



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1201 NE Lloyd Boulevard, Suite 1100  
PORTLAND, OREGON 97232-1274  
October 8, 2010

**ELECTRONICALLY FILED**

The Honorable Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, D.C. 20426

Subject: National Marine Fisheries Service's Recommended Terms and Conditions and  
Preliminary Fishway Prescription for the Wells Hydroelectric Project, FERC Project No.  
2149

Dear Secretary Bose:

The National Marine Fisheries Service (NMFS) encloses for filing with the Federal Energy Regulatory Commission (FERC) its Recommended Terms and Conditions and Preliminary Fishway Prescriptions as contained in the 2004 Anadromous Fish Agreement and Habitat Conservation Plan for the captioned project. Our terms and conditions are consistent with the license application filed by the Douglas County Public Utility District (District).

NMFS does not object to the issuance of a new license for the Wells Hydroelectric Project, provided our comments, recommendations, terms and conditions, and prescriptions are incorporated into the new license. As described herein, NMFS reserves the right and opportunity to amend, modify or add to these recommendations, terms and conditions, and prescriptions, including Section 18 fishway prescriptions, if resource conditions change, Project plans are altered, or new information is developed. NMFS encourages the Commission and the District to continue consultation and coordination with us regarding means and measures to protect, mitigate the Project's effects, and enhance public trust fishery resources and associated environmental values. We also recommend that the Commission initiate formal consultation discussions with NMFS directly to jointly determine information needs to comply with Section 7 of the ESA on these relicensing actions.

NMFS recommends that the Commission determine that the proposed new license constitutes a major Federal action affecting the quality of the human environment and, consistent with the Commission's Notice dated August 10, 2010 (FERC No. 2149), prepare a draft and final Environmental Impact Statement (EIS) pursuant to the NEPA, 42, USC 4321 *et seq.*, and implementing regulations promulgated by the Council on Environmental Quality at 40 CFR Part 1500. NMFS further recommends that the draft EIS include the range of alternatives previously identified through the NEPA scoping process. We respectfully request that the Commission, in its draft EIS, analyze an alternative that fully incorporates, without material modification, the HCP set forth above.



Please contact Bryan Nordlund (360-534-9338), Steve Fransen (360-753-6038), or Christopher Fontecchio, NOAA General Counsel, (206-526-6153) if you have any questions regarding these recommended terms and conditions and prescriptions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Keith Kirkendall". The signature is fluid and cursive, with the first name "Keith" and last name "Kirkendall" clearly distinguishable.

Keith Kirkendall  
Branch Chief  
FERC & Water Diversions

Cc: Service List

**UNITED STATES OF AMERICA**  
**FEDERAL ENERGY REGULATORY COMMISSION**

Public Utility District No. 1 of	)	
Douglas County, Washington	)	Project No. 2149
Application for Major New License	)	Wells Hydroelectric Project

**NATIONAL MARINE FISHERIES SERVICE'S NOTICE OF INTERVENTION, COMMENTS,  
RECOMMENDED TERMS AND CONDITIONS, AND PRELIMINARY FISHWAY  
PRESCRIPTIONS**

**I. INTRODUCTION**

The U.S. Department of Commerce, National Marine Fisheries Service (NMFS) reviewed the application of the Public Utility District No. 1 of Douglas County (Douglas PUD) for relicensing of the Wells Hydroelectric Project (FERC No. P-2149). Pursuant to the notice issued by the Federal Energy Regulatory Commission (Commission) on August 10, 2010, NMFS submits the following notice of intervention and response to the application and applicant-prepared environmental assessment (APEA).

NMFS has statutory responsibility for the protection and enhancement of living marine resources, including anadromous fish and their supporting habitats, under the Endangered Species Act (ESA), 16 U.S.C. §1531 et seq., Magnuson Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. §1801 et seq., Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. §661 et seq., Reorganization Plan No. 4 of 1970, 84 Stat. 2090, and the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 et seq. The middle reach of the Columbia River supports a number of anadromous fish species under NMFS' jurisdiction. These species include ESA listed Upper Columbia River spring Chinook salmon

(*Oncorhynchus tshawytscha*) and Upper Columbia River steelhead (*O. mykiss*) as well as presently unlisted Upper Columbia River summer/fall Chinook salmon (*O. tsawytscha*), Okanogan River sockeye salmon (*O. nerka*), and coho salmon (*O. kisutch*).

