



# United States Department of the Interior



U.S. FISH AND WILDLIFE SERVICE  
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In Reply Refer to:  
FWS/R7/SAFWFO

Ms. Samantha Owen  
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Seattle, Washington 98104

Subject: Draft Fish and Wildlife Program and Draft Summary of Study Results for the Eklutna Hydroelectric Project (Service file number 2022-0074477)

Dear Ms. Owen:

Thank you for providing the Draft Fish and Wildlife Program (Program), dated October 27, 2023, and Draft Summary of Study Results, dated October 31, 2023, on behalf of the Owners of the Eklutna Hydroelectric Project (Project). The U.S. Fish and Wildlife Service (Service) appreciates the time and effort that have gone into the studies and development of alternatives. The Service has reviewed the Draft Program and Draft Summary of Study Results, we offer the following background and recommendations.

The 1991 Fish and Wildlife Agreement (1991 Agreement) was developed in response to resource agency concerns over the loss of a sockeye salmon (*Oncorhynchus nerka*) run that once spawned in Eklutna Lake<sup>1</sup> (AEA 1992). According to the Environmental Assessment (EA; AEA 1992), the loss caused by the 1929 development project and the desires of the fish and wildlife agencies to provide appropriate consideration to fish and wildlife resources led to agencies' initial recommendation that the Project be placed under Federal jurisdiction. The 1991 Agreement process was intended to be as protective as the Federal Power Act (FPA) such that it would

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<sup>1</sup> According to the Alaska Energy Administration's EA, during negotiations of the Eklutna sale, "One significant problem was identified; namely, loss of a sockeye run that once spawned in Eklutna Lake. The loss was caused by a small private power development constructed in 1929. This problem was not identified in pre-authorization studies for the Federal Eklutna Project, and the Federal project does not include any mitigation. This specific problem and the desires of the fish and wildlife agencies to provide appropriate consideration to fish and wildlife resources over the long run led first to recommendation that the two projects [Eklutna and Snettisham] be placed under FERC jurisdiction; and subsequently to the August 7, 1991, Agreement that provides a process similar to FERC's but without a requirement for Federal regulation." (AEA 1992).

obviate the need for the Federal Energy Regulatory Commission (FERC) licensing process<sup>2</sup>. The 1995 Alaska Power Administration Sale Act addressed the sale of the only two assets administered by the Alaska Power Administration (APA), the Eklutna and Snettisham Projects, and directed the Secretary of Energy to terminate the APA<sup>3</sup>. Mitigation commitments were required for the divestiture<sup>4</sup>; specifically. The Fish and Wildlife Agreement ensured protection and enhancement of fish and wildlife and protection of cultural resources that may be identified in the future, making it legally enforceable<sup>5</sup>.

According to the 1991 Agreement and subsequent EA, the Project Owners are required to develop future environmental studies to quantify impacts and develop proposals for the protection, mitigation, and enhancement of fish and wildlife affected by such hydroelectric development. The overarching goal of the 1991 Agreement is for the Eklutna Owners to work in consultation with resource agencies to quantify the impacts of the Eklutna Hydropower Project on fish and wildlife resources and to develop and implement a Fish and Wildlife Program with measures to protect, mitigate damages to, and enhance (PME) fish and wildlife (including related spawning grounds and habitat) affected by the Eklutna Project<sup>6</sup> (AEA 1992). The 1991 Agreement was intended to provide a means to identify and address fish and wildlife issues post-sale.

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<sup>2</sup> The 1991 Agreement specifically states the Agreement is a “mechanism to develop and implement measures to protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat) [and] obviate the need for the Eklutna Purchasers and AEA to obtain FERC licenses.” The 1992 Divestiture Summary Report stated that the 1991 Agreement would work “at least as well as Federal regulation for the intended purpose of mitigation and enhancement of affected fish and wildlife resources” and would therefore be sufficient to restore and maintain habitat.

