



HOUSE COMMITTEE ON  
**NATURAL RESOURCES**  
CHAIRMAN BRUCE WESTERMAN

**To:** House Committee on Natural Resources Republican Members

**From:** Water, Wildlife and Fisheries Subcommittee, Kiel Weaver

([Kiel.Weaver@mail.house.gov](mailto:Kiel.Weaver@mail.house.gov)) and Annick Miller ([Annick.Miller@mail.house.gov](mailto:Annick.Miller@mail.house.gov))

**Date:** March 8, 2023

**Subject:** Oversight hearing: *“Benefits and Access: The Necessity for Multiple Use of Water Resources”*

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The Subcommittee on Water, Wildlife and Fisheries will hold an oversight hearing on *“Benefits and Access: The Necessity for Multiple Use of Water Resources”* on **Wednesday, March 8, at 2:00 p.m. EST in 1324 Longworth House Office Building.**

Member offices are requested to notify Annick Miller ([Annick.Miller@mail.house.gov](mailto:Annick.Miller@mail.house.gov)) by 4:30 p.m. on Tuesday, March 7, if their Member intends to participate in the hearing.

## **I. KEY MESSAGES**

- For generations, water resources projects have delivered multiple benefits to humans, fish and wildlife.
- Similarly, our ocean resources and sustainable fisheries have been an invaluable resource for coastal communities.
- Access to inland and offshore water resources is important for our economy and the environment.
- While conflicts over these resources have existed historically, the policies of the Biden administration have exacerbated some of these conflicts and threatened economies, the environment and community ways of life.
- This hearing will explore those threats while focusing on solutions.

## **II. WITNESSES**

- Mr. Scott Corwin, Executive Director, Northwest Public Power Association, Vancouver, Washington
- Ms. Martha Guyas, Southeast Fisheries Policy Director, American Sportfishing Association, Tallahassee, Florida
- Mr. Dan Keppen, Executive Director, Family Farm Alliance, Klamath Falls, Oregon
- Ms. Amy Cordalis, Legal Counsel Yurok Tribe, Klamath, California and Co-Founder, Ridges to Ripples Indigenous Conservation Group, Sacramento, California

### III. BACKGROUND

The hearing will focus on the multiple purposes and benefits of the water resources within the Water, Wildlife and Fisheries Subcommittee's jurisdiction. These purposes and benefits include water for food production (such as farming and fishing), drinking water, energy, environmental needs, tourism, and recreation.

Inland, multi-purpose water infrastructure encompasses dams, reservoirs, and associated irrigation canals, all of which may be used for more than one purpose for economic, social, and environmental activities. Similarly, our oceans are a crucial asset to our nation and provide for multi-purpose activities. Federal statutes, regulations and the agencies that implement these rules have a significant impact on Americans' ability to access and develop our nation's water resources.

#### **Activities in Federal Offshore Waters**

##### *Fisheries*

The Magnuson-Stevens Fishery and Conservation Management Act of 1976 (MSA, 16 U.S.C. 1801 et seq.) is the primary law governing fisheries resources and fishing activities in federal waters, which are defined as 200 nautical miles from the U.S. coast (excluding state coastal waters that extend three or nine miles from shore, depending on the state).<sup>1</sup> The Secretary of Commerce, through the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), enforces the MSA. Initially passed in 1976, the MSA set out to prevent overfishing, rebuild overfished stocks, increase long-term social and economic benefits for coastal communities and ensure a safe and sustainable seafood supply. To accomplish these goals, the law established eight Regional Fishery Management Councils (Councils) that include representation from coastal states and various fishery stakeholders.<sup>2</sup>

The Councils implement the statutory goals of MSA, in coordination with NMFS. This process is accomplished through Council-based Fisheries Management Plans (FMPs) for each fishery. FMPs require scientific stock assessments of the fishery. Following a Council's development of an FMP, a Council forwards the plan to NOAA for approval. If the plan is approved, NMFS must then issue regulations to implement the plan.<sup>3</sup>

In 2018, Congress amended the MSA with the Modernizing Recreational Fisheries Management Act (P.L. 115-405) that aimed to improve recreational fishing data and management of mixed-use fisheries through requirements to conduct new reports, studies, and guidance in the sector.<sup>4</sup>

U.S. fisheries are among the most highly regulated fisheries in the world. They adhere to a broad range of regulations compared to other nations. In addition to the MSA, they are subject to the federal Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the

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<sup>1</sup> <https://myfwc.com/fishing/saltwater/recreational/maps/>

<sup>2</sup> "About the MSA." U.S. Regional Fishery Management Councils, <http://www.fisherycouncils.org/about-the-msa>.

<sup>3</sup> <http://www.fisherycouncils.org/>

<sup>4</sup> Id.

National Environmental Policy Act (NEPA), the National Marine Sanctuaries Act (NMSA) and the Antiquities Act, as well as federal regulations implementing conservation and management decisions. The United States is a global leader in fisheries management and the recreational and commercial fishing industries are significant drivers of the U.S. economy. Together, the U.S. seafood industry and the recreational fishing industry generate \$154.7 billion in sales impacts<sup>5</sup> and support upwards of 1.1 million U.S. jobs.<sup>6</sup>

In recent years, controversies have arisen over access for commercial and recreational fishing due to data collection, regulations, and Marine Protected Areas (MPAs) – such as Marine National Monuments and Marine Sanctuaries – that often prohibit various fishing activities.

