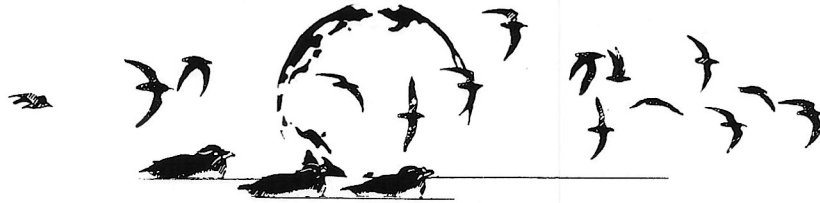

Pacific Seabird Group



DEDICATED TO THE STUDY AND CONSERVATION OF PACIFIC SEABIRDS AND THEIR ENVIRONMENT

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July 20, 1998

Chris Wheaton, Acting Chief
Wildlife Division
Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

Re: Comments on Draft Predation Action Plan: Avian Species

Dear Mr. Wheaton:

These are the Pacific Seabird Group's (PSG) comments on the Oregon Department of Fish and Wildlife's draft Predation Action Plan: Avian Species ("Draft Plan"). PSG supports several of the options presented in the Draft Plan, but objects strongly to any actions that may cause significant harm to the populations of Caspian terns or double-crested cormorants. The options supported by some agencies are based upon a misguided belief that Caspian terns are somehow culprits in the demise of certain populations of salmonids. This is tantamount to coming home after an unsuccessful day at work and kicking the family dog. Here the family dog is the largest Caspian tern colony in the world, which may account for one-quarter of all Caspian terns in North America. PSG will firmly oppose actions that jeopardize the health of this species.

I. The Pacific Seabird Group

As you may know, PSG is an international organization that was founded in 1972 to promote knowledge, study and conservation of Pacific seabirds. PSG draws its members from the rim of the entire Pacific Basin, including the United States, Canada, Mexico, Japan, China, Australia, New Zealand, and Russia. Among PSG's members are biologists who have research interests in

Pacific seabirds, state and federal officials who manage seabird populations and refuges, and individuals with interests in marine conservation. PSG is especially active with regard to seabird-fishery conflicts and oil spill restoration.

II. PSG's Recommended Actions

While the Draft Plan (p. 24) refers to the "fragile status of salmonid species," the coho salmon and steelhead at issue are populations not species — a distinction that we believe is crucial in weighing competing federal and state obligations as natural resource trustees regarding salmonids and seabirds. To express the obvious, the fundamental reason that the Columbia River salmonids experience a "fragile status" is a series of enormous dams (Bonneville 1,061 MWe; Dalles 1,814 MWe; John Day 2,160 MWe; McNary 986 MWe) that have been built on the Columbia River, and the failure of natural resource agencies to mitigate effectively the damages to migratory fishes that those structures cause. We believe that it is both unscientific and contrary to law to destroy or jeopardize healthy seabird colonies because state and federal fishery managers have not devoted the resources necessary to enable the salmonid populations to reproduce successfully in an alien environment that has destroyed their natural breeding strategies. Moreover, we believe that operational changes at the dams would yield far more benefits to coho salmon and steelhead than harassing seabirds or destroying their colonies.

PSG recommends the following courses of action.

A. Research

We urge the agencies to continue the research that is outlined in the Draft Plan, both on salmonids and on seabirds. In particular, the five-year study on the diets of seabirds in the Columbia River estuary should be continued so that we have long-term data on the diets of these species. We support research dedicated to improving habitat away from Rice Island that might lure Caspian terns to nesting sites further away from concentrations of smolts. This could include using decoys, recordings of tern vocalizations, removal of vegetation, creation of new islands, predator control, or other techniques. We know of no studies concerning the effectiveness of the on-going hazing of double-crested cormorants, and suggest that such studies be designed and implemented. Finally, the agencies should assess the effects of the general warming of the marine waters of the eastern North Pacific during the past twenty years on these issues (see J. McGowan et al., Climate-Ocean Variability and Ecosystem Response in the Northeast Pacific, Science 281: 210-217, 1998).

