



September 11, 2009

Dr. Jane Lubchenco, Administrator
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Dear Dr. Lubchenco:

This letter transmits the "FCRPS Adaptive Management Implementation Plan (AMIP)," which the new Administration asked the regional officials to prepare. The AMIP is the joint product of our three agencies and NOAA Fisheries Service-Northwest Region (NOAA Fisheries). Utilizing the 2008 BiOp's adaptive management provisions, the AMIP provides details on how the reasonable and prudent alternative (RPA) set forth in the 2008 BiOp will be implemented and enhances several aspects of those provisions, particularly additional actions, specific triggers for contingency measures, and planning for and implementing contingency measures, should that be required. We request your concurrence that the AMIP is consistent with the RPA, that reinitiation of consultation is therefore not required, and that NOAA commits to those actions in the AMIP that are identified for NOAA's execution.

As you know, the U.S. Army Corps of Engineers (Corps), Bureau of Reclamation (Reclamation), and Bonneville Power Administration (BPA), collectively referred to as the Action Agencies, are responsible for the operation and maintenance of the Federal Columbia River Power System (FCRPS). Pursuant to Section 7 of the Endangered Species Act (ESA), the Action Agencies consulted with NOAA Fisheries to ensure that the continued operation and maintenance of the FCRPS is not likely to jeopardize the continued existence of species listed as endangered or threatened (i.e., when its effects are combined with the effects of the environmental baseline and cumulative effects the species can be expected to survive with an adequate potential for recovery), nor result in the destruction or adverse modification of their designated critical habitat.

Formal consultation was initiated with the submittal by the Action Agencies of an August, 2007, Biological Assessment (BA). The BA noted (see Sec. 1.2.2.2) that the continued existence and operation of the FCRPS without mitigation is likely to jeopardize the continued existence of listed salmon and steelhead. Accordingly, rather than engage in an iterative process of submitting a proposed action only for hydro system operations and having NOAA Fisheries propose a reasonable and prudent alternative (RPA) which included mitigation, the Action Agencies instead proposed and analyzed in the BA their own RPA (the proposed RPA) consisting of hydro operations, a full mitigation package,

and an adaptive management approach. The proposed RPA was the result of an extensive collaboration effort between the Action Agencies and the sovereign states and tribes, which effort was undertaken at the order of the court in National Wildlife Federation v. NMFS (No. CV 01-640-RE, D. Or.).

In May 2008, NOAA Fisheries issued the 2008 FCRPS Biological Opinion (2008 BiOp) with an RPA, which was very similar to the Action Agencies' proposed RPA. Each Action Agency subsequently formally adopted NOAA's RPA in respective agency decision documents.¹ These decision documents each conclude, based upon the 2008 BiOp and other information, that the RPA will not jeopardize the continued existence of listed species or result in the destruction or adverse modification of their designated critical habitat. They also state that each of the Action Agencies will implement their actions consistent with the adaptive management provisions that are an integral part of RPA.

The legal sufficiency of the 2008 BiOp has been challenged by the National Wildlife Federation, et al.; the State of Oregon; and, the Nez Perce Tribe in the above cited case. The case has been fully briefed and argued, but the Court has not yet ruled on the allegations raised in this case. Rather, on April 2, 2009, the Court invited the new leadership within the Obama Administration to more fully understand the 2008 BiOp and the issues in dispute.

The Court's invitation was accepted, and over the past four months you and we² have received numerous briefings from internal agency staff, held listening sessions with most of the parties to the litigation, and participated in a tour of Ice Harbor and Lower Monumental Dams, and their respective fish passage and research facilities. In addition, you invited a number of independent scientists to a science workshop to help us more fully understand the scientific analyses used, and biological conclusions reached, in the 2008 BiOp. The Administration also considered the Court's perspectives as set forth in its May 18, 2009, letter to counsel as well as those of the parties to the litigation which were raised in the listening sessions and in their correspondence.

