

PM&E's: Through the looking glass, and what Alice found there

Keith Kirkendall

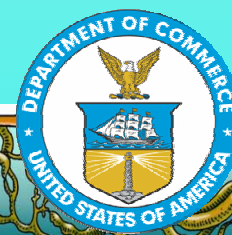
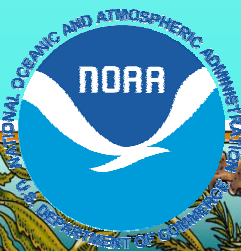
NOAA/NMFS

NWR Hydropower Division

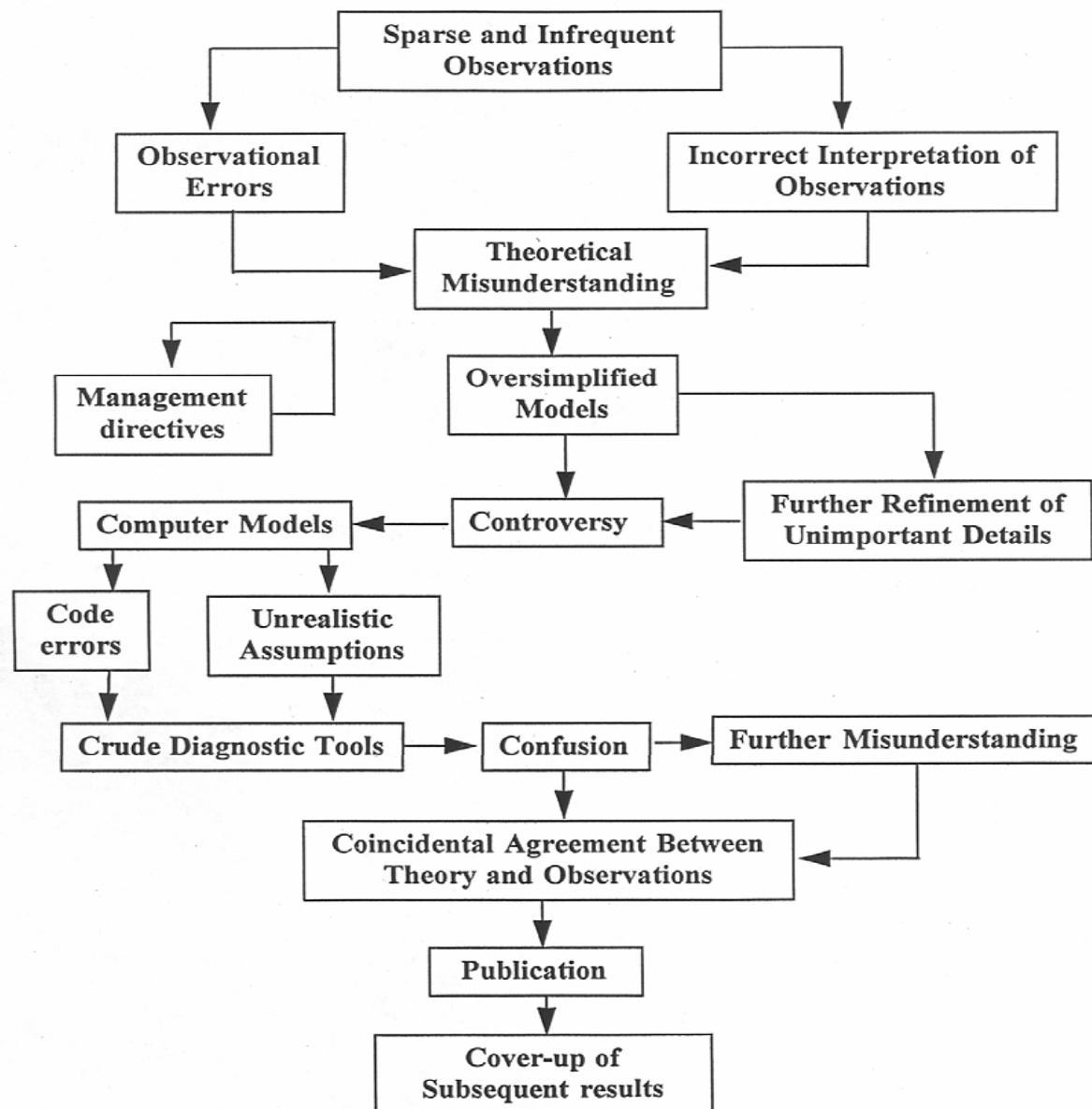
National Hydropower Association

2009 Annual Conference

Washington, DC



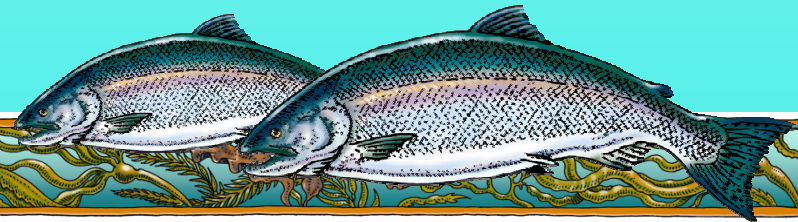
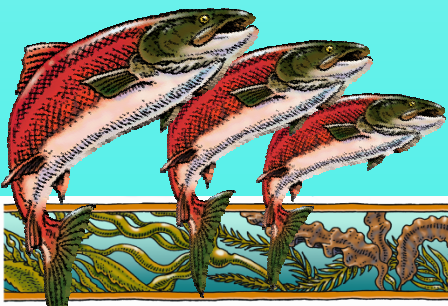
Reaching PM&E's – half way to insanity!?



To Settle or not to Settle

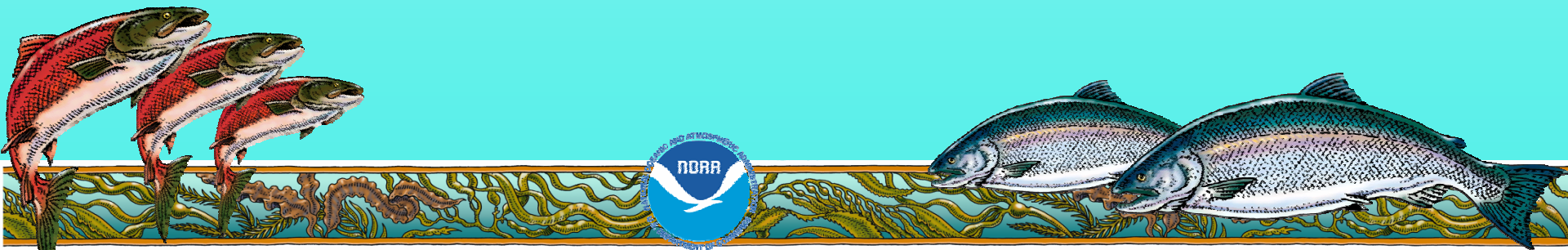
Phase I of Insanity

