

Sweetheart Lake Hydroelectric Project

2013 Wildlife Studies Work Group Meeting Summary

Wednesday, May 13, 2013 8:30 AM

Members Attending, Agency

Dianne Rodman, FERC
Dennis Chester, USFS
Ryan Scott, ADFG
Shawn Johnson, ADFG
Neil Barton, ADFG
Stephanie Sell, ADFG
Richard Enriquez, USFWS
Sadie Wright, NMFS
Barb Stanley, USFS
John Matkowski, FERC
Cathy Needham, Kai Environmental

Members invited but not attending:

Barb Adams, USFS
Susan Walker, NMFS

Meeting Objectives and Agenda Items:

1. Review Wildlife Analysis to date..
2. Discuss and follow up from April 24, 2013 meeting on ADFG licensing wildlife agreement, mitigation or out of license agreement for wildlife under the Alternative License Process.

Attached below are written review comments of Wildlife Analysis submitted by Sadie Wright, NMFS followed by the transcribed minutes of the meeting.

**Draft Wildlife Review for Juneau Hydropower Inc. Sweetheart Lake
Hydroelectric Project FERC #13563**

Comments and Revisions by Sadie Wright, NMFS Protected Resources Division

My comments are focused on shaping this Wildlife Review to be an applicable part of an Endangered Species Act (ESA) Section 7 consultation initiation package.

- **Project Description:** A complete and detailed description of the proposed project/action is needed, including timing and required equipment. Any parts of the action that may affect ESA-listed species need to be fully described (e.g., sound source levels, speeds, timing, etc.). Section 7 consultations occur for the Final Action, not for multiple potential alternatives.
- **Action Area:** This needs to include all areas to be affected directly or indirectly by the action and not merely the immediate area involved in the action (50 CFR 402.02). For example, transit routes of vessels bringing supplies to the site, or arriving to bring/lay underwater cable. Will vessels be coming from Juneau or somewhere else? What route will they take? What elevation will aircraft fly at to arrive at the site?
- **Species Descriptions:** First, do not rely on information on NMFS websites. This is not peer-reviewed information and may be erroneous. In addition, the websites are frequently updated, so the same website may look very different a year later, with completely different information. Instead, use Stock Assessment Reports. These are official citable reports that can be located years later.
 - **Humpback Whale:** See updated Stock Assessment Reports for the Central North Pacific stock. The most recent SAR (from 2012) will provide more accurate, up to date information regarding population abundance and trends for this species. In addition, the SAR also describes known and potential threats to the species. It would be better to reference the SAR instead of a NMFS website.
 - **Steller Sea Lion:** Western DPS Steller sea lions have been observed in Southeast Alaska. I suggest that you contact Lauri Jemison at ADF&G for the more recent data about WDPS sightings, and for count data for Port Snettisham. A Steller sea lion haulout is present at Mist Island in Port Snettisham. The presence and number of Steller sea lions at this haulout needs to be documented in your consultation initiation package. Brand re-sighting effort at this haulout may determine the proportion of WDPS individuals in the area. Use the Steller sea lion SSRs to cite population trend information and potential threats (instead of NMFS websites). Section 3.2.1.2 of your report states that “Habitat for Steller sea lions include a terrestrial zone, an aquatic zone, and an air zone that extends 3,000,,” This is actually the description for officially designated Critical Habitat for this species (58 FR 45269; August 27, 1993). The description of habitat in general for this species should be much broader and encompass most of the

marine environment. Reference SARs for potential threats to this species (instead of NMFS websites). Reference the Federal Register notices, which are the official documents, for legal action such as the proposed de-listing of the EDPS of Steller sea lion (77 FR 23209; April 18, 2012), instead of NMFS websites.

