats are being harmed through removal of dams and the draining of associated habitats. In Oregon, the Oregon

Department of Transportation is updating its “Routine Road Maintenance – Water Quality and Habitat Guides Best Management Practices” guide under the ESA 4(d) rule. This offers an opportunity to encourage better ODOT policies that are consistent with the Recovery Plan.

Currently, removal of beaver dams and draining of associated habitats is allowed under ODOT’s “routine maintenance” provisions without any consultation or permits. In short, management practices by Oregon Department of Transportation work against critical habitat and recovery efforts for coastal Oregon coho stocks.

The HC recommends that the Council comment on this matter, in particular to encourage ODOT to change its policy on beaver dam removal as a routine maintenance activity. NMFS and ODFW will soon be updating their programmatic approaches to routine road maintenance in Oregon. The HC is prepared to draft a letter to ODOT for the June briefing book if the Council wishes.

Shared NMFS/Council Habitat priorities

Barry Thom, Regional Administrator of NOAA Fisheries West Coast Region, spoke to the HC about NMFS’ 2019 habitat priorities and how to enhance communications between NMFS and the HC in a timely manner. NMFS’ priorities in 2019 include finalizing Amendment 28, determining guidelines for sustainable aquaculture, facilitating salmon habitat conservation to benefit Southern Resident killer whales, and improving habitat protection and mitigation through Endangered Species Act tools such as landowner agreements and programmatic biological opinions. NMFS is also interested in improving communication channels with the HC in order to improve stakeholder involvement on habitat issues and to anticipate pending actions so that the Council can comment in a timely manner.

One way to improve coordination is for the Council and NMFS to determine the types of Federal and state actions on which the Council would likely comment, as described in the essential fish habitat (EFH) implementation guidelines (50 CFR 600). A list of specific activities would make it easier for NMFS West Coast Region staff to identify actions to bring to the Council’s attention. The HC will prepare an initial list of these types of actions and activities for review at a future meeting.

Study of Juvenile Salmon Use of the Sacramento Delta

Correigh Greene (NMFS) summarized a study on juvenile salmon use of Sacramento Delta. The study looked at the timing of fish habitat use and how it is influenced by various factors, including the effects of river flows and cold water input. The study has important implications related to the importance of flow on the timing of juvenile salmon in the river and delta. A second forthcoming study on their abundance and distribution in the Sacramento River, delta, and bay suggests habitat-related constraints that are potentially relevant to determination of maximum sustainable yield for Sacramento stocks. Furthermore, the effectiveness of multiple proposed and ongoing habitat restoration projects are likely flow-dependent. These findings may be relevant to habitat issues in the Sacramento Fall-run rebuilding plan.

Washington Drought Declaration

Last week Washington's Governor ordered an emergency drought declaration. This early declaration allows farmers to plan their crops in advance. The coming months are forecast to be warmer than normal, putting more areas at risk of drought. The state's water supply experts will continue to closely monitor watersheds of concern, including those on the east slope of the Cascades and the Olympic Peninsula.

EPA's National Pollutant Discharge Elimination System General Permit for offshore Seafood Processors

On March 18, the Environmental Protection Agency (EPA) began regulating seafood processor vessels in Federal waters off Washington and Oregon. The National Pollutant Discharge Elimination System (NPDES) General Permit applies to whiting motherships and catcher-processor vessels(a). The HC briefed the Council on the draft NPDES permit in 2017. EPA received comments from agencies and scientists on factors contributing to ocean acidification and hypoxia; including seafood processing waste as a significant source of biochemical oxygen demand. Based on the information, EPA is prohibiting discharges in hypoxia-prone areas; in waters shallower than 100 m (55 fathoms) from April through October, and year-round at Heceta and Stonewall Banks. Seafood processing primarily occurs offshore of these areas. Other provisions of the NPDES permit include advanced effluent treatment and monitoring, seabird impact reduction measures, and documentation of bycatch and prohibited species. This is the first Federal regulation on the West Coast to address anthropogenic effects on ocean hypoxia. The permit goes into effect on May 1, 2019 and will be reconsidered with new information in five years.

For more information, see: <https://www.epa.gov/npdes-permits/npdes-general-permit-offshore-seafood-processors-federal-waters-washington-and-oregon>

NOAA Aquaculture Plan Outline

NOAA submitted a supplemental report into the briefing book inviting public comment on NOAA's draft National Strategic Plan for Federal Aquaculture Research for 2020-2024. The plan will replace the 2014-2019 plan.

The new draft plan outline does not include a key goal that was in the current plan, "Advance Understanding of the Interactions of Aquaculture and the Environment." We understand that the program was directed to limit the number of goals. Understanding the environmental effects of aquaculture is still a priority for NOAA and this goal may be covered by an objective to "enable science-based expansion of domestic aquaculture." However, it is not clear to the HC that it is covered by this objective, and we are concerned that the new approach will not adequately address potential environmental and fishery-related impacts of aquaculture. The comment period ends April 19. The HC anticipates a future comment period when the outline is expanded into a draft plan and will continue to track this issue for the Council.

Recap of HC Recommendations:

- Regarding the Central Valley Project BiOp, the Council may wish to provide comments to BOR and NMFS on the proposed changes prior to release of the biological opinion. The deadline is June 17, one day before the June Council meeting begins.
- The HC recommends that the Council consider raising the Coastal Zone Management Act issue with the Council Coordinating Committee on behalf of all Regional Fishery Management Councils.
- The HC proposes that it prepare a draft letter to Oregon Department of Transportation on beaver management policies to protect threatened coastal coho salmon for consideration at the June meeting.

PFMC

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