“Society is like a stew. If you don’t stir it up every once in a while then a layer of scum floats to the top.”

------ Edward Abbey

20:14/01. U.S. HOUSE NATURAL RESOURCES COMMITTEE MARKS UP REPUBLICAN DROUGHT BILL: The U.S. House of Representatives’ Natural Resources Committee on 9 July marked up H.R. 2898, a drought relief bill authored by Central Valley Representative David Valadao (R-California). The bill passed the Committee on a near-party line vote, with Rep. Jim Costa (D-California) the only Committee member to cross the aisle. None of the proposed Democratic amendments to the bill, including three by Rep. Jared Huffman (D-California), were added to the bill. The bill is expected to easily pass the Republican-controlled House of Representatives, but will face a tougher challenge in the Senate where six Democrats would need to vote against their party to have it pass.

The so-called “Western Water and American Food Security Act of 2015” overwhelmingly favors California Central Valley industrial irrigators at the expense of the habitat and fish from which salmon fishermen derive their livelihoods. Among the several provisions of the bill that
would negatively impact the fishing community are a relaxation of permitting procedures for massive reservoir construction projects (that incidentally will not result in the addition of any water to the already drained system), cuts back on Endangered Species Act protections that are a main reason why salmon runs are present in the Central Valley today, and offers water delivery guarantees to industrial irrigators, despite the uncertainty that any additional water will be present in the future. IFR and PCFFA are strongly opposed to the bill, given the authors’ complete disregard for protecting salmon as a natural resource and the foundation of our industry.

For more information, see this 9 July Lexington Herald-Leader article on the Committee markup. The bill text is available at Congress’ bill-tracking website.

20:14/02. CALIFORNIA STATE WATER RESOURCES CONTROL BOARD ADOPTS SACRAMENTO RIVER OPERATIONS PLAN THAT WILL HARM SALMON: The California State Water Resources Control Board (State Board) on 7 July adopted a controversial plan to control the release of water from Shasta Dam on the upper Sacramento over the course of the year. The plan, which will start with baseline water releases at 7250 cfs from the dam and aim for a 57-degree temperature target, calls for real-time management of the water supply in the reservoir so as to preserve cold water as far into the year as possible. Salmon eggs and babies face severe health threats when water temperatures exceed 56 degrees F˚, and any temperature over 60 degrees is essentially a death sentence. Accordingly, the fishing community should expect severe impacts on the number of baby salmon that survive the trip down the Sacramento River this year, as the plan’s 57-degree target exceeds the threshold to ensure salmon survival. The plan hopes to avoid a repeat of last year’s devastating loss of naturally spawning Sacramento River Chinook salmon. Because of loss of temperature control at Shasta Dam late last year, an estimated 95% of the winter-run and 98% of the fall-run Chinook juveniles died before making it to Red Bluff Diversion dam.

The plan comes after weeks of back-and-forth between the State Board, state and federal agencies, environmental and fishing advocates, and industrial irrigators who use the released water for agricultural operations. The U.S. Bureau of Reclamation (USBR) revealed on 29 May that an earlier temperature plan was based on an incorrect assessment of the amount of cold water in Shasta Lake. Subsequently, USBR and several other agencies, including California Department of Fish & Wildlife, the National Marine Fisheries Service, and the California Department of Water Resources, collaborated on a plan to optimize use of the cold water pool actually present in the reservoir, which is 30% smaller than previously believed.

For more information, see this 8 July Sacramento Bee article, and Sublegals 20:09/1, 20:11/01.

20:14/03. SUCTION DREDGE MINING STILL BANNED IN CALIFORNIA STREAMS; OREGON MORATORIUM GOES INTO EFFECT JANUARY, 2016: Both California and Oregon once issued thousands of permits for suction dredge mining, which is a process by which individual miners float motorized barges in mostly coastal streams and suck up their bottom sediments with 4 to 6 inch suction hoses, shooting it out again through a sluice system to (they hope) capture small particles of gold. With gold prices now routinely above $1,000/ounce, this largely recreational activity has boomed in popularity. Unfortunately, while the impacts of individual suction dredge operations may be localized, the cumulative impacts of multiple suction dredge operations on salmon-bearing streams can be disastrous.