NMFS hereby submits its Comments, Notice of Intervention, Preliminary Recommended Terms and Conditions, and Preliminary Fishway Prescriptions, in response to the Commission's Notice of Application and Applicant-Prepared EAs' (Environmental Assessment) Accepted for Filing, Soliciting Motions to Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions (Comment Notice), dated August 10, 2010. NMFS submits its recommended terms and conditions and preliminary fishway prescriptions pursuant to sections 10(j) and 18 of the Federal Power Act (FPA), 16 U.S.C. §791 et seq., and pursuant to its statutory responsibility for the protection and conservation of the anadromous fish species listed above.

## **II. SCHEDULE FOR FILING MODIFIED FISHWAY PRESCRIPTIONS AND RECOMMENDED CONDITIONS**

NMFS will submit modified Section 18 fishway prescriptions and recommended conditions, and will respond as needed to any comments received, within 60 days after the close of the Commission's draft NEPA (National Environmental Policy Act) document comment period, unless substantial new information is provided during the NEPA comment period that would require additional time for consideration.

## **III. PROJECT DESCRIPTION AND BACKGROUND**

On July 12, 1962, the Commission's predecessor, the Federal Power Commission (FPC), issued the existing 50-year Wells Project (Project) license. On February 2, 1965, the original license was amended to add three additional generating units to the powerhouse, increasing generation capacity from the original seven generating units. The second phase of construction was completed January 24, 1969.

The Wells Project is located on the middle reach of the Columbia River in Chelan and Douglas

Counties, Washington, at river mile (RM) 515.6, and approximately eight miles downstream of the city of Pateros, Washington. The current Project generally consists of the Wells Hydrocombine facility, including the powerhouse, spillway and its integrated downstream fish passage system, non-overflow embankment structures, upstream fish passage facilities, a fish hatchery, visitor facilities at the dam, recreational facilities on the Project reservoir, and waters and lands within the Project boundary. The hydrocombine is 1,130 feet long, 168 feet wide, has a top elevation of 795 feet above mean sea level, contains ten generating units with a maximum generating capacity of 840 megawatts, and eleven spillway structures. The reservoir is 29.5 miles long, and includes the confluences of the Methow and Okanogan Rivers.

In March 1979, in response to petitions from tribes and other entities, the Commission initiated a consolidated proceeding on juvenile fish protection for the Mid-Columbia hydroelectric projects, including the Wells Project. Under the Mid-Columbia Proceeding, Douglas PUD agreed to a series of interim settlement agreements that provided for spill, hatchery compensation, and studies to improve fish protection. The last interim settlement for the Project was signed on October 1, 1990.

In 1993, Douglas PUD and other parties to the Mid-Columbia Proceeding began discussing the possibility of developing a long-term, comprehensive program for managing fish and wildlife in the Mid-Columbia region. As a result, Douglas PUD, NMFS, the U.S. Fish and Wildlife Service, the Washington Department of Fish and Wildlife, and Confederated Tribes of the Colville Reservation negotiated and signed the Wells Anadromous Fish Agreement and Habitat Conservation Plan (HCP) in April of 2002, and submitted the HCP to the Commission on November 24, 2003. The Commission approved the HCP on June 21, 2004, and amended the current Project license accordingly. The HCP became effective on the date of the Commission's approval. NMFS expects that the HCP, in its entirety, will be a feature of any license application submitted by Douglas PUD, and the new Project license offered by the Commission.



#### **IV. AFFECTED FISH RESOURCES**

ESA-listed Upper Columbia River steelhead and spring Chinook salmon inhabit the middle reach of the Columbia River as well as unlisted Upper Columbia River summer/fall Chinook salmon, coho salmon and Okanogan River sockeye. These species are termed "Plan Species" in the Wells HCP. At the time of filing the HCP with the Commission, coho salmon were considered extirpated. However, ongoing efforts to reintroduce this species into the project area have been successful, and coho salmon mitigation actions are now being implemented via the HCP. The effects of the project on Permit Species (i.e. Plan species not including coho salmon) are fully described in NMFS' December 2002 Final Environmental Impact Statement and the August 12, 2003 and March 3, 2004, Biological Opinions issued for the Project. These documents were filed with the Commission by Douglas PUD as part of a license amendment process.

