



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OREGON 97232-1274

F/NWR5

VIA ELECTRONIC FILING

November 3, 2006

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: National Marine Fisheries Service's Comments on Construction Activities under FERC Preliminary Permit for the Tacoma Power Narrows Tidal Energy Project (FERC No. 12612)

Dear Secretary Salas:

We wish to bring to your attention a number of concerns we have regarding projects undergoing preliminary permitting for tidal energy production where the applicants intend to place turbines in the water as part of their investigation prior to filing a license application. Specifically, we point to Tacoma Power's *Narrows Tidal Energy Project* (Project No. 12612) for which the Federal Energy Regulatory Commission (FERC) issued a preliminary permit on February 22, 2006. We are concerned that planned actions may exceed the scope of the existing preliminary permit, and that such actions trigger review under the Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the National Environmental Policy Act (NEPA).

FERC has routinely held that preliminary permits "confer[] no authority on the permittee to undertake construction of the proposed project or any part thereof."¹ FERC relies on this distinction from licenses to support its view that issuing a preliminary permit is not a major federal action affecting the quality of the human environment. See, e.g., *Symbiotics, LLC*, 116 FERC ¶62,189 (Sept. 6, 2006); and *City of Brawley, CA*, 113 FERC ¶62,066 (Oct. 25, 2005). However, in its July 31, 2006, Progress Report, Tacoma Power identifies the company's intent to place a turbine in Tacoma Narrows for analysis during the remaining term of its preliminary permit. The report states that the preliminary permit allows for construction of a pilot project, including installation of a turbine. Since a turbine is clearly a "part" of a hydroelectric project—if not the very heart of the project—the placement of turbines in the water at potential project

¹Section 5 of the Federal Power Act, 16 U.S.C. §798, states that preliminary permits are issued "for the sole purpose of maintaining priority of application" for a period of time as "may be necessary for making examinations and surveys, for preparing maps, plans, specifications and estimates, and for making financial arrangements."



While issuing and interpreting preliminary permits is FERC's responsibility, a change in the historic scope of such permits would have consequences for other agencies, including the National Marine Fisheries Service. Although preliminary permits which disallowed construction were not typically ripe for environmental review, issuing permits that allow construction and related activities would trigger the need for reviews under the ESA, MMPA, MSA, and NEPA. For example, consultation is required for any action which "may affect" ESA-listed species, marine mammals (listed and non-listed), and Essential Fish Habitat (EFH).² Also, FERC regulations recognize that under NEPA, actions would require an environmental assessment, at a minimum, when they may affect anadromous fish or listed species, 18 CFR §380.4(b). We have not been contacted to take part in any of the necessary consultations or reviews, even as permittees are imminently planning actions which clearly cross these thresholds.

For instance, in the above-cited matter, Tacoma Power plans to place a turbine in the water which includes a dual rotor with 18-meter (59-foot) blades per rotor. The maximum tip speed on these blades is estimated to be about 27 miles per hour,³ or nearly 40 feet per second. By comparison, an adult Chinook salmon's burst speed is about 22 feet per second.⁴ Blade tips moving this fast through the water have potential to strike salmon species and marine mammals, resulting in injury or death. Noise impacts are another potential hazard to aquatic species. Protected habitat could also be negatively affected by the placement – even temporarily – of anchors, cables, transmission lines, etc.

Placement of turbines in sensitive waters, such as the Puget Sound or Columbia River estuary, prior to undergoing consultation may result in unlawful and unpermitted take of listed species and marine mammals, which under section 11 of the ESA and section 105 of the MMPA carry substantial penalties (16 USC §1540 and 16 USC §1375, respectively). Similarly, the MSA and NEPA require consideration of impacts before actions triggering reviews can take place.

It is not our intent to single out Tacoma Power, in as much as we are aware there have been at least 15 other preliminary permit applications submitted to FERC for tidal or wave energy projects in the Pacific Northwest. However, Tacoma Power's Narrows Project is the first one that we know of that has received a preliminary permit from FERC, and we see this project as the earliest opportunity to raise these concerns.

We understand the need to promote research at this stage and appreciate the energy value posed by this emerging technology. At the same time, it is imperative that we find a way forward which is sensitive to the needs of threatened and endangered species, and other environmental

²Pursuant to ESA §7(a)(2), 16 U.S.C. §1536(a)(2); 50 C.F.R. § 402.02(c) (within definition of "action"), the MMPA, U.S.C. §§1371(a)(5)(A) and (a)(5)(D), and the MSA U.S.C. §1855(b)(2).

³Tacoma Power, Project No. 12612-Washington, Tacoma Narrows Tidal Energy Project, Progress Report #1. July 31, 2006.

⁴Bell, M. 1990. Fisheries handbook of engineering requirements and biological criteria. U.S. Army Corps of Engineers, North Pacific Division, Portland, Oregon. Puget Sound Chinook are listed as threatened under the ESA. 70 Fed. Reg. 37160 (June 28, 2005).

values which Congress has charged the fish and wildlife agencies to protect. We would like to meet directly with FERC staff, at the earliest possible time, to identify a solution to this matter. We look forward to resolving these concerns at the earliest possible time. Please feel free to contact me at 503-230-5431 or email me at Keith.Kirkendall@noaa.gov.

Sincerely,



Keith Kirkendall
Chief, FERC and Water Diversions Branch
Hydropower Division

cc: Service List
William Guey-Lee, FERC – Washington D.C.
Chris Robinson, Tacoma Power – Tacoma, WA
Brian Peck, USFWS – Lacey, WA
Steven Reneaud, WA Attorney General's Office – Olympia, WA
Lauri Vigue, WDFW – Olympia, WA
Kathy Fletcher, People for Puget Sound – Seattle, WA
Christopher D. Fontecchio, NOAA General Counsel – Seattle, WA
Melanie Harris, NMFS Office of Habitat Conservation -- Silver Spring, MD

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

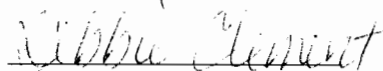
Tacoma Power)	Narrows Tidal Energy Project
)	
_____)	FERC Project No. 12612

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by electronic filing, the National Marine Fisheries Service's letter regarding its Comments on Construction Activities under FERC Preliminary Permit for the Tacoma Power Narrows Tidal Energy Project (FERC No. 12612) to Magalie R. Salas, FERC, and this Certificate of Service upon each person designated on the official service list compiled by FERC in the above captioned proceeding.

Dated November 3, 2006.

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Debbie Clement

Submission Contents

comments.pdf..... 1-4