

STAFF EVALUATION OF THE RECORD/RECORD OF DECISION

FISH AND WILDLIFE CONSULTATION PROCEDURES

BONNEVILLE POWER ADMINISTRATION

MAY 1985  
DOE/BP-474

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EXHIBITS

1. Proposed Fish and Wildlife Consultation Procedures
2. Notice of Final Fish and Wildlife Consultation Procedures

Commenters and Abbreviations

<u>Commenter</u>	<u>Abbreviation</u>
Colockum Transmission Company	CTC
Columbia Basin Fish and Wildlife Council	CBFWC
Columbia River Inter-Tribal Fish Commission	CRITFC
Direct Service Industries, Inc.	DSIs, Inc.
Federal Energy Regulatory Commission	FERC
Idaho Power Company	IPC
Pacific Northwest Generating Company	PNGC
Puget Sound Power & Light Company	Puget Power
U. S. Army Corps of Engineers	Corps
U. S. Bureau of Indian Affairs	BIA
U. S. Bureau of Reclamation	Bureau



## INTRODUCTION

BPA published a Notice of Intent to Adopt Procedures and Notice of Proposed Procedures in the Federal Register on November 1, 1983 (48 FR 50392). Exhibit 1 contains the proposed procedures as published in the Federal Register. BPA conducted public information/public comment forums on the procedures on November 18, 1983, in Spokane, Washington, and on November 19, 1983, in Portland, Oregon. BPA received comment letters from six utilities and organizations, and oral comments from five agencies, utilities, and organizations at the public information/public comment forums. BPA revised portions of the procedures in response to the comments. Because the consultation responsibility in section 4(h)(11)(B) of the Pacific Northwest Power Act applies to the Corps of Engineers, Bureau of Reclamation, and Federal Energy Regulatory Commission, as well as to BPA, BPA provided the revised procedures to these agencies for review and comment. BPA received comment letters from the Corps of Engineers and Bureau of Reclamation, and a letter from the Federal Energy Regulatory Commission stating that it had no comments.

This Staff Evaluation of the Record/Record of Decision lists the issues raised in comment letters and at the public information/public comment forums, evaluates the comments, and describes the disposition of each issue in the procedures as published in the Federal Register notice of final procedures (Exhibit 2).



ISSUES, COMMENTS, AND DISPOSITION

INTRODUCTION

Letters and transcripts referenced are those contained in the Public Involvement Office's Official Record for the fish and wildlife consultation procedures (FW-1). Unless otherwise noted, references are to letters.

Issue No. 1

Should BPA expand the applicability of the proposed procedures to include the funding of Fish and Wildlife Program measures pursuant to Sec. 4(h)(10) of the Pacific Northwest Power Act (Act)?

Proposed Procedures. The procedures as proposed are confined to consultation in the exercise of BPA's fish and wildlife responsibilities in the management and operation of Federal Columbia River Power System (FCRPS) hydroelectric facilities. Sec. 1 of the proposed procedures specifically states that they do not apply to fish and wildlife funding pursuant to Sec. 4(h)(10) of the Act.

Comments. The Columbia Basin Fish and Wildlife Council (CBFWC) and Columbia River Inter-Tribal Fish Commission (CRITFC) state that BPA's Sec. 4(h)(11)(B) consultation duties apply to BPA's fish and wildlife funding responsibilities, as well as its Sec. 4(h)(11)(A) responsibilities. The CRITFC also states that, if BPA does not expand the procedures to apply to funding, it should develop other procedures to do so. CBFWC; CRITFC.



Evaluation. By its own terms, the obligation to consult contained in Sec. 4(h)(11)(B) of the Act applies only to the exercise of BPA's responsibilities under Sec. 4(h)(11)(A). It does not apply to BPA's funding responsibilities under Sec. 4(h)(10). Under its Sec. 4(h)(10) funding authority, BPA is now funding over 130 projects to protect, mitigate, and enhance fish and wildlife affected by the hydroelectric facilities in the Columbia River Basin. There is indisputably a need to consult on this funding, and BPA policy is to do so. <sup>1/</sup> In fact, BPA consults extensively with fish and wildlife agencies and Indian tribes on project funding, and most funded projects are conducted by fish and wildlife agencies and Indian tribes. However, the proposed procedures would be unsuitable for use in consulting on fish and wildlife project funding. BPA's experience is that the appropriate way to structure consultation on project funding must be responsive to varying circumstances. Consultation on project funding is not a function that lends itself to uniform, routinized requirements, and such requirements are more likely to inhibit consultation rather than aid it. In addition, BPA need not decide on the wisdom of procedures for consultation on project funding in connection with adopting procedures for consultation on fish and wildlife matters in FCRPS management and operation.

Decision. The final procedures apply only to consultation in the exercise of BPA's fish and wildlife responsibilities in the management and operation of Federal Columbia River Power System hydroelectric facilities. By its own

<sup>1/</sup> BPA Goal 10 states "BPA will work closely with Federal agencies, the Regional Council, Indian tribes, and other entities in implementing the fish and wildlife provisions of the Regional Act." Attachment, memorandum from Administrator, Bonneville Power Administration, September 20, 1984.



terms, the obligation to consult contained in Sec. 4(h)(11)(B) of the Act applies only to the exercise of BPA's responsibilities under Sec. 4(h)(11)(A). Procedures for consultation on project funding may be ill-advised, and the determination of whether to develop such procedures need not be made now.

#### Issue No. 2

Should BPA expand the applicability of the proposed procedures to include resource acquisitions and billing credit actions?

Proposed Procedures. The procedures as proposed are confined to consultation in the exercise of BPA's fish and wildlife responsibilities in the management and operation of Federal Columbia River Power System hydroelectric facilities. Sec. 1 of the procedures specifically states that they do not apply to resource acquisitions and billing credit actions.

Comments. CBFWC and CRITFC assert that BPA's Sec. 4(h)(11)(B) consultation duties apply to resource acquisitions and billing credit actions, as well as to BPA's Sec. 4(h)(11)(A) responsibilities. The CRITFC also states that, if BPA does not expand the procedures to apply to resource acquisition and billing credit actions, it should develop other procedures to do so. CBFWC; CRITFC.



Evaluation. Fish and wildlife agencies and Indian tribes have a valid interest in BPA resource acquisitions and billing credits. However, as stated above, by its own terms, the duty to consult in Sec. 4(h)(11)(B) applies only to the exercise of BPA's responsibilities pursuant to Sec. 4(h)(11)(A). BPA's authorities to acquire resources and grant billing credits are contained in Sec. 6 of the Act. BPA has adopted procedures for granting billing credits which afford fish and wildlife agencies and Indian tribes notice and the opportunity to comment at two stages in the granting process. Because of the present Pacific Northwest electric power surplus, BPA is not seeking resource acquisitions other than conservation, and has no immediate plans to develop resource acquisition procedures. BPA's procedures for complying with the National Environmental Policy Act would require notifying relevant fish and wildlife agencies were BPA to propose to acquire a generating resource.

Decision. The final procedures apply only to consultation in the exercise of BPA's fish and wildlife responsibilities in the management and operation of Federal Columbia River Power System hydroelectric facilities. By its own terms, the obligation to consult contained in Sec. 4(h)(11)(B) of the Act applies only to the exercise of BPA's responsibilities under Sec. 4(h)(11)(A) of the Act. Separate procedures provide for notice to fish and wildlife agencies and Indian tribes and opportunity to comment on billing credits, and BPA has no immediate plans to acquire generating resources.



Issue No. 3

Should the procedures define with greater detail those matters which are appropriate for consultation?

Proposed Procedures. Sec. 3 of the procedures as proposed states:

BPA will consult, as provided in this section, on policies and actions applying the directives of Sec. 4(h)(11)(A) of the Act to adequately protect, mitigate, and enhance fish and wildlife and to provide fish and wildlife equitable treatment in the management and operation of Federal Columbia River Power System hydroelectric facilities. BPA will not consult when the provisions of Sec. 4(h)(11)(A) of the Act have already been implemented through other policies and actions, such as the provision of adequate flows for spring salmon and steelhead migration, which the Water Budget addresses.

Comments. CRITFC states that the procedures should define with greater detail those matters which it has determined suitable for consultation. CRITFC. In addition, the Pacific Northwest Generating Company (PNGC) states that all of BPA's customers should be informed of the types of actions to be governed by the procedures. PNGC.

Evaluation. The proposed procedures, as quoted above, state that BPA will consult on policies and actions applying the directives of Sec. 4(h)(11)(A) of the Act, but does not specify what these actions and policies might be. This has two consequences. First, as PNGC's comments point out, it prevents a consultation party or other interested party from knowing the types of actions and policies on which BPA will consult. Second, it prevents the BPA officials



responsible for discharging BPA's consultation duty from knowing with certainty when the obligation applies and when it does not. This could cause confusion and possibly a failure to consult when consultation is required. The proposed procedures do not specify what falls within the exercise by BPA of its responsibilities in the management and operation of the FCRPS. In addition, the proposed procedures do not state how BPA will handle a policy or action some fish and wildlife consequences of which are addressed by a previously adopted policy or a previous action implementing Sec. 4(h)(11)(A), but some of which are not. They state that BPA will not consult when the provisions of Sec. 4(h)(11)(A) of the Act have already been implemented through other policies and actions. However, in some cases, a policy or action will have, for example, potential effects on flows during the spring salmon and steelhead outmigration period, which the Water Budget addresses, and other consequences which are not covered by a policy or action such as the Water Budget.

