

## Chapter 5 Environmental Consultation, Review, and Permit Requirements

In this Chapter:

- Laws and procedures to be met
- Actions taken
- Consultations

Several federal laws and administrative procedures must be met by the alternatives. This chapter lists and briefly describes requirements that will apply to elements of this project, actions taken to assure compliance with these requirements, and the status of consultations or permit applications.

### 5.1 National Environmental Policy Act

This EIS was prepared according to NEPA (42 USC 4321 et seq.). NEPA is a national law for protection of the environment. NEPA applies to all federal projects or projects that require federal involvement. BPA will take into account potential environmental consequences and will take action to protect, restore, and enhance the environment.

### 5.2 Endangered and Threatened Species

The Endangered Species Act (16 USC 1536) provides for conserving endangered and threatened species of fish, wildlife and plants. Federal agencies must ensure proposed actions do not jeopardize the continued existence of any endangered or threatened species, or cause the destruction or adverse modification of their habitat. When conducting any environmental impact analysis for specific projects, agencies must identify practicable alternatives to conserve or enhance such species.

Possible impacts of the proposed facilities to known or suspected occurrences of state or federal threatened, or endangered species are discussed here and in Chapter 4 of the Final EIS.

#### 5.2.1 Federal List

BPA asked the USFWS and NMFS to list the threatened and endangered species occurring within the vicinity of the proposed

project. Five federally-listed threatened and endangered animal species potentially occurring within the project vicinity were listed: the bald eagle, the grizzly bear, the Gray wolf, Snake River sockeye salmon, and Snake River chinook salmon. No proposed species were listed (see Appendix E for copies of the letters from the USFWS).

USFWS and NMFS require that a biological assessment be prepared if threatened or endangered species might be impacted by a federal action. BPA and the Tribe will continue to consult with both agencies on impacts to listed species. Two Biological Assessments are part of this Final EIS (see Appendices And B).

Potential impacts to species are discussed in Section 4.7.1.7, **Threatened and Endangered Species**.

There is one documented location of a *Howellia aquatilis* (water howellia) in Idaho, in Bonner County (Blair, 1997). In order to germinate the plant requires seasonally ponded wetlands such as sloughs and oxbows which dry out in the fall (Kibbler, 1997). No sloughs or oxbows are present in the project area. No other federally-listed plants occur in the program study area.

### **5.2.2 State List**

The IDFG lists the following threatened and endangered species potentially occurring in the project area: spring/summer/fall chinook salmon; bald eagle; peregrine falcon; and gray wolf. Cutthroat trout, steelhead, and bull trout are listed as priority species.

## **5.3 Fish and Wildlife Conservation**

The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 et seq.) encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 USC 661 et seq.) requires federal agencies undertaking projects affecting water resources to consult with the USFWS and the state agency responsible for fish and wildlife resources.

Currently, BPA is consulting with the USFWS and IDFG. BPA has also requested a formal consultation with NMFS.

Mitigation measures designed to conserve fish and wildlife and their habitat are in Chapter 4.

## **5.4 Heritage Conservation**

Congress passed many federal laws to protect the nation's cultural resources. These include the National Historic Preservation Act, the Archeological Resources Protection Act, the American Indian

Religious Freedom Act, the National Landmarks Program, and the World Heritage List. Preserving cultural resources allows Americans to have an understanding and appreciation of their origins and history. A cultural resource is an object, structure, building, site or district that provides irreplaceable evidence of natural or human history of national, state or local significance. Cultural resources include National Landmarks, archeological sites, and properties listed (or eligible for listing) on the National Register of Historic Places.

Construction, and operation and maintenance of proposed facilities could potentially affect historic properties and other cultural resources. A cultural survey of each site and access roads has been done to determine if any cultural resources are present and would be impacted. Five prehistoric sites have been identified.

