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SECRETARY



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

F/NWRS

2006 JUN 26 P 3:31

June 20, 2006

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

ORIGINAL

Re: Notice of Intervention for Washington Tidal Energy Company's Application for Preliminary Permit, Deception Pass Tidal Energy Hydroelectric Project (FERC No. 12663-000).

Dear Secretary Salas:

On May 2, 2006, the Federal Energy Regulatory Commission (FERC) issued a *Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments* for the Washington Tidal Energy Company's Deception Pass Tidal Energy Hydroelectric Project (FERC No. 12663-000) in Deception Pass in Skagit and Island Counties, Washington. Attached for filing, please find the National Marine Fisheries Service's (NMFS) Notice of Intervention in the above-captioned proceeding and certificate of service.

Sincerely,

Keith Kirkendall, Chief
FERC & Water Diversions Branch
Hydropower Division

Enclosure

cc: Original & 8 Copies to the Secretary
Service List
Joseph Cannon
Charles Cooper



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

Washington Tidal Energy Company)	FERC Project No. 12663-000
)	(Deception Pass Tidal Energy
)	Hydroelectric Project)
Application for Preliminary Permit)	
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**NATIONAL MARINE FISHERIES SERVICE'S
NOTICE OF INTERVENTION**

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, United States Department of Commerce, hereby provides notice pursuant to 18 C.F.R. §385.214(a), as amended at 68 Fed. Reg. 51,070 (Aug. 25, 2003) (Rule 214), that it is intervening in this proceeding. NMFS has a Federal statutory responsibility for protection, mitigation, and enhancement of marine and anadromous fish resources and marine mammals that may be directly affected by the results of this proceeding. NMFS therefore intervenes for the purposes of becoming a party, and to ensure that its interests and those of the Department and the public are represented in this proceeding.

Service of process and other communications concerning this proceeding should be made to:

Keith Kirkendall
National Marine Fisheries Service
1201 NE Lloyd Blvd., Suite 1100
Portland, Oregon 97232-1274
Phone: (503) 230-5431
Fax: (503) 231-2318
Email: Keith.Kirkendall@noaa.gov

U.S.C. § 661 and 662; the Sustainable Fisheries Act, 16 U.S.C. § 1801 et seq.; the Federal Power Act (FPA) at 16 U.S.C. § 803 and 811; the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839 et seq.; the Pacific Salmon Treaty Act of 1985, 16 U.S.C. § 3631-3644; the Marine Mammal Protection Act 16 U.S.C. §1361 et seq., as amended; and finally, the Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq.

Pursuant to the above-cited authorities, NMFS has a statutory responsibility for protection and enhancement of marine mammals and marine and anadromous fish resources that may be affected by the outcome of this proceeding. The FPA and FWCA specifically authorize NMFS to participate in this proceeding. By carrying out its statutory responsibilities under the FPA, FWCA, ESA and other authorities cited above, NMFS acts in the public interest. In addition, NMFS is obligated to satisfy its tribal trust responsibilities in the exercise of its statutory authorities affecting tribal interests and tribal treaty obligations.

III. NMFS' Preliminary Comments

Please note that two species listed by NMFS under the ESA do occur in and around the area of Deception Pass and may be adversely affected by the proposed Project; these species are Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*) and the Southern Resident killer whale (*Orcinus orca*). NMFS listed the Puget Sound Chinook salmon as a threatened species under the ESA on March 24, 1999 (64 Fed. Reg. 14,308), and designated critical habitat for this species on September 2, 2005 (70 Fed. Reg. 52,630). The area proposed by Washington Tidal Energy Company for evaluation is within designated critical habitat. In addition, Southern Resident killer whales frequent

the Deception Pass area and have been sighted under the Deception Pass bridge and near West Beach at Deception Pass State Park. On November 18, 2005, NMFS listed the Southern Resident killer whale distinct population segment as an endangered species under the ESA (70 Fed. Reg. 69,903) and take prohibitions became effective on February 16, 2006. Critical habitat has not been designated for this species. Finally, pinniped species (harbor seals and sea lions) protected under the Marine Mammal Protection Act use the area extensively. Harbor seals haulout sites are located at the east end of the pass and a nursery are is located at the west end of the pass at Williamson Rocks.

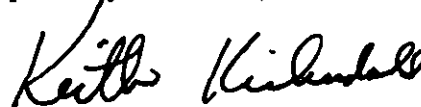
Because these species are present, special consideration should be given to avoiding impacts from the proposed project. FERC may need to initiate consultation with NMFS. Please refer to the ESA section 7 implementing regulations, 50 CFR Part 402, for information on the consultation process.

IV. Conclusion

For the above-stated reasons, NMFS respectfully requests that its motion to intervene in this proceeding for the Project be granted.

DATED this 20 day of June, 2006, on behalf of the National Marine Fisheries Service.

Respectfully submitted,



Keith Kirkendall
Chief, FERC and Water Diversions Branch
Hydropower Division

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

Tacoma Power) **FERC No. 12612-000**
) **(Narrows Tidal Energy Project)**
Application for Preliminary Permit)
_____)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail, the National Marine Fisheries Service's Notice of Intervention, cover letter to Magalie Salas, FERC, and this Certificate of Service upon each person designated on the official service list compiled by the Commission in the above captioned proceeding.

Dated this 20 day of June 2006.



Kathy Ceballos