



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

*National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668*

January 22, 2004

The Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501

Re: Docket R-03-5

Dear Commissioners,

The National Marine Fisheries Service (NMFS) has reviewed The Regulatory Commission of Alaska (RCA) notice of inquiry to develop regulations for water power development projects in response to recently enacted legislation. NMFS is an active participant in Federal Energy Regulatory Commission (FERC) licensing for water power development projects in Alaska, as well as nationally. Pursuant to Part I of the Federal Power Act, 16 U.S.C. 791a et seq., the Department of Commerce, through NMFS, has certain authorities and responsibilities in the process for licensing non-federal hydroelectric generating facilities.

**NMFS Comments on Issues Raised by RCA**

Issue 1. NMFS staff will attend the workshops in Juneau and Anchorage. NMFS will provide written comments at all appropriate junctures in the regulation development process. If necessary, NMFS will participate in any interactive workshops or other forums designed to resolve the state licensing program issues.

Issue 2. Other regulatory and legal factors relating to NMFS must be considered in the development of a state licensing program. Examples of federal statutes with regulatory guidance that are factors in this issue include the Clean Water Act, National Environmental Policy Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and Fish and Wildlife Coordination Act. Due to the complexities of the federal statutes and regulations and the time frame for responding to the RCA request for comments, NMFS is not able to provide a detailed analysis and response regarding how federal authorities may impact the proposed state regulations. However, NMFS can provide assistance and guidance regarding institutional, financial, regulatory and legal issues associated with the transfer of federal authority to the State of Alaska. NMFS and NOAA General Counsel will provide input regarding NMFS' interests as you develop these regulations.

Issue 3. NMFS is charged with protection of anadromous fish species. NMFS' primary concern in this issue in Alaska is protection of salmon. Assuring adequate fish passage is an important legal mandate. Fish passage is implied in your statement ("the protection of, mitigation of damage to, and enhancement of, fish and wildlife, including related spawning grounds and habitat") but not specifically addressed. Fish passage is included in AS 42.45.350 which is the enabling legislation for creating this regulatory process. The final regulations should specifically



discuss fish passage.

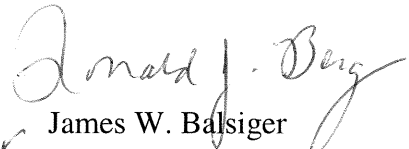
Issue 4. NMFS currently participates in the FERC regulatory process. NMFS would be comfortable working with an RCA process modeled after FERC, although a more streamlined process may be appropriate for small projects.

Issue 5. All projects subject to this licensing process will be small (< 5,000 kilowatts). The existing FERC classification system does not need to be followed. NMFS suggests that RCA treat all these projects the same or develop a classification system that further differentiates minor projects.

### **General Comments**

NMFS will be an active partner in the development of regulations for Alaska water power development and is willing to participate on the committee that will be formed to assist with the regulations. Please contact Larry Peltz (phone 271-1332) in our Anchorage office if you have any questions.

Sincerely,

  
For James W. Balsiger  
Administrator, Alaska Region