

Federal Agency Current Practice and Future Plans for Collaboration in the Refinement and Implementation of the FCRPS Biological Opinion

The October 1, 2003 Quarterly Status Report for the FCRPS Biological Opinion Remand included work plans for FCRPS remand activities and FCRPS implementation activities. These plans, which were subsections of a single plan attached to the October 1 Report, are separated and updated as Exhibits A.1 and A.2 to the Second Quarterly Status Report. As discussed in greater detail below, the work plan contemplates a variety of significant and substantial opportunities for State and Tribal input into the work products that will be factored into the forthcoming biological opinion (“BiOp”) on remand.

The purpose of this paper is to elaborate upon the opportunities provided in the Federal plan for coordination and collaboration during the remand. NOAA Fisheries continues to believe that this is a reasonable plan in view of the schedule. In addition, this paper provides background information regarding the opportunities for participation of various interested parties in the broader context of the administration and implementation of NOAA Fisheries’ 2000 Biological Opinion for the hydrosystem.

I. Overview of Opportunities for State and Tribal Input Into Remand Process.

The Federal plan (1) involves the non-federal parties in all of the reviews of actions and scientific information described below, (2) plans for their review of a draft BiOp, and (3) schedules the release of the draft BiOp prior to the last quarter of the remand period to allow for further discussion as deemed appropriate and necessary by the parties. NOAA Fisheries continues to view this as a reasonable opportunity for coordination and collaboration.

The Federal agencies are aware of alternative views on the appropriate approach to generalized “collaboration” expressed by some parties. The Federal agencies do not agree that the alternative “approaches,” which have never been clearly articulated as specific proposals by any Party, are realistic in view of the scheduling expectations of the Court. Furthermore, the regulations for consultation under Section 7(a)(2) of the Endangered Species Act envision these discussions as primarily discussions among Federal agencies on what are clearly Federal decisions. Notwithstanding this context, NOAA Fisheries has a long history of opening up the process to involve State and Tribal co-managers and others to avoid perceptions of secrecy, to enhance opportunities for coordination and collaboration where they exist, and to ensure a full vetting of the scientific issues prior to basing its findings on what it considers to be the “best scientific and commercial data available,” 16 U.S.C. § 1536(a)(2).

A. Establishment of Goals Representing the Characteristics of Viable Salmonid Populations

This information is important for jeopardy analyses, including that undertaken for the FCRPS remand, because assessment of the current status of ESUs needs to be viewed relative to these

characteristics. It is currently being developed through two geographically-based Technical Recovery Teams (TRTs) formed by NOAA for the Columbia River Basin, one for the Lower Columbia and Willamette, and another for the Interior. There are similar teams for geographic areas outside the Columbia River Basin. The charge to the TRTs is to develop objective, measurable criteria for determining when de-listing is warranted. The TRTs are comprised of scientists selected for their expertise, including representatives of affected States and Tribes. Moreover, there are considerable opportunities for public involvement throughout the entire TRT process, and TRT work products are peer reviewed and distributed for public comment.

Guidelines for the TRTs can be found at <http://research.nwfsc.noaa.gov/trt/guidanc9.pdf> and include definition of the populations that comprise the ESU and the attributes of abundance, productivity, spatial distribution and genetic diversity that would characterize a healthy, viable population.

B. Development of Current Summaries of Key Scientific Questions

(1) Updated White Papers on Flow, Fish Passage at Dams and Juvenile Fish Transportation

These papers are being revised as draft NOAA Technical Memoranda (tech memos), incorporating the most recent data on Columbia River salmonids (the 2004 tech memos will combine information from the flow/survival and transportation papers into a single paper). NOAA sent draft tables of contents for all three of these memos to Columbia Basin Fish and Wildlife Authority (CBFWA)^{1/} for comment by letter dated November 19, 2003, and posted the letter and tables of contents on the remand web site. NOAA asked that comments be sent to NOAA's NW Fisheries Science Center by December 5, 2003. Some contacts were made with regional technical leads, discussing specific technical issues and analytical approaches. NOAA has requested State and Tribal comments on the redrafted technical memos that are now available for review and request that comments be submitted to NOAA's NW Fisheries Science Center by February 1, 2004.

