

Jan. 1993

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
FEDERAL ENERGY REGULATORY COMMISSION
AND THE
UNITED STATES FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR
FOR
COOPERATION AND COORDINATION REGARDING
AGENCY REVIEW OF HYDROELECTRIC DEVELOPMENT APPLICATIONS

In the interest of mutual cooperation and coordination regarding review of non-Federal hydroelectric development proposals, this Memorandum of Understanding (MOU) is executed between the Federal Energy Regulatory Commission (Commission) and the U.S. Fish and Wildlife Service (Service), pursuant to the authority and responsibilities contained in the Federal Power Act, as amended, (FPA), 16 U.S.C. § 791a, et seq., the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a, et seq., the Electric Consumers Protection Act of 1986, Pub. L. 99-495, the Energy Policy Act of 1992, the Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531-1544, and the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321-4347.

WHEREAS, the Commission is authorized to issue preliminary permits, licenses, and exemptions from licensing to non-Federal entities for the development of hydroelectric powerplants under its jurisdiction; and

WHEREAS, the Service is authorized to provide assistance to and cooperate with Federal agencies to protect and increase fish and wildlife resources; and

WHEREAS, the Electric Consumers Protection Act of 1986 requires that Commission-issued licenses must include conditions, based on recommendations received pursuant to the Fish and Wildlife Coordination Act from the Service and other agencies, to protect, mitigate and enhance fish and wildlife, where the Commission determines that those conditions are not inconsistent with the FPA or other applicable law, and;

WHEREAS, the FPA requires the Commission to give equal consideration to a number of purposes, including power and development; energy conservation; protection, mitigation of damage to, and enhancement of fish and wildlife; protection of recreational opportunities; and preservation of other aspects of environmental quality; and other beneficial public uses; and

WHEREAS, the Energy Policy Act of 1992 amends the FPA and other provisions of law to require further interaction between the Commission and the Department of the Interior, including matters of interest to, and within the responsibility of, the Service in order to implement the new Act; and

WHEREAS, the Commission and the Service recognize the benefits to be obtained by better cooperation and coordination, and both agencies wish to refine administrative processes and joint guidelines by which issues concerning the above-mentioned matters can be resolved in a timely and legally sound manner; and

NOW THEREFORE, because it is in the public interest that the agencies work together to ensure timely consideration of development applications that gives equal consideration to developmental and nondevelopmental values and provides for the appropriate protection, mitigation, and enhancement of fish and wildlife resources, the Commission and the Service agree to the following:

Article 1. Interagency Hydropower Task Force. There is hereby established an Interagency Hydropower Task Force (Task Force), the purpose of which is to provide a framework for ongoing discussions regarding the above-mentioned matters and other matters of mutual interest that may arise from time to time and to develop further mutual written agreements or understandings pertaining to such matters.

A. Task Force Membership. The members of the Task Force shall be appointed by appropriate authorities in each agency.

B. Meetings. The Task Force shall meet periodically at the convenience of the members, but not less than two times per year.

C. Recordation of Meetings. Following the conclusion of each meeting, a memorandum shall be prepared recording the matters discussed, the positions of the parties, and any agreements reached. The Task Force will prepare other reports and memoranda, as appropriate, at the discretion of its members.

D. Future Written Understandings. The Task Force is charged with developing future written understandings. Matters that are potentially the subject of such understandings include, but are not necessarily limited to, the following:

- Commission/Service coordination during pre-filing consultation.
- Enhancing consultation under section 10(j) of the FPA.

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- Consultations pursuant to section 7 of the Endangered Species Act.
- Opportunities to work together on multiple-project or river-basin-wide cumulative environmental impact analyses.
- Studies and funding mechanisms to provide information needed to address fish and wildlife resource concerns associated with hydropower development.

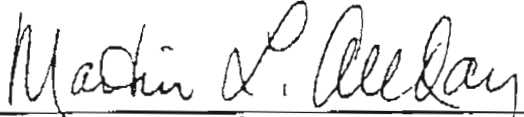
The signature level for future written understandings will be determined based on their scope and content.

Article 2. Nothing in this MOU shall be interpreted to modify or limit the rights and authorities of either agency or the Department of the Interior, including administrative procedures under the FPA and the Administrative Procedure Act (5 U.S.C. § 522 et seq.), particularly the Service's responsibility under the Department of the Interior's authority pursuant to sections 4(e), 18, and 30(c) of the FPA, the Commission's authority pursuant to sections 4, 10, 308, and 309 of the FPA, and the availability of judicial review of a final Commission order under section 313 of the FPA.

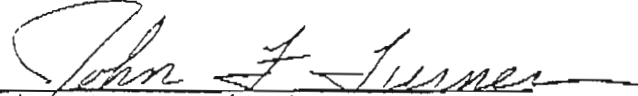
Article 3. Nothing in this MOU shall be construed to limit or modify the Service's right to intervene in Commission proceedings, in accordance with applicable law and regulations.

Article 4. Nothing in this MOU shall be construed as precluding the participation of other interested entities in future understandings listed in Article 1 section D, above, where the Commission and the Service agree that such participation would be appropriate. Nothing in this MOU shall be construed as precluding the Commission or the Service from developing similar MOUs with other Federal agencies.

Article 5. This MOU shall remain in effect until terminated by either party in writing and may be modified by mutual written agreement of the parties.



 Chairman, Federal Energy
 Regulatory Commission



 Director, United States
 Fish and Wildlife Service,
 Department of the Interior

1/11/93

 Date

1/13/93

 Date