



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: P.O. Box 43200, Olympia, WA 98504-3200 • (360) 902-2200 • TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

December 18, 2020

The Honorable Raul Grijalva
Chairman, Committee on Natural Resources
United States House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Grijalva:

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on H.R. 8632 – The Ocean-Based Climate Solutions Act.

Fish and wildlife hold intrinsic value for Washington residents and sovereign tribal nations. They are a significant part of our history, culture, and our future. They support recreational opportunities and important commercial industries that are significant contributors to our economy and society locally, nationally, and internationally. As such, there is growing understanding and demand for the protection of fish and wildlife resources as climate change and other threats shift and alter ecosystems and their habitats and place many populations at risk.

While we appreciate the legislation's efforts to preserve fish and wildlife resources by addressing the impacts of climate change on our oceans, marine life, and coastal communities, we provide several recommendations on changes we believe would help address the bill's goals and policies more effectively. Our feedback is grounded in our perspective as Washington's principal fish and wildlife stewards and managers. Moreover, our expertise is informed by the role we play in various state and regional fisheries and ecosystem management and policy bodies.

We hope that our analysis of and suggestions for H.R. 8632 will inform and improve future versions of this legislation should it advance. Enclosed, please find WDFW's comments.

Sincerely,

Kelly Susewind
Director

Enclosure

The Honorable Raul Grijalva

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cc: The Hon. Pramila Jayapal, U.S. House of Representatives
Casey Katims, Governor's DC Executive Director
Jennifer Hennessey, Governor's Senior Advisor
JT Austin, Governor's Senior Advisor
Rich Innes, Meridian Institute

H.R.8632 – Ocean-Based Climate Solutions Act of 2020

Comments Prepared By: The Washington Department of Fish and Wildlife

H.R. 8632 Overarching Recommendations

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to comment on H.R. 8632 – the Ocean-Based Climate Solutions Act of 2020 – and hopes to provide a more comprehensive analysis of future iterations. It is our understanding that the legislation incorporates provisions from previously introduced bills, makes substantive amendments to several prior environmental statutes, and promulgates many new mandates, tasks, and processes to collectively address the ocean impacts of climate change and reform federal ocean management to better account for climate mitigation and adaptation. In addition to its section-by-section analysis, WDFW offers its recommendations for the overarching legislation which contains themes and areas of concern that need to be improved upon:

Taskforces

- Implementation of some of the provisions requires the establishment of new taskforces. From Implementation of some of the provisions requires the establishment of new taskforces. We are concerned this may result in duplication of effort. There are many existing fish and wildlife conservation and management processes and regimes (e.g. Pacific Fishery Management Council, Pacific Flyaway) which take into account the impacts of climate change on the ocean. We would request that existing processes and regimes are further evaluated to avoid undoing or duplicating what is already working well. Further, as written, primarily federal representatives comprise the membership of the taskforces. State and regional perspectives are critical to the success of these councils and taskforces, and we recommend that you consider increasing their representation.
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Addition and/or Expansion of Sections

- WDFW also welcomes the addition and/or expansion of sections to include additional relevant issues that are not currently evident in the legislation. For example, the legislation only has a couple of brief mentions of aquatic invasive species. Given the spectrum of the legislation, we understand this may be an oversight. However, climate change is expected to increase AIS threats significantly without proactive measures to combat their spread. We recommend the establishment of a section and funding source for coastal entities to address AIS in marine environments.

Ocean-Dependent Wildlife

- Although the legislation predominately focuses on the fish-related aspects, climate change will also have significant implications for ocean-dependent wildlife and would recommend that there is broader consideration and acknowledgment of these species throughout the legislation. For example, while the legislation speaks to coordination of fish activities, the co-management model clearly exists in the Migratory Bird Management and Flyways (which includes coasts and estuaries) co-management realm, especially as there are well documented conflicts between certain migratory bird species and commercial fishery industries.
- In incorporating wildlife aspects, the criteria to assess eligibility/projects in several of the titles and sections should explicitly consider regional planning efforts like State Wildlife Action Plans

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or Migratory Bird Joint Venture strategic population and habitat goals (or priorities) in their evaluation of preservation, restoration, or other activities.