Decision. The final procedures clarify the policies and actions to which the procedures apply. See Sec. 3 and the explanation of Sec. 3 in the Federal Register notice of final procedures.

#### Issue No. 4

Should BPA add to the list of consultation parties in the procedures (a) a representative of the direct service industries (DSIs); and/or (b) a representative of all BPA's customers?



Proposed Procedures. The proposed procedures define consultation parties to include only the parties specifically enumerated in Sec. 4(h)(11)(B) of the Act. These parties do not include BPA's direct service industrial customers or other customers which do not operate hydroelectric projects on the Columbia River or its tributaries.

Comments. Direct Services Industries, Inc. (DSIs, Inc.) states that BPA should add a direct service industry (DSI) representative to the definition of consultation parties, and that consultation parties need not be confined to the entities specifically referenced in Sec. 4(h)(11)(B) of the Act. DSIs, Inc. states that the DSIs have a direct, special, and continuing interest in BPA's operating plans because nonfirm and borrowed DSI firm energy are the sole source of service to one-fourth of the DSIs loads, and its availability requires that BPA plan and obtain implementation of particular Federal hydroproject operations. DSIs, Inc. also states that, while the proposed procedures provide for courtesy copies of notices to anyone requesting them, they do not provide assurance that a nonconsultation party's comments would be accepted and considered in BPA's consultation and annual meeting process. DSIs, Inc. Similarly, PNGC states that the procedures should provide for consultations with all of BPA's customers because they have a strong interest in changes in the operation of the Federal Base System as well as the cost of any such changes. They should receive notification of the annual meeting provided for in the proposed procedures because the meetings will provide an opportunity for general updates on consultation-related matters. PNGC; PNGC, Portland transcript, p. 36.



Evaluation. The DSIs and all of BPA's customers have an interest in the management and operation of the FCRPS. However, the consultation duty in Sec. 4(h)(11)(B) is confined to the named parties. In addition, the procedures provide for courtesy copies of all notices to anyone who requests them. The DSIs and BPA customers may do this. The principal purpose of Sec. 4(h)(11)(B) of the Act was to ensure greater access to BPA decisionmaking by fish and wildlife agencies and Indian tribes. The consultation procedures as written will not detract from access to BPA decisionmaking by the DSI's and other BPA customers, and will, in fact, enhance such access.

Decision. The final procedures define consultation parties to include only fish and wildlife agencies, Indian tribes, and hydroelectric project operators. Sec. 4(h)(11)(A) of the Act requires BPA to consult only with these groups. The procedures provide for courtesy copies of all notices to anyone who requests them, which will afford notice to any nonoperator customer of a policy or action on which BPA is consulting. This will permit customers to convey their views to BPA officials, should they choose to do so. BPA will consider all comments received.z

Issue No. 5

Should the procedures provide for the inclusion of Puget Power in consultations regarding the mid-Columbia River in general and, specifically, regarding Wells, Rocky Reach, Rock Island, and Wanapum/Priest Rapids dams?



Proposed Procedures. The proposed procedures define consultation parties to include only the parties specifically enumerated in Sec. 4(h)(11)(B) of the Act. These parties do not include BPA customers which do not operate hydroelectric projects on the Columbia River or its tributaries.

Comments. The Puget Sound Power & Light Company (Puget Power) states that, although it is not an operator of any of the mid-Columbia PUD projects, it purchases nearly 40 percent of their generation, and therefore has a great financial interest in what occurs at them. Puget Power.

Evaluation. As stated above, BPA's Sec. 4(h)(11)(B) consultation duty is confined to fish and wildlife agencies, Indian tribes, and hydroelectric project operators. The procedures provide for consultation notices to the operators of the Mid-Columbia hydroelectric projects; Puget Power may wish to request the Mid-Columbia operators to alert Puget Power regarding actions and policies potentially affecting its interests. In addition, pursuant to the procedures, Puget Power may request courtesy copies of all notices, and can itself determine whether a proposed policy or action will affect one of the hydroelectric projects from which it purchases power.

Decision. The final procedures define consultation parties to include only fish and wildlife agencies, Indian tribes, and hydroelectric project operators. Sec. 4(h)(11)(A) of the Act requires BPA to consult only with these groups. The procedures provide for courtesy copies of all notices to anyone who requests them, which will afford notice to Puget Power of a policy



or action on which BPA is consulting. This will permit Puget Power to convey their views to BPA officials, should they choose to do so.

Issue No. 6

Should the procedures provide a mechanism for consultation party review of BPA's determination of whether or not it will consult on a policy or action?

Proposed Procedures. The proposed procedures not not provide for consultation party review of BPA's determination of whether or not it will consult on an action or policy.

Comment. CBFWC states that the procedures should provide a mechanism for the consultation parties to "validate . . . in a timely manner" BPA's determinations, and that BPA should issue some abbreviated notice prior to such determinations. CBFWC; CBFWC, Portland transcript, p. 34. CRITFC states that, to avoid possibly arbitrary determinations, BPA should request comments on whether consultation parties desire to be consulted on various subjects, identifying to the maximum extent practicable upcoming specific policy proposals and actions that may be appropriate for consultation. CRITFC. The Colockum Transmission Company (CTC) states that the procedures should provide for notice to consultation parties of actions and policies BPA is considering for eligibility for consultation. CTC, Spokane transcript, pp. 31-32.

Evaluation. The commenters are concerned that their opportunities to become involved in BPA actions and policies under Sec. 4(h)(11)(A) could be



undermined by narrow and arbitrary decisions regarding what policies and actions fall within the consultation procedures. However, consulting on whether or not to consult on a policy or action is unneeded and would be unnecessarily burdensome. The final procedures clarify the policies and actions to which the procedures are applicable. In addition, the potential consequences of failing to consult when the procedures are applicable provides assurance to consultation parties that BPA will consult when consultation is appropriate.

Decision. The final procedures do not provide for consultation party review of BPA determinations of what policies and actions are suitable for consultation. Such consultation would be unnecessarily burdensome. The final procedures clarify the policies and actions to which the procedures are applicable.

#### Issue No. 7

If BPA does not include a mechanism for consultation on whether or not to consult on a policy or action, should the procedures provide for notice to all consultation parties of decisions made, actions taken, or policies adopted without consultation?

Proposed Procedures. The procedures as proposed do not provide for notice to all consultation parties of decisions made, actions taken, or policies adopted without consultation.



Comments. IPC states that BPA should provide notice to all consultation parties of decisions made, actions taken, or policies adopted without consultation. IPC.

Evaluation. Notice of the type recommended by IPC would permit consultation parties to monitor BPA application of the consultation procedures. However, BPA takes actions and formulates policy in many areas to which the consultation procedures do not apply. The consultation procedures provide for conducting consultations in all cases where the procedures are applicable. Consequently, such a notice would impose a very substantial administrative burden, yet yield insubstantial benefits.

Decision. The proposed procedures do not provide for notice to all consultation parties of decisions made, actions taken, or policies adopted without consultation. The consultation procedures provide for conducting consultations in all cases where the procedures are applicable. Such a notice would impose a very substantial administrative burden, yet yield insubstantial benefits.

#### Issue No. 8

Should the procedures include a provision for initiating consultation early in the planning and proposal development process?



Proposed Procedures. The proposed procedures state:

BPA will mail such [consultation] notices sufficiently in advance of its decision or action to permit consultation parties to respond and to permit BPA to consider their comments and recommendations.

Comment. CBFWC states that consultations should be initiated early rather than when BPA staff has already completed a proposal. CBFWC. CRITFC states that, to achieve meaningful consultations and avoid consultations on foregone conclusions, consultation notices must be issued substantially prior to any final commitment. CRITFC.

Evaluation. The proposed procedures specify that consultation notices will be mailed early enough to permit consultation parties to comment to BPA and to permit BPA to consider their comments and recommendations. However, this does not mean that notices would be mailed as early as practicable, and CBFWC validly observes that consultation should be initiated early in BPA's consideration of an action or policy. At the same time, BPA's experience with consultation has demonstrated that it is not useful to initiate consultation before BPA has sufficiently formulated an action or policy and identified its potential for fish and wildlife impacts to enable evaluation by consultation parties.

Decision. Sec. 4(a) of the final procedures has been altered to provide for the initiation of consultation as early as practicable. See Sec. 4(a) and the explanation of Sec. 4(a) in the the Federal Register notice of the final procedures.



Issue No. 9

Should the procedures provide for notice to consultation parties of the outcome of consultations?

Proposed Procedures. The procedures as proposed do not provide for notice to consultation parties of the outcome of consultations.

Comments. CRITFC states that BPA should add a new subsection following the subsection entitled "Opportunity to Express Views," which would be entitled "Notice of Outcome," and would state that BPA will inform consultation parties of its final decision and the basis for that decision. CRITFC. The Idaho Power Company (IPC) states that BPA should send to all consultation parties a notice of decision regarding all actions on which BPA has consulted. IPC states that the notice should include, as a minimum, a list of comments received (by party) and BPA's evaluation of them. IPC. The Bureau of Indian Affairs (BIA) states that, if BPA's action varies greatly from an Indian tribe's recommendations, BPA should provide the Tribe a written explanation of the reasons. BIA, Spokane transcript, p. 36.

