Response to Comments Received on the 8/30/04 Final Draft Updated Proposed Action for the FCRPS Biological Opinion Remand

Introduction

The Action Agencies have prepared this document to respond to comments received on the August 30, 2004 *Final Draft Updated Proposed* (UPA) *Action for the FCRPS Biological Opinion Remand*.

The Action Agencies provided the Draft UPA for NOAA Fisheries to consider in their September 2004 draft version of the FCRPS Biological Opinion (Draft BiOp). On September 9, 2004 the Draft UPA and Draft BiOp were posted for public review at www.salmonrecovery.gov and NOAA Fisheries announced that it was seeking comment from the salmon co-managers. While developing their Final BiOp, NOAA Fisheries considered the numerous comments received and addressed those comments in a memorandum dated November 30, 2004.

In several instances, BiOp commenters also provided comments on the Draft UPA. The Action Agencies considered the comments that were specific to the Draft UPA as they prepared the Final UPA. The comments were also considered in the respective agency decision documents for implementation of the Final UPA.

The comments are grouped into 15 different categories as follows:

Category 1 – Coordination
Category 2 – Agency Authorities
Category 3 – Certainty of Implementation
Category 4 – Credit
Category 5 – Duration
Category 6 – Cost effectiveness
Category 7 – Funding
Category 8 – Action Area
Category 9 – Habitat
Category 10 – Hatcheries
Category 11 – Hydrosystem
Category 12 – Fish Transport
Category 13 – Predator Control
Category 14 – Performance Standards and Progress Reporting
Category 15 – Recovery

Category 1 – Coordination

1. *Concerns that the UPA departs from the aggressive non-breach approach endorsed by the four governors.*

Action Agency Response: There appears to be some confusion about the degree to which the UPA continues or departs from the aggressive non-breach approach endorsed by the four Northwest governors and contained in the 2000 BiOp. The Action Agencies want to stress that the UPA continues the aggressive non-breach approach of the 2000 BiOp and in fact improves upon the actions previously undertaken. While the UPA substantially incorporates all major elements of the 2000 BiOp's reasonable and prudent alternative, this hydrosystem operations program will improve salmon survival in the Basin by responding to the most recent scientific information and by adding new measures targeted to achieving increased salmon survival. The UPA builds on existing efforts and commits to new actions including added fish spill in April to respond to new information about the benefits of transport versus in-river migration for early migrants, protection and restoration of spawning and rearing habitat directed at specific factors limiting salmon survival, a significant increase in control of salmon predators and improvement of certain important hatchery programs. The Action Agencies have a specific objective to install new fish passage facilities at all eight of the mainstem Columbia and Snake river dams within 10 years. These passage devices have shown potential to improve salmon survival while reducing costs for electric ratepayers. While the UPA focuses on actions that benefit the greatest number of ESA-listed salmon such as hydrosystem operations with flow augmentation and spill to assist fish passage, structural improvements at all eight mainstem dams, and predator control, the UPA also continues and makes more specific actions in the other H's such as habitat and hatcheries to address ESU-specific needs. These more specific actions with performance measures to ensure accountability may be perceived by some to have reduced a more diffused program of habitat and hatchery improvements outlined in the 2000 BiOp. The Action Agencies believe that these more specific actions improve the certainty that actions taken will provide measurable benefits to ESA listed salmon because they are based on identified factors limiting salmon survival in geographic-specific areas and are therefore an improvement over the less-targeted program of the 2000 BiOp. Finally the Action Agencies would like to assure interested parties in the Northwest that there has not been a decrease in the Action Agencies' level of effort or commitment under this UPA and in fact the new efforts described above signal, if anything, an increased commitment to implement measures based on the best available science to avoid the likelihood of jeopardizing the continued existence of listed ESUs.

2. *The Technical Management Team should be an advisory board for Federal Caucus hydrosystem related decisions.*

Action Agency Response: The Technical Management Team is one of several inter-agency technical groups to the NMFS Regional Forum established in 1995. It is responsible for making recommendations on operations to allow for adaptive management adjustments during the water year. The Action Agencies, as they have since 1995, will continue to consider recommendations and input from the Technical Management Team, System Configuration Team, Implementation Team and other Regional Forum groups in their decisions for the FCRPS. See also 3.18.1 of NOAA's Response to Comments.

3. *The UPA ignores the significant role of state and tribal fishery co-managers relative to decisions regarding hatchery production.*

***Action Agency Response*:** The Action Agencies recognize that state and tribal fishery managers play a significant role relative to hatchery production decisions. The Action Agencies will continue to work collaboratively with the appropriate implementing agencies for any actions in the UPA, as well as any hatchery and harvest conservation actions. The Action Agencies also added to the Final UPA the recognition of the role of *US v Oregon* parties in production related fishery management actions. (see Final UPA sections I.F and III.D.3 & 13)

4. *It is difficult to understand how the UPA can be analyzed if elements of it are waiting finalization of subbasin plans which currently contain no specific actions or measures to be adopted.*

Action AgencyResponse: NOAA Fisheries used the specific habitat actions proposed by the Action Agencies in the UPA to complete the jeopardy analysis. This includes commitments to specific numbers and types of actions in specific subbasins, but not the individual projects that will be selected to satisfy these commitments. The Action Agencies anticipate using the relevant information from adopted subbasin plans and recovery plans to inform future implementation plans and individual projects selection.