- Agree on project impacts and proposed protection, mitigation and enhancement measures ('**PM&E's**').
- Negotiate conditions under FPA sec. 4(e), 18, 10(j), CWA sec. 401, ESA, etc.
- Agree on additional studies or alternative solutions.



Benefits from Settlement (cont.)

- Sequence and time PM&E measures
- Build Working Relationships for Future Implementation
- Avoid Costly Litigation
- Accelerate Implementation of PM&E's



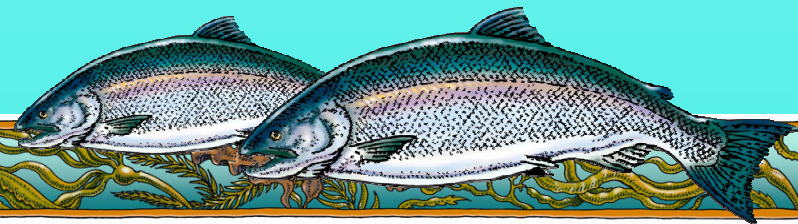
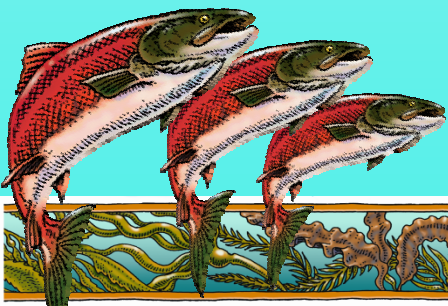
When is Settlement Appropriate?

