

June 2004

# COLUMBIA RIVER BASIN

## A Multilayered Collection of Directives and Plans Guides Federal Fish and Wildlife Activities



G A O

Accountability \* Integrity \* Reliability



Highlights of [GAO-04-602](#), a report to the Committee on Indian Affairs, United States Senate

## Why GAO Did This Study

Numerous federal agencies conduct water, power, or resource management activities affecting the fish and wildlife of the Columbia River Basin, as well as the 13 tribes residing there. These agencies, such as the Bonneville Power Administration (Bonneville), Army Corps of Engineers, and Forest Service, and regulatory agencies, such as the National Marine Fisheries Service, are also responsible for protecting, sustaining, and enhancing fish and wildlife resources in the basin and involving the tribes in the process.

Recently, Bonneville's financial position deteriorated significantly, and some tribes in the basin challenged Bonneville's actions modifying funding of fish and wildlife activities in federal court. In this context, GAO agreed to (1) identify and describe the laws, treaties, executive orders, and court decisions that define federal responsibilities to perform activities benefiting fish and wildlife in the basin and involve the tribes, and (2) describe the plans and programs that guide these respective fish and wildlife activities. In accordance with our policy to refrain from addressing matters that are in litigation, GAO did not examine any issues that are before the court.

[www.gao.gov/cgi-bin/getrpt?GAO-04-602](http://www.gao.gov/cgi-bin/getrpt?GAO-04-602).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barry T. Hill at 202-512-3841 or [hillbt@gao.gov](mailto:hillbt@gao.gov).

## COLUMBIA RIVER BASIN

# A Multilayered Collection of Directives and Plans Guides Federal Fish and Wildlife Activities

## What GAO Found

Federal responsibilities for protecting, mitigating, and enhancing fish and wildlife resources in the basin, as well as involving the tribes in the process, are defined by a multi-layered collection of laws, treaties, executive orders, and court decisions. Nationwide, basin-specific, and agency mission-specific laws create responsibilities for federal agencies to mitigate the impacts of federal activities that could potentially harm fish, wildlife, and their habitat. For example, the Endangered Species Act establishes nationwide responsibilities for agencies to protect listed species, while the Northwest Electric Power Planning and Conservation Act (Northwest Power Act) establishes responsibilities in the basin to mitigate the impacts of hydropower development, and each agency has mission-related responsibilities to fish and wildlife, such as the Forest Service's responsibilities under the National Forest Management Act. Regarding tribes, federal agencies must consult and collaborate with Indian tribes on fish and wildlife activities that may impact tribal rights established under various treaties and executive orders. Federal responsibilities and activities under these laws, treaties, and executive orders have been defined and clarified over the years through numerous court decisions.

Federal agency fish and wildlife activities in the basin are guided by numerous plans and programs, but the majority of fish and wildlife activities are driven by the Northwest Power Act and the Endangered Species Act. Under the Northwest Power Act, the Columbia River Basin Fish and Wildlife Program addresses all fish and wildlife impacted by the Federal Columbia River Power System, and under the Endangered Species Act, agencies are guided by the biological opinions developed by the National Marine Fisheries Service and the U.S. Fish and Wildlife Service for the protection of threatened and endangered species, as well as two other related collaborative plans. Agency participation in these key efforts varies widely, from mandatory funding of fish and wildlife activities to voluntary collaboration on the design of activities, but interagency collaboration is essential to successful implementation of these activities. In addition, other laws and specific agency missions drive numerous other collaborative and individual fish and wildlife activities.

We provided copies of our draft report to the Departments of Agriculture, Commerce, Defense, the Interior, as well as Bonneville and the Environmental Protection Agency. Bonneville and the Departments of Agriculture and Commerce provided official written comments. The comments were generally technical in nature and we made changes to the report, where appropriate. The Department of Defense and the Environmental Protection Agency had no comments on the report. The Department of the Interior did not provide comments in time to be included in this report.

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**Abbreviations**

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FCRPS	Federal Columbia River Power System
FWS	U.S. Fish and Wildlife Service
NMFS	National Marine Fisheries Service
NRCS	Natural Resources Conservation Service
USGS	U.S. Geological Survey

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United States General Accounting Office  
Washington, D.C. 20548

June 4, 2004

The Honorable Ben Nighthorse Campbell  
Chairman  
The Honorable Daniel K. Inouye  
Vice Chairman  
Committee on Indian Affairs  
United States Senate

The Columbia River Basin encompasses approximately 258,000 square miles of mountains, forests, rangeland, and coastline extending predominantly through the Western states of Washington, Oregon, Idaho, and Montana and into Canada. Although the basin is home to an abundance of fish and wildlife, some species are in danger of extinction, in part, because of the extensive hydropower development of the Columbia River and its tributaries. Endangered species include fish, such as some species of salmon and steelhead; birds, such as the marbled murrelet; and certain species of caribou, deer, and rabbit. The basin is also home to 13 Indian tribes, some of which have treaties with the United States, dating from the mid-1800s, that explicitly recognize hunting and fishing rights. The tribes rely on the fish and wildlife of the basin for sustenance and to maintain their cultural traditions.

Numerous federal agencies conduct activities within the basin that affect the fish and wildlife of the basin, as well as the tribes. For example, the Bonneville Power Administration (Bonneville), the U.S. Army Corps of Engineers (Corps), and the Department of the Interior's Bureau of Reclamation (Reclamation) manage and operate the Federal Columbia River Power System, composed of 31 power-generating dams on the Columbia River and its tributaries. Bonneville collects the revenues from the Federal Columbia River Power System and uses a portion of those revenues to fund many of the fish and wildlife activities in the basin. The Department of Agriculture's Forest Service manages 81,000 square miles of forest in the basin, and Interior's Bureau of Land Management manages 33,000 square miles of rangeland.

Along with their primary water or land management responsibilities, these agencies, as well as regulatory agencies such as the National Oceanic and Atmospheric Administration's National Marine Fisheries Service and the Environmental Protection Agency, are responsible under various laws, treaties, executive orders, and court decisions for protecting, mitigating, and enhancing fish and wildlife resources in the basin, as well as involving

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the tribes in the process. In addition, the Northwest Power and Conservation Council, established pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), develops the Columbia River Basin Fish and Wildlife Program to mitigate the effects of hydroelectric dams on basin wildlife.

Recently, Bonneville's financial position deteriorated significantly, raising questions about its ability to meet its fish and wildlife responsibilities.<sup>1</sup> Subsequently, several tribes in the basin challenged the legality of actions by Bonneville and the Northwest Power and Conservation Council regarding the funding of fish and wildlife activities in the United States Court of Appeals for the Ninth Circuit. In this context, we agreed to (1) identify and describe the laws, treaties, executive orders, and court decisions that define the responsibilities of Bonneville and other federal agencies to perform activities benefiting fish and wildlife in the Columbia River Basin and involve tribes in the process, and (2) describe the fish and wildlife plans and programs that Bonneville and other federal agencies have developed to guide these respective fish and wildlife activities. In accordance with our policy to refrain from addressing matters that are in litigation, we did not examine any issues that are before the court. In conducting our work, agency officials, tribal representatives, and others brought to our attention concerns about the implementation of various fish and wildlife plans and programs in the basin, and we have included information regarding these concerns in this report.

To address the objectives of this report, we updated information in our prior report on federal salmon and steelhead recovery activities in the Columbia River Basin.<sup>2</sup> To update the information and identify directives, plans, and programs for other fish and wildlife species, we met with officials of the 11 federal agencies identified in that report: Bonneville, the Forest Service and Natural Resources Conservation Service within the Department of Agriculture, the Bureau of Indian Affairs, Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Geological Survey and

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<sup>1</sup>U.S. General Accounting Office, *Bonneville Power Administration: Obligations to Fish and Wildlife in the Pacific Northwest*, [GAO-03-844T](#) (Washington, D.C.: June 4, 2003), and *Bonneville Power Administration: Long-Term Fiscal Challenges*, [GAO-03-918R](#) (Washington, D.C.: July 1, 2003).

<sup>2</sup>U.S. General Accounting Office, *Columbia River Basin Salmon and Steelhead: Federal Agencies' Recovery Responsibilities, Expenditures, and Actions*, [GAO-02-612](#) (Washington, D.C.: July 26, 2002).

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Reclamation within the Department of the Interior, the Corps within the Department of Defense, the National Marine Fisheries Service within the Department of Commerce, and the Environmental Protection Agency. We also met with representatives of 10 of the 13 Columbia River Basin tribes to confirm the directives identified by the 11 federal agencies and to determine how the tribes participate in the fish and wildlife plans and programs. Appendix I provides further details about the scope and methodology of our review. We conducted our work from August 2003 through April 2004 in accordance with generally accepted government auditing standards.

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## Results in Brief

Federal responsibilities for protecting, mitigating, and enhancing fish and wildlife resources in the Columbia River Basin, and for involving the tribes in the process, are defined by a multilayered collection of laws, treaties, executive orders, and court decisions. At the national level, federal laws such as the Endangered Species Act and the Clean Water Act create a responsibility for federal agencies to mitigate the impacts of agency activities that could potentially harm fish, wildlife, and their habitat. At the basin level, certain federal laws create agency responsibilities that are specific to the fish and wildlife within the basin. For example, under the Northwest Power Act, Bonneville, the Corps, and Reclamation must work together to mitigate the effects of the Federal Columbia River Power System on fish and wildlife. At the mission level, many agencies that operate within the basin have fish and wildlife responsibilities under laws that are unique to their own activities, such as the Federal Land Policy and Management Act of 1976 for the Bureau of Land Management and the National Forest Management Act for the Forest Service. At the tribal level, 6 of the 13 tribes in the basin have treaty hunting and fishing rights, and various laws and executive orders provide that federal agencies are to consult and collaborate with Indian tribes on the management of fish and wildlife in the basin. Agencies have developed internal agency orders to implement this guidance. Federal responsibilities under these multilayered directives are continually being clarified through court decisions, and cases such as *United States v. Oregon* and *United States v. Washington* have confirmed tribal treaty fishing rights and the extent of those rights.

Multiple plans and programs guide agency fish and wildlife activities in the basin. Agencies design and implement these plans and programs both collaboratively and independently, but the majority of fish and wildlife activities are driven by the Northwest Power Act and the Endangered Species Act. The Columbia River Basin Fish and Wildlife Program,



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developed pursuant to a requirement of the Northwest Power Act, outlines a collaborative strategy for protecting, mitigating impacts to, and enhancing fish and wildlife affected by the construction and operation of hydroelectric dams. The Northwest Power and Conservation Council spearheads the development and revision of the program. In addition to developing the program, the Council is also involved with developing plans for subbasins using watershed-level input from federal agencies, state and local governments, and tribes. Bonneville funds the implementation of the program through contracts with federal and state agencies, tribes, and private organizations, and funds the development of the subbasin plans. In response to the Endangered Species Act, biological opinions have been developed that set forth reasonable and prudent measures/alternatives to minimize the impacts of agency actions on certain fish species—salmon, steelhead, bull trout, and white sturgeon—affected by the federal hydropower system and other federal actions. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service developed these biological opinions collaboratively. In addition, they have collaborated with other federal agencies on the development of the Basin-wide Salmon Recovery Strategy, which outlines a conceptual salmon recovery plan. Agencies also implement fish and wildlife plans and programs that are driven by agency-specific missions. For example, the Corps utilizes Project Management Plans to ensure that agency activities follow proper guidelines for protecting and allowing for fish passage through its hydropower projects on the Columbia River.

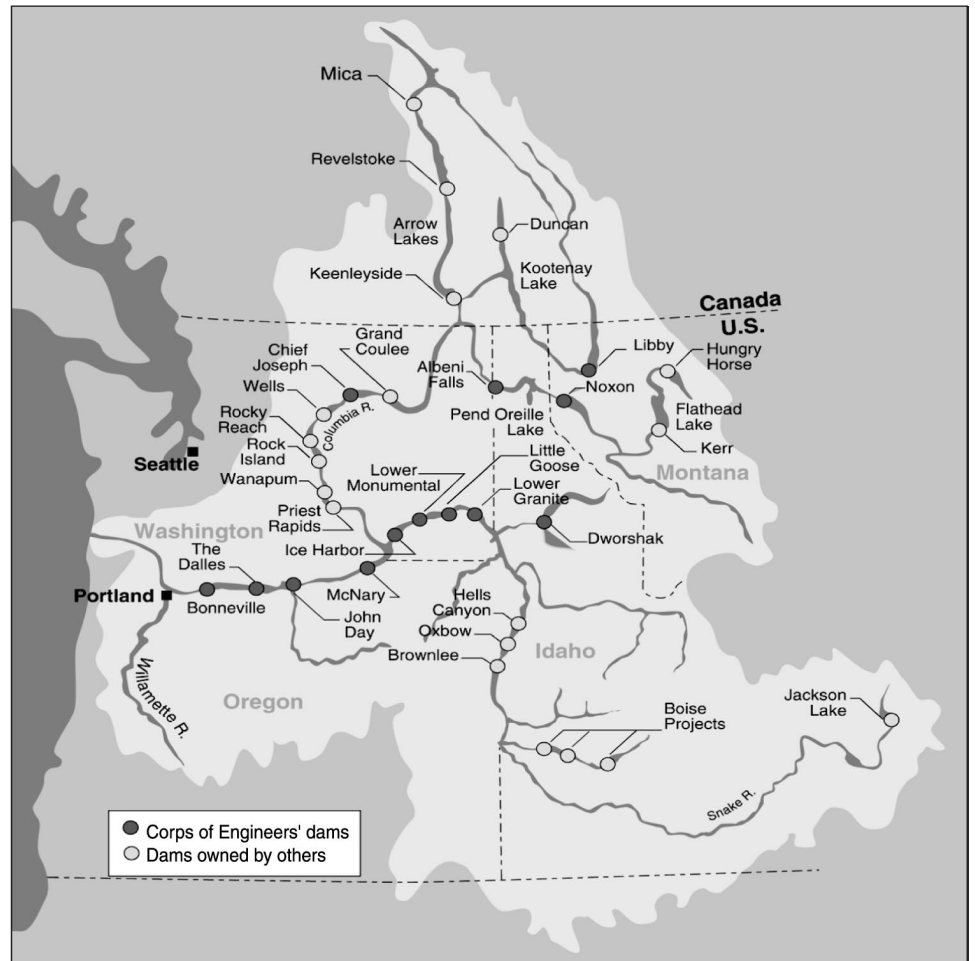
Bonneville and the Departments of Agriculture and Commerce provided technical comments on this report and we made changes, where appropriate. The Department of Defense and the Environmental Protection Agency had no comments on the report. The Department of the Interior did not provide comments in time to be included in this report.

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## Background

The Columbia River Basin, the nation's fourth largest, extends through seven Western states—Oregon, Idaho, Montana, Nevada, Utah, Washington, and Wyoming—and into Canada. (See fig. 1.) Twelve major tributaries, the longest of which is the Snake River, feed the Columbia River. The basin contains over 250 reservoirs and about 150 hydroelectric projects, including 18 dams on the Columbia and Snake Rivers.

**Figure 1: Map of the Columbia River Basin**



Source: U.S. Army Corps of Engineers.

The basin is home to many species of fish and wildlife, some of which are listed under the Endangered Species Act (ESA) as threatened or endangered, in part as a result of the extensive hydropower development of the basin rivers. Endangered fish in the basin include certain species of salmon, steelhead, and white sturgeon; bull trout are listed as threatened. Threatened and endangered wildlife in the basin include birds such as the marbled murrelet and northern spotted owl, and other animals such as certain species of caribou, deer, lynx, and rabbit. The basin is also home to 13 Indian tribes, which by treaty, executive order, or other authority, reside on reservation lands within the basin. As shown in table 1, nearly 45,000

members are enrolled in the tribes with reservation lands in the basin. Fish and wildlife are of critical importance to these tribes, as the tribes rely on them for sustenance as well as preservation of their cultural traditions. For example, salmon are part of the spiritual and cultural identity of most of the basin's tribes, and are frequently used in tribal religious services.

