



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OREGON 97232-1274
April 20, 2011

Representative Ben Cannon
Oregon House of Representatives
900 Court Street NE
Salem, OR 97301

Dear Rep. Cannon:

Thank you for your April 19, 2011, letter, requesting National Marine Fisheries Service's (NMFS) technical review of House Bill (HB) 3165. This bill requires the Oregon Water Resources Department (OWRD) to assemble a work group to evaluate any water right transfer application for the use of water stored in the Willamette Basin Storage Project (Project) prior to acting on the application. It prohibits the OWRD from assembling a work group unless sufficient funding is available for the work group, and it requires the OWRD commission to approve the work group's report before processing the transfer application. Additionally, it requires the multi-party work group to ensure the transfer application meets a number of standards regarding the effect of the proposed transfer on other existing and future water rights.

NMFS' interest in HB 3165 pertains to how it might affect implementation of the 2008 Willamette Project Biological Opinion (opinion) and the recovery of species listed under the Federal Endangered Species Act (ESA). This opinion includes a Reasonable and Prudent Alternative (RPA) that the Action Agencies (U.S. Army Corps of Engineers [Corps], Bonneville Power Administration [BPA], and Bureau of Reclamation [BOR]) must follow in order to avoid jeopardy to Upper Willamette River Chinook salmon and steelhead and adverse modification of designated critical habitat for these species that have been listed as threatened under the ESA. The RPA requires the Corps to release water from its Project reservoirs in order to protect these fish and their habitat in river reaches below the dams and in the mainstem Willamette River. Additionally, RPA 2.9, "Protecting Stored Water Released for Fish," requires the Action Agencies to coordinate with OWRD and Oregon Department of Fish and Wildlife (ODFW) to facilitate conversion of stored water to an in-stream flow water right. Without this protection and enforcement of stored water by the State, there is no guarantee that the stored water released from Project dams will serve the purpose of providing necessary habitat for ESA-listed fish.

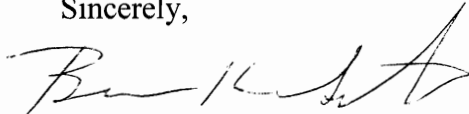
NMFS supports collaborative approaches to solve complex issues such as this one. To carry out RPA 2.9, the Action Agencies will need to convene a multi-party stakeholder group as they assess and prepare the transfer application. It would be more efficient to use this process rather than require a separate process likely involving the same participants. Also, HB 3165's requirement that OWRD must obtain financial backing and form a separate work group could slow down a process that has been on hold for over a decade.



NMFS is also concerned that HB 3165 may be inconsistent with the Proposed Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead (Plan), which was prepared by NMFS and ODFW and involved a lengthy multi-party stakeholder process. The Plan, which NMFS and ODFW are in the process of completing, identifies insufficient stream flows as a limiting factor and water withdrawals as a specific threat to the recovery of these protected species. The Plan further recommends actions regarding the establishment of minimum instream flows and other related issues that are considered necessary to protect listed fish in the Willamette basin.

Thank you for this opportunity to provide technical comments on the proposed bill. If you have any questions, please call me at 503-230-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Suzumoto". The signature is fluid and cursive, with a large initial "B" and "S".

Bruce Suzumoto
Assistant Regional Administrator
Hydropower Division

cc: William Ferry, Reclamation
Kevin Brice, USACE