In brief, the principle continuing impacts of the Wells Project on these species are those relating to inundation (loss of summer/fall Chinook spawning areas; alteration of substrate; alteration of the aquatic community, especially the type and number of prey species; alteration of cover and shelter, altered riparian vegetation, safe juvenile migration through the reservoir) and the existence of the project (reduced survival of adult and juvenile migrants and increased TDG (Total Dissolved Gas) levels during forced spill events). The adult and juvenile survival standards contained in the HCP captures a great majority of these impacts relating to the existence and operation of the Project (tailrace, dam, forebay, and reservoir) on populations migrating through the Project. Pursuant to the HCP, Douglas PUD is required and committed to meet specific project (i.e. pool and dam) survival goals for each Plan Species and to mitigate for the remaining unavoidable project impacts through an ESA-compliant hatchery program and tributary enhancement projects under the guidance of interagency committees using robust adaptive management programs.

## **V. GENERAL COMMENTS**

NMFS expects that all of the substantive License conditions for the proposed new Project license and other provisions pertaining to anadromous fish will be governed by the HCP. As a signatory to the HCP, NMFS wholly supports the HCP as a substitute for any other provisions that would be inconsistent with the HCP's protections for anadromous fish. Thus, our general comment on the May 2010 final license application is that it in no case should result in License conditions that conflict in any way with the terms and conditions of the HCP. NMFS reserves the right to offer additional, specific comments on the original application should the Commission not incorporate any part of the HCP without material modification, in favor of inconsistent or additional provisions from the original application or any other source.

In regard to compliance with the NEPA, NMFS requests that the Commission, in its draft Environmental Assessment or Environmental Impact Statement, analyze an alternative that fully incorporates, without material modification, the HCP.

## **VI. NMFS' RESOURCE MANAGEMENT GOALS AND OBJECTIVES**

A primary goal of the NMFS is to rebuild and, ultimately, maintain self-sustaining anadromous fish runs in the Mid-Columbia region and fully use the available habitat and production capability. These goals apply with respect to species listed under the ESA (Upper Columbia spring Chinook and steelhead), as well as those Plan Species not currently listed (sockeye, summer/fall Chinook and coho) but which are effected by continuing project operations or may require listing in the future. In addition, NMFS' preliminary prescriptions and recommended terms and conditions are intended to serve the public interest and meet our environmental trust responsibilities following our statutory obligations under the resource laws that we administer.

NMFS further intends by these preliminary prescriptions and recommended terms and conditions to achieve the related planning goals and objectives established by state, Federal, and local watershed plans.

The Washington Department of Ecology administers Section 401 of the Federal Clean Water Act, and has established criteria to protect and improve water quality. Specific criterion pertaining to the Wells Project includes water temperature and total dissolved gas. The United States Department of Agriculture -Forest Service (USDA-FS) and BLM (Bureau of Land Management) are responsible for carrying out the Northwest Forest Plan (USFS/BLM 1994), and a comprehensive ESA recovery plan is currently being implemented in the Upper Columbia River Basin including the Project and tributaries entering the Project reservoir. All of these plans contain provisions which pertain to protection, mitigation and enhancement in the Upper Columbia region.

## **VII. NOTICE OF INTERVENTION**

The National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, hereby submits its notice of intervention in the above-referenced proceeding, pursuant to the Commission's regulations at 18 CFR 385.214(a)(2). Service of process and other communications concerning this proceeding should be made to:

- Will Stelle, Regional Administrator  
National Marine Fisheries Service  
7600 Sand Point Way NE  
Seattle, WA 98115-0070
- Christopher Fontecchio  
7600 Sand Point Way, N.E.  
Seattle, Washington 98115  
Phone: (206) 526-6515 or 6153  
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Email: [Chris.Fontecchio@noaa.gov](mailto:Chris.Fontecchio@noaa.gov)
- Keith Kirkendall  
National Marine Fisheries Service  
1201 NE Lloyd Blvd. Suite 1100  
Portland, OR 97232  
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NMFS is a Federal agency with jurisdiction over anadromous fish resources affected by the licensing, operation and maintenance of hydroelectric projects. See Reorganization Plan No. 4 of 1970, 84 Stat. 2090, as amended; the Federal Power Act (FPA), 16 U.S.C. §797 et seq.; the Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. §661 et seq.; the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. §1801 et seq.; the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §839 et seq.; and the Pacific Salmon Treaty Act of 1985, 16 U.S.C. §3631 et seq. The effects of the Project on passage and flow conditions, habitat, water quality, and other conditions relevant to anadromous fish resources directly concern NMFS in accordance with its interests and responsibilities established by the above statutory authorities.

NMFS also has jurisdiction over anadromous fish species affected by Project operations pursuant to the ESA, 16 U.S.C. §1531 et seq. Of the anadromous fish species affected by the Project, NMFS has listed the evolutionary significant units of Upper Columbia River steelhead and Upper Columbia River spring Chinook salmon under the ESA.

