

CRS Report for Congress

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The Columbia River Basin's Fish Passage Center

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Summary

The Fish Passage Center (FPC) provides technical assistance and information to fish and wildlife agencies and tribes on the passage of juvenile and adult salmon and steelhead through the mainstem Columbia River. It is an element of the Northwest Power and Conservation Council's fish and wildlife program, which was created by the Northwest Power Act (P.L. 96-501). The Council's fish and wildlife program is funded by the Bonneville Power Administration (BPA) with revenue from the sale of electric power in the Pacific Northwest. Some parties in the region contend that the FPC does not provide unbiased scientific analysis, but instead advocates specific policy positions. Language in H.Rept.109-275, the conference report on FY2006 Energy and Water appropriations (P.L. 109-103) prohibits further BPA obligations supporting the FPC, and directs BPA and the Council to transfer FPC functions to other existing entities within 120 days of enactment. Because the prohibition was not contained in the language of the statute itself, it is unclear what BPA is obligated to do. However, on March 17, 2006, the U.S. Ninth Circuit Court of Appeals issued an order, in response to a motion filed on behalf of the FPC, that requires BPA to "continue, pending resolution of this petition and/or further order of the Court, its existing contractual arrangement to fund and support the Fish Passage Center under the existing terms and conditions." Resolution of the FPC's future and role is pending. This report will be updated as warranted.

Background

Under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (the Northwest Power Act, P.L. 96-501), Congress required that the Pacific Northwest Electric Power Planning and Conservation Council (now known as the Northwest Power and Conservation Council) develop and adopt a program to protect fish and wildlife, enhance their habitat, and mitigate habitat damage.¹ The act required that the program be

¹ 16 U.S.C. §839b(h)(1)(A).

based on broad regional consultation with agencies, tribes, customers, and the public.² Congress further mandated that BPA fund the Council program through revenue collected from electric power ratepayers.³

One element of the Council's fish and wildlife program is the Fish Passage Center (FPC), which was established to address concerns about impacts to fish from the Federal Columbia River Power System (FCRPS), a system of 31 federal dams primarily on the Snake and Columbia rivers in Washington and Oregon (see **Figure 1**). Eight dams, four on the lower Columbia River and four on the lower Snake River, are the primary impediments to upstream and downstream fish migration in the Columbia Basin. The FPC provides technical assistance and information to state and federal fish management agencies, tribes, and the public on the passage of juvenile and adult salmon and steelhead through the mainstem Columbia River hydrosystem.⁴ It also plans and implements the annual Smolt Monitoring Program and the Gas Bubble Trauma study, which supplies daily information for in-season river management decisions aimed at protecting salmon and steelhead. The FPC also provides agencies and tribes with reservoir operation information and analysis, including current and historical data, to support their decisions and requests to the federal agencies operating the FCRPS. Additionally, the FPC coordinates the implementation of the regional comparative survival study.⁵

² 16 U.S.C. §839b(h)(2)-(5).

³ 16 U.S.C. §839b(h)(10)(A).

⁴ Northwest Power and Conservation Council, *Mainstem Amendments to the Columbia River Basin Fish and Wildlife Program* (Portland, OR: 2003), p. 27.

⁵ Available at [http://www.fpc.org/about_fpc.html], accessed March 21, 2006.

Figure 1. Major Columbia River Basin Dams



Source: [<http://www.nwd.usace.army.mil/ps/colrvbsn.htm>], accessed March 21, 2006.

Regional Issues

The FPC has been at the center of some controversy in the Pacific Northwest. Many agencies and tribes concerned primarily with salmon recovery have confidence in the center's technical analyses and consider FPC staff to be a valuable resource when reviewing FCRPS operations and impacts on fish. Others are concerned that FPC does not provide unbiased analysis, but rather advocates policy positions favoring fish protection.

