

KARIN J. IMMERGUT, OSB #96314
United States Attorney
STEPHEN J. ODELL, OSB #90353
Assistant United States Attorney
District of Oregon
600 United States Courthouse
1000 S.W. Third Avenue
Portland, OR 97204-2902
(503) 727-1000

MATTHEW McKEOWN
Acting Assistant Attorney General
SETH M. BARSKY, Assistant Section Chief
ROBERT L. GULLEY, Senior Trial Attorney
COBY HOWELL, Trial Attorney
Wildlife & Marine Resources Section
Benjamin Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
(202) 305-0500 (ph)
(202) 305-0275 (fx)

Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, *et al.*

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, *et al.*

Defendants.

Civil No. 01-640-RE

**FEDERAL DEFENDANTS'
SIXTH REMAND REPORT**

As required by the Court's Order dated March 28, 2007, Federal Defendants provide the Court with an updated proposed action/RPA and, as we agreed at the March 9, 2007 Status

Conference, draft biological analyses prepared by the Action Agencies, in collaboration with the PWG, that analyze the baseline, current status of the various populations that constitute the Interior Columbia ESUs, and projected the status of the populations after implementation of the proposed action/RPA as reflected primarily in quantitative metrics.

The updated proposed action/RPA consists of a summary and description of the proposed action/RPA including actions for the hydrosystem, tributary and estuary habitat actions, hatchery improvements, harvest management, predator management, and research, monitoring, and evaluation (RM&E). While the proposed action/RPA represents the program the Action Agencies currently intend to submit to NMFS, it does not reflect all of the on-going discussions with the sovereigns. These discussions may, and in all likelihood will, result in additional, or modified, actions in many, if not all, Hs.

The biological analyses here focus on how the various **populations** within an ESU correspond with the metrics and considerations set out in NMFS Metrics Memorandum.¹ The biological analyses when completed for all ESUs will provide the foundation for the comprehensive analysis in the FCRPS and Upper Snake biological opinions. The Action Agencies will include the proposed action/RPA, the completed biological and critical habitat analyses in respective assessments which they will subsequently submit to NMFS. NMFS will conduct its own independent analysis of the information provided by the Action Agencies, the information developed in the collaboration, and other qualitative and quantitative biological

¹ D. Robert Lohn to Policy Working Group, "Metrics and Other Information that NOAA Fisheries Will Consider in Conducting the Jeopardy Analysis," dated September 11, 2006 ("Metrics Memorandum").

information to prepare its biological opinion at the ESU level.² This means that NMFS will have to determine the significance of the population analyses and other information at the ESU level in preparing its biological opinion.

Federal Defendants will be prepared at the June 20 status conference to discuss the date for the submittal of the biological opinion. Additional work and discussions with the PWG remain to complete this task. However, Federal Defendants believe that the products submitted here constitute substantial progress toward the completion of the Biological Assessment and the subsequent preparation of the Biological Opinion.

RESPECTFULLY SUBMITTED,

MATTHEW McKEOWN
Acting Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

SETH M. BARSKY
Assistant Section Chief
ROBERT L. GULLEY
Senior Trial Attorney

/s/ Coby Howell
COBY HOWELL
Trial Attorney
Wildlife & Marine Resources Section
Benjamin Franklin Station, P.O. Box 7369
Washington, DC 20044-7369

² NMFS has not yet conducted a formal analysis of the measures contained within this proposed action/RPA and expresses no opinion at this time regarding the sufficiency of these measures. NMFS will conduct the analysis of the proposed action/RPA for the Upper Snake and FCRPS BiOps, as well as other related future biological opinions, according to the requirements of the Ninth Circuit's recent decision in *NWF v. NMFS*, 481 F.3d 1224 (9th Cir. 2007). The Federal Defendants believe that NMFS's jeopardy analysis memorandum (D. Robert Lohn to Policy Work Group, "NOAA's Intended Biological Opinion Standards and Analysis," dated July 12, 2006) and the Metrics Memorandum - - both of which have informed the development of this proposed action/RPA - - meet or exceed the requirements of that decision.

(202) 305-0500 (ph)
(202) 305-0275 (fx)

Attorneys for Defendants

CERTIFICATE OF SERVICE

Pursuant to Local Rule Civil 100.13(c), and F.R. Civ. P. 5(d), I certify that on May 21, 2007, the foregoing will be electronically filed with the Court's electronic court filing system, which will generate automatic service upon on all Parties enrolled to receive such notice. The following will be manually served by overnight mail:

Dr. Howard F. Horton, Ph.D.
U.S. Court Technical Advisor
Professor Emeritus of Fisheries
Department of Fisheries and Wildlife
104 Nash Hall
Corvallis, Oregon, 97331-3803
FAX: (541)-737-3590
(hortonho@onid.orst.edu)

Walter H. Evans, III
Schwabe Williamson Wyatt, P.C.
1211 S.W. Fifth Ave
1600-1800 Pacwest Center
Portland, OR 97204
(wevans@schwabe.com)

James W. Givens
1026 F Street
P.O. Box 875
Lewiston, ID 83051

/s/ Coby Howell