

## **The 2014 Federal Hydrosystem Biological Opinion** *Largest Species Restoration Program Anywhere in Nation*

**A History of Litigation** –The Endangered Species Act (ESA) is called the most powerful conservation law in the country. It requires federal agencies to insure that any action authorized, funded or carried out by them is not likely to further jeopardize the continued existence of species listed for protection under the ESA, or modify their critical habitat. Plans, called “Biological Opinions” (BiOp) must be developed by the agencies including actions that will be implemented to minimize any harmful impacts of a federal action on a listed species. BiOps are not required to bring about species “recovery”; but they must ensure the species is “not jeopardized” and has opportunity to recover.

Northwest and national anti-dam and fishing groups have found the ESA a useful tool when it comes to the operations of the federal hydro dams on the Columbia and Snake rivers. They’ve sued NOAA Fisheries, the agency responsible for salmon protection under the ESA and the federal “action” agencies - Bonneville Power Administration, US Army Corps, and Bureau of Reclamation - that operate and market the dams’ output, for nearly twenty years. The eight federal dams on these rivers generate 4,300 megawatts of clean renewable electricity, enough to power almost four cities the size of Seattle, and provide many other benefits such as flood control, irrigation, navigation and trade, but they also affect 13 listed stocks of salmon and steelhead, making them a target for litigation.

The most recent lawsuits challenge a 2014 Supplemental Biological Opinion (BiOp) submitted to US District Court in Oregon (Court) in January 2014. The 2014 BiOp builds on a 2008/2010 BiOp that was developed in collaboration with Northwest states and tribes and whose science was approved by the Obama Administration. The plaintiffs in the litigation include national environmental groups American Rivers and National Wildlife Federation as well as local environmental and fishing groups. Oregon also filed a Notice of Intent to Sue and the Nez Perce tribe have filed as amicus supporting the plaintiffs. A preliminary injunction seeking even more flow and spill from the hydro system is expected in March from the plaintiffs; oral argument with Judge Michael Simon is scheduled in June 2015.

**The 2014 Biological Opinion** – In submitting the 2014 Supplemental BiOp to the Court, NOAA concluded its myriad measures are benefitting listed salmon now and will do so well into the future. Plaintiffs characterize the BiOp as containing the same flaws as previous ones and accuse the federal agencies of not following a previous ruling made by Judge Redden, who stepped down from the case right after ruling.

However, a careful and accurate reading of the Judge Redden’s opinion shows this to be magical thinking. In his ruling, Judge Redden directed the federal agencies to: (1) “reevaluate the efficacy” of the BiOp’s measures to avoid jeopardy; (2) “identify reasonably certain mitigation plans for the life” of the BiOp, and (3) “consider whether more aggressive action, such as dam removal and/or additional flow augmentation and reservoir modifications are necessary to avoid jeopardy”. He found the plan’s habitat measures to be sufficient through 2013 but specifically directed the agencies to review the habitat analysis and measures in the plan from 2013-2018 to determine if they would deliver anticipated benefits.

*After an exhaustive review of the “efficacy” of the plan’s measures, and inclusion of actual habitat benefits to-date, among other things, NOAA concluded they were delivering or exceeding expected benefits, salmon numbers overall were increasing, and reaffirmed their “no jeopardy” conclusion.*

**Unprecedented Plan, Unprecedented Returns** – The 2014 BiOp notes that stringent “performance standards” set at each federal dam to increase the survival of young fish migrating downstream are being met. This is due to an investment of \$1.6 billion in new downstream passage technologies and significant changes in how the dams are being operated to speed young salmon moving downstream to the ocean and help adults return to their spawning grounds. Young fish also are transported in barges around the dams, a practice that continues to result in the highest number of returning adults for most salmon species. The massive \$1 billion program to restore degraded habitat in the Columbia Basin, known as the “Fish Accords” being implemented by Northwest states and tribes, also is bearing fruit.

The BiOp is clearly doing its part and the salmon are responding to its measures, combined with good ocean conditions. Over 1 million fall Chinook salmon returned to spawn in 2013, a level not seen since Bonneville dam went into operation in 1938, and in 2014, the fall chinook returns reached just over a million again. Last year also brought record Snake River sockeye returns and record coho returns, bringing a modern-day record annual return of over 2.5 million salmon to the basin. New life has been breathed into the endangered Snake River sockeye run, which was all but extinct 20 years ago.

The BiOp adds hundreds of millions every year to the \$14 billion that Northwest families and businesses have already invested in salmon restoration and protection. The BiOp is the largest restoration effort anywhere in the country, far surpassing other well-known efforts such as the restoration of the Florida Everglades. Despite all the progress, the anti-dam groups continue to challenge the plan in court. Their goals are to establish case precedent that would change the legal standard in the ESA from one of “no jeopardy” to listed species to one of recovering listed species – a far higher bar. And, they support removing the federal Snake River dams so it is not in their interest to acknowledge the tremendous progress being made in salmon restoration as evidenced by robust, even record-setting salmon returns.

*Northwest RiverPartners is a partnership of farmers, electric utilities, ports, and large and small businesses in the Pacific Northwest. We are dedicated to ensuring the Columbia and Snake remain living, working rivers to benefit families and businesses in the region.*

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