



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

November 21, 2002

The Honorable Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

RE:Project No. 12236-000 and 12238-000 (Connally Lake Project)

Dear Secretary Sales:

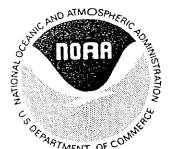
Enclosed for filing in the reference proceeding is the National Marine Fisheries Service's Motion to Intervene. Copies have been served on the Applicant.

Sincerely,

A handwritten signature in black ink that reads "Tom Meyer". The signature is fluid and cursive.

Tom Meyer  
Staff Attorney  
Office of General Council

Enclosures: Original + 8 copies



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Connelly Lake Hydroelectric Projects )  
Competing Preliminary Permit Applications ) FERC Project Nos. 12336-000 and 12338-000  
Haines, Alaska )

NATIONAL MARINE FISHERIES SERVICE  
MOTION TO INTERVENE

The Federal Energy Regulatory Commission (FERC) is considering competing preliminary permit applications submitted by the Alaska Power and Telephone Company (Alaska Power) and Pacific Energy for licensing the Connelly Lake Hydroelectric Projects, located in Haines Borough, Alaska. Pursuant to the FERC notice dated September 27, 2002, the National Marine Fisheries Service (NMFS) hereby moves to intervene in the above matter, in accordance with 18 C.F.R. 385.214. The following represents NMFS's motion to intervene in these proceedings for the purpose of reservation of authority pursuant to section 18 of the FPA, 16 U.S.C. 811, and essential fish habitat (EFH) conservation recommendations pursuant to section 305(b) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855.

Service of process and other communications concerning this Motion should be made to:

James W. Balsiger  
Regional Administrator  
National Marine Fisheries Service  
Juneau, Alaska

## I. INTEREST OF THE PETITIONER

Petitioner NMFS is entrusted with Federal jurisdiction over marine, estuaries, and anadromous fishery resources. On October 3, 1970, the President established within the United States Department of Commerce "an agency which shall be known as the National Oceanic and Atmospheric Administration (NOAA) ...." Reorg. Plan No. 4 of 1970, 3 C.F.R. 203 (1970 compilation), reprinted in 5 U.S.C. Appendix R at 64 (1970). Under the Reorganization Plan, nearly all the functions vested bylaw within the Bureau of Commercial Fisheries of the Department of the Interior, including those pertinent to these proceedings, were transferred to the Secretary of Commerce to be exercised through NOAA. NMFS was established by NOAA to exercise the functions formerly carried out by the Bureau of Commercial Fisheries, 35 Fed. Reg. 1845 5 (1970).

By virtue of this delegation of authority, NMFS is responsible for oversight and evaluation of activities which may affect marine, estuaries, and anadromous fishery resources. In order to assure "equal consideration" of fish and wildlife with other purposes, the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666(c), requires that NMFS be consulted "whenever the waters of any stream or other body of water are proposed or authorized to be impounded ... for any purpose whatever ... by any public or private agency under Federal permit or license such consultation is intended to prevent loss and damage to fish and wildlife resources and to develop and improve those resources."

NOAA's Habitat Conservation Policy, published in the November 25, 1983, Federal Register, 48 Fed. Reg. 53142, provides further direction for NMFS where anadromous fish and their habitat are concerned. Anadromous fish and the preservation of their habitat are specifically identified as priorities for NMFS.

Section 10(j) of the Federal Power Act (FPA), (16 U.S.C. 803(j)), authorizes NMFS to recommend license conditions necessary to protect, mitigate damage to, and enhance fish and wildlife (including spawning habitat) affected by the project. Section 18 of the FPA (16 U.S.C. 811) gives NMFS authority to provide mandatory fishway prescriptions. NMFS's general statutory authority for the protection of marine, estuaries, and anadromous fishery resources also derives from the Anadromous Fish Conservation Act, 16 U.S.C. 757(a), the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and the Pacific Salmon Treaty Act, 16 U.S.C. 3631-3644.

## II. PUBLIC INTEREST AS GROUNDS FOR INTERVENTION

Rule 214 of FERC procedures provide for intervention if the entity's participation is in the public interest, 18 C.F.R. 285.214(b)(2)(iii). The statutes cited above in "I" are Congressional statements of the national public interest in the protection of aquatic resources. These statutes reflect Congress' intent that NMFS represent those interests as they pertain to marine, estuary and anadromous fishery resources. Fishery interests would be affected by the activities covered by the preliminary permit applications. Therefore, intervention by NMFS is in the public interest and will ensure that NMFS is able to provide measures for fish protection, and that its statutory interests are addressed adequately during the licensing process.

## III. DESCRIPTION OF THE TWO COMPETING PROPOSED PROJECTS

Both projects are described in the FERC notice dated September 27, 2002:

The Connelly Lake project proposed by Alaska Power would be operated as a storage project

and would consist of: (1) a 48-foot-high, 575-foot-long rockfill dam at the lake outlet, (2) Connelly Lake, which would have a minimum water surface elevation of 2,280 feet, its current level, and a maximum water surface elevation of 2,312 feet, (3) a screened intake structure at elevation 2,270, (4) a 6,188-foot-long penstock, 48-inch-diameter to a valve house with an auxiliary release adjacent to the dam, then 30-inch-diameter penstock, (5) a powerhouse containing one generating unit with an installed capacity of 6.2 MW, (6) a 14-mile-long, 34.5 kilovolt underground transmission line connecting to an existing power line, and (7) appurtenant facilities.

