



BPA and Corps Project Implementation

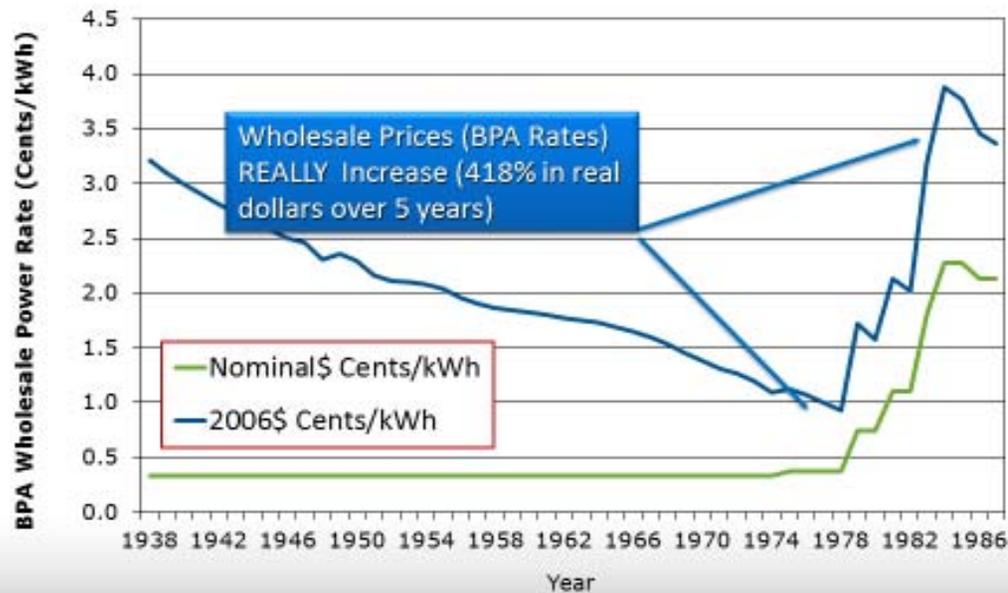


Northwest Power Act: “101”



Northwest Power Act, 16 USC 839

- Act was intended to settle disputes about WPPSS debt for development of nuclear power and allow BPA to help pay off billions of dollars of loans;



Rates, Fish and Co-management

- The Act was also intended to resolve disputes among BPA's customer classes (Public, IOU, and Industrial) over BPA's low cost power;
- Fish and wildlife protection mitigation and enhancement were included in the Act's purposes and added to BPA's mission;
- Columbia River Tribes successfully lobbied to add tribes as co-managers to the Act;



