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July 9, 2019

Drs. Jack Barth and Caren Braby, Co-Chairs
Oregon Council on Ocean Acidification and Hypoxia
Oregon Department of Fish and Wildlife, Marine Resource Program
2040 Marine Science Drive
Newport, OR 97365

RE: Oregon Ocean Acidification and Hypoxia Action Plan

Dear Drs. Barth and Braby, and Council Members and Staff,

Thank you for the opportunity to offer public comment on the draft Oregon Ocean Acidification and Hypoxia (OAH) Action Plan. We appreciate Oregon's leadership in addressing this direct threat to the health of our marine ecosystem and the coastal communities that depend upon it. The recently released draft OAH Action Plan lays out a set of discrete actions that, if properly implemented, can help the state adapt to and mitigate the impacts of OAH, while building resilience for coastal communities.

The Pew Charitable Trusts' main interest relative to OAH is to promote and maintain healthy marine ecosystems. While Oregon's nearshore marine and estuarine ecosystems are directly threatened by OAH, they also provide opportunities to ameliorate and build resilience to the adverse impacts of OAH. In particular, protecting and restoring submerged aquatic vegetation (SAV) such as eelgrass has the potential to both combat the impacts of ocean acidification, while at the same time ensuring that our nearshore and estuarine environments continue to provide the ecosystem services that drive healthy coastal communities.[1]

While we support the state in its efforts to undertake all five priority actions described in the draft plan, in this letter we offer specific comments on priority actions 3 and 5 related to promoting ecosystem adaptation and resilience, and mobilizing those state agencies with the appropriate regulatory jurisdiction. **Specifically, we ask that the state of Oregon ensure that its action plan goes beyond identifying "strategies to maintain SAV in Oregon's estuaries,"[2] to also include developing and enacting policies and regulatory actions that protect and restore SAV such as eelgrass.**

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[1] Nielsen, K., Stachowicz, J., Carter, H., Boyer, K., Bracken, M., Chan, F., Chavez, F., Hovel, K., Kent, M., Nickols, K., Ruesink, J., Tyburczy, J., and Wheeler, S. *Emerging understanding of the potential role of seagrass and kelp as an ocean acidification management tool in California.* California Ocean Science Trust, Oakland, California, USA. January 2018.

[2] Oregon Governor's Natural Resource Office. Oregon's Ocean Acidification and Hypoxia Action Plan. August 2019. URL: https://www.oregonocean.info/index.php/ocean-acidification Page 3

Below we discuss our recommendations in further detail, and provide examples of how the state can take the critical step from identifying strategies, to implementing actions that protect Oregon's coastal ecosystems.

Priority Action #3 – Create Resilience

This priority action seeks to promote adaptation and resilience to OAH in management decisions. As part of this vision, the Action Plan directs state agencies to "identify strategies to maintain sustainable native shellfish stocks and SAV in Oregon's estuaries and nearshore waters," and proposes a grant program to help identify how to restore and protect "SAV and native shellfish that provide ecosystem services."[3] We support the state of Oregon undertaking the steps included in Priority Action #3, but believe that there must be a further commitment to actually implementing identified strategies and enacting policies that protect and restore these highly productive habitats that are so crucial to ensuring ecosystem resilience along Oregon's Coast.

There are multiple regulatory pathways and policy options that the state could pursue to better ensure the protection and restoration of SAV in Oregon's estuaries and nearshore waters. For example, the Oregon Department of State Lands' (DSL) removal/fill permitting process could be revised to better ensure that adverse impacts to eelgrass are mitigated according to the best available science and restoration practices. Currently, Oregon's Removal/Fill Guide includes a section describing the conditions best suitable for eelgrass mitigation, but does not include clear and rigorous standards for the design of compensatory mitigation plans that will achieve full replacement of ecosystem services and function.[4]

In addition to developing robust science-based mitigation standards for eelgrass, the state could also direct local jurisdictions to update the 22 estuary management plans that constitute the regulatory framework for managing estuaries on the Oregon coast.[5] Updating the state's estuary management plans with the latest data on SAV presence/absence, abundance, and distribution would better enable state and local governments to protect and conserve existing SAV resources. Having updated data on SAV can also help inform restoration and compensatory mitigation efforts in the future, such as establishing eelgrass acreage goals for each estuary and/or cumulatively across the coast. Up-to-date data and monitoring of eelgrass could also inform designation within estuaries of SAV protected areas, buffer zones, and other spatial management tools intended to protect eelgrass, ameliorate the localized impacts of OAH, and help build resilience for Oregon coastal communities and ecosystems.

