



WPPA Environmental Seminar Alphabet Soup Regulatory Update – ESA/NMFS

Dena Horton, Deputy Director
Pacific Northwest Waterways Association (PNWA)

WPPA Environmental Seminar

Overview of PNWA

Endangered Species Act (ESA) – Key Rulemakings

Salish Sea Nearshore Programmatic (SSNP)
Consultation & Conservation Calculator Update

Court Decisions & Lawsuits

PNWA Advocacy Next Steps



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
 - Utilities
 - Pilots
 - Agriculture & forest products producers
 - Towboaters & steamship operators
 - Union labor



FEDERAL PARTNERSHIPS



U.S. Army Corps of Engineers

Portland, Walla Walla, Seattle Districts
Northwestern Division
Headquarters in DC
Assistant Secretary of the Army (Civil Works) – Pentagon



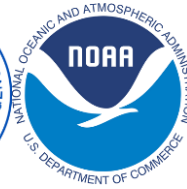
Congress

Northwest House & Senate Delegations (District & 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



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ESA – Key Rulemakings

NOAA Fisheries & U.S. Fish & Wildlife:

Agency Cooperation: (Changed environmental baseline & mitigation/conservation offsets requirements)

<https://www.fws.gov/sites/default/files/documents/2024-03/endangered-species-act-402-final-regulation-signed-2024-03-27.pdf>

Critical Habitat:

https://www.fws.gov/sites/default/files/documents/2024-03/endangered-species-act-424-final-regulation-signed-2024-03-26_0.pdf

U.S. Fish & Wildlife:

Reinstating 4(d) Rule:

<https://www.fws.gov/sites/default/files/documents/2024-03/endangered-species-act-4d-final-rule-signed-2024-03-26.pdf>



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SSNP Consultation Update

Activities covered by the Salish Sea Nearshore Programmatic Consultation:

- Culvert/bridge repair/replacement
- Relocating/repair of existing utilities
- Stormwater facilities/outfalls
- Shoreline modifications
- Expand or install a new in-water or overwater structure
- Repair or replace an existing structure
- Minor maintenance of an existing structure
- Repair, replace, expand or install a new aid to navigation, scientific measurement device, or tideland marker
- Dredging for vessel access
- Dredging and debris removal to maintain functionality of culverts, water intakes, or outfalls
- Habitat enhancement activities
- Set-back or removal of existing bulkheads, tidegates, berms, dikes, or levees
- Beach nourishment
- Sediment/Soil remediation



SSNP Consultation Update

What is the Salish Sea Nearshore Programmatic (SSNP) protecting?

SSNP intends to protect these species and their critical habitat:

- Puget Sound (PS) Chinook salmon
- Hood Canal summer-run (HCSR) chum salmon
- PS steelhead
- Puget Sound/Georgia Basin (PSGB) yelloweye rockfish
- PSGB bocaccio
- Southern Resident Killer Whales (SRKW)

Activities covered in SSNP not likely to adversely affect:

- 2 distinct population segments of humpback whales, and southern DPS of green sturgeon or critical habitat for green sturgeon.
- A distinct population segment of PS eulachon or critical habitat for eulachon.



SSNP Consultation Update

NEWS

Salish Sea Biological Opinion Provides Path for Nearshore Projects while Safeguarding Species

June 29, 2022

Streamlined consultations will help stop loss of vital salmon habitat.

Feature Story | West Coast



Juvenile salmon spend their first few months in saltwater growing in nearshore habitat, increasing their odds of

More Information

- > [Salish Sea Biological Opinion \(PDF, 359 pages\)](#)
- > [Mitigation Banks in the West Coast Region](#)
- > [Nearshore Habitat Values Model Calculator Frequently Asked Questions](#)
- > [Army and NOAA to advance Endangered Species Act consultations](#)

Recent News

FEATURE STORY

[Stranding Network Helps Young Killer Whale Stranded on Carmel Beach](#)
West Coast



FEATURE STORY

[Harbor Seals Consume up to 3](#)



Conservation Calculator Update

fisheries.noaa.gov/resource/tool-app/puget-sound-nearshore-conservation-calculator

Puget Sound Nearshore Conservation Calculator

March 08, 2024

This conservation calculator assesses the value of nearshore habitat so that project proponents can gauge the impacts of their projects.

[File/Document](#)

[Tool/App](#) | [West Coast](#)

We are working with Puget Sound ports to optimize application of the calculator for port-specific infrastructure. The current calculator version may not be applicable to some port structures.

[View the Calculator User Guide \(Version 1.6\)](#)

[Change log \(Version 1.6\)](#)

Accessibility Disclaimer: This habitat tool is not currently in a format compliant with Section 508 Amendment to the Rehabilitation Act of 1973. If you need assistance with the habitat tool, please contact Lisa Abernathy at Lisa.Abernathy@noaa.gov, (206) 526-4742 to discuss your information needs.