B. Improve Fish Hatchery Techniques

PSG believes that the primary management actions that need to be implemented immediately are those that improve fish hatchery techniques. We have consulted with senior Ph.D. fishery biologists in the U.S. Fish & Wildlife Service (FWS) who estimate that the percentage of smolts that return to breed in Pacific Northwest drainages is less than 1%, and in many cases a mere 0.1%. This is contrasted with returns of 4-5% in Iceland and parts of Alaska. We understand that progressive fishery scientists in FWS have for years attempted to implement hatchery management techniques that would retain wild characteristics in salmonids (the "Keep 'em Wild" initiative), but the FWS Assistant Director for Fisheries has refused to implement this program. Among other things, a Keep 'em Wild program would not feed hatchery fish by hand, which trains them to aggregate in the upper water column searching for food when they are released (see Draft Report, p. 4). The Draft Report notes other attributes of hatchery-raised smolts that might be improved by a Keep 'em Wild program — their lack of resilience (p. 6) and a tendency to be dazed when they are placed in the wild (p. 8). "NATURES tanks" (p. 28) might similarly improve wild characteristics in hatchery-raised salmonids.

We also strongly urge fishery managers to implement alternatives to barging fish, which by most accounts is inimical to their ability to survive in the wild (p. 8), and to release them further down the Columbia River (p. 9) closer to the ocean. Improving these practices would likely increase the percentage of smolts that return to spawn much more than limiting seabird predation. Caspian Terns have been characterized as opportunistic feeders in such locations as Georgian Bay, Canada (Dr. Ralph Morris, pers. com., Brock University) and Elkhorn Slough (Jennifer Parkin, Moss Landing Marine Laboratories, pers. com.), where foraging observations of this species have been carried out. Thus, Caspian terns can be expected to take advantage of any readily available prey of suitable size, including temporary abundances of dazed and confused salmonid smolts in surface waters.

C. Modification of Federal Dams on the Columbia River

We understand that one means of improving salmonid breeding would be to modify the operation of dams owned by the U.S. Army Corps of Engineers and Bureau of Reclamation to improve fish survival. Such modifications would result in less water being available for hydroelectricity. We believe the Draft Plan should have evaluated this option. Any environmental impact statement (the requirements for which are discussed below) should fully discuss this reasonable alternative.

We appreciate that modifying the operation of the dams could have important economic consequences. In this regard, PSG has a great deal of experience in assisting state and federal natural resource trustees in restoring seabird populations after oil spills. If a tanker were to destroy Rice Island and its Caspian tern colony, the state and federal natural resource trustees would likely seek tens of millions of dollars of damages from those responsible. We suggest that in their cost-benefit analysis regarding the loss of electricity in modifying dam operations, the federal government analysis should assign a value to Caspian terns and cormorants using the identical economic criteria that it uses when the government acts as a natural resource trustee in an oil spill.

D. Modification of Habitat and Translocation

As discussed above, PSG endorses experimental work to enhance habitat so that some Caspian terns might select nest sites on East Sand Island, Willapa Bay or other locations. We object to actions (harassment, altering substrates, etc.) that destroy the Caspian tern nesting habitat on Rice Island because there is no certainty that suitable habitat will be created elsewhere. PSG does not object to controls on hybrid western X glaucous-winged gulls.

The Draft Report notes that the colony on Rice Island first formed in 1987. We acknowledge that colonies of many tern species are renowned for moving and that their allegiance is stronger toward other members of their colony than to a particular breeding location. As one example, a huge sooty tern colony in Hawaii moved from Moku Manu to Manana Island in 1947 (Harrison, C.S., Seabirds of Hawaii: Natural History and Conservation, Cornell University Press 1990, p. 188). Thus, terns breed opportunistically at suitable locations, which can change from year to year.

In response to those who may believe that Caspian terns are somehow "unnatural" interlopers in either the Columbia River estuary or on Rice Island, we know little about the "natural" distribution and abundance of this species on the west coast of North America. Caspian tern populations throughout North America were drastically reduced by feather hunting at the turn of the century, and may just now be recovering from that severe perturbation. Information of any kind before the mid-19th century is scant. Current changes in distribution may be the normal ebb and flow of ranges as weather patterns shift, as exemplified by recent marine warming off the coast of Oregon or the "Mini Ice Age" that lasted from about 1500 to the late 19th century.