Environmental problems created by suction dredging for salmon streams include creating massive sediment plumes up to several hundred feet long, disturbing and destabilizing fragile
spawning and rearing gravel beds, creating large holes in the gravel beds and disturbing and remobilizing toxic mercury deposits that would otherwise remain sequestered and trapped at bedrock. Mercury in particular, once mobilized, converts chemically to methylmercury which is a potent (and water soluble) neurotoxin for both wildlife and humans that contaminates human domestic water systems and is bioaccumulative in human food chains. Environmental impact studies in California concluded that just one suction dredge operation can account for 10 percent or more of the total allowable water quality limit of methylmercury under current state water quality toxicity standards.

Furthermore, in both states these suction dredge operations typically concentrate in coastal areas that contain Endangered Species Act (ESA)-listed salmon, and in which tens of millions of dollars of taxpayer funds have already been spent trying to restore key salmon habitat areas that the suction dredges damage. To add insult to injury, in both states these suction dredge permit programs, and the damages they do to fragile coastal stream environments, are heavily taxpayer subsidized. In neither state do permit fees even begin to cover the costs to the states of these programs.

The rules originally governing both states’ programs were also decades out of date. PCFFA and IFR joined efforts by the Karuk Tribe of California and many other groups several years ago to update California’s rules to limit suction dredge mining in California to those areas where its environmental harms could be minimized. As a result, since 2009 there has been a California-wide Legislative moratorium on issuing suction dredge permits in that state, so that new rules could be created and implemented that “fully mitigate all identified significant impacts.” In February, 2011, the California Department of Fish & Wildlife (CDFW) issued proposed new rules that, however, identified 9 significant but unmitigable adverse impacts of suction dredging. In essence, CDFW was acknowledging that it could not comply with the new legal standard because there are some negative impacts of suction dredging (including mercury resuspension) that simply could not be eliminated or mitigated in any feasible way. This created an administrative impasse that extended the moratorium indefinitely.

At present there are seven civil cases filed in various counties of California either by suction dredge miners, fisheries and environmental groups or the Karuk Tribe challenging various issues in the new rules – some claiming that the new rules are too stringent, others that they are too lax. These seven civil cases are now all consolidated into one master court case entitled Suction Dredge Mining Cases, Superior Court of San Bernardino County, Judicial Council Proceeding No. JCPDS4720.

A parallel criminal citation for illegal suction dredge mining while the moratorium was in effect is known as People vs. Reinhart, and is now on appeal to the California Supreme Court as Case No. S222620 from Plumas County Superior Court, coming through the Third Appellate District. The miners’ claim in that case is that the federal 1872 Mining Act “preempts state laws” regulating this form of mining – a claim accepted by the Plumas County Superior Court and Third Appellate District on appeals, but those opinions were depublished and decertified by the California Supreme Court when it took on the current appeal, and so can no longer be cited as binding legal precedent. PCFFA/IFR and the Karuk Tribe and many other parties filed an Amicus (“Friend of the Court”) Brief in the appeals case before the California Supreme Court on 9 July 2015, disputing this miners’ preemption claim. That key preemption issue has also come before the San Bernardino Superior Court in the Suction Dredge Mining Cases, based on the earlier (but now decertified) Third Appellate Court ruling, but on 9 July the miners’ failed to get that Judge to agree to a Temporary Restraining Order or Preliminary Injunction ordering the California Department of Fish & Wildlife (CDFW) to issue suction dredge mining permits. In short, suction dredge mining remains illegal in California at least until either the ongoing
litigation is resolved, or the California Legislature resolves some basic jurisdictional problems in California law that the CDFW says prevents it from issuing permits.

