

**American Rivers \* Friends of the Earth \* Idaho Rivers United \*Institute for Fisheries Resources \* National Wildlife Federation \* Northwest Sportfishing Industry Association \* NW Energy Coalition \* Pacific Coast Federation of Fishermen's Associations \* Save Our *Wild* Salmon \* Sierra Club \* Trout Unlimited**

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Stephen J. Wright, Administrator  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97298

Frank Cassidy, Jr., Chairman  
Northwest Power Planning Council  
851 SW 6<sup>th</sup> Avenue, Suite 100  
Portland, OR 97204-1248

**RE: Improving Federal Performance and Accountability for Salmon Recovery under Potential Changes in Allocation of the Federal Columbia River Power System after 2006**

Dear Mr. Wright and Mr. Cassidy:

**Introduction**

The Bonneville Power Administration (BPA) and Northwest Power Planning Council (NPPC) have requested public input regarding how the federal government should market the power and distribute the costs and benefits of the Federal Columbia River Power System (FCRPS) in the Pacific Northwest after 2006, when some current contracts for federal power expire. This issue raises critical questions about the future federal role in Northwest water, salmon, and energy choices, and the related roles of public and investor-owned utilities. Most importantly, it presents an opportunity to make energy choices in the Northwest which promote, rather than retard the recovery of abundant wild salmon and steelhead in the Columbia and Snake River Basin.

The distribution of power from the FCRPS, both in quantity and means, has tremendous implications for salmon recovery efforts. All plausible recovery scenarios require a reduction of output from federal hydroelectric dams, and require an assured steady stream of revenue from ratepayers. Similarly, BPA's current power marketing structure creates incentives that have led the agency to violate its legal mandate of equitable treatment under the Northwest Power Act (NWPA).

Under the current rate and power distribution structure, BPA and other federal agencies have largely failed to meet their legal requirements under the Endangered Species Act, the Northwest Power Act, and tribal and international treaties. This "regional dialogue" could provide an opportunity to improve a structure that has proven dysfunctional.

Public and investor-owned utilities have submitted to BPA a proposal (the "Allocation Proposal" or "PermaSlice") regarding the future role of BPA in which they are seeking long-term stability and certainty in FCRPS power allocation through 2026. The Save Our *Wild* Salmon Coalition (SOS) the NW Energy Coalition (NVEC), and the undersigned organizations believe that this proposal, or any other proposal that concerns the Columbia/Snake River hydrosystem and salmon, must achieve the legal obligations set forth by salmon recovery laws, including the Endangered Species Act, the Northwest

Power Planning and Conservation Act, and tribal and international treaties. Pacific Northwest salmon are a national resource – as evidenced by the significant federal investment in salmon recovery efforts. In order to satisfy this national interest, any proposals to implement changes to BPA’s power supply role must guarantee the same level of certainty and stability for salmon – and salmon-dependent businesses and communities – as that sought for power.

However, as currently crafted the utilities Allocation Proposal falls short of both meeting current legal obligations and guaranteeing this level of certainty. The current draft Allocation Proposal underestimates the relationship between power production and salmon protection; increases pressure on the Columbia and Snake rivers to produce power; and at best, maintains an operating structure for the next 20 years that has yet to produce self-sustaining, harvestable populations of wild salmon.

SOS and NWECC, on behalf of their combined membership, offer the following principles to help assure that the utility proposal, or any such proposal to change BPA’s power supply role, adequately meets the requirements for salmon protection and recovery. We also offer *examples* of possible mechanisms that could be used to implement the principles. BPA and the NPPC should work to incorporate this proposal into any outcomes of this process.

### **Principles**

- 1. The FCRPS, and thus the Columbia and Snake rivers, must be run to achieve the legal responsibility of salmon recovery. Power generation from the FCRPS must be allocated to ensure that salmon responsibilities are met. Simply allocating power based on a “slice” or percentage of the federal system does not guarantee that even minimum salmon restoration measures will be achieved. The federal agencies responsible for salmon recovery in the Northwest are not currently meeting their responsibilities under federal laws and treaties. An Allocation Proposal that preserves the current state of salmon recovery is unacceptable.**

Implementation -- This principle is over-arching, and must be met in addition to the measures detailed below related to decision-making and accountability. In addition, because the utilities Allocation Proposal shifts financial, weather, and market-related risks to the customers, there will no longer exist any justification for BPA to declare a “hydro emergency” based on financial concerns as the agency did during 2001. The exceptions to this rule should include severely restricted physical conditions involving short-term forced outages, or if public safety is jeopardized. Contracts implementing PermaSlice should guarantee that emergencies not be declared except for those reasons. Furthermore, the contracts should be written so as to make that guarantee legally enforceable by third parties, and river operation controlling documents should be amended to reflect that change.

