

**TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE**

**HEARING ON
“Crisis of Confidence: The Political Influence of the Bush Administration on
Agency Science and Decision-Making”**

**BEFORE THE
Committee on Natural Resources
United States House of Representatives
July 31, 2007**

Mr. Chairman, I am Bill Hogarth, Assistant Administrator for the National Marine Fisheries Service (NMFS).

Thank you for the opportunity to discuss our activities to implement the Endangered Species Act (ESA), including those in the Klamath River basin. The events in the Klamath basin have again been the subject of recent news. I would like to take this opportunity to discuss the efforts NMFS is undertaking to restore its important fishery resources.

The Magnuson-Stevens Act and the Endangered Species Act – and the state water laws of Oregon and California are the principal rules for sustaining the resources and communities of the Klamath, and for working out competing interests among the many people involved in this complex system. The Federal Power Act, which regulates Klamath hydro-electric power plants, also plays an important role.

A drought that began in the late 1990s has made it difficult for the watershed to produce enough water and fish for everyone. Ocean conditions that influence the survival of salmon at sea are cyclical, and are a key variable affecting the numbers of adult salmon returning to the Klamath to spawn.

These conditions led to the following major events:

- The crisis of 2001, when irrigation for farming and wildlife management was severely curtailed, drying up 170,000 acres of farmland and two National Wildlife Refuges.
- In 2002, a combination of low flows, high air and water temperatures, a large salmon run that entered the River early in the season, and disease that contributed to a record die-off of adult fish.

- Three years of low returns of adult Klamath River Chinook salmon (2004, 2005 and 2006).
- Two parasites killing possibly half or more of the juvenile salmon before they reach the ocean.

Federal agencies have taken significant action over the past several years to improve conditions. My colleagues from the Interior Department can speak to their actions. NMFS' efforts include:

1. **New Fish Passage in the Klamath Basin.** NMFS has prescribed, pursuant to its Federal Power Act authorities, fishways for fish passage at four dams on the Klamath River. The passage will provide access to hundreds of miles of river that have been blocked for nearly a century. NMFS is also participating in alternative settlement negotiations with PacifiCorp and a diverse group of other interested parties. As part of these discussions parties are seeking a comprehensive solution to water, fish, power generation, agriculture, and wildlife issues in the Klamath basin as a whole.
2. **Pacific Coast Salmon Recovery Fund (PCSRF).** NMFS has provided over \$20.0 M since 2000 to the State of California and Indian tribes to restore salmon and their habitat throughout the Klamath River basin.
3. **Klamath River Coho Recovery Plan.** NMFS recently completed a Klamath River Coho recovery plan that was required by the new Magnuson Act reauthorization. The Coho Plan relies heavily on the State of California's coho recovery plan and integrates the findings from many Klamath River watershed groups and coalitions established throughout the basin to improve habitat conditions for fish and coho salmon. NMFS is also actively developing an ESA recovery plan for Southern Oregon/Northern California coho (which includes Klamath River coho).

I will now focus more generally on our efforts to ensure that the best available scientific information guides our decisions and activities related to the ESA. The foundation of the ESA is its reliance on the use of the best available scientific data in making sound decisions regarding the protection of species. The ESA requires federal agencies to use the best scientific data available (1) in making decisions to list species as threatened or endangered, (2) in designating critical habitat, and (3) during interagency consultations.

To ensure that the best scientific data are relied upon in making decisions under the ESA, NMFS and the U.S. Fish and Wildlife Service (the Services) issued a joint policy in 1994 guiding the use of best available scientific and commercial data. That policy requires the Services' biologists to evaluate all scientific and other information available that will be used to support listing actions, develop or implement recovery plans, prepare biological opinions, and other ESA decisions. The Services also routinely seek peer review of their listing decisions and draft recovery plans.

In addition, the Services published a joint Interagency Consultation Handbook in 1998. The handbook instructs biologists that are conducting an interagency consultation under Section 7 of the ESA to use the best available scientific and commercial data to make their findings. When conducting interagency consultations, the Services' biologists are often faced with a lack of information or uncertainty in the information that is available. In such circumstances, the Services must apply their best professional judgment regarding the anticipated effects of the action under consultation. In so doing, NMFS applies the precautionary principle to address areas of uncertainty so that risks are viewed cautiously in favor of the species and their designated critical habitat but does so in a balanced way that attempts to minimize disruptions to the action under review.