Evaluation. A notice of the outcome of BPA deliberations on a proposed policy or action would inform consultation parties of how their concerns were addressed, and the requirement of issuing such a notice would ensure such concerns are considered. However, it is sufficient for such a notice to contain a brief description of the policy or action, a brief description of



the basis for it, including fish and wildlife considerations, and the availability of additional information. If a consultation party wishes to review other materials, such as comments by others, it can review BPA's record of the consultation process.

Decision. The final procedures contain a new section providing for notice to consultation parties of policies adopted or actions taken after consultation pursuant to the procedures. See Sec. 4(g) and the explanation of Sec. 4(g) in the Federal Register Notice of the final procedures.

#### Issue No. 10

Should the procedures be modified to provide for closer coordination with the Federal Energy Regulatory Commission (FERC)?

Proposed Procedures. Sec. 1 of the procedures as proposed states:

These procedures do not apply to: . . . (2) BPA's coordination with other Federal agencies under Sec. 4(h)(11)(B) of the Act, except for coordination of consultation procedures . . .

Sec. 5(e) of the procedures as proposed states:

To the extent practicable, BPA will coordinate these procedures with the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the Federal Energy Regulatory Commission when addressing a subject or issue on which BPA shares responsibility with one or more of these agencies.



Comments. Puget Power states that the procedures do not recognize FERC's authority and responsibility for non-Federal projects. Puget Power.

Evaluation. As recognized by Sec. 4(h)(11)(B) of the Act, there is a need for coordination between BPA and FERC on matters which involve the responsibilities of both agencies. However, as the proposed procedures state, BPA will handle coordination outside of the consultation procedures, except regarding consultation, itself. The procedures state that BPA will coordinate consultations with FERC to the extent practicable when BPA and FERC share responsibility regarding an issue or subject. As has been BPA's practice, copies of consultation notices should go to FERC to enable FERC to call to BPA's attention matters of FERC interest which BPA has not recognized. However, it is not clear what additional provisions are appropriate, and the comments suggest none.

Decision. The final procedures have been modified to provide for sending to FERC copies of all notices issued pursuant to the procedures. See Sec. 5(e) and the explanation of Sec. 5(e) in the Federal Register notice of the final procedures. This will enable FERC to call to BPA's attention matters of FERC interest BPA has not recognized. The procedures as proposed provide for coordination with FERC on consultations.

#### Issue No. 11

Should the procedures be modified to take into account that use of the tribal Water Budget manager to represent the Tribes under the expedited consultation



procedures would impose an added burden because it would expand the tribal Water Budget manager's role and increase the need for coordination?

Proposed Procedures. Sec. 5(d) of the procedures as proposed permits a consultation party to authorize BPA to notify and consult with a representative of the consultation party when following the expedited consultation procedures provided for in Sec. 4(f) of the proposed procedures. The explanatory material in the Federal Register notice of the proposed procedures stated:

This is intended to permit use of the Water Budget managers called for by section 304(b) of the Columbia River Basin Fish and Wildlife Program as channels of communication between BPA and the fish and wildlife agencies and Indian tribes identified in section 2 of the procedures.

Comment. CRITFC expresses the concern that use of the tribal Water Budget manager to represent the Tribes under the expedited consultation procedures would impose an added burden because it would expand the tribal Water Budget manager's role and increase the need for coordination, and states that the added burden would be particularly great if the tribal Water Budget manager represented the upper Columbia as well as the lower Columbia Tribes. CRITFC, Portland transcript, pp. 31-33.

Evaluation. The comments may point to a valid concern. However, while BPA suggests the use of the Water Budget managers to represent the fish and wildlife agencies and Indian tribes in the expedited consultation procedures, the decision to do so rests with the fish and wildlife agencies and Indian



tribes. There is no apparent way that the consultation procedures, themselves, could address the potential problem of overburdening the Water Budget managers, and CRITFC does not suggest a way.

Decision. The final procedures do not address the potential problem of overburdening the Water Budget managers. This issue is outside the scope of the procedures.

Issue No. 12

Should the procedures address BPA funding of Columbia Basin Indian tribes to enable them to meet to express their views on matters which are the subject of consultations?

Proposed Procedures. The procedures as proposed do not address BPA funding of Columbia Basin Indian tribes to enable them to meet to express their views on matters which are the subject of consultations. The procedures state:

These procedures do not apply to: . . . (3) the use of the BPA Fund and BPA authorities to protect, mitigate, and enhance fish and wildlife affected by hydroelectric facilities on the Columbia River and its tributaries pursuant to Sec. 4(h)(10)(A) of the Act . . .

Comment. CRITFC comments indicate that it is desirable that BPA fund Columbia Basin Indian tribes to enable them to meet to express their views on matters which are the subject of consultations. CRITFC.



Evaluation. BPA funding is outside the scope of the procedures.

Decision. The final procedures do not address BPA funding of Columbia Basin Indian tribes to enable them to meet to express their views on matters which are the subject of consultations. Such funding is outside the scope of the procedures.

Issue No. 13

Should the the procedures address in greater detail the coordination of consultations with the Bureau of Reclamation and Corps of Engineers?

Proposed Procedures. Sec. 5(e) of the procedures as proposed states:

To the extent practicable, BPA will coordinate these procedures with the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the Federal Energy Regulatory Commission when addressing a subject or issue on which BPA shares responsibility with one or more of these agencies.

Comment. The bureau of Reclamation commented that the procedures should clarify how BPA would coordinate with the Bureau on consultations pertaining to a Bureau project. Bureau. The Corps of Engineers commented that it may be more efficient to have a joint consultation rather than to coordinate consultations in cases where BPA, the Corps, and Bureau of Reclamation must all take action on a common matter, and that such a joint consultation would be preferable to duplicative, separate consultations even if they were coordinated. Corps.



Evaluation. BPA agrees that joint consultations may be advisable where BPA's responsibilities overlap with the responsibilities of the Corps, the Bureau, or FERC, and has modified the final consultation procedures to specifically contemplate joint consultations with these agencies. See Sec. 5(e) and the explanation of Sec. 5(e) in the Federal Register notice of final procedures. However, BPA does not believe that the procedures should specify how BPA will coordinate consultations with these other agencies when such coordination is necessary. The consultation procedures provide for tailoring how consultations are conducted to the magnitude and complexity of an issue; how consultations should be coordinated will differ from one issue to the next. In some cases, joint consultations may be appropriate, as suggested by the Corps of Engineers. In others, it may be appropriate for BPA consultations to focus on some questions and Bureau or Corps consultations to focus on others. BPA believes that the specific way in which consultations are coordinated is best decided on a case by case basis.

Decision. The final procedures specifically contemplate joint consultations with the Corps of Engineers, Bureau of Reclamation, or FERC when appropriate. Because the way in which consultations are coordinated is best determined on a case by case basis, the final procedures do not specify in greater detail procedures for the coordination of consultations.

Issue No. 14

Should the procedures more clearly distinguish between the phrases "consultation procedures" and "public participation procedures"?



Proposed Procedures. The proposed procedures state:

For fish and wildlife policies which qualify as major regional power policies under BPA's Procedure for Public Participation in Major Regional Power Policy Formulation (46 FR 26368, May 12, 1981), BPA will follow both these consultation procedures, if applicable, and the Procedure for Major Regional Power Policy Formulation. BPA will combine and coordinate the two procedures to the extent practicable.

Comment. The Corps observes that the procedures do not adequately distinguish between the phrases "consultation procedures" and "public participation procedures." Corps.

Evaluation. The explanation of Sec. 5(b) in the Federal Register notice of proposed procedures was unclear regarding BPA's Procedures for Public Participation in Major Regional Power Policy Formulation. The confusion would be avoided by elaborating the explanation.

Decision. The explanation of Sec. 5(b) in the Federal Register notice of final procedures has been expanded to clarify what is meant by Procedures for Public Participation in Major Regional Power Policy Formulation.

Issue No. 15

Should the procedures specify how they will be coordinated with NEPA compliance procedures.



Proposed Procedures. The explanation of Section 5(c) of the procedures in the draft Federal Register notice of final procedures reviewed by the Corps of Engineers stated:

The Council on Environmental Quality's regulations for implementing NEPA urge Federal agencies to "integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all procedures run concurrently rather than consecutively." (40 CFR 1500.2(c).) BPA expects to conduct combined NEPA and consultation meetings, when appropriate, and to integrate BPA's NEPA procedures with the consultation procedures in other ways.

Comment. The comments of the Corps of Engineers state that "Rather than stating that BPA plans to integrate NEPA procedures and the consultation procedures 'in other ways', it would appear to reduce duplication of effort if these 'other ways' were specified." Corps.

Evaluation. Section 5(c) of the procedures as published in the Federal Register notice of proposed procedures stated:

To the extent practicable, BPA will coordinate these procedures with NEPA procedures by combining notices and meetings and by using NEPA documents as sources of information on proposed policies or actions.

Thus, the procedures do specify "other ways" in which the consultation procedures will be coordinated with NEPA procedures.



Decision. The procedures specify how the consultation procedures will be coordinated with NEPA procedures. There is no need to alter Sec. 5(c) from the language contained in the notice of proposed procedures.

Issue No. 16

Does BPA intend to consult with non-Federal hydroelectric project operators regarding compensation of costs and power losses pursuant to Sec. 4(h)(11) of the Northwest Power Act?

