“So we cling to this fishing lifestyle even now, when it isn’t very productive for us. It is a love affair with a type of employment we are reluctant to part with.”

-- Judson Brown

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21:13/01. PCFFA, IFR VICTORIOUS IN CHALLENGE TO FIFTH FAILED COLUMBIA RIVER SALMON PLAN: On 4 May, U.S. Federal District Court Judge Michael Simon ruled for the Plaintiffs on every major issue, in a long-standing landmark lawsuit (National Wildlife Federation, et al. vs. National Marine Fisheries Service, et al., U.S. Dist. Ct. of Oregon, No. 3:01-cv-00640-SI) challenging the most recent version of the federal Columbia-Snake River Salmon Recovery Plan and Biological Opinion (the “Columbia Salmon BiOp”). Such formal Biological Opinions are required under the federal Endangered Species Act (ESA) pursuant to Sec. 7 consultation requirements, in order for the U.S. Army Corps of Engineers and Federal Bureau of
Reclamation to continue to run the Federal Columbia River Power System (FCRPS), which consists of four major hydropower dams straddling the Columbia River, and four additional hydropower dams on the lower part of the Snake River, the major tributary of the Columbia. All these dams (and their warmed-up, predator-filled slack-water reservoirs) present multiple migration hazards for both incoming adult and outgoing juvenile salmon and steelhead living in the Columbia River Basin. Before the construction of multiple hydropower dams from the 1930's through 1960's, the Columbia River was once the home of the largest salmon runs in the world, with more than half of that production generated within its Snake River tributary.

This ruling makes this the fifth consecutive supposedly comprehensive Columbia Salmon BiOp to have been declared “arbitrary and capricious” as well as contrary to the best available science, since litigation first began over how ESA-listed salmon and steelhead are treated in the Columbia Basin FCRPS system back in 1992.

Judge Simon noted in language highly critical of the federal agencies that after a series of failed Columbia Salmon BiOps ever since 1992, and multiple warnings by prior Federal Court Judges in the case that much more had to be done, populations of ESA-listed salmon and steelhead in the Columbia-Snake River Basin have not substantially improved, but rather continue to deteriorate on a long-term trend. Since 1991, when Snake River sockeye salmon were first ESA-listed as “endangered,” and 1992 when the Snake River fall Chinook were first listed as “threatened” under the ESA, today there are 13 separate populations of Columbia or Snake River salmon and steelhead that are classified as either endangered or threatened under the ESA.

The original native runs of Columbia and Snake River salmonids (a term which includes both salmon and steelhead) have been estimated to be between 10 and 16 million adult fish, but since the construction of multiple dams across these rivers, the remaining populations of wild salmonids in the rivers have been reduced to less than 10 percent of their historic numbers – in some runs, to less than 1 percent. Many populations of salmonids once present in abundance in that basin had already gone extinct by the time the first ESA listings occurred.