<sup>3</sup> Alaska Power Administration Sale Act, 1995 H.R. 104-187 “These findings indicate that the time for the Federal Government's divestiture of these projects is ripe, since the goals as originally intended have been met.”

<sup>4</sup> APA EA. “Mitigation commitments required for Implementation of Proposed Alternative [divestiture]

- The final Environmental Management Plan will include language that affords protection to cultural resources that may be identified in the future.
- Protection and enhancement of fish and wildlife is ensured through the Fish and Wildlife Agreement; Snettisham and Eklutna Projects (effective August 7, 1991). This agreement encompasses assessment of damages to resources.”

<sup>5</sup> Alaska Power Administration Sale Act, 1995 H.R. 104-187 “H.R. 1122 and separate formal agreements provide for the full protection of fish and wildlife. The purchasers, the State of Alaska, the U.S. Department of Commerce, the National Marine Fisheries Service (NMFS) and the U.S. Department of the Interior have entered into a formal agreement providing for post-sale protection, mitigation and enhancement of fish and wildlife resources affected by Eklutna and Snettisham. H.R. 1122 makes that agreement legally enforceable. As a result of this formal agreement, the Department of Interior and the Department of Commerce all agree that the two hydroelectric projects warrant exemption from the Federal Energy Regulatory Commission (FERC) licensing under the Federal Power Act.”

<sup>6</sup> AEA EA, “Protection and enhancement of fish and wildlife is ensured through the Fish and Wildlife Agreement (effective August 7, 1991), which encompasses assessment of damages to resource, and provides for future resource enhancement and mitigation procedures. In addition, the process includes public involvement that will be utilized toward development of a fish and wildlife program.”

**Draft Fish and Wildlife Program**

The Draft Program does not address fish passage; it proposes to release a baseline level of year-round instream flows from the Anchorage Water and Wastewater Utility portal valve located approximately 1 mile downstream from the Eklutna Lake dam, and it does not propose infrastructure changes to accommodate the higher flows required for channel and habitat maintenance. As drafted, we believe the Program does not entirely meet the intent of the 1991 Agreement, which was established in part due to concerns for the sockeye salmon run.

While the 1991 Agreement was intended to be as protective as the Federal licensing process and therefore obviate the need for licensing by FERC; however, there are some significant disparities between what has occurred and would have occurred under FERC licensing. Under the FERC process, section 18 of the FPA would have provided the Service and National Marine Fisheries Service (NMFS) with authority to issue fishway prescriptions. Section 10(j) of the FPA would have required license conditions for protection, mitigation of damages to, and enhancement of fish and wildlife resources and related habitat based on recommendations from Federal and State fish and wildlife agencies, pursuant to the Fish and Wildlife Coordination Act. Section 10(j) recommendations typically address water quantity, water quality, instream flows, ramping rates, and habitat management, and may also include recommendations for the development and improvement of fish and wildlife in the project area. Under the FPA, FERC would then have considered any rejected Section 10(j) conditions as Section 10(a) recommendations<sup>7</sup>. During analysis under the National Environmental Policy Act, FERC would have analyzed direct, indirect, and cumulative impacts of the project, including impacts from the 1929 dam and the connected actions of Eklutna dam construction and redesign. Furthermore, the Federal licensing process would have allowed for official government to government consultation between Federally Recognized Tribes and FERC. Instead, the concerns of Native Village of Eklutna regarding the loss of culturally important resources are given equal consideration as other beneficial uses such as impacts to recreation.

