

# Chapter 5: Consultation, Review, and Permit Requirements

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## 5.1 National Environmental Policy Act

This EIS was prepared pursuant to regulations implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), which requires Federal agencies to assess the impacts their actions may have on the environment. Decisions will be based on understanding of the environmental consequences and actions will be taken to protect, restore, and enhance the environment.

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## 5.2 Endangered and Threatened Species and Critical Habitat

The Endangered Species Act (ESA) of 1973 (16 U.S.C. 1536), as amended, requires Federal agencies to ensure that their actions are not likely to jeopardize endangered or threatened species or result in the destruction or adverse modification of their critical habitats. BPA, COE, and BOR have consulted with NMFS regarding the effects of operation of the FCRPS in 1995 and future years upon listed, threatened, and endangered species and NMFS and USFWS issued biological opinions. BPA's actions to implement power-related activities, including the alternatives considered in this EIS, will not conflict with the outcomes of such ESA consultations. Therefore, no specific consultation is planned on these alternatives. If a site-specific action affects listed species in a manner or to an extent not considered in the biological opinions, additional consultations may become necessary.

If a site-specific NEPA document tiered to this EIS is needed, the appropriate offices of the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) will be contacted for lists of species. As necessary, Biological Assessment(s) analyzing the effects of the actions on any listed species will be prepared. These Biological Assessments will be forwarded to the USFWS and/or NMFS for concurrence and included in the site-specific NEPA document.

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## 5.3 Fish and Wildlife Conservation

The Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901 et seq.) encourages Federal agencies to conserve and to promote conservation of nongame fish and wildlife species and their habitats. The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) requires Federal agencies undertaking projects affecting water resources to consult with the USFWS in order to conserve or improve wildlife resources. BPA will

consult with the USFWS to conserve, improve, and protect fish and wildlife resources if a site-specific action is taken.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) (16 U.S.C. 839 et seq.) contains provisions intended to protect, mitigate, and enhance the fish and wildlife (including their spawning grounds and habitat) of the Columbia River and its tributaries. The Pacific Northwest Electric Power and Conservation Planning Council (Council), established under the Northwest Power Act, developed a Regional Electric Power and Conservation Plan (Plan). In implementing its mandate to assure an adequate, efficient, economical, and reliable power supply, BPA must give due consideration to the protection, mitigation, and enhancement of the region's fish and wildlife resources. Any actions BPA takes (including acquisition of major resources, i.e., resources with a planned capability greater than 50 average megawatts acquired for more than 5 years) must be consistent with the Plan, including its fish and wildlife components, unless an exemption is granted by Act of Congress.

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## 5.4 Heritage Conservation

A number of Federal laws and regulations have been promulgated to protect the Nation's historical, cultural, and prehistoric resources. BPA must consider whether its actions may have an effect on a property listed or eligible for listing on the National Register of Historic Places, a property listed on the National Registry of Natural Landmarks, a property listed as a National Historic Landmark, a property listed on the World Heritage List, a property listed on a state-wide or local list, or the ceremonial rites or access to religious sites of Native Americans. Consistent with Section 106 of the National Historic Preservation Act (16 U.S.C. 470), BPA will consult with the appropriate State Historic Preservation officers before undertaking any site-specific actions.

In addition, BPA has executed a Programmatic Agreement with the BOR; the COE; USFS; the Advisory Council on Historic Preservation; the Idaho, Montana, and Washington State Historic Preservation Officers; the Colville Confederated Tribes; and the Spokane Tribe of Indians. This Programmatic Agreement effectively mitigates for impacts to cultural resources from changes in elevation at the five major Federal storage reservoirs on the Columbia River system, satisfying BPA's responsibilities under Section 106 of the National Historic Preservation Act. The Programmatic Agreement also ensures BPA's consistency with the American Indian Religious Freedom Act and the Native American Graves Protection and Repatriation Act by providing for BPA participation in the disposition of Native American burials if such sites are discovered.

In 1983, BPA, the Advisory Council on Historic Preservation, and the State Historic Preservation Officers of California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming signed Programmatic Memoranda of Agreement which specified procedures for ensuring that BPA's energy conservation programs were consistent with Section 106 of the National Historic Preservation Act and implementing regulations. These procedures will be followed for conservation acquisitions.

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## 5.5 State, Area-Wide, Local Plan and Program Consistency

In accordance with Executive Order 12372, this EIS will be circulated to the appropriate state clearinghouses to satisfy review and consultation requirements.

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## 5.6 Coastal Zone Management Consistency

The Coastal Zone Management Act of 1972 requires that Federal actions be consistent, to the maximum extent practicable, with approved state Coastal Zone Management programs. The alternatives examined here are not expected to have coastal zone impacts. If an action which could affect the coastal zone is undertaken in a

subsequent site-specific document tiered to this EIS, BPA will consult with the appropriate state(s) to ensure consistency with the state programs.

