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June 27, 2007

**Certified Mail**  
**Return Receipt Requested**

Ms. Christy Brannon  
Freedom of Information Act Compliance Officer  
Bonneville Power Administration  
P.O. Box 3621, Mail Stop DK-7  
Portland, OR 97208

RECEIVED BY BPA FOIA OFFICE THIS DATE: 7-18-07
DUE DATE: 8-14-07
LOG # 07-033

the  
8/28/07

Re: Freedom of Information Act Request

Dear Ms. Brannon:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") as amended, the Save Our *Wild* Salmon Coalition ("SOS") requests copies of any and all documents, records, communications, or correspondence, including, but not limited to, letters, memoranda, e-mails, notes of telephone conversations, or any other record of communication, on or after January 1, 2007 through the date of your response to this request, by, to, or between any employee of the Bonneville Power Administration ("BPA") and any other employee or contractor of BPA or the U.S. Fish and Wildlife Service ("FWS"), Department of the Interior, the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, or the Council on Environmental Quality regarding or relating in any way to FWS's participation in the process to develop a Biological Opinion for the Operation of the Federal Columbia River Power System on remand ("FCRPS BiOp"). This request includes any documents of any kind that mention, discuss, or relate in any way to the role, or any consideration of a role, that FWS employees or contractors had, currently have, or will have in any aspect of the preparation, review, critique, or development of data and analyses that may inform any aspect of the FCRPS BiOp or the proposed action for consideration in the FCRPS BiOp, including but not limited to the development of the so-called COMPASS model by the National Marine Fisheries Service and others. The requested documents specifically include any that relate in any way to limiting or changing the role or participation of any FWS employee or contractor in any aspect of preparation of the FCRPS BiOp or analyses related to it. Withheld documents, if any, must be identified specifically and the basis for withholding explained.

The request for documents, records, and correspondence should be interpreted as including, but not limited to, any and all correspondence, memoranda, e-mails, papers, maps, scientific or technical data, telephone logs, meeting notes, and notes documenting any communications, regardless of physical form or characteristics. Our request encompasses all

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documents and records, whether in draft or final form, in the possession of BPA, regardless of whether the documents or records were produced by employees or contractors of BPA.

We would be glad to work with you and your staff to identify the documents sought in this letter. Please do not hesitate to call should you need clarification about whether certain documents fit within the parameters of this request.

### **Fee Waiver**

The Freedom of Information Act and BPA's implementing regulations permit the waiver of search and copy fees where the release of the information is in the public interest. See 5 U.S.C. § 552(a)(4)(A)(iii); 10 C.F.R. § 1004.9(a)(8). This request satisfies these criteria. We provide the following information relating to the public benefits associated with our request and the entitlement of SOS to a fee waiver in this matter.

Preservation and recovery of the Northwest's salmon and steelhead, particularly those in the Columbia and Snake Rivers, has been the subject of intense public interest and scrutiny even before many of these stocks were listed as threatened or endangered pursuant to the Endangered Species Act. As thousands of public comments, public meetings, Congressional hearings, and media attention demonstrate, protection and recovery of Northwest salmon and steelhead has spawned intense interest among many segments of the public, including environmentalists, commercial fisherman, state and federal legislators, and water resource users. Many of these groups, on all sides of the public discourse, are concerned that the federal government take the necessary steps to protect and recover listed salmon and steelhead stocks. The requested documents are essential to the public's understanding and assessment of the implementation of that goal and the Endangered Species Act in the region. In particular, at least one news organization has reported disagreement between FWS and NMFS regarding FWS's participation in the FCRPS BiOp remand. See Attachment A, *Gagging the salmon-counters*, Cascadia Times, Spring 2007 at 11 ("According to one insider, Bonneville and NOAA are trying to toss the Fish and Wildlife Service 'completely out of the mainstem Columbia and are putting pressure at the Washington, D.C. level'"). A response to this request will help the public to better understand the accuracy of this and other reports and all of the factors underlying these actions.

SOS will use the requested information to evaluate BPA's efforts to achieve the goals of the Endangered Species Act and other applicable environmental laws. SOS is uniquely qualified to review the requested information and synthesize it for consumption by the general public. Through advocacy on Endangered Species Act and salmon issues in the administrative and judicial processes, each of these groups has extensive experience with respect to the Endangered Species Act and, in particular, its application to threatened and endangered anadromous fish stocks in the Northwest. In addition, SOS will be able to evaluate the information either because of the expertise of staff members or the close ties to leading experts in relevant fields, including

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fisheries biology, who may review the requested documents.