Meanwhile the California Legislative Assembly’s Committee on Water, Parks & Wildlife is planning a hearing on 14 July on SB 637, which passed the Senate on 3 June by a 22-15 vote. SB 637 would grant formal authority to CDFW to issue permits if it determined that such permits “did not cause significant effects” on fish and wildlife (i.e., changing the current standard of “fully mitigate all identified significant impacts”), but also would for the first time grant separate authority to the State Water Resources Control Board to limit suction dredging by specifying certain areas where (to protect water quality) dredging would be prohibited, or particular methods prohibited. This legislative change, it is hoped, will break the current legal impasse and require much more stringent standards – including outright prohibition in sensitive areas – for future California suction dredge permits.

One result of the 2009 California moratorium is that hundreds of California miners simply shifted their operations to Oregon, causing the number of permits issued each year in that state to nearly triple. This caused chaos in several Oregon rivers, including escalating conflicts with many other river users and local landowners as hundreds of new suction dredge operations concentrated in key coastal river areas. Many of these areas also contained ESA-listed coho salmon, a species that Oregon spends millions of dollars each year trying to recover. As a result, in 2013 the Oregon Legislature passed Senate Bill 838, finding that motorized suction dredge mining can create significant environmental damages, setting up a Stakeholder Advisory Committee process to look at the problem and advise the Legislature, but also imposing a moratorium that would automatically go into effect from January 2016 to January 2021 unless legislation to address the problem was passed in the 2015 Legislative Session. In 2015, the Legislature considered a bill (SB 830) to deal with this problem, but unfortunately that bill did not come up for a final vote before the Legislature adjourned. That total Oregon moratorium on suction dredge mining will thus go into effect as of 2 January 2016.

The sponsors of Oregon SB 830 are now intending to pre-file it, as previously amended, for reintroduction in Oregon’s February, 2016 short session, together with a bill that would make the moratorium permanent, thus eliminating the problem in Oregon entirely. Federal Courts have ruled in the past that states may, for health and public safety reasons, ban particular forms of mining entirely, consistent with the federal 1872 Mining Act, so long as other mining methodologies exist, which they do in this case (such as on-land terrestrial mining of the more traditional varieties, which are already regulated).

For more information see: CDFW’s suction dredge mining information portal page; see also the best compilation to date of scientific papers on the impacts of suction dredging in CDFG’s 2009 Scientific Literature Review; CDFG’s April 2013 Report to the Legislature. For California’s pending bill SB 637 search the California Legislature’s web site by bill number. For this issue in Oregon, see the SB 838 Study Group in which PCFFA’s Glen Spain participated, and which advised the Oregon Legislature on this issue. For Oregon’s 2013 Session SB 838, and 2015 Session SB 830, search for these bills on the Oregon Legislature’s Bill Archives.

20:14/04. GILLNETTERS OPPOSE WILLAPA BAY SALMON POLICY: On 30 June a group of commercial gillnetters – the Willapa Bay Gillnetters Association (WBGA) – filed a petition for a judicial review of the new Willapa Bay salmon management policy. The group argues that the Washington Department of Fish and Wildlife (DFW) acted outside of their authority by placing new restrictions on fishing places, times, manner, and methods in policy rather than rules. The attorneys also argue that the Department has acted in an “arbitrary and capricious” way when it used specific models to study how much salmon harvest the new policy
would allow as well as how the policy would impact current economic situations for commercial and sport fishermen in Willapa Bay. The new policy limits the allowable catch of wild naturally spawning Chinook salmon. Gillnetters are allowed 20% catch before fishing is closed in the area, but the impact will drop to 14% in coming years – further restricting the harvestable numbers. Past numbers allowed commercial fishermen a catch rate of 30-40% before fishing was stopped, and fishermen fear a 14% rate would not allow them to make ends meets. Fishermen argue that the higher 30-40% rates were beneficial to natural born fish, because it kept runs from being overrun with hatchery fish.

