

# NORTHWEST DEFENSE

The Newsletter of the Northwest  
Environmental Defense Center

WINTER 2024

*Photo: Karen Russell*

## NEDC SECURES IMPORTANT NEW PROTECTIONS FOR ROSS ISLAND LAGOON

We are thrilled to announce that an NEDC lawsuit has resulted in significant new protections for the Willamette River's Ross Island lagoon, a critically important location for fish, wildlife, and recreation in the heart of Portland.

In October, NEDC finalized a Settlement Agreement with the Oregon Department of Environmental Quality, after NEDC challenged a 2022 Clean Water Act Certification issued to Ross Island Sand and Gravel Co. ("RISG"). From 1926-2001, RISG mined the Ross Island lagoon, significantly altering the island and lagoon habitat. Since 1979 RISG has been required to perform restoration activities at the site, including the re-creation of upland forest, wetlands, and shallow water habitat. Reclamation progress has slowed in recent years; in the meantime, water quality in the lagoon is deteriorating and has become dangerous for salmon, steelhead, and other sensitive aquatic species. The primary driver of these risks for aquatic species is a Harmful

Algal Bloom (HAB), that has unfortunately been occurring more frequently in the lagoon in summertime due to warm temperatures, nitrogen, and little to no water circulation.

Because the reclamation activities involve depositing large amounts of fill material in the Willamette River, RISG must obtain a Clean Water Act permit from the U.S. Army Corps of Engineers to perform the work. A necessary component of that permitting process is obtaining a Certification from Oregon DEQ (known as a "§ 401 Certification") that the RISG operations will comply with all applicable state water quality standards.

In early 2023, NEDC challenged RISG's § 401 Certification, arguing that it must include more robust conditions to ensure reclamation activities do not further degrade water quality in the lagoon. In the lawsuit, NEDC pointed to sev-

*(Continued on page 2)*

### IN THIS ISSUE:

From the NEDC Staff ..... Pg 2  
Protecting Tillamook Bay..... Pg 3  
Challenge Permit for Controversial Warehouse ..... Pg 4  
Protecting Oregon Floodplains..... Pg 5

Efforts to Protect the Upper Rogue River ..... Pg 5  
Student Project Highlights.....Pg 6-7  
NEDC Community .....Pg 8  
Support NEDC Today! ..... Pg 8



*(NEDC Secures Important New Protections for Ross Island Lagoon...Continued from page 1)*

eral water quality parameters that are affected by reclamation activities, including dangerously high temperatures, increased turbidity, and the presence of Harmful Algal Blooms.

We are now proud to report that NEDC's settlement with DEQ has resulted in crucial new protections for water quality and threatened species in Ross Island lagoon. Per the terms of the settlement, DEQ has issued a new §401 Certification, requiring RISG to undertake additional sampling for multiple key pollutants both within the lagoon and downstream in the Willamette River. RISG will also have to take immediate action whenever this sampling indicates reclamation activities are harming water quality. Perhaps most notable are the new Certification's requirements in response to HABs: each time a HAB is found to have formed in the lagoon, RISG must install a silt curtain at the opening of the lagoon and mechanically skim the algal bloom from the surface until the HAB is no longer present.



*A Harmful Algal Bloom in Ross Island Lagoon. Photo: Human Access Project*

In short, this new certification should lead to real improvements in water quality in downtown Portland and in the Willamette River downstream. This is great news for threatened salmon, steelhead, and wildlife in the heart of the city, and for the Portland community, which deserves a Willamette River free of summertime algal blooms.

NEDC has been represented in this case pro bono by the Law Office of Karl G. Anuta, and by NEDC Staff Attorney Mary Stites.



*Pictured left to right: Staff Attorney Mary Stites, Bookkeeper Karen Russell, Law Clerk Grayson Murray, Executive Director Jonah Sandford*

## FROM THE NEDC STAFF

Greetings! As we enter a new year and a new Presidential administration, we are more focused than ever at protecting and restoring this incredible corner of the world. This year we'll be fighting to secure new protections for the Pacific Northwest's air, water, species, and communities—and pushing back hard against any efforts to weaken regional environmental regulations.