This most recently failed Columbia Salmon BiOp was issued in 2014, but it was largely a hold-over rewrite from a previous Bush Administration BiOp (the “fourth BiOp”) that was also ruled to be illegal back in 2008 and its Supplemental BiOp also tossed out as illegal in 2010. Among other legal flaws, the Court invalidated the 2014 BiOp because: (1) the standard for determining non-jeopardy NMFS used was a completely novel “trending toward recovery” standard, under which if even one additional fish were saved by a mitigation measure, that measure was deemed “a success” and jeopardy would be said to be avoided. The legal requirement under the ESA of “recovery” is far more robust, and must also include a precautionary margin erring on the side of recovery of the species when impacts are in doubt; (2) NMFS relied on stringing together the incremental benefits of multiple hypothetical and highly speculative “habitat improvement projects” whose benefits were in fact uncertain, and in many cases were never funded nor carried through, all while populations continued to decline; (3) the accelerating and increasingly obvious impacts of climate change were more or less ignored or deliberately discounted in the analysis, and; (4) the environmental impact analysis required under the National Environmental Policy Act (NEPA) was illegally inadequate, incomplete and based on data too obsolete or outdated to be useful in a rapidly changing environment. And of course, the agencies characteristically refused to even consider the potential impacts of dam removals in their analysis, not on the basis of any scientific analysis but apparently on the theory that such actions were simply politically unlikely.
On this last issue of considering dam removals, Judge Simon particularly noted that under a legally adequate NEPA analysis: “For example, the option of breaching, bypassing, or even removing a dam may be considered more financially prudent and environmentally effective than spending hundreds of millions of dollars more on uncertain habitat restoration and other alternative actions..... More than 20 years ago, Judge Marsh admonished that the Federal Columbia River Power System ‘cries out for a major overhaul.’ Judge Redden, both formally in opinions and informally in letters to the parties, urged the relevant consulting and action agencies to consider breaching one or more of the four dams on the Lower Snake River. For more than 20 years, however, the federal agencies have ignored these admonishments and have continued to focus essentially on the same approach to saving the listed species -- hydro-mitigation efforts that minimize the effect on hydropower generation operations with a predominant focus on habitat restoration. These efforts have already cost billions of dollars, yet they are failing. Many populations of the listed species continue to be in a perilous state. The 2014 BiOp continues down the same well-worn and legally insufficient path taken during the last 20 years.” (Opinion, pp. 18-19)

Judge Simon later continued: “Although the Court is not predetermining any specific aspect of what a compliant NEPA analysis would look like in this case, it may well require consideration of the reasonable alternative of breaching, bypassing, or removing one or more of the four Lower Snake River Dams. This is an action that NOAA Fisheries and the Action Agencies have done their utmost to avoid considering for decades. Judge Redden repeatedly and strenuously encouraged the government to at least study the costs, benefits, and feasibility of such action, to no avail. Because action alternatives in a NEPA analysis need not be under the jurisdiction or control of the lead agency, a comprehensive NEPA analysis would likely need to include such a reasonable alternative..... It is doubtful the Action Agencies could demonstrate that breaching, bypassing, or removing one or more of the Snake River dams is not ‘reasonable’ under NEPA.” (Opinion, pp. 136-137).

Judge Simon ordered the agencies back to the drawing board to develop a new Biological Opinion and full NEPA analysis that complies with the law no later than March 1, 2018.


For more information, the 149-page Opinion and Order can be found here. For more media stories see the 4 May Seattle Times and also the 4 May Oregonian and the 4 May story by the Associated Press. Photo by Tim Sloane.

21:13/02. CRABBING SET TO RESUME ON CALIFORNIA’S NORTH COAST: California’s crabbers are looking forward to finally opening crabbing in their region next week, with the announcement that Dungeness crabs North of the Sonoma/Mendocino County line are certified by the California Department of Public Health as safe to consume and ready for harvesting. Except for a 35-mile stretch of coastline around Trinidad, California, commercial crabbing will begin on the North Coast at 12:01 AM on 12 May, almost six months later than in a normal season. Commercial crabbers are allowed to set gear at 8:01 AM on 9 May, and recreational crabbers are already allowed to begin fishing in those areas.
The move by the California Department of Fish and Wildlife to open crabbing gives crabbers at least some opportunity to resurrect a fishing season largely destroyed by the presence of a harmful algal bloom that stretched from southern California all the way to Alaska. Crabbing was delayed in those areas as well, although Oregon and Washington’s delays were relatively short. California south of the Sonoma/Mendocino County line was delayed by almost five months.

For more information, see this 3 May Santa Rosa Press-Democrat article.

**21:13/03. TUNNEL UPDATE: FEDERAL TAXPAYERS FOOTING IRRIGATORS’ BILL FOR PLANNING; CA LEGISLATORS DEMAND WATER QUALITY ANALYSIS:** In response to a 25 January PCFFA, California Water Impact Network and Planning and Conservation League letter, the U.S. Bureau of Reclamation (Bureau) has confirmed that almost $90 million of planning for the “California Water Fix” (formerly Bay Delta Conservation Plan) twin tunnels project has been paid for with federal tax dollars, rather than by the San Joaquin Valley water districts that stand to benefit from tunnel construction as required by state law.