[Send Us Your Feedback](#)

More Information

- > Puget Sound Nearshore Habitat Conservation Calculator
- > Workshops, Presentations, and Training Resources
- > Frequently Asked Questions

Results of CIE Peer Review:

<https://www.st.nmfs.noaa.gov/science-quality-assurance/cie-peer-reviews/cie-review-2024>



Conservation Calculator Update

NMFS Staff Holding Office Hours to Assist Applicants with Calculator Questions:

<https://www.fisheries.noaa.gov/west-coast/habitat-conservation/puget-sound-nearshore-habitat-conservation-calculator>

“Nearshore Calculator Expert Office Hours

We are now offering virtual Nearshore Calculator assistance! Sign up for a 20 minute session and a member of the NOAA Fisheries Nearshore Team will join you for a video meeting (or you can phone in). We recommend a representative from the action agency is also invited to the meeting, if your questions are project specific. You can include a note to invite additional people in your meeting via the "comments" box on the sign up page. We will make sure all parties receive an invitation and link. You will also be able to share the meeting link with other people who would like to attend. Prior to your meeting, please email a draft Conservation Calculator to psnearshoreconservation.wcr@noaa.gov, if relevant, along with any additional information that might help us prepare for your appointment.

Please book only one session per week. Our time is in high demand. If we have open time slots available, we will be happy to assist you longer.

Please invite your federal project manager to this meeting if you have an active consultation through a federal agency (most commonly the Army Corps of Engineers).”



Conservation Calculator Update

SLOPES 6 - Standard Local Operating Procedures for Endangered Species

- According to Corps NWD Regulatory, the thresholds (triggers) are being met to revamp the consultation
- The process is not moving as swift as desired (staffing capacity for NMFS)
- Conservation offsets are a sticking point
- It will cover expanded territory, but it is not known whether a conservation calculator will be built for the area or not
- Corps anticipates providing BA to NMFS for review by end of 2024 or early 2025

Nationwide Permits

- NWP expire in March 2026 – “concepts of a plan”
- No NMFS consultation for NWPs (use programmatic)



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Court Decisions & Lawsuits

Maine Lobstermen's Association v. NMFS case

Chevron overturned

Skagit Dike District No. 12

- Brief history
- Challenging BiOp and factors leading to Jeopardy call

National Hydropower Association & Northwest Hydroelectric Association v. USFWS & NMFS

- File August 2, 2024 in DC District Court
- Regulated by FERC and specifically challenging the conservation offsets/mitigation authority created through rulemaking

Earthjustice on behalf of Center for Biological Diversity, Sierra Club, and WildEarth Guardians v. Interior/USFWS & Commerce/NMFS

- Filed August 1, 2024 in Northern District of California
- Seeks to vacate both the 2024 and 2019 rules



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Advocacy Next Steps

- PNWA established a Regulatory Legal Action Steering Committee (next meeting October 9th at 3:00pm)
- PNWA continues to advocate for programmatic tools that work for ports, agency funding and consultation staffing capacity (Appropriations, IIJA, IRA, bill report language, etc.)
- Continue advocacy on WRDA, funding, & ESA related legislation with Members of Congress
- Keep sending your permitting horror stories to PNWA
- Continue advocacy with Federal Agencies for tools that work
- Continue partnership outreach nationwide
 - National and regional port associations
 - National ESA Reform Coalition (NESARC)



Advocacy Next Steps

Language PNWA Requested: "Although additional funding has been provided to NOAA through the Infrastructure Investment and Jobs Act (IIJA), Inflation Reduction Act (IRA), and appropriations, the NOAA Fisheries West Coast Region, particularly in the Pacific Northwest, continues to experience chronic understaffing for ESA Section 7 consultations and stakeholder engagement leading to significant project delays. Within existing funds provided, **NOAA Fisheries shall prioritize** funding for increasing staffing capacity and staff retention efforts for ESA Section 7 consultations, particularly in the Pacific Northwest."

Included in House CJS Bill Report: *"Staffing Levels.—Although additional funding has been provided to NOAA through the Infrastructure Investment and Jobs Act (IIJA), Inflation Reduction Act (IRA), and appropriations, the NOAA Fisheries West Coast Region, particularly in the Pacific Northwest, continues to experience chronic understaffing for Endangered Species Act (ESA) Section 7 consultations and stakeholder engagement leading to significant project delays. Within existing funds, **NOAA is encouraged to prioritize** increasing staffing capacity and staff retention efforts for ESA Section 7 consultations, particularly in the Pacific Northwest."*



Advocacy Next Steps

- Election results can change government significantly regardless of political party control
- Executive Orders
- Cabinet and senior level staff appointments
- Reorganization of executive branch departments
- Legislation and agency rulemaking
- Future Supreme Court rulings



(Trekandshoot via Shutterstock)



Thank You – Questions?



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