The National Historic Preservation Act of 1966, as amended, requires that the agency official consider the effects an undertaking may have on historic properties and provide an opportunity for the State Historic Preservation Officer (SHPO) and/or the Advisory Council (AC) to comment on such effects. BPA and BIA are jointly consulting with SHPO and AC on this specific project. If any alternative would affect a historic property, specific mitigation plans would be developed and reviewed by the SHPO and AC. All excavation on federal lands must be done under an Archaeological Resource Protection Act of 1979. Excavation on non-federal lands may require permits or approvals from private landholders, the state of Idaho, or the Nez Perce Tribe depending on land status. Further, all excavation is bound by the Native American Graves Protection and Repatriation Act of 1990.

Research identified five sites within the study area. All sites are prehistoric and possess characteristics that appear to make them eligible for inclusion in the National Register of Historic Places under Criterion d, scientific information. Cherrylane, Sweetwater Springs, North Lapwai Valley, Cedar Flats, and Luke's Gulch sites had artifacts.

The Sweetwater Springs site may have artifacts that are 9,000 years old, with three possible prehistoric occupations of the site.

If sites cannot be avoided, BPA will work with the State Historic Preservation Officer of Idaho to determine if those sites are eligible for a listing under the NRHP. If they are, effects will be evaluated and appropriate mitigation measures initiated.

If previously unidentified cultural resources are found during construction which would be adversely affected by the proposed project, BPA would follow all required procedures set forth in the following regulations, laws, and guidelines: Section 106 (36 CFR Part 800) of the National Historic Preservation Act of 1966 as amended (16 USC Section 470); the National Environmental Policy

Act of 1969 (42 USC Sections 4321-4327); the American Indian Religious Freedom Act of 1978 (PL 95-341); the Archaeological Resources Protection Act of 1979 (16 USC 470a-470m); and the Native American Graves Protection and Repatriation Act of 1990 (PL 101 -601).

## 5.5 State, Areawide and Local Plan and Program Consistency

The proposed action alternatives would be consistent with the Nez Perce County Comprehensive Plan and the Clearwater and Nez Perce National Forest Plans. The Nez Perce County Comprehensive Plan is applicable to all parts of the county, except incorporated communities, federal lands and Nez Perce tribal lands. Forest plans guide natural resource management activities and establish management standards for areas within national forests.

The proposed satellite facilities, weir sites and control/treatment stream strategies, located on national forest system lands, are consistent with the current forest plans. In addition, continued implementation of current and proposed activities identified in the forest plans, such as grazing, recreation, mining or timber sales would not be affected by the additional facilities and land uses proposed in the EIS, as long as forest plan standards are maintained; therefore, no amendments to the forest plans are necessary. The Tribe would work with the USFS while designing and locating the proposed facilities. Special use permits would be obtained and USFS PACFISH management objectives would be met.

The Use of Existing Facilities Alternative would be inconsistent with the *Comprehensive Land Use Plan of Clearwater County, Idaho*. This Plan, adopted in 1962 and amended in 1992, identifies goals and objectives that reflect the needs of Clearwater County. In the Land Use and Natural Resources Section, the Plan identifies a goal: "... provide a variety of long-term beneficial uses of all the land within Clearwater County to promote proper, orderly growth, and economic stability." Policy C of this goal "Oppose any plans that include introducing, or reintroducing any endangered, or threatened species into or near Clearwater County." The Use of Existing Facilities Alternative would partially be located in the county and would be inconsistent with this policy.

### 5.5.1 Proposed Central Incubation and Rearing Facilities

Two central incubation and rearing facilities would be built for hatchery stock in the Proposed Action. The Cherrylane facility is proposed for a site on private land on the Nez Perce Reservation, and the Sweetwater Springs facility is proposed for a site on state land off of the reservation. Both of these facilities would be within

unincorporated Nez Perce County. The Nez Perce County Comprehensive Plan identifies, as one of its goals, to conserve natural resources so as to provide for future as well as present needs.

### **5.5.2 Proposed Satellite Facilities, Spring Chinook Direct Release and Weir Sites**

The Proposed Action and the Use of Existing Facilities Alternative propose six satellite rearing facilities for supporting production capacity at Cherrylane and Sweetwater Springs. Four of these facilities are located in the two national forests, that is, one in the Clearwater National Forest (Yoosa/Camp Creek) and three within the Nez Perce National Forest (Mill Creek, Newsome Creek and Cedar Flats). Luke's Gulch is located on tribal land on the Nez Perce Reservation. Three spring chinook direct release sites and 11 weir sites are proposed in the national forests.