There is an ever-decreasing availability of suitable nesting habitat for Caspian terns in this nation. They need vegetation-free and predator-free habitat near aquatic food. In many cases, the only such habitat is sand bars, which are notoriously unstable. It is because options for moving no longer exist that a related species, the least tern, is endangered. Seabirds tend to move to control infestations of lice and ticks or as a response to disturbance. In San Francisco Bay, which harbors the largest colony in California, Caspian terns are now relegated to nesting in just three major sites, all of which are artificial because no natural habitat remains. Maintaining these sites is expensive, and the existence of two on salt evaporation pond levees is tenuous because this activity is uneconomic. The San Francisco Bay area is a microcosm of this species' predicament on a larger scale, and we suspect that plenty of natural habitat for this species in the Columbia River estuary has been destroyed by humans, perhaps including dredging and the construction of huge dams.

We have canvassed a number of seabird biologists concerning where Caspian terns forage, and the information that we have assembled suggests that moving the Caspian tern colony a few miles from Rice Island may not change their impact on smolts. At Elkhorn Slough, Jennifer Parkin (Moss Landing Marine Laboratories, pers. com.) found that a large percentage of the food that parents fed young terns came from Elkhorn Slough, implying that they fed nearby. The Caspian tern colonies in South San Francisco Bay travel 35-40 miles daily to Monterey Bay to feed (Dr. David Ainley, pers. com.; Stephen Bailey, pers. com.). Foraging Caspian terns at Point Reyes are thought to be from a colony at the Alameda Naval Air Station, about 35 miles distant (Stephen Bailey, pers. com.). In both Lake Ontario and Georgian Bay [Lake Huron], observations from numerous colonies indicate that Caspian terns feed 10-28 miles from colonies (Chip Weseloh, Canadian Wildlife Service, pers. com.; Dr. Ralph Morris, Brock University, pers. com.). Observations in Tasmania indicate this species forages 8 to 18 miles from colonies (Bill and Maggie Wakefield, pers. com.). Without marked or telemetered birds we cannot be certain of the breeding status of feeding terns.

This information is pertinent to the efficacy of moving Caspian terns from Rice Island. The Draft Report indicates that Caspian terns at Rice Island feed on salmonids during April and May (Figure 3). Caspian terns do not incubate during April, but do so from May to mid-June (Draft Report, Figure 2). Young terns are fed in June and July, and tern chicks accompany their parents to the best feeding locale as soon as the chicks are capable of flight. Thus, the time when Caspian terns are most likely to feed adjacent to their colony - when young are fed - is when the smolts have already gone to sea. During incubation or before eggs are laid in April and May, Caspian terns can be expected to range 20-40 miles to exploit super abundances of food supplies

such as dazed smolts at the water's surface. Even if all of the Caspian terns were to move 15 miles down river to East Sand Island, there is no certainty that their feeding habits or locations would change.

E. Killing Seabirds and Introducing Predators to Seabird Colonies

We unequivocally oppose killing seabirds, either directly or by placing predators on seabird islands, to improve marginally the recovery of depleted salmon populations. Like most seabirds, Caspian terns are long-lived, with band returns indicating that some have lived to be at least 26 years of age. They have evolved to survive over time even after repeated breeding failures, but removal of breeding adults would undermine the survival of the population. The species may be declining in California (Jennifer Parkin, Moss Landing Marine Laboratories, pers. com.) and is considered vulnerable in British Columbia. These population trends must be considered in managing this species in Oregon.

PSG has for years urged FWS to remove introduced predators from seabird colonies and former seabird colonies in this nation because we view alien predators as one of their primary conservation problems. Indeed, FWS Region 1 policy (including Oregon and Washington) for twenty years has been to "remove all introduced predators from marine bird colonies on all National Wildlife Refuges and encourage their removal from all other colonies."

Not only do we oppose introducing predators, we question the wisdom of including this option in the Draft Plan. Predators could easily be introduced into seabird colonies by misguided individuals. We urge the State of Oregon and others to delete discussion of this option in future reports, because it can lead to illegal vigilante actions by individuals who view seabirds as the cause of declining salmonid populations.