Representatives of the U.S. Fish and Wildlife Service, the Oregon Department of Fish and Wildlife, and the Columbia River Inter-Tribal Fish Commission, among others, have provided statements in support of FPC. They indicate that their jobs require them to provide the best scientific information on effects of the FCRPS on fisheries resources to their respective agencies and to the region as a whole and that they have relied heavily on the scientists at the FPC for information and analysis. They stress that, in their opinion and consistent with independent review, the work conducted by the FPC scientists is at

a high level of scientific rigor and merit and that no other group in the region has had to endure such levels of scrutiny as the FPC staff.⁶

The National Marine Fisheries Service (NMFS) Science Center and the University of Washington's Columbia Basin Research Center have both expressed concern that the FPC's approach mingles an advocacy role with a scientific one and that this commingling of advocacy and analysis shades the FPC's analytical products. Staff of those two research institutions also feel that the FPC data are difficult to work with and that the data sources and underlying analyses are not always clear.⁷ The Council established a Fish Passage Center Oversight Board in 2000⁸ to assess why the FPC did not enjoy the same reputation for independent analytical quality as other scientific bodies in the region.⁹

Issues

The debate over FPC's role in the Columbia Basin recently came to a head with language in H.Rept. 109-275, on FY2006 Energy and Water appropriations, prohibiting additional BPA funding in support of the FPC. The conferees called upon BPA and the Council to transfer the FPC's primary duties (warehouse of smolt monitoring data, routine data analysis, and reporting and coordination of the Smolt Monitoring Program) to other entities in the region within 120 days of enactment (making the target date for the transfer March 19, 2006).

BPA selected two entities to take over the functions of the FPC. On January 26, 2006, BPA announced that the Pacific States Marine Fisheries Commission (PSMFC) and the Battelle Pacific Northwest National Laboratory (PNNL) would assume the duties of the FPC on March 21, 2006.¹⁰ Specifically, BPA indicated that PSMFC would (1) manage the Smolt Monitoring Program; (2) perform functions associated with related data collection and management; and (3) conduct routine analysis and reporting of that data. PNNL was selected to (1) oversee, coordinate and facilitate broader, non-routine scientific analysis of that data, including independent peer review; and (2) manage the analysis itself, which would be performed by biometricians and scientists selected by and under contract to PNNL via request for qualifications. In addition, BPA proposed that the Columbia Basin Fish and Wildlife Authority assume the function of coordinating the policy interests of regional fishery agencies and tribes on flow and spill issues. This would

⁶ State, federal, and tribal fishery agencies, *Joint Technical Staff Memo* (Jan. 25, 2006), available at [http://www.fpc.org/documents/joint_technical/06-06.pdf], accessed March 21, 2006.

⁷ *Ibid.*

⁸ Northwest Power Planning Council, *Columbia River Basin Fish and Wildlife Program* (2000), p. 28, available at [<http://www.nwcouncil.org/library/2000/2000-19/Default.htm>], accessed March 21, 2006.

⁹ *Fish Passage Center Oversight Board Meeting Notes* (Oct. 2, 2002), available at [http://www.nwcouncil.org/fw/fpcob/2002_10.pdf], accessed March 21, 2006.

¹⁰ BPA press release, available on March 21, 2006, at [<http://www.bpa.gov/corporate/BPAnews/2005/NewsRelease.cfm?ReleaseNo=695>].

be done under a modification to its current BPA contract, pending approval of its members.¹¹

On March 17, 2006, the U.S. Court of Appeals for the Ninth Circuit issued an order, in response to a motion filed on behalf of the FPC, that requires BPA to “continue, pending resolution of this petition and/or further order of the Court, its existing contractual arrangement to fund and support the Fish Passage Center under the existing terms and conditions.”¹² This order conflicts with the direction in H.Rept. 109-275 for BPA to cut FPC funding. P.L. 109-103 is controlling because the provision in H.Rept. 109-275 was not enacted into law. This becomes a twofold question for the court: (1) does P.L. 109-103 authorize BPA to make changes to FPC funding; and, if it does not, (2) does BPA have authority to make those changes under existing law?

The future of the FPC in Columbia Basin salmon and steelhead management is unclear. Resolution of the Ninth Circuit Court’s order with the final disposition instructions in H.Rept. 109-275 may either leave the current FPC in place and continue the regional debate over advocacy and science, or shift current FPC responsibilities to different entities.

¹¹ Ibid.

¹² U. S. Court Of Appeals for the Ninth Circuit, *Northwest Environmental Defense Center, Public Employees for Environmental Responsibility; Et Al., v. Bonneville Power Administration*, Order No. 06-70430 (March 17, 2006).