**Table 1: The 13 Columbia River Basin Indian Tribes, Reservation Size, and Enrollment**

Tribe	Acreage encompassed within reservation boundaries <sup>a</sup>	Number of enrolled tribal members <sup>b</sup>
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho	345,000	1,493
Kootenai Tribe of Idaho	250	121
Nez Perce Tribe of Idaho	750,000	3,300
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho	544,000	4,535
Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana	1,244,000	6,950
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	289,819	1,888
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	11,466	295
Confederated Tribes of the Umatilla Reservation, Oregon	172,140	2,140
Confederated Tribes of the Warm Springs Reservation of Oregon	643,570	3,831
Confederated Tribes of the Colville Reservation, Washington	1,400,000	8,842
Kalispel Indian Community of the Kalispel Reservation, Washington	4,629	329
Spokane Tribe of the Spokane Reservation, Washington	154,898	2,305
Confederated Tribes and Bands of the Yakama Reservation, Washington	1,372,000	8,624
<b>Total</b>	<b>6,931,772</b>	<b>44,653</b>

Sources: U.S. Department of the Interior and U.S. Department of Commerce.

<sup>a</sup>Includes Indian and non-Indian land.

<sup>b</sup>Tribe members residing both on and off reservation lands in 2001.

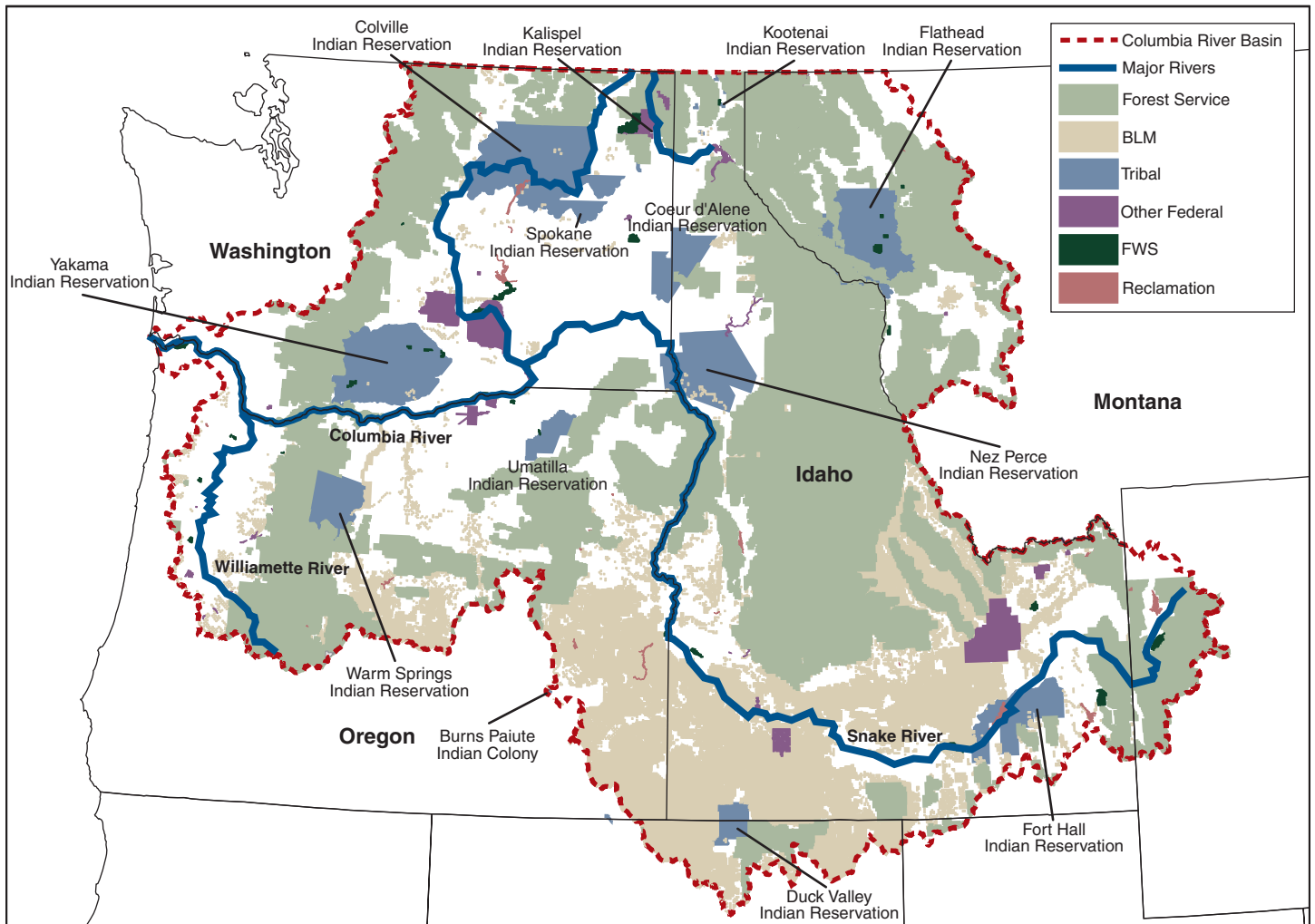
Numerous federal agencies, including the following, conduct activities within the basin that affect fish and wildlife, as well as the Columbia River Basin Indian tribes. Many of these agencies are responsible for managing water resources, the power generated by hydroelectric projects, or land resources, such as forests, grazing lands, and wildlife refuges.

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- Bonneville Power Administration (Bonneville) provides power transmission services and markets the electricity generated by the 31 Corps and Reclamation dams comprising the Federal Columbia River Power System (FCRPS). In doing so, it must provide treatment to fish and wildlife equitable to the other purposes for which the FCRPS is operated.
  - U.S. Army Corps of Engineers (Corps) designs, builds, and operates civil works projects to provide electric power, navigation, flood control, and environmental protection.
  - Bureau of Reclamation (Reclamation) designs, constructs, and operates water projects for multiple purposes, including irrigation, hydropower production, municipal and industrial water supply, flood control, recreation, and fish and wildlife.
  - U.S. Forest Service (Forest Service) manages national forests and grasslands under the principles of multiple use and sustained yield, and ensures that lands will be available for future generations.
  - Bureau of Land Management (BLM) administers public lands and subsurface mineral resources, and sustains the health, diversity, and productivity of public lands for the use and enjoyment of future generations.
  - U.S. Fish and Wildlife Service (FWS) manages wildlife refuges, conserves, protects, and enhances fish, wildlife, and plants, and implements the ESA for terrestrial species, migratory birds, certain marine mammals, and certain fish.
  - Bureau of Indian Affairs (BIA) encourages and assists American Indians to manage their own affairs under the trust relationship with the federal government. It develops forestlands, leases assets on these lands, directs agricultural programs, protects water and land rights, and undertakes other responsibilities in cooperation with the tribes.

Together, these federal agencies and the 13 basin tribes manage over half of the portion of the Columbia River Basin located within the United States. The Forest Service and BLM manage about 81,000 square miles of forest and grasslands, and 33,000 square miles of rangeland, or about 37 percent and 15 percent of the basin's U.S. land area, respectively. Reservation land totals about 5 percent. All other agencies combined manage about 3

percent of the U.S. portion of the basin. Figure 2 illustrates the federal and tribal land ownership patterns.

**Figure 2: Landholders in the Columbia River Basin**



Source: U.S. Fish and Wildlife Service.

Note: Area shown within reservation boundaries includes both Indian and non-Indian land.

In addition to the water, power, and land resource management agencies, several other federal agencies have regulatory, resource protection, and research responsibilities in the basin.

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- National Marine Fisheries Service (NMFS) conserves, protects, and manages living marine resources so as to ensure their continuation as functioning components of marine ecosystems, and to afford economic opportunities. NMFS also implements the ESA for marine and anadromous (migratory fish such as salmon and steelhead) species.
  - Environmental Protection Agency (EPA) protects human health and safeguards the natural environment by protecting the air, water, and land. It administers the Clean Water Act and Clean Air Act.
  - Natural Resources Conservation Service (NRCS) assists farmers, ranchers, and other landowners in developing and carrying out voluntary efforts to protect the nation's natural resources.
  - U.S. Geological Survey (USGS) conducts objective scientific studies and provides information to address problems dealing with natural resources, geologic hazards, and the effects of environmental conditions on human and wildlife health.

Along with their primary water, power, resource, and other management and regulatory responsibilities, these agencies are responsible under various laws, treaties, executive orders, and court decisions for protecting, mitigating, and enhancing fish and wildlife resources in the basin, as well as involving the tribes in the process. One of the main drivers of such activities is the Northwest Power Act, which provided for the establishment of the Northwest Power and Conservation Council. Under the act, the Council develops the Columbia River Basin Fish and Wildlife Program to mitigate the effects of hydroelectric dams on basin fish and wildlife, and Bonneville assists in implementation and is the principal source of funding for the program.

Bonneville recently experienced a substantial deterioration of its financial condition, in part because of drought conditions, rising costs of providing power, and lower than projected revenue from selling surplus power. For example, as we reported in July 2003, its end of year cash reserves fell from \$811 million to \$188 million from fiscal year 2000 to 2002.<sup>3</sup> Bonneville's financial difficulties caused concern about its ability to meet its fish and wildlife funding responsibilities under the Northwest Power Act. The Yakama tribe filed two petitions in June 2003, and the Upper Columbia

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<sup>3</sup>GAO-03-918R.

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United Tribes filed a petition in December 2003, in the United States Court of Appeals for the Ninth Circuit to review Bonneville's budgeting, accounting, and contracting processes, and in the case of the Yakama, the Northwest Power and Conservation Council's recommendations, regarding fish and wildlife funding. As of now, the two Yakama filings and the Upper Columbia United Tribes filing are being discussed in separate settlement negotiations. In accordance with our policy to refrain from addressing matters that are in litigation, we did not address the issues before the court in this report.

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## A Multilayered Collection of Directives Defines Federal Responsibilities to Fish, Wildlife, and Tribes in the Columbia River Basin

Federal responsibilities for protecting, mitigating, and enhancing fish and wildlife resources in the basin, as well as involving the tribes in the process, are defined by a multilayered collection of laws, treaties, executive orders, and court decisions. Nationwide, basin-specific, and agency mission-specific laws create responsibilities for federal agencies to mitigate the impacts of their activities on fish, wildlife, and their habitat. In addition, various laws, treaties, executive orders, court decisions, and agency policies require agencies to consider the rights of tribes in the basin. Federal responsibilities and activities under these layers of directives have been defined and clarified over the years through numerous court decisions. Appendix II lists laws, treaties, and executive orders identified by federal agencies as guiding their fish and wildlife responsibilities in the basin. Appendix III lists laws, treaties, and executive orders identified by federal agencies as guiding their tribal responsibilities in the basin. Appendix IV lists court decisions that have helped define or clarify agency responsibilities to fish, wildlife, and tribes under these directives. Each appendix includes the citation for every law, treaty, executive order, and court case listed.

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## Agency Responsibilities Are Defined by Nationwide, Basin-specific, and Mission-specific Fish and Wildlife Directives

Federal agencies are responsible under nationwide, basin-specific, and agency mission-specific laws for mitigating the impacts of their activities that could potentially harm fish, wildlife, and their habitat. At the national level, federal environmental and fish and wildlife protection laws create broad responsibilities for federal agencies in addition to each agency's mission-specific responsibilities. These laws guide the fish and wildlife activities of federal agencies nationwide, in some cases, under the oversight and enforcement authority of regulatory agencies such as EPA and NMFS. Federal agencies identified the following nationwide laws, among others, as guiding their fish and wildlife activities:

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- **Clean Water Act**—Authorizes EPA to establish effluent limitations and requires permits for the discharge of pollutants from a point source to navigable waters. EPA approves state and tribal limits for the maximum amount of a pollutant that a water body can receive and still meet water quality standards for specified purposes, including fish and wildlife.
  - **Endangered Species Act**—Provides for the conservation and recovery of species of plants and animals that FWS and NMFS determine to be in danger or soon to become in danger of extinction.
  - **National Environmental Policy Act**—Requires federal agencies to examine the impacts of proposed major federal actions significantly affecting the environment.

At the basin level, certain federal laws create agency responsibilities that are specific to the fish and wildlife there. These laws guide the fish and wildlife activities of agencies such as Bonneville, the Corps, and Reclamation that are to be conducted in conjunction with their water and power responsibilities within the basin. Federal agencies identified the following basin-specific laws, among others, as guiding their fish and wildlife activities:

- **Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act)**—Provides for the formation of the Northwest Power and Conservation Council and directs it to develop a program to protect, mitigate, and enhance the fish and wildlife of the Columbia River Basin. Requires Bonneville’s administrator to use Bonneville’s funding authorities to protect, mitigate, and enhance fish and wildlife affected by the development and operation of the FCRPS and to do so in a manner consistent with the Council’s program while ensuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.
- **Fisheries Restoration and Irrigation Mitigation Act of 2000**—Directs the Secretary of the Interior to establish a program to implement projects, such as installation of fish screens and fish passage devices, to mitigate impacts on fisheries associated with irrigation systems in Idaho, Montana, Oregon, and Washington.
- **Mitchell Act**—Directs the Secretary of Commerce to carry on activities for the conservation of fishery resources in the Columbia River Basin.



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At the mission level, many agencies that operate within the basin have fish and wildlife responsibilities under laws that are unique to their activities. These laws guide the fish and wildlife activities of agencies such as the Forest Service, BLM, FWS, and BIA that are to be conducted in conjunction with their resource management responsibilities. The following laws were among the numerous mission-specific laws that federal agencies identified as guiding their fish and wildlife activities:

- **National Forest Management Act**—Mandates multiple uses for lands managed by the Forest Service to include outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness purposes.
- **Federal Land Policy and Management Act of 1976**—Directs the Secretary of the Interior to develop and maintain land use plans using a systematic interdisciplinary approach to achieve the integrated consideration of physical, biological, and economic factors.
- **National Wildlife Refuge System Administration Act of 1966**—Establishes the National Wildlife Refuge System and directs the Secretary of the Interior in the overall management of the refuge system to maintain the biological integrity, diversity, and environmental health of the system, and prepare a comprehensive conservation plan for each refuge.
- **National Indian Forest Resources Management Act**—Directs the Secretary of the Interior to undertake management activities on Indian forest lands with tribal participation.

Treaties and executive orders also establish federal agency responsibilities for fish and wildlife. Federal agencies identified two treaties guiding their fish and wildlife activities in the basin—the Columbia River Treaty, which defines the relationship between the United States and Canada concerning the operation of Columbia River dams and reservoirs, and the Pacific Salmon Treaty, which governs the harvest of certain stocks in the fisheries of Northwest states (including Alaska) and Canada. Federal agencies also identified three executive orders guiding their activities with regard to floodplain management, protection of wetlands, and protection of migratory birds. The most recent of these, Executive Order 13186, January 10, 2001, titled Responsibilities of Federal Agencies To Protect Migratory Birds, directs executive agencies to take certain actions to further implement the Migratory Bird Treaty Act for the conservation of migratory birds and their habitats. Executive Order 11988, May 24, 1977, requires

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certain actions related to floodplain management, and Executive Order 11990 of the same date requires certain actions related to the protection of wetlands.

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### Various Laws, Treaties, and Executive Orders Require Agencies to Consider the Rights of Tribes

Laws, treaties, and executive orders create federal responsibilities to Indian tribes and guide federal agency activities that affect the tribes of the Columbia River Basin. Federal laws, including the following, create a responsibility for federal agencies to support tribal self-government, facilitate tribal participation in federal activities, and assist in the management of tribal resources.