- Southeast Alaska Pacific Herring: Don't reference NMFS websites. Anecdotal information exists that Pacific Herring do periodically spawn in Gilbert Bay and Port Snettisham. Contact David Harris at the ADF&G Commercial Fisheries Division for more information. It is important to know when and where herring have been observed to spawn in this area in order to establish mitigation measures so this activity can avoid or minimize impacts to this species.
- Table 4: This Table was produced by the U.S. Fish and Wildlife Service and a link to view the table is provided on the NMFS website (which is what you apparently referenced). The information in the table is no longer accurate, and it would be better to not reference a website. New information is now available on the NMFS website with a list of T&E species under NMFS authority in Alaska. If you do reference the tables on the website, provide a screen copy of the website with the date that you accessed the site so that people understand that although the information may have changed, that is what you saw that day. Another option is to request an official species list from NMFS, and you can reference the response letter.
- Map referenced locations: For example, in Section 3.2.2 you reference Sentinel Point. Please include this location on a map, and reference the map where I can see the location when you mention the area (e.g., Sentinel Point (see Figure x.x)).
- Section 3.2.2.1: In the first paragraph you mention humpback whale critical habitat. This terminology can be confusing because no official designation of critical habitat has occurred for this species. It should not be inferred that critical habitat has not been designated because there is no critical habitat for this species. Humpback whales enter Gilbert Bay to forage, so care should be taken to avoid and minimize effects to that species during that time.

Paragraph 5 states that cable could be laid in early spring or late fall to reduce the likelihood of humpback whale being present. Is that accurate? Have surveys been conducted throughout the year across multiple years to determine peak humpback whale usage in Port Snettisham and Gilbert Bay? What data was that statement based on?

MMPA language on page 21: USFWS 2013(b) does not appear in the References section, but I assume it is a website. Instead of referencing websites, use the Marine Mammal Protection Act itself. You can reference the actual Act and just quote the language in the Act. If the definition you are using is outside of the Act you can reference other legal documents or agency guidance documents where the definition was officially described.

Page 21, paragraph 3: You can reference the regulation or Federal Register notice (instead of a website) for the regulations governing the approach to humpback whales in Alaska (66 FR 29502; May 31, 2001). The language in the regs is a little different than what you describe in this paragraph (e.g., the approach regs do not just apply to vessels).

Page 21, last paragraph in section 3.2.2.1: For Section 7 consultation purposes, you will need to include in the description of the project/action all timing restrictions that will be in place to minimize effects to species. Other mitigation measures that you may consider including in the action description is the presence of training marine mammal observers to halt potentially harmful activities when marine mammals are present. You may also consider adding distance buffers from potentially harmful sounds sources (e.g., if a marine mammal is sighted within 500 m of xx sound source, work will be halted until the marine mammals has moved away). Distances and timing windows will likely be different for different species.

- Section 3.2.2.2: This section needs to reflect the haulout on Misty Island (see my comments on page 1). I suggest you examine each potential stressor (e.g., ship strike, acoustic harm/harassment/disturbance, risk of pollution, cumulative effects, entanglement, change in food availability, etc.) separately and give explanations for why you expect “take” of Steller sea lions to occur or not.
- Section 3.2.2.3: See my comments on page 2 regarding the presence of Pacific Herring in Gilbert Bay and Port Snettisham. David Harris, with ADF&G, has been notified by the AK State Troopers and others that herring spawning events have been observed in that area. Explain why you expect that the proposed activity will not affect herring spawning in Gilbert Bay.
- Section 3.2.3: These determinations (may affect, but is not likely to adversely affect) means that you think the activity will take zero individuals. Do you think this activity can be conducted in such a way that zero Steller sea lions will be flushed from their haulout, and zero humpback whales will be hit by vessels, or change their foraging behavior significantly to avoid cable-laying and other vessels?
- Section 4.2: Does subsistence harvest of marine mammals occur in this area?
- Section 4.3.1.: First sentence—MMPA, not MMPSA. First paragraph—you referenced the 2011 Stock Assessment Report. A 2012 SAR is available for this species.

Paragraph 2: Instead of referencing websites, this information can also be found in peer-reviewed journal articles.

Paragraph 3: You mention that the Tongass Forest Plan includes measures that would apply to harbor seals. Please include the specific measures in the description of the proposed action so that it is clear what measures will be taken during/after the project.

