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Removing Dams (From Consideration)

How the feds plan to shirk the mission of a salmon recover

By Ted Williams

Fly Rod & Reel, March 2005

In the minds of hydropower producers, property-rights zealots and timber moguls as well as many grazers, farmers and irrigators, the Endangered Species Act functions like a bovine-spongiform prion, eventually causing madness. It's not that the ESA seriously inconveniences these people; it's just that they can't abide the federal government telling them how to do business, especially when they believe the law's constraints on sacrificing public resources might cost them additional profits. That's why they worked so hard and spent so much money to help bring George W. Bush to power, and that's why so many of them have joined his administration.

Early on, Bush bureaucrats realized they couldn't neutralize the Endangered Species Act with legislation. So they hatched creative and frequently illegal (say the courts) administrative schemes to circumvent the will of Congress and the American public. Consider their machinations with the 12 threatened and endangered salmonid stocks in the Columbia River Basin. First they hired timber lobbyist Mark Rutzick and inserted him into the fish section of the National Oceanic and Atmospheric Administration (NOAA Fisheries) to dictate salmonid policy. Rutzick had attracted the Bush administration's attention when he led Big Timber's campaign to do away with ESA listings for salmon and steelhead by pretending that there's no difference between wild and hatchery stocks. The feds, Rutzick had declared before he became part of the administration, needed "to use hatchery fish more aggressively to restore salmon runs," a strategy that would "benefit timber-dependent communities and industries."

Under marching orders from its new salmonid czar, NOAA Fisheries appalled the scientific community (including its own biologists) with its May 28, 2004 proclamation that, henceforth, domestic salmonids raised in hatcheries can count as wild fish when determining whether or not a stock requires ESA protection. Who needs clean, cold, free-flowing rivers when we can mass-produce salmon and steelhead in concrete fish factories? [See Conservation, November/December 2004.] Then, on September 9, 2004, NOAA Fisheries released a draft biological opinion smeared with Rutzick's fingerprints. Under the Endangered Species Act the US Fish and Wildlife Service or NOAA is required to issue a biological opinion as to whether or not a project jeopardizes a listed species (the latter agency presides over creatures spending significant parts of their lives in saltwater). If NOAA or the Fish and Wildlife Service determine jeopardy, the project can proceed only if the agency approves "reasonable and prudent alternatives."

But Andy Eller, a Fish and Wildlife Service biologist in Florida, tells me his superiors have privately informed him that, under White House orders, there will be no jeopardy opinions for any species anywhere no matter what.

The Bush administration's draft biological opinion is a court-ordered replacement for the five-year-old Clinton administration document, ruled illegal in May 2003 by US District Judge James Redden on grounds that it contained no mechanism for implementing all the habitat enhancements, hatchery improvements, and dam tweaks it falsely claimed would prevent jeopardy. But, dependent though it was on unproven, unattainable offsite mitigation and failed strategies such as transporting smolts

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around dams by barge and truck, the Clinton opinion at least acknowledged obvious legal and scientific realities: 1. that salmon and steelhead recovery was the goal of all this prodigious effort and expenditure; 2. that the eight mainstem dams on the Columbia and Snake jeopardize the listed stocks; and 3. that if other prescribed fixes failed, breaching the four most hurtful dams-on the lower Snake River-must at least be considered.

The Bush opinion, on the other hand, is based on the astonishing and unprecedented assertion that, because the dams were built before enactment of ESA, they are as much a part of the natural environment as waterfalls-that is, even though the document acknowledges huge salmonid mortality caused by the dams (over 80 percent of the entire run in some cases), dams no longer count as fish killers. Further, the Bush opinion discards the ESA's plainly stated mission of recovery and proclaims that merely keeping a genetic ember aglow is good enough and that unspecified people at some unspecified future time can worry about restoring the stocks to a point where extinction is no longer likely (provided they're so inclined, because it's strictly voluntary). Finally, the Bush opinion rejects even the remote possibility of breaching the lower Snake River dams, an option that would save money as well as salmonids.

Breaching these four dams, which produce less than five percent of the Northwest's power, would cost under \$1 billion. But according to the Bush administration's own biological opinion, all the prescribed Rube Goldberg techno-fixes, which the administration admits won't recover the stocks and which haven't worked in the past, will cost \$6 billion; and that's just for the next 10 years. Like the Clinton plan, the Bush plan is built around trucking and barging, which in a quarter century has not once resulted in the four- to six-percent adult return needed for recovery or even the two-percent return needed to halt the ongoing extinction process.

