

**REMAND COLLABORATION STATUS UPDATE**  
**For the FCRPS 2006 Biological Opinion**  
**February 2, 2007**

This update describes the status of the remand collaboration process and provides additional details on activities undertaken by NOAA, the FCRPS Action Agencies and participating sovereigns to develop items to be included in an All-H based Proposed Action or reasonable and prudent alternative (PA/RPA), to clarify policy issues, and reach agreement or narrow the areas of disagreement on scientific and technical information (See attachment 1).

The Policy Work Group (PWG) engaged in another three-day retreat at the beginning of November (See attachment 2). Based upon an ESU matrix approach developed earlier by members of the PWG (see Fourth Status Report to the Court, Remand Collaboration Status Update, October 2, 2006, p. 3), participants discussed status, trend and gap information for each ESU, mortality factors contributing to the gap, strategies for addressing limiting factors identified in the collaboration process and draft actions and benefits. Based upon this discussion in the collaboration, the Action Agencies adopted the ESU matrix format as a way to organize and array information, and link actions to ESU viability gaps for the purposes of the PA/RPA and accompanying biological analysis (BA).

The Action Agencies at the request of the PWG, developed a draft for the Upper Columbia ESUs which was discussed. In addition, the Action Agencies shared rough drafts of actions in each “H” and a draft benefits paper for discussion. Other members of the PWG presented big picture overviews of the status, current actions and needs of the species on an ESU scale. As in the two prior PWG retreats, sovereigns expressed their views on information and issues with respect to the ESU matrices, as well as more broadly with respect to the collaboration process and next steps. The federal participants also expressed their views and reflected back to the group what they had heard from the retreat discussion. The participants generally agreed that the discussions were productive and advanced the collaboration. However, they also noted and acknowledged that there remain areas of disagreement on the collaboration process, policy choices, scientific and technical information, and specific elements of a PA/RPA.

Since the November retreat, the Action Agencies have been working intensively to develop the draft PA/RPAs, from Steps 5-6, and the accompanying BA. Preliminary drafts of ESU matrices, actions and benefits have been shared with the PWG and discussed at meetings in late November, early December and January. As these products move toward completion, they will be shared with the PWG for discussion and comment in an iterative process. The Action Agencies also presented a mock-up of a draft ESU biological analysis approach to the PWG that seeks to demonstrate an initial application of the metrics set forth in the Lohn memos (Lohn, 2006, 2006a) to a hypothetical ESU. The mock-up is not complete and will require further refinement and PWG discussion before being submitted to NOAA as part of the Action Agencies' PA/RPA and accompanying BA. The Action Agencies anticipate having a draft completed PA/RPA and BA available for PWG review by March.

The parties to the collaboration continue to utilize, as well as assess the appropriate role of, the 10-step framework as summarized below.

#### **Steps 1-4**

A summary of information from collaboration workgroups was incorporated into the ESU matrices format. Draft ESU matrices discussed at the PWG November retreat included the following information:

- Geographic locations of ESU major population groups (MPGs), categories and populations within MPGs
- Population-level (by size category) TRT viability curves
- Framework gaps by source of human-caused mortality – range for FCRPS
- Abundance trends, abundance targets and current abundance
- Limiting Factors by “H” and Proposed Actions to address limiting factors (both for Action Agency consideration and for other entities implementing actions for salmon recovery)
- A demonstration by a PWG member of an electronic method of tracking the tributary habitat actions developed by the Habitat Workgroup.

At the November 30<sup>th</sup> PWG meeting, a member presented analysis raising concern that ICTRT preliminary Gap Analysis may exhibit inconsistencies

in biological risk and corresponding thresholds in viability criteria. NMFS technical staff is reviewing the information.

## **Steps 5 and 6**

The Action Agencies provided expanded draft ESU matrices for all Interior Columbia ESUs for PWG review in late November. Initial PWG discussion took place on November 30th followed by more discussion on January 11<sup>th</sup>. The Action Agencies have solicited comments on this information and are revising the draft ESU matrices based on the information they receive. The Action Agencies have not yet integrated all the critical information on MPGs and populations from the ESU overviews that were developed in the PWG.

The Action Agencies also provided working drafts of actions by “H” and draft descriptions of associated benefits for PWG review in late December. The PWG discussed these documents on January 11th. The Action Agencies derived the actions and methods for calculating benefits from collaboration products and discussions. Whether utilization of this information was thorough or adequate remains a subject of PWG discussion.

A PWG member provided participants an electronic tool for integrating the gap analysis and the assessment of relative impacts with relative expectations for the FCRPS Proposed Action and other measures to improve survival across all life-stages.

Mainstem juvenile survival for a range of hydro operations has been initially assessed using the COMPASS model. The COMPASS model and latent mortality hypotheses have been submitted to the Independent Science Advisory Board for review.

Some PWG members continue to work with the U.S. v. Oregon process to discuss potential harvest related actions that may be included in the PA/RPA.

While the PWG has been reviewing the Action Agencies’ drafts being developed for the Proposed Action, the sovereigns believe that there are key issues that the Action Agencies have yet to include in the Proposed Action. They identified the following issues that should be addressed before the Action Agencies deliver the PA/RPA (i.e. Proposed Action and mitigation)

and the corresponding Biological Assessment to NOAA. The issues identified for further consideration and collaboration include:

- Identifying within the Proposed Action, the ESU biological objectives that will need to be achieved to satisfy the recovery considerations for the Proposed Action, including the anticipated jeopardy standard (a trend toward recovery) as described in the two Lohn memos. This requires greater clarity regarding the nature of the gap-filling exercise within the framework.
- Identifying within the Proposed Action, the ESU biological objectives that will need to be achieved to satisfy the survival considerations for the anticipated jeopardy standard. This requires greater clarity on the parameters for evaluating the continued persistence of listed species within each ESU.
- Refining the strategies within the Biological Assessment to ensure the Proposed Actions are focused and sufficient to meet needed survival criteria and recovery trends for each ESU.
- Additional detail on actions, implementation funding and timing of implementation.
- Prioritizing resources to address survival and recovery considerations for those ESA-listed ESUs with the greatest gaps in VSP parameters and for those most severely affected by the development and operation of the FCRPS. Prioritization of resources will encompass both funding and FCRPS operations, including consideration of how to address survival in lowest water years.