5. *Tthe UPA does not reference the federal government's treaty and trust obligations, government-to-government relationship, legal obligations in U.S. v. Oregon and under the Secretarial Order related to ESA and treaty rights.*

Action Agency Response: The UPA was prepared for the purpose of Section 7 consultation under the ESA and focuses on the requirements of that consultation. The Action Agencies are committed to continuing to meet their treaty and trust responsibilities consistent with the federal government's responsibility, Executive Order, and Government-to-Government agency specific policies.

6. *Northwest Power and Conservation Council (Council) coordination is needed for the specific UPA actions in the Upper Columbia.*

Action Agency Response: BPA and Reclamation will coordinate with the Council as appropriate to avoid duplication with the Council's Fish and Wildlife program and to ensure that the UPA's specific metric goals are met. See also Section I.F of the Final UPA.

Category 2 – Agency Authorities

1. *The Action Agencies lack implementation authority for hatchery and harvest actions and they should be included as conservation actions and pursued in a collaborative manner with the appropriate implementing agencies.*

Action Agency Response: Harvest actions are not part of the UPA. However, the Action Agencies do fund a number of harvest and hatchery actions as part of overall hydropower

mitigation. They will continue to work collaboratively with the appropriate implementing agencies for any actions in the UPA, as well as any hatchery and harvest conservation actions. The Action Agencies have added to the Final UPA the recognition of the role of *US v Oregon* parties in production related fishery management actions. NOAA Fisheries has also committed to working with the state and Tribal co-managers in *US v Oregon* on implementation of the new hatchery actions in the UPA. See also 3.8.7 of NOAA's Response to Comments and Final UPA Sections I.F and III.D.3 & 13.

Category 3 – Certainty of Implementation

1. *Actions included in the UPA are described too vaguely. Implementation schedules, contingency plans, and funding commitments should be added to the UPA to provide sufficient agency accountability for implementation.*
2. *The 2000 BiOp RPA actions in the UPA should not be Conservation Actions because there is not enough certainty that they will be implemented.*

***Action Agency Response*:** The Action Agencies have added greater detail to the Final UPA for actions they intend to implement over the 10-year period and will also provide additional detail in their implementation plans (see Section II.A.1 of the Final UPA). The implementation plans will identify ESU-specific targets and UPA actions as well as conservation actions and measures that, while not required to avoid jeopardy, will aid in recovery. The Action Agencies will also annually report on their progress to ascertain whether implementation is occurring consistent with the UPA. The Action Agencies are fully committed to implementing the UPA actions and achieving the metrics goals and benchmarks described in the Final UPA and will report annually on implementation progress.

Category 4 – Credit

1. *The UPA should be clear what the Action Agencies consider beyond their current discretion with regards to changes in hydropower system configuration and operation.*

***Action Agency Response*:** The Action Agencies state in Section I of the Final UPA that "The Corps and Reclamation are authorized by Congress to operate and maintain the Federal Columbia River Power System (FCRPS) projects addressed in this UPA to provide for multiple purposes, including hydropower generation, flood control, irrigation, navigation, fish, wildlife, water quality, municipal and industrial water, and recreation. BPA is responsible for marketing and transmission of power generated from these projects." The actions described in the UPA are discretionary actions that are consistent with the ESA implementing regulations and provide for the congressionally authorized multiple project purposes.

2. *It is difficult to compare the actions from the 2000 BiOp RPA and the actions in the UPA without an explicit accounting and comparison.*

Action AgencyResponse: The Action Agencies prepared the "Crosswalk of 2000 NOAA FCRPS BiOp Actions and the 8/30/04 Draft UPA", dated October 6, 2004 and available on www.salmonrecovery.gov, to provide such a comparison.

3. *The UPA double counts actions taken under the 2000 BiOp.*

Action Agency Response: The Action Agencies included the habitat actions implemented under the 2000 BiOp in the UPA because those actions are still accruing or will soon begin to accrue benefits for listed ESUs. NOAA recognized the beneficial effects from these actions but they did not apply any specific credit toward filling the survival gap in the new BiOp

Category 5 – Duration

1. *The UPA does not clearly state what time period of operations are being consulted on.*

***Action Agency Response*:** In the Final UPA, the Action Agencies proposed that the term of the action would be "the duration of the biological opinion issued at the end of this consultation" (see Final UPA, p. 2). Consequently, the term of the UPA is the same as the 10-year duration of the BiOp (see Final BiOp Section 3.1), with annual progress reports from the Action Agencies and comprehensive programmatic evaluations for 2007 and 2010.