- **Indian Reorganization Act**—Enacts measures to protect ownership of Indian lands, restore lands to tribal ownership, and grants rights of self-government to Indians.
- **Indian Self-Determination and Education Assistance Act**—Enacts measures that promote a policy of Indian self-determination by assuring maximum Indian participation in educational and other federal services to Indian communities, generally provided through the Departments of the Interior and Health and Human Services programs for Indians.
- **Snyder Act**—Authorizes appropriations and expenditures through BIA for the benefit; care; and assistance of Indians, such as education, health, and other purposes.

Treaties between the United States and six basin tribes document the agreements reached between the federal government and the tribes in exchange for ceding most of their ancestral lands. Federal agencies have a general trust responsibility to protect tribal rights reserved under these treaties. Typically, each treaty describes the boundaries of the tribal lands ceded, the boundaries of lands reserved for habitation by the tribe, payments to be made to the tribe, and certain rights of the tribe under the treaty, including specific hunting and/or fishing rights, as shown in table 2.

**Table 2: Treaties Establishing Reservations and Reserving Hunting and/or Fishing Rights of Six Columbia River Basin Tribes**

Treaty	Tribe	Hunting and/or fishing rights
Treaty with the Wallawalla, Cayuse, etc. (12 Stat. 945) June 9, 1855	Confederated Tribes of the Umatilla Indian Reservation, Oregon	The exclusive right of taking fish in the streams running through and bordering the reservation and at all other usual and accustomed stations in common with citizens of the United States, and the privilege of hunting, gathering roots, and pasturing their stock on unclaimed lands in common with citizens.
Treaty with the Yakama (12 Stat. 951) June 9, 1855	Confederated Tribes and Bands of the Yakama Reservation, Washington	
Treaty with the Tribes of Middle Oregon (12 Stat. 963) June 25, 1855 <sup>a</sup>	Confederated Tribes of the Warm Springs Reservation of Oregon <sup>a</sup>	
Treaty with the Nez Perces (12 Stat. 957) June 11, 1855	Nez Perce Tribe of Idaho	
Treaty with the Flatheads, etc. (12 Stat. 975) July 16, 1855	Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana	
Treaty with the Eastern Band Shoshoni and Bannock (15 Stat. 673) July 3, 1868	Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho	The right to hunt on the unoccupied lands of the United States so long as game may be found thereon.

Source: GAO analysis.

<sup>a</sup>Off-reservation hunting, fishing, and other rights were relinquished in a supplemental treaty of November 15, 1865.

Presidential executive orders were used by the U.S. government to reserve lands for six other Columbia River Basin tribes, as shown in table 3.<sup>4</sup> Similar to treaties, these executive orders describe the lands reserved for habitation by the tribes, but unlike treaties, do not explicitly state each tribe’s right to fish and/or hunt. Nevertheless, the federal government has respected nontreaty rights to hunt and fish on tribal lands.

<sup>4</sup>Unlike the other 12 Columbia Basin tribes, the Kootenai Tribe of Idaho has neither a treaty nor an executive order establishing reservation lands. The Kootenai Reservation in Idaho was established in 1894, consisting of allotments on the public domain.

**Table 3: Executive Orders Establishing Reservations for Six Columbia River Basin Tribes**

Executive order date	Tribe
April 9, 1872 <sup>a</sup>	Confederated Tribes of the Colville Reservation, Washington
Sept. 12, 1872 <sup>b</sup>	Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Nov. 8, 1873 <sup>c</sup>	Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
April 16, 1877 <sup>d</sup>	Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Jan. 18, 1881	Spokane Tribe of the Spokane Reservation
March 23, 1914	Kalispel Indian Community of the Kalispel Reservation, Washington

Source: GAO analysis.

<sup>a</sup>The April executive order was superseded by a July 2, 1872, executive order that redefined the reservation boundaries. In a May 9, 1891, agreement, the Indians ceded about 1.5 million acres of the reservation, referred to as the "North Half", to the United States. Under the agreement, the tribe retained the right to hunt and fish on those lands. Congress ratified the agreement in an act of June 21, 1906, 34 Stat. 325, 377-8, and the Supreme Court upheld the hunting and fishing rights retained against state regulation in *Antoine v. Washington*, 420 U.S. 194 (1975). Although the 1891 agreement was not ratified until 1906, Congress opened up the North Half of the reservation for settlement in an act of July 1, 1892, 27 Stat. 62.

<sup>b</sup>The reservation was subsequently dissolved in 1883; lands were purchased as a subsistence homestead in 1934, under Title II of the National Industrial Recovery Act of 1933.

<sup>c</sup>Composed of lands reserved for Indians by an executive order of June 14, 1867.

<sup>d</sup>A treaty of October 1, 1863, between the United States and the Western Bands of Shoshonee Indians, authorized the President to establish a reservation when deemed necessary, and the bands received an annuity as full compensation and equivalent for the loss of game and the rights and privileges conceded.

Three other executive orders, as well as a presidential memorandum, were identified by federal agencies as providing guidance in their intergovernmental relationships with tribes while performing their missions.

- **Executive Order 12866 (September 30, 1993), Regulatory Planning and Review**—Establishes a program to reform and make more efficient the regulatory process, including making the process more accessible and open to the public. Provides that wherever feasible, agencies shall seek views of appropriate state, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect them.
- **Executive Order 12875 (October 26, 1993), Enhancing the Intergovernmental Partnership**—Prohibits executive agencies, to the extent feasible, from promulgating any regulation not required by

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statute that creates a mandate upon a state, local, or tribal government, unless funding for the direct costs is provided or the agency consults with the affected government.

- **Executive Order 13175 (November 6, 2000), Consultation and Coordination with Indian Tribal Governments**—Requires executive agencies to respect Indian tribal self-governance and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and tribal governments. Provides that each agency shall have an accountable process to ensure meaningful and timely tribal input in the development of regulatory policies that have tribal implications.
- **Memorandum for the Heads of Executive Departments and Agencies (April 29, 1994), Government to Government Relations with Native American Tribal Governments**—Requires, among other things, that executive agencies operate within a government to government relationship with federally recognized tribal governments; consult to the greatest extent possible with tribal governments before taking actions that affect tribal governments; and assess the impact of federal government plans, projects, programs, and activities on tribal trust resources and ensure that tribal rights and concerns are considered in developing them.

In addition to these executive orders, some federal agencies have internal orders and memorandums to guide their actions with tribes. For example, Secretarial Order 3206, jointly issued by the Secretary of the Interior and the Secretary of Commerce in 1997, clarifies the responsibilities of the departments, their agencies, offices, and bureaus when actions taken under the authority of the ESA affect or may affect Indian lands, tribal trust resources, or the exercise of tribal rights. The order acknowledges the trust responsibility and treaty obligations of the United States toward Indian tribes and tribal members and its government to government relationship in dealing with the tribes. Accordingly, activities of the Departments of Commerce and the Interior under the ESA should harmonize trust responsibilities, tribal sovereignty, and the agency missions, and strive to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species. In its 1996 Tribal Policy, Bonneville outlines the foundation for its trust responsibility as a federal agency and provides a framework for a government to government relationship with the 13 federally recognized Columbia River Basin tribes. In addition, FWS cited its Native American Policy of 1994, EPA cited its Tribal Consultation

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Framework of 2001, and NMFS cited the Department of Commerce’s American Indian and Alaska Native Policy of 1995, as providing agency guidance for meeting responsibilities to the tribes.

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## Court Decisions Define and Clarify Agency Responsibilities

Federal responsibilities and activities under laws, treaties, and executive orders are continually being defined and clarified through court decisions. These decisions provide guidance regarding the fish and wildlife activities of federal agencies such as Bonneville, the Corps, and NMFS. The following court decisions were among those that federal agencies identified as guiding their fish and wildlife activities in the basin:

- ***National Wildlife Federation v. National Marine Fisheries Service***—Remanded NMFS’ 2000 biological opinion for ESA-listed salmon and steelhead in the Columbia and Snake Rivers to NMFS to resolve deficiencies identified by the court.<sup>5</sup>
- ***National Wildlife Federation v. United States Army Corps of Engineers***—Remanded a decision regarding dam operations in the FCRPS to the Corps to address compliance with its obligations under the Clean Water Act.<sup>6</sup>
- ***Northwest Environmental Defense Center v. Bonneville Power Administration***—Interpreted Bonneville’s responsibility to provide “equitable treatment” for fish and wildlife in conducting its power marketing activities under the Northwest Power Act.<sup>7</sup>

Court decisions have also defined and clarified the responsibilities of federal agencies to tribes, regarding both the extent of the federal government’s trust responsibilities to tribes under laws, treaties, and executive orders, and, more specifically, the extent of Columbia River Basin treaty tribes’ fishing rights. Regarding the extent of federal agency trust responsibilities for Indian tribes, case law defines the trust responsibility of the federal government to protect the rights of tribes as established in treaties and other agreements. For example, in *Seminole*

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<sup>5</sup>No. CV 01-640-RE, 2003 WL 21077450 (D. Or. May 7, 2003).

<sup>6</sup>132 F. Supp.2d 876 (D. Or. 2001).

<sup>7</sup>117 F.3d 1520 (9<sup>th</sup> Cir. 1997).

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*Nation v. United States*, the Supreme Court said that the government’s conduct in carrying out its obligations to Indians should be “judged by the most exacting fiduciary standards,”<sup>8</sup> and in *Pyramid Lake Paiute Tribe of Indians v. Morton*, a federal district court found that the Secretary of the Interior was required to assert his statutory and contractual authority “to the fullest extent possible”<sup>9</sup> to fulfill the government’s trust responsibilities.

Regarding Columbia River Basin tribes, federal agencies identified two court cases that have helped to identify and define treaty rights to fish for four treaty tribes—the Confederated Tribes of the Umatilla Reservation, Oregon; the Confederated Tribes and Bands of the Yakama Reservation, Washington; the Confederated Tribes of the Warm Springs Reservation of Oregon; and the Nez Perce Tribe of Idaho. In 1968, 14 Yakama tribal members filed suit to prevent the State of Oregon from interfering with their off-reservation treaty fishing rights. The court found that the state’s authority to regulate Indian fishing for conservation purposes was limited as treaties reserved to the Columbia River tribes an absolute right to a fair share of the fish produced by the Columbia River system.<sup>10</sup> In the second case, *United States v. Washington*, a federal district court in Washington found that the Indians were entitled to the opportunity to take up to 50 percent of the harvestable number of fish that can be taken.<sup>11</sup>

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## Multiple Plans and Programs Guide Federal Fish and Wildlife Activities in the Basin

Federal agency fish and wildlife activities in the basin are guided by numerous plans and programs, but the majority of fish and wildlife benefits are achieved through a few key collaborative plans, driven by the Northwest Power Act and the ESA. Under the Northwest Power Act, the Columbia River Basin Fish and Wildlife Program outlines a collaborative strategy for benefiting fish and wildlife affected by the development and operation of hydroelectric dams in the Columbia River Basin, and under the ESA, agencies are guided by biological opinions developed

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<sup>8</sup>316 U.S. 286, 297 (1942).

<sup>9</sup>354 F. Supp. 252, 256 (D.D.C. 1973).

<sup>10</sup>*Sohappy v. Smith*, 302 F. Supp. 899, 911 (D. Or. 1969), consolidated with *United States v. Oregon*, Civil No. 68-513 (1969) initiated by the United States as trustee of tribes against the State of Oregon.

<sup>11</sup>*United States v. Washington*, 384 F. Supp. 312, 343 (W.D. Wash. 1974).

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collaboratively by FWS and NMFS for the recovery of threatened and endangered species, as well as by two other related collaborative plans. Additional laws and specific agency missions drive numerous other collaborative and individual fish and wildlife plans and programs. Appendix V provides descriptions of selected plans and programs identified by federal agencies in the basin.

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**The Northwest Power Act and the Endangered Species Act Drive Key Collaborative Plans and Programs**

The key collaborative fish and wildlife plans and programs in the basin are driven by responsibilities created under the Northwest Power Act and the ESA. Agencies collaborate on both the development, as well as the implementation, of these key plans and programs. The lead agencies and federal and tribal collaborators in the development and implementation of the plans and programs are summarized in figure 3.



**Figure 3: Federal and Tribal Collaboration on Key Fish and Wildlife Plans and Programs Driven by the Northwest Power Act and the Endangered Species Act**

Plan/program	Lead agency	Contribute to development											Contribute to implementation													
		BIA	BLM	Bonneville	Corps	EPA	Forest Service	FWS	NMFS	NRCS	Reclamation	USGS	Tribes	BIA	BLM	Bonneville	Corps	EPA	Forest Service	FWS	NMFS	NRCS	Reclamation	USGS	Tribes	
Columbia River Basin Fish and Wildlife Program	→ Bonneville (through the Council <sup>a</sup> )		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
FCRPS Biological Opinions	→ FWS and NMFS		■	■	■		■	■		■					■	■							■			
Recovery plans for salmon <sup>b</sup>	→ NMFS		■	■	■	■	■	■		■	■	■		■	■	■	■	■	■	■		■	■	■	■	
Basin-wide Salmon Recovery Strategy	→ NMFS	■	■	■	■	■	■	■		■				■	■	■	■	■	■	■		■				

Source: GAO analysis.

Note: Figure does not include significant state, local, and private entity participation in plan development and implementation.

<sup>a</sup>The Northwest Power and Conservation Council, which is led by representatives from four states, was created by the Northwest Power Act to assist Bonneville in fulfilling its federal responsibilities to fish and wildlife.

<sup>b</sup>The recovery plans for salmon are still under development. This figure reflects expected agency contributions to the implementation of recovery plans.

### Northwest Power Act-Driven Plans and Programs

Under the Northwest Power Act, the Northwest Power and Conservation Council (Council) has a duty to prepare and adopt the Columbia River Basin Fish and Wildlife Program (Fish and Wildlife Program) to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries for impacts of all federal and nonfederal hydroelectric projects in the basin. In preparing the Fish and Wildlife Program, the Council periodically solicits recommendations from federal and state fish and wildlife agencies, Indian tribes, and others concerning the needs of fish and wildlife in the basin. The Council then develops a draft Amendment to the Fish and Wildlife Program that incorporates the recommendations received, and releases the draft for public comment. After reviewing comments received on the draft, and balancing the needs of fish and wildlife with the region’s hydropower needs, the Council issues the Fish and Wildlife Program, which provides guidance and recommendations on mitigating the impacts of hydropower on the region’s fish and wildlife.

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To incorporate local planning for the more than 50 subbasins in the Columbia River Basin into the Council's development of the Fish and Wildlife Program, the Council initiated subbasin planning in 2001. The Council expects to complete the first round of subbasin plans in May 2004, review and take comments on the plans through the fall, and then amend them into the program by January 2005. The plans will then form the basis from which projects will be solicited and selected. Federal agencies, including the Corps, Forest Service, Reclamation, BLM, EPA, FWS, NMFS, NRCS, and USGS, are providing watershed-level information and technical assistance, and some Columbia River Basin tribes are among those taking the lead in coordinating and managing development of specific subbasin plans. A few of the tribes reported that subbasin planning is an important step to including local input in the Fish and Wildlife Program, but expressed concern that challenges to the successful implementation of subbasin plans exist. For example, one tribal representative expressed concern with the consistency of funding and contracting procedures, while another expressed concern at the level of local commitment to subbasin fish and wildlife priorities.