For example, in the Gulf of Mexico (Gulf), recreational anglers continue to express frustrations with NMFS's lack of greater incorporation of state data into broader red snapper management. In 2016, Congress directed the National Sea Grant College Program and NMFS to fund independent red snapper data collection, surveys, and assessments, including the use of tagging and advanced sampling technologies. This "Great Red Snapper Count" estimated that there were more than 118 million red snapper in the U.S. waters of the Gulf.<sup>7</sup> Previous estimates by federal fisheries officials put the population at about 36 million red snapper.<sup>8</sup> A witness from the American Sportfishing Association, which represents recreational fishing interests, will testify on these data challenges.

On the commercial fishing side, the Biden administration has embraced potential expansions of MPAs under its 30 by 30 initiative (also sometimes referred to as the "America the Beautiful" initiative).<sup>9</sup> Restrictive MPAs reduce and consolidate fishing grounds and threaten fishing economies while doing little to protect biodiversity.<sup>10</sup> MPAs ignore that biodiversity continues to exist outside these protected zones because of the MSA process. The goals of the MSA are not only for the conservation and management of the fishery resources, but also "to assure that our citizens benefit from the employment, food supply, and revenue which could be generated."<sup>11</sup> Yet, the Biden administration ignores this MSA approach as it uses National Marine Monuments to limit fishing, such as the administration's decision to reinstate the ban on all commercial fishing in the Northeast Canyons and Seamounts Marine National Monument off New England's coast.<sup>12</sup>

Another decision that has the potential for substantial impacts to recreational anglers and boaters is the proposed vessel speed rule put forward under the guise of protecting the North Atlantic right whale.<sup>13</sup> The rule would expand mandatory speed restrictions (10 knots or less) to include vessels 35 to 65 feet and significantly broaden seasonal speed zones that would impact tens of

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<sup>5</sup> Department of Commerce: Fisheries Economics of the United States 2020.

<sup>6</sup> Id.

<sup>7</sup> <https://www.hartheresearch.org/snappercount>

<sup>8</sup> Id.

<sup>9</sup> <https://www.nationalgeographic.com/environment/article/biden-commits-to-30-by-2030-conservation-executive-orders>

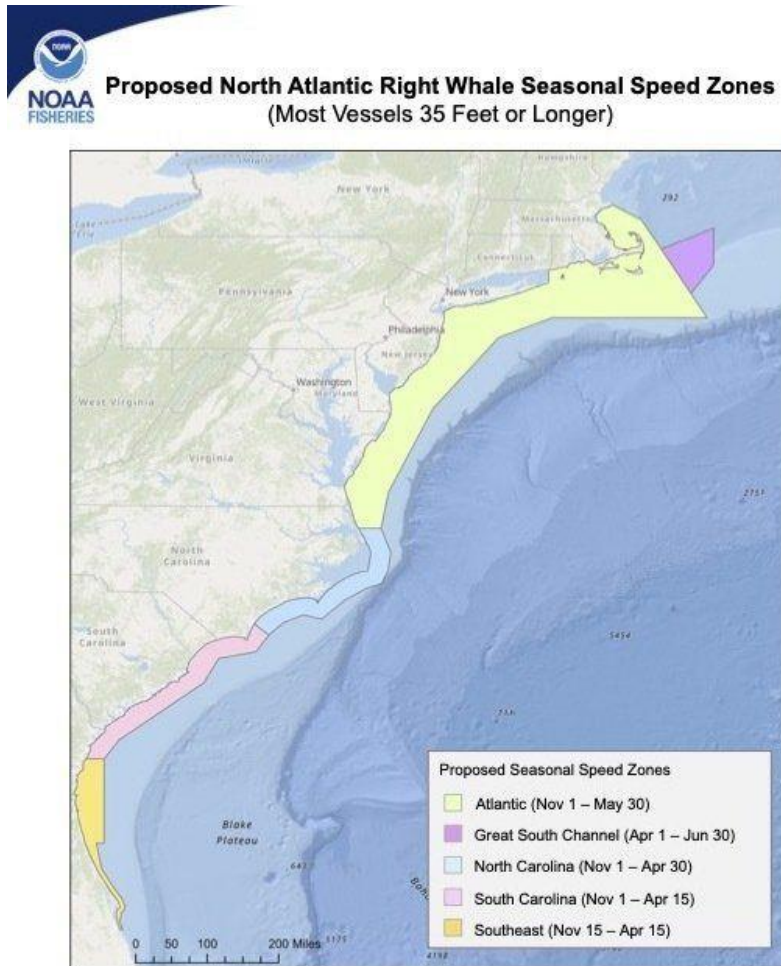
<sup>10</sup> <https://www.nature.com/news/policy-marine-biodiversity-needs-more-than-protection-1.20229>

<sup>11</sup> 16 U.S.C. 1801(a)(7)

<sup>12</sup> UPDATE: Biden's 'Marine Monument' decision features commercial fishing ban. Gloucester Daily Times. October 9, 2021. [https://www.gloucestertimes.com/news/update-bidens-marine-monument-decision-features-commercial-fishing-ban/article\\_5a4e863a-28b2-11ec-bc7e-57c8a2b6171d.html](https://www.gloucestertimes.com/news/update-bidens-marine-monument-decision-features-commercial-fishing-ban/article_5a4e863a-28b2-11ec-bc7e-57c8a2b6171d.html).