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## 5.7 Floodplains Management

Executive Order 11988 (Floodplain Management) and DOE regulations implementing the Executive Order (10 CFR Part 1022) direct BPA to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Avoiding impacts to floodplains by siting structures outside such areas will be addressed, as appropriate, during follow-on site-specific environmental studies that may be associated with the implementation of alternatives addressed in this EIS.

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## 5.8 Wetlands Protection

Executive Order 11990 (Protection of Wetlands) and DOE regulations implementing the Executive Order (10 CFR Part 1022) direct BPA to minimize the destruction, loss, or degradation of wetlands; and to preserve and enhance the natural and beneficial values of wetlands. Any site-specific actions tiered to this EIS will be evaluated to determine if they include actions in or affecting a wetland or result in a net loss of wetlands. If a wetland will be affected, a finding must be made that there is no practicable alternative to affecting that wetland and that all practicable measures have been taken to minimize harm.

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## 5.9 Farmland Protection

The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.) requires Federal agencies to identify and take into account the adverse effects of their programs on the preservation of farmlands. Any subsequent actions considered in an environmental document tiered to this EIS will be evaluated to determine whether or not those actions would convert farmland to other uses or cause physical deterioration and/or reduction in productivity of farmlands. A farmlands assessment would be prepared if any prime or unique farmland or farmland of statewide importance were affected.

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## 5.10 Recreation Resources

BPA's site-specific actions will be evaluated to determine if they affect a component of the National Wild and Scenic Rivers System or the National Trails System; a USFS Wilderness Area or roadless area; a Bureau of Land Management Wilderness Area or Area of Critical Environmental Concern; a park or other area of ecological, scenic, recreational, or aesthetic importance; or convert property acquired or developed with assistance from the Land and Water Conservation Fund to other than outdoor public recreation uses. This evaluation would be included in any site-specific document tiered to this EIS.

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## 5.11 Global Warming

A discussion of possible global warming effects from the regional operation of about 3,300 MW of combustion turbines (approximately 400 MW from BPA) and 100 MW of cogeneration (all BPA) has been incorporated by reference from BPA's Resource Programs EIS and presented in this EIS. Greenhouse gases have been included in this analysis in terms of describing the total volume of greenhouse gases that may be emitted; dollar values have not been assigned.

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## 5.12 Permits for Structures in Navigable Waters

If a proposed action subsequent to this EIS includes a structure or work in, under, or over a navigable water of the United States; a structure or work affecting a navigable water of the United States; or the deposit of fill material or an excavation that in any manner alters or modifies the course, location, or capacity of any navigable water of the United States, a Section 10 Permit under the Rivers and Harbors Appropriations Act of 1899 will be required from the COE.

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## 5.13 Permits for Discharges Into Waters of the United States

A Section 404 Permit (Permit for Discharges into the Waters of the United States) under the Federal Water Pollution Control Act (Clean Water Act) of 1972 as amended will be required from the COE if a subsequent action includes the discharge of dredged or fill material into waters of the United States.

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## 5.14 Permits for Rights-of-Way on Public Land

If a subsequent action involves the use of public or Indian lands not in accordance with the primary objective of the management of those lands, under the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), a Federal permit for a right-of-way across such lands will be required. The alternatives examined here are not expected to have such effects.

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## 5.15 Energy Conservation at Federal Facilities

None of the alternatives analyzed in this EIS include the operation, maintenance, or retrofit of an existing Federal building; the construction or lease of a new Federal building; or the procurement of insulation products. Therefore the requirements for energy conservation at Federal facilities do not need to be addressed.

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## 5.16 Pollution Control at Federal Facilities

In addition to their responsibilities under NEPA, Federal agencies are required to carry out the provisions of other Federal environmental laws. The alternatives discussed in this EIS do not require any particular response with regard to these other Federal laws, which are more concerned with site-specific proposals and alternatives, rather than the broad decisions analyzed in this EIS. Specific environmental laws will be cited as appropriate in any site-specific document tiered to this EIS.

To the extent applicable to an alternative presented in this EIS, compliance with the standards contained in the following legislation is mandatory:

- Title 42 U.S.C. 7401 et seq., The Clean Air Act, as amended.
- Title 33 U.S.C. 1251 et seq., The Clean Water Act, as amended.
- Title 42, U.S.C. 300 F et seq., The Safe Drinking Water Act, as amended.
- Title 42 U.S.C. 9601 [9615] et seq., The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- Title 7 U.S.C. 136 et seq., The Federal Insecticide, Fungicide, and Rodenticide Act, as amended.
- Title 42 U.S.C. 6901 et seq., The Resource Conservation and Recovery Act of 1976, as amended.

- Title 15 U.S.C. et seq., The Toxic Substances Control Act, as amended; Title 40 CFR Part 761, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions."
  - Title 42, U.S.C. 4901 et seq., The Noise Control Act of 1972, as amended.
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## **5.17 Other**

- Title 16 U.S.C. 1131 et seq., The Wilderness Act, as amended; Title 43 CFR Part 19, "Wilderness Preservation."