U.S. Department of Commerce Inspector General Reports on the Interagency Consultation Process

In July 2005, the U.S. Department of Commerce Office of the Inspector General (OIG) issued a report entitled, *The NMFS Review Process for the California Central Valley and State Water Projects' Biological Opinion Deviated from the Region's Normal Practice* (STL-17242-5-0001/July 2005). The report concluded that NMFS deviated from its procedures for conducting interagency consultation pursuant to the ESA in developing its biological opinion on the Long-Term Central Valley and State Water Project Operations Criteria and Plan (OCAP). To address those deficiencies, the report contained several recommendations, including a review of our policies and procedures for conducting interagency Section 7 consultations, ensuring that those policies and procedures are followed, and conducting peer review on the OCAP biological opinion.

In response to these recommendations, I withdrew and consolidated the agency's Section 7 delegations of authority. On December 15, 2005, I issued a new Delegation of Authority for the conduct of consultations under Section 7 of the ESA and a Section 7 Improvement Plan.

NMFS' Delegation of Authority to Conduct Section 7 Consultations

The Delegation of Authority created several new requirements to ensure Section 7 policies and procedures are being followed. Specifically, it required: (1) each NMFS Regional Office and the Headquarters Office of Protected Resources (which coordinates our ESA implementation efforts nationally) develop a quality assurance plan by March 16, 2006, (2) all section 7 determinations be reviewed and approved by the NOAA Office of General Counsel, unless NOAA General Counsel waives its review in writing, (3) there be a National Section 7 coordinator and regional Section 7 coordinators to advise pertinent staff and managers on Section 7 issues and provide training, (4) tracking of all section 7 consultations in a national database; and, (5) maintaining proper records for all consultations.

Section 7 Improvement Plan

Concurrent with the issuance of the 2005 Delegation of Authority, NMFS issued a Section 7 Improvement Plan designed to improve the quality of the agency's Section 7 consultations. That plan required the development of up-to-date standard guidance for conducting section 7 consultations, enhanced training requirements for staff conducting consultations, and conducting an annual review of consultation documents prepared by the Regional Offices to ensure that consultation documents comply with the requirements of the Delegation of Authority.

Peer Review of the OCAP Biological Opinion

Also in response to the OIG's recommendations, NMFS sought peer review on its OCAP Biological Opinion. NMFS asked the CalFed Bay-Delta Authority Science Program (CBDA) and the Center for Independent Experts (CIE) each to conduct independent peer reviews to evaluate whether the scientific information used in the biological opinion was the best available. The peer review reports raised multiple and complex issues that merited evaluation in the context of future improvements to NMFS' Section 7 program and the OCAP biological opinion.

In April 2006, the Bureau of Reclamation (BOR) re-initiated Section 7 consultation on the 2004 OCAP biological opinion. The NMFS Southwest Region and BOR are working together to develop a strategy to address the scientific recommendations. Consultation with the BOR is ongoing. In July 2007 the BOR indicated its intent to transmit a final biological assessment to NMFS and FWS by the end of calendar year 2007. A firm date for a new biological opinion has not been scheduled, but NMFS expects to complete a new biological opinion during calendar year 2008.

Conclusion

NMFS and its federal partners have been working side by side with the stakeholders in the Klamath basin to find achievable long-term solutions to the ecological problems we face. However, we cannot get there by pitting one set of stakeholders against another.

Furthermore, NMFS has taken and will continue to take significant steps to restore important fishery resources in the Klamath basin and in the Central Valley. We continue to do all that we can to ensure the quality and integrity of our ESA programs. Our decisions are guided by the best available science and in instances where the science is not definitive and policy discretion is required, we rely on the experience and judgment of our senior career professionals to inform the decision making process. I believe Congress can and should be confident in the NMFS' ability to manage the resources entrusted to it. Thank you for this opportunity and I will be happy to take any of your questions.