- 5.0 Discussion: The Section 7 consultation will analyze the potential effects of the final proposed action, not multiple alternatives.
- 6.0 Recommendations: My understanding is that FERC is federal action agency for this Section 7 consultation and that Juneau Hydropower (Duff Mitchell) is the non-federal designee for FERC. If any issues arise regarding endangered, threatened, or candidate species under NMFS authority during the project, I would expect to be notified by Duff or FERC (not through the USFS as an intermediary). Details of an outreach/education plan associated with marine mammals should be included in the action description. All planned mitigation measures to avoid or minimize effects to marine mammals should be included clearly in the project description. It must be clear what will be done, not what could or might be done.

JHI

Sweetheart Lake Hydroelectric Project

2013 Wildlife Studies Work Group Meeting

May 13, 2013 8:30 AM

Mr. John Matkowski: Hi, this is John Matkowski from FERC.

Mr. Duff Mitchell: Hi, John. Duff Mitchell here.

Mr. John Matkowski: Hey, how are you?

Mr. Duff Mitchell: Good. You have a good weekend?

Mr. John Matkowski: Yeah, pretty good. A lot of storms out here this weekend. So--.

Mr. Duff Mitchell: Well, we had a beautiful Friday and then it went all to crap over the weekend. So, yeah.

Ms. Dianne Rodman: Dianne Rodman of FERC.

Mr. Duff Mitchell: Good morning, Dianne--or I should say good afternoon.

Ms. Dianne Rodman: Good afternoon indeed. Yes, hi.

Mr. Duff Mitchell: Hi. We have John, myself, and I'm on-- this is Duff, I'm on the line.

Ms. Dianne Rodman: Okay, great. Well, I'll be waiting. Let me put you on speaker here.

Ms. Cathy Needham: Hello, this is Cathy [sp].

Mr. Duff Mitchell: Hey. Good morning, Cathy.

Ms. Cathy Needham: How are you?

Mr. Duff Mitchell: Good.

I got a call early from Shawn today, Cathy , and I just told him we were just gonna do an update. This wasn't any finality to the wildlife review, it's just an update of where we're at and then he's gonna give us an update on the agreement. So, I'm not looking for a protracted meeting.

Ms. Cathy Needham: Okay--.

Mr. Duff Mitchell: --We'll cover the issues.

Mr. Ryan Scott: Good morning, this is Ryan, Shawn Johnson, Neil Barton, and Stephanie Sell from Fish and Game in Douglas.

Mr. Duff Mitchell: Oh, great. Well, we have John and Dianne on the line from FERC, and Cathy Needham and myself, Ryan. Good morning.

Mr. Ryan Scott: Morning.

Mr. Duff Mitchell: I think I have everybody that confirmed that they were. Some people gave me a question mark, so they didn't not confirm or say that they weren't gonna be, but we can go ahead with the meeting since it's 8:30, a little bit after 8:30. There's really just two things on the agenda. One is just an update of the wildlife analysis review--well, actually we should wait for Dennis--.

Ms. Cathy Needham: --Yeah--.

Mr. Duff Mitchell: --Dennis is--. Are you on Dennis? Nope. Yeah, we should wait for Dennis to see if he dials on.

Mr. Dennis Chester: Dennis.

Mr. Duff Mitchell: Alright, Dennis. Hey, we got everybody on board that we think's gonna be on board. We have John and Dianne from FERC. We have Cathy , myself, and then we have four folks with the Fish and Game: Ryan, Shawn, Stephanie, and Neil. So, I was just starting to go into just--agenda is just--we're just gonna go on an update of the Wildlife Analysis Review today, and then we can go to the second agenda item, which is just an update with any agreement with Fish and Game.

So, Cathy , I guess I could handle this, or I could turn it over to you and you could just give us an update of where things are at or where you see things going, if that's alright with you.

Ms. Cathy Needham: Yeah, I'd be happy to. We're potentially working on two things. One, was a result of the April 17th meeting where some addition information that wasn't originally integrated into the Wildlife study report. We've got that information. I think Duff, you may have handed it out at the last teleconference or sent it to the work group, subsequently. And we're just integrating that information into the study report in terms of citing so that the information is there. There wasn't--in looking through the additional field reports that were given to us, there wasn't any surprises in terms of the new species being--I mean, there was a bird that

was added to bird that was added to the bird list that wasn't previously there, but the rest was information that was covered in other areas within the study report already. Just some observations by Liz Fleury [sp], now we have a formal field report for that because she was with Cameron [sp]. So, that field report was added to it, that kind of stuff. So, nothing new in terms of observations or trends of information, just better documentation in that study report.