III. Legal Authorities and Legal Procedures

We believe that any action by agencies that significantly alters the nesting habitat on seabird colonies would be a "major federal action significantly affecting the quality of the human environment" under 42 U.S.C. section 102(2)(C) (National Environmental Policy Act). Such an action would require the preparation of a full environmental impact statement, not merely an environmental assessment. Under 40 C.F.R. Part 1502, the environmental impact statement must provide a full and fair discussion of environmental impacts, discuss direct and indirect effects, and provide means to mitigate adverse environmental impacts. As part of such full and fair discussion and analysis, we believe that state and federal fishery agencies should provide

data for at least the past twenty years on the percentage of smolts that have returned each year to spawn in the Columbia River system. This information would allow the public and decision makers to assess whether the growth of the Caspian tern colony since 1987 has had an appreciable effect on the recruitment of salmonids. The environmental impact statement should acknowledge that most fish species produce a super abundance of ova and larval fish, which are inevitably drastically reduced during their life cycle. Moreover, changing water flows in the Columbia River dams should be evaluated as a reasonable alternative in this process.

Because some or all of Rice, Miller Sands and Jim Crow Sands islands are within the National Wildlife Refuge System (Draft Report, p. 16), many actions in the Draft Report require FWS to make a compatibility determination under the National Wildlife Refuge System Improvement Act of 1997. FWS must determine whether destroying the largest tern colony in the United States would "materially interfere with or detract from the fulfillment of the mission of the system or the purposes of the refuge." PSG believes that this question answers itself.

Because threatened brown pelicans roost in huge numbers there, actions that might affect East Sand Island (including alterations to habitat to persuade Caspian terns to nest) triggers consultation under section 7 of the Endangered Species Act. During this process the federal agencies must ensure that their actions are not likely to jeopardize the continued existence of this threatened species.

In Sierra Club v. Martin, 110 F.3d 1551 (11th Cir. 1997) and Newton County Wildlife Association v. U.S. Forest Service, 113 F.3d 110 (8th Cir. 1997) the courts ruled that the Forest Service is not required to obtain permits under the Migratory Bird Treaty Act to take birds when it issues permits to log in national forests. The 9th Circuit (Oregon and Washington) is not bound by these decisions, and we believe that the 9th Circuit would require permits when federal agencies intentionally destroy or move the largest colony in the world of a species directly covered by the Migratory Bird Treaty Act. This opinion is guided by the fact that the 9th Circuit generally takes a more strict view of environmental statutes than do the circuit courts based in Atlanta and St. Louis.

In any event, the Draft Report (p. 13) notes that "federal actions are nevertheless bound by international treaties." The United States Government has entered into several treaties that forbid it from destroying seabird colonies by ruining their habitat. Article VI(c) of the U.S.-Japan Migratory Bird Treaty (1972) requires the USA to take measures "to control the introduction of live animals and plants which could disturb the ecological balance of unique island environments." Article IV(1)

of the U.S.-U.S.S.R. (1976) treaty requires the USA to "enhance the environment of migratory birds" and to "abate" "detrimental alteration of that environment." Under the U.S.-Canada Migratory Bird Treaty (1916) and the U.S.-Mexico Migratory Bird Treaty (1936) Caspian terns can be taken only in extraordinary situations. None of these treaties allow the destruction of the largest Caspian tern colony in the United States (Rice Island) or the largest colony of double-crested cormorants on the Pacific coast (East Sand Island) except under extreme circumstances that are not present here.

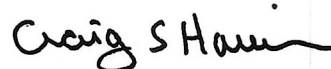
In sum, the federal and state agencies are required to undergo a great deal of analysis, justification and explanation if they were to conclude that destroying nesting habitat at seabird islands is warranted.

IV. Conclusion

PSG wants to work with the state and federal agencies on these important natural resource issues as it has with FWS and NMFS on many other issues to our mutual satisfaction. The rush to judgment in this instance and the apparent political pressure on the agencies to implement "solutions" that may not work and could irretrievably harm seabird populations is unacceptable.

PSG is writing an identical original letter to each of the individuals and agencies identified below. Please give me a call (202-778-2240) or contact me at charrison@hunton.com if you have any questions concerning these issues.

Sincerely,



Craig S. Harrison
Vice Chair for Conservation

cc: Ronald E. Lambertson, Acting Regional Director, U.S. Fish and Wildlife Service, Portland
Colonel Robert T. Slusar, U.S. Army Corps of Engineers, Portland District
William Stelle, Regional Administrator, National Marine Fisheries Service, Seattle