<sup>13</sup> <https://www.saltwatersportsman.com/news/noaa-proposes-vessel-speed-restrictions-to-protect-right-whale/>

thousands of recreational vessels (see Map 1 below).<sup>14</sup> Due to the large area covered, the speed restriction would leave little to no time for fishing. Lost fishing days also harm the saltwater recreational fishing industry, which generates \$6.3 billion in sales and supports 61,000 jobs throughout the affected region.<sup>15</sup> The International Game Fish Association stated that the rule “would cripple America’s outdoor economy along the East Coast”.<sup>16</sup>



**Map 1: Boat Speed Restrictions under the Proposed Right Whale Speed Rule.**

*Source: NOAA*

### *Other Purposes*

Offshore energy development and maritime transportation are major industries that utilize federal waters. While these activities are not under the jurisdiction of this subcommittee, NMFS and the U.S. Fish and Wildlife Service (USFWS) are key regulatory agencies that impact these interests.

<sup>14</sup>Id

<sup>15</sup> <https://asafishing.org/boat-speed-restrictions-could-affect-atlantic-coast-anglers/>

<sup>16</sup> <https://www.saltwatersportsman.com/news/noaa-proposes-vessel-speed-restrictions-to-protect-right-whale/>

A recent issue affecting the fisheries industry is the expansion of offshore wind and the impacts to surveys, habitat, and fishing grounds. NMFS's surveys are essential for collecting the data necessary to inform the sustainable management of fisheries, recovery of protected resources and conservation of habitats and ecosystems.<sup>17</sup> Offshore wind development in the northeast U.S. Region may impact thirteen surveys, including the North Atlantic Right Whale Aerial Surveys.<sup>18</sup> In general, NMFS utilizes a precautionary approach in implementing the fishery management laws.<sup>19</sup> Therefore, a greater scientific uncertainty in the information used to inform management decisions typically results in more restrictive (i.e., precautionary) management measures, such as lower fishing quotas or fewer incidental take authorizations. Conflicts between offshore wind and fisheries will be covered in detail in future hearings.

Recently, NMFS has faced criticism for delaying the issuance of permits for seismic surveys needed for oil and gas exploration. The Department of the Interior's Bureau of Ocean Energy Management (BOEM) is responsible for all Outer Continental Shelf (OCS) leasing policy and program development issues for oil, gas and other marine minerals. However, BOEM must consult with NMFS when a proposed action might adversely affect marine resources and their environment. NMFS relies on the authorities provided under the MSA, MMPA, and ESA to engage in consultations. Under MMPA, NMFS must issue "Letters of Authorization" for harassment takings of marine mammals for BOEM to issue a seismic permit. These permits usually take weeks to issue, but due to a miscalculation by NMFS in the 2021 Incidental Take Rule, the agency has developed a growing backlog of permits.<sup>20</sup> Delaying the issuance of these permits creates uncertainty both for projects that are near production and long-term exploration.

## **Western Water**

The California Gold Rush of 1849, the Homestead Act of 1862 and other factors encouraged settlement of the western United States (West) throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries.<sup>21</sup> However, much of the area was, and continues to be, semi-arid or arid, with very little precipitation. As water demand increased from agriculture and other uses, interest in storing water runoff for later use led to attempts at constructing water storage projects. Without water storage, settlers had limited farming opportunities in the summer months when river flows were at their lowest or did not exist.<sup>22</sup>

In 1901, President Theodore Roosevelt sent a message to the Congress in which he expressed support for the development of the West and the creation of a federal reclamation program, proclaiming "In the arid region it is water, not land, which measures production. The western

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<sup>17</sup> NOAA Fisheries and BOEM Federal Survey Mitigation Implementation Strategy - Northeast U.S. Region.  
<https://doi.org/10.25923/jqse-x746>

<sup>18</sup> Id.

<sup>19</sup> Code of Federal Regulations - 50 CFR 600.350(d)(3)(ii)