- We recommend that the management arms of migratory bird populations be considered or directly consulted with as it relates to selecting important areas or prioritization exercises, particularly in offshore/open water habitats often neglected in protection status as it pertains to migratory bird site networks.
- We also request the inclusion and emphasis of monitoring as an activity eligible for project grants/funds. With changing conditions, the inability to assess the results of targeted actions are hampering the ability to adaptively manage.

Funding and Resources Needs

- The conservation and management of federal fisheries and marine species relies on science and administration by the National Marine Fisheries Service (NMFS). Wildlife conservation and management of wildlife species is also driven by science from the U.S. Fish and Wildlife Service (USFWS) and management paradigms. Without new budget and staff resources, WDFW would be concerned that the new tasks and mandates created by the bill, if not accompanied with new authorizations and appropriations, would detract from the core activities supporting conservation and management. For example, North Pacific Fishery Management Council (NPFMC) and Pacific Fishery Management Council (PFMC) have made progress on many aspects of ecosystem-based fisheries management and preparing for climate change. Both are challenged by workload and scientific resources at NMFS. Most concerning is that the pressure on NMFS's budget in recent years has translated to the loss of long-term surveys. There is more demand for conservation and management work than NMFS is able to fulfill with current resources. The legislation might specifically consider increasing the authorization for these programs.

Consultation with Subject-Matter Experts

- WDFW also wants to acknowledge that while not having a formal request to comment, the PFMC did discuss the legislation at its November meeting. Those discussions revealed concern and controversy from stakeholders about some of the legislation's fisheries provisions, especially those that would remove fishing grounds and do so without robust stakeholder involvement. We know the Councils would be appreciative of a request to comment.
- WDFW recommends extensive solicitation of feedback from subject-matter experts and sectors directly impacted by the provisions to inform the development of the next iteration of the legislation.

Technical Improvements

- WDFW supports better integration between titles throughout the overarching legislation. Many of the sections would seem to impact or might even conflict with other sections. For example, marine protected areas (Title II) should not be designated separately from a robust coastal marine spatial planning effort (Title VI). Another example, designing fishery management regimes that are resilient in the face of climate change and shifting stocks (Title IV) is often hindered by fixed area closures such as MPAs (Title II).

TITLE I – BLUE CARBON

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Section 104

- WDFW supports the Blue Carbon Partnership Grant Program as the funding would supplement existing estuary restoration programs

Section 107

- Washington leads the country in production of farmed clams, oysters, and mussels, with an annual value of more than \$107 million. In addition, the state has a longstanding tradition of recreational and subsistence harvesting. Should this section result in new restrictions in intertidal areas currently used by shellfish aquaculture operations, shellfish growers would face severe economic implications. Stakeholder input to these decisions is therefore critical.

Section 108

- We may be misunderstanding the intent behind identifying the Smithsonian Institute as the organization to support and maintain the Coastal Carbon Data Clearinghouse, but we believe NOAA would be a more effective place to house the data.

TITLE II—MARINE PROTECTED AREAS (MPAs)

Section 201, 202 and 203

- We recommend aligning Title II with existing efforts in the northeast Pacific to maintain and protect the integrity of our marine ecosystems. Likewise, a high-level interagency task force, if not sufficiently grounded in the different regions of the nation, would not be the most effective means of achieving the goals of the section. Local and regional efforts would be preferable. WDFW was also part of the interagency team that produced the Marine Spatial Plan for Washington's Pacific Coast. It involved a multi-year effort looking at the ocean areas of the coast and considered current uses of the ocean and ecologically important areas, and how new uses, such as offshore energy development, might affect both. Less of a top down approach here could prove more durable in the long run.
- Working within the Magnuson-Stevens Act, both Councils have already established a broad array of protective measures to minimize the impacts of fishing on important ecosystem attributes, which can include spatial measures like protected areas, but also includes gear modifications and other measures. MPAs are only one tool, and their value in highly productive ecosystems like the California Current, Gulf of Alaska and the Bering Sea is limited.