Proposed Procedures. Sec. 1 of the procedures as proposed state:

These procedures do not apply to: (1) consultation under Sec. 4(h)(11)(B) of the Act on compensation of costs and power losses at non-Federal electric power projects pursuant to Sec. 4(h)(11)(A)(ii) of the Act. . . .

Comment. The Corps of Engineers notes this provision and states that "Since compensation is addressed in Section 4(h)(11), it is unclear whether BPA intends to consult with the non-Federal project operators in some way." Corps.

Evaluation. The Federal Register notice of proposed procedures and the draft of the Federal Register notice of final procedures reviewed by the Corps contained the following explanation of Sec. 1:



BPA is developing policies and procedures for compensating costs and power losses at non-Federal electric power projects pursuant to Sec. 4(h)(11)(A)(ii) of the Act (16 U.S.C. 839b(h)(11)(A)(ii)). See 48 FR 20117, May 4, 1983. The policies and procedures BPA is developing will address consultation on such compensation.

The Corps' comments correctly allude to the fact that the consultation responsibility in Sec. 4(h)(11)(B) of the Pacific Northwest Power Act would apply to compensations under Sec. 4(h)(11)(A) of the Act. As the quoted explanation of Sec. 1 of the consultation procedures suggests, BPA intends to consult on compensations.

Decision. BPA does intend to consult with non-Federal hydroelectric project operators on compensations under Sec. 4(h)(11)(A) of the Pacific Northwest Power Act. The policies and procedures BPA is developing on compensation will address consultations on compensation.

#### Issue No. 17

Do BPA's responsibilities under Sec. 4(h)(11)(A) of the Northwest Power Act apply to marketability determinations and other, similar BPA actions?

Proposed Procedures. Sec. 3 of the procedures as contained in the notice of proposed procedures stated that BPA would consult on policies and actions applying the directives of Sec. 4(h)(11)(A) of the Act to adequately protect, mitigate, and enhance fish and wildlife and to provide fish and wildlife equitable treatment in the management and operation of Federal Columbia River



Power System hydroelectric facilities. As with the final procedures, Sec. 3 of the draft revised version provided to the Corps of Engineers for review and comment described in greater detail the actions and policies on which BPA would consult.

Comment. Referring to Sec. 3, the Corps of Engineers stated:

It is unclear how BPA will determine when the provisions of Section 4(h)(11)(A) will preclude the need to consult on possible fish and wildlife impacts. Does this imply that BPA will accept the Corps "equitable treatment" determinations on its proposed projects and actions and will not further address such matters in marketability determinations or other power related determinations.

Corps.

Evaluation. The consultation procedures are not intended to imply that BPA will defer to the Corps on fish and wildlife issues regarding potential new generating projects under development by the Corps. The comment refers to BPA's responsibility to evaluate the marketability of power from potential generating projects under development by the Corps. Sec. 3(e) of the draft revised consultation procedures reviewed by the Corps stated that BPA would consult on "actions and policies in other areas of BPA responsibility which may alter the management and operation of FCRPS hydroelectric facilities in a manner that affects fish or wildlife . . ." BPA's responsibility to consult under the Pacific Northwest Power Act applies to the exercise by BPA of its responsibilities in the management and operation of FCRPS hydroelectric facilities. BPA believes that the exercise of its responsibilities in the



management and operation of FCRPS hydroelectric facilities encompasses the exercise of other BPA responsibilities when the exercise such other responsibilities could affect how FCRPS hydroelectric facilities are managed and operated. Sec. 3(e) of the procedures provides that BPA will consult in such instances when an effect on fish and wildlife could result.

The explanation of Sec. 3(e) in the draft reviewed by the Corps referred to BPA's responsibilities in the areas of new generating resource development, conservation, and electric power transmission, but did not refer specifically to marketability determinations. The same is true of the explanation of the final procedures. Nonetheless, marketability determinations would fall within the types of BPA actions Sec. 3(e) is intended to include because of the potential for new Federal generating projects to alter the way in which the FCRPS hydroelectric facilities are managed and operated in ways that affect fish and wildlife.

Decision. The procedures do not infer that BPA will defer to the Corps of Engineers regarding fish and wildlife issues pertaining to potential generating projects on which BPA examines power marketability. A marketability determination would fall within Sec. 3(e) of the procedures if the generating project examined could affect the management and operation of FCRPS hydroelectric facilities in a manner that affects fish and wildlife.

JKelly:jk (WP-PJ-4254N)



Exhibit 1

PROPOSED FISH AND WILDLIFE CONSULTATION PROCEDURES

(As published in Federal Register, 48 FR 50392, Nov. 1, 1983)

1. Purpose and Scope. BPA seeks by these procedures to foster an expanded role for fish and wildlife agencies, Indian tribes, and hydroelectric project operators in Federal Columbia River Power System hydroelectric facility management and operation. The purpose of these procedures is to define how BPA will discharge its consultation duties under Sec. 4(h)(11)(B) of the Act. Sec. 4(h)(11)(A) directs BPA to exercise its role in the management and operation of hydroelectric facilities on the Columbia River and its tributaries consistently with the purposes of the Act and other applicable laws to adequately protect, mitigate, and enhance affected fish and wildlife in a manner that provides fish and wildlife equitable treatment with other hydroelectric system purposes. In so doing, BPA must take into account to the fullest extent practicable the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council. Sec. 4(h)(11)(B) of the Act directs BPA to exercise these responsibilities in consultation with the Pacific Northwest's Federal and State fish and wildlife agencies, appropriate Indian tribes, and affected project operators.

These procedures do not apply to: (1) consultation under Sec. 4(h)(11)(B) of the Act on compensation of costs and power losses at non-Federal electric power projects pursuant to Sec. 4(h)(11)(A)(ii) of the Act; (2) BPA's coordination with other Federal agencies under Sec. 4(h)(11)(B) of the Act, except for coordination of consultation procedures; (3) the use of the BPA Fund and BPA authorities to protect, mitigate, and enhance fish and wildlife affected by hydroelectric facilities on the Columbia River and its tributaries pursuant to Sec. 4(h)(10)(A) of the Act; or (4) BPA's fish and wildlife responsibilities in electric power resource acquisition and development under Sec. 6 of the Act. Other procedures apply to these responsibilities.

2. Definitions.

- a. Director. The Director of BPA's Division of Fish and Wildlife.
- b. Consultation Parties. The fish and wildlife agencies, Indian tribes, and project operators defined and identified in this section.
- c. Fish and Wildlife Agencies. The Pacific Northwest's Federal and State fish and wildlife agencies. Agencies within this category are the:

- National Marine Fisheries Service
- U.S. Fish and Wildlife Service
- Idaho Department of Fish and Game
- Montana Department of Fish, Wildlife, and Parks
- Oregon Department of Fish and Wildlife
- Washington Department of Fisheries
- Washington Department of Game



d. Indian Tribes. Any Indian tribe or band located in the Columbia River Basin which has a governing body which is recognized by the Secretary of the Interior. Indian tribes and bands within this category are the:

- Burns Paiute Indian Colony
- Confederated Tribes of the Colville Reservation
- Coeur d'Alene Tribe of the Coeur d'Alene Reservation
- Shoshone-Paiute Tribes of the Duck Valley Reservation
- Kalispel Indian Community of the Kalispel Reservation
- Kootenai Tribe of Idaho
- Nez Perce Tribe of Idaho
- Confederated Salish and Kootenai Tribes of the Flathead Reservation
- Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
- Spokane Tribe of the Spokane Reservation
- Confederated Tribes of the Umatilla Reservation
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation

e. Project Operators. Utilities and other non-Federal entities which operate hydroelectric facilities on the Columbia River or its tributaries within the United States which are (1) subject to the Pacific Northwest Coordination Agreement; and/or (2) downstream of at least one Federal or non-Federal hydroelectric facility which is subject to the Pacific Northwest Coordination Agreement. Project operators in this category are the:

- Chelan County PUD No. 1
- Cowlitz County PUD No. 1
- Douglas County PUD No. 1
- Eugene Water and Electric Board
- Grant County PUD No. 2
- City of Idaho Falls
- Idaho Power Company
- Montana Power Company
- Pacific Power & Light Company
- Pend Oreille County PUD No. 1
- Portland General Electric Company
- Seattle City Light
- City of Spokane
- Tacoma City Light
- Washington Water Power Company

f. Program. The Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council pursuant to Sec. 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 16 U.S.C. 839 et seq.

3. Use of Procedures. BPA will consult, as provided in this section, on policies and actions applying the directives of Sec. 4(h)(11)(A) of the Act to adequately protect, mitigate, and enhance fish and wildlife and to provide fish and wildlife equitable treatment in the management and operation of Federal Columbia River Power System hydroelectric facilities. BPA will not consult when the provisions of Sec. 4(h)(11)(A) of the Act have already been implemented through other policies and actions, such as the provision of



adequate flows for spring salmon and steelhead migration, which the Water Budget addresses.