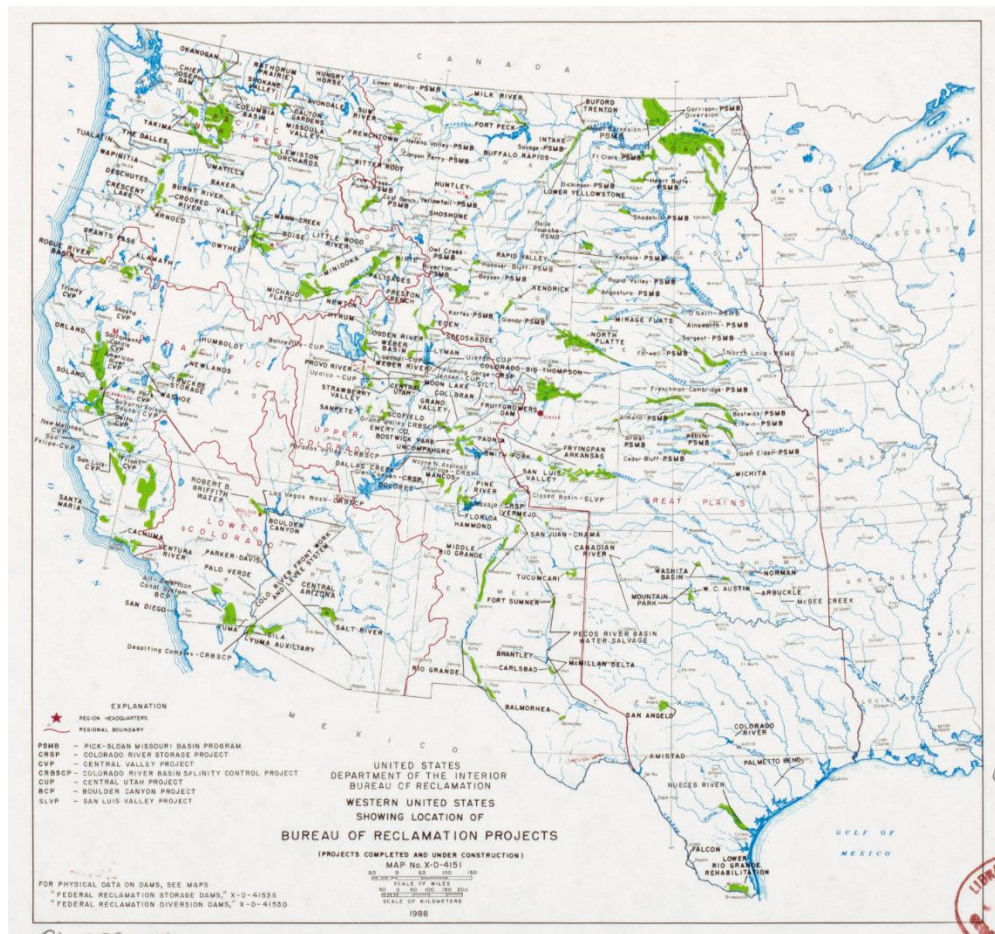
<sup>20</sup> Incidental Take Authorization: Oil and Gas Industry Geophysical Survey Activity in the Gulf of Mexico  
<https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico>

<sup>21</sup> <https://www.archives.gov/files/publications/prologue/2012/winter/homestead.pdf>

<sup>22</sup> <https://www.usbr.gov/projects/pdf.php?id=183>



half of the United States would sustain a population greater than that of our whole country today if the waters that now run to waste were saved and used for irrigation.”<sup>23</sup> A year later, Roosevelt signed what is known as the Reclamation Act of 1902 (Reclamation Act) into law. The Reclamation Act authorized federal large-scale planning and construction of irrigation works for the storage, diversion, and development of waters in arid and semi-arid western states.<sup>24</sup> Within a year, the federal Reclamation Service (now called the Bureau of Reclamation) administratively authorized five projects for construction. By 1907, it would authorize twenty-four projects.<sup>25</sup>



**Map 2: Bureau of Reclamation Projects**

*Source: Library of Congress*

To date, there are more than 180 federal water projects throughout the West (see Map 2) authorized by Reclamation laws.<sup>26</sup> Most of the West’s largest cities – particularly those that benefit from Colorado River basin waters (Los Angeles, Phoenix, Las Vegas, Denver, and others) – owe their continued existence to the Bureau of Reclamation’s (Reclamation) multi-purpose projects.

Today, Reclamation is the nation’s largest wholesale water supplier, providing water to farmers that produce 60% of the nation’s vegetables and one quarter of its fresh fruit and nut crops.<sup>27</sup> A witness from the Family Farm Alliance, an organization representing irrigation districts that

<sup>23</sup> Papers relating to the foreign relations of the United States, with the annual message of the President transmitted to Congress December 3, 1901.

<sup>24</sup> 32 Stat. 388 (43 U.S.C. §391)

<sup>25</sup> The Arid West - The Newlands Reclamation Act of 1902

<sup>26</sup> <https://www.usbr.gov/history/2011NEWBRIEFHISTORY.pdf>

<sup>27</sup> <https://www.usbr.gov/main/about/fact.html>

receive water from these projects, will discuss the importance of western water and the multiple benefits it provides.

### *California's Central Valley and State Water Projects*

For decades, the federal Central Valley Project (CVP) and California's State Water Project (SWP) operations have been managed in a coordinated manner to deliver water to cities, communities, and farms within California. The CVP's operations have been subject to several controversies and litigation, especially over ESA. The CVP is subject to biological opinions (BiOps) issued by NMFS and the USFWS over ESA-listed species. The intent of a BiOp is to ensure the project does not reduce the likelihood of survival and recovery of an ESA-listed species. The CVP has two BiOps which subject operations and water deliveries to flow requirements for the endangered three-inch Delta smelt (regulated by USFWS) and endangered and threatened salmon species (regulated by NMFS) with some water requirements for each conflicting with the other.<sup>28</sup> Legislation, H.R. 872 (Calvert) has been proposed to consolidate the management and regulation of the ESA by transferring NMFS's ESA authorities to the USFWS.<sup>29</sup> In both cases, however, federal requirements for these fish divert water that would have otherwise been destined for communities and farms.<sup>30</sup> Combined with other water requirements under the Central Valley Project Improvement Act (CVPIA, P.L. 102-575), the State of California's water quality standards and the lack of integrated new water storage, the CVP and the State Water Project's operations have changed dramatically over the last forty years and are heavily litigated.<sup>31</sup>