Section 204

- WDFW is unsure how the deep-sea coral protection measures in Sec 204 align with the work of the Pacific and North Pacific Councils. Both Councils have taken action to protect significant coral areas from damage from fishing gear. We would need more time to understand how the bill would affect that work. It appears it would extend the protections the Councils have recommended to more than just fishing.
- There may be a conflict between Sec. 204(a)(2), which mentions gear towed from a vessel, and the provisions under Sec. 204(b) which uses "bottom-tending fishing gear". A definition of "bottom tending" may be beneficial. To explain, some PFMC closures apply to bottom trawl but not to fixed gear hook and line gear. Fixed gear might be considered bottom tending by some

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definitions as the gear sits on the bottom and can damage corals (although the footprint is smaller than with bottom trawl gear).

TITLE III – OFFSHORE ENERGY

Title III concerning development of offshore renewable energy resources needs elaboration on the specifics to addressing impacts to existing users, in particular fisheries, as well as wildlife.

Section 316

- WDFW recommends making sure that offshore energy is sited to appropriately protect wildlife resources and existing uses of the ocean. Seabirds may be particularly vulnerable. The state spent multiple years developing the Marine Spatial Plan for Washington’s Pacific Coast, and WDFW was a member of the interagency team developing the plan and lead the evaluation of ecologically important areas off the coast. The plan was incorporated into the enforceable policies of Washington’s Coastal Zone Management Program and will provide the state consistency review over projects in federal waters. Concerns do remain about whether federal agencies will consider tradeoffs between new and existing uses (including ecology) to the extent the state would prefer. Discussions during development of the plan indicate that there are no clear areas off the coast where energy development would be fully compatible with existing uses.

The legislation currently includes vague language around the relationship between research and planning for siting prior to the installation of facilities. We recommend the inclusion of language that stipulates the process: research first, planning second, including stakeholder input from states and others, and lastly installation. We offer the plan as a model. We emphasize the importance of pre-work as a way to avoid situations in which things are moving down an erroneous path. We recommend that the authorized study of best practices for managing impacts to wildlife be supported with a portion of the revenue from federal offshore wind energy leases.

Section 318

- We feel it crucial to ensure that local marine spatial planning efforts are supported. Marine spatial planning efforts, like that conducted by Washington state, will identify areas of conflict with seafood harvest activities and might also identify areas of seabird concentrations.
- The West Coast Regional Planning Body (RPB) established under President Obama’s National Ocean Policy was beginning to make progress and established a formal charter in early 2016 but was also hampered by not having new resources to support the work. We continue to support the regional approach as being inclusive of fisheries management councils, adjoining states, and Federally recognized tribes. The state continues to participate and support the West Coast Ocean Alliance, which is where coordination efforts on the West Coast turned after President Trump’s EO 13840 terminated the RPBs.

TITLE IV—CLIMATE-READY FISHERIES, EFFICIENT FISHERY VESSELS, AND BUY AMERICAN SEAFOOD

Title IV describes the objective of food supply and security through harvest of American wild-caught seafood, yet other Sections of this Act likely would reduce the harvest. For instance, increased MPAs

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and siting of offshore renewable energy facilities will both reduce areas available for fishing. Sec 405 provides guidance to address issues that both the NPFMC and the PFMC are already addressing but are hindered by the lack of resources. Congress must appropriate funds for this Section if it is to have any value. We recommend aligning with what the Regional Councils and NOAA have been doing in this area and finding ways to amplify existing science and address known data gaps.