In his 13 April response to PCFFA’s letter, Bureau Regional Director David Murillo confirmed that Central Valley Project (CVP) water contractors such as Westlands Water District, who purchase water delivered from northern California via the CVP, had not contributed a single dollar for federal activities related to the environmental analysis, design or construction of the tunnels. California Water Code section 85089 requires that CVP contractors pay for, among other things, tunnel “environmental review, planning and design.” To date, state water contractors such as the Metropolitan Water District of L.A. (Met), who also stand to benefit from the tunnels, have footed the majority of tunnel planning expenses. Unlike Westlands, which serves agricultural irrigators in the western San Joaquin Valley, Met is able to pass its expenses on to residential water customers.

In other tunnel news, California State legislators led by Senator Lois Wolk have called on the State Water Resources Control Board (State Board) to update the Bay-Delta Water Quality Control Plan in the next 1-2 years, echoing similar sentiments from a coalition of fishing and conservation organizations. “The Bay-Delta Water Quality Control Plan is the guiding document for managing water in our Bay-Delta Estuary. Without updated regulatory standards, we are using a patchwork of scientific findings and 20-year-old standards to inform water management decisions to the detriment of endangered fish, wildlife, and the people that depend on the Bay and Delta for their livelihood,” said Wolk. Water quality standards must support all designated uses of the Bay-Delta, including fisheries and local family farms. Meeting many of those standards depends on whether there is adequate streamflow through the Delta, and would influence the ability of the tunnels to move water around the state.

The Cal Water Fix is a plan to construct two massive tunnels to drain water from the Sacramento River near the City of Sacramento, channel it underneath the San Francisco Bay Delta Estuary, and then deliver it to state and federal pumps for delivery into the San Joaquin Valley. The tunnels would have a massive impact on the Bay-Delta ecosystem, which is a critical component of the salmon migratory highway connecting commercially valuable fall-run Chinook and endangered winter-run Chinook with the ocean, as well as their natal streams. The tunnels would divert water from the Sacramento River before it has a chance to reach the Bay-Delta, thereby depriving that estuary of its critical lifeblood.

For more information, see this 28 April Daily Kos article on the irrigators abandoning their responsibility to pay for the tunnels, and this 4 May Maven’s Notebook piece on the Legislators’ demand for water quality standard updates. Read Senator Wolk’s letter here.
21:13/04. FDA WARNS OF UNSAFE ANIMAL DRUGS AND CHEMICALS IN IMPORTED SHRIMP: The U.S. Food & Drug Administration (FDA) on 18 April issued an import alert for Malaysian shrimp due to elevated levels of nitrofurans and chloramphenicol, chemicals used during the shrimp aquaculture process to diagnose, cure, mitigate, treat, or prevent diseases at hatcheries. Neither of these carcinogenic chemicals are considered safe for human ingestion under FDA guidance, and their use at any stage of the shrimp farming process will likely result in the presence of these chemicals in edible portions of the final product. From 1 October 2015, through 30 September 2015, FDA detected elevated levels of nitrofurans and chloramphenicol in 32% of shrimp products imported from Peninsular Malaysia. FDA border inspection agents have been directed to detain imports of Malaysian shrimp products to prevent their entry into the U.S. Food Supply.

This scenario calls into focus the problems of a globalized seafood supply chain, in which food safety and sustainability measures in the U.S. often do not apply to foreign producers. In 2014, over 90% of the seafood consumed in the U.S. was imported, and significant percentages of domestically produced seafood were exported to premium markets abroad. American consumers would be well-served to question the provenance of their seafood, and to favor safe, sustainable, wild-caught and domestic seafood products over farmed imports.