So, the second thing we've been doing since the last time, such as giving a new teleconference, is working through the--going through the Wildlife in office report, we've received comments from Dennis. And then on Friday, we received comments from National Marine Fisheries Services. So, I haven't had any time to look at the missed comments that I've had. So, a week or so to start working on the comments for the--from the Forest Service. A lot of their comments were--we foresee to rearrange the documents a little bit, so that portion of it has been complete, and now, we're just addressing some specific issues where additional information and discussion was recommended by the Forest Service. So, that's where we're at.

Mr. Duff Mitchell: Alright. Well, I appreciate that, and we did get the National Marine Fisheries Service comments. Sadie's not online, but she also raised some issues with herring. And so, I have called Dave Harris and left a message,

but I think he's been out on the Seymour Canal Fisheries. So, we'll follow up with that as well, even though that's more of an aquatic, it's still falls under T&E [sp] or potentially--what's the word--I think the herring's potentially gonna be listed or-- what's that term, Cathy ?

Ms. Cathy Needham: In a specific candidate species.

Mr. Duff Mitchell: That's it. So, that's kind of the update. And then Shawn and Ryan, I imagine that there's going to be comments in writing, and I expect them to be from any of the Wildlife analysis--well, I don't want to presuppose, but we've been talking pretty heavily with goats and bears. So, we're well aware of those issues as well, that there's going to be comments coming in specifically on that.

Mr. Ryan Scott: Yeah, Duff. Certainly there will be. This is Ryan. I guess I was thinking--I thought we already submitted them.

Mr. Duff Mitchell: I think that--well, I don't wanna-- Cathy , do you have anything specifically for Ryan? I know we've discussed this pretty heavily, so I mean, they're in the verbal records, so they might as well be written. But, did you get something specifically on that or was that the earlier comments from the Wildlife report?

Ms. Cathy Needham: I think--.

Mr. Duff Mitchell: --I think we've got a lot of Wildlife report issues, so Ryan, if maybe that's what you're referring to?

Mr. Ryan Scott: Yeah, I would agree with that. So--.

Mr. Duff Mitchell: --Okay. We can take from that. I mean, I think it's similar. We don't need additional comments unless you need specifically a new piece of paper, Cathy.

Ms. Cathy Needham: Well, if there is comments on the Wildlife analysis, I personally have not received comments from Fish and Game on the Wildlife analysis document, other than what was discussed on the April 17th teleconference.

Mr. Duff Mitchell: No, I think what Ryan's referring to, and what I'm thinking that he's referring to is the earlier scoping comments and the other comments that Fish and Game has submitted in this particular area regarding goats and bears--.

Ms. Cathy Needham: --Yeah, we do have those documents for information in terms of the Wildlife study report. But, we have not received comments on the Wildlife analysis.

Mr. Ryan Scott: Okay. That's--and thanks Cathy, for clarifying, so that's my misunderstanding. Yes, anticipate that Fish and Game will submit written comments for that.

Ms. Cathy Needham: One thing I would have a question on. So, are you in that process of reviewing and then commenting on

it, and would it be helpful for you to have an updated version of the analysis given that it's been restructured?

Mr. Ryan Scott: Yes, it would be great. We have all been in the field the last week or more. So, no, we haven't started it. So, this is a good time to send us an updated version if there is one available.

Ms. Cathy Needham: Okay, the updated version has not addressed all of Dennis's comments and suggestions yet. It has been restructured. Some sections have been--species have been moved between sections, and then, information that was originally put into the original report that didn't belong in the [unintelligible] Wildlife analysis. It had more to do with potential 4E litigation measures. Those have been removed. So, I would say--you know what, Duff, we still have a little of work to do in terms of adjusting Dennis's comments before I think it's--.

Mr. Ryan Scott: --Guys, this is Ryan again. I guess if that is the case, I would prefer that it's done and then comment on it. I mean, I don't know that a lot has changed since our initial comments on the study plans and things like that. So, if that works for you, we'll wait until it's--until you've gotten what you need to do, done via Dennis's comments. And then we'll go from there. That way we don't interject something that may not matter. It may get fixed, and it seems like it's a

better use of everybody's time if we wait 'till it's done and then comment on it.