Category 6 – Cost effectiveness

1. *General support for cost effectiveness consideration is expressed.*
2. *The regions economy would be affected by UPA actions that are not proven to be either cost-effective or biologically- effective.*
3. *The cost-effectiveness of hydrosystem configuration actions is questioned.*
4. *Significantly better ESU survival will not occur through less costly alternatives to achieve equal or better passage survival.*
5. *New system configurations, including RSWs, must be cost effective and other cost effective alternatives should continue to be considered.*

Action Agency Response: The Action Agencies have a responsibility to the region to invest resources wisely, and remain committed to provide the same or greater benefits to salmon as provided in the new BiOp and Final UPA in a cost effective manner. This BiOp is performance based and allows for adaptive management considering new information. The UPA addresses this topic in Section II.C, "The Role of Cost Effectiveness." The Action Agencies have clarified in the Final UPA that cost effectiveness alternatives will be discussed with interested parties in the region and considered if equal or better survival improvements at lower cost would result.

Category 7 – Funding

1. *The UPA does not mention BPA's cuts to the Council's Fish and Wildlife Program funding in FY 2002 and 2003, which is a very important context for any increased mitigation commitments assumed in the UPA or BiOp.*

Action Agency Response: BPA will fund the significant mitigation commitments included in the UPA. These commitments will be achieved within the existing available funds for the Fish and Wildlife Program averaging $139 million in expense across 2003-2006 (the current rate

period) within available capital, and within the budget associated with the upcoming rate period(s).

BPA recognizes there is continuing disagreement regarding funding commitments and actual expenditures in recent years. The period in question was one of the most financially tumultuous in BPA's financial history. While, beginning in 2001, BPA actively cut its other programs through a series of initiatives over $650 million in expense for the remainder of the rate period (through 2006), it took steps to hold fish and wildlife to the funding levels announced by the Administrator in December 2001. Specifically, BPA continued to manage expenditures to $139 million average for the current rate period. Expenditures for the expense program in FY 2002 were $137.1 million and in FY 2003 $140.6 million.

Category 8 – Action Area

1. *The Action Area needs to be broadened to include the Okanogan subbasin (for tributary habitat projects) and other areas used by listed species.*

***Action Agency Response*:** The Action Area in the Final UPA was expanded to include BPA's proposed tributary habitat conservation measures in the Okanogan subbasin. In the Final BiOp, NOAA added to the Action Area all additional tributary spawning areas which are accessible to listed adult salmon or steelhead that are affected by the UPA. See also 3.3.1 and 3.3.4 of NOAA's *Comments on the 2004 Draft FCRPS Biological Opinion* (NOAA's Response to Comments).

Category 9 – Habitat

1. *The UPA focuses on tributary habitat actions with short-term benefits when actions with long-term benefits may be more effective.*

Action Agency Response: The tributary habitat actions include types of actions that result in immediate benefits and those for which benefits accrue over a longer period of time. For example, an action that curtails entrainment by screening diversions would have an immediate impact in reducing mortality. By contrast, an action that enhances riparian areas through streambank improvements may take many years to accrue biological benefits to spawning and rearing habitat. Both near-term and long-term actions would provide improvement that will continue over time. BPA and Reclamation included a mix of both near-term and longer term benefit accruing actions in the UPA, but emphasized the near-term actions because they would have greater immediate impact in securing habitat and improving survival.

2. *The UPA should include the reintroduction of Upper Columbia River spring Chinook into historical Okanogan subbasin habitats.*

***Action Agency Response**:* The Action Agencies' collective goal in formulating a tributary habitat program was to improve juvenile survival to offset the losses associated with the FCRPS dams. Reintroduction was not an action that NOAA considered to be an appropriate means of

improving fish survival at this time. Reintroduction of Upper Columbia River spring Chinook into the Okanogan subbasin is beyond that scope but may be an appropriate action to consider in the recovery plans currently being prepared by NOAA.

2. *The Salmon Creek pumping project will help upper Columbia River ESUs and should be included in the UPA.*

Action Agency Response: BPA and Reclamation included tributary habitat actions and affiliated metric measurements in the UPA that they are confident would be achieved within the timeframe, authorities, and funding available for such actions to avoid the likelihood of jeopardy from hydrosystem operations. The Final UPA notes that NOAA identified passage at Salmon Lake Dam and a potential pump exchange project for flow augmentation in the intrinsic potential analysis of the Okanogan subbasin. However, BPA decisions for the project are contingent upon completion of the appropriate environmental review processes, ISRP review, and Council recommendation. Furthermore, Reclamation does not have Congressional authority to implement the project and there is no assurance that the subject authority could be obtained. Therefore, the Action Agencies did not include this project in the Final UPA because there is insufficient certainty that it would be available in time or able to meet the identified metric goals.

3. *Non-hydrosystem mitigation is effective even if the benefits don't accrue until after 2010.*

***Action Agency Response*:** The Action Agencies agree, however, our first priority was to develop a tributary habitat program that would provide survival improvements for juvenile fish within the term of the BiOp while remaining mindful of the long-term effects of those actions.