The Northwest Power Act directs Bonneville to fund the protection, mitigation, and enhancement of fish and wildlife in a manner consistent with the act. To meet this requirement, Bonneville takes actions and enters into agreements with other entities to meet the goals and objectives outlined by the Council. Bonneville receives assistance in this process from the Columbia Basin Fish and Wildlife Authority, composed of federal, state, and tribal fish and wildlife officials, which provides recommendations regarding fish and wildlife projects proposed by contractors. The Council's Independent Scientific Review Panel reviews proposed projects to ensure that they are consistent with the goals of the Fish and Wildlife Program. As shown in the following examples, other federal agencies and tribes also collaborate with Bonneville in implementing the Fish and Wildlife Program, affording Bonneville access to additional knowledge and technical capabilities, as well as access to resources needed for mitigation activities.

- FWS and NMFS provide Bonneville with assistance on issues such as fish passage and population monitoring. In addition, Bonneville provides direct funding to FWS for the operation and maintenance of certain hatcheries.
- The Corps and Reclamation manage in-river mitigation at hydropower facilities, such as fish screens, with direct funding from Bonneville.

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- Federal agencies such as the Forest Service and BLM, as well as state, tribal, and private landowners, receive direct funding or contract with Bonneville for habitat mitigation activities.
  - Tribes contract with Bonneville to provide mitigation activities such as habitat improvement, hatchery management, and habitat acquisition projects both on and off reservation.

Recently, Bonneville revised its Fish and Wildlife Program project budget, accounting, and contracting policies, raising concerns among federal agencies, the Council, and the tribes. For example, in 2002, Bonneville decided that it should not be the primary source of funding for off-site mitigation projects on federal lands, and placed a temporary hold on funding for land purchases and easements for off-site mitigation while it reviewed its financial condition and liquidity position. In addition, Bonneville changed its budgeting and planning methods from obligations to accruals in November 2002. Federal agencies, the Council, and some tribes reported that Bonneville's processes for project submittal, approval, and contract renewal and management are inconsistent and constantly changing. As such, many project managers at the tribes who serve as contractors to Bonneville reported spending as much time learning and adapting to changing processes as implementing projects on the ground. According to Bonneville, the changes were based in part on the recommendations of a 1997 accounting firm review of program implementation, and were necessary to improve program implementation, keep Fish and Wildlife Program costs on target, and align its fish and wildlife budgeting approach with its other program budgets.<sup>12</sup>

#### Endangered Species Act-Driven Plans and Programs

Under the ESA, agencies must use their authorities to conserve endangered and threatened species and make sure that their actions do not jeopardize the continued existence of listed species. In the Columbia River Basin, agencies collaborate on several concurrent and sometimes overlapping plans towards this end, including biological opinions, the proposed recovery plans for salmon, and the Basin-wide Salmon Recovery Strategy. While different in their specific focus and scope, all of these plans promote the continued existence of threatened and endangered species in the basin.

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<sup>12</sup>Moss Adams, LLP, *Columbia River Basin Fish and Wildlife Program Management Review of Contracting Processes* (Portland, Oregon: Dec. 1997). The report is available at <http://www.nwppc.org/library/1998/98-1.htm>. Site last visited on May 14, 2004.

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As the regulating agencies for endangered and threatened species, FWS and NMFS are the lead agencies on most fish and wildlife plans driven by the ESA. Section 7 of the ESA requires agencies to consult with FWS and NMFS to ensure that actions are not likely to jeopardize listed species. Based on these consultations, FWS and NMFS are required to produce biological opinions that prescribe reasonable and prudent measures/alternatives for proposed federal actions that may adversely affect listed species. Bonneville, the Corps, and Reclamation consult with FWS and NMFS on the impacts that operation of the FCRPS has on endangered and threatened species. In response to these consultations, NMFS develops biological opinions for anadromous species impacted by the FCRPS, while FWS develops biological opinions for resident fish and wildlife impacted by the FCRPS.<sup>13</sup>

NMFS first issued a Biological Opinion for the FCRPS for salmon and steelhead in 1992, and developed subsequent versions, such as a 1998 supplement that added steelhead. The most recent Biological Opinion for the FCRPS for salmon and steelhead was issued in 2000. In 2003, however, a federal court remanded the 2000 Biological Opinion after ruling it deficient, due to reliance on federal mitigation actions that had not undergone section 7 consultations, as well as reliance on off-site nonfederal mitigation activities that were not reasonably certain to occur.<sup>14</sup> A new salmon and steelhead Biological Opinion for the FCRPS is due in June 2004. FWS developed a Biological Opinion for resident fish impacted by the FCRPS, including bull trout and white sturgeon. The first FCRPS Biological Opinion for white sturgeon was developed by FWS in 1995.

To develop the reasonable and prudent measures/alternatives outlined in the FCRPS Biological Opinions, FWS and NMFS rely on technical input from several agencies, as well as information contained in other fish and wildlife plans:

- Bonneville, the Corps, and Reclamation consult with FWS and NMFS in developing reasonable and prudent measures/alternatives for hydropower operation that can reasonably be implemented;

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<sup>13</sup>While the FCRPS is composed of 31 federal projects, the biological opinions only address the 14 projects participating in coordinated power operations.

<sup>14</sup>*National Wildlife Federation v. National Marine Fisheries Service*, No. CV 01-640-RE, 2003 WL 21077450 (D. Or. May 7, 2003).

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- Forest Service and BLM contribute information used to develop the reasonable and prudent measures/alternatives that address off-site habitat; and
  - To the extent possible, NMFS has incorporated information from the Council's subbasin planning in their development of the Biological Opinions due in June.

Notwithstanding this collaboration, several agencies and groups, such as the Council and tribes, expressed a desire for increased participation in developing the Biological Opinions. These groups indicated that they have important technical information and experience that could help inform the development of the Biological Opinions.

Responsibility for implementing the Biological Opinions lies with the operators and managers of the FCRPS—Bonneville, the Corps, and Reclamation—known as the Action Agencies. In fulfilling this responsibility, the Action Agencies create Biological Opinion Implementation Plans, which provide guidance on how the Biological Opinions should be implemented. The Action Agencies create 1-Year Implementation Plans, which outline annual goals for meeting reasonable and prudent measures/alternatives, as well as 5-Year Implementation Plans, which address longer-term goals for meeting the measures. The development of Implementation Plans typically involves significant input from other agencies. For example, Bonneville and the Council work together to support ESA objectives by integrating the implementation of the Biological Opinions with subbasin planning and the Fish and Wildlife Program's administrative process. In addition, implementation of the Biological Opinions has evolved as the Action Agencies continue to incorporate new information from ESA recovery planning processes.

Many basin agencies provide input to the Action Agencies on the implementation of hydrosystem operations and configuration under the Biological Opinions through the Regional Forum (Forum). Key members of the Forum include Bonneville, the Corps, and Reclamation, as well as FWS and NMFS, and the states of Oregon, Washington, Idaho, and Montana. The Forum is composed of five committees that make decisions concerning the FCRPS in accordance with the Biological Opinions, facilitating regional communication and coordination towards fulfillment of the Biological Opinions. Forum meetings are open to all entities, and interagency collaboration is an essential element of the Forum. However, some tribal representatives indicated that they would like to have more sovereign

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representation on the Forum. They feel that the meetings neither provide for a collaborative, balanced exchange of information between federal agencies and the tribes, nor satisfy the requirement for government-to-government consultation with tribes on matters that affect them.

As further required by the ESA, NMFS is currently developing recovery plans for salmon (recovery plans) for various regions within the Columbia River Basin, which outline programs for the recovery of endangered or threatened salmon and steelhead in the basin. Specifically, the recovery plans are designed to organize, coordinate, and prioritize recovery actions for salmon and steelhead, as well as outline objective measurable criteria that will be used to determine when they no longer need the protection of the ESA. In addition, recovery plans communicate the vision for salmon and steelhead recovery to other agencies and the public.

NMFS' development of the recovery plans has been enhanced by collaboration and information sharing with other agencies and groups, including tribes. NMFS is using the Council's subbasin planning as a framework for developing the various recovery plans. While NMFS is not required to collaborate with the Council on this effort, working through the subbasin framework affords NMFS access to local watershed information. Although the recovery plans have yet to be completed—the first recovery plan is due in December 2005—NMFS hopes they will be implemented through interagency collaboration using the subbasin plans.

Separate from the recovery plans, the Basin-wide Salmon Recovery Strategy provides an interim conceptual, collaborative plan for the recovery of salmon and steelhead in the basin, until recovery plans are complete. Referred to as the "All-H Paper" because it addresses the four "H's" of fish management—hatcheries, habitat, harvest, and hydropower—it is a blueprint for collaboration among federal agencies in the basin seeking to restore aquatic habitat and achieve recovery objectives for endangered and threatened salmon and steelhead.

Development of the All-H paper involved input from nine federal agencies, collectively known as the Federal Caucus—Bonneville, the Corps, Forest Service, Reclamation, BIA, BLM, EPA, FWS, and NMFS. Agency participation in the development varied according to agencies' missions and expertise:

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- Bonneville, the Corps, and Reclamation provided input on recovery activities related to hydropower, and Reclamation provided input on irrigation;
  - Forest Service and BLM provided input on recovery concerns related to habitat;
  - FWS and NMFS provided input on the role of annual harvest allocations in recovery;
  - FWS and NMFS provided extensive input and guidance on the role of hatcheries in recovery; and
  - EPA provided input and recommendations related to habitat and hydropower.

After input from the nine agencies had been collected, and the All-H was completed, agencies memorialized their collaboration through a Memorandum of Agreement that outlined how agencies could cooperate on implementation of the All-H. Overall, interagency collaboration on the development of the All-H was well regarded, and the four “H’s” have contributed to decision making on other plans in the basin. In addition, NMFS has relied on information outlined in the All-H Paper as a framework for developing the forthcoming recovery plans.

Implementation of the measures by the nine federal agencies as outlined in the All-H Paper is voluntary; while agreed to by members of the Federal Caucus, the paper establishes expectations, but does not establish specific obligations for individual agencies. Actual implementation of the recommendations has varied across agencies, and across the different categories of recovery—hatcheries, habitat, harvest, and hydropower. Nonetheless, the comprehensive approach to species management outlined in the All-H Paper has informed and guided agencies’ work on other plans. For example, the Council now uses information contained in the All-H Paper in its development of the Fish and Wildlife Program, and the Action Agencies use the four “H’s” in the Biological Opinion Implementation Plans.

**Other Directives and Agency Missions Drive Additional Collaborative and Independent Plans and Programs**

Additional fish and wildlife plans and programs are driven by other directives, such as the Clean Water Act and court decisions based on treaty rights, as well as by each agency’s unique mission. Agencies develop and implement these plans and programs through collaborative and independent agency efforts. The lead agencies and federal and tribal collaborators in the development and implementation for selected plans and programs are summarized in figure 4.

**Figure 4: Federal and Tribal Collaboration on Selected Fish and Wildlife Plans and Programs Driven by Other Directives and Agency Missions**

Plan/program	Lead agency	Contribute to development											Contribute to implementation															
		BIA	BLM	Bonneville	Corps	EPA	Forest Service	FWS	NMFS	NRCS	Reclamation	USGS	Tribes	BIA	BLM	Bonneville	Corps	EPA	Forest Service	FWS	NMFS	NRCS	Reclamation	USGS	Tribes			
Clean Water Act General Assistance Grant Program to Tribes	EPA					■																						■
Clean Water Act Section 319 Grant Program	EPA					■																						■
Clean Water Act Section 106 Grant Program	EPA					■																						■
U.S. v. Oregon Management Plans	NMFS and FWS	■						■	■					■					■	■								■
Project Management Plans	Corps				■												■											
Research and Monitoring Programs	Reclamation																									■		
Northwest Forest Plan	Forest Service and BLM	■	■		■	■	■	■	■				■			■	■	■	■									■
Land and Resource Management Plans	Forest Service		■				■									■			■									
District Resource Management Plans	BLM		■													■												
Environmental Quality Incentive Program	NRCS											■															■	■

Source: GAO analysis.

Note: Figure does not include significant state, local, and private entity participation in plan development and implementation.

**Clean Water Act-Driven Programs**

The Clean Water Act established the basic structure for regulating discharges of pollutants into the waters of the United States. As the regulating agency for the Clean Water Act, EPA has the authority to



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implement pollution control programs such as setting wastewater standards for industry. The Clean Water Act also provides for states and tribes to set water quality standards for all contaminants in surface waters. EPA also manages grant programs designed to assist agencies, tribes, and others to comply with this guidance.

In the Columbia River Basin, EPA manages several grant programs that indirectly benefit fish and wildlife by promoting water and environmental quality on tribal lands. EPA manages these programs collaboratively with tribes and other organizations to identify water quality needs in the basin, as well as suitable projects to address these needs. Grant programs in the basin identified by EPA include the following:

- **Clean Water Act General Assistance Grant Program to Tribes**—Provides general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer regulatory and multimedia programs addressing environmental issues on Indian lands.
- **Clean Water Act Section 319 Grant Program**—Provides funding to states and Indian tribes for a wide variety of nonpoint source activities, including technical and financial assistance, education, training, technology transfer, demonstration projects, and monitoring.
- **Clean Water Act Section 106 Grant Programs**—Assists Indian tribes and states in carrying out effective water pollution control programs, including water quality planning and assessments, development of water quality standards, and water quality monitoring.

Implementation of these grant projects is handled by grant recipients, with minimal assistance from EPA beyond the initial discussions concerning project design and funding. According to EPA, the grant programs work well and allow the tribes to fully incorporate their technical knowledge and experience into water quality planning.

## Court Decision-Driven Plans and Programs

In addition to federal environmental protection laws, such as the Clean Water Act, tribal treaty rights and clarifying court decisions have also resulted in plans to manage basin fish and wildlife. For example, the 1969 *United States v. Oregon* and 1974 *United States v. Washington* court decisions ruled that certain Columbia River Basin tribes have a right to 50 percent of the annual harvestable catch of fish at all usual and accustomed fishing areas. A subsequent court ruling in 1977 ordered FWS, NMFS, state

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fish and wildlife agencies, and the tribes to develop a collaborative plan for managing the annual harvest of the fisheries affected by *United States v. Oregon*. In addition, BIA assists the tribes in negotiations with federal agencies and development of the plan. Known as the Five Year Columbia River Fish Management Plan, the plan sets forth harvest allocation terms, as well as efforts to rebuild and enhance fish runs. Since that plan expired in 1982, harvest allocation under *United States v. Oregon* has been alternately managed by additional multiyear collaborative plans and annual court-ordered negotiations that seek to balance tribal harvest, nontribal harvest, and species protection. According to FWS and NMFS, their input on *United States v. Oregon* negotiations must balance both their trust responsibilities to tribes, as well as their responsibilities to endangered and threatened species that are affected by the *United States v. Oregon* decision. At present, *United States v. Oregon* harvest allocation is decided by annual court-ordered negotiations, although the parties are seeking to develop a new long-term collaborative plan, to be known as the Columbia River Fish Management Agreement. Otherwise, the parties will continue to revisit harvest and fish management decisions for the Columbia River through annual negotiations.

Implementation of measures agreed to in *United States v. Oregon* negotiations or plans is handled collaboratively by federal, state, and tribal parties. For example, FWS and NMFS are responsible for implementing measures, such as hatchery enhancement, to rebuild depressed fish stocks. State agencies are responsible for publishing and regulating annual harvest levels. The five Columbia River Basin tribes that are parties to *United States v. Oregon* are responsible for abiding by annual harvest levels. According to NMFS, the implementation of *United States v. Oregon* negotiations or plans affect fisheries in a number of important areas, including habitat, production, and hatchery management. Furthermore, the decisions reached during the negotiations serve as guidelines for the various decisions made on the Regional Forum committees. For example, agreements concerning harvest levels that are reached with tribes during the *United States v. Oregon* negotiations serve as the baseline for discussions of harvest management and monitoring at the Regional Forum.