For more information, see the FDA’s 18 April Import Alert, and this 3 May One Fish Foundation commentary on problems with the globalized shrimp food system. Shrimp basket photo by National Marine Fisheries Service, public domain.

21:13/05. FISH KILLS IN ASIA, SOUTH AMERICA RAISE ENVIRONMENTAL CONCERNS: Officials in Vietnam and Chile are putting together clues as to why massive fish kills are causing millions of fish to wash up on those nations’ shores. In Vietnam, citizens started noticing dead fish on a 125-mile stretch of coastline on 6 April. The die-off has been so drastic that it fueled public demonstrations against the government, a rare occurrence in that communist nation, where freedom of speech is closely restricted. Mortality there has been linked to wastewater discharges from a Taiwanese-owned steel plant that represents a $10 billion foreign investment in Vietnam’s emerging industrial economy. Observers have pointed out that the Vietnamese government’s initial “passive” reaction to the fish kill may complicate the United States’ ratification of the Trans-Pacific Partnership, a 12-nation trade agreement that includes the U.S. and Vietnam. Vietnamese unwillingness to enforce its own environmental laws could result in fear among foreign investors that trade with Vietnam will come under public scrutiny as injurious to the environment.

Chilean officials are blaming a harmful algal bloom that killed 40,000 tons of farmed salmon, 8,000 tons of sardines, and thousands of clams and cuttlefish in various areas along Chile’s coast over the last several months. Fishermen there are also taking to the streets to protest government inaction over the fish kill. The bloom is being linked to the El Niño that has disrupted ocean conditions across the Pacific, including in the shellfish and crab fisheries on the West Coast of the U.S. Researches note that the ocean warming this year off Chile is due to the most intense El Niño event in 65 years. Some are also calling attention to a possible link between offshore aquaculture and the multi-species die-offs.
For more information, see this 5 May Los Angeles Times article on the Vietnamese fish kill, and this 5 May Australian Broadcasting Corporation article on the Chilean die-off that has incredible photographs of the devastation, and this 4 May Planet Ark article on the protests in Chile.

21:13/06. FISHERMEN WIN INJUNCTION IN FIGHT TO PREVENT CORPORATE SEAFOOD MERGER: The 9th Circuit Court of Appeals this week upheld a preliminary injunction preventing Pacific Seafood Group and Ocean Gold Seafoods from completing a corporate merger. Several fishermen brought a federal antitrust lawsuit against the two seafood processors in 2015, arguing that the merged corporation would monopolize the buyer-processor industry and reduce fair competition in the marketplace. After the trial court granted the injunction, the Defendant processors appealed to the 9th Circuit, where the injunction was upheld. The case will now return to the trial court, where it will be heard on the merits.

For more information, see this 3 May Courthouse News Service article, or read the text of the 9th Circuit’s decision.

21:13/07. FISHERMEN’S COLLABORATIVE MAPPING PROJECT SLOWS BYCATCH IN ALASKA: A knowledge-sharing program initiated by the Alaska Longline Fishermen’s Association (ALFA) has succeeded in significantly reducing bycatch of sensitive rockfish species, simply through collecting and sharing catch information. The ALFA program provides mapping transducers to member vessels that record multiple data sets, such as terrain, depth, and more. Fishermen also share fishing locations and both targeted and incidental catch information. The data collected from the 85 member vessels is aggregated into crowdsourced maps that allow fishermen to see when and where target species are located. ALFA members were able to reduce rockfish bycatch in their halibut fishery by 20% in two years through use of their member-generated fishing maps.

For more information, see this 9 April The Economist article, and check out the Alaska Longline Fishermen’s Association website.

