

## Craver, Patti

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**From:** Logan, Dennis |  
**Sent:** Wednesday, November 30, 2011 5:15 PM  
**To:** Krieg, Rebekah; Grange, Briana  
**Subject:** RE: Columbia - draft letter responding to NMFS about section 7

Great. Looks like a nice, tight story. -Dennis

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**From:** Krieg, Rebekah [<mailto:rebekah.krieg@pnnl.gov>]  
**Sent:** Wednesday, November 30, 2011 5:11 PM  
**To:** Logan, Dennis; Balsam, Briana  
**Subject:** RE: Columbia - draft letter responding to NMFS about section 7

Here are my edits on top of Dennis'. I just added a bit of technical clarification.

I agree – you did a great job, Briana.

Becky

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**From:** Logan, Dennis [<mailto:Dennis.Logan@nrc.gov>]  
**Sent:** Wednesday, November 30, 2011 1:42 PM  
**To:** Balsam, Briana; Krieg, Rebekah  
**Subject:** RE: Columbia - draft letter responding to NMFS about section 7

Briana and Becky,

My suggested edits are in the attachment. Very nice job, Briana.

Dennis

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**From:** Balsam, Briana  
**Sent:** Wednesday, November 30, 2011 3:21 PM  
**To:** Logan, Dennis; Krieg, Rebekah  
**Subject:** Columbia - draft letter responding to NMFS about section 7

Dennis and Becky,

Attached is what I have come up with so far for the response letter to NMFS for Columbia. Please let me know what you think.

Becky—do you think anything else should be described in the section discussing data on juvenile salmonids? Since I have only been minimally involved in this project, I tried to keep it very brief so that I didn't misrepresent anything, but feel free to add whatever you think is appropriate.

Thanks!

Briana

December XX, 2011

Mr. William W. Stelle, Jr.  
Regional Administrator  
National Marine Fisheries Service  
Northwest Regional Office  
1201 NE Lloyd Blvd., Suite 1100  
Portland, Oregon 97232-1274

SUBJECT: RESPONSE TO LETTER OF NON-CONCURRENCE ON BIOLOGICAL  
ASSESSMENT FOR PROPOSED LICENSE RENEWAL OF COLUMBIA  
GENERATING STATION. (TAC NO. ME3121; NMFS CONSULTATION NO.  
F/NWR/2011/05286)

Dear Mr. Stelle:

The U.S. Nuclear Regulatory Commission (NRC; the staff) received your October 24, 2011, letter in response to the staff's draft supplemental environmental impact statement (SEIS) for the proposed license renewal of Columbia Generating Station (CGS) in Benton County, Washington. Your letter directs NRC to initiate formal consultation under section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA). Before determining whether formal section 7 consultation is the appropriate next step, the NRC staff would like to clarify a few issues raised in your letter.

#### **I. Entrainment of Juvenile Salmonids**

Your letter states that the CGS cooling system has the potential to entrain juvenile salmonids during the proposed relicensing period. Of the two salmonid species listed under the ESA, juvenile Upper Columbia River spring Chinook (*Onocorhynchus tshawytscha*) are too large to be entrained into the cooling system, and CGS collected no life stage of Upper Columbia River steelhead (*O. mykiss*) in entrainment studies conducted in 1979–1980 and 1985, which indicates the absence of entrainable individuals of this species in the area of where CGS withdraws cooling water. If your office has any contradictory information that would indicate that the CGS cooling system is entraining or has the potential to entrain protected juvenile salmonids, we would welcome that information for our staff's consideration. Absent of any such additional information, we believe that, consistent with 50 CFR 402.12(k), the staff's conclusion of "may affect, but is not likely to adversely affect" for both the Upper Columbia River spring Chinook salmon and the Upper Columbia River steelhead in NRC's August 2011 biological assessment (NRC 2011a) does not warrant initiation of formal section 7 consultation.

#### **II. NMFS's Anadromous Salmonid Passage Facility Design**

Your letter states that you do not concur with the NRC's effect determinations because CGS's intake screen design is not consistent with NMFS's screen criteria in *Anadromous Salmonid Passage Facility Design* (NMFS 2011). The Forward to this document states, however, that:

“Existing facilities may not adhere to the criteria and guidelines listed in this document. However, that does not mean these facilities must be modified specifically for compliance with this document. The intention of these criteria and guidelines is to ensure future compliance in the context of major upgrades and new designs of fish passage facilities.”

CGS is an existing facility, and the proposed license renewal would not involve any “major upgrades” or “new designs of fish passage facilities.” Your letter seems to indicate that compliance with NMFS’s screen criteria is required, but the document containing the criteria makes no such claim. Therefore, the NRC staff does not believe that non-compliance with this criterion alone necessitates initiation of formal section 7 consultation.