#### Agency Mission-Driven Plans and Programs

Agency missions also drive fish and wildlife plans in the basin. Specifically, the water and resource management responsibilities of the Corps, Reclamation, Forest Service, BLM, and NRCS require these agencies to create plans that address the fish and wildlife impacts of their activities. Some of these plans are collaborative in their design or implementation, and represent agency efforts to more fully meet their mission with

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assistance from other agencies. Others are designed and implemented independently by individual agencies, and represent agency efforts to benefit fish and wildlife through mission activities.

The Corps uses Project Management Plans to ensure that their internal agency activities follow appropriate guidelines for protecting fish passage and mitigating barriers to it along the Columbia River. The scope of Project Management Plans varies widely, but each plan includes a fish protection and mitigation component. Development and implementation of Project Management Plans is handled independently by the Corps. Information contained within Project Management Plans informs the Corps' participation in other plans in the basin, and thus influences the activities of other agencies. For example, the Corps reported that the content of Project Management Plans is frequently used in developing the annual and 5-year Biological Opinion Implementation Plans for the FCRPS.

Reclamation uses Research and Monitoring Programs to independently fund, develop, and implement a wide range of discretionary efforts, including research and monitoring efforts that focus on fish and wildlife. Funding for the Research and Monitoring Programs is distributed annually from Reclamation's Commissioner's office, and projects are selected from across a variety of departments. According to Reclamation officials, Research and Monitoring Programs are important tools for incorporating fish and wildlife activities into internal agency policies.

The collaborative efforts of the Forest Service and BLM have yielded the Northwest Forest Plan, an effort to facilitate a collaborative interagency approach to ecosystem management on federal lands located within the range of the threatened northern spotted owl. In addition, the Northwest Forest Plan includes an Aquatic Conservation Strategy designed to promote the recovery of listed endangered and threatened species, as well as nonlisted aquatic species. As land management agencies, Forest Service and BLM take the lead on developing and implementing measures for the long-term health of forests, wildlife, and waterways on their lands. Nonetheless, several other federal agencies provided input on the design of the Northwest Forest Plan through a Memorandum of Understanding signed by the Corps, Forest Service, BIA, BLM, EPA, FWS, NMFS, USGS, and the National Park Service. In addition, federal agencies, as well as state, local, and tribal governments, continually collaborate on the implementation of the Northwest Forest Plan. For example, the Regional Interagency Executive Committee, which is comprised of representatives from the federal agencies, facilitates the prompt and coordinated

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implementation of the Northwest Forest Plan at the regional level. In addition, the Intergovernmental Advisory Committee, which is comprised of representatives from federal, state, county, and tribal governments, provides a vehicle for input from the states, counties, and tribes, and promotes the integration and coordination of forest management activities among federal and nonfederal entities.

The Forest Service also develops Land and Resource Management Plans, commonly referred to as Forest Plans, to manage each specific National Forest. Forest Plans, developed through the National Environmental Policy Act public comment process, address a variety of forest management concerns but contain objectives and standards/guidelines that specifically address conservation and restoration of fish and wildlife habitat integrated with other resource management needs. According to the Forest Service, Forest Plans were the primary vehicle for integrating fish and wildlife concerns with other management objectives. Forest Plans do not set forth determinations on the type and number of actions to be implemented, but provide sideboards and guidance for the design of site-level actions. Development and implementation of these plans are primarily handled by the Forest Service, although NMFS, FWS, and tribes provide some input. The Forest Service coordinates with BLM on the development of Forest Plans where BLM lands lie adjacent to National Forests. BLM and Forest Service also collaborate on species management, including habitat management and aquatic management strategies. Through consultations with the Forest Service, Columbia River Basin tribes provide input on the design and implementation of Forest Plans, and also participate in cost-share fish and wildlife activities on National Forest System lands. According to one Forest Service official, securing cost-share funding for activities benefiting nonlisted fish is an ongoing challenge because endangered and threatened species fish tend to receive the most attention and funding.

BLM uses District Resource Management Plans to guide agency activities. Resource Management Plans outline general management guidelines for all agency activities, and also contain specific management guidelines for protecting fish and wildlife. Although Resource Management Plans address internal management guidelines for BLM, they are developed through the National Environmental Policy Act public comment process. As such, they receive significant public attention and input, and BLM must incorporate the comments into their development of the plans.

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NRCS uses its Environmental Quality Incentive Program to fund projects that indirectly benefit fish and wildlife through environmental improvements to irrigation, erosion, water quality, and agriculture. Operated collaboratively with tribes, NRCS funds these projects on a cost-share basis, providing a minimum of 2.6 percent of the total funds. According to NRCS, tribes are an excellent vehicle for gaining access to lands previously inaccessible to environmental improvements because the tribes are continually purchasing land from private sellers, and because they are willing to partner with NRCS on land rehabilitation.

In conjunction with their agency missions, and in recognition of their trust responsibilities to tribes, federal agencies also have the opportunity to participate in the development and implementation of tribally managed fish and wildlife plans. For example, representatives from the Nez Perce, Umatilla, Warm Springs, and Yakama tribes, as well as staff from the Columbia River Inter-Tribal Fish Commission, compiled the *Wy-Kan-Ush-Mi Wa-Kish-Wit*, which outlines a framework for restoring anadromous fish stocks in the Columbia River Basin. This tribal plan outlines the cultural context for the tribes' salmon restoration efforts, as well as technical and institutional recommendations and watershed restoration actions. According to the tribes, however, federal agency collaboration on tribe-led plans is minimal, and there is significant room for increased participation from agencies on tribal fish and wildlife plans.

In addition to opportunities for collaboration on tribal plans, agencies also have opportunities to fulfill agency missions and other responsibilities through collaboration on state-managed plans. For example, one agency reported collaborating with the state of Washington on their "Extinction Is Not an Option" plan, which provides a framework for the recovery of endangered species in the state. Agencies also collaborate with the state of Oregon on the Plan for Salmon and Watersheds. According to some federal agency representatives, collaboration on federal and state fish and wildlife plans is important in ensuring that overall fish and wildlife goals in the basin are met.

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## Agency Comments and Our Evaluation

We provided copies of our draft report to the Departments of Agriculture, Commerce, Defense, the Interior, as well as Bonneville and EPA. Bonneville and the Departments of Agriculture and Commerce provided official written comments. (See apps. VI through VIII, respectively, for the full text of the comments received from these agencies and our responses.) The comments were generally technical in nature with few comments on

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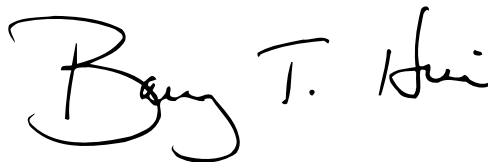
the report's overall findings. We made changes to the report, where appropriate, based on the technical comments provided by the three entities that commented on the report. The Department of Defense and EPA had no comments on the report. The Department of the Interior did not provide comments in time to be included in this report.

Bonneville commented that the draft would benefit from the inclusion of additional information regarding the federal government's trust responsibilities to the tribes in the Columbia River Basin. Within the scope of our review, we believe the topic is adequately and accurately described in the report. The Department of Agriculture objected to our assertions in figures 3 and 4 that the Forest Service contributes to the development or implementation of certain plans, and that BLM contributes to the development and implementation of Forest Service Land and Resource Management Plans, respectively. The figures are intended to demonstrate the collaborative nature of fish and wildlife plans and programs in the basin. While we recognize that in many cases agencies do not have official roles or responsibilities in specific plans, we believe our figures accurately highlight both formal and informal contributions from agencies and tribes, as described to us by agency officials, tribal representatives, and others.

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We are sending copies of this report to the Secretaries of Agriculture, Commerce, Defense, the Interior, and the Administrators of Bonneville and EPA, appropriate congressional committees, and other interested Members of Congress. We will also make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact me at (202) 512-3841. Key contributors to this report are listed in appendix IX.



Barry T. Hill  
Director, Natural Resources  
and Environment

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# Scope and Methodology

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To identify and describe the laws, treaties, executive orders, and court decisions that define the responsibilities of the Bonneville Power Administration (Bonneville) and other federal agencies to perform activities benefiting fish and wildlife in the Columbia River Basin and involve tribes in the process, we reviewed our prior report on salmon and steelhead recovery activities in the Columbia River Basin for 11 agencies with significant responsibility for fish and wildlife in the Pacific Northwest.<sup>1</sup> These agencies were Bonneville; the Forest Service and Natural Resources Conservation Service (NRCS) within the Department of Agriculture; the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (FWS), and U.S. Geological Survey (USGS) within the Department of the Interior; the U.S. Army Corps of Engineers (Corps) within the Department of Defense; the National Marine Fisheries Service (NMFS) within the Department of Commerce; and the Environmental Protection Agency (EPA). We reviewed the directives identified by the agencies in the report as defining their responsibilities for salmon and steelhead in the basin, and requested confirmation from each agency on these directives. In addition, we asked each agency to identify any additional directives that define their responsibilities for other fish and wildlife, and to identify any directives applicable to Columbia River Basin tribes that create fish and wildlife responsibilities for agencies. We also requested input from the 13 Columbia River Basin tribes on the directives that define federal responsibilities for fish and wildlife in the basin. Based on the responses provided by agencies and tribes, we compiled a summary of directives that define agency responsibilities for fish and wildlife in the basin. We collected documentation on these directives from the agencies, discussed the directives with agency, tribal, and other representatives for clarification.

To identify and describe the fish and wildlife plans and programs that Bonneville and other federal agencies have developed to guide their fish and wildlife activities, we reviewed our prior report on salmon and steelhead recovery activities in the Columbia River Basin. We then reviewed the plans and programs identified by the agencies in the report as guiding their recovery activities for salmon and steelhead, and requested confirmation from each agency on these plans and programs. In addition,

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<sup>1</sup>U.S. General Accounting Office, *Columbia River Basin Salmon and Steelhead: Federal Agencies' Recovery Responsibilities, Expenditures, and Actions*, GAO-02-612 (Washington, D.C.: July 26, 2002).

we asked agencies to identify any additional plans and programs used to fulfill agency responsibilities for fish and wildlife in the basin, and we interviewed agency officials to gather additional information on the implementation of fish and wildlife plans and programs. We also interviewed staff and officials of the Northwest Power and Conservation Council and the Columbia Basin Fish and Wildlife Authority, in order to gather information on their roles in assisting federal agencies with the design and implementation of fish and wildlife plans and programs. To gather the tribal perspective on fish and wildlife plans and programs, we met with representatives from 10 of the 13 federally recognized tribes in the basin, as well as representatives from the Columbia River Inter-Tribal Fish Commission, and the Upper Columbia United Tribes. In addition, 10 of the 13 tribes submitted written comments on tribal participation in federal fish and wildlife plans in the basin.

During our information collection, agencies, organizations, and tribes highlighted a number of concerns regarding the implementation of fish and wildlife plans and programs in the basin, which we included in this report. In accordance with our policy to refrain from addressing matters that are in litigation, we did not examine or report on any issues that are before the court.

We performed our work from August 2003 through April 2004, in accordance with generally accepted government auditing standards.



# Laws, Treaties, and Executive Orders Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife

Tables 4, 5, and 6 list the nationwide, basin-specific, and mission-specific laws reported by federal agencies as guiding their actions to protect, mitigate, and enhance fish and wildlife in the Columbia River Basin.

**Table 4: Nationwide Laws Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

Nationwide law	Citation	Description
Anadromous Fish Conservation Act	16 U.S.C. §§ 757a-757f	Authorizes the Secretaries of Commerce and of the Interior to enter into cooperative agreements for the development, conservation, and enhancement of anadromous (migratory) fish resources.
Bald Eagle Protection Act	16 U.S.C. §§ 668-668d	Prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions.
Clean Air Act	42 U.S.C. §§ 7401-7671q	Requires EPA to set limits on air pollutants and approve state implementation plans to reduce pollutants that exceed limits, and requires federal activities to comply with limits.
Federal Water Pollution Control Act (commonly referred to as the Clean Water Act)	33 U.S.C. §§ 1251-1387	Provides for the restoration and maintenance of the Nation's waters. Authorizes EPA to establish effluent limitations and requires permits for the discharge of pollutants from a point source to navigable waters. EPA approves state and tribal limits for the maximum amount of a pollutant that a water body can receive and still meet water quality standards for specified purposes, including fish and wildlife.
Coastal Zone Management Act of 1972	16 U.S.C. §§ 1451-1465	Directs federal agencies to cooperate with state and local governments to control polluted runoff in coastal waters and to otherwise generally protect, develop, and restore the resources of the nation's coastal zone, including fish and wildlife and their habitats.
Comprehensive Environmental Response, Compensation, and Liability Act of 1980	42 U.S.C. §§ 9601-9675	Provides for the cleanup of hazardous waste by imposing liabilities and duties on responsible parties, including federal agencies, and by authorizing the federal government to take cleanup actions in response to releases or threatened releases of hazardous substances.
Endangered Species Act	16 U.S.C. §§ 1531-1544	Provides for the conservation and recovery of species of plants and animals that the National Marine Fisheries Service or the U.S. Fish and Wildlife Service determines to be in danger of or soon to become in danger of extinction. Includes measures to protect the habitats of these species.
Federal Water Project Recreation Act	16 U.S.C. §§ 4601-12 to 1-21	Declares that recreation and fish and wildlife enhancement should be given full consideration as purposes of federal water development projects.
Fish and Wildlife Conservation Act of 1980	16 U.S.C. §§ 2901-2912	Provides for financial and technical assistance to states for development and implementation of conservation plans and programs for nongame fish and wildlife.
Fish and Wildlife Coordination Act	16 U.S.C. §§ 661-666c	Authorizes the Secretary of the Interior to, among other things, provide assistance to, and cooperate with, federal, state, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife and their habitat, in minimizing damages from overabundant species, and in providing public shooting and fishing areas.

**Appendix II**  
**Laws, Treaties, and Executive Orders**  
**Guiding Agency Activities Affecting**  
**Columbia River Basin Fish and Wildlife**

(Continued From Previous Page)

Nationwide law	Citation	Description
Flood Control Acts	<i>E.g.</i> Flood Control Act of 1970, Pub. L. No. 91-611, 84 Stat. 1818 (1970) and Flood Control Act of 1965, Pub. L. No. 89-298, 79 Stat. 1073 (1965).	Authorize projects for the benefit of navigation, the control of destructive floodwaters, protection of the shorelines, and other purposes.
Magnuson-Stevens Fishery Conservation and Management Act of 1972	16 U.S.C. §§ 1801-1883	Establishes a framework for the conservation and management of U.S. coastal and Outer Continental Shelf fishery resources and anadromous species, which includes the establishment of national standards for fishery management and conservation and of eight Regional Fishery Management Councils to develop fishery management plans. Requires federal agencies to consult with the Secretary of Commerce with respect to any agencies actions that may adversely affect essential fish habitat, and requires the Secretary to recommend habitat conservation measures to the agency.
Marine Mammal Protection Act	16 U.S.C. §§ 1361-1421h	Enacts various measures to protect marine mammals and their habitats. Most notably, prohibits the taking of marine mammals, except under certain conditions, including as an incidental take during commercial fishing operations.
Marine Protection, Research and Sanctuaries Act of 1972	33 U.S.C. §§ 1401-1445, 16 U.S.C. §§ 1431-1434	Regulates the dumping of all types of materials into ocean waters and authorizes the EPA to issue dumping permits for material other than dredged material and the Army Corps of Engineers to issue permits for the transportation and dumping of dredged materials, based in part on the effect of the dumping on fish and wildlife and the marine environment.
Migratory Bird Conservation Act	16 U.S.C. §§ 715-715r	Establishes a Migratory Bird Conservation Commission, headed by the Secretary of the Interior, to approve areas of land or water recommended by the Secretary, and approved by the state in which the land is located, for acquisition as reservations for migratory birds.
Migratory Bird Treaty Act	16 U.S.C. §§ 703-712	Implements various treaties and conventions between the United States, Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Prohibits taking, killing, or possessing migratory birds.
National Environmental Policy Act of 1969	42 U.S.C. §§ 4321-4347	Enacts measures to promote efforts to prevent or eliminate damage to the environment. Requires federal agencies to examine the impacts of proposed major federal actions "significantly affecting" the environment.
National Historic Preservation Act of 1966	16 U.S.C. §§ 470	Encourages agencies and individuals to develop historic preservation programs, and requires agencies to oversee any historic sites under their jurisdiction and consider the effects of its actions on historic sites. Provides for tribes to designate an official to administer the preservation program on tribal lands.
Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990	16 U.S.C. §§ 4701-4751	Enacts measures to prevent the unintentional introduction of nonindigenous species into the waters of the United States and to minimize the economic and ecological effects of such species that become established. Establishes a task force, comprising, among others, the FWS, the Coast Guard, and EPA to develop a program to prevent introduction of and to control the spread of introduced aquatic nuisance species.

