

The National Marine Fisheries Service (NMFS) has reviewed Juneau Hydropower, Incorporated's (JHI) Draft License Application (DLA) and Preliminary Draft Environmental Assessment (PDEA) for a proposed hydroelectric project at Sweetheart Lake and Sweetheart Creek, about 30 miles southeast of Juneau, Alaska.

On October 10, 2012 FERC requested comments on the DLA and PDEA and NMFS' Preliminary Terms and Conditions. In general we find the DLA and PDEA to be incomplete and thus our review to be premature. The DLA and PDEA do not identify, describe or address the issues that came out of scoping, including those provided to JHI by NMFS in our May 17 written review of the Draft Aquatic Resources Study Plan. Final Aquatic Study plans were not developed. The PDEA fails to clearly and fully identify the issues, and does not disclose the direct, indirect, and cumulative effects of the proposed action. Effects analyses are either incomplete or the findings (e.g., that the project will enhance EFH) are not substantiated. We find it inappropriate that the DLA and PDEA were submitted for agency review and to FERC prior to completion of all field studies and reports, and all prior to completion an adequate plan of study.

Thus NMFS is unable to develop and is not filing:

- Preliminary License Terms and Conditions; nor
- FPA § 10(j) recommendations to ensure the protection, mitigation, and enhancement of fish and wildlife resources impacted by the project; nor
- FPA § 10(a) recommendations to ensure the project and operations are best adapted to comprehensive plan for improving or developing Sweetheart Creek or the interconnected marine waters for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power, for the adequate protection, mitigation, and enhancement of fish and wildlife and for other beneficial public uses including recreational and other purposes.
- EFH Conservation Recommendations

JHI's Communication Protocol for Sweetheart Lake was approved by FERC, NMFS and other stakeholders. It states that stakeholders would have the opportunity to review and comment on major documents, including study reports. But the communication protocol was not followed by JHI. NMFS and other stakeholders did not have the opportunity to review and comment on the study reports used to prepare the PDEA, many of which remain incomplete, and were either filed concurrently with the PDEA, or after it.

JHI has also recently requested NMFS concurrence with their determination that the proposed project would not adversely affect Essential Fish Habitat with regard to proposed project operations [presumably on the aquatic resource of Sweetheart Creek, Gilbert Bay and beyond]. NMFS does not make EFH affect determinations for proposed actions nor do we make concurrence determinations. As

explained to JHI, FERC or its designee makes that determination. If NMFS has information and we feel the action would adversely affect EFH, we may provide EFH Conservation Recommendations.

NMFS does not have sufficient information on the project or its effects on EFH to agree or disagree with JHI's EFH determination. The anadromous fish produced in Sweetheart Creek, marine resources in Gilbert Bay, and the substantial sockeye fisheries from Sweetheart Lake would potentially be affected by the project. Once a revised and complete preliminary environmental document is prepared, and if NMFS believes based on that information that the project would have substantial adverse effects, we may request expanded EFH consultation including preparation of an EFH Assessment. This is likely.

NMFS recommends that JHI address all issues raised in scoping, develop a final plan of study in consultation with NMFS and other stakeholders, complete these studies (which may require at least one, and most likely two or more field seasons), comply with the communications protocol for review of study plans and study reports, and prepare a complete revised DLA and PDEA for submission to FERC and other stakeholders for review and development of our resource recommendations including FPA § 10(j) and 10(a) recommendations, draft license terms and conditions and any EFH conservations recommendations .