On February 19, 2020, Reclamation under the prior administration released a Record of Decision on CVP operations that was "based on the latest science to provide greater water reliability for California farms, families and communities while improving protections for endangered species and their habitats."<sup>32</sup> The next day, California Governor Gavin Newsom filed a lawsuit against Reclamation that accused the agency of ESA violations.<sup>33</sup> On March 30, 2020, California issued its own incidental take permit (ITP) that created separate operating rules for the SWP.<sup>34</sup> Shortly after taking office, the Biden administration ignored requests from the entire California Republican delegation that the federal government defend the Trump administration's Record of Decision and related BiOps.<sup>35</sup> Instead, the administration chose to re-write the plans<sup>36</sup> and proposed an interim operations plan, which is now in effect.<sup>37</sup>

Most of California's reservoirs started the year well below their historic water levels when heavy storms flooded parts of California. While some facilities were able to store a portion of the influx of water, environmental rules designed to protect ESA-listed Delta smelt in the Sacramento-San

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<sup>28</sup> <https://www.usbr.gov/mp/bdo/lto/current-imple.html>

<sup>29</sup> <https://calvert.house.gov/media/press-releases/rep-calvert-reintroduces-fish-act-0>

<sup>30</sup> <https://www.usbr.gov/mp/bdo/lto/biop.html>

<sup>31</sup> <https://crsreports.congress.gov/product/pdf/R/R45342>

<sup>32</sup> <https://www.usbr.gov/mp/bdo/rodcvp.html>

<sup>33</sup> <https://oag.ca.gov/system/files/attachments/press-docs/60-Day%20Notice.pdf>

<sup>34</sup> <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Files/ITP-for-Long-Term-SWP-Operations.pdf>

<sup>35</sup> [https://valadao.house.gov/uploadedfiles/2021.02.23\\_doi\\_doc\\_biop.pdf](https://valadao.house.gov/uploadedfiles/2021.02.23_doi_doc_biop.pdf)

<sup>36</sup> <https://www.usbr.gov/mp/bdo/lto/>

<sup>37</sup> [https://valadao.house.gov/uploadedfiles/2021.10.21\\_interim\\_operations\\_plan.pdf](https://valadao.house.gov/uploadedfiles/2021.10.21_interim_operations_plan.pdf)

Joaquin River Delta made it so that nearly 95% of incoming water in the delta flowed into the Pacific Ocean.<sup>38</sup> According to the Public Policy Institute, these regulatory protocols that reduced pumping of water to areas in need led to the loss of 84,000 acre feet of water, or enough to irrigate 25,000 acres of farmland for a year or supply 150,000 homes.<sup>39</sup> H.R. 215 (Valadao), the Water for California Act, seeks to bring balance back to water use in the State.

### *Klamath River Basin*

Reclamation's Klamath Project (Project) in northern California and southern Oregon irrigates approximately 200,000 acres and is the regional hub for agricultural food production and wildlife refuge habitat for waterfowl in the Pacific Flyway. In addition, tribal nations upstream and downstream within the Klamath watershed depend on water, although their needs may vary depending on their location.

The Klamath Basin is suffering from drought, onerous federal endangered species regulations, and water conflicts between various parties. Like the CVP, two competing BiOps control the project operations. These BiOps cover three different endangered species: the Lost River and shortnose suckers (regulated by FWS), and the Coho salmon (regulated by NMFS). The BiOps for the sucker fish mandate that the surface elevation of Upper Klamath Lake remain at least 4,138 feet above sea level to maintain that habitat.<sup>40</sup> In addition, Reclamation must also produce a spring flushing flow to benefit salmon.<sup>41</sup>

Since Reclamation shut-off of the Klamath Project in 2001, Congress and the Executive branch have devoted considerable time, water, and taxpayer dollars to try to resolve these water conflicts. Yet, more than twenty years later, very little has been resolved.<sup>42</sup> Uncertainty and water conflicts continue, and serious questions remain over the long-term impacts of potential dam removal and the appropriate level of diverting irrigation water towards species and downstream needs in the basin.

For example, on May 12, 2021, Reclamation announced that the Project's main delivery system, the "A" Canal, would remain closed for the entire 2021 irrigation season, and that no water would be available for delivery from Upper Klamath Lake for the first time in 117 years.<sup>43</sup> The Klamath Water Users Association (KWUA), which represents most of the farms served by the Project, estimated that the lack of irrigation water led to a loss of \$100 million in economic activity, a 40 to 60 percent decline in on-farm income, a 10 percent decline in land value, and 700 regional jobs lost. In addition, KWUA estimated that more than 300 homes lost water for drinking, cooking and sanitation purposes.<sup>44</sup>

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<sup>38</sup> Hayley Smith. Environmental rules stoke anger as California lets precious stormwater wash out to sea. January 20, 2023. <https://www.latimes.com/california/story/2023-01-20/anger-flares-as-california-stormwater-washes-out-to-sea>

<sup>39</sup> Id.