21:13/08. FISHERMEN TAKE TO THE AIR TO SURVEY MARINE MAMMAL INTERACTIONS: Two Half Moon Bay, CA fishermen boarded a 4-seater Cessna aircraft this week to survey for possible whale entanglements with crab fishing gear in an attempt to better understand the causes of gear interactions, as well as to alert whale disentanglement teams if they encountered a wrapped whale. A four-hour flight brought them into view of fifteen whales, but none were in need of rescue. Flyovers by both manned aircraft, as well as drones, may become a new tool in the fishing industry’s arsenal for combating cetacean injuries due to fishing gear, as early identification and response to entanglements is key to tracking the animal and engaging in disentanglement efforts. California’s fishermen are also pursuing a lost gear recovery program through their state Legislature to mitigate potential whale/gear interactions, as well as engaging in disentanglement first-responder trainings at the local port levels.

For more information, see this 4 May Half Moon Bay Review article.

21:13/09. NMFS TO PERFORM ENVIRONMENTAL ANALYSIS ON HATCHERIES IN GREEN RIVER WATERSHED: The National Marine Fisheries Service (NMFS) announced plans this week to begin environmental impact analysis required by the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) on a proposal to approve ten salmon and steelhead plans for fish hatcheries in the Duwamish-Green River basin in
Puget Sound. The plans address breeding and release protocols for hatchery-raised fish, genetic management of hatchery stocks, and impacts of construction of a Fish Restoration Facility that has not yet been constructed. The plans would operate out of existing hatcheries in the area. NMFS is requesting public comment on the issues it should address in its environmental analysis. Those scoping comments are due on 3 June at 5:00 PM.

To get involved, submit your comments by email to: GreenHatcheriesEIS.wcr@noaa.gov with "Green Hatcheries Scoping" in the subject line. You may also mail or fax your comments to:

William W. Stelle, Jr.
Regional Administrator
NMFS, West Coast Region
National Oceanic and Atmospheric Administration
7600 Sand Point Way NE
Seattle, WA 98115-0070
Fax (206) 526-6426

For more information, visit the NMFS webpage for the project, or contact Steve Leider at Steve.Leider@noaa.gov, or (360) 753-4650. Steelhead photo by U.S. Fish & Wildlife Service, public domain.

21:13/10. OCEAN ACIDIFICATION DESTROYING REEFS IN FLORIDA KEYS: In one of the first studies of long-term effects of ocean acidification on marine ecosystems, scientists at the University of Miami have shown that acidifying oceans are eating away at the limestone infrastructure that supports coral reefs in the upper Florida Keys. Although this phenomenon was expected, it is happening much more quickly than researchers initially assumed. The reef lost twelve pounds per square yard of limestone over the last six years, equivalent to about 6 million tons over the length of the reef. More acidic ocean water eats away at the soft limestone, as well as at the shells of crustaceans and bivalves. As that habitat and those food sources succumb to the pressure of acidification, fish species that rely on those inputs will begin to disappear. Ocean acidification is caused by the ocean’s absorption of excess atmospheric carbon dioxide (most of which is generated by burning fossil fuels), which causes a change in the ocean’s chemistry toward a more acidic pH. The loss of the reefs could have significant impacts on Florida’s economy, to which they contribute approximately $2.8 billion annually through commercial fishing and diving.

For more information, see this 3 May Associated Press article.

21:13/11. OREGON SENATORS INTRODUCE BILL TO ASSIST SALMON MIGRATION, FUNDED BY IRRIGATORS: Oregon Senators Jeff Merkley and Ron Wyden introduced this week a bill to reauthorize the Fisheries Restoration and Irrigation Mitigation Act (FRIMA), a federal cost-sharing program worth $25 million and used by the U.S. Fish & Wildlife Service to install fish screens on water diversions and remove barriers to salmon migration. Originally conceived in 2000, FRIMA has funded 127 projects that have reopened 1130 miles of salmon migratory corridor and spawning grounds. The program has also resulted in 130 fish screens installed on irrigation channels, and the removal of 56 barriers to salmon migration. The bill provides for the program in Oregon, Washington, Idaho and western Montana, and was last reauthorized in 2009.

For more information, see this 28 April press release from Senator Wyden, and this summary of the bill.
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