[3] *Ibid.* Page 16
[4] Oregon Department of State Lands. *A Guide to the Removal/Fill Permit Process.* April 2019. Page 17
[5] Oregon Department of Land Conservation and Development. *Assessment of Oregon's Regulatory Framework for Managing Estuaries.* March 2014

Priority Action # 5 – Build Sustained Support

This priority action directs relevant governmental agencies to develop "clear, defined goals to address projected ecosystem and economic impacts from OAH." As part of this effort, priority action #5 calls for the Governor to issue a policy directing relevant state agencies to "consider work they are doing and their plans to address OAH priorities..."[6] We support the vision for undertaking this action and feel it is a necessary step towards achieving the goal of resilience as explicated in Priority Action # 3. However, the ultimate success of the OAH Action Plan will require that those activities - regulatory and otherwise - described in earlier priority actions are implemented; in particular those activities intended to build resilience for coastal communities and ecosystems.

Building sustained support for those state agencies that have a role in protecting and restoring SAV will be critical to the OAH Action Plan's goal of building resilience. Developing strong partnerships with relevant federal agencies can also help create efficiencies and build capacity at the state level for protecting critical habitat such as SAV. For example, the state of California's natural resource agencies have partnered with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) to develop the California Eelgrass Mitigation Policy (CEMP). This policy affords protection to eelgrass through state and federal agencies permitting processes by developing science-based standards for avoiding, minimizing, and mitigating adverse impacts resulting from activities conducted in California's coastal zone. In doing so, the CEMP provides clarity and consistency to coastal managers, communities, and developers on how proposed activities must achieve "no net loss of eelgrass habitat function in California.[7]"

Additionally, as a participant in the National Coastal Zone Management Program, the state of Oregon can ensure that any federal action that may have an impact on its coastal zone, is consistent with the state's coastal management program (OCMP). Specifically, the OCMP incorporates all of Oregon's enforceable policies (i.e. regulations) relative to coastal resources; and federally permitted activities (i.e. dredging, oil/gas exploration, energy facility siting, clean water act compliance, etc.) are required to adhere to those enforceable policies. With respect to the OAH Action Plan, we encourage to the state to assess the current regulatory landscape for protection of SAV, and work to ensure that not only do state-level regulations promote the protection and restoration of SAV, but that regulations are incorporated into the OCMP to ensure those protections extend to federal activities as well.

[6] Oregon Governor's Natural Resource Office. Oregon's Ocean Acidification and Hypoxia Action Plan. August 2019. URL: https://www.oregonocean.info/index.php/ocean-acidification Page 20

[7] NOAA Fisheries. West Coast Region. *California Eelgrass Mitigation Policy and Implementing Guidelines.* October 2014

Conclusion

As stated in a recent report by the California Ocean Protection Council and Ocean Science Trust:

> *"Investing in the protection and restoration of SAV is a 'no regrets' coastal management strategy for maintaining functional, resilient ecosystems in the face of OA and other stressors."*[8]

We wholeheartedly concur with this finding. Oregon's OAH action plan, if properly implemented, has the potential to greatly enhance resilience on Oregon's coast, for both the marine ecosystem and the communities that depend upon it. In particular, advancing protections and restoration efforts for SAV such as eelgrass can help Oregon adapt to and reduce the impacts of OA, while also expanding provision of the many other ecosystem services derived from SAV. Among other things, these habitats provide nursery and foraging ground for commercially and recreationally valuable species, buffer against storms and floods, and help improve water quality and clarity. As Oregon proceeds with adoption and implementation of the OAH Action Plan, it should seek to advance protection and restoration of SAV as a tool to help ensure resilience and adaption to ocean acidification.

Thank you in advance for your consideration of these comments. We greatly appreciate the work of the Council and Action Plan Working Group, and look forward to participating in the statewide discussion of how best to address OAH.

Sincerely,

Steve Marx
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[8] Nielsen, K., Stachowicz, J., Carter, H., Boyer, K., Bracken, M., Chan, F., Chavez, F., Hovel, K., Kent, M., Nickols, K., Ruesink, J., Tyburczy, J., and Wheeler, S. *Emerging understanding of the potential role of seagrass and kelp as an ocean acidification management tool in California.* California Ocean Science Trust, Oakland, California, USA. January 2018. Page iv