<sup>40</sup> <https://www.usbr.gov/mp/kbao/docs/klamath-2020-ba.pdf>

<sup>41</sup> Id.

<sup>42</sup> Klamath irrigators have recently seen their water allocations reduced to zero, spent millions in Klamath ecosystem restoration, and yet the BiOps don't allow for any improvements.

<sup>43</sup> U.S. Dept. of the Interior, Bureau of Reclamation, *Extreme Drought Conditions Force Closure of Klamath Project's "A" Canal*, (May 12, 2021), <https://www.usbr.gov/newsroom/#/news-release/3850>.

<sup>44</sup> [https://naturalresources.house.gov/uploadedfiles/footnote\\_33.pdf](https://naturalresources.house.gov/uploadedfiles/footnote_33.pdf)



The Infrastructure Investment and Jobs Act (P.L. 117-58), allocated \$162 million to the USFWS for ecosystem restoration activities in the Klamath basin. Not all of these funds have been made available. On February 28, 2022, USFWS announced the second round of funds under this account, up to \$15 million.<sup>45</sup> According to the Congressional Research Service, the federal government has expended at least \$460 million in addressing the multiple issues in the Klamath Basin since 2001.<sup>46</sup>

### *Colorado River Basin*

The Colorado River Basin (Basin) covers seven states (Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming) and the Republic of Mexico (see Map 3). In the United States, the Basin provides water for the irrigation of nearly 5.5 million acres, municipal water supply to about 40 million people, and hydropower facilities that can generate more than 4,200 megawatts (MW) of electricity.<sup>47</sup> Within the Basin, there are seven National Wildlife Refuges and eleven National Park Service units.<sup>48</sup>

The Colorado River is one of the most developed, regulated, and negotiated rivers in the United States. It has numerous diversions, several major dams, and reservoirs, and is managed through multiple compacts, laws, regulatory guidelines, contracts, court decisions, and decrees (collectively known as the “Law of the River”).<sup>49</sup> Since 2000, the Basin has experienced historically dry conditions and the combined storage in Lakes Powell (the reservoir created by Glen Canyon Dam) and Mead (the reservoir created by the Hoover Dam) reached the lowest levels since Lake Powell initially began filling in the 1960s.<sup>50</sup>

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<sup>45</sup> <https://fws.gov/press-release/2023-02/us-fish-and-wildlife-service-makes-15-million-bipartisan-infrastructure-law>

<sup>46</sup> Federal Expenditures for Klamath Basin, [https://republicans-naturalresources.house.gov/UploadedFiles/Federal Expenditures for Klamath Basin.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/Federal%20Expenditures%20for%20Klamath%20Basin.pdf)

<sup>47</sup> <https://www.usbr.gov/dcp/docs/DCP%20Basin%20States%20Transmittal%20Letter%20and%20attachments.pdf>

<sup>48</sup> <https://www.usbr.gov/climate/secure/docs/2021secure/basinreports/ColoradoBasin.pdf>

<sup>49</sup> <https://www.usbr.gov/lc/region/pao/lawofrivr.html>

<sup>50</sup> <https://www.usbr.gov/dcp/docs/DCP%20Basin%20States%20Transmittal%20Letter%20and%20attachments.pdf>

In 2019, the Colorado River Drought Contingency Plan (DCPs) Authorization Act (P.L. 116-14) was signed into law. The DCPs authorized under the Act obligated the lower Basin states to reduce water deliveries within their states, committed Reclamation to additional water conservation efforts, and instituted plans to coordinate upper Basin operations to protect Lake Powell storage levels and hydropower generation. These provisions expire in 2026.<sup>51</sup>



**Map 3: Colorado River Basin map.**

*Source: Glen Canyon Dam Adaptive Management Program.*

Drought conditions have required the Basin to fast-track additional negotiations on additional measures to protect reservoir levels before the 2026 deadline. Reclamation is currently in the process of completing the environmental review necessary to implement new pre-2026 operating measures. In addition, Reclamation has started negotiations with the seven basin states on post-2026 operations<sup>52</sup>. Reclamation has indicated that it will propose later this spring a Supplemental Environmental Impact Statement (SEIS) that will supplement the current water shortage guidelines under the guise of protecting water delivery and hydropower operations.<sup>53</sup> The State of California has proposed an alternative plan, while the six other Basin states have also proposed their own alternative plan.<sup>54</sup> The Subcommittee will likely have detailed hearings on the Colorado River Basin in the 118<sup>th</sup> Congress.