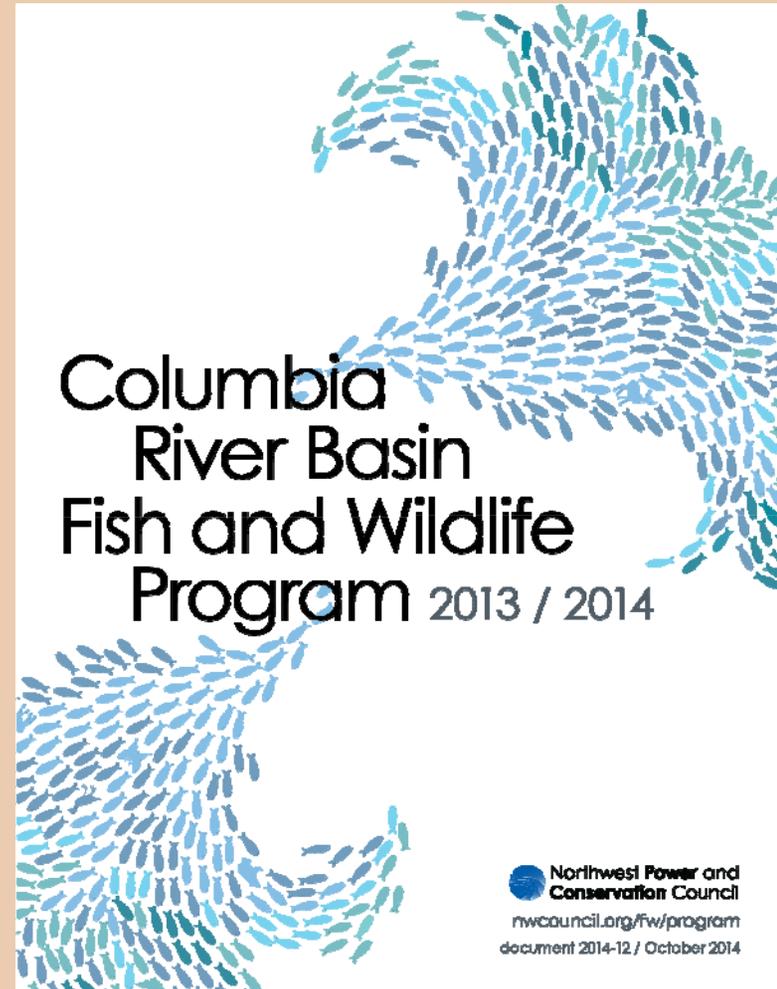
NWPA: Fish and Wildlife

- Completely new sections of federal law were adopted, to:
 - Require BPA to use its fund and authorities to protect, mitigate and enhance fish and wildlife to the extent affected by the development and operation of *any* hydroelectric facilities in the Columbia Basin consistent with the Council's energy plan and fish and wildlife program;
 - Create the Northwest Power and Conservation Council as an interstate compact and required it to adopt fish and wildlife and energy plans every five years;
 - Require FERC, the Corps, BuRec and BPA to give fish and wildlife equitable treatment and take the F&W Program into account.



Fish and Wildlife Program

- Co-manager and others submit “Recommendations”
- Council holds hearings on the recommendations.
- Council adopts Program on the basis of the recommendations with “findings”.



Fish and Wildlife Program: 4(h)(6)

- Complement the existing and future activities of the Federal and region's State fish and wildlife agencies and appropriate Indian tribes;
- Based on best available scientific knowledge;
- Cost effective;
- Consistent with tribal legal rights;
- Provide for improved anadromous fish survival at Columbia River system hydro facilities; and
- Provide flows of sufficient quality and quantity to meet sound biological objectives.



BPA Implements the Program: 4(h)(10)

- BPA must use its fund and authorities to protect, mitigate and enhance fish and wildlife to the extent affected by the development and operation of *any* hydroelectric facilities in the Columbia Basin consistent with the Council's energy plan and fish and wildlife program
- 1996 Congressional amendment (aka "Gorton amendment") established independent scientific review panel (aka "ISRP").
- The Council makes the final recommendations of projects to be funded through BPA's annual fish and wildlife budget after considering any recommendations from the ISRP.



9th Cir. Cases addressing F&W Program/Costs

- Nw. Res. Info. Ctr., Inc. v. Nw. Power Planning Council, 35 F.3d 1371 (9th Cir. 1994)(1992 F&W Program).
- Confederated Tribes of Umatilla Indian Reservation v. Bonneville Power Admin., 342 F.3d 924 (9th Cir. 2003)(2001 Emergency Operations,... Must show overall BPA treats fish second to power).
- Golden Nw. Aluminum, Inc. v. Bonneville Power Admin., 501 F.3d 1037 (9th Cir. 2007) (2002 Rate Case F&W Costs).
- Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 422 F.3d 782, 797 (9th Cir. 2005)(2005 Spill Injunction).
- Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin., 477 F.3d 668 (9th Cir. 2007) (Fish Passage Center).





Water Resources Development Act (WRDA)

- Public laws enacted by Congress to deal with various aspects of water resources: environmental, structural, navigational, flood protection, hydrology, etc.
- Typically, the U.S. Army Corps of Engineers administers the bulk of the Act's requirements.
- WRDAs are enacted periodically, every 2 to 10 years.





Columbia River Sedimentation and Sand Bars

- Sand bars have formed in river mouths entering Bonneville, The Dalles and John Dam dam reservoirs.
- The sand bars impede tribal access to treaty fisheries and treaty fishing access sites.
- The sand bars are havens for predators that impact salmon and probably lamprey.
- Lamprey use the sand bars for habitat.
- The sand bars may impact cold water refugia.





2018 WRDA? Or Existing Corps Authorities?

- Can these sand bars be addressed in a biologically sound manner to protect lamprey and salmon?
- Can the sand bars be modified to assure public safety?
- Can the sand bars be modified to allow for small boat access?