DFW argues that the lower numbers are important, however, to restoring wild salmon runs in the area, but fishermen say there are no longer any wild runs on the Willapa – the supposedly “wild” fish are instead hatchery fish that have failed to return to the hatchery. DFW has 20 days to respond to the petition.

For more information see this 7 June Chinook Observer article. Gillnetter photo by NOAA, public domain.

20:14/05. WASHINGTON STATE ORDERED TO FIX FISH BLOCKING BARRIERS: Under new federal court orders, Washington State must fix hundreds of barriers, usually built underneath state highways and roads that block migrating salmon routs. The blocking-barriers violate Washington Native American Tribes’ treaty-backed right to catch fish. The state is now under orders to fix 30-40 barriers per year by 2030. Washington appealed the decision, but the state Legislature approved the current budget to fix the fish barriers. The approved 16-year bill includes $300 million for fish passages – short of what the state requires but more than in the past. The House has two more bills to pass to complete the package. Fish barriers and passages have been worked on by the Washington Department of Transportation for years, but that agency has never fully corrected the problem. This year alone the Department will tackle 13 fish passage projects. Blocked instream fish passage, which disrupts habitat, provides ambush sites for predators, and prevents upstream migration, is now the main impediment to salmon stock recovery.

For more information see the 5 July ABC News article.

20:14/06. ACIDIC WATERS THREATENING BEAUFORT SEA’S FISH POPULATION – STUDY: A new study has found that within twenty years the Beaufort Sea could see many of its crustaceans, fish, and whales impacted by ocean acidification. Many of these organisms are vital to indigenous life in the area. The study was led by the National Oceanic Atmospheric Administration (NOAA), which sent a team of scientists to the Bering, Chukchi, and Beaufort Seas for two-month expeditions in 2011 and 2012. The study found that ocean acidification in the areas will likely reach levels threatening survival levels for shelled organisms by the year 2030 in Beaufort and Chukchi Seas, and by 2044 in the Bering Sea. Some parts of the Beaufort Sea have already reached these levels. Scientists believe the Beaufort Sea is expected to change first. Ocean acidification generally only directly affects shelled organisms, but those
organisms are eaten by fish and whales, and therefore affect the larger organisms indirectly. Scientists are calling for proper carbon dioxide reduction and fisheries management to avoid the problem.

For more information see the 18 June CBC News article.

20:14/07. FRASER RIVER LOWER AND HOTTER, AFFECTING SALMON: In British Columbia, the Fraser River – a salmon spawning hot spot – is now running lower and hotter than expected. Current levels are even lower and hotter than averages for the end of August. The river is usually full of cool water at this time of year from snowmelt – but British Columbia’s snowpack melted earlier this year. June faced record highs and dry weather, and July is continuing the trend, meaning Fraser River salmon are having a tough time. The temperature is averaging 19 degrees Celsius (66.2 F˚), too hot for inmigrating adult salmon, whose migrating behavior changes and declines at 18 degrees. Many are concerned about these temperature increases, because salmon begin dying and having disease outbreaks at 20 degrees C˚ (68 F˚). Other hot summers on the Fraser have seen as many as 40-50 percent of Fraser River salmon die before spawning. The bulk of the arriving salmon should begin to show up in about a month. Until then, people are hoping for rains to cool down the temperatures and add water to the river, but unless rain comes soon, the outlook is bleak. If rains do not come, sport and commercial fishing will have to be regulated and severely limited to maintain fish stocks.

For more information see the 6 July Globe and Mail article.