In addition to drought issues, ESA requirements to protect four ESA listed fish species (the humpback chub, bonytail, Colorado pikeminnow, and razorback sucker), continue to change federal water operations. This includes managing predatory invasive fish species such as the smallmouth bass. Reclamation recently announced a draft Environmental Assessment (EA) on flow options aimed at preventing smallmouth bass from spawning and potentially impacting the above listed species.<sup>55</sup> However, there are concerns that the alternatives discussed in the EA did not account for the impacts to grid reliability and access to energy for the periods during proposed flow experiments.<sup>56</sup>

<sup>51</sup> <https://www.usbr.gov/dcp/finaldocs.html>

<sup>52</sup> <https://www.federalregister.gov/documents/2022/06/24/2022-13502/request-for-input-on-development-of-post-2026-colorado-river-reservoir-operational-strategies-for>

<sup>53</sup> <https://www.govinfo.gov/content/pkg/FR-2022-11-17/pdf/2022-25004.pdf>

<sup>54</sup> <https://www.politico.com/news/2023/02/04/colorado-river-biden-climate-change-water-00080990>

<sup>55</sup> [https://www.usbr.gov/uc/DocLibrary/EnvironmentalAssessments/20230200-GCDSmallmouthBassFlowOps\\_Draft%20EA\\_508.pdf](https://www.usbr.gov/uc/DocLibrary/EnvironmentalAssessments/20230200-GCDSmallmouthBassFlowOps_Draft%20EA_508.pdf)

<sup>56</sup> <https://www.usbr.gov/uc/progact/amp/amwg/2023-02-16-amwg-meeting/20230216-AMWGMeeting-FinalAgenda-508-UCRO.pdf>

## *Columbia River Basin*

Long-standing litigation surrounding the Federal Columbia River Power System (FCRPS) has caused major uncertainty on hydropower generation and rates, farming, and navigation. The FCRPS is comprised of 31 federal hydropower dams in Idaho, Montana, Oregon, and Washington. Twenty-one of these dams are owned and operated by the U.S. Army Corps of Engineers (Corps) and ten by Reclamation. Overall, they provide about 50 percent<sup>57</sup> of the region's electric power supply as well as irrigation, navigation, flood risk management and recreation benefits. The Bonneville Power Administration (Bonneville), an agency within the Department of Energy, sells and delivers the power generated by these dams. FCRPS operations impact thirteen anadromous species of salmon and steelhead listed for protection under the ESA.<sup>58</sup> Additionally, there are two ESA-listed resident species, bull trout and sturgeon.

Electricity is not the only benefit provided by these dams, the system is the nation's single largest wheat export gateway, transporting over 60% of all U.S. wheat to markets overseas.<sup>59</sup> About 15 million metric tons of wheat destined for export move through the system each year, as well as 8.4 million metric tons of soybeans, 2 million tons of wood products and 6 million tons of corn.<sup>60</sup> According to the Pacific Northwest Waterways Association, it would have taken 42,160 rail cars or 162,153 semi-trucks to move the cargo that was barged on the system in 2020.<sup>61</sup>

The Columbia River System Operations (CRSO) encompasses fourteen of the FCRPS dams. Management of the CRSO have been the subject of constant litigation for decades. In May 2016, a federal judge ordered the federal agencies that own and operate the dams — the Corps, Reclamation and Bonneville — to undertake a new environmental analysis.<sup>62</sup> The order required the agencies to consider breaching four dams on the Lower Snake River in eastern Washington: Ice Harbor, Lower Monumental, Little Goose, and Lower Granite. In 2020, these agencies released a Record of Decision (ROD), as mandated by the court. The ROD did not endorse dam breaching, stating that while that alternative had the “greatest benefits for some species of ESA-listed fish, it would achieve those benefits at the expense of not meeting the other components of the agencies’ Purpose and Need Statement or certain EIS objectives.”<sup>63</sup> In particular, these dams have salmon passage and survival rates of between 93 to 99 percent.<sup>64</sup>

The National Wildlife Federation and other plaintiffs sued the federal government on the 2020 ROD. In 2021, the federal government, the State of Oregon, the Nez Perce Tribe and the plaintiffs filed an agreement with the U.S. District Court that outlined how dam operations would

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<sup>57</sup> <https://www.nwcouncil.org/energy/energy-topics/hydropower>

<sup>58</sup> Federal Columbia River Power System, <https://www.usbr.gov/pn/fcrps/index.html>

<sup>59</sup> <https://www.pnwa.net/wp-content/uploads/2021/11/CSRS.pdf>

<sup>60</sup> <https://www.pnwa.net/wp-content/uploads/2022/08/CSRS.pdf>

<sup>61</sup> Id.

<sup>62</sup> House, Kelly (2016, May 4). *Judge rejects feds' Columbia River salmon plan, calls for a rewrite*. The Oregonian.

[https://www.oregonlive.com/environment/2016/05/judge\\_rejects\\_feds\\_columbia\\_river.html](https://www.oregonlive.com/environment/2016/05/judge_rejects_feds_columbia_river.html)

<sup>63</sup> <https://www.federalregister.gov/documents/2020/10/08/2020-22147/record-of-decision-columbia-river-system-operations-environmental-impact-statement>

<sup>64</sup> *Executive Summary CRSO EIS*, page 24.

be altered in the coming year while allowing for parties to reach further agreement on long-term operations.<sup>65</sup>

While the litigation is currently in stay, a mediation process is underway. However, that approach has been criticized. Of concern for many stakeholders is the Biden administration's apparent push for trying to reach a "consensus" resolution and instead to advance a predetermined outcome of dam removal. According to the Inland Ports and Navigation Group (IPNG) and Northwest River Partners (NWRP):

"Unfortunately, it has become clear that our input is not being heard in the mediation context, leading to more serious concerns that a small group of stakeholders is seeking to prescribe decisions for our entire region regarding our climate response, electricity rates, transportation, grid reliability, food and energy security, and the future of river dependent communities without the full opportunity of affected stakeholders to participate."<sup>66</sup>