- ***A settlement process is preferable only if the following exist:***

The applicant is willing to collaborate in good faith to analyze and mitigate all project impacts.

The applicant is willing to enable all interested parties to participate effectively in the process.

The process does not eliminate or reduce legal protections under FERC regulations.



So what are the elements that make settlement possible?

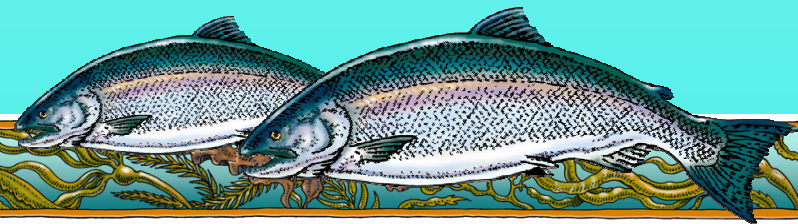
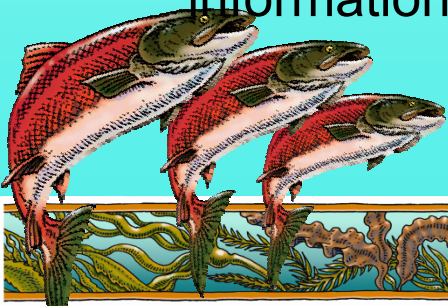
All participants commit the staff and time necessary to participate fully.

Common resource objectives and priorities established (focus on solutions; not blame game).

Resource agencies clearly state the policy and legal mandates that will guide their participation. This is particularly important where there are potential conflicts.

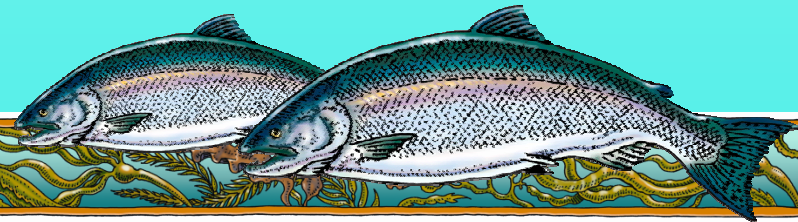
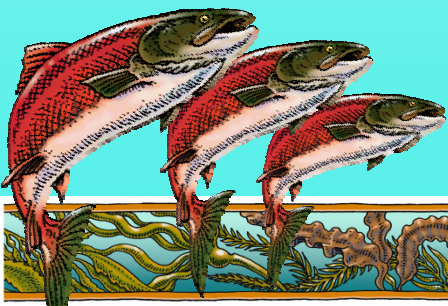
Development of a clear, specific schedule for getting from the issue identification to submission of application (i.e., know where we are going, how you will get there, and how long will it take).

A coherent, integrated study plan limiting studies to those necessary to answer resource issues essential to an informed relicensing decision. Studies should be prioritized according to importance of information and time needed to complete.