Ms. Cathy Needham: Right. I would agree with that if Duff is okay with that.

Mr. Duff Mitchell: I'm good with the productive use of everybody's time. I think there's gonna--there's no surprises. I think Fish and Game has been completely consistent with the issues that they've raised with goats and bears, and so, I think your Wildlife analysis is--understands their positioning. So, I think that's great, that's fine.

Mr. Ryan Scott: Okay, great. Thank you.

Mr. Duff Mitchell: If there is not any--Dianne or John, do you have any comments? I was just gonna close out this area of the agenda and move forward, but before I do so, did you guys want to raise anything or say anything?

Ms. Dianne Rodman: I didn't actually review the Wildlife analysis report. I presumed that the information would be the same that was in the draft application.

Mr. Duff Mitchell: I think there is. The difference between the Wildlife report and the Wildlife analysis that we were covering before, I think is that this was more along the line with some Forest Service protocol.

Ms. Dianne Rodman: Yeah.

Mr. Duff Mitchell: It's more of a Forest Service--well, I--
-yeah. I don't wanna presuppose or mis-state it, but that's my
understanding.

Mr. Dennis Chester: I guess--This is Dennis, I guess what
I'll interject is that Cathy Needham's original report was more
of a report on what was done as far as surveys and stuff like,
but it really wasn't an analysis. And what she's--what we're
commenting on at this point is more of the analysis that goes
along with the NEPA document. In other words, it analyzes teeny
species, Forest Service-sensitive species, management indicator
species, subsistence issues, and migratory birds.

Ms. Dianne Rodman: So, that should all be in the
application, right?

Mr. Dennis Chester: Correct.

Ms. Dianne Rodman: Okay.

So, if there is nothing new in there that we did not review
when we reviewed the draft license application, then I'm okay.

Mr. Dennis Chester: Yeah. This document wasn't with the
draft.

Ms. Dianne Rodman: Oh, okay.

Mr. Duff Mitchell: Yeah, thank you for that clarification,
Dennis. I guess the report is what--yeah, the report was a
report, and this is more the analysis of the report, if I'm
clarifying or trying to help clarify.

Ms. Dianne Rodman: Oh, okay. In that case, Cathy, I'd definitely like to see the updated version of the Wildlife analysis.

Ms. Cathy Needham: Excellent.

Ms. Dianne Rodman: When it's ready.

Ms. Cathy Needham: Yeah--.

Ms. Dianne Rodman: --By the way, do you have any kind of a ball park on the date we'd be expecting it?

Ms. Cathy Needham: I hate to commit myself.

Ms. Dianne Rodman: Ball park.

Ms. Cathy Needham: I mean, I am working on it steadily. But, I'm also working on an environmental assessment for another project, simultaneously. And so, it could--it's--I think a draft that could be sent out for the next group could probably be sent out next week. I'm gonna be out of the office this week, so I'm gonna--my progress on it is gonna be a little bit slow over the next four or five days, but--.

And maybe it's just best to say by the end of next week, by the 24th, regardless of the remaining comments that still need to be addressed in it, it probably should go back out. I mean, we've handled most of the larger pieces of it from Dennis's comments and now, it's starting to [unintelligible] need to be addressed. So--.

Ms. Dianne Rodman: --Yeah, 'cause if you get comments from us, you're gonna have to address those before Duff files everything in July.

Ms. Cathy Needham: Yeah.

Ms. Dianne Rodman: Okay. So, I'll put down somewhere around May 24th.

Ms. Cathy Needham: Regardless of where we are with the changes and stuff, I think it's fair to resend it out and share it. And there may be some comments in the sidelines of things that we're still working on. We're doing some recalculations on some of the habitat things. So, I think it will be done this week while I'm gone, but I'm not positive. I haven't double-checked with there being a [unintelligible] or not. So, I [unintelligible] works, so--.

Ms. Dianne Rodman: Fine by me.

Ms. Cathy Needham: It'll be apparent what we're still working on once--when I send it out this next week.