One of the goals of the Nez Perce National Forest Plan is to "... provide and maintain a diversity and quality of habitat that *ensures* a harvestable surplus of resident and anadromous fish species." The forest plan specifies that the fish habitat potential be increased to 87% throughout the forest through four measures:

- direct habitat improvement,
- soil and water resource improvement,
- use of fish/water quality objectives for individual drain-ages; and,
- maintenance of current high habitat levels in areas designated to remain roadless.

The forest plan points out that these improvement measures would benefit sensitive fish species (such as chinook salmon). The Clearwater Forest Plan identifies a similar goal to "... manage the forest's streams to achieve optimum levels of fish production."

The goal of the action alternatives is to produce enough salmon returning to spawn, within 20 years following project initiation, so that some salmon could be harvested. This goal supports the finding that the proposed project is consistent with these forest plans.

### **5.5.3 Water Appropriation**

The U.S. has filed for reserved water rights for the Nez Perce Tribe; however, it is anticipated to be years before these water rights are adjudicated by Idaho state courts. Before any surface waters could be used for the alternatives, these rights need to be granted. The Nez Perce Tribe is presently working with the state

of Idaho in an attempt to use the water in advance of the anticipated court degree. In the absence of the Tribe being granted the use of the water, BPA would apply for water rights for Cherrylane, Sweetwater Springs and each satellite facility requiring one. No water rights would be needed for the spring chinook direct release sites and weir sites.

Although there is a moratorium within the Clearwater River Subbasin at the present time, surface water used for hatchery facilities is considered nonconsumptive. Furthermore, the purpose of the moratorium is to conserve surface water for the fish, and since the purpose of the NPTH is to restore salmon runs in the Clearwater River Subbasin, the proposed water rights would likely be exempt from the moratorium. BPA would not proceed with expending the funds necessary to construct the proposed facilities without first obtaining the appropriate water rights to operate these facilities. The water rights would be obtained for both surface water and groundwater. Until water rights could be obtained, BPA and the Tribe would discuss a waiver for the moratorium with the Idaho Department of Water Resources.

## **5.6 Farmland Protection Policy Act**

The Farmland Protection Policy Act (7 USC 4201 et seq.) directs federal agencies to identify and quantify adverse impacts of federal programs on farmlands. The Act's purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to non-agricultural uses.

The Proposed Action is in accordance with the Farmland Protection Policy Act, (7 USC 4201 et. seq.). The Sweetwater Springs and North Lapwai Valley sites would not affect any prime, unique, or other important farmland as designated by the Natural Resources Conservation Service (Gariglio, 1995).

The proposed hatchery site at Cherrylane is located on soils designated by the NRCS as prime farmland. The proposed hatchery has special siting requirements that this location satisfies. Site requirements include proximity to the Clearwater River, level terrain, and land availability. Alternative sites do not meet the siting requirements or do not affect farmland of lower relative value than the Cherrylane site. In addition, evaluation of the proposed site according to criteria set forth in the Act show the site to score relatively close to those sites which are to be given minimum consideration for protection.

## 5.7 Recreation Resources

BPA reviewed the Wild and Scenic River inventory of listed and proposed rivers (16 USC Sec. 127 (b)) qualifying for Wild, Scenic, or Recreational River status to determine the status of proposed sites for the program. The portion of the Selway River adjacent to the Cedar Flats site, and the mouth of Meadow Creek, are designated as a Recreational River in the Wild and Scenic Rivers system. The Selway River drains the Selway-Bitterroot Wilderness of northeastern Idaho. The proposed Cedar Flats facility is in the viewshed for the recreation use which occurs above the Ranger Station, including access to wilderness trailheads. The river is used by float boaters primarily during the spring and summer seasons. Other recreational activities along the river include camping, fishing, swimming, photography, hiking and driving for pleasure.

A National Historic Trail was identified in the National Trail System (16 USC Sec. 1242-1245) on Trail No. 40 (the Nee-Me-Poo Trail) in the area of the Yoosa/Camp Creek site.