4. *Concerned that the jeopardy determination has led to tributary habitat projects being abandoned.*

***Action Agency Response*:** In the broad sense, the UPA defines a tributary habitat program which is more limited in geographic territory than the 2000 BiOp's RPA because it is more specific to the needs of certain ESUs. However, the UPA is much more definitive about which actions and their affiliated metric goals will be attained by the Action Agencies. Further, to maintain some momentum from the actions undertaken from the 2000 BiOp's RPA, BPA and Reclamation offer "conservation measure" subbasins in the UPA. In total, the UPA's tributary habitat program addresses all of the "priority subbasins" of the 2000 BiOp in effect at the time of the remand, plus it adds one additional subbasin—the Okanogan—which was not included as a priority subbasin under the 2000 BiOp. The effect of the UPA is a more focused, and better defined tributary habitat program with specific performance standards. Additional tributary habitat projects also may be identified for implementation through recovery planning processes. No tributary habitat projects implemented under the 2000 BiOp have been abandoned.

5. *Reclamation's Snake River spring/summer Chinook 3-year metric goal of 20 cfs for protection of instream flows should be increased to at least 1,000 cfs in the Salmon River alone.*

Action Agency Response: The Salmon River metric goal is part of a conservation measure in the UPA that was offered by Reclamation as an early recovery action item but which is not necessary to avoid the likelihood of jeopardy. Reclamation considered it important to only offer obtainable goals. Two restrictive factors to consider were the need to acquire water from willing sellers and meeting the constructs of State water law. Although a much larger instream flow may be desirable for Salmon River fish populations, Reclamation did not consider it to be efficacious to offer a higher metric goal in the UPA. Higher flow needs may be identified in the in NOAA Fisheries' final recovery plans for the relevant ESUs.

6. *Recommend that a clear restoration goal for acreage or linear feet of tidal channel reconnected be established to make it possible to properly evaluate the effectiveness of the UPA's offsite mitigation approach. The two restoration projects in the draft UPA do not constitute restoration at a landscape scale.*

Action Agency Response: The UPA indicates that the primary metric that will be used in the estuary initially is the number of acres protected, restored, or enhanced. Though the Action Agencies are using acres as a surrogate measurement for the time being, they are working toward being able to quantify the benefits to survival through restoration. The number of estuary habitat projects in the Final UPA is increased to six distributed throughout the estuary. While these projects are focused on shallow water and wetland habitat for juvenile Snake River fall Chinook and other ocean-type ESUs, they should benefit all ESUs. The Action Agencies recognize the value of a landscape, or ecosystem scale approach and plan to continue to work with the Lower Columbia River Estuary Program (LCREP) and others in the region to identify other projects for potential implementation in the estuary.

7. *The statement in the draft UPA that the Action Agencies have limited authority to regulate toxics is not consistent with their draft estuary Research Monitoring and Evaluation Plan, which integrates toxics monitoring.*

Action Agency Response: The Action Agencies note LCREP's comment on toxic contaminants on the estuary and reference to the Action Agencies' estuary RM&E plan. While this plan includes discussion of toxics monitoring, the Action Agencies do not have regulatory authority and have limited ability to address toxics under their authorities. The Final UPA clarifies that the estuary RM&E plan included recommendations that other regional entities have the responsibility to implement in order to develop a more robust and comprehensive program.

8. *If the Umatilla and Yakima rivers are more degraded than the John Day, why is the mitigation happening in the John Day, and why does it not address two of the John Day's limiting factors?*

Action Agency Response: The John Day conservation measure was offered by Reclamation in the UPA to assure continuance of an on-going Reclamation program. Absent this conservation measure, Reclamation might have been required to eliminate the program. This conservation measure is not necessary to avoid the likelihood of jeopardy but was volunteered as an early recovery action. Reclamation does not have authority to address limiting factors associated with grazing or forestry practices so could not include them in the conservation measure metric goals.

9. *The Tribes are concerned with the rationale for neglecting certain areas that may have a strong need for restoration to occur.*

Action Agency Response: The Action Agencies agree that there are many areas of the Columbia River Basin in need of restoration to meet overall biological objectives for recovery of listed fish. However, as noted in Section I.D of the Final UPA, the UPA does not include all of the Action Agency actions that contribute to the conservation and recovery of listed species. The Action Agencies focused the UPA on specific actions that would improve juvenile fish survival consistent with meeting responsibilities to provide for authorized project purposes and the ESA. The Action Agencies will continue to fulfill their further duty to conserve listed species consistent with the applicable recovery plans being developed by NOAA Fisheries. See also 3.11.15 NOAA Response to Comment.

Category 10 – Hatcheries

1. *The best available science does not support a hatchery offset for hydrosystem operations.*

Action Agency Response: The hatchery actions included in the Final UPA are limited to those actions that Action Agencies in coordination with NOAA Fisheries, using the best available science, has determined to effectively contribute to reducing the risk of extinction for the targeted ESU. (see Appendix F of the Final BiOp).

2. *Hatchery efforts have helped Snake River fall chinook approach delisting, and additional supplementation in Snake River drainages should be included in the UPA.*

Action Agency Response: The Action Agencies have included in the Final UPA a number of safety-net programs using supplementation to reduce extinction risk of Snake River sockeye and spring/summer Chinook populations and to jumpstart recovery. The Action Agencies' proposed expansion of the adult salmon and steelhead collection facilities at Lower Granite Dam will facilitate collection and use of natural-origin Snake River fall Chinook broodstock in hatchery supplementation programs, including programs in the Clearwater River drainage, if these fishery management actions are approved through the *US v Oregon* process.