Mr. Duff Mitchell: Alright. Hope we can move to the second agenda item. And I did get a call Shawn earlier, so Shawn was still saying it's a work in progress, but perhaps, Shawn, you can give us an update of where you and Ryan are at with working with your superiors to determine where we can head with the--an out-of-license agreement, or some other--.

Mr. Shawn Johnson: --Yeah, sorry I don't definitive answer today, but schedule's--I've been out of town, my boss has been out of town. But, I think, the people sitting at the meeting here, we are okay with doing a side agreement. And I would hope maybe by the end of today my leadership will give me a thumbs up or down. But, what I've gathered from them, so far, I don't think we're gonna have an issue with it. Just so we require some planning and scheduling and all that kind of stuff. We're working out the details.

Mr. Duff Mitchell: Alright. Well, thanks. I really don't have anything further on our agenda. And I think that it would probably--if there is something that comes down the line with Fish and Game, Shawn, you and me can work with Ryan. We can work together on that and take whatever steps we can do without having to have another meeting. I mean, we can work on that individually with Juneau Hydropower and Fish and Game, and maybe with the next meeting, report any progress thereof.

But, I think we should hold off on any meetings until we can get the next review out, give people some time to digest it. And so, Cathy, it looks like the 24th, you will honor about or maybe before or whatnot, maybe we can--not lock in a meeting right now, but maybe look at it a week after that. Would that be acceptable with everybody?

Mr. John Matkowski: When was that date?

Mr. Duff Mitchell: Yeah, John, she's gonna put it out the 24th, I wanted to give people a few days to look it over before we have another meeting. So, I was looking at maybe sometime the week following that.

Ms. Dianne Rodman: The week following that--well, I'm gonna be off from the 23th through the 28th. And then the day after that, I'm gonna be unpacking my office. So, I really would like to look at it, as I said. I would say, reasonably, the earliest I could do it, though, would be Friday the 31st. Maybe--.

Mr. Duff Mitchell: Well, we could move it to the week after, the first week of June. I don't wanna--.

Ms. Cathy Needham: --I'm completely unavailable that first week of June.

Ms. Dianne Rodman: Okay--.

Ms. Cathy Needham: --I'll be in the field.

Mr. Duff Mitchell: I don't mind meeting on a Friday either, if--I just don't wanna kick around with the Fish and Game folks. What does your schedules look like? And Dennis, what does your schedule look like on the 31st?

Mr. Ryan Scott: This is Ryan. I'll be getting back into town on the 27th. Cathy, I should be able to get the document electronically, so I can work on it. If we're gonna do it on

the 31st, let's do it first thing in the morning and get it out of the way.

Ms. Dianne Rodman: Sure.

Mr. Ryan Scott: And then--but, I can be at the 31st meeting.

Mr. Duff Mitchell: Okay. That sounds good. Dennis, how does it look on your schedule?

Mr. Dennis Chester: Well, I'm trying to find--I know I've got somebody coming in to town on the 31st, but a early morning meeting might work. I can't find the time right at the moment and it's not on my calendar for some reason.

Mr. Duff Mitchell: Well, if we have it at 8:30, is that early enough? Or should we try to make it at eight?

Mr. Ryan Scott: 8:30 is good.

Mr. Duff Mitchell: Okay--.

Ms. Dianne Rodman: --Okay--.

Mr. Duff Mitchell: --And that works good for Dianne since she's on DC time.

Ms. Dianne Rodman: Super. Thank you folks.

Mr. Duff Mitchell: Dianne, is that alright, 8:30--or 12:30 your time--?

Ms. Dianne Rodman: --That will be great, yes.

Mr. Duff Mitchell: Alright. Well, guys, I appreciate that. Let's reconvene the meeting on May 31st at 8:30. And

we'll have the documents thereof updated of where we can go.
Shawn and Ryan, I'll just standby to hear from you guys if and
how we start working together on putting together some skeleton
of agreement and then fill it in.

Mr. Ryan Scott: Sounds good, Duff. You guys have a nice
week.

Mr. Duff Mitchell: Okay.

Ms. Dianne Rodman: Okay. Thank you.

Mr. Dennis Chester: Thanks.

Ms. Dianne Rodman: Bye.

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