As always, none of the work you read about in these pages would be possible without your support. We are so grateful for the generosity and passion of the public interest community here in the Pacific Northwest, and we're proud to work alongside the region's finest advocates to help preserve this remarkable place. We'll see you in 2025!

--Jonah, Mary, Grayson, and Karen



# PROTECTING TILLAMOOK BAY FROM LARGE-SCALE OYSTER HARVESTING

Native eelgrass beds serve a critical role in healthy estuary ecosystems here in the Pacific Northwest. This aquatic plant provides nursery and refuge functions for several fish and shellfish species, including threatened salmon and steelhead. Eelgrass beds also provide a buffer against ocean acidification, and help sequester carbon, cycle important nutrients, and stabilize sediments. The Oregon Department of Fish and Wildlife has identified eelgrass as a “species of greatest conservation need.”



*Clumps of uprooted eelgrass on Cape Meares Beach, near Tillamook Bay.  
Photo: Scott Gordon*

In Oregon’s Tillamook Bay, this essential component of the ecosystem is at risk. For years, Pacific Seafood—one of the largest seafood suppliers in the United States—has used a destructive mechanical process for cultivating and harvesting oysters on nearly 1,500 acres of the bay. This involves dragging a large harrow behind a boat through the Tillamook Bay substrate, over and over again—first to ensure the oysters don’t sink into the mud, and then to harvest the oysters when they are ready. This process damages and destroys beds of native eelgrass by ripping eelgrass out of the sediment, and also scrapes large amounts of that sediment from the floor of the Bay—leading to increased turbidity as the dredging vessel moves through the water.

This mechanical dredging is threatening Tillamook Bay’s diverse aquatic life—long a crucial part of the local economy. It’s also damaging the livelihoods of local fishing guides, who now regularly experience tangled fishing lines and clogged boat motors from the eelgrass mats excavated by Pacific Seafood’s operations.

Remarkably, to this point Pacific Seafood has avoided environmental regulation for its destructive mechanical harvesting activities, in large part by strategically purchasing older “legacy lease” sites that were originally issued decades ago, before many modern environmental restrictions were in place.

NEDC is now focused on protecting Tillamook Bay by putting an end to these unregulated, harmful operations. In October, NEDC and our partners at the Northwest Guides and Anglers Association sent Pacific Seafoods a 60-day Notice of Intent to Sue Letter, alleging that Pacific Seafood is violating the Clean Water Act by failing to obtain a necessary permit. Section 404 of the

*(Continued on page 4)*

## Attorney Board Members

Amy van Saun  
*President*

Jesse Buss  
*Vice President*

Hannah Clements Goldblatt  
*Secretary*

Emma Bruden  
*Treasurer*

Karl Anuta

Peggy Hennessy

Carra Sahler

Jamie Saul

Ryan Shannon

Michelle Smith

Teryn Yazdani

## Student Board Members

Ian Connolly

Tory Dille

Megan A. Flaherty

Hayden Wyatt

## Staff

Jonah Sandford  
*Executive Director*

Mary Stites  
*Staff Attorney*

Grayson Murray  
*Law Clerk*

Karen Russell  
*Bookkeeper*

## Contact NEDC

10101 S. Terwilliger Blvd.

Portland, OR 97219

[nedc@lclark.edu](mailto:nedc@lclark.edu)

503.768.6673

[www.nedc.org](http://www.nedc.org)

# NEDC CHALLENGES BUILDING PERMIT FOR CONTROVERSIAL PORTLAND FREIGHT WAREHOUSE

NEDC and our partners at Crag Law Center, 1000 Friends of Oregon, and Neighbors for Clean Air have challenged a controversial building permit for a proposed ProLogis freight warehouse in northeast Portland. The site at issue abuts apartment buildings and is within walking and rolling distance of multiple schools, including Parkrose High School, Parkrose Middle School, and Shaver Elementary School. The City of Portland has authorized construction of a facility that would introduce dozens of freight trucks into the residential area, adding approximately 1,600 daily trips along existing high-crash corridors. The new permit was issued despite intense opposition from the local community, who has argued the increased truck traffic and associated diesel pollution would exacerbate existing air quality, traffic, public safety, and quality of life concerns in the underserved Parkrose and Argay Terrace neighborhoods.