(2) Tech Memo on the Feasibility of Attaining Survival Improvements through Habitat Work in the Estuary

NOAA informed and asked for feedback from the Science Workgroup of the Lower Columbia

^{1/} CBFWA is an organization with membership including four State and two Federal fish and wildlife management agencies and thirteen Indian Tribes of the Columbia River Basin. The members established the Authority by charter in 1987 to, among other things, coordinate and promote effective protection and restoration of fish, wildlife and their habitat in the Columbia River Basin.

River Estuary Partnership (LCREP)² on new research plans discussed in the draft estuary/plume tech memo. Those plans and associated projects were also reviewed in detail by CBFWA as part of the Northwest Power and Conservation Council's (NPCC) funding process and the Corps' Anadromous Fish Evaluation Program review process. Both processes include opportunities for direct review and comment from State and Tribal organizations. Further, LCREP and the Lower Columbia Fish Recovery Board (State of Washington) are incorporating findings from this research into their subbasin plans for the Lower Columbia River and Estuary subbasin planning processes.

The Science workgroup is attended by Federal (i.e., Corps, BPA, FWS, USGS), State (State fish and wildlife and environmental quality agencies) and local partner (private environmental groups and land trusts) organizations of LCREP. The Science Workgroup serves the science technical and policy development group for the Board of Directors of LCREP.

(3) *Tech Memo on the Effectiveness of Hatchery fish Spawning in the Wild*

NOAA has drafted a tech memo on the relative effectiveness of hatchery fish spawning in the wild, for the purpose of determining whether there is now sufficient information to increase confidence levels for estimates of hatchery fish contributions to wild populations, thus raising confidence levels for estimates of wild population growth. As described for the Flow, Fish Passage at Dams, and Juvenile Fish Transportation tech memos (above), NOAA sent the draft table of contents to CBFWA for comment by letter dated November 19, 2003, and posted the letter and table of contents on the remand web site, with a request for comments by December 5, 2003. Some contacts were made with government and university scientists (USGS, ODFW, WDFW, USFWS, McGill University, Oregon State University, and University of Washington), to confirm the status of unpublished studies and in some cases to clarify published results. NOAA is also planning to send the draft paper to all of the authors of the studies cited, to confirm that we correctly summarized their results. As with the other tech memos we will also be accepting comments from other parties through February 1, 2004.

² The Lower Columbia River Estuary Program (LCREP), a participant in the U.S. Environmental Protection Agency's National Estuary Program, is a two-State, public-private initiative. It works to protect and restore the nationally significant lower Columbia River estuary with on-the-ground improvements and education and information programs. Using a watershed approach, the Estuary Partnership cuts across political boundaries, integrating 28 cities, 9 counties, and the States of Oregon and Washington. It has a strong record of bringing diverse interests together to reach consensus in the best interests of this complex river system.

(4) *Analytical Approach to Estimation of Population Growth Rate*

A draft of this tech memo was posted on the remand website on November 21, 2003, together with an announcement for a workshop that was held on December 5 at NOAA's Northwest Fisheries Science Center. The first half of the meeting consisted of 30-minute presentations by NOAA, Action Agency (consultant), and Tribal scientists on estimating salmonid population trends and extinction metrics. Participants were offered an opportunity to make brief formal comments for consideration by independent reviewers. Attendees included representatives from IDFG, WDFW, CRITFC, the Fish Passage Center, Nez Perce Tribal Fisheries, American Rivers, the Quinalt Indian Nation, CBFWA, and ISAB^{3/} as well as the Action Agencies and other regional stakeholders. The independent reviewers are preparing a report to NOAA Fisheries that summarizes the workshop presentations and comments, reviews the draft technical memo, and makes recommendations for further revisions and future work.

