



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

May 7, 2012

Jim Luce
Council Chair
State of Washington Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, Washington 98504-3172

Re: Columbia Generating Station – Pending Application for NPDES permit renewal

Dear  Luce:

Energy Northwest, owners of the Columbia Generating Station, the nuclear power plant on the Hanford Reach of the Columbia River, applied to the State of Washington and the Energy Facility Site Evaluation Council (EFSEC) on November 19, 2010, for renewal of a National Pollutant Discharge Elimination System (NPDES) permit for this plant. I am writing to advise you of the presence of several Federally protected species of steelhead and salmon in the vicinity of water intakes and discharges for this plant and to request that you provide the National Marine Fisheries Service (NMFS) with the opportunity to evaluate any draft permit prior to issuance. I would also like to offer technical assistance regarding these species, which may be affected by the plant as regulated by your permit.

As you know, on January 19, 2010, Energy Northwest also applied for a renewed license for the Columbia Generating Station from the U.S. Nuclear Regulatory Commission (NRC). NMFS implements the Federal Endangered Species Act (ESA) for protected salmonid species. The NRC has contacted NMFS to initiate an ESA consultation concerning the license renewal for the plant, and, in their letter of December 20, 2011 (enclosed), encouraged us to contact EFSEC about the NPDES permit for intake and discharge structures at the project.

The State of Washington, through EFSEC, has the delegated authority from the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. § 1342(b), to issue NPDES permits to the Columbia Generating Station and similar facilities subject to EPA's oversight, 33 U.S.C. § 1342(d). EFSEC issued such a permit for this project in 2006, and that permit expired May 25, 2011. Under the terms of the CWA, 33 U.S.C. § 1326(b), the next NPDES permit for the Columbia Generating Station must, in addition to regulating effluent discharges, "require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact." *Id.*; see also, 40 C.F.R. § 125.90. In particular, in this case, it must provide for the adequate protection of ESA-listed salmonid species consistent with EPA and NMFS authorities under the CWA, §§ 303(c), 304(a) and 402, and ESA, §§ 7(a)(2) and 9.



Two ESA-listed species of salmonids inhabit the Hanford Reach in the vicinity of the project's current intake and discharge structures. These structures are located in habitat designated as critical for these species pursuant to the ESA. The table below provides the status, listing notice, and critical habitat designation notices for ESA-listed species likely to be affected by the project. In addition, Middle Columbia River fall Chinook salmon, which spawn in the Hanford reach, are a commercially important species whose habitats are protected under the Magnuson-Stevens Fishery Conservation and Management Act.

Species (ESU or DPS)	Listing	Designated Critical Habitat
Upper Columbia River Spring Chinook	Endangered 6/28/2005 70 FR 37160	9/02/05 70 FR 52630
Upper Columbia River steelhead	Threatened 8/24/09 74 FR 42605	9/02/05 70 FR 52630

The Upper Columbia River steelhead distinct population segment (DPS) is of particular concern for this plant because adult fish spawn, and juveniles rear, near the plant's intake and discharge structures. It is important that the structures be designed to minimize the entrainment or impingement of fry and juvenile salmonids and any other adverse effects.

The ESA prohibits the "take" of listed species. "Take" is broadly defined to mean "...to harass, harm, kill, trap or capture or collect" listed species subject to criminal and civil penalties. ESA § 9; 16 U.S.C. § 1538. NMFS issued a rule that limits the application of this prohibition for this threatened DPS if we determine that the plant's water intake structures meet NMFS' Juvenile Fish Screen Criteria. 50 C.F.R. § 223.203(b)(9). Any take of listed Upper Columbia River steelhead associated with a compliant intake structure would not be prohibited. Chapter 11 of NMFS' Anadromous Salmonid Passage Facility Design manual provides guidance on water intake systems design to minimize adverse effects to anadromous fish. This document can be obtained at:

<http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf>.

In addition to NMFS' enforcement of ESA § 9 prohibitions, we also advise Federal agencies on the likely effects of their actions on listed species. Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of listed species and are not likely to destroy or adversely modify designated critical habitat. ESA § 7(a)(2); 16 U.S.C. § 1536(a)(2). If NMFS finds that the NRC's proposed license renewal meets these standards in a written biological opinion, NMFS can also issue an incidental take statement that would exempt take incidental to the project's operation from ESA prohibitions, including operation of the project's cooling water intake system. As the requirements of the NPDES permit will determine the likely effects of the project's cooling water intake and discharge structures, that permit will inform the ESA § 7(a)(2) consultation and any biological opinion NMFS issues on the NRC's license renewal for the plant.

NMFS has a Memorandum of Agreement (MOA) with EPA providing for enhanced coordination under the Clean Water Act and ESA. I am enclosing a copy of this MOA for your reference. This letter serves as our notification to you called for by Section IX (A)(1) of that MOA at page 19-20. By separate letter, we are notifying EPA, Region 10, that this MOA may be applicable in this instance. A copy of that letter is enclosed.

Although the current NRC license for the Columbia Generating Station does not expire until 2023, we understand that the NRC plans to make a decision on relicensing in June 2012. With this in mind, we would appreciate learning of EFSEC's schedule for a decision regarding the renewal of the NPDES permit. We would appreciate receiving a copy of your draft permit when one is available with sufficient time to evaluate its content in consultation with EPA. Finally, we would welcome an opportunity to provide our staff's technical expertise with designing, constructing, and screening intake structures to minimize adverse effects on salmonids.

Please contact Bruce Suzumoto, Assistant Regional Administrator for the Hydropower Division, (503) 230-5417, with any questions and to follow up on these requests.

Sincerely,

A handwritten signature in dark ink, appearing to read "William W. Stelle, Jr.", written in a cursive style.

William W. Stelle, Jr.
Regional Administrator

Enclosures

NRC letter to NMFS dated 12/20/2011
EPA, NMFS, FWS MOA
NMFS letter to EPA

cc: NRC
EPA
Washington Governor's Office
Washington Department of Ecology
Energy Northwest