

I. Status of the Remand Process:

Pursuant to this Court's direction at the January 16, 2004, Attorneys' Steering Committee meeting, the National Marine Fisheries Service (hereinafter "NOAA Fisheries" or "NOAA") is currently engaged in collaboration with the States and Tribal entities on scientific and analytical issues and activities relevant to the remand process for revising the 2000 Biological Opinion for the Federal Columbia River Power System ("FCRPS") ("2000 BiOp"). In order to allow the collaboration process a full opportunity to inform the work on remand, NOAA has been required to redirect the focus of its efforts from implementing its Remand Work Plan (filed as attachment to the Second Quarterly Status Report). Since the time at which the collaboration process was commenced, NOAA has thus temporarily set aside the Work Plan to focus on and fully engage in the collaboration process. Because that process is still ongoing, NOAA is deferring making any decisions about revisions to the 2000 BiOp until it has completed the discussions with the States and Tribes and given full consideration to the results of those discussions. NOAA staff will resume consultation and development of a revised biological opinion after the collaboration has run its course.

At the time of this report, discussions are still underway, and thus no final schedule for the collaborative process is available. However, NOAA believes it is reasonable to expect that the collaboration will conclude by the end of May 2004. NOAA will then integrate the appropriate information obtained through the collaboration, along with other relevant information, and produce a new draft biological opinion. NOAA then expects to make available to the States and Tribes an opportunity for a further discussion of the draft opinion, after which it will issue its final revised biological opinion. A brief summary of the history and structure of the ongoing collaboration is presented below, along with NOAA's current estimate of the amount of time that will be required after the conclusion of that process to issue the draft, and then the final, biological opinion.

Following the Attorneys' Steering Committee meeting on January 16, 2004, NOAA, the States, and Tribes began the collaboration process with a meeting, which was followed by an exchange of letters that eventually led to the more organized process now underway.

Through the assistance of a neutral facilitator, the collaborating parties have organized the collaboration effort into five subject areas for a series of structured discussions. These subject areas are: 1) hydrosystem effects; 2) dam passage; 3) the role of hatchery programs in off-site mitigation; 4) habitat offsite mitigation potential; and 5) a potential framework for application of the jeopardy standard. Scientists and managers from NOAA are meeting with staff from the States and Tribes and have held five “scoping” meetings, at which the issues to receive focus in the collaboration for each of five subject areas were identified. The collaborating parties are now exchanging relevant information for each subject area and will then hold workshops to discuss the information and its potential application to the revised biological opinion.

In light of the collaboration process, NOAA’s estimates of the amounts of time required to complete the draft, and then final, biological opinion have been updated. Prior to the time the collaboration began, NOAA’s Work Plan called for the distribution of a draft biological opinion by March 24; sixty-eight days were at that point remaining to accomplish that task. The final biological opinion was expected to be issued on June 2, 2004 (pursuant to the Court’s order), which would allow seventy days after the draft was to be circulated.

Going forward, once work under the Work Plan is resumed (following conclusion of the current phase of collaboration), sufficient time will need to be factored into the schedule to recognize the amount of time and work required to transition into and out of the collaboration. Such would include the time NOAA will need in order to synthesize and consider the information developed through the collaboration process and use it in developing the draft biological opinion. Thus, NOAA believes that a draft biological opinion could be ready within 90 days after conclusion of collaboration (which reflects the 68 days remaining in the suspended Work Plan, plus approximately three weeks to integrate the information yielded through collaboration). Thus, assuming for instance that the collaboration is successfully concluded by the end of May 2004, NOAA anticipates it would circulate a draft opinion by the end of August 2004.

Assuming no further collaboration is requested after release of the draft biological

opinion, NOAA expects that it could stay within the 70-day period originally contemplated to issue the final biological opinion. However, NOAA would be willing to afford the States and Tribes a second phase of collaboration after the release of the draft biological opinion. A two-week period would seem reasonable for such further collaboration. If such a second phase of collaboration is initiated, then the final biological opinion could be released approximately 84 days from the release of the draft (which reflects the 70-day period remaining in the Work Plan plus 14 days for the collaboration).

Applying these estimates would yield a new amended schedule as follows: assuming the current phase of collaboration is wrapped up in May, then by the end of August (90 days after conclusion of collaboration) a draft biological opinion would be released. If no further collaboration is requested, then the final, revised biological opinion would be expected to be released in early November (approximately 70 days after release of the draft). (Alternatively, the time requested for collaboration would be added to the 70-day period.)

In order to formally adopt such an amended schedule for completion of the remand process, Defendant plans to file a motion for an extension shortly after the meeting of the Steering Committee on April 16, 2004, which will afford an opportunity for discussion among the interested parties.

II. Other Relevant Matters:

During the remand process, this Court has left the 2000 FCRPS BiOp in place to guide ongoing operation of that system and continuing efforts to provide offsite mitigation. Consistent with the requirements of that opinion's reasonable and prudent alternative (RPA) providing for adaptive management, the federal agencies responsible for operation of the FCRPS^{1/} (hereafter "the Action Agencies") have been working on updated implementation plans (the 1- and 5-year plans called for by the 2000 RPA)^{2/} for the 2004 salmon migratory

^{1/}U.S. Army Corps of Engineers, U.S. Bureau of Reclamation and the Bonneville Power Administration (responsible for marketing hydroelectric power produced by the FCRPS).

^{2/}Although the 1- and 5-yr. plans contemplated under the BiOp are, conceptually, distinct plans, they are generally contained in a single document.

season, which begins later this month. On March 30, 2004, Bonneville Power Administration and the Corps of Engineers issued a preliminary proposal for modifying the spill regime at some dams during July and August for a three year period. This was in response to the Northwest Power and Conservation Council's Fish and Wildlife Program Mainstem Amendments and other regional calls for an examination of the benefits of the current spill program to determine whether the biological benefits attributed to spill could be achieved in a less costly manner. In the course of their deliberations on these Implementation Plan refinements the federal agencies have also been discussing proposed changes to the Plans with the States (including State fish and wildlife agencies), and the Tribes. The Action Agencies' executives, together with NOAA Fisheries' Regional Administrator, have proposed a further meeting with the Columbia Basin States and Tribes for April 16, 2004, to discuss proposed revisions for the 2004 spill operations. After obtaining State and Tribal advice and comments relevant to the spill proposal, the Action Agencies expect to provide NOAA with revised implementation plans describing their intended 2004 and 2004-2008 operations. The revised plans will also serve to identify the appropriate proposed action for the purposes of this remand, so that NOAA would analyze the effect of those proposed operations instead of that proposed in the 1999 Biological Assessment. The plans would be available to NOAA prior to the time the first phase of the collaboration process is completed (currently expected to be before the end of May 2004).

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Respectfully submitted this 1st day of April, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Third Quarterly Status Report was served on the following on April 1, 2004, by electronic notice from the Clerk upon electronic court filing, except that counsel indicated in **bold-face font** were served by facsimile and first-class U.S. mail:

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DEFS' THIRD QUARTERLY
STATUS REPORT

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