NOAA Fisheries Threatened and Endangered Species Coordination Changes

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Pacific Northwest Waterways Association

- Non-profit trade association that advocates for federal policies & funding in support of regional economic development
- Over 150 members in WA, OR, and ID:
  - Public ports
  - Agriculture & forest products producers
  - Utilities
  - Towboaters & steamship operators
  - Pilots
  - Union labor
Northwest federal navigation projects

Deep draft navigation
- Puget Sound
- Grays Harbor
- Lower Columbia River
- Oregon coast

Inland navigation
- Columbia Snake River System

Small ports
- Puget Sound
- Lower Columbia River
- Oregon coast
Advocating for federal navigation infrastructure

• **U.S. Army Corps of Engineers:**
  - Portland, Walla Walla, Seattle Districts
  - Northwestern Division
  - Headquarters in DC
  - Assistant Secretary of the Army (Civil Works) – Pentagon

• **Congress:**
  - Northwest House & Senate delegations (local and DC)
  - House & Senate Energy & Water Appropriations Subcommittees
  - House Transportation & Infrastructure Committee (T&I); Senate Environment & Public Works Committee (EPW)

• **White House:**
  - Office of Management & Budget (OMB)
  - CEQ
NOAA Fisheries Threatened and Endangered Species Coordination Changes

Agenda
Overview – Before 2018
2018 NOAA Fisheries West Coast Region Office (WCRO) Guidance
Impacts and Impasse
PNWA & Partners Advocacy Activities
Next steps - how you can help
Overview – Prior to 2018

- Applying for maintenance permits – in water/over water structures
- Apply to Corps for permits – Seattle and Portland Districts, Northwestern Division
- Section 7 Consultation with the Services - NOAA Fisheries WCRO and U.S. Fish & Wildlife Service
- Informal Section 7 Consultation (30 – 90 days-ish)
- Existing structure included in environmental baseline, minimal monitoring and rare compensatory mitigation
- Effects were temporary, known, and use BMPs to avoid, minimize, and mitigate
What changed?

- Chinook salmon ongoing decline and worldwide attention to Southern Resident Killer Whale orca = pressure to recover the species
- Lack of Federal/State investment in habitat restoration, toxics reduction, culvert & derelict vessel removal
- New interpretation of baseline & philosophy by NOAA Fisheries WCRO
- NOAA Fisheries WCRO staffing capacity diminished - drives need for new tools (programmatic/calculator)
- Essentially using Section 7 Consultation process to implement recovery versus no net loss
New Guidance in 2018 - Document

• NOAA Fisheries WCRO issues new internal guidance on assessing affects of existing structures for Section 7 Consultation – no economic impact analysis or stakeholder or agency input

• 2018 guidance released to public

• New environmental baseline = pre-development

• Virtually all maintenance projects require FORMAL Section 7 Consultation (approximately 1 – 3 years)

• All maintenance projects and ongoing existence of the structures are automatically assumed to cause damage to species/habitat – extending useful life of structure “enduring effects” – must cover applicant for take/prevent lawsuits

• Increased compensatory mitigation for maintenance
New Guidance in 2018 – In Practice

• NOAA Fisheries WCRO – severe staffing shortage
• Need “tools” to process more permits with less staff
• New guidance to implement – put all permits on hold approximately two years while staff develop Salish Sea Nearshore Programmatic BiOp and the conservation calculator

• Completed Programmatic BiOp, SLOPES BiOp, and Batch of 39 BiOp
• Batch of 39 BiOp – all 39 individual projects and all projects collectively = jeopardy to the species
• Conservation calculator (alternatives for payment)
Impacts and Impasse

- Corps of Engineers & NOAA Fisheries spend 3 years in talks over interpretation and implementation of ESA & CWA – result = impasse (no net loss v. recovery)

- NOAA Fisheries WCRO completed Programmatic BiOp, SLOPES BiOp, and Batch of 39 BiOp and the Corps has not formally accepted them (exceptions)

- Maintenance project delays and conservation calculator – mitigation costs increase 5% to 30% - fear of deferred maintenance/loss of competitiveness

- Impacts to Corps Regulatory, O & M, & Civil Works programs

- FHWA-FTA drafts letter to NOAA Fisheries
Port of Kalama, Washington
All recent projects have required formal consultation including:
- Marina maintenance and repairs
- Modification of existing maintenance dredge program