Section 401

- WDFW overall supports of strengthening domestic markets for American caught seafood. During COVID-19 pandemic we've seen huge impacts to the fishing industry and food supply as global trade is interrupted. Strengthening local markets for US seafood is critical to local food systems, food security, local, state and national economy.
- Subsections 5 and 6 encourage harvest of smaller fish species that have a "lower carbon footprint" and "aren't overharvested" vs. larger species. WDFW is not aware of science to support this. WDFW is concerned that this would conflict with the scientific advice both the PFMC and NPFMC receive to maximize protection for forage fish in order to maintain ecosystem function while providing groundfish harvest.

Section 402

- WDFW is supportive of a new grant program for marketing, promotion, research and management of US fisheries and seafood products. While some grant programs exist like the Saltonstall-Kennedy grant program at NOAA, there's a significant demand for this type of work and existing grant programs don't provide much funding per project which makes it hard to fund ongoing research and marketing work.

Section 405

- We believe that a new program may be duplicative of what some of the Regional Fisheries Management Councils are already doing to incorporate climate assumptions/ planning into their processes.

Section 406

- WDFW supports providing grants for shifting fisheries technologies and adapting operations to climate change.

Section 407

- The Shifting Stocks Task Force (Sec 407) would, in our view, be much less effective at addressing the goals of this section than would the Councils. Shifting stocks will indeed be a challenge, yet the specific challenges will differ by region. The Councils are working to address shifting stocks but need more federal funding for annual surveys of fish distribution and abundance, and more federal resources for the additional workload on the Councils.

Section 408

- WDFW would appreciate more time to review this section to better understand intent and provide feedback as fish habitat consultation is critically important.

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Section 409

- Ocean aquaculture program should be coordinated, using marine spatial planning tools, with other uses of the marine environment, so that the efficiency and carbon footprint of wild-capture fisheries is not negatively impacted.

TITLE VIII – STRENGTHENING MARINE MAMMAL CONSERVATION

We appreciate a more thorough and explicit incorporation of the effects of climate change into the estimation and protection of marine mammal populations. Washington has several species and stocks expected to be damaged directly or indirectly by changing ocean conditions, including some of imminent state and federal conservation concern.

Sections 802, 803, 804

- Based on the experience of the NPFMC with developing protective measures for Steller sea lions, Title VIII may also result in increased debate over allocating desirable groundfish species for harvest or for forage for the marine mammals that will probably be listed under this section. The NPFMC has spent over a decade finding the right balance, which seems to be achieved at present, as the role of fishing does not appear to be affecting recovery of the populations. We would recommend that the legislation recognize the balance that the regional Councils will have to strike between providing forage for marine mammals and providing seafood for the American public under Title IV.
- A new designation of “important areas” could potentially offer NMFS additional flexibility and efficiency in preventatively managing marine mammals, but it appears to be an expansion of Critical Habitat without the title. We only see reference to the application of these additional protections in calculating Potential Biological Removal and would recommend augmenting the section to discuss further benefits that climate considerations would afford marine mammals and the mechanisms employed.
- Title VIII could have meaningful benefits for marine mammals and would request more clarity in both the authority and responsibility. We recommend stipulating whether NMFS will be expected to re-evaluate current MMPA authorizations (e.g. recent Navy NWTT authorization through 2027) based on improved understanding of risk based on climate impacts, or whether this will only affect NOAA’s authorizations into the future. We believe that state input should be solicited and considered in development of any designated areas, vulnerability assessments and management plans. Further, WDFW recommend that the language concerning *setting the speed limit* be changed to mandating that federal agencies work together with local and state government to determine a speed limit scheme that is geographically appropriate and minimizes vessel risk to marine mammals.
- Additionally, we would suggest that more nuance be applied when considering exemptions from conservation measures – this is an area where Critical Habitat designation is lacking. We appreciate the U.S. Navy’s critical role in our national security and believe that strategic restrictions could benefit marine mammals without impeding military readiness. For instance, exemptions to speed regulations could be limited to active exercises while observing precautionary measures during transit.
- We are pleased to see an emphasis on reducing vessel impacts and measuring underwater noise, and the grant programs described align with collaborative conservation efforts in

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development for the Salish Sea. Specifically, the Quiet Sound program is an initiative born out of Governor Inslee’s Southern Resident Orca Task Force recommendation 22 and is currently attempting to identify and secure funding. A greater understanding of underwater natural and anthropogenic sound, including standardization and data sharing, may dramatically improve our ability to manage waterways for marine mammals.