20:14/08. ICICLE SEAFOODS SOLD TO INDONESIAN, AMERICAN COMPANIES: Icicle Seafoods, the 10th-largest U.S. seafood company last year, has been sold to two companies, one of which has ties to Indonesia. Icicle had 2013 sales of $498 million and operates eleven fishing boats, five onshore processing plants, and three processing vessels in Alaska. The buyers are Convergence Holdings, based in Indonesia, and Dominion Catchers, with an address in Florida. The American Fisheries Act requires that 75 percent of ownership and control of vessels be owned by American citizens, which has led to questions about the buyers’ U.S. presence. A spokesman for Convergence said the company sees “an opportunity to synergize Icicle” with its Indonesian operations.

For more information see this July 1 Seattle Times article on the sale.

20:14/09. FIVE GULF STATES REACH $18.7 BILLION SETTLEMENT WITH BP OVER OIL SPILL: Florida, Alabama, Mississippi, Louisiana, and Texas have reached a settlement of roughly $18.7 billion dollars with energy giant BP to resolve Clean Water Act penalties resulting from the company’s 2010 Gulf of Mexico oil spill. If approved, the settlement would be the largest with a single entity in American history. The settlement money will be used to repair the damage done to the economies and environments of the five states involved in the massive Deepwater Horizon oil spill. This is good news for fishermen, as the settlement money will be used to help restore fish populations that had been devastated, which weakened the economically important fishing industry in that region.

For more information see this 2 July Statesman Journal article on the settlement. Deepwater Horizon photo by NOAA, public domain.
20:14/10. NEW CALIFORNIA LAW CRACKS DOWN ON SMALL-TIME POACHERS: California Governor Jerry Brown signed a law on 1 July that allows law enforcement agencies to issue citations for infractions of Marine Protected Area regulations. AB 298, which becomes law in January 2016, allows game wardens to issue citations with penalties anywhere from $100 to $1000. Previously, wardens could only charge violators with a misdemeanor and provide a summons to a court hearing. This led to a backlog of cases at District Attorney’s offices. Many advocates of the law also saw a misdemeanor as a penalty too heavy-handed for those who might unknowingly violate the regulations. Violators can still be charged under the new law, but the more serious charge will most likely only be used on repeat offenders and commercial operations poaching in the protected areas.

For more information see this 1 July article in the San Diego Union-Tribune on the law.

20:14/11. RUSSIAN PRESIDENT SIGNS LAW BANNING DRIFT NET FISHING ON RUSSIA’S EASTERN COAST: Russian President Vladimir Putin last week signed into law a ban on drift net fishing off of Russia’s Pacific coast. Russian and Japanese boats mainly use the practice to catch sockeye salmon while throwing away less valuable pink salmon. In 1991, the UN passed a resolution urging all nations to ban drift net fishing. Proponents of the law say that it will protect marine wildlife, as well as coastal fishermen, who saw a decline in fish populations while drift net fishing was allowed.

For more information, see this 8 July Moscow Times article on the new law.

20:14/12. WASHINGTON TEENS WIN CARBON-DIOXIDE LAWSUIT AGAINST DEPARTMENT OF ECOLOGY: In what was proclaimed as a “landmark ruling” by Washington State environmental lawyers, a group of teenagers won a lawsuit ordering the Washington Department of Ecology to consider reductions in statewide carbon dioxide emissions. The eight teenagers had originally petitioned the state to use the best available science to develop a policy for reducing emissions. When their petition was denied, they joined attorneys from the Western Environmental Law Center and brought a lawsuit against the state. The case is Zoe & Stella Foster v. Washington Department of Ecology.

Carbon dioxide in the atmosphere is one of the leading causes of ocean acidification, which is thought to have serious impacts on food webs that support commercial fisheries. Impacts include the inability of crustaceans and shellfish to form shells, depression of certain species’ immune systems, and more frequent red tides, which leads to increased accumulation of toxins in finfish such as anchovies. The restriction of carbon dioxide emissions that could result from this ruling might help to curb ocean acidification, leading to more robust marine ecosystems and fisheries.

For more information, see this 1 July King 5 TV article on the decision, which can be read in full here.

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