**Appendix II**  
**Laws, Treaties, and Executive Orders**  
**Guiding Agency Activities Affecting**  
**Columbia River Basin Fish and Wildlife**

(Continued From Previous Page)

Nationwide law	Citation	Description
North American Wetlands Conservation Act	16 U.S.C. §§ 4401-4414	Enacts measures to protect, enhance, restore, and manage wetlands and their ecosystems (which includes fish and wildlife). Authorizes the Secretary of the Interior to fund wetland improvement projects.
Oil Pollution Act of 1990	33 U.S.C. §§ 2701-2761	Imposes liability on responsible parties for damages (e.g., loss of natural resources) and for removal costs that agencies, tribes, and others incur from oil discharges into navigable waters.
Public Rangelands Improvement Act of 1978	43 U.S.C. §§ 1901-1908	Establishes a national policy to improve conditions on public rangelands; requires the Secretary of the Interior and Secretary of Agriculture to develop, update, and maintain an inventory of range conditions; and authorizes funding for range improvement projects.
River and Harbor Act of 1899, §§ 9,10	33 U.S.C. §§ 401, 403	Prohibits projects that interfere with navigation, unless congressional approval is given and a permit is obtained from the Department of Transportation for bridges or causeways, or from the Army Corps of Engineers for other projects such as piers, wharfs, breakwaters, bulkheads, jetties, weirs, dams, or dikes.
Safe Drinking Water Act of 1974	42 U.S.C. §§ 300f to j-26	Enacts measures to protect public drinking water. Requires EPA to promulgate national drinking water regulations to be enforced by states, and prohibits federal agencies from assisting actions that will contaminate an aquifer designated as a drinking water source.
Sikes Act	16 U.S.C. §§ 670-670o	Establishes a program for conservation and rehabilitation of natural resources, including fish and wildlife, at military installations, in accordance with a plan developed by the Secretaries of Defense and the Interior in coordination with the appropriate state agency.
Transportation Equity Act for the 21 <sup>st</sup> Century, § 3039	49 U.S.C. § 138 note	Directs the Secretary of Transportation, in coordination with the Secretary of the Interior, to study alternative transportation needs on public lands, such as national parks, recreation areas, and wildlife refuges, to encourage and promote the development of transportation systems for the betterment of those areas in order to, among other things, conserve natural, historical, and cultural resources and prevent adverse impacts, relieve congestion, reduce pollution, and enhance the visitor experience.
Watershed Protection and Flood Prevention Act	16 U.S.C. §§ 1001-1010	Authorizes the Secretary of Agriculture to provide financial and other assistance to state and local entities and to Indian tribes to plan and carry out projects in watersheds for flood prevention, conservation, development, utilization, and disposal of water, or for conservation and proper use of land.
Wild and Scenic Rivers Act	16 U.S.C. §§ 1271-1287	Institutes a national wild and scenic rivers system and implements a policy of protecting rivers that comprise the system and preserving them in a free-flowing state, by enacting protective and other measures.
Wilderness Act	16 U.S.C. §§ 1131-1136	Establishes a National Wilderness Preservation System composed of federally owned areas the Congress designates as "wilderness areas," which are to be administered in a way that protects the areas and preserves their wilderness character. Federal agencies that had jurisdiction over areas designated as part of the system are to retain jurisdiction and continue to manage them.

Source: GAO analysis of information provided by federal agencies.

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**Laws, Treaties, and Executive Orders**  
**Guiding Agency Activities Affecting**  
**Columbia River Basin Fish and Wildlife**

**Table 5: Basin-specific Laws Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

<b>Basin-specific law</b>	<b>Citation</b>	<b>Description</b>
Bonneville Project Act of 1937	16 U.S.C. §§ 832-832l	Authorizes the construction, maintenance and operation of the Bonneville Project to improve navigation on the Columbia River, and for incidental purposes such as the production of electricity. Creates the Bonneville Power Administration (Bonneville) and authorizes it to market power produced by the Project and to construct electricity transmission lines. Requires Bonneville to set its rates in a way that considers the recovery of the cost of producing and transmitting electric energy from the Federal Columbia River Power System.
Columbia Basin Project Act	16 U.S.C. §§ 835-835c-5	Makes the construction of Grand Coulee Dam subject to federal reclamation laws discussed in this table, and authorizes the Secretary of the Interior to take certain actions, including the sale and exchange of lands and the administration of public lands in the project area, to, among other things, protect project land.
Federal Columbia River Transmission System Act	16 U.S.C. §§ 838-838k	Directs the Secretary of Energy, through the Administrator of the Bonneville Power Administration, to operate and maintain the federal electric power transmission system in the Pacific Northwest and to construct appropriate improvements and additions. Designates Bonneville as the marketing agent, with some exceptions, of electric power generated by federal plants constructed by the Army Corps of Engineers or the Bureau of Reclamation in the Pacific Northwest.
Fisheries Restoration and Irrigation Mitigation Act of 2000	16 U.S.C. § 777	Directs the Secretary of the Interior, in consultation with heads of other appropriate agencies, to develop and implement projects to mitigate impacts on fisheries of the construction and operation of water diversions by local governmental entities in portions of Oregon, Washington, Montana, and Idaho from which water drains into the Pacific Ocean. Eligible projects include the development, improvement, or installation of fish screens and fish passage devices.
Mitchell Act	16 U.S.C. §§ 755-757	Directs the Secretary of Commerce to establish salmon-cultural stations in the Columbia River Basin in Oregon, Washington, and Idaho, and to carry out other activities for the conservation of fishery resources in the Columbia River Basin.

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*(Continued From Previous Page)*

<b>Basin-specific law</b>	<b>Citation</b>	<b>Description</b>
Pacific Northwest Electric Power Planning and Conservation Act	16 U.S.C. §§ 839-839h	Enacts measures to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply, and includes provisions for the protection of fish and wildlife. Provides for the formation of the Pacific Northwest Electric Power and Conservation Planning Council (Council) and directs it to, among other things, develop a program to “protect, mitigate, and enhance” fish and wildlife of the Columbia River Basin. Requires the Administrator of the Bonneville Power Administration to take steps to “protect, mitigate, and enhance” fish and wildlife affected by the development and operation of the Federal Columbia River Power System, while ensuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Requires federal agencies responsible for managing, operating, or regulating hydroelectric facilities in the Columbia River Basin to provide equitable treatment for fish and wildlife with the other purposes for which these facilities are operated and managed, and to consider in their decision-making process, to the fullest extent practicable, the Council’s fish and wildlife program.

Source: GAO analysis of information provided by federal agencies.

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**Table 6: Mission-specific Laws Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

<b>Mission-specific law</b>	<b>Citation</b>	<b>Description</b>
Federal Land Policy and Management Act of 1976	43 U.S.C. §§ 1701-1782	In setting policy for and providing for the management of public lands, along with the Classification and Multiple Use Act, establishes a multiple-use mandate for lands managed by the Bureau of Land Management. Directs the Secretary of the Interior to develop and maintain land use plans using a systematic interdisciplinary approach to achieve the integrated consideration of physical, biological, and economic factors.
Federal Power Act	16 U.S.C. §§ 791a-797, 798-824a, and 824b-825r	Provides for the development, conservation, and use of the nation's navigable waters, including the development of waterpower resources, and, to that end, requires federal licenses for the construction and operation of certain nonfederal hydroelectric projects. For projects using lands within federal land reservations, such as national forests, licenses are subject to conditions established by the relevant land management agency for protection of the lands. License conditions must include a requirement for fish passage as prescribed by the Secretaries of the Interior and Commerce. The license must also include conditions for the protection and enhancement of fish and wildlife, based generally on recommendations made by federal and state fish and wildlife agencies.
Individual project authorization acts ( <i>E.g.</i> , Tualatin Federal Reclamation Project Act)	Various authorizing statutes ( <i>E.g.</i> , Pub. L. No. 89-596, 80 Stat. 822)	Authorize Columbia River Basin projects by agencies such as the Army Corps of Engineers and the Bureau of Reclamation for purposes such as navigation, power production, fish and wildlife conservation, and recreation.
Multiple-Use Sustained-Yield Act of 1960	16 U.S.C. §§ 528-531	Directs the Secretary of Agriculture to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the various products and services obtained from those areas, in cooperation with interested state and local government agencies and others.
National Forest Management Act	16 U.S.C. §§ 1600-1614	Along with the Organic Act and the Multiple-Use Sustained-Yield Act, establishes a multiple-use mandate for lands managed by the Forest Service to include outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness purposes. Regulations adopted pursuant to the National Forest Management Act require the Forest Service to manage habitat to maintain viable and well-distributed populations of native fish and wildlife.
National Wildlife Refuge System Administration Act of 1966	16 U.S.C. §§ 668dd, 668ee	Establishes the National Wildlife Refuge System and directs the Secretary of the Interior to, among other things, provide for the conservation of fish and wildlife and their habitats within the system and to prepare a comprehensive conservation plan for each refuge.
Reclamation Act	Act of June 17, 1902, ch. 1093, 32 Stat. 388; Act of August 4, 1939, ch. 418, 55 Stat. 1187	Includes a requirement that the Bureau of Reclamation obtains water project permits from and operates projects in accordance with state water law.
Reclamation Recreation Management Act	16 U.S.C. §§ 4601-4631	Establishes federal responsibility to provide opportunities for public recreation at federal water projects, and authorizes the Secretary of the Interior to undertake specific measures for the management of Reclamation lands.

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<b>Mission-specific law</b>	<b>Citation</b>	<b>Description</b>
Soil Conservation and Domestic Allotment Act	16 U.S.C. §§ 590a to 590q-3	Authorizes the Natural Resources Conservation Service, and includes among its purposes the protection of rivers and harbors against the results of soil erosion, and the prevention and abatement of agriculture-related pollution.
Water Resources Development Acts	<i>E.g.</i> , Water Resources Development Act, 33 U.S.C. §§ 2201-2330	Authorize the Army Corps of Engineers to construct environmental restoration projects; to restore degraded ecosystems resulting from the construction or operation of a project; to restore, protect, and create aquatic and wetlands habitat in connection with a project; and to assist tribal, state, and local governments in preparing comprehensive development plans. Authorize compensation for fish and wildlife losses caused by four dams on the lower Snake River.
Wyden Amendment	16 U.S.C. § 1011(a)	Authorizes the Forest Service and Bureau of Land Management to enter into cooperative agreements with federal agencies, tribal, state and local governments, private and nonprofit entities, and landowners for the protection, restoration, and enhancement of fish and wildlife habitat and other resources on public or private land.

Source: GAO analysis of information provided by federal agencies.

Table 7 lists the treaties that federal agencies reported as guiding their actions to protect, mitigate, and enhance fish and wildlife in the Columbia River Basin.

**Table 7: Treaties Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

<b>Treaty</b>	<b>Citation</b>	<b>Description</b>
Columbia River Treaty	Treaty Relating to Cooperative Development of the Water Resources of the Columbia River Basin (with Annexes) (September 16, 1964)	Defines the relationship between the United States and Canada concerning the operation of Columbia River dams and reservoirs.
Pacific Salmon Treaty	Treaty between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon (August 13, 1985)	Governs the harvest of certain salmon stocks in the fisheries of the Northwest states (including Alaska) and Canada.

Source: GAO analysis of information provided by federal agencies.

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Laws, Treaties, and Executive Orders  
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Table 8 lists the executive orders that federal agencies reported as guiding their actions to protect, mitigate, and enhance fish and wildlife in the Columbia River Basin.

**Table 8: Executive Orders Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

<b>Executive order</b>	<b>Citation</b>	<b>Description</b>
Floodplain Management	E.O. 11988 (May 24, 1977)	Directs executive agencies to evaluate the potential effects of any actions they may take in a floodplain and to take action to reduce the risk of flood loss and to preserve the beneficial values served by floodplains.
Protection of Wetlands	E.O. 11990 (May 24, 1977)	Directs executive agencies to minimize the destruction, loss, or degradation of wetlands in carrying out their responsibilities on federal land.
Responsibilities of Federal Agencies to Protect Migratory Birds	E.O. 13186 (January 10, 2001)	Directs executive agencies to take certain actions to further implement the Migratory Bird Treaty Act for the conservation of migratory birds and their habitats.

Source: GAO analysis of information provided by federal agencies.



# Laws and Executive Orders Guiding Agency Activities Affecting Columbia River Basin Tribes

Table 9 lists the laws that federal agencies reported as guiding their actions with regard to tribes in the Columbia River Basin.

**Table 9: Laws Guiding Agency Activities Affecting Columbia River Basin Tribes**

Law	Citation	Description
Indian Reorganization Act	25 U.S.C. §§ 461-463, 464, 465, 466-470, 471-473, 474, 475, 476-478, 479.	Enacts measures to protect ownership of Indian lands and to restore lands to tribal ownership, and authorizes the Secretary of the Interior to acquire lands for Indians. Grants rights of self-governance to Indians.
Indian Self-Determination and Education Assistance Act	25 U.S.C. §§ 13a, 450-450n, 455-458e	Enacts measures that promote a policy of Indian self-determination by assuring maximum Indian participation in educational and other federal services to Indian communities, including effective and meaningful participation in the planning, conduct, and administration of those services. Includes measures to improve Indian education.
Snyder Act	25 U.S.C. § 13	Directs the Bureau of Indian Affairs, Department of the Interior, to spend appropriated funds for the benefit, care, and assistance of Indians for enumerated purposes, such as education, health, and the development of water supplies.
National Indian Forest Resources Management Act	25 U.S.C. §§ 3101-3120	Directs the Secretary of the Interior to undertake management activities, together with the Indians, on Indian forestland to develop, maintain, and enhance the land in a perpetually productive state in accordance with the principles of sustained yield and multiple uses, to maintain and improve wildlife and fisheries, and for other purposes.
Native American Graves Protection and Repatriation Act	25 U.S.C. §§ 3001-3013	Establishes a process for agencies to return Native American remains and associated funerary objects to lineal descendants and affiliated Indian tribes, and regulates the ownership and control of Native American cultural items that are excavated or discovered on federal or tribal lands after November 16, 1990.

Source: GAO analysis of information provided by federal agencies.

**Appendix III  
Laws and Executive Orders Guiding Agency  
Activities Affecting Columbia River Basin  
Tribes**

Table 10 lists the executive orders and presidential memorandum that federal agencies reported as guiding their actions with regard to tribes in the Columbia River Basin.