## 5.8 Floodplain/Wetlands Assessment

In accordance with U.S. Department of Energy regulations on Compliance with Floodplain/ Wetlands Environmental Review Requirements (10 CFR 1022.12), an assessment of program impacts on floodplains and wetlands has been prepared. BPA published a notice of floodplain/wetlands involvement for this program in the *Federal Register* on April 29, 1994.

### 5.8.1 Project Description

The purpose and need for the proposed program are described in Chapter 1. Locations of 100-year floodplains were determined from Flood Insurance Rate Maps published by the Federal Emergency Management Agency, U.S. Department of Housing and Urban Development. For those facility and weir sites not mapped by FEMA, the 100-year flood elevation was estimated and compared to the elevation at the site. Analysts reviewed flood frequencies using existing U.S. Geological Survey stream gauge records at stream locations as close to each site as possible to determine channel characteristics at each site: slope; channel roughness; bottom width, and top width. The data were used to determine the channel's flood capacity using existing topographic maps of the area.

Wetlands that would be affected by the proposed program were identified from National Wetlands Inventory maps prepared by the U.S. Fish and Wildlife Service, and from field inspections. Wetlands are generally considered a unique resource in the United States because of the limited total acreage of unaffected wetland habitat in

comparison to total upland habitat. In acknowledgment of the value of wetland resources, jurisdictional wetlands have been placed under federal protection through Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act. Section 404 is jointly administered by the Army Corps of Engineers and the Environmental Protection Agency, and covers all fills placed in "...waters of the United States, including lakes, rivers, streams, marshes, swamps and bogs." Section 404 permits cover stream alterations and diversions, and a wide variety of other land disturbing activities that take place in, or affect, these waters. As of September 1993, Section 404 also covers drainage, excavation and other procedures that affect wetlands. All necessary permits/conditions required for project activities to take place would be obtained or complied with.

Federal policy for determining mitigation for impacts to wetlands, which requires a Section 404 permit, was developed in the Memorandum of Agreement (MOA) between the EPA and the Corps. The MOA expresses the goal of no overall net loss of wetland functions and values and defines the sequence of review for wetland mitigation. The review of projects under the MOA involving activities impacting waters of the United States is predicated on the Council of Environmental Quality (CEQ) regulations as 40 CFR 1508.20 which defines mitigation to include: (1) avoidance of impacts, (2) minimizing impacts, (3) rectifying impacts, (4) reducing impacts over time, and (5) compensation for remaining impacts.

### **5.8.2 Floodplain/Wetlands Effects**

Floodplain impacts are discussed in Chapter 4. Based on preliminary engineering design, three satellite facilities and 11 weirs would be placed within the 100-year floodplain.

Intake and outlet structures for facility water supply/discharge at all facilities would be located within the 100-year floodplain. These would be permanent structures located in the riverbank with adequate protection to prevent streambank erosion or structural damage during high river flows. They would not contribute to any significant rise in flood elevation through the creation of a backwater.

Five of the satellite facilities would have fish acclimation ponds within the 100-year floodplain, including Newsome Creek, Cedar Flats, and Mill Creek. The ponds would generally be low to the ground offering little resistance to floodwaters and thereby would not contribute to any significant rise in the flood elevation. Ponds would be repaired or replaced if damaged by floodwaters.

Mobile trailers for facility personnel would be required at the three satellite facilities listed above. If possible, their placement would be outside the 100-year floodplain.

Eleven weirs would be placed within the stream channel as part of the action alternatives. Their purpose is for adult broodstock

collection or monitoring and evaluation. Weirs would be placed within the active stream channel and would be designed to minimize changes in stream hydraulics and to wash out in the event of a flood. Permanent anchoring points on either streambank would be required at each weir site. These could range from concrete anchors placed flush with the bank surface to steel members driven into the bank. The anchoring points would have adequate protection to prevent bank erosion or structural damage during high river flows. A sill in the streambed would likely be required at some of the weir sites. Specific weir sites requiring a sill would be identified during the design phase. The sill would be placed along the bottom of the stream channel and would have a low vertical profile. It would not create a backwater and would not contribute to any significant rise in flood elevation. No impact on floodplains would be expected.