## **Hydropower**

Hydropower is produced when water is released through dams, spinning turbine blades that are connected to generators to produce energy. In specific regions, it constitutes a significant source of electricity (i.e., 66% in Washington State).<sup>67</sup> Hydropower currently accounts for 31.5% of total U.S. renewable electricity generation and about 6.3% of total U.S. electricity generation.<sup>68</sup>

Hydropower is renewable and emissions-free and can be adjusted quickly to match real-time changes in electricity demand. It not only provides power for baseload (full-time) needs and peak times, but also serves as a backup generation source for intermittent wind and solar power.<sup>69</sup> It is generally low-cost compared to other generation sources.<sup>70</sup> A witness from the Northwest Public Power Association will speak to the numerous benefits of hydropower as an important piece of the overall domestic energy mix.

### *Federal Hydropower*

Under numerous federal statutes, the Corps and Reclamation generate hydropower at federal dams and reservoirs. Reclamation owns 77 hydropower facilities.<sup>71</sup> Under Reclamation's policy, hydropower is first used to provide electricity to operate irrigation pumps.<sup>72</sup> Any remaining hydropower is primarily sold by either of two federal agencies, the Bonneville Power Administration and the Western Area Power Administration, to wholesale customers. The wholesale electricity rates are designed to repay the federal capital investment – plus interest – in

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<sup>65</sup> <https://www.doi.gov/pressreleases/biden-harris-administration-announces-steps-improve-conditions-salmon-columbia-river>

<sup>66</sup> [https://republicans-naturalresources.house.gov/UploadedFiles/2023-02-06\\_Congressional\\_Memo\\_on\\_Mediation\\_-\\_Final.pdf](https://republicans-naturalresources.house.gov/UploadedFiles/2023-02-06_Congressional_Memo_on_Mediation_-_Final.pdf)

<sup>67</sup> U.S. Energy Information Administration, Washington State profile and energy estimates, <https://www.eia.gov/state/?sid=WA>

<sup>68</sup> Department of Energy, Water Power Technologies Office, Hydropower Basics

<https://www.energy.gov/eere/water/hydropower-basics>

<sup>69</sup> <https://www.eenews.net/articles/why-solar-tripping-is-a-grid-threat-for-renewables/>

<sup>70</sup> <http://www.hydro.org/why-hydro/affordable/>

<sup>71</sup> [https://www.usbr.gov/power/FY2022\\_Q4\\_Hydropower\\_Update.pdf](https://www.usbr.gov/power/FY2022_Q4_Hydropower_Update.pdf)

<sup>72</sup> U.S. Bureau of Reclamation, History of Reclamation Power, <https://www.usbr.gov/power/who/history.html>

federal electricity generation and transmission facilities, annual operation and maintenance costs of such facilities, and federal staffing.<sup>73</sup>

### *Non-Federal Hydropower*

Under the Federal Power Act (FPA, 16 U.S.C. 791 et seq.), the Federal Energy Regulatory Commission (FERC) has authority to license non-federal hydropower facilities. There are approximately 1,030 active, non-federal hydropower licenses currently issued by FERC.<sup>74</sup>

Most licenses are valid for 30 to 50 years. However, the process to relicense facilities can be complex, expensive, lengthy, and uncertain.<sup>75</sup> During licensing or re-licensing, FERC must consider the power aspect of the project, but must give equal consideration to energy conservation, fish and wildlife, recreational opportunities and other federally mandated needs.<sup>76</sup> While FERC has the authority to license these facilities, the resource agencies under the jurisdiction of the House Natural Resources Committee have imposed significant mandates on the licenses and the process to grant them due to FPA and federal environmental statutes like the Endangered Species Act (ESA, 16 U.S.C. 1531 et seq.).

### *Potential for New Hydropower Resources*

In 2016, the U.S. Department of Energy published a comprehensive analysis to evaluate future pathways for low-carbon, renewable hydropower (hydropower generation and pumped storage) in the United States. The report showed that domestic hydropower could grow from 101 gigawatts (GW) of capacity to nearly 150 GW by 2050.<sup>77</sup> This included expanding, upgrading, and/or improving efficiency of existing hydropower facilities; adding power generation capabilities at existing but non-powered dams; installing hydropower in existing water conveyance infrastructure, such as canals and conduits; developing new hydropower projects requiring new water diversions or impoundments; and developing new pumped storage projects. The report did not evaluate or recommend new policy actions designed to facilitate new hydropower resources, however.<sup>78</sup> Some policy proposals for expanding hydropower resources will be discussed at this and future hearings.

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<sup>73</sup> Id.

<sup>74</sup> <https://www.ferc.gov/licensing>

<sup>75</sup> Federal Energy Regulatory Commission, Hydropower Licensing: A Guide for the Public. <https://www.ferc.gov/sites/default/files/2020-04/hydro-guide.pdf>

<sup>76</sup> Id.

<sup>77</sup> Hydropower Vision: A New Chapter for America's 1st Renewable Electricity Source. <https://www.energy.gov/sites/default/files/2018/02/f49/Hydropower-Vision-021518.pdf>

<sup>78</sup> Id.