

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 1, 2023

The Honorable Richard W. Spinrad
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue NW
Room 5128
Washington, D.C. 20230

Dear Administrator Spinrad:

The Committee on Natural Resources (the “Committee”) is investigating the National Oceanic and Atmospheric Administration’s (“NOAA”) National Marine Fisheries Service (“NMFS”) regarding NMFS’s recent reversal on supporting the continued operation of the dams on the Lower Snake River. The Committee is concerned that NMFS’s drastic change – from stating that the continued operations of the dams on the Lower Snake River “will not destroy or adversely modify designated critical habitat”¹ for Columbia River Basin salmon and steelhead species, to claiming that breaching those same dams is a “centerpiece action” for achieving “healthy and harvestable” levels² – is untethered from scientific standards and statutory authority. The Committee is also concerned with the lack of transparency and public input for NMFS’s recent support for breaching dams on the Lower Snake River.

The Snake River is the principal tributary to the Columbia River.³ Following congressional authorization in 1945,⁴ the federal government built four large dams on the Lower Snake River in the 1960s and 1970s: Ice Harbor, Lower Monumental, Little Goose, and Lower Granite (the “Lower Snake River Dams”).⁵ The Lower Snake River Dams provide significant energy production for the states of Washington, Oregon, Idaho and for Western Montana (the “Northwest Region”). Collectively, Lower Snake River Dams provide: 3,500 megawatts of total capacity,

¹ NAT’L OCEANIC & ATMOSPHERIC ADMIN., NAT’L MARINE FISHERIES SERVICE, *Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Continued Operation and Maintenance of the Columbia River System 2* (July 24, 2020), <https://repository.library.noaa.gov/view/noaa/26460> [hereinafter BiOp].

² NAT’L OCEANIC & ATMOSPHERIC ADMIN., NAT’L MARINE FISHERIES SERVICE, *Rebuilding Interior Columbia Basin Salmon and Steelhead* 17-18 (Sep. 30, 2022) <https://media.fisheries.noaa.gov/2022-09/rebuilding-interior-columbia-basin-salmon-steelhead.pdf> [hereinafter 2022 Report].

³ Walla Walla District, *Lower Snake River Dams*, U.S. ARMY CORPS OF ENGINEERS, <https://www.nww.usace.army.mil/Missions/Lower-Snake-River-Dams/> (last accessed Apr. 27, 2023).

⁴ Hannah Mitchell, *A step towards navigable waters: A history of McNary Lock and Dam*, U.S. ARMY CORPS OF ENGINEERS (Mar. 20, 2023), <https://www.nww.usace.army.mil/Media/News-Stories/Article/3334377/a-step-towards-navigable-waters-a-history-of-mcnary-lock-and-dam/>.

⁵ Walla Walla District, *supra* note 3.

2,300 megawatts of firm peaking capability, and an average of 900 megawatts of zero-carbon energy each year.⁶ The Lower Snake River Dams also provide essential grid services such as operating reserves and voltage support, and operational flexibility to support renewable integration.⁷ In addition to energy production, the Lower Snake River Dams provide a significant economic benefit to the nation with 40 million tons of cargo valued at over \$3 billion moving through the system annually.⁸ Breaching the Lower Snake River Dams, while still meeting clean energy goals and system reliability needs, will cost between \$415 million to \$860 million annually by 2045, with consumer energy bills increasing 8-18% annually as a result.⁹ Another study, using recognized modeling, concluded that replacing the power generated by the Lower Snake River dams would require an additional \$15 billion and force an additional 5 to 9 million metric tons of CO2 emissions into the environment.¹⁰

In a July 2020 Biological Opinion (the “BiOp”), NMFS supported the continued operation of the Lower Snake River Dams and concluded that the Lower Snake River Dams are “managed to benefit” fish populations in the Columbia River Basin.¹¹ Specifically, the BiOp proposed the continued operation of the Lower Snake River Dams to meet congressionally authorized purposes, including power system management, irrigation, water supply, navigation, recreation, and fish and wildlife conservation.¹² The BiOp detailed how the “flexible” spill passage operations of the Lower Snake River Dams increase juvenile passage conditions and adult returns for fish populations, while providing power system benefits to the Northwest Region.¹³

On September 28, 2020, the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Department of Energy’s Bonneville Power Administration (collectively, “the Agencies of Record”), issued a joint Record of Decision (“ROD”) on the Columbia River System Operations Environmental Impact Statement (“CRSO EIS”). The CRSO EIS was developed in accordance with the National Environmental Policy Act (“NEPA”) and was the product of a years-long, \$40 million public process aimed at reviewing and updating management of the 14 federal dams on the Columbia River system, including the Lower Snake River Dams.¹⁴ While the public process elicited some support for breaching the Lower Snake River Dams as a means to increase regional fish populations,¹⁵ “many stakeholders” in the region expressed “high concern with the potential

⁶ ENERGY AND ENVIRONMENTAL ECONOMICS, INC. (E3), *BPA Lower Snake River Dams Power Replacement Study 1* (July 2022), <https://www.ethree.com/wp-content/uploads/2022/07/e3-bpa-lower-snake-river-dams-power-replacement-study.pdf> [hereinafter E3 Study].