4. Consultation Procedures.

a. Notice. Except as stated in subsection 4(f), for all policies or actions on which BPA consults, BPA will send notice of the contemplated policy or action by mail to all consultation parties. BPA will mail notices to the chairperson, director, or chief executive officer of each consultation party, or, upon written request, such person's designee. Notices will describe the contemplated policy or action, identify its potential impacts on Federal Columbia River Power System hydroelectric facility management and operation and fish and wildlife, solicit comments and recommendations, and specify a date by which BPA must receive comments and recommendations. BPA will mail such notices sufficiently in advance of its decision or action to permit consultation parties to respond and to permit BPA to consider their comments and recommendations.

b. Copies of Notices. Upon request, BPA will regularly mail courtesy copies of the notices provided for in subsection 4(a) to any person, including employees or members of consultation parties and any other person.

c. Opportunity to Express Views. Consultation parties may express their views and make recommendations to BPA through written comments, meetings with appropriate BPA representatives, or both. Consultation parties may meet with BPA either individually or in groups.

d. Annual Meeting. In addition to other consultation procedures, BPA will conduct an annual meeting with all consultation parties to discuss BPA policies and actions pursuant to Sec. 4(h)(11)(A) of the Act. BPA will invite from consultation parties recommendations for the agenda of these meetings. BPA will send notices of such meetings to all consultation parties and will send courtesy copies of such notices to any person who has requested copies of notices pursuant to subsection 4(b).

e. Other Means. If necessary or appropriate to achieve the purpose of these procedures, BPA will use additional means for consultation. Such means may include, but are not limited to, meetings convened by BPA, the dissemination of information and analyses, educational activities, and group problem solving techniques.

f. Expedited Procedures.

(1) BPA will follow expedited consultation procedures when BPA determines that an emergency or unanticipated immediate power marketing opportunity requires prompt action by BPA so that the time available is insufficient to permit BPA to follow the procedures in subsections (a) through (c) of this section. An emergency is a condition threatening safety or the reliability of the Pacific Northwest electric power system. An immediate power marketing opportunity is a use of the Federal Columbia River Power System which improves the efficiency or economy of the Pacific Northwest electric power system and on which BPA must promptly take action or forego.



(2) Expedited consultation procedures will consist of notice by telephone to interested consultation parties and opportunity for those notified to express their views. For the purpose of this paragraph, an interested consultation party is a consultation party which, as determined by BPA, actively participates in Federal Columbia River Power System management and operation fish and wildlife issues or whose fish and wildlife interests the contemplated action would particularly affect.

5. General Provisions.

a. Records. The Director will compile and maintain records on actions and policies to which these procedures are applied. Records will contain: (1) notices issued under these procedures; (2) written submittals to BPA and BPA's replies, if any; (3) meeting notes; (4) if prepared, meeting transcripts, summaries or evaluations of comments, and records of decision; and (5) other information the Director determines is appropriate. Such records will be available for inspection and copying.

b. Relationship to Procedure for Public Participation in Major Regional Power Policy Formulation. For fish and wildlife policies which qualify as major regional power policies under BPA's Procedure for Public Participation in Major Regional Power Policy Formulation (46 FR 26368, May 12, 1981), BPA will follow both these consultation procedures, if applicable, and the Procedure for Major Regional Power Policy Formulation. BPA will combine and coordinate the two procedures to the extent practicable.

c. Coordination with National Environmental Policy Act (NEPA) Procedures. To the extent practicable, BPA will coordinate these procedures with NEPA procedures by combining notices and meetings and by using NEPA documents as sources of information on proposed actions or policies.

d. Use of Representatives. Use of individuals or associations to represent consultation parties under these procedures is at the discretion of the party represented. BPA will cooperate with such representatives, and, if a representative is so authorized, BPA will consider the views expressed by the representative as the views of the party represented. Unless authorized to do so for the purpose of the expedited consultation procedures in subsection 4(f), BPA will not substitute notice to a representative for notice to a consultation party under these procedures.

e. Coordination With the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Federal Energy Regulatory Commission. To the extent practicable, BPA will coordinate these procedures with the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the Federal Energy Regulatory Commission when addressing a subject or issue on which BPA shares responsibility with one or more of these agencies.

(WP-PJ-4256N)



Exhibit 2  
U.S. DEPARTMENT OF ENERGY

Bonneville Power Administration

Fish and Wildlife Consultation Procedures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Final Procedures. BPA File No: FW-1.

SUMMARY: BPA has adopted final procedures for consultation in the exercise of BPA's fish and wildlife responsibilities in the management and operation of Federal Columbia River Power System hydroelectric facilities. The Pacific Northwest Electric Power Planning and Conservation Act directs BPA to consult with Columbia River Basin fish and wildlife agencies, Indian tribes, and hydroelectric project operators in discharging these responsibilities. BPA published a notice of proposed procedures in the FEDERAL REGISTER on November 1, 1983 (48 FR 50392). This notice contains final procedures and an explanation of the procedures.

Responsible Official: John R. Palensky, Director, Division of Fish and Wildlife, Office of Power and Resources Management, is the responsible official for the fish and wildlife consultation procedures.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Reginald Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208-334-9138



## SUPPLEMENTARY INFORMATION:

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#### III. Final Procedures

#### I. Background

BPA published a Notice of Intent to Adopt Procedures and Notice of Proposed Procedures in the FEDERAL REGISTER on November 1, 1983 (48 FR 50392), and conducted public information/public comment forums on the procedures on November 18, 1983, in Spokane, Washington, and on November 19, 1983, in Portland, Oregon. BPA received comment letters from six utilities and organizations, and oral comments from five agencies, utilities, and organizations at the public information/public comment forums. These comments were considered by BPA and the procedures were revised. The Staff Evaluation of the Record/Record of Decision lists the issues raised by the comment letters and forums, summarizes and evaluates the comments, and describes the disposition of each issue. Copies of the Staff Evaluation of the Record/Record of Decision may be obtained by contacting BPA's Public Involvement Office at the address or phone numbers listed above.

#### II. Explanation of Procedures

##### A. Introduction

In addition to introducing many changes in electric power planning and development, the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96-501, 94 Stat. 2697 (16 U.S.C. 839, et seq.)) (the Pacific Northwest Power Act or Act), created new fish and wildlife responsibilities within the region. It authorized the Northwest Power Planning Council to adopt the Columbia River Basin Fish and Wildlife Program to "protect, mitigate, and enhance" fish and wildlife affected by the development and operation of hydroelectric projects on the Columbia River and its tributaries. The Council adopted the program on November 15, 1982. The Act also further defined the fish and wildlife responsibilities of the Federal agencies which manage and operate Federal Columbia River Power System (FCRPS) hydroelectric facilities. These agencies include the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and BPA. The Act directed these agencies to "protect, mitigate, and enhance" affected fish and wildlife in a manner that provides "equitable treatment" with other system purposes, and to do so "taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable" the Fish and Wildlife Program. For example, BPA and the other Federal agencies are implementing this responsibility by providing for enhanced river flows to aid spring salmon and steelhead migration and other measures called for in the Fish and Wildlife Program.

In exercising these fish and wildlife responsibilities, the Act directs the affected Federal agencies to consult with "the Secretary of the Interior, the



Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes, and affected project operators." (16 U.S.C. 839b(h)(11)(B).) Since enactment of the Act, BPA has met this consultation duty by convening meetings to which all consultation parties have been invited. BPA has described proposed policies and actions at these meetings and solicited comments. This procedure has been unsatisfactory. Consultation parties have had to travel from elsewhere in the region to learn whether a proposed action warrants their concern. At times, lengthy meetings have yielded few comments or recommendations. The consultation procedures published in this notice replace this approach. The procedures are intended to expedite notice to consultation parties of issues for consultation and to permit tailoring how consultations are conducted to the significance and complexity of a proposed policy or action. BPA also intends by these procedures to permit consultation parties to select the means by which they communicate their views to BPA and to affirmatively involve consultation parties in BPA decisionmaking.

In addition to defining the fish and wildlife responsibilities of BPA and the other Federal agencies that manage and operate FCRPS hydroelectric facilities, the Act assigns two related fish and wildlife responsibilities to BPA. It directs BPA to fund and carry out measures to "protect, mitigate, and enhance" fish and wildlife affected by hydroelectric projects on the Columbia River and its tributaries (16 U.S.C. 839b(h)(10)). It also requires that BPA provide for fish and wildlife protection, mitigation, and enhancement in the acquisition of electric power generation to meet regional electric power demand (16 U.S.C. 839d). However, under the terms of the Act, the consultation duties applicable to the management and operation of FCRPS hydroelectric facilities, for which the procedures published here provide, do not apply to these additional fish and wildlife responsibilities.

Some issues for which BPA will use the consultation procedures will also be major regional power policies. In these cases, BPA's "Procedure for Public Participation in Major Regional Power Policy Formulation" (46 FR 2636, May 12, 1981) will apply in addition to the consultation procedures. As provided in sub-Sec. 5(b) of the consultation procedures, BPA will coordinate the two procedures.

## B. Section by Section Explanation

Sec. 1, Purpose and Scope. This section identifies the BPA fish and wildlife responsibilities to which the consultation procedures apply. For clarity, the section also lists four areas of BPA responsibility to which the procedures do not apply:

1. BPA is developing policies and procedures for compensating costs and power losses at non-Federal electric power projects pursuant to Sec. 4(h)(11)(A)(ii) of the Act (16 U.S.C. 839b(h)(11)(A)(ii)). See 48 FR 20117, May 4, 1983. The policies and procedures BPA is developing will address consultation on such compensation.

