

**RE: Seeking your help – with a matching-dollar offer by RBAW -- in combating National Marine Fisheries Service (NMFS) ‘guidance’ which makes marina upgrades cost-prohibitive**

**To our Yacht Clubs which operate marinas and outstations:**

We are writing this letter to ask for your financial assistance – and to have RBAW match that assistance dollar for dollar -- with an effort to combat very damaging and cost-prohibitive federal agency ‘guidance’ that is grinding to a halt all projects to upgrade over-water structures throughout Washington State and the Pacific Northwest.

In asking for your help – an action we do not take lightly – we wanted to provide you with background on why the NMFS guidance on marinas is such a threat to what we do. We also wanted to detail for you why we believe we have to take extra steps to obtain a reasonable compromise for those projects – be they improvements to marinas, docks, out-stations, etc. -- that so many of our clubs will be taking on in the near future. We’ll then share the latest action step we have in mind, along with other colleague organizations such as the Northwest Marine Trade Association (NMTA).

Back in April 2018, the West Coast branch of the National Marine Fisheries Service (NMFS) issued new guidance regarding the Endangered Species Act (ESA) that dramatically impacted recreational boating access and, in particular, projects taken on by anyone who wants to maintain, upgrade, or replace existing marinas, docks, and boatyards. NMFS’ guidance placed a new litmus test on whether “future impacts from the structure should be considered effects of the action,” and, further, led the agency to propose a mitigation approach that would require those doing projects to not only pay the cost of their impact but for the *costs of cumulative and historical impacts to endangered/threatened fisheries and habitat over time*.

After NMTA, RBAW, Ports, and the Pacific Northwest Waterways Association raised major concerns with this new guidance, NMFS offered to work with stakeholders to develop a programmatic permit approach to addressing mitigation. In late 2018, with some 76 marina replacement and upgrade projects on hold due to the new guidance, we agreed to enter into this programmatic permit discussion. NMTA member Marine Floats and RBAW’s President, along with NMTA’s Vice President of Government Affairs and RBAW’s state lobbyist, were selected to enter into discussions with NMFS.

NMFS began this process by developing what it called a “mitigation calculator” to determine mitigation levels and costs by analyzing a series of specific impacts from marina projects. RBAW and NMTA raised early concerns that the mitigation calculator appeared to be imposing mitigation requirements and resulting costs several times higher than what marina projects were expected to finance in the past. This culminated in an early December meeting with the NMFS West Coast branch chief and her staff in Olympia, where we were given a further preview of the mitigation calculator and how it worked.

At that meeting, and in a subsequent Dec. 23, 2019 letter to NMFS, RBAW and NMTA representatives asked the agency to provide real-world costs – or at least cost ranges – for how the mitigation calculator would apply to actual projects that were on hold. NMFS never provided such detail, and, in fact, ultimately decided that it was no longer going to utilize the mitigation calculator to determine credits, instead deciding that those would be evaluated on a case-by-case basis.

In mid-July, we received a Draft Biological Opinion and “reasonable and prudent alternatives” document that would be applied to 39 batched-up marina projects and allow them to proceed during a

construction window running from July 15, 2020 to Feb. 15, 2021. The problem is that the Draft Biological Opinion and “reasonable and prudent alternatives” guidance would place the same cost-prohibitive conditions on marina projects as the prior NMFS guidance had.

We do not see any adjustments or any recognition of the benefits of replacing or upgrading marinas in this guidance, but rather the same exorbitant costs. Just to provide one example of what the guidance suggests, it would classify a removal or replacement of creosote piling not as an environmental *benefit*, but as a new mitigation *cost* that is imposed based on the historical impacts of the creosote pilings.

RBAW and NMTA are now left in a position where we allow marina projects to bear new and exorbitant costs, to contemplate legal action which we view as an absolute last resort, or to seek out a politically-driven compromise.

We are moving toward seeking out a politically-driven compromise that involves hiring a firm, Thompson Consulting Group, which has extensive experience on Endangered Species Act (ESA) issues and close relationships with key members of the Washington Congressional Delegation including U.S. Senator Maria Cantwell. We can't guarantee this will be successful, but Thompson Consulting Group has a strong track record and we feel contracting with them for a few months is a worthwhile proposition.

This gets to the details of our request to you. If you are a club that operates a marina or docks and will be seeking to upgrade or replace it in the future, the current NMFS guidance should be something that dramatically concerns you. We are choosing to fight for you, rather than just settle for a “fait accompli” where you pay whatever cost a federal agency decides to impose on you.

We are asking that you consider a commitment of \$2,500, \$1,000, \$500, \$250, or \$100 toward the joint effort to bring in the Thompson Consulting Group to help us for a few months. And, we are making our own commitment to match your efforts. At its Sept. 10 meeting, the RBAW Board decided that whatever our clubs do, we will match them dollar for dollar – up to \$2,500 in matching funds toward an overall \$5,000 contribution. We already know that NMTA, and the Tacoma-based firm Marine Floats, are working to get to this same amount in commitments.

Again, we fully recognize this is not a “business as usual” request on our part. We ask for your commitment because we believe this is a very serious matter, involving an existential threat to our ability to maintain and upgrade the marinas we operate and depend upon.

Please consider our request and making a financial commitment to help, and if you could, let us know by mid-October if you are able to contribute. To let us know where your Club stands on contributing, or if you have questions, contact us: RBAW President Bob Wise (408-218-4900; [bobwise98110@gmail.com](mailto:bobwise98110@gmail.com)); or RBAW state lobbyist Doug Levy (425-922-3999; [Doug@Outcomesbylevy.onmicrosoft.com](mailto:Doug@Outcomesbylevy.onmicrosoft.com)).

Thank you for your time and attention to this matter.



**Steve Finney**  
VP, Gov. Affairs



**Bob Wise**  
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