Port of Everett, Washington
- Marina maintenance dredging
- Severe schedule impact and almost lost state grant funding

Port of Portland, Oregon
- Pile maintenance program
- Temporary water quality, hydroacoustic noise, and disturbance/harassment during removal and replacement of pile and potential for spill
- Continued existence of the structure
Maintenance Project Example – Batch of 39 BiOp

Port of Bellingham, Washington
• 2016 cruise dock repairs
  • Informal consultation
  • Permit in 3 months
  • No additional monitoring or compensatory mitigation
• 2020 cruise dock repairs (very similar project)
  • Included in the Batch of 39 BiOp
  • Delay – approximately 7 months
  • Jeopardy decision
  • Monitoring and compensatory mitigation increased costs 5-10% (credit costs flux)
  • Still working through issues with NOAA Fisheries

Batch of 39 - Results
• Corps – no formal acceptance of BiOp
• Response letter from Port of Bellingham
• Begs the question - will all maintenance projects in Puget Sound be deemed jeopardy to the species?
PNWA Advocacy Activities

- **June 22, 2018 – Letter to NOAA-NMFS:**
  - PNWA and WPPA sent joint letter outlining concerns

- **August 23, 2018 – Letter to NOAA-NMFS:**
  - Washington Maritime Federation sent joint letter outlining concerns

- **October 12, 2018 – Regulatory Workshop held**
  - U.S. Army Corps of Engineers, NOAA-NMFS, and PNWA
  - Discussion of port permitting approach
  - Presentations by the Corps and NOAA-NMFS
  - Conversation regarding baseline, maintenance, and programmatic reviews

- **November 21, 2018 – Response Letter from NOAA-NMFS:**
  - SRKW orcas and salmon
  - Staffing shortages and office merger leading to assumption of more work with fewer people
  - Agree to work on SLOPES that will cover most port maintenance activities

- **October 28, 2019 – New Guidance from NOAA-NMFS HQ**
  - Corps and NOAA-NMFS disagree on interpretation of how to implement consideration of baseline conditions
  - Disagreement affecting completion of programmatic
  - So what does this mean for current and future projects in the pipeline?
PNWA Advocacy Activities

- **January 9, 2020 – Meeting with NOAA-NMFS:**
  - PNWA and WPPA hold meeting with NMFS at the Port of Kalama

- **March 1-5, 2020 – PNWA Mission to Washington:**
  - Highlighted regulatory concerns to PNW Congressional delegation, OMB, and Corps Headquarters (HQ)

- **October 20, 2020 – PNW Congressional Staff Virtual Briefing**
  - NWSA, Port of Bellingham, and Port of Anacortes share stories
  - Cascadia Law Group lays out misinterpretation of ESA case

- **November & December 2020 and January 2021 – Virtual Hill Visits**
  - Advocacy to PNW Congressional Staff and Committee Staff

- **February 1, 2021 – PNWA Letter to Corps Northwestern Division**
  - Request execution of formal protocols to elevate Regulatory issue to Corps HQ

- **March 15-18, 2021 – PNWA Mission to Washington:**
  - Reiterated regulatory concerns to PNW Congressional delegation

- **March 19, 2021 – Joint Letter to OMB & CEQ**
  - PNWA, WPPA, OPPA, WMF send letter to Administration
  - NOAA Fisheries Significant Regulatory Action (APA, EO 12866, etc.)
  - Seek resolution – rescind 2018 guidance and use formal rulemaking process
Implications Beyond West Coast Region

- ESA listed species in other regions – NOAA Fisheries plans for other regions
- Maintenance project schedule impacts and mitigation costs
- Threat to competitiveness and future investment
Next Steps

PNWA is committed to:

▪ Continued follow up with Corps of Engineers and NOAA Fisheries

▪ Continued advocacy to PNW Members of Congress, key committee leaders, and staff within the PNW delegation

▪ Continued advocacy to the Administration (OMB/CEQ) to seek resolution

How can you help?

▪ Outreach to your Members of Congress

▪ Outreach to key committee leaders

▪ Outreach to the Administration (OMB-CEQ)

▪ Please share any ideas, strategies, and information with PNWA
Questions?

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