## **VIII. RESERVATION OF AUTHORITY**

NMFS reserves its right under Section 18 of the Federal Power Act to modify these fishway prescriptions and recommended terms and conditions based upon significant new information and

conclusions developed in connection with the fulfillment of other statutory consultation and review requirements, including consultation under Section 7 of the ESA, 16 U.S.C. §1536, or Section 305(b) of the MSA, 16 U.S.C. §1855, regarding essential fish habitat. NMFS respectfully requests the Commission, upon issuance of any new license in this proceeding, retain by means of a specific reopener provision for fishway prescriptions in accordance with Section 18 of the FPA, and other appropriate reservations of authority operation, maintenance and modification under the new license, or any amendments thereto, so as to ensure full compliance with the requirements of Section 18 of the FPA and any new or modified fishway prescription issued thereunder.

In addition, NMFS respectfully requests the Commission, upon issuance of any new license in this proceeding, retain by means of a specific ESA reopener provision and other appropriate reservations of authority (including authority to require license amendments or project modifications to comply with the ESA following reinitiation of ESA Section 7 consultation at the request of the NMFS) sufficient discretionary involvement or control with respect to project construction, operation, maintenance and modification under each new license, or any amendments thereto, so as to ensure full compliance with the requirements of the ESA, with respect to the carrying out of such actions during the term of the new license.

## **IX. PRELIMINARY SECTION 18 FISHWAY PRESCRIPTIONS**

The following prescriptions, as well as the recommended terms and conditions listed below, are submitted pursuant to NMFS' independent statutory authorities regarding anadromous fish resources. The provisions contained herein are not intended to alter in any way the provisions of the HCP, and should be read consistently with the provisions of the HCP.

Section 18 of the FPA states in relevant part that "the Commission shall require the construction, maintenance, and operation by a licensee of . . . such fishways as may be prescribed by the Secretary of Commerce or the Secretary of the Interior." Section 1701(b) of the National Energy Policy Act of 1992,

P.L. 102-486, provides guidance as to what constitutes a fishway. Section 1701(b) states: “The items which may constitute a ‘fishway’ under Section 18 for the safe and timely upstream and downstream passage of fish shall be limited to physical structures, facilities or devices necessary to maintain all life stages of such fish, and project operations and measures related to such structures, facilities or devices which are necessary to ensure the effectiveness of such structures, facilities or devices for such fish.”

These mandatory fishway prescriptions are based on the best available biological and engineering information available. NMFS’ prescriptions for the Wells Project encompass structures for upstream and downstream passage, and project operations, performance standards, and other measures to ensure effective consultation with all parties to the HCP. Each prescription is based on substantial evidence contained in the record. NMFS has carefully reviewed these prescriptions, and considers them to fall fully within the scope of its Section 18 authority because they are measures needed to ensure the safe, timely, and effective passage of fish.

NMFS hereby prescribes, on a preliminary basis, the following license conditions for the construction, operation and maintenance of upstream and downstream fishways to provide safe, timely and effective passage through the Wells Project. Recognizing that the following prescriptions are consistent with the HCP, NMFS respectfully requests, pursuant to its authority under Section 18 of the FPA, that the Commission incorporate into the Project license, in their entirety and without modification, the prescriptions included herein.

**Article 1. Preliminary Prescription for Incorporating the Anadromous Fish Agreement and Habitat Conservation Plan into the Project License**

For the protection, mitigation of damages to, and the enhancement of fishery resources the licensee shall carry out its obligations, in their entirety, as set forth in the Anadromous Fish Agreement and Habitat Conservation Plan for the Wells Hydroelectric Project No. 2149 filed with the Commission on November 24, 2003, and as approved by the Commission at 107 FERC ¶ 61,280 and ¶ 61,281.

*Rationale:* NMFS' prescriptions for fishways and recommended terms and conditions presumes that the terms of the 2004 Anadromous Fish Agreement and HCP on file with the Commission for the Wells Hydroelectric Project, FERC No. P- 2149, is adopted into the license in its entirety and without material modification. In addition to the descriptions contained herein, NMFS' prescriptions rely on the HCP as the basis and rationale for the construction, operation and maintenance of fishways – including adult fishways; the fish bypass system, and project spillways. If the HCP-related license articles in the existing license are not continued in the new license, without material modification by FERC, or if these articles are materially altered by court order or other review before becoming final in the new license, NMFS reserves the right to revise and refile modified prescriptions and recommended terms and conditions within 90 days of notice indicating any such material modification or alteration, and to take any further actions required by the ESA.