⁷ *Id.*

⁸ Walla Walla District, *supra* note 3.

⁹ E3 Study, *supra* note 6 at 4.

¹⁰ ENERGY GPS CONSULTING, LLC, *Lower Snake River Dams Power Supply Replacement Analysis* (July, 29 2022), https://nwrivernpartners.org/wp-content/uploads/2022/06/EGPSC_LSRD-Power-Cost-Replacement-Study_6_29_2022_Final.pdf.

¹¹ BiOp, *supra* note 1 at 51.

¹² *Id.* at 47, 64.

¹³ *Id.* at 54-55.

¹⁴ DEP’T OF ENERGY, BONNEVILLE POWER ADMIN., *Record of Decision; Columbia River System Operations Environmental Impact Statement*, 85 Fed. Reg. 196 (Oct. 8, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22147.pdf> [hereinafter ROD].

¹⁵ *Id.* at 63857.

regional socioeconomic effects” of breaching the Lower Snake River Dams.¹⁶ Notably, breaching would eliminate approximately 48,000 irrigated acres, hydropower generation flexibility, and navigation on the lower Snake River.¹⁷ Ultimately, noting the multiple congressionally-approved federal authorizations that the operation of the dams must balance,¹⁸ the Agencies of Record selected a preferred alternative that continues operation of the Lower Snake River Dams and supports the recovery and “harvest” of salmon and steelhead fisheries in the Columbia River Basin.¹⁹

On September 30, 2022, NMFS directly contradicted its own BiOp allowing for the operation of the Lower Snake River Dams when it released a report (the “2022 Report”) declaring that breaching the Lower Snake River Dams was necessary to achieve “abundant” stocks of salmon, steelhead, and other fish species.²⁰ NMFS’s apparent newfound support for breaching the Lower Snake River Dams is superficially conclusory as the 2022 Report included numerous caveats to the efficacy of breaching the Lower Snake River Dams.²¹ Notably, the 2022 Report admitted that there is “uncertainty” on whether breaching the Lower Snake River Dams would provide “direct productivity and survival benefits” for “salmon and steelhead stocks.”²² While it was “expected” but not certain that juvenile survival rates would increase from the current 75 percent, the actual survival rate would still certainly be below 100 percent.²³ Further uncertainty cited in the 2022 Report includes the “substantial disagreement” over the actual impact that passage through the Lower Snake River Dams has on fish mortality, environmental degradation in other areas, and the impact of climate change – including whether the effects of climate change can be mitigated at all.²⁴

Thus, by NMFS’s own admission, the expected results from breaching the Lower Snake River Dams on fish populations are at best inconclusive. Additionally, in its most recent Snake River salmon recovery plan, NMFS acknowledged that “with few exceptions, fish passage measures, including the use of surface passage structures and spill, are performing as expected and are very close to achieving, or have already achieved, the juvenile dam passage survival objective of 96 percent for yearling Chinook salmon and steelhead migrants” as defined in the preceding NMFS Biological Opinion.²⁵

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Federal authorizations include, but are not limited to, the Pacific Northwest Electric Power Planning & Conservation Act of 1980 (16 U.S.C. §839, et.seq.) which requires an adequate, efficient reliable power supply as well as protection of fish and wildlife resources; the Rivers and Harbors Act of 1945 (P.L. 79-14), which authorized the construction of the Lower Snake River dams and recognized the benefit of irrigation at the projects; the Flood Control Act of 1944 (P.L. 78-534) which authorized the sale of power at Army Corps-operated dams and defined recreation at the dams; the Bonneville Power Act of 1937 (P.L. 75-329) which authorized BPA’s power marketing authority at hydropower projects in the Northwest.

¹⁹ ROD, *supra* note 14 at 63866.

²⁰ 2022 Report, *supra* note 2 at 35.

²¹ *Id.* at 30.

²² *Id.* at 32.

²³ *Id.*

²⁴ *Id.* at 30-32.