The Program should provide connectivity to the lake, release year-round instream flows sufficient to support salmon spawning and rearing habitats throughout the river corridor, and accommodate periodic high-volume flows that maintain habitat characteristics through a self-sustaining dynamic equilibrium between the hydrograph and natural sediment supply. The Service acknowledges the appreciable costs associated with a Program that adequately addresses sockeye salmon and other stakeholder concerns. However, we do not believe that cost alone is a compelling enough argument to dismiss the Eklutna Lake sockeye salmon fishery, which was the primary driver for the 1991 Agreement. Recognizing this divide, the Service recommends a phased approach which sets interim terms or benchmarks to spur incremental progress towards a

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<sup>7</sup> Federal Power Act, Section 10(a), would require that the Project adopted be: (A) best adapted to a comprehensive plan that considers improving, developing, or conserving waterways; (B) considers recommendations of Federal and State resources agencies and recommendations (including fish and wildlife recommendations) of Tribal entities affected by the Project; and (C) considers the electricity consumption efficiency improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity.

long-term and mutually agreeable solution that ultimately provides fish passage at the dam and instream flows capable of supporting fish and wildlife into the future.

### **Draft Summary of Study Results**

The Summary of Study Results should include a section dedicated to discussing and quantifying the impacts of the project on fish and wildlife. As the last obstacle to year-round instream flows and connectivity to the lake, it is important to address past and ongoing impacts of Eklutna hydropower on salmon. With the exception of the Wetlands and Wildlife Habitat and the Terrestrial Wildlife Study Reports, the emphasis of many of the studies became answering questions related to the operational capabilities of the project and developing models to evaluate proposed PME measures; however, there should be a summary to evaluate and quantify the impacts the project has had on fish and wildlife. The lower dam, which was part of the original project, was the initial obstruction to fish passage and the Initial Information Package details how the responsibility for the project facilities changed with different ownership through the years. The Federal Government eventually became responsible for all project facilities<sup>8</sup> until the lower dam was conveyed to Eklutna Inc. through Alaska Native Claims Settlement Act in 1986 and 1987. The lower dam has since been removed, the current Project continues to restrict water in Eklutna River and impact salmon production.

Additional comments and recommendations regarding the Draft Program and Draft Summary of Study Results are provided in the enclosure.

Overall, to meet the intent of the 1991 Agreement, we believe the Final Fish and Wildlife Program should include the following modifications:

- Provide water to the full length of the river on a year-round basis.
- Provide a long-term solution to get marine derived nutrients from the river to the lake.
  - We have expressed openness to a phased approach in returning sockeye salmon to the lake. The Final Program should provide a commitment to design a phased approach within five-years of the Final Program.
- Include methods to facilitate larger channel maintenance flows from the lake, such as a new gate at the dam.
- Include a higher instream flow regime to increase downstream salmon rearing habitat; the channel maintenance flow regime should be increased commensurate with the increased instream flow regime.
- Include a summary section in the Program or Draft Summary of Study Results that provides quantification of acres impacted, where possible.
- Include physical habitat manipulation as components in both the Program as well as in the Adaptive Management Plan.

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<sup>8</sup> USBR 1958 Technical Report, "Since the old plant would be of help for only 2 or 3 months of the year and this during the light-load period and to the extent of 2,000 kilowatts (less than 1 year's load growth), there appeared to be no justification to use the existing plant; therefore, the old plant has been put out of "standby" service and no attempt will be made to maintain it."

- Provide more flexibility in the Adaptive Management Plan so that PME's can be implemented as effectively as possible.

Thank you for the opportunity to share our comments and recommendations, and we look forward to working with you toward the Final Program. For more information or if you have any questions, please contact Senior Fish and Wildlife Biologist Wildlife Conservation, Ms. Jennifer Spegon at (907) 271-2768 or via email [jennifer\\_j\\_spegon@fws.gov](mailto:jennifer_j_spegon@fws.gov), or Senior Fish and Wildlife Biologist Ecological Services, Ms. Carol Mahara at (907) 271-2066 or via email [carol\\_mahara@fws.gov](mailto:carol_mahara@fws.gov) and reference Service file number 2022-0074477.

Sincerely,

Douglass M. Cooper  
Ecological Services Branch Chief

Enclosure