In addition, any proposals emerging through this public process must undergo a rigorous environmental assessment under the National Environmental Policy Act (NEPA) to determine and weigh the impacts of such potential changes – whether intentional or unintentional – to threatened and endangered salmon and steelhead or other environmental values and resources in the region. BPA has stated its belief that the outdated environmental impact statement prepared for the 1996 Business Plan will meet the need for any environmental assessment. To the contrary, any new changes to BPA’s power supply role will necessitate a new environmental impact statement.

- 2. Salmon requirements will change over time, as required by the Endangered Species Act, the Northwest Power Act, related laws, and tribal treaties. The Allocation Proposal must be structured in a manner that expressly acknowledges and accounts for these future changes.**

**These changes could include, but will not be limited to, removal of the four lower Snake River dams. Furthermore, the Allocation contracts must remove the economic and operational incentives to violate salmon requirements and to oppose changes in those requirements over time.**

Implementation -- We propose that customers be passive recipients of energy from BPA and not control how the river is run, how much power they would receive or when they would receive it, even as changes to the system are made over time. Each customer (including BPA, on behalf of its full requirements customers) would receive a "slice," or percentage, of the energy output of the system, but not an allocation of capacity, storage or pondage, as is the case in the customers' Allocation Proposal.

The current system retains some flexibility, even after non-power constraints are satisfied. Within the requirements for refill dates, minimum stream flows, etc., there is still room for weekly, daily and hourly decisions, which the customers' proposal allows the customers to make. However the impacts of these decisions, even though not violating specific FCRPS Biological Opinion (BiOp), flood control, or other non-power requirements, still can have significant affects on the biological health of the river. Our proposal keeps those decisions in the hands of BPA and the other operating agencies, because they have responsibilities to both the standards set by the ESA, NHPA, and other laws, as well as stewardship responsibilities that go beyond the requirements of current river management policies called for by the BiOp and related documents. Conversely, individual utilities do not have those obligations or broader perspectives, and may instead make those decisions with only the goal of maximizing power generation. The river must not be operated according to a formula. Thus we propose that the flexibility of the system – after non-power constraints are met – would instead stay in the hands of BPA, subject to the recommendations below (see #3).

Changing the nature of BPA's power supply role in this manner will help ensure that operation of the FCRPS is compatible with current and future salmon recovery requirements. However, even with this change, customers receiving a "slice" of energy output will have an incentive to push for as large a "slice" as is possible, since those utilities will be required to meet the remainder of their load through the energy market. This incentive will be at odds with future salmon recovery actions that will require a reduction of FCRPS power generation, such as the removal of the four lower Snake River dams. To minimize or eliminate this incentive, it is all the more important that salmon be given an equal voice in decisions regarding the operation of the FCRPS. This issue is described in more detail below (see #3).

In addition, as Bonneville points out in its detailed reply (July 2, 2002) to the customer Proposal, losing the current "one-utility" coordination will most likely de-optimize the system and could even threaten reliability. Our proposal maintains the benefit of operating the FCRPS as one large coordinated utility.

Finally, given that salmon requirements will change over time, twenty-year contracts are simply too long to ensure that the power system can accommodate future salmon recovery policies. The duration of any contracts to implement changes to BPA's power supply role must not extend more than five years. There may be some circumstances under which longer contracts may be able to ensure adequate salmon protection, if such contracts 1) were subject to approval by the governing structure recommended below (see #3); and 2) include re-openers that allowed for continuing jurisdiction to ensure compliance with federal laws and treaties.

**3. The existing structures and mechanisms that currently guide salmon recovery are not adequate to ensure that legal salmon restoration requirements are met. The Allocation Proposal must be**

**accompanied by a structural change to the decision-making process for salmon recovery. Through this structural change, salmon must be given equal weight in deciding the strategies necessary to ensure the implementation of the two previous principles.**

Implementation-- Currently hydro operating decisions are made on a gross operating level (seasonal and monthly reservoir refill levels and dates, etc.) by the Northwest Power Pool under the Pacific Northwest Coordinating Agreement (PNCA), and, closer to real time, by BPA's operators and by the rest of the federal family (Army Corps of Engineers, Bureau of Reclamation, etc.) via the Technical Management Team (TMT), Implementation Team (IT), and ultimately the so-called Executive Committee in case of disputes. Non-power requirements, including fish requirements, are legally required to supersede power needs. However, BPA's prominent role in these processes often leads to inappropriate and unlawful consideration of the financial impact to the power system caused by these operating decisions.