The Connelly Lake project proposed by Pacific Energy would be operated in a run-of-river mode and would consist of: (1) a proposed 50-foot-high, 575-foot-long rockfill dam at the lake outlet, (2) Connelly Lake, with a surface area of 150 acres at normal water surface elevation of 2,280 feet, (3) a 6,200-foot-long, 30-inch-diameter penstock, (4) a powerhouse containing one generating unit with an installed capacity of 6.0 MW, (5) a 15-mile-long, 34.5-kilovolt transmission line connecting to an existing power line, and (6) appurtenant facilities.

#### IV. AFFECTED FISHERY RESOURCES

1. Anadromous Fish: The unnamed creek flowing from Connelly Lake (Alaska Department of Fish and Game Anadromous Stream Catalog #5-33-10200-2016) supports spawning and rearing populations of coho salmon and Dolly Varden char. The Alaska Department of Fish and Game has identified approximately 0.25 miles of anadromous fish habitat within this stream. Besides providing spawning habitat for stocks originating in this reach, this reach provides feeding and resting habitat and refuge for mainstem stocks during periods of high flows and other adverse conditions. The unnamed stream enters the Chilkoot River, which supports migration and spawning of coho and sockeye salmon and Dolly Varden char within the Haines Bald Eagle Preserve.

2. **Essential Fish Habitat:** Affected anadromous streams, including the Chilkoot River, support Essential Fish Habitat (EFH) for anadromous fish species. The proposed action is likely to adversely affect EFH.

## V. PROJECT IMPACTS

1. **Construction Impacts:** Among potential project impacts, both proposed projects would require construction or reconstruction of access roads, diversion structures, penstocks, and powerhouse that could result in erosion, stream sedimentation, and increased turbidity. Sedimentation of spawning gravels downstream of the project could reduce egg and fry survival. Construction activities could result in dewatering of fish habitat. Diversion structures could limit or prevent fish migration and passage and result in a loss of gravel recruitment that is critical to downstream spawning habitats.

2. **Operational Impacts:** Among the potential operational impacts, the project proposed by Alaska Power would require impoundment and control of flow regimes. The bypass reach includes habitat used by salmon that are important to the Chilkoot River fishery. Diversion of water around the bypass reach could result in permanent loss of spawning habitat and loss of anadromous fish populations within this stream. Dewatering of the bypass reach would reduce available habitat used by resident and anadromous mainstem fish populations. Failure to maintain adequate instream flows due to operation of either proposed project could result in dewatering of spawning redds and loss of fish populations within this stream. Construction of a powerhouse at the confluence of the Chilkoot River could result in false attraction of adult salmon migrating to spawning sites. Construction and operation of either proposed project could result in additional impacts to anadromous fisheries that cannot be ascertained from the scoping documents and require the completion of additional studies.

VI.. POSITION OF THE PETITIONER

In requesting intervener status, NMFS seeks status to become a party to the proceeding. Connelly Lake outlet stream is an important anadromous fish stream. Important EFH is located within the reach above the proposed powerhouse sites that could be adversely affected by project construction and operation. Pursuant to Section 10(j) and Section 18 of the FPA, NMFS reserves its responsibility to request appropriate studies, provide appropriate license terms and conditions and prescribe any necessary fishways to protect EFH and our trust resources.

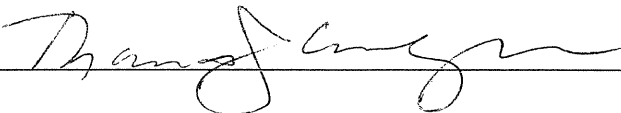
VII.. MOTION TO INTERVENE

NMFS moves to intervene in this proceeding and requests that any license issued in this proceeding incorporate license terms and conditions that we may develop during the licensing process including a reservation of authority for NMFS to prescribe any fishways necessary for the protection of the anadromous fish resources of the Connelly Lake drainage.

Dated this 21 day of November 2002.

Respectfully submitted,

FOR THE NATIONAL MARINE FISHERIES SERVICE



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Thomas J. Meyer  
NOAA General Counsel  
Alaska Region

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 12336-000 and 12338-000 )  
Competing Preliminary Permit Applications ) Docket No. P-12336-000  
Connelly Lake Projects ) P-12338-000  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by Federal Express Mail, a copy of the National Marine Fisheries Service's Preliminary Motion To Intervene in the encaptioned action on the applicant to this proceeding, in accordance with the Commission's Rules of Practice and Procedure.

DATED this 21st day of November 2002 in Juneau, Alaska.



Janet R. Herr  
Administrative Support  
for Habitat Conservation  
National Marine Fisheries Service  
Juneau, Alaska