#### **X. RECOMMENDED TERMS AND CONDITIONS**

NMFS continues to work with the Wells HCP Committees to implement adaptive management strategies for the Project, as well as tributary habitat enhancement projects and supplementation programs. NMFS has also been peripherally tracking settlements regarding other fish species, aquatic environment, and wildlife species. In addition, at the time of the 2003 and 2004 Biological Opinions, decisions previously made by NMFS regarding ESA designated Critical Habitat, including Project lands and tributaries entering Project reservoirs, had been vacated and has since been revised. As such, consideration of Critical Habitat and measures for implementing settlement agreement activities and other new license actions will need to be considered in future ESA consultation.

## **Article 2. Hatchery and Tributary Enhancement Mitigation**

The licensee shall carry out the Tributary Conservation Plan and the Hatchery Compensation Plan, in their entirety, as set forth in the Anadromous Fish Agreement and HCP for the Wells Hydroelectric Project No. 2149 filed with the Commission on November 24, 2003, and as approved by the Commission at 107 FERC ¶ 61,280 and ¶ 61,281.

### *Rationale:*

This provision accompanies the fishway provisions set out above to implement the HCP.

### **License Term**

NMFS recommends that the Commission limit the new Wells Project license to a term that is no longer than the term of the HCP. If the Commission were to opt for a license term beyond the term of the HCP, this would cause a lapse in ESA coverage and necessitate a new consultation prior to license issuance to assess the effects of incidental take for the Project for the remaining term of the license beyond the expiration of the HCP. Such a consultation may result in modification of the measures to limit incidental take in the years after the expiration of the HCP. This is because the parties to the HCP have not contemplated extending the HCP beyond the fifty-year term. In the absence of protections under the HCP, the Commission, fishery agencies, licensee and other interested parties would need to consider what measures would provide appropriate protections for ESA-listed anadromous fish.

Per the terms agreed to in the HCP, passage through the Project (including the dam and reservoir) has been assessed by conducting juvenile fish survival studies, and recently confirmed in 2010 via the ten-year check-in survival study. Preliminary 2010 study results suggest that the project survival of juvenile salmonids is above 96 percent, comfortably above the minimum survival levels (93 percent) agreed to in the HCP and assessed in previous ESA consultation. As such, based on the evidence available in 2010 it is reasonable to believe that so long as current project operations persist per the HCP, take of listed species due to Project effects will not jeopardize the existence of these species, as concluded in previous ESA consultations. Since the ten-year survival study check-in will be repeated at

ten-year intervals for the duration of the HCP, any increase in take of salmonids is likely to be detected in those check-ins. It makes more sense to rely on the current system of using data from the check-ins and other monitoring efforts as it becomes available to limit take of listed species for the life of the HCP, rather than to try to project now, through an amended term beyond the planned HCP term of 50 years, what measures will be required for the final out-years of an extended license.


If toward the end of the HCP term the HCP signatory parties wish to extend the HCP to the end of the new license, the Commission possesses the necessary authority to accommodate such a plan. When the HCP expires in 2054, options will exist to extend the protection measures contained in the HCP to match the term of the license. Therefore, if the Commission, in its discretion, opts for a longer license term (as has been proposed by the settlement parties), NMFS will respond accordingly and discuss extensions of the HCP with the appropriate parties prior to 2054.

In any event, ESA consultation on the new project license will include assessment of effects on Critical Habitat, because designations were vacated at the time of consultation for the HCP and have since been replaced (see 50 CFR 226.212). The primary effect of the Project on Critical habitat concerns the migration corridor, and the migration corridor has been previously assessed in ESA consultation on the HCP. Remaining ESA consultation on the new license will be to assess effects of new license components on Critical Habitat, little of which exists at the Project other than the migration corridor.



Public Utility District No. 1 of )  
Douglas County, Washington ) Project No. 2149  
Application for Major New License ) Wells Hydroelectric Project

I hereby certify that I have this day served, by electronic or first class mail, a letter to Kimberly D. Bose, Federal Energy Regulatory Commission, from the National Marine Fisheries Service, regarding National Marine Fisheries Service's Recommended Terms and Conditions and Preliminary Fishway Prescription for the Wells Hydroelectric Project, FERC Project No. 2149 and this Certificate of Service to each person designated on the official service list compiled by the Commission in the above captioned proceeding.

  
Bonnie J. Hossack  
Administrative Assistant