In December 2023, NEDC and partners challenged the building permit at the Land Use Board of Appeals (“LUBA”), arguing that the permit was issued without a required analysis of off-site impacts, including noise and odor. Our coalition won an important early victory, persuading LUBA that the building permit was within its jurisdiction to review. Then after extensive motions practice this summer, LUBA effectively reversed its earlier decision, determining it did not in fact have jurisdiction—ultimately leaving the question of compliance with off-site impacts unanswered. Our coalition has now sought review before the Oregon Court of Appeals.



Photo: George Steene

This legal challenge follows two years of attempts to work in good faith with the City of Portland to ensure the site is developed in a manner that protects public health and safety, and can cultivate wealth-generating opportunities for the Parkrose and Argay Terrace communities. In approving this massive new freight warehouse, the City has failed to follow its environmental justice and equity goals articulated in the City Code and Comprehensive Plan. It is essential that the City begin applying policies that are designed to protect overburdened, frontline communities from the impacts of industrial development.

## *Protecting Tillamook Bay from Large-Scale Oyster Harvesting...Continued from page 3)*

CWA requires a permit for any activity that results in the discharge of dredged material to U.S. waters. Pacific Seafoods’ mechanical oyster cultivation activities clearly require such a permit: its vessels and equipment scrape sediment, biological material like eelgrass, and other dredged material from the Bay floor, and then discharge or redeposit it to the water column and nearshore waters of the Pacific Ocean. But after nearly two decades of these activities, Pacific Seafood has failed to even apply for a Section 404 Permit to authorize its extensive dredging operations.

This year, we will be working diligently to ensure that Pacific Seafood is adequately regulated under the Clean Water Act. It is essential that any oyster cultivation activities in Tillamook Bay are done in a manner that protects native eelgrass and the rest of this sensitive estuary ecosystem—along with the people that work and recreate there.

NEDC is represented in this case by Jamie Saul of the Wild and Scenic Law Center. Keep an eye on our website for updates on this important case!



## PROTECTING OREGON FLOODPLAINS FROM HARMFUL DEVELOPMENT

On October 15, NEDC and our partners submitted our final brief in a critical lawsuit to protect threatened salmon, steelhead, and orcas from irresponsible development in Oregon's floodplains. The case revolves around FEMA's National Flood Insurance Program ("NFIP"), which provides taxpayer-subsidized flood insurance for structures in high-hazard, flood-prone areas. Over the years, this program has increased the development of floodplains, destroying valuable habitat for endangered species and putting people in harm's way.

In 2016, a National Marine Fisheries Service Biological Opinion concluded that FEMA's implementation of the NFIP—including its poor floodplain management and incentivization of floodplain development—jeopardized the survival and recovery of sixteen salmonid species, the southern eulachon, and the salmonid-dependent Southern Resident orca. NMFS recommended several changes to the NFIP to protect



Photo: Conrad Gowell, Native Fish Society

these species and comply with the Endangered Species Act.

Unfortunately, FEMA has failed to make these required changes and has continued to put these iconic species at risk. In the present lawsuit, NEDC and our allies seek to ensure that FEMA complies with the Endangered Species Act, and no longer incentivizes development that harms floodplain ecosystems and exposes communities to severe flooding events. Oral argument is scheduled for this spring.

## NEDC LAWSUIT FUNDS EFFORTS TO PROTECT THE UPPER ROGUE RIVER

In recent years, a central focus of NEDC's litigation efforts has been protecting Pacific Northwest waters from stormwater pollution at industrial facilities. NEDC routinely brings several Clean Water Act "citizen suits" each year against polluting facilities. Over the last two decades, these efforts have resulted in significant upgrades in stormwater treatment systems across the region, and reduced pollution in sensitive waterways. And importantly, "Supplemental Environmental Project" ("SEP") payments from these cases have directed millions of dollars in funding to regional nonprofits to improve water quality and restore degraded habitat.

