



Oregon

Kate Brown., Governor

APPENDIX 8.I.

Department of Fish and Wildlife

Wildlife Division

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February 4, 2020

Heather Wade, Coastal Policy Specialist
Oregon Coastal Management Program
Oregon Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540



RE: Jordan Cove Energy Project/Pacific Connector Gas Pipeline, US Army Corps Federal Permit No. NWP-2017-41, FERC Docket Nos.: CP17-495-000 and CP17-494-000

Dear Ms. Wade,

Per the Department of Land Conservation and Development (DLCD) Oregon Coastal Management Program's (OCMP) request, the Oregon Department of Fish and Wildlife (ODFW) provides the following Enforceable Policy consistency review of the Jordan Cove Energy Project/Pacific Connector Gas Pipeline (JCEP/PCGP projects).

It is the mission of ODFW to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. In accordance with the State of Oregon Wildlife Policy (ORS 496.012), ODFW reviews development actions and makes recommendations to state and federal regulatory agencies for the avoidance, minimization, and mitigation of impacts to fish, wildlife, and their habitats (OAR 635-415). ODFW also serves as an OCMP partner. In this role, ODFW provides technical assistance to the OCMP as part of their federal consistency review process.

ODFW staff evaluated the federal actions proposed by the Federal Energy Regulatory Commission (FERC; Docket Nos. CP17-494-000 and CP17-495-000) and the US Army Corps of Engineers (Permit No. NWP-2017-41) for their consistency with the fish and wildlife statutes and rules included in the JCEP/PCGP Enforceable Policy list (last updated August 1, 2019; retrieved from the DLCD website).

In short, ODFW does not find the current proposals for the JCEP/PCGP projects to be consistent with all of the OCMP fish and wildlife Enforceable Policies. The primary issues have to do with incomplete fish passage plans (ORS 509.580-.910 and OAR 635-412), and inadequate avoidance, minimization, and mitigation of impacts to fish and wildlife habitat to ensure consistency with the State Wildlife Policy (ORS 496.012 and OAR 635-415).

A status summary of the fish and wildlife Enforceable Policies is provided in the attached table.

For a more complete, detailed analysis of the outstanding issues, ODFW refers OCMP to our most recent comment letters to various federal and state permitting agencies:

1. ODFW Supplemental Comments on FERC's Jordan Cove Energy Project and Pacific Connector Gas Pipeline Project Final Environmental Impact Statement (Docket # CP17-494-000 and CP17-495-000) to be submitted to FERC by February 7, 2020 (copy attached to this letter).
2. Oregon State Agency Comments on FERC's Jordan Cove Energy and Pacific Connector Gas Pipeline Project Final Environmental Impact Statement (Docket # CP17-494-000 and CP17-495-000) dated December 23, 2019.
3. Oregon State Agency Comments on FERC's Draft Environmental Impact Statement for Docket Nos. CP-17-494-000 and CP17-495-000 dated July 3, 2019.
4. ODFW Protest of the United States Forest Service's Proposed Forest Plan Amendments (#28132) to the Umpqua, Rogue River-Siskiyou, and Fremont-Winema National Forests Jordan Cove Natural Gas Liquefaction Terminal and Pacific Connector Gas Pipeline Projects dated January 6, 2020.
5. ODFW Protest of the Bureau of Land Management Proposed Resource Management Plan Amendments: Jordan Cove Natural Gas Liquefaction Terminal and Pacific Connector Gas Pipeline Plan (DOI-ORWA-M000-2017-0007-EIS) dated December 20, 2019.
6. ODFW Letter to Oregon Department of State Lands Regarding Jordan Cove Energy Project Removal-Fill Application #APP0060697 Revised, dated January 15, 2020.

ODFW Staff involved in the review of the Enforceable Policies included:

Sarah Reif, Energy Coordinator, Wildlife Division

Christopher Claire, Habitat Protection Biologist Charleston Field Office

Dr. Steven Rumrill, Shellfish Program Manager, Marine Resources Program, Newport

Greg Apke, Fish Passage Program Leader, Fish Division

Danette Faucera, Water Policy Coordinator, Fish Division

Jon Germond, Habitat Resources Program Manager, Wildlife Division

Martin Nugent, Threatened and Endangered Species Coordinator, Wildlife Division

Rod Kraemer, Forest Practices Liaison, Wildlife Division

Various District Fish and Wildlife Biologists.

Thank you for the opportunity to provide technical assistance, and your attention to Oregon's fish and wildlife resources. Should OCMP have any questions or require additional information, please contact sarah.j.reif@state.or.us or 503-947-6082.