2. In addition to requiring consultation, Sec. 4(h)(11)(B) of the Act (16 U.S.C. 839b(h)(11)(B)) directs BPA, the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and the Federal Energy Regulatory Commission to coordinate with one another in discharging their fish and wildlife responsibilities under Sec. 4(h)(11)(A) of the Act (16 U.S.C. 839b(h)(11)(A)). BPA is accomplishing this coordination through existing mechanisms; these procedures do not address



coordination except for coordination of consultations (see sub-Sec. 5(e) and the explanation of sub-Sec. 5(e), below).

3. The consultation procedures do not apply to BPA's responsibility to fund fish and wildlife measures under Sec. 4(h)(10) of the Act (16 U.S.C. 839b(h)(10)). BPA's public participation procedures apply to policy issues in the exercise of these responsibilities, and BPA's acquisition and financial assistance regulations apply to the award of funds.

4. Separate procedures will apply to fish and wildlife considerations in BPA purchases of electric power to meet regional demand and in related actions. Because of the current regional electric power surplus, BPA has no immediate plans to establish procedures for such purchases. However, BPA has established procedures for "billing credits," through which BPA supports electric power conservation and generation undertaken by others. See 48 FR 43484, September 23, 1983. These procedures provide for notice to fish and wildlife agencies and Indian tribes and opportunity to comment.

## Sec. 2, Definitions

Sec. 2(c), Fish and Wildlife Agencies. This definition identifies the fish and wildlife agencies with which Sec. 4(h)(11)(B) of the Act (16 U.S.C. 839b(h)(11)(B)) directs BPA to consult. Sec. 4(h)(11)(B) of the Act directs BPA to consult with "the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies of the region. . . ." BPA has secured confirmation that the Secretary of the Interior and the Administrator of the National Marine Fisheries Service have delegated authority to represent them to the Pacific Northwest regional directors of the U.S. Fish and Wildlife Service and National Marine Fisheries Service, respectively.

Sec. 2(d), Indian Tribes. BPA believes that "appropriate Indian tribes," as used in Sec. 4(h)(11)(B) of the Act (16 U.S.C. 839b(h)(11)(B)), means federally recognized tribes located in the Columbia River Basin. Tribes recognized by the Federal government are listed at 48 FR 56862, December 23, 1983.

Sec. 2(e), Long-Term Power Agreements. Long-term power agreements are defined as written agreements which have a term of one year or longer and which fall into one of three categories.

In the first category are agreements for the sale or exchange by BPA of electric power or power-related services available through the management and operation of FCRPS hydroelectric facilities. Electric power is used here to mean both energy and capacity. Electric power sales include sales of firm power, surplus firm power, nonfirm power, and all other types of power BPA markets, both intraregional and interregional. BPA also markets power-related services available through the management and operation of FCRPS hydroelectric facilities. One example is energy storage, which BPA provides by holding water in reservoirs for later generation. Another example is operating reserves which is generating capacity BPA makes available to replace a customer's loss of generating capacity which would otherwise result in the customer's inability to meet its load.

In the second category are agreements for the purchase by BPA of electric power or power-related services. From time to time BPA purchases power or power-related services from BPA's customer utilities or others.



In the third category are agreements specifying how FCRPS hydroelectric facilities will be managed and operated. Examples are an agreement between BPA and the Corps of Engineers and Bureau of Reclamation which provides for provisional storage draft for the delivery of advance energy and agreements implementing the terms of the Columbia River Treaty between the United States and Canada.

The explanation of Sec. 3(d), below, further discusses long-term power agreements.

Sec. 2(f), Power Marketing Policies. Power marketing policies are defined as policies pertaining to power and power-related services available through the management and operation of the FCRPS (see the discussion of Sec. 2(e), above).

Sec. 2(g), Project Operators. As applied to BPA, BPA interprets the phrase "affected project operators," as used in Sec. 4(h)(11)(B) of the Act (16 U.S.C. 839(h)(11)(B)), to mean non-Federal operators of hydroelectric facilities on the Columbia River or its tributaries which could be affected by the exercise of BPA's responsibilities in the management and operation of FCRPS hydroelectric facilities. The procedures define "affected project operators" as the operators of hydroelectric projects on the Columbia River and its tributaries which are subject to the terms of the Pacific Northwest Coordination Agreement or located downstream from a Coordination Agreement project. Parties to the Pacific Northwest Coordination Agreement agree to operate their projects as if part of a single utility system. All Federal hydroelectric projects on the Columbia River and its tributaries are subject to the agreement. Consequently, BPA actions can affect all hydroelectric projects on the Columbia River and its tributaries which are subject to the Coordination Agreement. In turn, BPA actions can affect non-Federal project operators whose projects are located downstream from projects which are subject to the Coordination Agreement. BPA actions are not expected to similarly affect upstream projects not covered by the Coordination Agreement.

### Sec. 3, Use of Procedures

The purpose of this section, together with Sec. 1, is to delineate the policies and actions on which BPA will consult. The exercise of BPA's responsibilities in the management and operation of FCRPS hydroelectric facilities ranges from the establishment of broad power marketing policies to hour-by-hour power production scheduling. BPA markets both power and services. BPA is a party to the Pacific Northwest Coordination Agreement, and participates in the coordinated operation of Pacific Northwest electric power generating facilities, including annual planning. Together with the Division Engineer, North Pacific Division, U.S. Army Corps of Engineers, the BPA Administrator is the "U.S. Entity" under the Columbia River Treaty between the U.S. and Canada. BPA also has other authorities and responsibilities related to electric power conservation, the development of new generating facilities, and electric power transmission.

Under the procedures, BPA will always consult on BPA's participation in the establishment of policies and the implementation of actions which are specifically initiated and designed to implement the directives of Sec. 4(h)(11)(A) of the Pacific Northwest Power Act. These are the policies and actions referred to in Sec. 3(a) of the procedures. Because BPA exercises its FCRPS responsibilities in tandem with the Corps of Engineers and Bureau of Reclamation, such policies and actions are normally developed jointly with and Corps and/or Bureau, not independently by BPA. For example, BPA consulted on derating the firm energy



capability of the FCRPS in conjunction with establishing the Water Budget as a firm operating constraint in coordinated hydroelectric system planning to provide flows for spring salmon and steelhead migration. BPA will consult on the establishment of other fish and wildlife constraints on FCRPS hydroelectric facility operations. BPA will also consult on alterations to such policies, and on actions which could alter their effectiveness.

Likewise, BPA will always consult on BPA's participation in the annual planning process pursuant to the Pacific Northwest Coordination Agreement (Sec. 3(b) of the procedures). This process establishes the rights and obligations of the parties to the agreement to operate their reservoirs as a part of the coordinated system. The process takes into account all member electric power loads, generation to meet loads, constraints on the operation of generating projects (including constraints for fish and wildlife), and other factors, including the coordinated operation of Canadian reservoirs subject to the Columbia River Treaty. Parameters addressed by the planning process include reservoir elevations, flows, and, indirectly, rates of reservoir elevation change.

BPA plans to make consultation on the Coordination Agreement planning process an annual focal point for consultation. The planning process provides an excellent opportunity to review FCRPS operations and related fish and wildlife concerns. Because BPA is a party to numerous short-term power agreements and individual power marketing transactions on an hourly, daily, and weekly basis, individual transactions do not have independent effects on system operation or fish and wildlife. Consultation on the Coordination Agreement planning process will permit examining FCRPS operations as a whole, reflecting the net effects of all expected operations. BPA will make available for consultation party review the submittals BPA makes as part of the planning process and the results of computer projections of Federal system operation. BPA will work with consultation parties to analyze fish and wildlife concerns and how they might be addressed either through the planning process or subsequently during the operating year.

BPA will also consult regarding power marketing policies which could affect fish and wildlife (Sec. 3(c) of the procedures). For example, assuming potential fish and wildlife impacts, BPA will consult on power marketing policies governing hydroelectric system services. Such policies can have long-term effects on FCRPS management and operation, and can affect the submittals BPA makes in the Coordination Agreement planning process.

Similarly, BPA will consult on long-term power agreements (Sec. 3(d) of the procedures). BPA markets FCRPS power and services through contracts with individual customers. Power sales and energy storage agreements are examples. In addition, from time to time BPA purchases power and services from others, also under written agreements. Some of these agreements are long-term, defined in Sec. 2(e) as having a term of 1 year or longer. Others are executed for terms of less than 1 year. As stated above, such short-term agreements and individual power and service transactions under long-term agreements do not have independently identifiable effects on the operation of the FCRPS or fish and wildlife. However, as with power marketing policies, long-term agreements can have long-term effects on FCRPS management and operation, and can affect the submittals BPA makes as part of the Coordination Agreement process. For this reason, BPA will consult on long-term agreements as provided in Sec. 3(d) in addition to consulting on the Coordination Agreement process.



In addition to agreements for the sale or purchase of power or services, the definition of long-term power agreements in Sec. 2(e) includes agreements "specifying how Federal Columbia River Power System hydroelectric facilities will be managed and operated." The explanation of Sec. 2(e), above, cites as an example the agreement with the Corps of Engineers and Bureau of Reclamation regarding provisional storage draft for the delivery of advance energy. This agreement allows BPA to draft the Libby, Dworshak, Hungry Horse, and Grand Coulee reservoirs below the normal operating levels allowed in operating under the Pacific Northwest Coordination Agreement. In addition, BPA participates in the development of agreements implementing the Columbia River Treaty. These include both annual operating plans and occasional special purpose agreements. BPA would consult on any such agreement when an alteration to the management and operation of the FCRPS in a manner that affects fish and wildlife could result.