C. Refining What to Count for Updating the Environmental Baseline and Cumulative Effects Sections

NOAA sent a letter to the States and Tribes dated September 24, 2003, requesting their help developing a list of actions, starting with designation of a point of contact. In a follow-up letter dated November 26, 2003, NOAA asked the States and Tribes, and subbasin planning groups, for information on non-federal actions that affect salmonid habitat (i.e., that were not already identified in the May, 2003, Pacific Coast Salmon Restoration Fund report to Congress). NOAA asked that information be received by January 9, 2004, for incorporation into the March 24 draft biological opinion.

D. Developing How to Count Tributary Habitat Changes in the Environmental Baseline and Cumulative Effects

NOAA is developing a method for updating the environmental baseline and assessing additional offsite habitat needs by prioritizing habitat features in need of improvement to increase salmon productivity. The process includes identifying key limiting factors by identifying intrinsic

^{3/} The Independent Scientific Advisory Board (ISAB) was established by the Northwest Power and Conservation Council and NOAA Fisheries to provide independent scientific advice and recommendations on issues related to regional fish and wildlife recovery programs under the Northwest Power Act and the Endangered Species Act. The ISAB is designed to foster a scientific approach to fish and wildlife recovery and ensure the use of sound scientific methods in the planning and implementation of research and recovery strategies related to these programs. Information on membership, responsibilities and organization can be found at <http://www.nwcouncil.org/fw/isab/background.htm>

potential for habitat improvement, comparing current conditions with natural conditions, describing the proportion of the fish population affected, and then linking the changes in tributary habitat processes and instream conditions to potential changes in population status (all four VSP parameters). NOAA will then develop population-specific lists of factors limiting salmon productivity in tributaries, ranked by order of potential impact on fish population status.

NOAA presented the method for estimating the intrinsic potential of tributary habitat (i.e., under both historical and current conditions), as applied to the Yakima and the Grand Ronde subbasins, to a group of Northwest watershed experts (Robert Bilby, Peter Bisson, and Bruce Reiman), Peter Paquet of the NPCC, and Chip McConnaha and Bruce Marcot of Mobrاند Biometrics on December 11, 2003. NOAA has also been coordinating informally with State and Tribal subbasin planning representatives as it developed the Yakima and Grand Ronde pilots. The current plan for release of the draft basinwide review is late February or early March.

II. Background Information as to Opportunities for Participation of Interested Parties in the Administration and Implementation of the 2000 BiOp, Generally.

A. Implementation of Hydro Actions

Biological opinion implementation decisions concerning operation, maintenance and continued capital investment in the FCRPS dams are made through the NOAA Fisheries Regional Forum established for that purpose in the 1995 Biological Opinion. This forum is described in Section 9.4.2.1. of the 2000 BiOp as follows:

“The goal of this forum is to ensure the broadest possible technical and policy input in planning, funding, and implementation decisions regarding the operation and configuration of the FCRPS. Consensus should be sought on issues affecting the region to foster cooperation in the adaptive management process and longevity of decisions. However, nothing in the Regional Implementation Forum process is intended to dilute or remove the authority of any agency. Membership on the Implementation Team is open to senior program and policy level personnel from the states, Tribes, and Federal agencies. The teams and subgroups operating under the Implementation Team’s guidance are open to Federal, state, and Tribal representatives with technical expertise in hydroelectric operations and/or the effects of hydroelectric operations on fish, particularly on migrating juvenile and adult salmonids and native resident species, and water quality. In particular, the Action Agencies and NMFS have invited and encouraged participation by the four northwest states and Alaska, 13 Columbia River Tribes, CRITFC, USFWS, EPA, NWPPC, the Mid-Columbia PUDs, and

Idaho Power Company. All meetings of the NMFS Regional Forum teams are professionally facilitated and are open to the public. Meeting minutes are distributed to members and the public and are available for review....”

A more complete description of the process, meeting minutes and a wealth of additional information is available at <http://www.nwr.noaa.gov/1hydrop/hydroweb/rif.htm>.