**Table 10: Executive Orders and Presidential Memorandum Guiding Agency Activities Affecting Columbia River Basin Tribes**

Executive order or memorandum	Citation	Description
Consultation and Coordination with Indian Tribal Governments	E.O. 13175 (Nov. 6, 2000)	Requires executive agencies to respect Indian tribal self governance and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and tribal governments. Each agency shall have an accountable process to ensure meaningful and timely tribal input in the development of regulatory policies that have tribal implications.
Government to Government Relations with Native American Tribal Governments	Memorandum for the Heads of Executive Departments and Agencies (April 29, 1994)	Requires, among other things, that executive agencies operate within a government-to-government relationship with federally recognized tribal governments; consult to the greatest extent possible with tribal governments before taking actions that affect tribal governments; and agencies assess the impact of federal government plans, projects, programs, and activities on tribal trust resources and ensure that tribal rights and concerns are considered in developing them.
Regulatory Planning and Review	E.O. 12866 (September 30, 1993)	Establishes a program to reform and make more efficient the regulatory process, including making the process more accessible and open to the public. Wherever feasible, agencies are required to seek the views of appropriate state, local and tribal officials before imposing regulatory requirements that might significantly or uniquely affect them.
Enhancing the Intergovernmental Partnership	E.O. 12875 (October 26, 1993)	Prohibits executive agencies, to the extent feasible, from promulgating any regulation not required by statute that creates a mandate upon a state, local, or tribal government, unless funds necessary for direct costs of the mandate are provided by the federal government or the agency has consulted with affected state, local, or tribal government. Requires agencies to develop effective processes to permit state, local, and tribal representatives to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Source: GAO analysis of information provided by federal agencies.

# Court Decisions Guiding Agency Activities Affecting Columbia River Basin Fish, Wildlife, and Tribes

Table 11 lists the court decisions that federal agencies reported as guiding their actions to protect, mitigate, and enhance fish and wildlife in the Columbia River Basin.

**Table 11: Court Decisions Guiding Agency Activities Affecting Columbia River Basin Fish and Wildlife**

Court decision	Citation	Result
<i>Alesea Valley Alliance v. Evans</i>	161 F. Supp. 2d 1154 (D. Or. 2001)	Invalidated NMFS listing of naturally spawning Coho salmon on the Oregon coast as threatened.
<i>National Wildlife Federation v. National Marine Fisheries Service</i>	No. CV 01-640-RE, 2003 WL 21077450 (D. Or. May 7, 2003)	Invalidated the NMFS biological opinion that concluded that in light of certain mitigation actions, endangered and threatened species of salmon and steelhead trout in the Columbia River Basin would not be jeopardized by federal agencies' continued operations of the Federal Columbia River Power System. The court remanded the opinion to NMFS to resolve deficiencies the court identified.
<i>National Wildlife Federation v. United States Army Corps of Engineers</i>	132 F. Supp.2d 876 (D. Or. 2001)	Held that the Army Corps of Engineers' 1995 and 1998 "Records of Decision" describing how the Corps would operate dams on the Snake and Columbia Rivers violated the Clean Water Act by failing to ensure compliance with water quality standards issued by the State of Washington under the act. The court remanded the 1998 Record of Decision to the Corps for reconsideration and directed the Corps to issue a decision, within 60 days, that addresses compliance with its obligations under the Clean Water Act.
<i>Northwest Environmental Defense Center v. Bonneville Power Administration</i>	117 F.3d 1520 (9 <sup>th</sup> Cir. 1997)	Held that the requirement in the Pacific Northwest Electric Power Planning and Conservation Act to treat fish and wildlife equitably with power did not require Bonneville to dedicate a portion of the water to fish and wildlife in connection with agreements Bonneville entered into with Canada and several utilities governing rights to water stored behind electric dams on the Columbia River system in Canada. The court found that the act did not require equitable treatment for fish and wildlife for every action Bonneville took, but only required equitable treatment on a systemwide basis. Also held that the National Environmental Policy Act did not require Bonneville to prepare an environmental impact statement in this case.
<i>Northwest Resource Information Center, Inc. v. Northwest Power Planning Council</i>	35 F.3d 1371 (9 <sup>th</sup> Cir. 1994)	Held that in its final amendments to the Columbia River Basin Fish and Wildlife Program, the Northwest Power Planning Council failed to comply with requirements of the Pacific Northwest Electric Power Planning and Conservation Act and the Administrative Procedure Act by failing to (1) explain a statutory basis for its rejection of recommendations of fish and wildlife agencies and Indian tribes, and (2) evaluate proposed program measures against sound biological objectives. The court remanded the final amendments to the Council for reconsideration.

**Appendix IV  
Court Decisions Guiding Agency Activities  
Affecting Columbia River Basin Fish,  
Wildlife, and Tribes**

(Continued From Previous Page)

<b>Court decision</b>	<b>Citation</b>	<b>Result</b>
<i>Public Utility District No. 1 of Douglas County v. Bonneville Power Administration</i>	947 F.2d 386, 392-94 (9 <sup>th</sup> Cir. 1991)	Held that the Bonneville Power Administration erred in its adoption of the "Final Policy" for implementation of the Columbia River Basin Fish and Wildlife Program in deciding that only those measures protecting fish and wildlife specifically described in the program were compensable under the provision of the Pacific Northwest Electric Power Planning and Conservation Act entitling nonfederal electric projects to compensation for costs, including power loss, resulting from federally imposed measures to protect fish and wildlife.
<i>Confederated Tribes of the Umatilla Indian Reservation v. Bonneville Power Administration</i>	342 F.3d 924 (9 <sup>th</sup> Cir. 2003)	Held that the Bonneville Power Administration's alleged unreasonable delay in implementing the Pacific Northwest Electric Power Planning and Conservation Act requirement to provide equitable treatment to fish and wildlife was not reviewable by a court.

Source: GAO analysis of information provided by federal agencies.

Table 12 lists the court decisions that federal agencies reported as guiding their actions with regard to tribes in the Columbia River Basin.

**Table 12: Court Decisions Guiding Agency Activities Affecting Columbia River Basin Tribes**

<b>Court decision</b>	<b>Citation</b>	<b>Result</b>
<i>Lane v. Pueblo of Santa Rosa</i>	249 U.S. 110 (1919)	Held that the lower court should not have directed that a permanent injunction be issued to stop the Secretary of the Interior from disposing of land that comprised the Pueblo of Santa Rosa, a Pueblo Indian town in southern Arizona acquired from Mexico under the Gadsden Treaty, without allowing the federal government a chance to address the merits of the claim against it.
<i>Morongo Band of Mission Indians v. Federal Aviation Administration</i>	161 F.3d 569, 574 (9 <sup>th</sup> Cir. 1998)	Found, among other things, that although the United States had a general trust responsibility to Indian tribes, unless there is a specific duty that has been placed on the government with respect to Indians, this responsibility is discharged by the agency's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes.
<i>Pyramid Lake Paiute Tribe of Indians v. Morton</i>	354 F. Supp. 252 (D. D.C. 1973)	Tribe successfully challenged the Secretary of the Interior's regulation establishing the basis for determining the amount of water to be provided to the Truckee-Carson Irrigation District. Court held that the Secretary failed to adequately justify how much water, under court decrees and a contract with an irrigation district, he determined could be diverted from a river prior to the point where it flowed into an Indian reservation and fed a lake relied upon by many Indians for their livelihood.
<i>United States v. Ferry County</i>	511 F. Supp. 546 (E.D. Wash. 1981)	Held that lands acquired by the U.S. in trust for the tribes and individual Indians are nontaxable, and that all tax assessments against such lands are null and void.
<i>Seminole Nation v. United States</i>	316 U.S. 286 (1942)	Resolved a number of monetary claims by the Seminole Indians, finding in favor of the Seminoles on some, and against them on others.

**Appendix IV**  
**Court Decisions Guiding Agency Activities**  
**Affecting Columbia River Basin Fish,**  
**Wildlife, and Tribes**

(Continued From Previous Page)

<b>Court decision</b>	<b>Citation</b>	<b>Result</b>
<i>United States v. Creek Nation</i>	295 U.S. 103 (1935)	Held that the United States was liable to the Creek Indians for damages that occurred when it disposed of Creek land that a survey erroneously indicated belonged to the United States, measured by the value of the property at the time of the disposal.
<i>United States v. Mitchell</i>	463 U.S. 206 (1983)	Held that the United States breached its fiduciary duty to the Indians by mismanaging Indian forest resources, and was liable to the Indians for resulting money damages.
<i>Sohappy v. Smith</i>	302 F. Supp. 899 (D. Or. 1969)	Held that the State of Oregon was limited in its power to regulate the exercise of the Indians' federal treaty right to fish, in that regulation must be necessary for conservation of the fish, the state restrictions must not discriminate against the Indians, and restrictions must meet appropriate standards. Affirmed the treaty rights of certain Indian tribes to a fair share of the harvestable catch.
<i>United States v. Washington</i>	384 F. Supp. 312 (W.D. Wash. 1974)	Held that the State of Washington had authority to regulate Indians' exercise of their treaty fishing rights only to the extent necessary for the conservation of fishery resources, and that tribes (that met certain conditions) had the right to regulate fishing by their members without any state interference. Affirmed the treaty rights of certain Indian tribes to a share of the harvestable catch.
<i>Winters v. United States</i>	207 U.S. 564 (1908)	Held that a reservation of waters for irrigation purposes for the Indians on the Fort Belknap reservation is implied from an agreement that established a reservation for the Indians, and that no one has the right to divert water from naturally flowing to the reservation.

Source: GAO analysis of information provided by federal agencies.

# Plans and Programs Implemented by Federal Agencies to Manage Columbia River Basin Fish and Wildlife Activities

Table 13 provides descriptions of plans and programs identified by federal agencies, including the directives driving the plans and programs and the lead agencies.

**Table 13: Plans and Programs That Guide Federal Fish and Wildlife Activities in the Columbia River Basin**

Plan/program	Lead agency	Description
<b>Northwest Power Act-driven plans and programs</b>		
Columbia River Basin Fish and Wildlife Program	Bonneville, the Council	Program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Developed by the Council, funded by Bonneville, and implemented by a number of agencies and other organizations.
Northwest Power and Conservation Council Subbasin Planning Process	The Council	Process to incorporate local-level planning for the 50+ subbasins in the Columbia River Basin into the development and implementation of the Columbia River Basin Fish and Wildlife Program.
Northwest Power and Conservation Council Provincial Review	The Council	Program developed by the Council, and operated on a 3-year cycle, to improve the technical review and approval of projects funded by the Columbia River Basin Fish and Wildlife Program.
<b>Endangered Species Act-driven plans and programs</b>		
Biological Opinions for the FCRPS	FWS and NMFS	Plans that set forth reasonable and prudent measures/alternatives for operation by the Corps, Reclamation, and Bonneville of the FCRPS, in order to minimize impacts to fish and wildlife. Created as a result of consultation with FWS and NMFS under Section 7 of ESA.
Biological Opinion Implementation Plans for the FCRPS	Bonneville, the Corps, Reclamation	Frameworks developed by the agencies managing the FCRPS for complying with Biological Opinions for the FCRPS.
Bull Trout Recovery Plan	FWS	Plan designed to organize, coordinate, and prioritize recovery actions for bull trout, and to outline objective measurable criteria that will be used to determine when bull trout no longer needs the protection of the ESA.
Recovery plans for salmon (under development)	NMFS	Plans designed to organize, coordinate, and prioritize recovery actions for endangered and threatened salmon and steelhead, and to outline objective measurable criteria that will be used to determine when salmon and steelhead no longer need the protection of the ESA.
Basin-wide Salmon Recovery Strategy (All-H Paper)	All agencies in the Federal Caucus	A strategy and accompanying suite of actions to be used as a blueprint to guide federal actions towards recovery of threatened and endangered salmon and steelhead in the Columbia River Basin.
<b>Clean Water Act-driven plans and programs</b>		
Clean Water Act Section 319 Grant Program	EPA	Program to provide funding to states and Indian tribes for a wide variety of nonpoint source activities including technical and financial assistance, education, training, technology transfer, demonstration projects, and monitoring.
Clean Water Act General Assistance Grant Program to Tribes	EPA	Program to provide assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer regulatory and multimedia programs addressing environmental issues on Indian lands.

**Appendix V  
Plans and Programs Implemented by Federal  
Agencies to Manage Columbia River Basin  
Fish and Wildlife Activities**

(Continued From Previous Page)

<b>Plan/program</b>	<b>Lead agency</b>	<b>Description</b>
Clean Water Act Section 104(b)(3) Support to Total Maximum Daily Loads	EPA	Program to provide assistance to state water pollution control agencies; interstate agencies; and other nonprofit institutions, organizations, and individuals to promote the coordination of environmentally beneficial activities, including storm water control, sludge management, and pretreatment of wastewater.
Clean Water Act Section 106 Grant Program	EPA	Program to provide assistance to Indian tribes in carrying out effective water pollution control programs, including water quality planning and assessments, developing water quality standards and total maximum daily loads, and ambient monitoring.
Clean Water State Revolving Fund	EPA	A loan program to fund water quality protection projects for wastewater treatment, nonpoint source pollution control, and watershed and estuary management.
Lower Columbia Estuary Partnership	EPA	Program under Clean Water Act Section 320 to improve the quality of the Lower Columbia Estuary, and provide the basis for estuarine salmon recovery efforts. Key activities include habitat monitoring, volunteering monitoring, and species recovery.
<b>Court-driven plans and programs</b>		
<i>U.S. v Oregon</i> Management Plans/Agreements	FWS, NMFS	Plans that address tribal allocation of annual fish harvest, as well as hatchery and supplementation measures designed to help rebuild depressed fish stocks.
<b>Mission-driven plans and programs</b>		
Gas Abatement Project at Chief Joseph Dam	The Corps	Project to install spillway deflectors and implement operational changes at Chief Joseph Dam in order to reduce total dissolved gas levels.
Army Corps Anadromous Fish Evaluation Program	The Corps	Program to develop and evaluate anadromous fish passage facilities at Corps dams on the Columbia and lower Snake Rivers. Includes monitoring, research, and evaluation studies conducted in collaboration with other federal, state, and tribal agencies.
Project Management Plans	The Corps	Internal management plans developed in parallel with any Corps project. Designed to ensure that proper internal procedures are followed to protect and mitigate barriers to fish passage.
District Resource Management Plans	BLM	Internal management plans for all BLM activities. Developed via the National Environmental Policy Act process, they include specific management guidelines for protection of fish and wildlife.
Wild and Scenic River Plans	BLM, Forest Service	Management plans developed to ensure that agency activities protect identified "outstandingly remarkable values," including fish and wildlife, recognized in Wild and Scenic River Areas.
Upper Salmon Basin Project	NRCS	Project designed to provide a basis of coordination and cooperation between local, private, state, tribal, and federal fish and land managers, land users, land owners and other affected entities. Goal is to manage the biological; social; and economic resources to protect, restore, and enhance anadromous and resident fish habitat.
General Investigations	Reclamation	Projects funded by special congressional appropriations, some of which address fish and wildlife enhancement or mitigation. Also typically involve partnerships with other groups, such as states, interest groups, and tribes.
Research and Monitoring Programs	Reclamation	Internal Reclamation programs funded by the Commissioner's office that focus on a range of discretionary activities, including research and monitoring efforts for fish and wildlife.