3. *The UPA needs to include artificial production RM&E.*

Action Agency Response*:* Hatchery related action effectiveness research is included in the UPA as proposed actions and conservation actions. For example, the study of the reproductive success of hatchery fish relative to wild fish is included as a conservation action. See Final UPA section IV, RM&E substrategy 2.3 and RM&E Strategy 3.

4. *The UPA abandons the SNAPP projects identified in the 2000 BiOp.*

Action Agency Response*:* The Action Agencies have added safety-net projects for Snake River spring/summer Chinook, mid-Columbia River steelhead, lower Columbia River steelhead, and Columbia River chum to the Final UPA and will continue the Snake River sockeye safety-net

program that was included in the Draft UPA. These safety-net programs were determined by the NOAA Fisheries in coordination with the Action Agencies to be an effective and essential contribution to reducing the risk of extinction of these ESUs. The Safety-Net Artificial Propagation Program (SNAPP), the planning process described in the 2000 BiOp to identify any additional Snake River populations requiring a safety-net program, has completed its objectives. The populations identified as being at severe risk of extinction by SNAPP already have a safety-net or conservation hatchery program in place to reduce risk of extinction.

5. *The UPA should include hatchery actions to support recovery.*

***Action Agency Response*:** The Action Agencies have added a number of hatchery actions in the Final UPA. All of the actions included in the UPA are consistent with the Federal Caucus' *Conceptual Recovery Plan*. If future recovery plans or other scientific or biologically based information suggests that actions in the UPA do not support recovery, then the Action Agencies will make appropriate corrections through the adaptive management process described in section II of the Final UPA. The Action Agencies will continue to support implementation of actions under their existing authorities that contribute to the conservation and recovery of listed species.

6. *There should be supplementation programs for B-Run SR steelhead in the Clearwater, Lochsa, and Selway basins, where there is good habitat and no fish. [53]*
7. *The Entiat National Fish Hatchery should be shifted out of the Entiat basin to the Columbia River below Chief Joseph Dam to protect UCR spring chinook in the Entiat, and it could/should be done right away. [16*
8. *Wells Hatchery stock cannot be relied upon to ensure survival/recovery of UCR steelhead, because they are too domesticated, and too many are released into critical habitats where they compete with native fish. [16]*
9. *More hatcheries are needed to colonize uninhabited stream reaches in the SR basin.*

Action Agency Response: In developing the hatchery actions in the UPA, the Action Agencies considered primarily the expected survival benefits of the action, the relative certainty of successful implementation, including need for approval of fishery management actions by the *US v Oregon* parties, and the size of the survival gap for a particular ESU, i.e., the need for hatchery actions to fill the gap in addition to the other hydrosystem and non-hydrosystem actions in the UPA. The above actions do not meet one or more of these criteria. See also NOAA Response to Comments 3.12.3, 3.12.6, 3.12.7, and 3.12.8

10. *Support for the HGMP process has been reduced to a statement that the Action Agencies will only "consider" funding/implementing its suggested reforms.*

Action Agency Response: In developing the hatchery actions in the UPA, the Action Agencies considered primarily the expected survival benefits of the action, the relative certainty of successful implementation, including need for approval of fishery management actions by the *US v Oregon* parties, and the size of the survival gap for a particular ESU, i.e., the need for hatchery actions to fill the gap in addition to the other hydro and non-hydro actions in the UPA. The Action Agencies do not know what high-priority reforms may be identified by the HGMP process, and consequently do not know which ESUs will be targeted by the reforms nor the

survival benefits that would be provided by reforms. See also NOAA Response to Comments 3.12.4

11. Ratepayer dollars should not be spent on the hatchery actions BPA funds if they are not going to count toward filling the gap.

Action Agency Response: The Action Agencies agree. The hatchery actions included in the Final UPA were determined by NOAA Fisheries to contribute to reducing the risk of extinction, and credited to varying levels toward filling survival gaps for the targeted ESUs. See Also NOAA Response to Comments 3.12.12.

Category 11 – Hydrosystem

1. RSW technology is worth pursuing, but UPA should include appropriate testing and evaluation to validate assumptions.

Action Agency Response: Monitoring and evaluation to verify the effectiveness of improvements, such as RSWs, is routinely conducted by the Action Agencies, and discussed in the UPA in several locations, including pages 19, 43-44, and the discussion of action effectiveness research on pages 93-94.

2. The hydrosystem actions in the UPA will reduce the probability of meeting current flow targets.
3. UPA should clarify that flow objectives are not hard constraints.

Action Agency Response: The Action Agencies acknowledge in the Final UPA that it is not possible to physically achieve the flow objectives in all years because there is limited water and reservoir storage available. Flow objectives are targets, and not hard constraints. The proposed hydrosystem operations in the UPA do not differ significantly from those in the 2000 FCRPS BiOp, consequently the probability of meeting flow objectives does not change appreciably. The Action Agencies will continue to prepare annual Water Management Plans to achieve the best possible mainstem passage conditions, which are coordinated in the TMT process.