²⁵ NAT’L OCEANIC & ATMOSPHERIC ADMIN., NAT’L MARINE FISHERIES SERVICE, *ESA Recovery Plan for Snake River Spring/Summer Chinook Salmon (Oncorhynchus tshawytscha) & Snake River Basin Steelhead (Oncorhynchus*

For more than two decades, there has been extensive, ongoing litigation over the Lower Snake River Dams. Various national environmental organizations, eco-activist groups, and other plaintiffs are suing the U.S. Army Corps of Engineers, Bureau of Reclamation, NMFS, and other defendants, to breach the Lower Snake River Dams (the “Columbia River Basin Litigation”). The Columbia River Basin Litigation is currently stayed until August 31, 2023, as the Biden Administration’s Council on Environmental Quality has directed parties to engage in mediation to “facilitate meaningful engagement on comprehensive solutions.”²⁶ Given the role of NMFS as a defendant in the Columbia River Basin Litigation, the Committee is deeply concerned over NMFS’s efforts and ability to represent the Federal government’s position in favor of the continued operation of the Lower Snake River Dams in an unbiased manner now that NMFS has issued the 2022 Report in support of breaching the Lower Snake River Dams.

To assist the Committee with our investigation, please provide the following records, documents, or communications, in electronic format, no later than May 17, 2023:

1. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and the White House Council on Environmental Quality regarding the Columbia River Basin;
2. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and the White House Council on Environmental Quality regarding the Lower Snake River Dams;
3. All documents and communications, from January 20, 2021, to the present, between NOAA and the White House Council on Environmental Quality regarding the Columbia River Basin;
4. All documents and communications, from January 20, 2021, to the present, between NOAA and the White House Council on Environmental Quality regarding the Lower Snake River Dams;
5. All documents and communications, from January 20, 2021, to the present, between the NMFS and the White House Council on Environmental Quality regarding the Columbia River Basin;
6. All documents and communications, from January 20, 2021, to the present, between the NMFS and the White House Council on Environmental Quality regarding the Lower Snake River Dams;

mykiss) 185 (Nov. 2017), <https://media.fisheries.noaa.gov/dam-migration/final-snake-river-spring-summer-chinook-salmon-and-snake-river-steelhead-recovery-plan-2017.pdf>.

²⁶ Joint Motion to Extend the Litigation Stay, *National Wildlife Federation v. National Marine Fisheries Service*, Case No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022), https://earthjustice.org/wp-content/uploads/2423_joint_motion_for_stay_of_litigation.pdf.

7. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and non-governmental organizations regarding the Lower Snake River Dams;
8. All documents and communications, from January 20, 2021, to the present, between NOAA and non-governmental organizations regarding the Lower Snake River Dams;
9. All documents and communications, from January 20, 2021, to the present, between the NMFS and non-governmental organizations regarding the Lower Snake River Dams;
10. All documents and communications, from January 20, 2021, to the present, for the legal justification of the 2022 Report;
11. All documents and communications, from January 20, 2021, to the present, regarding the compliance of the 2022 Report with relevant legislation and statutes, including but not limited to NEPA;
12. All documents and communications on the impact of the 2022 Report on the Columbia River Basin Litigation;
13. Documents and communications, from January 20, 2021, to the present, sufficient to show who participated in developing the 2022 Report;
14. Documents and communications, from January 20, 2021, to the present, sufficient to show the public input into the 2022 Report;
15. All documents and communications, from January 20, 2021, to the present, regarding the decision to pursue a new undefined term of “healthy and abundant” fisheries in the Columbia River Basin as referenced in Exhibit 2²⁷ of the Joint Motion to Stay Litigation²⁸ filed with the District of Oregon in *National Wildlife Federation v. National Marine Fisheries Service* on August 4, 2022; and
16. All documents and communications regarding President Joe Biden’s March 21, 2023, remarks to bring “abundant salmon runs back to the [Columbia and Snake] River system.”

An attachment to this letter provides additional instructions for responding to the requests from the Committee on Natural Resources. Please contact the Majority staff for the Oversight and Investigations Subcommittee at (202) 225-2761 or HNRR.Oversight@mail.house.gov with any questions. Under House Rule X, the Committee on Natural Resources has “general oversight” of

²⁷ Exhibit 2 of the Joint Motion to Extend the Litigation Stay, *National Wildlife Federation v. National Marine Fisheries Service*, Case No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022), https://earthjustice.org/wp-content/uploads/2423-2_ex_2_us_commitments.pdf.

²⁸ Joint Motion to Extend the Litigation Stay, *supra* note 26.

Administrator Spinrad
May 1, 2023
Page 6 of 6

any matter relating to its jurisdiction, including all matters concerning America's water resources, generation of electrical power from federal water projects, and fisheries management. Thank you for your cooperation.

Sincerely,



Cliff Bentz
Chairman
Subcommittee on Water, Wildlife and Fisheries



Paul A. Gosar, D.D.S.
Chairman
Subcommittee on Oversight & Investigations

Enclosure