### **III. CGS’s Cooling Water Intake System**

Your letter directs the NRC to develop a cooling water intake system design that meets NMFS’s screen criteria and to create a schedule for implementing such a design. The identification and implementation of best technology available (BTA) for cooling water intake systems is, however, under the authority of the U.S. Environmental Protection Agency (EPA) under the Federal Water Pollution Control Act of 1972 (the Clean Water Act; henceforth, CWA). The EPA delegated its authority under the CWA to issue and oversee National Pollutant Discharge Elimination System (NPDES) permits to the State of Washington in 1973.

The State of Washington authorizes discharge of treated wastewater via three outfalls at CGS, in accordance with special and general conditions of NPDES Permit No. WA-002515-1. Under this permit, the State of Washington can require mitigation measures, such as requiring that a cooling system meet NMFS’s screen criteria, BTA, or other modifications of the cooling system to reduce entrainment and impingement impacts to aquatic life.

The evaluation or implementation of NMFS’s screen criteria is beyond the NRC’s regulatory authority. The NRC previously described limitations to its authority in a June 2011 letter to NMFS’s Northeast Regional Office regarding Hope Creek Generating Station and Salem Nuclear Generating Station, Units 1 and 2, in New Jersey (NRC 2011b). This letter is enclosed for your reference. As described in that letter, Congress amended the CWA in 1972 to assign statutory authority over water quality matters to the EPA. Portions of the CWA specifically removed water quality oversight authority from other Federal agencies such as the NRC, and, further, sought to prevent duplicative Federal oversight of CWA issues by specifically and solely vesting authority and expertise with EPA.

### **IV. Conclusion**

In conclusion, the NRC believes that informal section 7 consultation is the appropriate means of fulfilling NRC’s obligations under the ESA for the proposed CGS license renewal. The *Endangered Species Consultation Handbook* (FWS and NMFS 1998) also indicates that informal section 7 consultation is sufficient in an instance such as this:

“When action agencies request formal consultation on actions not likely to adversely affect listed species or designated critical habitat, the Services should explain that informal consultation/concurrence letters are adequate to complete section 7 compliance...”

Additionally, the NRC does not agree with the NMFS's rationale for its request for NRC to initiate formal section 7 consultation. Regarding such requests, the ESA regulations at 50 CFR 402.14(a) state that:

"The Director may request a Federal agency to enter into consultation if he identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the Federal agency a written explanation of the basis for the request."

As previously stated, the NRC welcomes any information that your office may have that would indicate that CGS is entraining either Upper Columbia River spring Chinook juveniles or Upper Columbia River steelhead juveniles or other available information that would justify initiation of formal section 7 consultation.

If you have any questions regarding this letter or the proposed CGS license renewal, please contact Daniel Doyle, environmental project manager, or Dennis Logan, aquatic biologist. Mr. Doyle can be reached at 301-415-3748 or by e-mail at [Daniel.Doyle@nrc.gov](mailto:Daniel.Doyle@nrc.gov). Mr. Logan can be reached at 301-415-0490 or [Dennis.Logan@nrc.gov](mailto:Dennis.Logan@nrc.gov).

Sincerely,

David J. Wrona, Chief  
Projects Branch 2  
Division of License Renewal  
Office of Nuclear Reactor Regulation

Docket No. 50-397

Enclosure:  
As stated (Enclosure is at ML11153A170)

cc w/encl: Listserv

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**OFFICIAL RECORD COPY**

Letter from D. Wrona to W. Stelle dated December XX, 2011

**SUBJECT:** RESPONSE TO LETTER OF NON-CONCURRENCE ON BIOLOGICAL ASSESSMENT FOR PROPOSED LICENSE RENEWAL OF COLUMBIA GENERATING STATION. (TAC NO. ME3121; NMFS CONSULTATION NO. F/NWR/2011/05286)

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[rebekah.krieg@pnl.gov](mailto:rebekah.krieg@pnl.gov)

## References:

[FWS and NMFS] U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*. Washington, DC: FWS and NMFS. March 1998. Available at <<http://www.fws.gov/caribbean/es/PDF/Sec%207%20Handbook.pdf>> (accessed 29 November 2011).

[NMFS] National Marine Fisheries Service. 2011. *Anadromous Salmonid Passage Facility Design*. July 2011. Available at <<http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf>> (accessed 29 November 2011).

[NRC] U.S. Nuclear Regulatory Commission. 2011a. *Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Columbia Generating Station; Draft Report for Comment*. Washington, DC: NRC. NUREG-1437, Supplement 47. August 2011. ADAMS No. ML11227A007.

[NRC] U.S. Nuclear Regulatory Commission. 2011b. Letter from A. Imboden, Branch Chief, to P. Colosi, Assistant Regional Administrator for Protected Resources, NMFS. Subject: Response to EFH Conservation Recommendations for Hope Creek and Salem license renewal review. June 15, 2011. ADAMS No. ML11153A170.