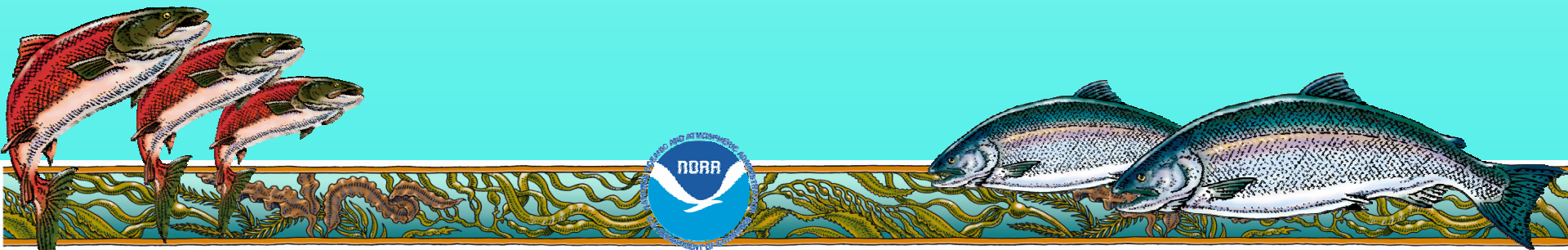
Going in with your eyes wide open

- Settlements are not easy
- Should technical staff participate in drafting? When should policy level staff be involved?
- Facilitators: what are they good for?
 - Operating rules
 - Logistics
 - Referee
 - Mediation
- Are Implementation Committees a good idea?
 - Are they enforceable?
 - Is 100% consensus needed?
 - Should some parties have a controlling vote?
 - What should happen if implementation committees disagree?



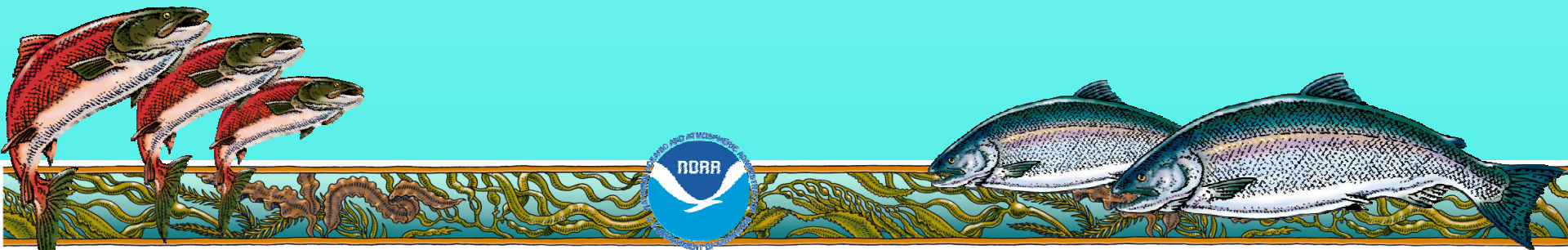
Threats to the Agreement: a participants perspective

- FERC's Schedule
- Missing parties
- Partial FERC adoption
- Changes in Parties' Representatives
- Irreconcilable Positions

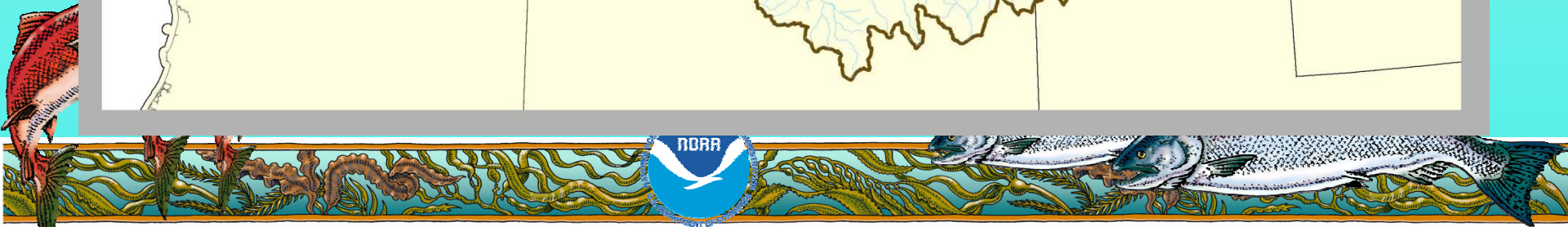


Why is a Collaborative Process Preferable?