4. The UPA fails to consider the tribal preferred river operations with natural peaking/normative flow operations or modified flood control operations to benefit fish.

Action Agency Response: The status of the reconnaissance level study of modifying current system flood control operations to benefit the Columbia River ecosystem is discussed on page 49 of the Final UPA. This study will be coordinated with NOAA and the Region in early 2005. If a decision to proceed with a feasibility study is made following this coordination and appropriations are received to complete the study, it may lead to recommendations for modifying operations consistent with the Action Agencies' authorities. However, without such analysis, the Action Agencies are not prepared to propose the recommended changes at this time.

5. *The flood control actions should be modified to provide further protection for upper river storage reservoirs and down river anadromous fish needs. The baseline is flawed by assuming these controls are non-discretionary.*

Action Agency Response: The status of the study on modifying flood control operations is discussed above. The Action Agencies participated with NOAA Fisheries to describe a "reference operation" that did not include flood control operations. While this "reference operation" analysis does not reflect an operation the Action Agencies have discretion to implement, as it is not consistent with the Action Agencies' obligation to provide for the Congressionally authorized project uses, it describes a mortality rate attributable to the existing configuration of the FCRPS that is a "conservative" estimate, e.g., one that is most protective of the species.

6. *The Action Agencies should consider evacuation as a mechanism to enhance river flows for spring migrants when flood and refill risk is low.*

Action Agency Response: The Action Agencies use adaptive management working with the TMT forum to consider evacuation as a mechanism to enhance river flows for spring migrants when flood and refill risks are low. An example is at Dworshak in May – June 2004 when flood control, fish and refill needs were balanced. The project maintained flood control and released between 10 – 21 kcfs from 25 May – 13 June. The project refilled on June 30.

7. *Disappointed that the Draft UPA did not include language to draft Dworshak into September or draft Libby and Hungry Horse 10 feet below full by September 30.*

Action Agency Response: The Action Agencies' plan to draft Dworshak to 1520 feet in September is addressed on page 46 of the Final UPA. The Action Agencies recognize the State of Montana and the Council's recommendation to limit the draft at Libby and Hungry Horse reservoirs to 10 feet most years and extend the draft through September. The UPA indicates that modification of the draft limits at Hungry Horse and Libby as recommended in the Council's Mainstem Amendment could be made in the future through the UPA's Adaptive Management Framework.

8. *Pool elevations above minimum operating pool (MOP) to maintain safe and efficient navigation channel are supported. MOP should be ended in the Snake River*

Action Agency Response*:* The adaptive management process allows the flexibility to operate the Snake River pools to meet authorized project purposes. Any adjustments to the pool elevation would be coordinated through the TMT.

9. *Want assurance that the full 427 kaf of Snake River flow augmentation is secured by Reclamation.*

Action Agency Response: The annual provision of up to 427 kaf for Snake River flow augmentation is not part of the UPA for the 2004 FCRPS BiOp. Reclamation is proposing to increase its flow augmentation efforts from the current amount of up to 427 kaf. Reclamation

now proposes to annually provide up to 487 kaf under a new set of proposed actions as part of its consultation on the operation and maintenance of its 10 projects in the upper Snake River. Progress is being made to secure this action as Congress has enacted legislation supporting the recent Snake River Basin Adjudication settlement agreement. The provision of this flow augmentation is subject to the availability of appropriation, state legislation for conformance with state water law, and willingness of water right holders to sell or lease water, and natural water supply. Reclamation and other partners have a history of providing all or a portion of this volume within available water supply.

10. Urge renewal of Idaho Power Company shaping agreement.

Action Agency Response: BPA may, in the future, be open to discussing the possibility of a shaping agreement with IPC. BPA's desire to pursue such an agreement would be contingent upon a clear definition of IPC's specific mitigation responsibilities; an assessment of the biological benefit that it would provide associated with the operation of the Federal hydrosystem; and the cost effectiveness of the measure in comparison to, or in concert with, other actions to achieve performance objectives.

11. Concerned that BPA will attempt to curtail summer spill even though the remanded BiOp calls for maintaining this operation.
12. Support reconsideration of summer spill, but should allow some of the savings for tribal and state habitat restoration programs.

***Action Agency Response**:* Page 3 of the UPA discusses summer spill. It states: "Reduced summer spill with offsets is not part of the UPA. However, the Corps or BPA may pursue this option in the future, if appropriate, through the exercise of the annual performance measure/adaptive management approach outline in Section II or through a future amendment to the UPA. Summer spill modifications will be considered only if they achieve equivalent or better biological performance for listed fish."

Should the Action Agencies seek to modify the summer spill program, consideration of how best to implement such a program would necessarily include an evaluation of complementary methods to meet the juvenile survival goals of the FCRPS. Inasmuch as federal funding of state and tribal conservation efforts would assist in the achievement of that objective, it would be considered.

13. The UPA needs to address water pollution – oil spills and discharges from the dams are violating the Clean Water Act.

