

NOAA FISHERIES  
PERMIT FOR INCIDENTAL TAKE OF ENDANGERED/THREATENED SPECIES

*Permit Number:* 1392

*Expiration Date:* Up to fifty (50) years from the Effective Date of the Anadromous Fish Agreement and Habitat Conservation Plan for the Rocky Reach Hydroelectric Project (FERC License No. 2145)

*Permit Holder:* Public Utility District No. 1 of Chelan County, Washington

*Principal Officer and Contact:* Roger L. Purdom  
Assistant General Manager - External Affairs

*Reporting Requirements:* As described in the Anadromous Fish Agreement and Habitat Conservation Plan or in this Permit.

*Authorization:*

Public Utility District No. 1 of Chelan County, Washington (Chelan PUD) and its designated agents are hereby authorized incidental take of Upper Columbia River steelhead (*Oncorhynchus mykiss*), Upper Columbia River spring-run chinook salmon (*O. tshawytscha*), Upper Columbia River summer/fall-run chinook salmon (*O. tshawytscha*), and Okanogan River sockeye salmon (*O. nerka*) which are currently listed or may be listed in the future under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543), associated with the operation and maintenance of the Rocky Reach Hydroelectric Project (FERC License No. 2145). These listed and unlisted species are referred to as "Permit Species" in the Anadromous Fish Agreement and Habitat Conservation Plan offered for signing on March 26, 2002 (HCP or Agreement) and throughout the remainder of this Incidental Take Permit (Permit).

In accordance with the provisions of section 10 of the HCP, this Permit authorizes Chelan PUD to incidentally take Permit Species that are listed under the ESA, to the extent that such incidental take of those species would otherwise be prohibited under Section 9 of the ESA, and its implementing regulations, or pursuant to a rule promulgated under Section 4(d) of the ESA, and to the extent that the take is incidental to Chelan PUD's lawful operation and maintenance of the Rocky Reach Hydroelectric Project (hereinafter referred to as the "Project") pursuant to the FERC license, subject to the condition that Chelan PUD must fully comply with all requirements of the HCP and the Permit.

*Permit for Incidental Take of Endangered/Threatened Species - Rocky Reach Hydroelectric Project*

Authorization for incidental take is subject to the provisions of the HCP, the provisions of Section 10 of the ESA, National Marine Fisheries Service's (NOAA Fisheries) regulations governing ESA-listed species permits (50 CFR Parts 222.301-222.309), and the conditions hereinafter set forth. In the event of a conflict between these general provisions and the provisions of the HCP, the language of the HCP shall govern. The period of the permit is fifty (50) years from the Effective Date of the HCP, unless the Agreement terminates early.<sup>1</sup>

This Permit does not authorize any take that might result from projects implemented in tributaries under the Tributary Enhancement Plan component of the HCP. Any projects implemented under this program that are likely to adversely affect listed species and result in incidental take of ESA-listed species will require separate ESA Section 7(a)(2) consultation. Similarly, this Permit does not authorize any take (either direct or incidental) that might result from implementing the Hatchery Compensation Plan component of the HCP, which is being considered in separate ESA Section 7(a)(2) consultations.

This Permit is based upon and incorporates by reference NOAA Fisheries' Record of Decision (ROD) regarding the issuance of this Permit and any findings and conclusions that accompany that ROD.

*Abstract:*<sup>2</sup>

Chelan PUD is authorized incidental take of endangered Upper Columbia River steelhead and Upper Columbia River spring-run chinook salmon associated with the operation and maintenance of the Project, pursuant to Section 10(a)(1)(B) of the ESA and the provisions of the HCP. Currently unlisted species that are adequately addressed by the HCP, and are therefore covered species, are Upper Columbia River summer/fall-run chinook salmon and Okanogan River sockeye salmon. In the event that these species are listed in the future as threatened or endangered pursuant to Section 4 of the ESA, incidental take of such unlisted covered species is also authorized. This authorization for each species will become effective upon the event that such species is listed in the future and its take is prohibited.

The HCP specifies initial conservation measures (project operations, funding for future tributary habitat protection and enhancement projects, and hatchery mitigation) to achieve No-Net-Impact

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<sup>1</sup>The Effective Date of the HCP is the latest of the following dates: 1) the Federal Energy Regulatory Commission (FERC) issues a final order approving the HCP and incorporates it into the Project license, 2) NOAA Fisheries issues Chelan PUD an Incidental Take Permit for the Project based upon the HCP, or 3) the U.S. Fish and Wildlife Service completes necessary consultations under the ESA. Thus the likely expiration of this Permit will be sometime in 2053 or 2054.

<sup>2</sup>This summary of the HCP within this abstract is not a definitive statement or interpretation of the rights and duties of the Signatory Parties, which are expressed exclusively in the Agreement itself. This Permit does not modify the HCP Agreement.