This year, an NEDC stormwater enforcement action is funding efforts to protect the upper Rogue River—an iconic southern Oregon river known for its wild native fish, whitewater rafting, and rugged scenery. The Native Fish Society is using SEP funds from an NEDC settlement agreement to lead a coalition advocating for restrictions on the use of commercial jet boats in the upper Rogue. These boats lead to bank erosion, increased turbidity, and significant impacts to threatened wild salmon and steelhead—not to mention noise and safety issues for other river users. "Thanks to the support from NEDC, we have been able to commit significant staff resources to engage with volunteers and stakeholders directly impacted by current commercial jetboat use of the upper Rogue River," said NFS' Executive Director Mark Sherwood. "It's our collective effort focused on key decision makers that can safeguard critical habitats for native fish and ensure public safety." NEDC is thrilled to support this important work through our Clean Water Act litigation.



A commercial jetboat on the upper Rogue River. Photo: Native Fish Society



## STUDENT PROJECT HIGHLIGHTS

From our Lewis & Clark Law School offices, a central part of NEDC's mission is to provide training, mentorship, and attorney supervision to the next generation of environmental advocates. Our student work for the 2023-24 academic year has gotten off to a great start—here are a few highlights.

### ENVIRONMENTAL JUSTICE

#### *VINYL CHLORIDE RULEMAKING*

This fall, the Environmental Justice group submitted comments supporting the EPA's proposed high-priority substance designation for vinyl chloride under the Toxic Substances Control Act ("TSCA"). These comments focused on addressing the disproportionate impact of vinyl chloride on low-income communities and communities of color, who face significant health risks due to proximity to petrochemical plants, transportation routes, and disposal sites. The EJ team advocated for stronger regulations and more stringent safety measures around vinyl chloride, emphasizing the need for EPA to engage directly with impacted communities, use public health data to inform decision-making, and ensure transparency in the regulatory process. Through this work, NEDC's goal is to amplify vulnerable voices and promote regulatory changes that protect all communities from hazardous pollutants.

### PUBLIC LANDS AND WILDLIFE

#### *SOLAR SITING RESEARCH*

In 2023, the Oregon Land Conservation and Development Commission directed the Department of Land Conservation and Development to begin rulemaking to implement several sections of House Bill 3409—a new and significant effort to address energy use and climate change in Oregon's built environment. NEDC students compiled a summary of key sections of the bill related to siting of solar generating facilities, including how Oregon's administrative rules will be modified to accommodate HB 3409. This work will provide NEDC and allied organizations an important reference guide as we prepare to engage with the rulemaking process.

### CLEAN AIR AND CLIMATE

#### *CLIMATE PROTECTION PROGRAM COMMENTS*

This fall, the Clean Air and Climate Group submitted comments to the Oregon Department of Environmental Quality regarding the Climate Protection Program ("CPP") 2024 rulemaking. The CPP's goal is to reduce Oregon's greenhouse gas emissions by 90% by



Photo: Grayson Murray

2050. NEDC students advocated for the 2024 CPP to be implemented expeditiously as written, and to be accompanied by stronger enforcement strategies.

In supporting the 2024 CPP as originally designed, the Clean Air and Climate Group emphasized the importance of maintaining two clear compliance pathways for industries: either reducing total emissions or purchasing Community Climate Investment Credits ("CCIs"). Alternative proposed compliance tools could complicate the system and delay actual emissions reductions. By enacting the CPP swiftly and avoiding further delays, Oregon can reduce emissions, spur clean energy innovation, and protect its economy from the mounting costs of climate change. Finally, NEDC students pushed for enhanced citizen reporting and facility emissions transparency, to provide regulators and citizens with additional compliance enforcement options.



## FOOD AND AGRICULTURE

### CAFO PERMITTING

The Food & Agriculture Group submitted comments this fall on a proposed Clean Water Act NPDES permit for J-S Ranch, a confined animal feeding operation (“CAFO”) just southeast of Salem. Elements of the permit were strong on paper, including a requirement that zero discharges escape the facility. However, due to the CAFO’s close proximity to the Santiam River—which is designated critical habitat for Chinook salmon and steelhead—NEDC students advocated for more stringent monitoring requirements. As a result of these and other comments, the Oregon Department of Agriculture responded by requiring J-S Ranch to engage in more frequent monitoring.

This project is connected to an earlier Food & Agriculture Group victory. In 2009, when the same CAFO was seeking coverage under Oregon’s CAFO general permit, NEDC’s comments contributed to ODA’s decision to require J-S Ranch to instead seek an individual permit. Had the facility obtained coverage under the general permit, the comparatively weak protections would have potentially jeopardized nearby water resources.