A billion dollars spent to get rid of the dams would be a lucrative investment. In addition to saving the \$6 billion the administration proposes to spend on just treating water for the next decade, breaching would save \$200 million a year now spent on dam repairs. According to the Army Corps of Engineers, restoration of the Snake's natural flow along the 140-mile stretch from Lewiston, Idaho to Pasco, Washington would annually inject \$376 million into the regional economy, \$65.5 million of it from improved fishing. In 2001 a rare (and brief) salmon season in Idaho, made possible by improved ocean conditions, generated \$90 million.

In 2002 the General Accounting Office undertook an exhaustive examination of salmon recovery and reported that, although \$3.3 billion had been spent over 20 years, essentially nothing had been accomplished. Finally, despite the climate-induced, short-lived upswing in adult returns after the turn of the 21st century, NOAA Fisheries itself admits that Snake River salmon are in no better shape today than they were when they were listed more than 10 years ago.

This lack of progress was the central message of former Oregon governor John Kitzhaber when he addressed the October 30, 2004 board meeting of American Rivers at the Skamania Lodge in Stevenson, Washington. Kitzhaber, on hand to receive a major award for his courageous advocacy of salmon recovery, had been the only Columbia Basin governor to call for breaching of the lower Snake River dams, describing it as "a scientific no-brainer." After his talk he told me this: "We've won it all in court, and not one thing has happened to recover these fish. I don't think the new draft biological opinion is going to stand up to legal scrutiny, but the tragedy is that it will take NOAA Fisheries two or three years to do another one. This whole debate is not about salmon as much as it is about the Endangered Species Act."

Seated with Kitzhaber was American Rivers' northwest regional director, Rob Masonis. "We would not

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spend \$6 billion dollars to send someone halfway to the moon, or to build half an airport," he declared. "And we should not spend \$6 billion dollars to merely slow the rate of extinction of wild salmon and steelhead. Instead, we should invest the money in actions that will lead to recovery, such as breaching the four lower Snake River dams. We had 22 Snake River sockeye return in 2004; and there's a no-jeopardy determination in the Bush biological opinion. That doesn't pass the straight-face test. How could someone possibly conclude that Snake River sockeye aren't in jeopardy? It's legal artifice."

The only good thing about the opinion, according to Masonis, is its back-door admission that tweaking the system won't work. In fact, the document states that you can tweak to the tune of \$6 billion and still not make progress. He also worries about costs of maintaining the status quo beyond the \$6 billion—such as reluctance on the part of taxpayers and ratepayers to fund initiatives that really work. For example, after spending \$160 million on useless fish weirs at the lower Snake River dams, they'd be less enthusiastic about ripping them out along with the dams themselves, even though independent biologists agree that dam breaching is the only solution that can work.

If the Clinton administration had showed some courage and resolve in writing the first biological opinion, that document would have passed court muster and the Bush administration would not have been able to perpetrate all this mischief. In November 1999, as NOAA Fisheries was preparing the biological opinion of 2000, I reported the following in *Fly Rod & Reel*: "Now President Clinton has an opportunity to set a national precedent for admitting and correcting environmental blunders by dismissing the quack cures of the engineers and disabusing America of the dangerous superstition that we can redesign nature." But because Clinton failed to take that opportunity, because he rejected dam breaching in favor of barging and trucking and other bogus elixirs, Bush's people have been given an opportunity to redesign federal law.

Both administrations had all manner of warning. In March 1999, 206 of the nation's most respected fisheries scientists briefed President Clinton about the realities of salmonid recovery: "The weight of scientific evidence clearly shows that wild Snake River salmon and steelhead runs cannot be recovered under existing river conditions. Enough time remains to restore them, but only if the failed practices of the past are abandoned and we move quickly to restore the normative river conditions under which these fish evolved." Among the signers were Dr. Robert Behnke of Colorado State University, arguably the world's leading authority on salmonids, and the University of Idaho's Dr. Richard Williams, chair of the independent scientific study group that had been hired by Oregon, Washington, Idaho, Montana and NOAA Fisheries and which had dismissed trucking and barging as a farce.

Concurring with Williams' group was a team of tribal and state fisheries biologists assembled by NOAA Fisheries to recommend recovery strategies. Their report also trashed trucking and barging, concluding that dam breaching on the lower Snake was the only way to get salmon back in the river and that this option would result in an 80 percent probability of recovering spring/summer chinooks and a 99 percent probability of recovering fall chinooks.

Confronting the White House in the salmon wars are advocates not just of fish but of fiscal responsibility. "Salmon recovery will only come when the fish have a healthier river system," says Autumn Hanna, Senior Policy Analyst at Taxpayers for Common Sense. "Twenty-three years of silly schemes like this have cost Americans more than \$3 billion, while making things worse for salmon and destroying salmon-based economies. We are deeply disappointed that the Bush Administration, which has pledged its concern for taxpayers, has nevertheless decided to continue this boondoggle."