- Gives a greater opportunity to shape and monitor the technical analyses on which license decision will be made (aka ownership)
- Allows for early identification of problems (scientific, legal, etc) and thus a greater opportunity to resolve
- Develops trust and a positive working relationship among all participants; and
- Provides a more complete and balanced record for decision making (adoption of settlement agreement)



Active FERC and Major Federal Projects



It cost how much!?

Entering phase II of Insanity

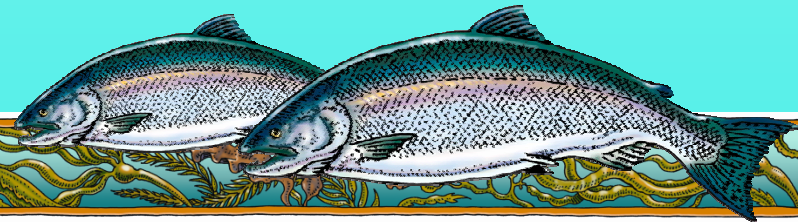
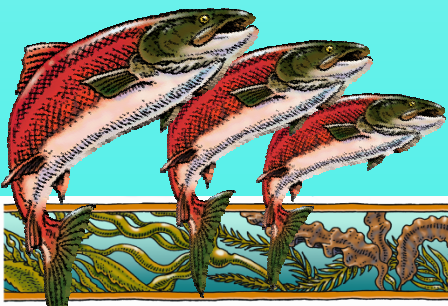
Cost over runs are the rule!

Juvenile surface collector estimate \$12-16 million; final about \$25 million

Juvenile surface collector estimate \$75 million; final cost \$108 million

Screens and ladder estimate \$25 million; final \$70-80 M

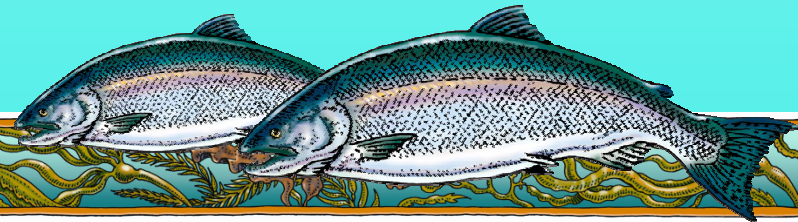
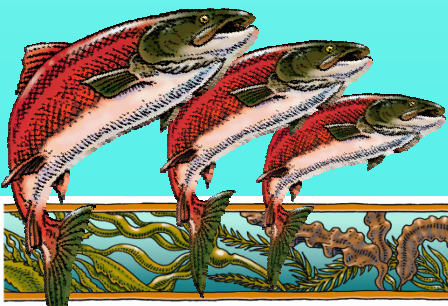
Juvenile surface collector / temperature control structure estimate \$68 million; final \$108 million



Implementation or Phase II of Insanity (aka negotiations *ad nauseam*)

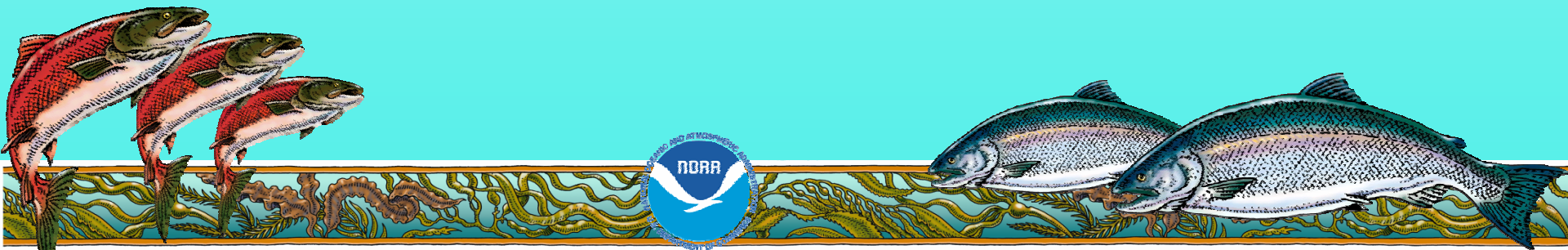
Adaptive Management:

- Able to adjust to changing conditions
- Consider more information as gathered
- Direct studies to compliment earlier studies
- A lot of work every single year
- *Lots more negotiations each step of the way*
- Combined with funds – are funds sufficient? This adds into uncertainties, which are problematic for ESA consultations and assurance that resources will be protected over the length of the license.