Placement of structures and improvement of access roads in the floodplain would not significantly increase the risk of flooding or flood damage. Displacement of floodwaters by structures is not expected to alter floodplain storage volume nor cause a local increase in the flood stage. Soil and vegetation disturbance at structure sites would not adversely impact the floodplain. Fill would be placed where necessary to support structures but would not generally create an elevated area that would divert or impede floodwaters.

The Yoosa/Camp Creek site has been identified as a possible jurisdictional wetland. The site is forested with the dominant community type being western red cedar-ladyfern. The soils are dark brown silty loams with decomposed organic material in the top 0-25 cm (0-10 inches). Three soil test pits were dug during field investigations of the site. The soils display characteristics of seasonal saturation and anaerobic conditions. Hydrology indicates a perched water table.

Development of the Yoosa/Camp Creek satellite facility would result in the removal of approximately 0.5 ha (1.2 acres) of forested wetland. A wetland delineation would be conducted to determine exact boundaries and total area impacted. The cedar trees are old but the stand is not considered old growth. The wetland provides good wildlife habitat and helps stabilize the sediment. The soils hold water and trap sediments in the event of a flood. These values would be lost with the removal of the vegetation. Mitigation would be developed with the Corps and the state to replace the wetlands impacted by the project. A mitigation plan would also be developed to insure impacts to remaining wetlands would be minimized to the fullest extent possible during construction. The plan could include minimizing the number of trees cut and using sediment barriers during earth-disturbing activities.

Development of the Luke's Gulch satellite facility would require access road improvements across a wet area that receives surface

water flow from upslope springs. The area affected would be less than 0.2 ha (0.5 acre).

Permits would be required from the Corps for these activities (see Section 5.12, **Discharge Permits under the Clean Water Act**).

### **5.8.3 Alternatives**

Under Executive Orders 11988 and 11990, developments on floodplains and in wetlands are discouraged whenever there is a practical alternative. Because the proposed project requires being next to creeks and rivers, there are no practical alternatives.

The No Action Alternative would not directly impact wetlands or floodplains.

### **5.8.4 Mitigation**

Mitigation for site-specific impacts is discussed in Chapter 4. Mitigation for wetland impacts at the Yoosa/Camp Creek site would be discussed with the Corps and the state and could potentially include replacement, enhancement or creation of wetlands.

## **5.9 Global Warming**

In a worst case scenario, proposed construction would clear about 2-4 ha (5-10 acres) of forest, releasing about 300-600 kilograms (660-1320 lb) of carbon to the atmosphere fairly rapidly through debris burning or decay. This carbon release would be partially mitigated by replanting cleared areas with native vegetation and by using harvested logs for lumber or for utility poles. Clearing would have no impact on global warming.

The amount of vehicle exhaust released during and after construction would have no impact on global warming.

## **5.10 Pollution Control at Federal Facilities**

Several pollution control acts apply to this project:

### **5.10.1 Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA), as amended, is designed to provide a program for managing and controlling hazardous waste by imposing requirements on generators and transporters of this waste, and on owners and operators of treatment, storage, and disposal (TSD) facilities. Each TSD facility owner or operator is required to have a permit issued by EPA or the

state. Construction and maintenance activities in BPA's experience have generated small amounts of hazardous waste. These typically include: solvents, pesticides, paint products, motor and lubricating oils, and cleaners.

The proposed project would not generate large amounts of solid waste. Small amounts of listed hazardous wastes may be generated by the project. These materials would be disposed of according to state law and RCRA.

### **5.10.2 Toxic Substances Control Act (TSCA)**

This Act is intended to protect human health and the environment from toxic chemicals. Chemical usage would be restricted to the central incubation and rearing facilities. All chemicals to be used have been used at other existing fish hatcheries. Their manufacture and use is in accordance with TSCA. This program would comply with the Act.

### **5.10.3 Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)**

This Act registers and regulates pesticides. There would be no insecticides or rodenticides used in the alternatives, however formalin, which is a fungicide, will be used to treat eggs during incubation in accordance with the Act.