We determined that because of the risks and uncertainties inherent in the available information, it was prudent to take a more precautionary approach in implementation of the RPA, utilizing the 2008 BiOp's adaptive management provisions. Furthermore, we determined that more data are needed to better inform future adaptive management decisionmaking. It was also determined that the scientific understanding of climate change has progressed since the issuance of the 2008 BiOp. These factors prompted the

¹ BPA Record of Decision following the May 2008 NOAA Fisheries FCRPS Biological Opinion on Operation of the FCRPS, et al., August 12, 2008, at 37-38; Bureau of Reclamation, Pacific Northwest Region, Decision Document Following the May 2008 NOAA Fisheries FCRPS Biological Opinion on Operation of the Federal Columbia River Power System, et al., September 3, 2008, at 29; U.S. Army Corps of Engineers, Northwestern Division Record of Consultation and Statement of Decision, NOAA Fisheries May 5, 2008, Biological Opinion, et al., August 1, 2008, at 37.

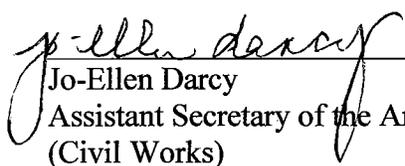
² Four different Cabinet-level agencies and the White House were represented in this process. The lead official for each agency in this review was: NOAA Administrator Dr. Jane Lubchenco for the Department of Commerce; Council on Environmental Quality Chair, Nancy Sutley for the White House; Principal Deputy Assistant Secretary of the Army, Terrence "Rock" Salt for the Department of Defense; and Associate Deputy Secretary, Laura Davis for the Department of Interior; and, for the Department of Energy, Bonneville Power Administration Administrator Steve Wright.

Administration to decide to take a more precautionary approach in implementing the RPA through the adaptive management. The enclosed AMIP implements this decision.

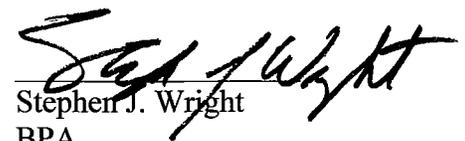
The AMIP was developed utilizing the adaptive management provisions of the 2008 BiOp RPA. Those provisions incorporate the adaptive management approach proposed in the Action Agencies' BA. The AMIP provides further definition and specificity for additional research, monitoring, and evaluation activities and for other refinements that will be implemented to address biological uncertainties, including those associated with climate change. As an additional precaution, based on research and monitoring, the AMIP further refines and expands on the existing contingency plans in the 2008 BiOp, providing for specific biological triggers which, if tripped, will set in motion additional contingency measures to benefit the listed salmonid species. These measures consist of rapid response actions that would be implemented within months and are designed to have immediate benefits, and long-term-contingency measures that would take longer to implement and longer to benefit the species. This two pronged approach (heightened monitoring and robust contingency plans) provides a backstop to guard against biological uncertainties and allows the Federal agencies to be attentive to the requirements of these fish for the term of the 2008 BiOp. There will also be accelerated precautionary measures, not contingent on triggers, such as advanced contingency planning and predator and invasive species management that will be developed and implemented to further help ensure that the FCRPS does not jeopardize the continued existence of listed species nor result in the destruction or adverse modification of their designated critical habitat.

Through the AMIP, which we, the undersigned representing our Cabinet level agencies, approve, the Action Agencies commit to implement the specified activities and processes to ensure that the benefits of the RPA will be achieved. As implemented through this detailed and aggressive AMIP, the 2008 BiOp is biologically and legally sound and is based on the best available scientific information, and the RPA satisfies the jeopardy standard, i.e., it is not likely to jeopardize the continued existence of the listed species (i.e. when its effects are combined with the effects of the environmental baseline and cumulative effects the species can be expected to survive with an adequate potential for recovery) nor adversely modify designated critical habitat.

Sincerely:


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)


Laura Davis
Associate Deputy Secretary
Department of Interior


Stephen J. Wright
BPA
Department of Energy

cc:

Chair, White House Council on Environmental Quality
Regional Director, NOAA Fisheries Service