Finally, BPA will consult on policies and actions in other areas of BPA responsibility which could alter the management and operation of the FCRPS in ways that affect fish and wildlife (Sec. 3(e) of the procedures). As mentioned above, BPA possesses authority to support electric power conservation and the development of generating facilities, and BPA also constructs and operates the Pacific Northwest Federal electric power transmission system, including interregional connections. BPA will consult when, for example, the purchase of electric power from a new generating facility would change FCRPS operations, with fish and wildlife impacts.

An important limitation is that BPA will not consult on Sec. 3(c), (d), or (e) policies and actions if their fish and wildlife impacts are subject to preestablished policies which apply the fish and wildlife directives of Sec. 4(h)(11)(A) of the Pacific Northwest Power Act. Thus, for example, if a power marketing policy's potential fish and wildlife impacts were confined to flows for spring salmon and steelhead migration, BPA would not consult on the policy because the Water Budget provides for such flows pursuant to Sec. 4(h)(11)(A) of the Pacific Northwest Power Act, and BPA consulted on the Water Budget. If the policy had potential fish and wildlife impacts other than on flows for spring salmon and steelhead migration, BPA would consult on the other impacts. Similarly, BPA would not consult on the fish and wildlife impacts of a long-term power agreement if the agreement were subject to a power marketing policy on which BPA consulted and which provided for compliance with Sec. 4(h)(11)(A) of the Act. BPA's aim is to incorporate into the management and operation of FCRPS hydroelectric facilities, in coordination with the Corps of Engineers and the Bureau of Reclamation, fish and wildlife operating constraints and procedures implementing the requirements of Sec. 4(h)(11)(A) of the Act. This ultimately will facilitate BPA's power marketing program by permitting BPA to meet its fish and wildlife responsibilities without consulting on individual power marketing policies and agreements.

#### Sec. 4, Consultation Procedures

The procedures are intended to improve consultation party opportunities to participate in BPA decisionmaking on fish and wildlife issues in hydroelectric system management and operation. The procedures are designed to achieve four objectives: (1) to avoid unnecessary formality; (2) to enable tailoring the manner in which consultations are conducted to the significance and complexity of proposed actions or policies and to the amount of time available; (3) to permit consultation parties to select the means by which they communicate their views to BPA; and



(4) to enable consultation parties to have meaningful involvement in BPA decisionmaking.

Sec. 4(a), Notice. The intent of the procedures is to afford consultation parties as much time as is practicable given BPA's decisionmaking timetable for an action or policy. This provision attempts to accommodate consultation party desires for notice as early as possible in BPA's planning and decisionmaking, recognizing that a policy or action and its potential fish and wildlife impacts must be well enough identified in a notice to enable a consultation party to decide whether and how to respond.

Sec. 4(b), Copies of Notices. The Act confines BPA's duty to consult to the consultation parties identified in Sec. 2 of the procedures. BPA recognizes that others are interested in BPA policies and actions in hydroelectric system management and operation affecting fish and wildlife. This section provides for courtesy copies of consultation notices to other interested parties.

Sec. 4(c), Opportunity to Express Views and Consideration of Consultation Party Concerns. This section leaves to consultation parties the choice of how they wish to consult with BPA. BPA expects to accommodate consultation party requests for meetings unless an unreasonable burden on BPA would result. When appropriate to attempt to resolve differences or otherwise address issues, BPA may convene meetings of consultation parties. Sec. 4(c) of the procedures states that BPA will work with any consultation party which raises a concern in the consultation process.

Sec. 4(d), Annual Meeting. This section provides for an annual meeting. Several consultation party representatives recommended an annual meeting to address fish and wildlife issues in hydroelectric system management and operation.

Sec. 4(e), Other Means. Sec. 4(a)-4(d) are intended as minimum procedures; Sec. 4(e) makes it clear that BPA may elect to use additional means of consultation.

Sec. 4(f), Expedited Procedures. Available time will not always permit BPA to follow the procedures in Sec. 4(a)-4(c). Unanticipated hydrological, power system, and market conditions sometimes require BPA to take action on short notice. In addition, emergencies sometimes occur. BPA expects the procedures in Sec. 4(a)-4(c) to take a minimum of 21 to 30 calendar days. The procedures in Sec. 4(f) are intended to provide for consultation when time is short. If the amount of time available to gather necessary information and make a decision is less than 30 calendar days, BPA expects normally to follow the expedited procedures.

Sec. 4(g), Notice of Outcome. When BPA has adopted a policy or taken an action on which it has consulted, it will notify consultation parties.

## Sec. 5, General Provisions

Sec. 5(a), Records. This section identifies the contents of consultation records. BPA does not intend to prepare detailed materials unless necessary to aid decisionmaking because of the complexity of an action and policy. The aim is to avoid unnecessary formality and to control the administrative burden associated with the procedures. When BPA follows both the consultation procedures in Sec. 4 and the Procedure for Public Participation in Major Regional Power Policy Formulation, the consultation record will be made part of the Official Record under the public participation procedure.



Sec. 5(b), Relationship to Procedure for Public Participation in Major Regional Power Policy Formulation. Pursuant to Sec. 4(g)(1) of the Pacific Northwest Power Act, BPA has adopted procedures for public participation in major regional power policy formulation. A major regional power policy is defined as:

An agency statement of future effect and general applicability designed to implement or prescribe policy which the Administrator identifies as involving major regional power issues. Major Regional Power Policy does not include the development and execution of particular agreements, contracts, or other instruments between BPA and its customers.

(46 FR 26368, May 12, 1981, Sec. 2(g).)

BPA will follow both the consultation procedures in Sec. 4 and the Procedure for Public Participation in Major Regional Power Policy Formulation on policies which qualify for both. Consultation parties may participate in public information and public comment forums and submit written comments pursuant to the Public Participation Procedure, and meet with BPA pursuant to Sec. 4(c).

Sec. 5(c), Coordination with National Environmental Policy Act (NEPA) Procedures. The Council on Environmental Quality's regulations for implementing NEPA urge Federal agencies to "integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all procedures run concurrently rather than consecutively." (40 CFR 1500.2(c).) BPA expects to conduct combined NEPA and consultation meetings, when appropriate, and to integrate BPA's NEPA procedures with the consultation procedures in other ways.

Sec. 5(d), Use of Representatives. This provision is designed to leave to consultation parties the choice of using representatives. BPA would always send the written notices provided for in Sec. 4(a) and 4(d) to individual consultation parties. It would be the option of a consultation party to respond on its own behalf or through an association or other representative. BPA would notify a representative instead of a consultation party only for purposes of the expedited consultation procedures provided for by Sec. 4(f), and only if authorized. This is intended to permit, for example, use by fish and wildlife agencies and Indian tribes, at their discretion, of the Water Budget managers called for by Sec. 304(b) of the Columbia River Basin Fish and Wildlife Program as channels of communication with BPA.

Sec. 5(e), Coordination With the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Federal Energy Regulatory Commission. The consultation responsibilities of Sec. 4(h)(1)(B) of the Pacific Northwest Power Act apply to the Army Corps of Engineers, Bureau of Reclamation, and Federal Energy Regulatory Commission as well as to BPA. Moreover, BPA shares with the Corps of Engineers and Bureau of Reclamation responsibility for the management and operation of the Federal Columbia River Power System. BPA may take actions jointly or in coordination with the Corps of Engineers and/or Bureau of Reclamation which fall within the scope of these consultation procedures. This subsection provides for coordinated consultations in such instances, including joint consultations.



### III. FINAL PROCEDURES

Sec. 1. Purpose and Scope. BPA seeks by these procedures to foster an expanded role for fish and wildlife agencies, Indian tribes, and hydroelectric project operators in Federal Columbia River Power System (FCRPS) hydroelectric facility management and operation. The purpose of these procedures is to define how BPA will discharge its consultation duties under Sec. 4(h)(11)(B) of the Act. Sec. 4(h)(11)(A) directs BPA to exercise its role in the management and operation of hydroelectric facilities on the Columbia River and its tributaries consistently with the purposes of the Act and other applicable laws to adequately protect, mitigate, and enhance affected fish and wildlife in a manner that provides fish and wildlife equitable treatment with other hydroelectric system purposes. In so doing, BPA must take into account to the fullest extent practicable the Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council. Sec. 4(h)(11)(B) of the Act directs BPA to exercise these responsibilities in consultation with the Pacific Northwest's Federal and State fish and wildlife agencies, appropriate Indian tribes, and affected project operators.

These procedures do not apply to: (1) consultation under Sec. 4(h)(11)(B) of the Act on compensation of costs and power losses at non-Federal electric power projects pursuant to Sec. 4(h)(11)(A)(ii) of the Act; (2) BPA's coordination with other Federal agencies under Sec. 4(h)(11)(B) of the Act, except for coordination of consultation procedures; (3) the use of the BPA Fund and BPA authorities to protect, mitigate, and enhance fish and wildlife affected by hydroelectric facilities on the Columbia River and its tributaries pursuant to Sec. 4(h)(10)(A) of the Act; or (4) BPA's fish and wildlife responsibilities in electric power resource acquisition and development under Sec. 6 of the Act. Other procedures apply to these responsibilities.

