

# MYTHBUSTERS #10

## Public Power Council Fish and Wildlife Committee *Revealing Fish and Wildlife Myths*

**MYTH:** *The U.S. District Court rejected the plan for Salmon and Steelhead known as the 2010 FCRPS Biological Opinion*

### **THE FACTS:**

- **The U.S. District Court accepted the measures in the BiOp through 2013 and remanded the habitat measures beyond 2013 to the federal agencies for revision.**
  - ⇒ Beyond 2013, the court required the federal agencies to identify specific habitat mitigation projects.
  - ⇒ The court concluded that through 2013 the BiOp provides “adequate protection” for salmon.
  - ⇒ The court largely kept the BiOp’s operational measures in place, differing only to maintain the court’s previous order for spill during brief portions of spring and late summer.
- **By focusing on habitat measures beyond 2013, the court implicitly approved all other measures of the BiOp.**
  - ⇒ All other measures impacting hydrosystem operation, technical improvements and habitat are in place and are being implemented.
  - ⇒ The BiOp is a 10-year document with a term from 2008 through 2018. All measures prior to 2013 and all measures other than habitat beyond 2013 have been approved.
- **Per the court’s request, the measures and actions implemented by this BiOp are the result of a regionally collaborative process.**
  - ⇒ The court encouraged the process that developed the BiOp which included consultation with the region’s Tribes and federal and state fish and wildlife agencies.
  - ⇒ The BiOp allows the states and Tribes and federal agencies to collaborate on measures involving the FCRPS on an ongoing basis.
  - ⇒ This process is working: salmon continue to return to the Columbia and Snake Rivers in record numbers and juvenile survival at individual dams in those rivers are meeting or close to meeting targets.

### **What arguments are used to support this myth?**

- **The 2010 BiOp was remanded to the federal agencies.**
  - ⇒ **Counter:** Only a portion of the 2010 BiOp was remanded for further work – habitat measures in the last five years of the BiOp. The rest of the BiOp measures remain in place.
- **The BiOp was not developed through a collaborative process.**
  - ⇒ **Counter:** Some advocates make this argument and want additional process because they are not sovereigns or federal and state entities with standing to be named parties in the BiOp litigation. In reality, the BiOp was developed after significant consultation with the region’s Tribes and the federal and state fish and wildlife agencies and public comment was taken on all drafts before they were finalized.
- **In its opinion, the court suggested that the federal agencies reassess breaching Lower Snake dams.**
  - ⇒ **Counter:** Though the court suggested an assessment, it did not order breaching these projects.
  - ⇒ **Counter:** Under the law, only the U.S. Congress can enable breaching. A court cannot.

### What this means:

- The 2010 Biological Opinion for the FCRPS was not rejected by the Court.
- The Court found that habitat measures beyond 2013 (the last 5 years of the BiOp) needed to be specifically identified and funded to ensure the implementation of the plan was reasonably certain to occur. It also insisted that extended spill measures continue during the spring and summer.
- All other measures in the BiOp (previously identified fish habitat improvements, fish passage improvements at the dams, fish friendly dam operations, improvements to hatcheries, control of salmon predators in the basin and research on other actions that will benefit salmon) were implicitly approved by the Court and are being implemented per the BiOp schedule.
- The Federal Action agencies and NOAA Fisheries are working on improved habitat measures for 2014 and beyond. These improved provisions will be filed with the court as a supplemental BiOp by the end of calendar year 2013.
- The framework of the current collaborative process is working: fish runs remain high and juvenile survival targets have been met or are close to being met. (AFEP 2012, ODFW and WDFW 2012a.b)

### REFERENCES

Anadromous Fish Evaluation Program 2012. U.S. Army Corps of Engineers Anadromous Fish Evaluation Program Review of 2102 Research in the Federal Columbia River Power System. <http://www.nwd-wc.usace.army.mil/tmt/documents/AFEP/>

ODFW and WDFW 2012a. 2012 Joint Staff Report: Stock Status And Fisheries For Fall Chinook Salmon, Coho Salmon, Chum Salmon, Summer Steelhead, And White Sturgeon Joint Columbia River Management Staff. Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife

ODFW and WDFW 2012b. 2012 Joint Staff Report: Stock Status And Fisheries For Spring Chinook, Summer Chinook, Sockeye, Steelhead, And Other Species, And Miscellaneous Regulations, Joint Columbia River Management Staff Oregon Department of Fish & Wildlife Washington Department of Fish & Wildlife.