SOS will provide the documents, expert synopses of the documents, and expert and legal advice based on review of the documents, to the interested community and the general public through public education activities. Indeed, SOS is uniquely well-qualified to disseminate this information to the public at large. SOS is a recognized contact for the regional and national news media on salmon preservation and recovery issues in the Pacific Northwest. SOS uses its media contacts as an opportunity to publicly disseminate information on governmental activities gleaned from the review of FOIA documents and to ensure full and balanced coverage of environmental issues by the news media. Save Our *Wild* Salmon has extensive programs to educate its over 6,000,000 members and the public on ESA and salmon recovery issues, including: community outreach; conducting conferences and symposia; preparing reports and comments to local, state, tribal, and federal legislative and administrative bodies; and disseminating news releases, giving interviews and press conferences to the media.

SOS will not benefit financially from the requested documents. Save Our *Wild* Salmon SOS is a § 501(c)(3) tax-exempt non-profit organization of more than 50 sport fishing, commercial fishing, and conservation organizations – local, regional, and national – which seek restoration of abundant salmon stocks throughout the Pacific Northwest to sustainably harvestable numbers. SOS will not use the requested documents to obtain any financial gain. Rather, we will use the documents to monitor and evaluate BPA's efforts to implement the ESA to protect listed anadromous fish species, a subject relevant to the health and welfare of the public and of long-standing and intense public interest and involvement. A fee waiver is clearly appropriate under these circumstances, and we request such a waiver.

As provided in the Freedom of Information Act, 5 U.S.C. § 552(a)(6)(A), we will expect a reply within twenty working days. Thank you for your assistance. If you have any questions regarding this request, please do not hesitate to call.

Sincerely,

Neal Clark  
Save Our *Wild* Salmon  
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# Gagging the salmon-counters

U.S. Fish and Wildlife Service scientists who reported bad news about salmon survival in the Columbia are ordered not to talk

Let's say you have 2,000 salmon, and you divide them evenly into two groups.

You stand at the far end of Lower Granite Reservoir and release the first 1,000 down the river. The dams and reservoirs along the way kill between 500 and 700 of them. After three or four years in the ocean, just 10 return make it all the way back to Lower Granite.

You load the other 1,000 fish into Army Corps of Engineers' barges at Lower Granite Dam. The Army Corps, which has been barging fish through the dams since 1969, claims that barging as many salmon is best for the fish. Bonneville, which could receive substantial increases in revenue if barging helps restore the salmon, supports the program.

After passing the last dam, 980 of the fish are still alive in the barge. But after three or four years, only five of the barged salmon return to Lower Granite.

In other words, the barging method returns only half as many salmon as allowing fish to swim all the way to the ocean.

These results come from research sponsored by the U.S. Fish and Wildlife Service, the states of Oregon and Idaho, and the Columbia River Inter-Tribal Fish Commission.

The combined trauma of dams, barges and poor ocean conditions are pushing the salmon toward extinction, the Comparative Survival Studies show. The survival rates are too low to sustain the runs.

The \$1 million-a-year studies, begun 10 years ago, could be critical to court-ordered recovery planning for the salmon - possibly showing for example what is working for the fish and what is not. For example the studies indicate that barged fish die twice as often as fish that swim in the river, making a case for halting the barging program, with some exceptions.

The studies also seem to indicate that salmon which have to pass eight dams do less well than fish that pass just one or three dams. This could bolster the argument in favor of dam breaching.

These results threaten Bonneville's hydro operations because they indicate that its current measures are not working, despite their annual \$691 million price tag. They may mean that other measures must be considered, such as increased flows, more spill or dam removal, if the salmon are to be spared.

Consequently, NOAA and Bonneville are doing what they can to silence the studies' authors and keep the Fish and Wildlife Service scientists and their data away from salmon recovery plans.

The rift has torn apart the nation's two leading fishery agencies, the Fish and Wildlife Service, and NOAA Fisheries, and once again exposes the Bush administration muzzling of scientists. According to one insider, Bonneville and NOAA are trying to toss the Fish and Wildlife Service "completely out of the mainstream Columbia and are putting pressure at the Washington, D.C. level."

NOAA Fisheries is not in agreement with the premise of the studies, says John Ferguson, director of the agency's Fish Ecology Division in Seattle.

"We don't believe the experimental design is working," Ferguson says. NOAA believes the study has an "apples and oranges" type problem. It is comparing different fish, of different sizes, that went out to sea at different times, under different conditions.

NOAA's approach is to count fish as they pass each dam — what fishery geeks refer to as "concrete to concrete." They look at how successfully salmon cross each dam under various conditions, something that at least in theory should be easier to measure. But these data do not address fatal traumas that occur as they are loaded onto the barges, traumas caused while in the barges but do not cause death until much later.

