

# A Ten Minute History of 15 Years of Columbia River ESA Litigation

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\*Remarks are solely the opinion of the author and do not necessarily reflect the views of CRITFC or its member Tribes.

# FCRPS BiOp Litigation

- Beginning in 1993, states and environmental groups sued NOAA's over its Biological Opinions (BiOps) for operations of federal mainstem Columbia and Snake River dams.
- CRITFC's member Tribes joined those suits as friends of the court.
- The plaintiffs and Tribes have claimed that the federal plans for the dams do not do enough to protect salmon and steelhead to meet ESA requirements.

# Remands and Collaboration

- The federal courts have overturned all but one BiOp since 1993.
- The 1995 BiOp was upheld by Judge Marsh, partly based on NOAA's promise of a collaborative process leading to a "1999 Decision."
- When the court has overturned a BiOp, it has ordered development of a new plan and BiOp for the dams ("Remand").

# FCRPS BiOps in the 21<sup>st</sup> Century

- NOAA issued BiOps in 2000 and 2004 which were both overturned.
- The 2000 BiOp failed to provide reasonable certainty that its off-site mitigation actions would occur.
- The 2004 BiOp proposed essentially no new actions, but instead lowered the “jeopardy bar” by factoring out impacts.

# FCRPS BiOP: 2008

- The Court encouraged the federal agencies to “collaborate” with states and tribes as they developed a new BiOp.
- The Court ordered more spill at dams while the new plan and BiOp was being developed; the Court refused to order more water released to increase flows.
- NOAA plans on providing its new 2008 BiOps (FCRPS and Snake) to the Court on May 5, 2008.