***Action Agency Response**:* The Action Agencies are complying with applicable laws and regulations in which jurisdiction rests with other entities. The Corps and Reclamation prepare spill prevention, preparedness and contingency plans for all the projects, consistent with the requirements of the Clean Water Act and the National Oil and Hazardous Substances Pollution Control Plan. These plans are coordinated with and meet the requirements of the appropriate regulatory state water quality agencies and EPA. These plans address accidental spill of regulated oil and lubricants at these projects

14. The UPA does not consider the possibility of increasing the total dissolved gas (TDG) standard.

***Action Agency Response*:** The Final UPA includes voluntary spill for fish passage to 120% TDG. The Corps is asked to spill for this purpose on the four lower Snake River projects, located in Washington, and the four lower Columbia River projects, located in Oregon and Washington. Both Oregon and Washington's water quality standard for TDG is 110%. In order to provide for the voluntary spill levels for fish passage, which result in the exceedence of existing states' TDG standards, the Corps coordinates with Oregon and Washington on a regional, multi-year basis to accomplish both the ESA objectives of survival and recovery of listed species, and the TDG water quality goals of the Clean Water Act. The Oregon Environmental Quality Commission issued a multi-year variance for fish passage spill through 2007 and the Corps is coordinating with the Washington Department of Ecology on approving a gas abatement plan through 2007.

15. The Corps priority to install RSWs has left many critical maintenance projects unfunded.

Action Agency Response: The priority to install RSWs or other surface bypass systems reflects strong support for this technology in the region, including the salmon managers and System Configuration Team within the NMFS Regional Forum. Funding for construction of RSWs is provided through Congressional appropriations through the Columbia River Fish Mitigation Project. The Corps' Operation and Maintenance funding is not used for this type of activity and therefore funding for important maintenance projects is not affected.

Category 12 – Fish Transport

1. *Disappointed that the UPA is not responding to the emerging information about the lack of utility of early spring transport.*

***Action Agency Response**:* The Final UPA has been revised based on the new information. It indicates that early season transport has shown mixed results and that collection for transport would not begin until April 20 in all but the lowest flow years. Specifically, page 40 of the UPA indicates, "Due to the mixed benefits of early season transport…collection for transport will not be initiated until April 20 in all years where average seasonal flows are expected to equal or exceed 70 kcfs. Prior to April 20, all collected fish will be bypassed back to the river. In those years where flows are anticipated to be between 70 and 85 kcfs, spill will be provided at the collector projects until April 20."

2. *No more than one-half of the juvenile fish population should be transported.*

***Action Agency Response**:* While the Corps typically transports more than 50% of the spring migrating fish in any given year, the Action Agencies believe that a smaller percentage of fish will be transported in the future. With a shortening of the transportation season and the potential for RSWs to play a larger role of drawing more fish away from the powerhouse, it is anticipated that fewer fish would be transported over the long term.

3. *The delay of the Snake River fall Chinook transportation evaluation until 2008 is not founded on science.*

***Action Agency Response*:** The delay of the Snake River fall Chinook transportation evaluation until 2008 is founded on science and the desire to have surface bypass systems, such as RSWs, in place to provide more favorable in river passage conditions. The Action Agencies believe that an adequate baseline for examining the effects of transportation under the existing conditions does not yet exist. While the current science suggests that transportation neither greatly helps nor harms migrating juvenile fall Chinook salmon, research conducted since roughly 2000 has had a number of logistical problems. Research planned for 2005 is meant to gain a better understanding of the effects of transportation and in-river migration for the existing condition. These studies are presently being worked through the regional forum and should develop a baseline for future research.

4. *BPA should set aside an area near Bonneville Dam to collect B-run steelhead for transport past McNary Dam.*

Action Agency Response: The Action Agencies formulated the UPA with a focus on improving the juvenile fish survival gaps identified by NOAA. Because this action targets adult fish and the adult fish hydrosystem survival targets have been largely achieved, it was not included in the Final UPA.

Category 13 – Predator Control

1. *The UPA should include American shad and walleye as predator control measures.*

***Action Agency Response*:** The Action Agencies have included consideration of potential management actions on non-indigeneous predators such as smallmouth bass and walleye in our UPA (see Predation sub-strategy 2.2). Management of these species will require considerable regional coordination, especially considering their popularity as recreational fisheries.

As for American shad, the direct or indirect affects of this non-indigeneous species on the survival of juvenile salmonids are largely unknown. If information became available that management actions could provide survival improvements for ESA listed salmonids then we may include appropriate actions in future implementation plans via an adaptive management approach. See also NOAA Response to Comments 3.10.4, 3.10.5, and 3.10.8.