Although this process is open to all co-managers, participation by them in the Regional Forum varies and changes with the issues under consideration, but the process is continuing as described with a few exceptions (e.g., professional facilitation was reduced and is now provided only for those meetings where it is deemed necessary). As noted above, the Implementation Team employs a series of technical teams to develop and review information and, where possible, to have the decision made by the “expert” technical staff with the most intimate knowledge of the issues. The finer scale planning processes of these technical teams are described in the 2000 BiOp for Water Management (9.4.2.2.), Capital Investment (9.4.2.3.), Water Quality (9.4.2.4.), and Operation and Maintenance (9.4.2.5.). All of these more specific plans and processes are also rolled up into the annual 1- and 5-year plans developed by the Action Agencies. The most recent 1- and 5-year plan (2004-08) was released regionally for comment on July 2, 2003 and finalized on November 17, 2003, is available at <http://www.SalmonRecovery.gov/index.shtml>, and is currently under review by NOAA-Fisheries. NOAA’s “findings” on earlier plans were provided in the October 1, 2003 status report (Documents P and Q) and are available on the BiOp remand website http://www.SalmonRecovery.gov/R_History.shtml.

B. Implementation of Offsite Mitigation and Research, Monitoring and Evaluation Actions

As with the hydro actions, the offsite actions are planned and coordinated through development of the 1- and 5-year plans. Specific planning steps are described in the BiOp for Habitat (9.4.2.6.), Hatcheries and Harvest (9.4.2.7.) and Research, Monitoring and Evaluation (9.4.2.8.). All of the action agencies fund offsite actions described in these plans, but the majority are funded by BPA and are closely coordinated and planned through the Northwest Power and Conservation Council’s (NPCC)^{4/} provincial planning process. NPCC recommendations are

^{4/} The NPCC was formed under the provisions of the Pacific Northwest Electric Power Planning and Conservation Act. It is made up of two representatives each from Washington, Oregon, Idaho and Montana. The Act directs the Council to adopt a plan for meeting the electrical needs of the region at the lowest possible cost, and a program to protect, mitigate and enhance fish and wildlife in the Columbia River Basin to the extent affected by the development and operation of the Federal Columbia River Power System. The Act requires that the Fish and

developed in collaboration with State and Tribal fish and wildlife agencies through the CBFWA and are subject to scientific peer review by the Independent Science Advisory Panel.^{5/} The NPCC advice on what to fund considers both BiOp requirements and the broader objectives for protection, mitigation and enhancement of fish and wildlife under the NW Power Act. Accordingly, BPA must weigh the recommendations developed by the Council against NOAA reviews of the adequacy of their plans in meeting critical RPA requirements. In general, however, BPA and the other Federal agencies work with NPCC and others to minimize instances of funding outside the NPCC recommendations. In addition to seeking comments on the hydro sections of the Implementation Plans, the Action Agencies have asked for public comments on all other sections of the Implementation Plans through the “Salmon Recovery” website (generally, at <http://www.SalmonRecovery.gov>).

C. Specific Review Process for Research Funded under the Corps’ Columbia River Fish Mitigation Project

The Corps’ Anadromous Fish Evaluation Program (AFEP) develops scientific information to assist the Corps and the region in making engineering, design, and operations decisions for the eight mainstem dams. Most studies are integral components of the Columbia River Fish Mitigation project (CRFM), which funds implementation of capital improvements to salmon passage improvements at dams. Funding for CRFM projects is appropriated by Congress each year, and has been averaging roughly \$85 million per year over the past several years.

CRFM projects, including AFEP studies, are coordinated and ranked annually based on the available budget in a regional collaborative process by the System Configuration Team (SCT) of the NOAA Fisheries’ Regional Forum (see above, Implementation of Hydro Actions). Technical coordination within AFEP is assured with regional fish agencies and Tribes through three Corps interagency work groups: 1) the Studies Review Work Group for the scientific review and development of research and monitoring activities; 2) the Fish Facilities Design Review Work Group for the review and development of engineering and design of fish facilities and new passage technologies; and 3) the Fish Passage Operations and Maintenance Work Group to provide input on ongoing project operations issues.

Regional SCT and AFEP participants include biologists, fish passage specialists and engineers

Wildlife Program be based on recommendations of the region’s Tribal, State and Federal fish and wildlife agencies.