Fish recovery interests are not now well represented in these various decision-making processes. In addition, the current processes are often informal and depend upon "consensus" among the various agencies that are involved. We propose that this situation be remedied in the following ways:

- a. **Equal Vote for Salmon**: To meet the criteria of this principle, we suggest that the Columbia River Treaty Tribes be vested with explicit authority equal to the federal agencies in all river operations forums and decisions. We are open to other ways of assuring that salmon have an equal voice in such decisions. However, Northwest tribes are the most effective governmental representatives of salmon needs, and the legal and treaty-based responsibilities to protect salmon.

For Pacific Northwest native tribes, salmon are more than simply an economic resource; they are part of the fabric of tribal culture and religion. Through treaties dating back to 1855, four such tribes – the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation – have legally reserved rights to anadromous fish in the Columbia River Basin. Northwest tribes deserve equal and formal representation in all decision-making processes regarding FCRPS operations.

- b. **Formalize Decision Processes**: Formalize all decision-making processes that affect river operations, e.g. the PNCA, TMT, IT, Executive Committee, etc. The decision-making bodies must provide formal membership, open meetings with published minutes, on-the-record voting and clear decision criteria. It must be made clear which groups have final authority to make which decisions, so that there is an explicit delineation of authority and accountability. Finally there must be a dispute resolution process to resolve differences expeditiously.

**4. The allocation agreement must include an independent third party contract enforcement mechanism to ensure that salmon requirements are met. The scope of this enforcement should reflect the fact that contracts setting forth how power from the FCRPS is allocated can affect the implementation of salmon requirements.**

Implementation-- The PermaSlice proposal is envisioned as being implemented mainly through contracts between BPA and the customers. However, many of those contracts will affect the broader public interest. Thus third parties must be provided a means to protect the public interest implications in the contract. This may imply separate contracts with the Tribes, for instance, and the ability of third parties to initiate dispute resolution under defined circumstances. The contracts must also explicitly confirm that

BPA cannot contract away its obligations, so that contract provisions are subject to judicial review and possible revision if needed to make them consistent with Bonneville's legal obligations.

- 5. The Allocation Proposal presents an opportunity to promote regional investments in energy conservation and non-hydro renewable resources. A diversified energy portfolio in the Northwest can help enhance and promote salmon recovery efforts by lessening the pressure on the Columbia and Snake rivers to generate energy. The Allocation Proposal must explicitly advance this goal by reducing the region's reliance on hydroelectric power through increased investments in non-hydro renewables and conservation.**

Implementation – In order to satisfy this principle, our proposal incorporates a proposal submitted by public interest groups on conservation and renewables. The Conservation and Renewables proposal describes mechanisms to acquire a combined target for regional acquisition of enough efficiency and clean energy to provide for the region's load growth without relying on more fossil generation. In the likely event that it becomes necessary to remove the four lower Snake River dams for the recovery of salmon, the mechanisms are available in that proposal to increase the targets to cover the dams' power output.<sup>1</sup>

In addition, if any contracts are ultimately negotiated with the DSIs, provisions should be in place to allow BPA to curtail their loads under drought conditions in order to meet fish spill requirements and to ensure reliability of the system.

We appreciate the opportunity to comment on this important issue, and look forward to further discussion in the public meetings on Potential Changes to BPA's Power Supply Role after 2006.

Sincerely,

Pat Ford, Executive Director, Save Our Wild Salmon  
Sara Patton, Director, NW Energy Coalition  
Shawn Cantrell, Northwest Regional Director, Friends of the Earth  
Glen Spain, Northwest Regional Director, Pacific Coast Federation of Fishermen's Associations,  
Institute for Fisheries Resources  
Paula Del Giudice, Regional Director, National Wildlife Federation  
Jeff Curtis, Western Conservation Director, Trout Unlimited  
Liz Hamilton, Executive Director, Northwest Sportfishing Industry Association  
Rob Masonis, Northwest Regional Director, American Rivers  
Bill Sedivy, Executive Director, Idaho Rivers United  
Bill Arthur, Northwest Regional Director, Sierra Club

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<sup>1</sup> The dams' average output is about 1200 aMWs. However, much of that power is generated during the spring when it has very low value. The dams can not be depended upon for more than half of that figure, especially in the summer when the power is most valuable. We estimate that around 600-900 aMWs of efficiency, which better follows load, could replace them, which is within the regional target's flexibility range (10% for efficiency, 5% for renewables) recommended in the public interest Conservation & Renewable proposal.