Sincerely



Sarah Reif
Energy Coordinator

Status Summary of JCEP/PCGP Enforceable Policies specific to Fish and Wildlife Resource Protection in the CZMA, as of February 3, 2020

Permit/Issue	Enforceable Policy	Status	
		Issue	Document/Page Reference *
Avoidance, minimization, and mitigation for impacts to fish and wildlife habitat	ORS 496.012 ORS 506.109	ODFW uses the Fish and Wildlife Habitat Mitigation Policy (OAR 635-415), in part, to determine consistency with the State of Oregon’s Wildlife Policy (496.012; see also 506.109). Due to the following insufficiencies (described in fuller detail in ODFW comment letters), ODFW does not find the JCEP/PCGP projects consistent with ORS 496.012 in the following areas:	
		Impacts to Category 1 habitats for marbled murrelet and northern spotted owl	1 – pages 24-30 2 – page 2 3 – pages 79-80 4 – pages 8-21 5 – pages 6-20
		Insufficient compensatory mitigation plans for impacts to Category 2 habitat for marbled murrelet and northern spotted owl	1 – pages 31-33 3 – pages 79-80 4 – pages 8-21 5 – pages 6-20
		Insufficient risk assessment and contingency planning for eelgrass mitigation	1 – pages 10-13 3 – page 71-72; pages 84-85 6 – pages 9-14
		Insufficient risk assessment and contingency planning for Horizontal Directional Drilling	1 – pages 22-24 3 – pages 107-109 6 – pages 4-6
		Underestimated impacts to shellfish, benthic communities, and estuarine habitats associated with dredging for the terminal and navigation channel	1 – pages 5-14 3 – pages 66-74 6 – pages 7-14
		No long-term stewardship plan (demonstration of durability) for the Kentucky mitigation site	1 – pages 14-16 3 – pages 82-84 6 – page 15
		Net loss of upland habitat impacted by the JCEP terminal	1 – page 16-19 3 – pages 74-75
		Underestimated impacts to stream and riparian resources, net loss of riparian habitat with insufficient plans for large woody debris	1 – pages 33-36 3 – pages 77-79; pages 106-120; pages 124-128 4 – pages 21-37 5 – pages 20-36

			6 – page 16
		Compensatory Wetland Mitigation Plan does not address temporal loss of wetland habitats during post-construction rehabilitation	6 – page 16
		Lack of a habitat mitigation plan for upland habitat impacts in juniper woodland, shrub-steppe, and oak woodland habitats	1 – pages 32 – 33 3 – pages 80-81; pages 89-90 4 – page 15-16 5 – page 14-15
		Out-of-kind and out-of-proximity mitigation proposed on USFS and BLM lands	4 – pages 15-37 5 – pages 14 - 36
		Inappropriate/insufficient plans for ensuring instream flow is maintained for aquatic life during hydrostatic testing and dust abatement	1 – pages 20-22 3 – pages 118-124
		In-water work windows have not been agreed upon, the applicant has indicated a desire to work outside IWWW in some areas	1 – pages 22-24 6 – pages 3-4
Provision of upstream and downstream passage for native, migratory fish	ORS 509.580-.910	<p>ODFW has received sufficient information for the Kentuck and APCO mitigation actions within the CZMA. These actions include the East Bay Drive Bridge, Golf Course Lane Culvert, Kentuck Tide Gate, Kentuck Creek Restoration, and the APCO Bridge. ODFW is working on final fish passage authorizations for these restoration actions.</p> <p>The following CZMA fish passage plan items for the pipeline and road crossings need to be updated and re-submitted to ODFW for final review and determinations:</p> <ol style="list-style-type: none"> a. Updated Appendix 3 of the applicant’s fish passage application (Horizontal Directional Drill Plans – CZMA) to understand current drilling strategies, potential impacts, and appropriate In-Water Work Windows, and b. Updated Appendix 6 of the applicant’s fish passage application (Stream 	1 – pages 2-3 2 – page 2 3 – pages 90-92 6 – page 2

		<p>Crossing Risk Assessment - CZMA) – Stream Restoration actions. This information is critical in the development of site specific stream crossing restoration plans.</p> <p>Until this information is provided and determined to meet applicable criteria, ODFW cannot find this project consistent fish passage statutes.</p>	
Fish screening	ORS 498.301, 498.302, 498.321	Project plans appear to be consistent with this Enforceable Policy.	ODFW has not commented on this directly in the referenced letters, but a review of the FEIS and supporting documents found the proposals consistent with National Marine Fisheries Service and ODFW criteria, and will be reviewed as part of Fish Passage approvals.
In-water blasting	ORS 509.140	The applicant has stated to ODFW, and the FERC Final Environmental Impact Statement states, that in-water blasting will not occur within the CZMA.	N/A

* ODFW letters are referenced in the above table using the following number scheme: (example: ‘1 – pg 34’ means Document 1 – Page 34)

1. ODFW Supplemental Comments on FERC’s Jordan Cove Energy Project and Pacific Connector Gas Pipeline Project Final Environmental Impact Statement (Docket # CP17-494-000 and CP17-495-000) to be submitted to FERC by February 7, 2020.
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