- We request the allocation of increased funding and resources to ensure programs are effective.

TITLE X—COASTAL RESILIENCY AND ADAPTATION

Section 1001

Additional funding to support projects that soften shorelines is very much supported, but WDFW would encourage coordination with EPA’s National Estuary Program (NEP) to reduce any redundancies. We also believe that there potentially should be some consideration of NOAA’s Nearshore mitigation banking programs as well. WDFW makes some initial recommendations to individual sub-sections:

1001c-(1)(2)

- We recommend that criteria should be specific to geographic regions as living shorelines differ by region – e.g., east coast, Gulf, west coast, Puget Sound. Additionally, we encourage language that prioritizes shoreline projects promoting intact ecological processes. Living shorelines projects should occur in situations where infrastructure needs to be protected and stabilization is necessary.

1001c (3)

- Not all regions experience the impacts of climate change in a similar fashion, nor do all situations that are disastrous for a community receive Presidential disaster declaration. Thus, we recommend striking the natural disaster requirement. We believe that priority should be added for projects promoting adaptation to prevent disaster in at-risk situations. Adaptation to prevent disaster is critical to avoiding a future disaster declaration.

1001c (4)

- From WDFW’s experience, it makes good sense to disburse funding for multiple projects from a single entity. We encourage leveraging existing state-local partnerships and state programs whenever possible. Additionally, we recommend supporting creative funding opportunities, such as providing seed funding for Revolving Loan programs at the state level.

1001e

- Due to the lack of similar sources of matching funds at the state level, we believe the requirement is more feasible if funding is going to a state agency that runs a subaward program.

1001 Definitions (i) (2)

- The definition of ‘living shoreline’ is too limiting. For example, it does not include sand and gravel beaches, such as those found in the Pacific Northwest/Puget Sound region. We recommend using the NOAA definition: “A protected and stabilized shoreline that is made of natural materials such as plants, sand, or rock” Source link: <https://oceanservice.noaa.gov/facts/living-shoreline.html>

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Section 1002

- Our key recommendation is to encourage making the language broader so it can be more inclusive of relevant projects. One way to do that in this section is under Section b(3), by striking the word “mangrove” and allowing a more general focus on coastal forests.

Section 1003

- WDFW supports this section. We would also recommend clarification around whether the language applies solely to native populations or if it is also inclusive of populations that have been introduced as part of shellfish aquaculture operations.

Section 1005

- A 90-day timeline will be challenging for many restoration projects, but that largely depends on what counts as eligible projects and the definition of “begin work”. We recommend that eligible projects should include acquisition and removal of fish passage barriers, which are most likely to be shovel-ready and provide climate solutions. Clarification of “nature-based infrastructure” is also needed and should not be interpreted as an opportunity for further development as part of this funding opportunity.
- We encourage that “begin work” can be interpreted as developing and issuing a contract to do work. For many organizations, it can take weeks to just put a project out to bid and contract the work. Upon award, the contractor must then rearrange their work plans to include a newly awarded contract and usually cannot start construction immediately upon award. Perhaps most importantly, there are specified “in-water work” windows that must be adhered to for construction. We generally bid out projects months in advance of these work windows, but then need to wait to actually start construction. For that reason, and because in-water work windows do not always align with budget cycles, we recommend allowing for flexibility on spending once the project “begins”.
- Regarding priority projects – we recommend that other sectors of the workforce that have been impacted by Covid-19 should be included to receive priority project status. This may include tribes, contractors, veterans, and minority and women-owned businesses.