#### Sec. 2. Definitions

- a. Director. The Director of BPA's Division of Fish and Wildlife.
- b. Consultation Parties. The fish and wildlife agencies, Indian tribes, and project operators defined and identified in this section.
- c. Fish and Wildlife Agencies. The Pacific Northwest's Federal and State fish and wildlife agencies. Agencies within this category are the:

National Marine Fisheries Service  
U.S. Fish and Wildlife Service  
Idaho Department of Fish and Game  
Montana Department of Fish, Wildlife, and Parks  
Oregon Department of Fish and Wildlife  
Washington Department of Fisheries  
Washington Department of Game

- d. Indian Tribes. Any Indian tribe or band located in the Columbia River Basin which has a governing body which is recognized by the Secretary of the Interior. Indian tribes and bands within this category are the:

Burns Paiute Indian Colony  
Confederated Tribes of the Colville Reservation



Coeur d'Alene Tribe of the Coeur d'Alene Reservation  
Shoshone-Paiute Tribes of the Duck Valley Reservation  
Kalispel Indian Community of the Kalispel Reservation  
Kootenai Tribe of Idaho  
Nez Perce Tribe of Idaho  
Confederated Salish and Kootenai Tribes of the Flathead Reservation  
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho  
Spokane Tribe of the Spokane Reservation  
Confederated Tribes of the Umatilla Reservation  
Confederated Tribes of the Warm Springs Reservation of Oregon  
Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation

e. Long-Term Power Agreements. Written agreements with a term of one year or longer: (1) for the sale or exchange by BPA of electric power or power-related services available through the management and operation of FCRPS hydroelectric facilities;

(2) for the purchase by BPA of electric power or power-related services from others; and

(3) specifying how FCRPS hydroelectric facilities will be managed and operated.

f. Power Marketing Policies. Policies which address providing power or power-related services available through the management and operation of the FCRPS.

g. Project Operators. Utilities and other non-Federal entities which operate hydroelectric facilities on the Columbia River or its tributaries within the United States which are (1) subject to the Pacific Northwest Coordination Agreement; and/or (2) downstream of at least one Federal or non-Federal hydroelectric facility which is subject to the Pacific Northwest Coordination Agreement. Project operators in this category are the:

Chelan County PUD No. 1  
Cowlitz County PUD No. 1  
Douglas County PUD No. 1  
Eugene Water and Electric Board  
Grant County PUD No. 2  
City of Idaho Falls  
Idaho Power Company  
Montana Power Company  
Pacific Power & Light Company  
Pend Oreille County PUD No. 1  
Portland General Electric Company  
Seattle City Light  
City of Spokane  
Tacoma City Light  
Washington Water Power Company

h. Program. The Columbia River Basin Fish and Wildlife Program adopted by the Northwest Power Planning Council pursuant to Sec. 4(h) of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, 16 U.S.C. 839 et seq.



Sec. 3. Use of Procedures. BPA will consult, as provided in these procedures, on:

a. BPA's participation in the establishment of policies and the implementation of actions the primary purpose of which is to implement the directives of Sec. 4(h)(11)(A) of the Pacific Northwest Power Act to adequately protect, mitigate, and enhance fish and wildlife and to provide fish and wildlife equitable treatment in the management and operation of FCRPS hydroelectric facilities.

b. BPA's participation in the annual planning process pursuant to the Pacific Northwest Coordination Agreement.

c. BPA power marketing policies which may alter the management and operation of the FCRPS in a manner that affects fish and wildlife, except that BPA will not consult on such a policy to the extent that the provisions of Sec. 4(h)(11) of the Pacific Northwest Power Act have already been implemented as applied to the fish and wildlife impacts of such policy.

d. Long term power agreements which may alter the management and operation of the FCRPS in a manner that affects fish and wildlife, and the extension of the term of such agreements, except that BPA will not consult on such an agreement or extension to the extent that the provisions of Sec. 4(h)(11) of the Pacific Northwest Power Act have already been implemented as applied to the fish and wildlife impacts of the agreement or extension.

e. Actions and policies in other areas of BPA responsibility which may alter the management and operation of FCRPS hydroelectric facilities in a manner that affects fish or wildlife, except that BPA will not consult on such a policy or action to the extent that the provisions of Sec. 4(h)(11) of the Pacific Northwest Power Act have already been implemented as applied to the fish and wildlife impacts of such action or policy.

Sec. 4. Consultation Procedures.

a. Notice. Except as stated in sub-Sec. 4(f), for all policies or actions on which BPA consults pursuant to these procedures, BPA will send notice of the contemplated policy or action by mail to all consultation parties. BPA will provide notice as early as practicable in the planning process once a policy or action and its potential fish and wildlife effects have been defined adequately to permit their description in such notice, and sufficiently in advance of BPA's decision or action to permit consultation parties to respond and to permit BPA to consider their comments and recommendations. BPA will mail notices to the chairperson, director, or chief executive officer of each consultation party, or, upon written request, such person's designee. Notices will describe the contemplated policy or action, identify its potential impacts on FCRPS hydroelectric facility management and operation and fish and wildlife, solicit comments and recommendations, and specify a date by which BPA must receive comments and recommendations.

b. Copies of Notices. Upon request, BPA will regularly mail courtesy copies of the notices provided for in sub-Sec. 4(a) to any person, including employees or members of consultation parties and any other person.



c. Opportunities to Express Views and Consideration of Consultation Party Concerns. Consultation parties may express their views and make recommendations to BPA through written comments, meetings with appropriate BPA representatives, or both. Consultation parties may meet with BPA either individually or in groups. BPA may, on its own initiative or at the request of a consultation party, convene a meeting of consultation parties to discuss a policy or action on which BPA is consulting under these procedures. When a consultation party has identified a concern regarding a policy or action, BPA will work with the consultation party to address the concern.

d. Annual Meeting. In addition to other consultation procedures, BPA will conduct an annual meeting with all consultation parties to discuss BPA policies and actions pursuant to Sec. 4(h)(11)(A) of the Act. BPA will invite from consultation parties recommendations for the agenda of these meetings. BPA will send notices of such meetings to all consultation parties and will send courtesy copies of such notices to any person who has requested copies of notices pursuant to sub-Sec. 4(b).

e. Other Means. If necessary or appropriate to achieve the purpose of these procedures, BPA will use additional means for consultation. Such means may include, but are not limited to, the dissemination of information and analyses, educational activities, and group problem-solving techniques.

f. Expedited Procedures. (1) BPA will follow expedited consultation procedures when BPA determines that an emergency or unanticipated immediate power marketing opportunity requires prompt action by BPA so that the time available is insufficient to permit BPA to follow the procedures in sub-Sec. (a) through (c) of this section. An emergency is a condition threatening safety or the reliability of the Pacific Northwest electric power system. An immediate power marketing opportunity is a use of the FCRPS which improves the efficiency or economy of the Pacific Northwest electric power system and on which BPA must promptly take action or forego.

(2) Expedited consultation procedures will consist of notice by telephone to interested consultation parties and opportunity for those notified to express their views. For the purpose of this paragraph, an interested consultation party is a consultation party which, as determined by BPA, actively participates in FCRPS management and operation fish and wildlife issues or whose fish and wildlife interests the contemplated action would particularly affect.

g. Notice of Outcome. BPA will notify consultation parties of policies adopted or actions taken after consultation pursuant to this section. Such notice will briefly describe the policy or action, the basis for the policy or action, including fish and wildlife considerations, and the availability of additional information. BPA will send such notices to all consultation parties and will send courtesy copies of such notices to any person who has requested copies of notices pursuant to sub-Sec. 4(b).

## Sec. 5. General Provisions.

a. Records. The Director will compile and maintain records on policies and actions to which these procedures are applied. Records will contain: (1) notices issued under these procedures; (2) written submittals to BPA and BPA's replies, if any; (3) meeting notes; (4) if prepared, meeting transcripts, summaries or evaluations of comments, and records of decision; and (5) other information the



Director determines is appropriate. Such records will be available for inspection and copying.

b. Relationship to Procedure for Public Participation in Major Regional Power Policy Formulation. For fish and wildlife policies which qualify as major regional power policies under BPA's Procedure for Public Participation in Major Regional Power Policy Formulation (46 FR 26368, May 12, 1981), BPA will follow both these consultation procedures, if applicable, and the Procedure for Major Regional Power Policy Formulation. BPA will combine and coordinate the two procedures to the extent practicable.

c. Coordination with National Environmental Policy Act (NEPA) Procedures. To the extent practicable, BPA will coordinate these procedures with NEPA procedures by combining notices and meetings and by using NEPA documents as sources of information on proposed policies or actions.

d. Use of Representatives. Use of individuals or associations to represent consultation parties under these procedures is at the discretion of the party represented. BPA will cooperate with such representatives, and, if a representative is so authorized, BPA will consider the views expressed by the representative as the views of the party represented. Unless authorized to do so for the purpose of the expedited consultation procedures in sub-Sec. 4(f), BPA will not substitute notice to a representative for notice to a consultation party under these procedures.

e. Coordination With the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Federal Energy Regulatory Commission. BPA will mail to the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and Federal Energy Regulatory Commission copies of all written notices issued pursuant to these procedures. When addressing a subject or issue on which BPA shares responsibility with one or more of these agencies, to the extent practicable BPA will coordinate with them or conduct joint consultations.

Issued in Portland, Oregon on May 22, 1985.

/s/ Peter T. Johnson  
Peter T. Johnson  
Administrator







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