Congress is outraged as well. On October 12, 2004 more than 100 US representatives wrote President

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Bush, complaining that, after the enormous investment of time and money, the draft biological opinion "redefines the problem instead of fixes it," "could place an even greater liability on thousands of West Coast fishermen, and millions of federal taxpayers" and "would cost \$600 million a year just to keep salmon on the brink of extinction instead of headed for improved survival rates."

Even the four Northwest states, which support restoration but haven't made a lot of noise since Kitzhaber left office, are expressing bitter disappointment. Jim Myron, natural resource policy advisor for Oregon's new governor, Ted Kulongoski, told me his boss is unhappy about "the approach the federal government has taken with regard to changing the environmental baseline to include the dams as part of the landscape." And he sent me 40 pages of written comments which, for example, call the plan "so vague and undefined regarding what actions are proposed that it creates a situation where it is impossible even for those familiar with the FCRPS [Federal Columbia River Power System] to understand what the agencies are proposing to do, let alone the public" and which accuse "the action agencies"-Bonneville Power Administration, Army Corps of Engineers, and Bureau of Reclamation-of "trying to avoid stating to their partners and to the public what they can and can't do to conserve salmon in their operation of the FCRPS."

Ron Boyce of the Oregon Department of Fish and Wildlife, said this: "We're concerned about them changing the requirements under ESA for improving survival and recovering listed salmon. Now it's just to do no additional harm. That's a major shift in focus. If this goes on, it will further jeopardize these fish. The levels of allowable take [by the dams] are just astronomical-84 percent for Snake River fall chinook, for instance."

On September 28, 2004, 412 businesses sent Congress a letter that called the Bush administration's draft biological opinion "a substantial step in the wrong direction" and pled for relief in the form of the recently introduced bi-partisan Salmon Planning Act-HR 1097 to "initiate a series of studies that explore the economic costs and benefits associated with effective salmon and steelhead recovery." Signers included fly-fishing companies Sage, Winston, Redington, Bauer, Cortland, Scott, Simms, Berkley, Dr. Slick, Patagonia, Helly Hansen, Pure Fishing, and conservationist Bob Triggs of the Little Stone Flyfisher Guide service.

Even Judge Redden, who surely will be hearing a challenge to the new biological opinion (possibly by the time you read this), is weighing in. Apparently he dislikes Bush's plan even more than Clinton's, which he ruled illegal; and he is publicly suggesting that NOAA Fisheries and the action agencies are steering us into a "train wreck."

During the 30 years Bert Bowler worked as a fisheries biologist for the Idaho Department of Fish & Game he struck me as unusually forthcoming during interviews. Now that he is native fisheries director for Idaho Rivers United he is even more so. What impresses Bowler most about the Bush administration's approach to salmonid management is its "arrogance." In addition to its shell game with wild and hatchery fish and its brazen assertion that the Endangered Species Act isn't about "recovery" of listed species, Bowler cites its 2004 attempt to cut summer spill rates needed to flush at least a few fall chinook smolts over the dams: "Their hue and cry was, 'Gee the energy market's bad; Bonneville's losing money; we're going to have to reduce spill.' We [a coalition of Idaho Rivers United, Save Our Wild Salmon, American Rivers, the Sierra Club, the National Wildlife Federation, and the Pacific Coast Federation of Fishermen's Associations] took the spill issue to Judge Redden. And we won. The feds then appealed to the Ninth Circuit, and we prevailed there, too.

"Their attitude has been: 'This federal judge, he's just getting in our way, but we're still going to plow ahead.' It's all a careful strategy, but they don't want to do everything right away because there'd be

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a huge outcry. These are smart people, working overtime to get around ESA. Edicts are coming down from DC: 'Hey, I don't care what the science says, this is the way it's going to be.' Bush put the foxes in charge of the henhouse; they're busy eating the chickens, and in four years there won't be any left. Demoralization among federal employees is horrendous; people are bailing out, but that's what the administration wants. Then they can outsource the whole thing."

Speaking of arrogance, maybe the most telling comment comes from the Bush administration itself. "We are doing the right thing by the law and by the fish," proclaims NOAA Fisheries spokesman Brian Gorman. "The Endangered Species Act does not mandate recovery; it mandates a recovery plan. That's different from recovery."

Advocates of wild salmon and steelhead should not give up; they still have the courts and Congress. On the other hand, they should be prepared for four very bleak years. I interviewed Bowler on October 12, 2004-before Bush had procured a second term. Now Bowler's observation that the administration doesn't want to give away the public's salmon and steelhead "right away" no longer applies. Now the president and his people don't have to worry about creating a huge outcry and backlash because they can't get voted out of office.

Now sportsmen and environmentalists can look for the White House to move much more quickly and aggressively against what it perceives to be and calls "impediments" and what the rest of society calls environmental laws.