Category 14 – Performance Standards and Progress Reporting

1. *A qualitative adult fish survival standard is insufficient; adult fish returning to natal spawning areas should be the gauge for success.*

Action Agency Response: Radiotelemetry studies conducted by the University of Idaho have indicated that migratory success through the hydropower system is relatively high. However, the effects of factors related to the hydropower system are difficult to tease out from those that are not related to the system. For example differential thermal exposure, latent hooking/netting

mortality, encounters with marine mammals, and incidence of disease, all could lead to reduced survivability, and may or may not be related to the existence or operations of the hydropower system

2. *Performance standards should include quantifiable criteria that will allow evaluation of survival benefits being provided from actions in the UPA to avoid jeopardy under ESA.*

Action Agency Response: Additional quantifiable criteria have been included in the Final UPA (Section II B). NOAA and the Action Agencies will be tracking juvenile and adult survival relative to quantifiable performance standards represented by survival estimates from the BiOp's no jeopardy assessment. In addition, quantifiable estimates of the programmatic, physical, and biological effects of the actions will be tracked for non-hydrosystem actions. This quantifiable progress will be used in annual progress reporting and comprehensive evaluations within the adaptive management framework (Section II) to ensure that the appropriate level of survival improvements (Section I B) are being achieved.

3. *Concerned that adaptive management framework will be applied to justify unscientific changes.*

Action Agency Response*:* As stated on page 8 of the UPA, the Action Agencies "will implement this UPA based on performance, accountability for results, and adaptive management. We will use the best available scientific information to identify and carry out actions that are expected to provide immediate and long-term benefits to ESA-listed fish." Any hydro changes through adaptive management will be coordinated with NOAA and through the Regional Forum. The intent is to make adjustments only when the biological performance standards will be met or exceeded.

4. *The UPA needs to clearly state how it does or does not incorporate the 2000 FCRPS BiOp performance standards.*

Action Agency Response*:* The Final UPA identifies the performance standards that will be used in comprehensive evaluations for 2007 and 2010 (See Final UPA section II B). For juvenile and adult hydrosystem survival, the performance standards have been updated from the 2000 BiOp with additional years of survival data and the new survival evaluations in the 2004 BiOp.

5. *Monitoring and evaluating the results of actions in the UPA should be more rigorous.*

Action Agency Response*:* The Action Agencies are implementing substantial monitoring efforts to track the in-river and system survival of juvenile and adult salmonids through the hydrosystem and to evaluate the effectiveness of predation programs and tributary habitat actions. The need for additional monitoring continues to be evaluated through the Federal Caucus RM&E workgroups, the Corps AFEP planning process, and the Council's Fish and Wildlife Program.

Category 15 – Recovery

1. *The Action Agencies must consider whether the UPA is consistent with any recovery plans, including the Conceptual Recovery Plan.*

***Action Agency Response*:** The focus of the new UPA and BiOp is on operating the FCRPS to avoid the likelihood of jeopardizing the continued existence of the listed ESUs. While the UPA is an important part of efforts for listed salmon and steelhead, it is not a recovery plan for the species. Nevertheless, the Final UPA is consistent with the *Basinwide Salmon Recovery Strategy* and the Federal agencies will continue to work from the strategy as recovery plans are drafted.

The Action Agencies agree with NOAA Fisheries that recovery plans will have a greater likelihood of success if developed in partnership with other stakeholders, including those that have the responsibility and authority to implement recovery actions. Current efforts that will provide a strong foundation for ESA recovery plans in the Columbia River Basin include the Council's subbasin plans and the State of Washington's regional recovery plans. The Action Agencies intend to work with NOAA Fisheries to assist in the Council's subbasin planning and with State of Washington recovery planning groups as they develop assessments, strategies, and actions. See also Final BiOp Section 2.5.

2. *Concerned that the new BiOp narrows the scope of FCRPS responsibility under ESA and virtually eliminates its role in a comprehensive fish recovery strategy for the Columbia Basin.*
3. *The "UPA fails to move the region forward in conservation of salmon and steelhead, and increases the risk of unfairly shifting conservation responsibilities to land-based interests and fisheries. . . . [T]he UPA contains inadequate hydropower actions that together may transfer a significant portion of hydropower system responsibilities to state and local governments, private property owners, urban and rural communities and agricultural, forestry and fishing industries."*

Action Agency Response: The UPA and the BiOp do not represent a reduction in the Action Agencies commitment to salmon recovery (conservation) nor an attempt to shift the financial burden of recovery to other parties in the region. The UPA and the BiOp identify their approach to meeting the provisions of Section 7 (a)(2) of the ESA, assuring that the operations of this system avoid the likelihood of jeopardizing the continued existence of the species and the adverse modification of designated critical habitat. The Action Agencies recognize their larger obligation to salmon recovery beyond the measures in the BiOp. They are, however, seeking to define their responsibilities more clearly and are committed to work with NOAA and the region in the recovery planning process. The actions in the UPA and 2004 BiOp include many improvements at the dams to improve fish passage and other non-hydro actions that will all contribute towards recovery.

4. *A shift away from recovery and habitat restoration that de-emphasizes restoration activity in the lower river and estuary could jeopardize the momentum of and undermine the progress and investments made by many parties toward habitat restoration and species recovery.*

Action AgencyResponse: The Action Agencies focused the estuary actions in the UPA to target Snake River fall Chinook, but did not de-emphasize the importance of estuary habitat. Four

additional estuary projects are included in the Final UPA, along with language indicating that additional projects may be identified as understanding of the specific habitat needs for ESUs is increased. Additional restoration actions in the estuary could also be identified as recovery plans are developed.