*Permit for Incidental Take of Endangered/Threatened Species - Rocky Reach Hydroelectric Project*

(NNI) for each Permit Species affected by the Project. No-Net-Impact consists of two components: 1) 91% Combined Adult and Juvenile Project Survival achieved by project improvement measures implemented within the geographic area of the Project, and 2) 9% compensation for unavoidable project mortality provided through hatchery and tributary programs.

To ensure that the conservation measures achieve the HCP's No-Net-Impact standard, the HCP incorporates a long-term adaptive management framework and specifically identifies necessary survival studies throughout the term of the Permit that will provide feedback for adaptive management, and if needed, changes in the conservation measures. The HCP also establishes four committees composed of Signatory Party representatives to administer key components of the HCP. Three technical committees oversee the project passage and survival (Coordinating Committee), hatchery mitigation (Hatchery Committee), and tributary enhancement (Tributary Committee) aspects of the HCP. A fourth committee (Policy Committee) is charged with resolving disputes arising in the technical committees, although this dispute resolution process is non-binding. Thus the HCP provides for changed circumstances and the mitigation measures to respond to changed circumstances.

*Permit Effective Date, Term, and Duration:*

Upon the Effective Date of the HCP, the Permit will become immediately effective for Permit Species currently listed under the ESA. The Permit will become effective without further action for currently unlisted Permit Species upon any future listing of such species under the ESA and prohibition of such species' take.

The HCP and this Permit shall remain in full force and effect for a period of fifty (50) years from the Effective Date of the HCP, unless the Agreement terminates early. As specified in sections 1 (Duration Of Agreement), 2 (Withdrawal From Agreement), and 10 (Endangered Species Act) of the HCP, under specific circumstances the HCP may terminate early or NOAA Fisheries may withdraw from the HCP and/or suspend or revoke the Permit. Although withdrawal from the HCP and revocation or modification of the Permit is subject to the "No Surprises" regulation (50 CFR §222.307(g) (2001)), as provided by that rule and through the terms of the HCP as set forth in sections 1, 2, and 10 of the HCP, Chelan PUD has consented to provisions for responding to future circumstances that differ from that rule. Amendments to the Permit or the HCP shall remain in effect for the then-remaining term of the Agreement or until the Permit is revoked, whichever occurs sooner. In the event that the HCP expires or is terminated, voided, or determined for any reason to be unenforceable before the end of its term, then: 1) with the exception of those measures set forth in section 1.5 of the HCP (Continuation of Measures Upon Termination), Chelan PUD shall continue to implement the last agreed-to measures until FERC orders otherwise, and 2) NOAA Fisheries is not restrained in any manner from advocating to FERC measures to replace those in the HCP.

*Permit for Incidental Take of Endangered/Threatened Species - Rocky Reach Hydroelectric Project*

*Incidental Take:*

The ongoing lawful operation and maintenance of the Project (including the newly installed juvenile bypass system [JBS]) and related predator control programs will result in the incidental take of ESA-listed Permit Species in the Middle Columbia River within the Project boundary (reservoir, forebay, dam, and tailrace).

Take of Juvenile Permit Species Resulting from Operation of the Project

Authorized project-related deaths (i.e., direct, indirect, and delayed mortality resulting from project effects) for juveniles of each Permit Species migrating through the Project will be equal to, or less than, 7% throughout the term of the HCP. However, through 2013, juvenile mortality may slightly exceed 7%, to the extent that initial measures fail to achieve the HCP standards. This shall include any lethal take associated with the predator removal program or the capture, handling, and transport of naturally produced juveniles for HCP-required research. Assessments of juvenile take (Juvenile Project Survival) will adhere to the study requirements of the HCP.

Descaling or injuries (non-lethal take) to juvenile Permit Species associated with the operation of the juvenile sampling facility and JBS shall not exceed a seasonal average of 2.5% or 1.5%, respectively (half the rate agreed upon as a trigger for initiating evaluation of the JBS). In the event that juveniles entering the JBS are already descaled or injured beyond these limits, the allowable take shall be no more than "background" levels plus these amounts.

Take of Adult Permit Species Resulting from Operation of the Project

NOAA Fisheries further expects, based on the available information, that project-related deaths of adults of the Permit Species (excluding Upper Columbia River steelhead kelts) will be equal to or less than 2%. The best available information indicates that total (natural and project-related) mortalities of adults migrating upstream through the Project range from approximately 2% to 4%. Taking into account natural mortality, which undoubtedly occurs, it is likely that the HCP standard of no more than 2% adult mortality resulting from project-related effects is being met at this time for each Permit Species. However, because it is not possible to distinguish between project-caused and natural mortality at this time, nor is it reasonable to determine the combined mortality at an individual project, NOAA Fisheries identifies the extent of allowed incidental lethal take of adult Permit Species to be no more than 4%. Take of adults will be monitored using conversion rates until such time that technologies allow for a reasonable differentiation of these sources of mortality. At that time, allowable project-related lethal take shall not exceed 2% for any Permit Species.