NOAA work on evaluating so-called "delayed mortality" lags far behind the Fish and Wildlife Service.

Fish and Wildlife Service scientist Howard Schaller, a leader of the Comparative Survival Studies, declined to respond to questions about why he and others were kicked out of NOAA's biological opinion deliberations. "This is a closed court-ordered process and I am not at liberty to discuss the specifics," he said.

The Fish and Wildlife Service is not commenting, or even confirming, the rift between the two agencies. It also is not cooperating with other agencies that participated in the Comparative Survival Studies. It is withholding its analysis of NOAA's model of salmon survival, known as COMPASS.

Even though the Fish and Wildlife Service and CRITFC have teamed up on the studies, the federal agency has decided to not share the analysis with the tribes.

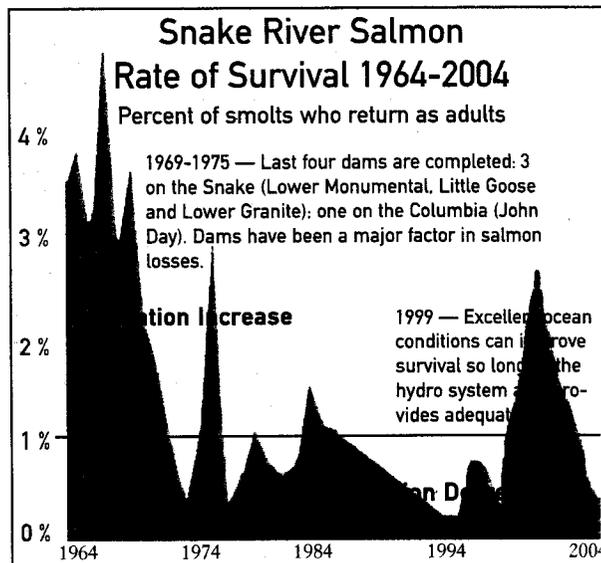
**"The Bush administration, once again, is muzzling the scientists. This is the World Series. You don't take the A team out." — Nicole Cordan, Save our Wild Salmon**

In a letter to CRITFC chair Olney Patt Jr., the Fish and Wildlife Service's region 1 director, Ren Lohofener, declined to share the analysis. The service also rejected *Cascadia Times* request for the material under the Freedom of Information Act. The newspaper intends to continue pursuing the withheld documents.

But a source close to the situation remarked, "Schaller's folks have been gagged."

The official reason for dismissing the Fish and Wildlife Service's key experts is that they missed a deadline for submitting comments to NOAA, said David Patte, a spokesman for the service. But for NOAA to exclude Schaller's team from its deliberations is seen as unwise by some. "This is the World Series — you don't take the A team out," says Nicole Cordan of Save Our Wild Salmon. "It's clear the administration is afraid of the science."

Schaller's team has developed an alternative



**SMOLTS TO ADULT SURVIVORS** — Survival rates for wild and hatchery Snake River chinook salmon from 1964 to 2004. A survival rate below 1 percent will lead to a population decrease for the stock, according to the Comparative Survival Studies group. To rebuild, at least 2 percent must be maintained, some experts say.

Source: Comparative Survival Studies

approach for use in NOAA's biological opinion and submitted it for review. Schaller's approach, one source said, "is transparent and is populated with actual data, whereas (the NOAA model) is highly complex, not transparent and uses synthetic (assumed) flow and survival data."

But while the U.S. Fish and Wildlife Service is not releasing their report, other documents detail their concerns about NOAA and are freely available on the web.

One such document from February 2006 indicates that the Fish and Wildlife Service had concerns about "made up" data, among other things:

- NOAA should exercise caution "in the planning phase to prevent the development of a model that implies precision the underlying data can't support;"
- Model results for the McNary to Bonneville reach differed from actual estimates;
- It is questionable whether there is adequate data for COMPASS to make in-season decisions for fish passage;
- NOAA makes assumptions about dam survival in years and at projects where no studies have been conducted.
- NOAA's model appears to be creating data that do not exist and treating those data the same as data which have more of an empirical basis.

• Bonneville's approach has been based on conditions the fish do not experience presently.

"Because most of these reservoir survival estimates are largely 'made up' based on non-tenable estimates of dam survival in non-studied years and within-season periods, the true sample size for investigating these relationships is greatly over inflated," the Comparative Survival Studies report stated.

The studies' leaders are seeking to expand the studies, by extending them to the Upper Columbia River and to steelhead. But Bonneville has refused to allow these additional experiments to go forward even though "these deficiencies have been caused largely by BPA policy decisions," according to the Independent Science Advisory Board, a panel that reports to NOAA Fisheries and the Northwest Power and Conservation Council.