**Appendix V  
Plans and Programs Implemented by Federal  
Agencies to Manage Columbia River Basin  
Fish and Wildlife Activities**

*(Continued From Previous Page)*

<b>Plan/program</b>	<b>Lead agency</b>	<b>Description</b>
Resource Management Plans	Reclamation	Management plans required for all reservoirs managed by the agency. Plans address management of recreational activities, as well as conservation of fish and wildlife.
Hungry Horse Mitigation Implementation Plan	Reclamation	Specific project at Hungry Horse Dam to control water withdrawals at the reservoir that were causing harm to fish, and to mitigate for impacts of constructing a water control system.
Lower Snake River Compensation Plan	Bonneville, FWS	Specific project to mitigate impacts to fish and wildlife from construction of last four FCRPS dams on the Lower Snake River. Project preceded mitigation requirements set forth under the Power Act.
Recreational Fishery Resources Conservation Plan	FWS	Internal agency plan to incorporate conservation planning into the management of recreational fisheries.
Land and Resource Management Plans (Forest Plans)	Forest Service	Internal agency plans that incorporate specific conservation measures for fish, wildlife, plants, and other natural resources, into management of National Forests.
Lynx Conservation Strategy and Agreement	Forest Service	Strategy to address the needs of lynx and lynx habitat in the context of forest management, and to foster cooperation and interaction between foresters and wildlife biologists.
PACFISH & INFISH	Forest Service, BLM	Aquatic strategies that apply interim standards and guidelines to agency actions for the protection of aquatic and riparian habitat for the restoration of endangered and threatened fish within the interior Columbia basin.
Northwest Forest Plan	Forest Service, BLM	An interagency approach to developing and implementing measures for the long-term health of forests, wildlife, and waterways on federal lands.
Pacific Coastal Salmon Recovery Fund	NMFS	Assist the states and tribes in implementing salmon restoration efforts.
Environmental Quality Incentive Program	NRCS	Cost-share program, operated collaboratively with tribes, to benefit fish and wildlife through environmental improvements to irrigation, erosion, water quality, and agriculture.
<b>State-driven plans and programs</b>		
“Extinction Is Not an Option”: Washington Statewide Strategy to Recover Salmon	State of Washington	Long-term strategy for the recovery of salmon in Washington state. Primary goals of the strategy are to restore salmon, steelhead, and trout populations to healthy and harvestable levels and improve the habitats on which fish rely.
Fish and Forest Agreement in Washington	State of Washington	Collaborative agreement between Washington state, tribes, federal agencies, timber interests, and environmental groups to address timber practices so as to minimize impacts to fish populations.
Oregon Plan for Salmon & Watersheds	State of Oregon	A statewide approach to natural resource management in Oregon that focuses on restoring Coho salmon through the Coastal Salmon Restoration Initiative and improving water quality through the Healthy Streams Partnership.
<b>Tribally-driven plans and programs</b>		
Wy-Kan-Ush-Mi Wa-Kish-Wit (“Spirit of the Salmon”)	Nez Perce, Umatilla, Warm Springs, Yakama tribes	A framework for restoring salmon in the Columbia River that outlines the cultural context for the tribes’ salmon restoration efforts, as well as technical and institutional recommendations and watershed restoration activities.
Warm Springs National Fish Hatchery Operational and Implementation Plan	Warm Springs tribe	Plan outlining management measures and operational procedures for the Warm Springs National Fish Hatchery, which is cooperatively managed by FWS and the Warm Springs tribe.

Source: GAO analysis of information provided by federal agencies.



# Comments from the Bonneville Power Administration



**Department of Energy**

Bonneville Power Administration  
Washington, D.C. 20585

MAY 10 2004

In reply refer to: DC-WASH

Mr. Barry T. Hill, Director  
Natural Resources and Environment  
United States General Accounting Office  
441 G Street, NW, Room 2928  
Washington, DC 20548

Dear Mr. Hill:

Thank you for providing the Bonneville Power Administration (Bonneville) with a copy of the draft report entitled *Columbia River Basin: A Multilayered Collection of Directives and Plans Guides Federal Fish and Wildlife Activities* (GAO-04-602). We are grateful for the opportunity to review the draft you sent us via e-mail on April 14, 2004, and to discuss our comments with General Accounting Office (GAO) staff before the report is issued in final form. As suggested, we are also forwarding Bonneville's comments concerning this draft to Brad Dobbins, Senior Analyst, in order that they may be reflected in the final report.

Overall, we believe the report serves a valuable purpose, as intended, in synthesizing and integrating a considerable body of information that describes the programs, plans and processes that guide the activities of federal agencies addressed to their fish and wildlife responsibilities, and that involve the 13 tribal governments of the Columbia basin. We acknowledge the difficulty inherent in this task, and offer our continued assistance and support. We hope the attached technical, editorial and policy comments contribute to the utility and accuracy of your report, and will be of assistance as you improve the final product.

There are two comments we would like to highlight for your consideration in the final report. One is the different ways the federal trust responsibility is expressed. Sometimes the report suggests the duty is very broad, other times more limited. Clarification would be of great benefit. Also, we encourage the inclusion of a citation to the independent

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**Appendix VI  
Comments from the Bonneville Power  
Administration**

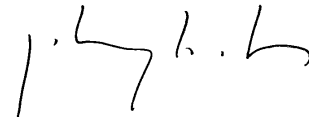
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third-party review of Columbia River Basin Fish and Wildlife Program so your audience can study it for themselves. The report may be found on the Internet at <http://www.nwppc.org/library/1998/98-1.htm>. This review identifies a number of steps to improve program implementation. Many of the recent policy changes Bonneville has made that concern the tribes have their origins in the independent review's recommendations.

Thank you for allowing us the opportunity to comment on the Draft Report.

Sincerely,



Jeffrey K. Stier  
Vice-President for National Relations

# Comments from the Department of Agriculture



United States  
Department of  
Agriculture

Forest  
Service

Washington Office

14<sup>th</sup> & Independence SW  
P.O. Box 96090  
Washington, DC 20090-6090

File Code: 1310/3520

Date: MAY 18 2004

Mr. Barry T. Hill  
Director, Natural Resources and Environment  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. Hill:

Thank you for the opportunity to review the draft U.S. General Accounting Office (GAO) Report, GAO-04-602, "Columbia River Basin: A Multi-layered Collection of Directives and Plans Guides Federal Fish and Wildlife Activities," on the behalf of the U.S. Department of Agriculture. Our comments are as follows:

Now on p. 4.

**Page 7, 2<sup>nd</sup> paragraph:** Change the sentence to read, "In response to the Endangered Species Act, biological opinions have been developed that set forth reasonable and prudent measures/alternatives to minimize the impacts of agency actions on certain fish species – salmon, steelhead, bull trout, and white sturgeon-affected by the federal hydro power system *and other federal actions*". NOAA and FWS issue biological opinions to all federal agencies, including the Forest Service, under Section 7 of the Endangered Species Act.

Now figure 3 on p. 20.

**Page 24, Table 4:** The Forest Service does not contribute to (1) the development of the "Columbia River Basin Fish and Wildlife Program," (2) the development of the "FCRPS Biological Opinions," or (3) the implementation of the "Columbia River Basin Fish and Wildlife Program."

Now on p. 22.

**Page 27, 2<sup>nd</sup> bullet:** The sentence states, "Federal Agencies such as the Forest Service and BLM, as well as State, Tribal, and Private Landowners, contract with Bonneville for habitat mitigation activities." However note the Forest Service only receives a small amount (approximately \$100,000) of *direct* funds from Bonneville for restoration work on less than 5% of the National Forests within the basin. Bonneville *indirectly* funds restoration work on National Forests within the basin, at a slightly higher percentage, through direct contracts to State Fish and Game Agencies and Tribes.

Now on p. 22.

**Page 27, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence:** The sentence stating, "... in 2002, Bonneville decided that it would no longer be the primary source of funding for offsite mitigation projects on federal lands..." is misleading. Bonneville has never been the primary source of funding for offsite mitigation projects on National Forest System lands. Any direct funding to National Forests was for restoration, not habitat mitigation. Costs associated with mitigating adverse effects from Forest Service actions are borne solely by the Agency, not by Bonneville. In addition, direct contributions from Bonneville for restoration actions on National Forest System lands have declined. Bonneville's focus for funding of mitigation work, beginning with the 2000 FCRPS Biological Opinion, has been on non-federal lands.



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Appendix VII  
Comments from the Department of  
Agriculture

Now on p. 24.

**Page 29, 2<sup>nd</sup> bullet:** The bullet stating, “Forest Service and BLM provide input on the reasonable and prudent measures/alternatives that address offsite habitat” is in regards to hydro-power consultations is inaccurate. The Forest Service provides input to NOAA and FWS on actions needed to address habitat limiting factors but does not contribute to development of reasonable and prudent measures/alternatives in biological opinions associated with Endangered Species Act consultation on the hydrosystem.

Now on p. 24.

**Page 29, 2<sup>nd</sup> paragraph:** Note all federal agencies proposing an action and completing consultation under Section 7 of the Endangered Species Act are considered “*Action Agencies*.” The correct term in this context is “*FCRPS Action Agencies*.” Not all federal “*Action Agencies*” are required to develop implementation plans.

Now figure 4 on p. 27.

**Page 32, Table 5:** BLM does not contribute in either the development OR implementation of FS Land and Resource Management Plans. This is similar to the BLM District Resource Management Plans where the Forest Service is not identified as contributing to the development or implementation of plans.

Now on p. 31.

**Page 38, top of page:** Add Forest Service to the sentence as follows: “Although the BLM Resource Management Plans and the Forest Service Land and Resource Management Plans address internal management guidelines for their agencies, they are developed through the National Environmental Policy Act public comment process.” Both BLM and the Forest Service develop management objectives and guidelines at the plan level through the NEPA process.


Now table 6 on p. 41.

**Page 46, Table 8:** It should be noted in the description for the “National Forest Management Act” that the FS is legally required to maintain well-distributed populations of native fish and wildlife. The term “viability” is associated with current regulations only.

Now table 13 on pp. 50 and 51.

**Page 54, Table 15:** Add the Forest Service to the “Wild and Scenic River Plans” as this is not only a responsibility of BLM. Revise the description for “PACFISH and INFISH” as follows: “These aquatic strategies applied interim standards and guidelines to proposed and ongoing FS and BLM actions for protection of aquatic and riparian habitat contributing to the restoration of ESA-listed salmonids within the interior Columbia basin.” PACFISH focused on ESA-listed anadromous salmonids while INFISH applies to all native fish species with an emphasis on bull trout. PACFISH was amended to FS and BLM plans in 1995. INFISH amended to FS plans in 1995, not to BLM plans. BLM letter of direction to apply INFISH only in bull trout watersheds.

Sincerely,

  
for DALE N. BOSWORTH  
Chief

cc: Sandy T Coleman, Linda Ulmer

# Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary of Commerce  
for Oceans and Atmosphere  
Washington, D.C. 20230

MAY 13 2004

Mr. Barry T. Hill  
Director, Natural Resources  
and Environment  
United States General Accounting Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Mr. Hill:

Thank you for the opportunity to review and comment on the General Accounting Office's draft report entitled "Columbia River Basin: A Multilayered Collection of Directives and Plans Guides Federal Fish and Wildlife Activities," GAO-04-602. Enclosed is the National Oceanic and Atmospheric Administration's comments on the draft report.

These comments were prepared in accordance with the Office of Management and Budget Circular A-50.

Sincerely,

A handwritten signature in cursive script, appearing to read "Conrad C. Lautenbacher, Jr.".

Conrad C. Lautenbacher, Jr.  
Vice Admiral, U.S. Navy (Ret.)  
Under Secretary of Commerce for  
Oceans and Atmosphere

Enclosure



THE ADMINISTRATOR



**NOAA Comments on the Draft GAO Report Entitled  
"Columbia River Basin: A Multilayered Collection of  
Directives and Plans Guides Federal Fish and Wildlife Activities"  
(GAO-04-602/April 2004)**

The report is comprehensive in providing information on federal agency responsibilities for fish and wildlife and Indian tribes in the Columbia River Basin. This report has no recommendations to respond to; thus, we only have the following recommended changes for factual information.

**Recommended Changes for Factual Information**

Now on p. 1.

*Page 5, first paragraph, first sentence:*

The U.S. Fish and Wildlife Service should be added to the first sentence: "Along with their primary water or land management responsibilities, these agencies, as well as regulatory agencies such as the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the Environmental Protection Agency...."

Now on p. 1.

*Page 5, first paragraph, first sentence:*

The National Marine Fisheries Service is a component of the National Oceanic and Atmospheric Administration (NOAA). This distinction should be made throughout the draft report.

Now on pp. 7 and 9.

*Page 11 versus Page 13:*

The National Marine Fisheries Service is listed with agencies on page 13 with its responsibilities for marine and anadromous species while the U.S. Fish and Wildlife Service (FWS) and its responsibilities for wildlife is listed with agencies on page 11. Is this because FWS has wildlife refuge (land management) responsibilities? If so, that should be noted.

Now on p. 7.

*Page 11, bullet for Bonneville Power Administration:*

The Federal Columbia River Power System (FCRPS) can sometimes refer to all 31 of the federal projects producing power marketed by the Bonneville Power Administration. However, only 14 of those projects participate in coordinated annual power operations (the others produce power but have their specific annual operation dictated by other project purposes). The definition is significant since the FCRPS Biological Opinions (BiOps) discussed in subsequent sections address only the 14 participating in coordinated power operations.

Now on p. 14.

*Page 19, footnote "a" to Table 2:*

Should the footnote state that the supplemental treaty of November 15, 1865 relinquished certain off-reservation hunting, fishing and other rights, rather than the tribe?

Now on p. 14.

*Page 19, last paragraph:*

At the end of this paragraph, change the last sentence and add the following sentence: "The federal government has respected non-treaty tribal rights to hunt and fish on tribal lands. However, as a general principle, executive order tribes do not have reserved rights to hunt and fish off reservations."

Appendix VIII  
Comments from the Department of  
Commerce

Now on p. 15.

*Page 20, footnote "a" to Table 3:*

Clarify the term "off-reservation." The right to hunt and fish "off-reservation" is restricted to the former reservation lands sold. This sentence as written could be misunderstood to say the tribe has "off-reservation" reserved rights elsewhere.

Now on p. 17.

*Page 22, first paragraph:*

There should be a reference to the American Indian and Alaska Native Policy of the U. S. Department of Commerce, dated March 30, 1995.

Now on p. 23.

*Page 28, second full paragraph:*

This paragraph misstates the history of consultation on the FCRPS. The correct history is as follows:

1. 1992 One year BiOp
2. 1993 One Year BiOp
3. 1994-98 Five Year BiOp, invalidated by court
4. 1995-99 Five Year BiOp, replaced 1994-98
5. 1998 supplement to 1995-99 to add steelhead
6. 1999 supplement to 1995-99 to add operation of Bureau of Reclamation Upper Snake projects
7. 2000 supplement to 1995-99 to add six additional Endangered Species Act salmon listing in March 1999
8. 2000-2010 Ten Year BiOp, remanded to NMFS and currently being revised

Now on p. 24.

*Page 30, first paragraph, lines 4-5:*

Replace one word in the following sentence: "Forum meetings are open to some all entities."

Now on p. 26.

*Page 31, fourth bullet:*

Add NMFS to the following sentence: "NMFS and FWS provided extensive input and guidance on the role of hatcheries in recovery;"

Now on p. 29.

*Page 35, second paragraph, lines 5-6:*

There are five "Columbia River Basin tribes that are parties to *United States v. Oregon*." Although the four tribes fish the mainstem, the Shoshone-Bannock are parties to the negotiations.

Now table 4 on p. 37.

*Page 43, Appendix II, Table 6:*

Under the description for the Magnuson-Stevens Fishery Conservation and Management Act of 1972, correct the last sentence to read as follows: "...consult with the Secretary of the Interior Commerce with respect to any ~~of the Department's~~ agencies' actions that may adversely affect essential fish habitat...."

Now appendix V, table 13,  
on p. 51.

*Page 54, Appendix XII, Table 15:*

Add the following information under "Mission-driven plans and programs:"

Pacific Coastal Salmon Recovery Fund	NMFS	Assists the States and tribes in implementing salmon restoration efforts.
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# GAO Contacts and Staff Acknowledgments

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## GAO Contacts

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