## CLEAN WATER

### INDUSTRIAL STORMWATER PERMITTING

In November, the Clean Water Group submitted comments on Pacific Seafood’s application for coverage under Oregon’s Industrial Stormwater General Permit. This seafood processing facility is proposing to discharge pollutants to the Skipanon River in Warrenton, Oregon. NEDC students worked collaboratively to review Pacific Seafood’s proposed Stormwater Pollution Control Plan (“SWPCP”), to ensure it provided sufficient enforceable strategies to minimize pollution from the facility. Students identified several deficiencies in the SWPCP, including a failure to include raw fish materials as potential pollutants and several other missing and insufficient elements.

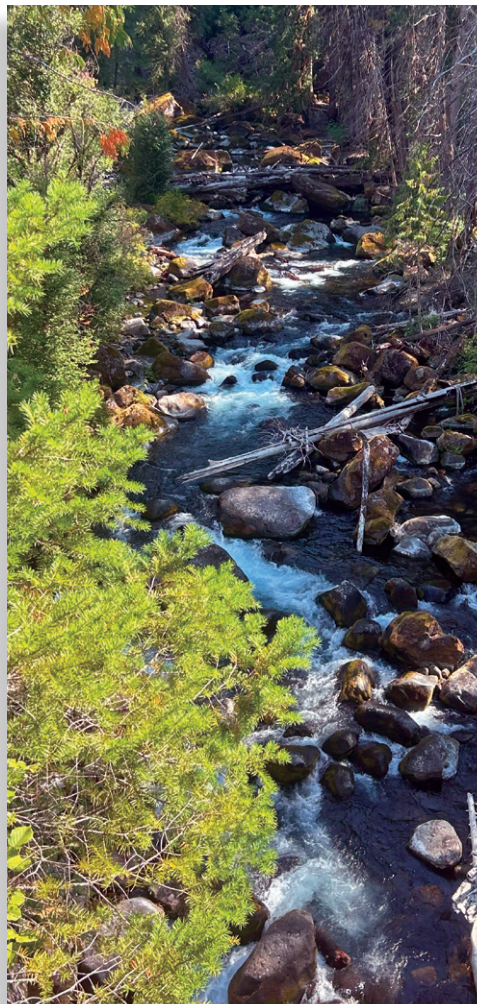


Photo: Grayson Murray

## NEDC 2024-25 STUDENT STAFF

### Student Directors

Maggie Baker

Juliette Liu

## PROJECT COORDINATORS

### Air & Climate

Tory Dille

Derek Lund

Hayden Wyatt

### Clean Water

Sara Brown

Will Currell

### Environmental Justice

Moriah Daniels

Antonia Langowski

### Food & Agriculture

James Cole

Cody Krato

Samuel Truesdale

### Public Lands & Wildlife

Ian Connolly

Shoshana Grossman

Victoria Reiners



## NEDC COMMUNITY

Thank you to everyone who helped us celebrate this year! Once again, events like NEDC's Pedal Pursuit and Westwind retreat were reminders of the incredible community around this organization. We can't wait to gather with you all in 2025—stay tuned for details on these and other upcoming events!



**PEDAL PURSUIT**  
MAY 2025



**WESTWIND**  
SEPTEMBER 12-14, 2025



## THANK YOU FOR YOUR SUPPORT!

NEDC can fight to protect the Pacific Northwest thanks to ongoing support of individuals like you. From protecting resources like the Willamette River, to ensuring clean air for all Oregonians, to mentoring the next generation of environmental advocates, your contributions help NEDC continue our mission.

## DONATE TO NEDC, AND GET A FREE T-SHIRT!

Donate *before* December 31, 2024, and we'll send you a very fashionable NEDC T-shirt! To qualify, either:

- Make a one-time donation of \$150 or more; or
- Become a monthly donor of \$10 or more.

That's it! We'll contact each qualifying donor about size and color preference.

**DONATE ONLINE AT**  
[WWW.NEDC.ORG/SUPPORT-NEDC](http://WWW.NEDC.ORG/SUPPORT-NEDC)