## **5.11 Noise Control Act**

Local, state and federal regulations and guidelines protect residents and workers from excessive noise. The Federal Noise Control Act of 1972 (42 USC 4901) requires that federal entities, such as BPA, comply with state and local requirements regarding noise. However, there would be no noise impacts that would exceed state and local requirements, only usual noise such as generators, trucks, people and construction.

## **5.12 Discharge Permits under the Clean Water Act**

The Clean Water Act (CWA) regulates discharges of dredged or fill material into waters of the United States.

BPA would acquire National Pollutant Discharge Elimination System (NPDES) permits from EPA, Region 10, as required, for the point discharge of any pollutant regulated under the CWA (33 USC 1251 et seq.) to the Clearwater River or its tributaries from NPTH facilities. Under Section 401 of the CWA, a federal permit to

conduct an activity that results in discharges into navigable waters is issued only after the affected state certifies that existing water quality standards would not be violated if the permit were issued. The EPA and the state of Idaho (ID Code 39118) recognize five different categories of aquaculture facilities for processing cold water fish. The NPTH facilities fall into the bottom range for a Type C facility. However, facilities under 9070 kg (20,000 lb) annual production are currently excluded from NPDES requirements (40 CFR, Part 122). Based on this classification, only the Cherrylane facility with a fall chinook on-site production of about 9070 kg (20,000 lb) could be regulated under the federal/state water quality permitting program. The current Cherrylane proposal would use off-line treatment of cleaning flow. Solids would be collected either by a decant system off the raceway or by microscreens from the fall chinook holding/acclimation ponds.

Section 402 of the Clean Water Act authorizes storm water discharges associated with industrial activities under the NPDES. The Environmental Protection Agency, Region 10, has a general permit for federal facilities for discharges from construction activities. BPA would issue a Notice of Intent to obtain coverage under the EPA general permit and would prepare a Storm Water Pollution Prevention Plan (SWPP). The SWPP Plan would help ensure that erosion and control measures would be implemented and maintained during construction. The SWPP Plan would address Best Management Practices for stabilization practices, structure practices, storm water management, and other controls.

Wetland management, regulation, and protection is related to several sections of the CWA, including Sections 401, 402, and 404, as well as a combination of other laws originally written for other uses. These are: The Coastal Zone Management Act, the Endangered Species Act, Historic Preservation Act, Rivers and Harbors Act, and the Wild and Scenic Rivers Act. Section 404 of the CWA (33 CFR 320-330) requires either review by the managing agencies or certification of consistency.

Compliance with these regulations is ensured by General Conditions for Nationwide Permits (*NWP*). Section 404 Conditions must also be complied with. The activities proposed by this project would most likely be authorized by the Corps' NWPs (33 CFR 330) under CWA Section 404, but would require notification and possibly State 401 water quality certification. The following NWP's could apply to the project:

NWP # 7 - Outfall Structures

NWP # 13 - Bank Stabilization

NWP # 14 - Road Crossing

NWP # 18 - Minor Discharges

NWP # 33 - Temporary Construction, Access and  
Dewatering

All conditions for NWP's under Section 404 would be met. See Section 5.8 for the Floodplain/Wetlands Assessment.

### **5.13 Underground Injection Permits under the Safe Drinking Water Act**

The Safe Drinking Water Act (42 USC Sec. 300f et seq.) is designed to protect the quality of public drinking water and its sources. In the state of Idaho, the Department of Health and Welfare, Division of Environmental Quality is responsible for implementing the rules and regulations of the Act. The proposed program would be designed to comply with local ordinances and laws and state water quality programs so as not to degrade the quality of aquifers nor jeopardize their use as a drinking water source.

A public drinking water permit would be required for Cherrylane and other facilities.

### **5.14 Permits from the State**

A Stream Channel Alteration Permit would be required for all instream construction. This includes intake and outlet pipes placed within stream channels. EPA will coordinate with IDFG, the State Department of Water Resources and the Corps to determine what permit (Corps and Water Resources joint permit) forms will be required.

BPA would request 401 water quality certification from the Idaho Division of Environmental Quality for program activities.