Project-related mortality of downstream migrating Upper Columbia River steelhead kelts is unknown at this time. Survival of kelts from all tributaries within the action area to below Priest Rapids Dam was estimated at about 18% in 2002. Estimates of "natural" mortality rates for these

*Permit for Incidental Take of Endangered/Threatened Species - Rocky Reach Hydroelectric Project*

fish - which have gone many months without feeding while expending considerable energy migrating and spawning - are not available, but are thought to be high. NOAA Fisheries expects that, compared to current survival rates, implementing HCP measures at the Project will substantially improve steelhead kelt survival through the Project in future years.

Take of Permit Species Resulting from Predator Control Measures

Non-lethal take of juvenile and adult Permit Species (capture and handling) as a result of predator control measures is expected to be rare. Thus NOAA Fisheries limits non-lethal take from these measures to no more than 20 juveniles and 4 adults of any Permit Species each year, and lethal take from these measures to no more than 10 juveniles and 2 adults of any Permit Species each year.

*Conditions:*

1. In accordance with the provisions of section 10 of the HCP, the Permit authorizes Chelan PUD to incidentally take Permit Species that are listed under the ESA, to the extent that such incidental take of these species would otherwise be prohibited under Section 9 of the ESA, and its implementing regulations, or pursuant to a rule promulgated under Section 4(d) of the ESA, and to the extent that the take is incidental to Chelan PUD's lawful operation of the Rocky Reach Hydroelectric Project, subject to the condition that Chelan PUD must fully comply with all requirements of the HCP and the Permit. The Permit will become immediately effective upon issuance for Permit Species currently listed under the ESA. The Permit will become effective for currently unlisted Permit Species upon any future listing of such species under the ESA as described in section 10.1.3 (Permit Issuance) of the HCP, and in accordance with NOAA Fisheries' regulations governing ESA-listed species permits (50 CFR §222.301 and §222.309).
2. Chelan PUD, in effecting the take authorized by this Permit, is considered to have accepted the terms and conditions of this Permit and to be prepared to comply with the provisions of the HCP, the Permit, the applicable regulations, and the ESA.
3. Chelan PUD must make available a copy of the Permit, including the accompanying HCP and related agreements, to personnel, contractors, or agents of Chelan PUD conducting authorized activities. All applicable provisions of the Permit must be presented and clearly explained to all authorized employees, contractors, or agents of Chelan PUD engaged in these activities.
4. Incidental take of ESA-listed Permit Species resulting from the actions of individual employees, contractors, or agents of Chelan PUD operating under the authority of this Permit in accordance with activities described in the HCP (with the exception of tributary enhancement activities or artificial production activities which are covered under separate

*Permit for Incidental Take of Endangered/Threatened Species - Rocky Reach Hydroelectric Project*

permits or biological opinions) shall be included, as appropriate, in the allowable take authorized above.

5. Upon request by NOAA Fisheries, Chelan PUD must allow NOAA Fisheries, or any other person(s) duly designated by NOAA Fisheries, to inspect Chelan PUD's records and facilities if such records and facilities pertain to (i) activities for which take of listed Permit Species is authorized by this Permit, (ii) ESA-listed Permit Species covered by this Permit, or (iii) NOAA Fisheries' responsibilities under the ESA.
6. Chelan PUD must provide NOAA Fisheries with copies of the HCP-specified information and reports (e.g., survival studies, committee reports, etc.) within the time frame specified by the HCP or otherwise agreed upon by the Policy, Coordinating, Hatchery, or Tributary committees.
7. Chelan PUD shall report all observations of any adult Permit Species mortality (noting whenever possible whether adult steelhead are kelts or pre-spawning adults). Chelan PUD shall also report exceedences of threshold values for descaling, injury, and mortality of juvenile Permit Species to NOAA Fisheries within two days of the incident, and shall include a concise description of the causative event (if known) and a description of any resultant corrective actions taken at the facility.
8. Chelan PUD shall report to NOAA Fisheries (by December 31 of each year) the number of juvenile and adult Permit Species salmon or steelhead caught or killed via implementation of the predator removal programs (noting whenever possible whether adult steelhead are kelts or pre-spawning adults).

*The fee in 50 CFR §222.307(d)(5) to cover the cost of issuance of this Permit has been waived.*

Issued by: D. Robert Lohn Date: 8/20/03

D. Robert Lohn  
Regional Administrator