^{5/} The ISRP was created by the NPCC in response to section 4(h)(10)(D) of the Northwest Power Act as amended in 1996. Under the amended Act, the ISRP provides the Council with independent scientific review of projects funded by the Bonneville Power Administration.

with Idaho, Oregon, and Washington, the Columbia River Inter-Tribal Fish Commission, basin Tribes, NOAA Fisheries, USFWS, U.S. Geological Survey Biological Resources Division, NPCC, and Bonneville Power Administration. Some of the technical work groups also involve scientists from State Universities' and Federal Laboratories.

D. Federal Agency Budget Planning

There are limits on the authority of Federal agencies to disclose certain Federal budget information. These limits are to ensure an orderly appropriations process and to prevent agencies from directly "lobbying" Congress outside the established process for communication of the Administration's budget proposals and priorities. Notwithstanding these efforts, the Federal agencies have done their best to share information on funding and funding requests for the 2000 FCRPS BiOp and Basinwide Salmon Recovery Strategy implementation as it becomes available. In October 2001 the Federal agencies summarized information on funding available from both non-appropriated (i.e., BPA) and appropriated (i.e., all of the other Federal agencies) sources. This included summaries of the budgets as enacted in the FY01 and as included in the Administration's FY02 proposal which was still before Congress at that time. This information was well received and the Federal agencies were encouraged to continue sharing this information. The Federal Caucus subsequently decided that these information briefings should be an annual part of the implementation process. March was selected as the best time because, by then, current year budgets likely would have been enacted, the Administration's budget proposal for the next fiscal year likely would have been proposed, and the Congressional deliberations would just be starting. In March 2003, the Federal agencies provided the second information briefing on the enacted FY03 budgets and the proposed FY04 budgets. As indicated in the FCRPS implementation work plan, the Federal agencies currently plan to schedule the next such briefing in March 2004.

E. 2003 Cumulative Progress/Check-in Report and NOAA Evaluation

The reasonable and prudent alternative in the 2000 FCRPS BiOp includes a risk management process to ensure that "required measures are implemented and effective." Mid-point implementation progress evaluations are specified for the third, fifth, and eighth years of the 10-year biological opinion. At each evaluation, NOAA Fisheries and the Action Agencies have the opportunity to confirm that implementation is proceeding as expected, modify the direction of implementation if necessary, or determine that the fundamental approach in the RPA is not working before it is too late to implement alternative approaches. The 2003 evaluation is primarily concerned with programmatic performance standards related to implementation of the RPA measures. In particular, the 2003 "check-in" evaluates the early implementation of hydro, offsite mitigation, and research, monitoring, and evaluation (RM&E) measures that are important for providing near-term survival improvements, planning for future survival improvements, and providing the research and monitoring necessary to assess progress. Details regarding NOAA's expectations in December 2000 for progress through 2003 were included in Appendix F of the

Biological Opinion for many key actions in the RPA.

To facilitate the 2003 implementation progress evaluation, the Action Agencies prepared an “Endangered Species Act 2003 Check-In Report for the Federal Columbia River Power System” (http://www.salmonrecovery.gov/Progress_Report.pdf; hereinafter, “Check-In Report”). This report was posted on September 29, 2003 and also included as Document O in the First Quarterly Status Report to the Court under the remand. By letter dated October 10, 2003 NOAA Fisheries also requested State and Tribal comment on the progress evaluation. On November 25, 2003, after receiving several comment letters, NOAA held a meeting at the offices of the CBFWA to discuss the report, the comments and tentative NOAA findings. Notes of this meeting were distributed by CBFWA on December 12, 2003 and are available at <http://www.SalmonRecovery.gov/remand.shtml>

The final NOAA Fisheries 2003 Implementation Progress Evaluation Report was released on December 23, 2003, is posted at <http://www.nwr.noaa.gov/1hydro/hydroweb/fedrec.htm>. It is also being filed with the Second Quarterly Status Report as Exhibit C.2 thereto.