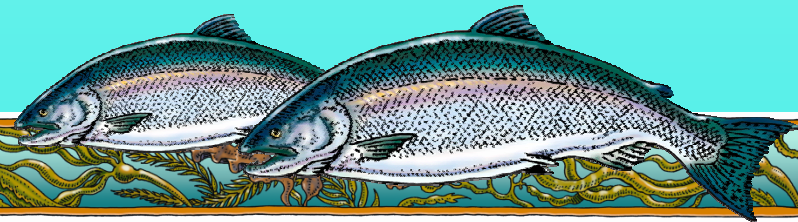
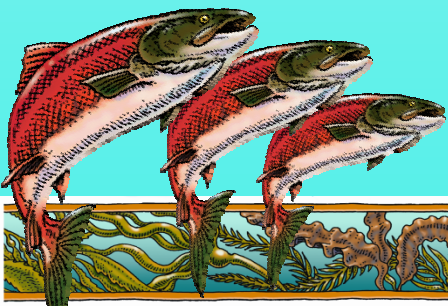
Are things working?

Rocky Reach is the largest surface collector with 6000 CFS into the collector, plus it also has 6 turbine intake screens that comprise the total bypass system. Fry criteria screens (0.4 fps)



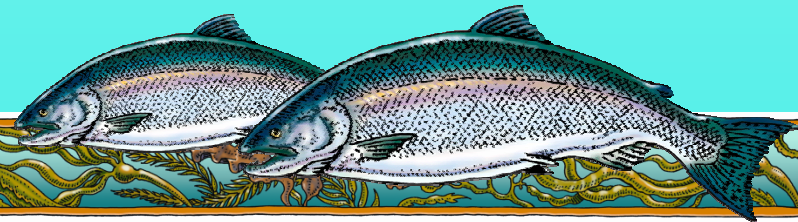
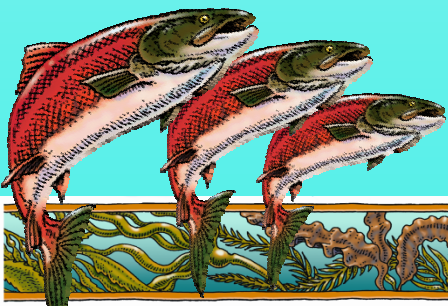
The Baker FSC is functioning really well. Tag groups of sockeye and coho were collected at 80 and 60+%, respectively. The minimum performance standard of 75% for one of these two key species was satisfied.

This year, we're testing on alternate days at 500 and 1,000 cfs attraction flow for the entire season to try to determine if doubling the attraction flow significantly increases smolt collection rates.



Fill it and they will come

- White River returns of Chinook salmon averaged 51 fish at 30 cfs; bumping flows to 130 cfs brought the average run to 340 fish; proposed listing (200-300 cfs) gave us 1476 fish on average; project shut down has brought us an average of 2081 Chinook.
- White River returns of pink salmon were typically less than 6,000. Since instream flows increased, pink returns increased to 13,000, then 16,000, then 30,000, then 80,000, and then 127,000 in 2007.



The Walrus and the Carpenter as recited by Tweedledee and Tweedledum –

*“The time has come” the Walrus said,
“to talk of many things:
Of Shoes - and Ships – and Sealing Wax –
Of Cabbages – and Kings –
And why the Sea is boiling hot –
And whether pigs have wings.”*

Through the Looking-Glass