Section 1006. Strategic Climate Change Relocation Initiative and Program

- We believe that an effort that includes consideration of all potential effects of climate change on communities needs to be included in a program like this – including both coastal communities and those inland. When identifying receiving communities and recommendations for moving communities, we recommend development of criteria that adopts net ecological gain and avoids additional climate impacts.

Title XI – OCEAN ACIDIFICATION AND HARMFUL ALGAL BLOOMS

Subtitle C

- As it pertains to Washington, WDFW recommends that efforts described throughout Subtitle C should be coordinated with and help support the existing efforts of the West Coast Ocean

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Acidification Alliance, and the work of the Washington Marine Resources Advisory Council and the University of Washington Center for Ocean Acidification.

Subtitle E

- WDFW supports this provision as Washington continues to witness harmful algal blooms as a contributing factor to fisheries disasters. For example, eligible recipients of the assistance could include Washington's coastal commercial crab industry as well as coastal tourist industries. These industries have historically experienced economic hardship when large recreational shellfish fisheries cannot open due to harmful algal blooms.

Subtitle D

- WDFW supports this provision as it reaffirms our support of the reauthorization of the Harmful Algal Bloom and Hypoxia Research and Control Act which secures more attention for preventions, control and mitigation of these issues. Further, it formalizes partnerships across levels of government which is hard to do from within a state agency.

Title XII – NATIONAL OCEAN POLICY, DATA, AND COORDINATED WEBSITE FOR GRANT PROGRAMS

Subtitle A

WDFW would like to emphasize that we believe regional ocean partnerships are beneficial and that they should be created in partnership with States and Tribes, rather than being designed by Congress. This is essential for these efforts to gain local acceptance and succeed in the long run.

Title XIII – COASTAL WETLANDS

Section 1301. Definitions

- The definition of restoration should include acquisition of land for the intention of restoration.

Section 1302. Coastal and Estuary Resilience Grant Program

- Additional funding to support coastal wetlands is very much encouraged, though we would encourage coordination with EPA's National Estuary Program (NEP), as well as USFWS's National Coastal Wetlands Conservation (NCWC) Grant Program and North American Wetlands Conservation Act (NAWCA) Grant Program to reduce any redundancies. This program is only somewhat duplicative of the National Estuary Program (NEP), where projects are limited to specifically identified systems (such as Puget Sound and Lower Columbia), but the USFWS grants are broader and more encompassing.
- We recommend that eligible costs include land appraisals and acquisition as related to wetland restoration and the ability of the acquisition to aid in meeting the grant evaluation criteria in perpetuity. Funds should not be used in acquisition for mitigation, but rather solely for the purposes of restoration and enhancement.
- The provision that "provide(s) economic and social benefits by reducing the potential impact and damage of storms on the built environment" is a reasonable element to include. However, there may be situations where such focus will directly conflict with the restoration focus. We

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would recommend including language that indicates how conflicting situations would be evaluated, prioritized, or resolved as there will likely be situations where it is not practical to do both.

Section 1303. Data collection

- This is what the NEP does for Puget Sound and in the Lower Columbia. We would encourage building upon that program and others as appropriate. You might consider increasing authorized funding for these and similar National Estuary Programs through section 320 of the Clean Water Act.

Section 1305. Annual restoration and funding

- The acreage requirement is a good goal. Acquisition funding is going to need to be made available through these funds to be able to achieve target goals. We recommend ensuring maintenance and monitoring funding for at least for the first five years (preferably ten years) of the project to ensure vegetation establishment. Considering sea level rise, we believe there should also be a focus on obtaining lands that are likely to shift into wetlands as the shoreline moves up in elevation.

Section 1307. Department of the Interior coastal wetland restoration; funding

- These are good goals, but we believe they need to consider how to prioritize this mandate in relationship to recreational and other existing authorized uses for those lands. Please work with state fish and wildlife agencies to figure out how to best meet the needs of the region. We would also recommend consideration of current state-created tools, like State Wildlife Action Plans, for the federal land activities.