In addition to the work of the Action Agencies in developing the draft PA/RPA and accompanying BA, discussions have taken place with sovereigns to identify non-federal actions affecting listed salmon and steelhead that are the subject of the FCRPS BiOp that are reasonably certain to occur (Steps 5B and 6). A format for providing this information is being developed through discussions between NOAA, participating sovereigns, and the Action Agencies. These actions will be included in the environmental baseline and cumulative effects portions of the BA and BiOp.

The PWG discussed certainty of implementation and biological effectiveness. Those discussions on certainty of implementation include:

- specificity of action;

- adequacy of assurance of funding;
- identification of responsible entity;
- reasonable assurance of presumed effectiveness and connection to research, monitoring and evaluation.

PWG discussions on assessment of “certainty” of biological effectiveness include:

- Use quantifiable data where it exists; describe qualitative information with as much specificity as possible and clearly describe the logic path to reaching a conclusion;
- Include consideration of current actions where benefits have not yet accrued and benefits of ongoing programs in analysis.

The PWG has also discussed the need to clearly describe the logic path linking Steps 1-4 with Steps 5 & 6 and Steps 7-9. Further discussion by the PWG may be necessary as the criteria are applied.

### **Steps 7-9**

At the January 11 meeting, the PWG discussed how to complete draft products for Steps 7, 8 and 9 (RME, contingencies and oversight/governance) for incorporation into the PA/RPA and accompanying BA. After a review of the current status of these products, members of the PWG asked that the Action Agencies develop a draft proposal for PWG discussion and comment based on the collaboration work products that have been developed to date. The PWG anticipates discussing the Steps 7-9 draft products in February, and anticipates further consideration and collaboration on those steps including:

- The need for RME actions to focus on the key uncertainties that arise in the selection and implementation of the PA or RPA.
- The need to clarify actions and processes that would be triggered by emergency operations for power and fish, and whether NMFS’ Regional Forum is appropriate for developing management actions to address the unique circumstances surrounding emergencies and contingencies.
- The need to address implementation and oversight of PA and RPA measures to improve survival across listed species’ life-cycles.

## **Concerns or disagreements remaining after PWG discussion**

### **From the Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, and Nez Perce Tribe**

The status report as set forth above does not adequately address tribal concerns with the current posture of the collaboration as to issues of concern to the tribes. The report makes much of the procedures followed by the parties without emphasis on the fact that the parties still have many areas of substantive disagreement or difference of opinion.

The lower Columbia River tribes, while agreeing that the collaboration process has procedurally followed the 10 step approach provided to the court at the initial stages of the collaboration, have grave concerns that at least the initial product of the Action Agencies proposed action does not capture the discussions in the 10 step approach in either form or substance. Our general categorical concerns are set forth in the following paragraph. The tribes are very concerned that much of the effort put into the process by non-agency collaborators has been given little recognition in the current Action Agency product. While this may be rectified in future drafts, the current posture is highly troubling.

The tribes have further significant concerns that the current and final Action Agency product do not and may not bear much resemblance to solutions that the tribes contemplated at the outset of the collaboration, and for which they have advocated throughout the process. The status report does not adequately address these misgivings. Tribal concerns, while not specifically limited by this listing, fall within general categories such as: clear and enforceable methods for closing survival gaps, clear and enforceable methods for reversing the trend toward extinction, monitoring any progress in either regard, mechanisms for curing methods that simply don't perform as advertised, recognition of hatchery contributions to recovery and the failure to provide a clear designation of the jeopardy standard against which to measure any Proposed Action. Also of great concern is the lack of any definitive discussion regarding the issue of latent mortality and how it will be treated, if at all, by the Action Agencies in a final PA and or a jeopardy standard.

The tribes continue to work in the collaboration process in hopes that changes may occur in future products, while maintaining a healthy degree of skepticism as to potential outcomes. The tribes will, as contemplated by the court, file a separate status report with which may discuss their concerns in more specific detail.

### **From the Spokane**

The Spokane Tribe has invested significant resources in the collaborative process. Most of our efforts have been to ensure that presentation of scientific and technical information is accessible and effective, and that analyses, deliberations and decisions are coherent, supported by the best available science and defensible. We do not believe this quarterly report reflects, to the extent possible, the products of the collaboration or the challenges we face in completing the 10 step approach.

Also, following the two PWG “retreats” held in August, we believe the nature of the federal defendants’ participation in the collaboration has undergone a perceptible shift, which is troubling and not readily apparent from the status report. Specifically, the action agencies are now engaged in developing draft documents, which they “share” with the PWG for “discussion and comment” in an “iterative” process. This includes sections of the proposed action and, more recently, elements of their biological assessment.

One of the consistent themes of the PWG discussions at Kahneeta and thereafter is that the action agencies’ draft documents do not reflect key information derived from and work products of the collaboration. Where the problems arise and the process breaks down is when subsequent federal iterations---again shared for comment---reflect neither the products of the collaboration identified as missing from, nor the substance of prior comments and discussions of, previous drafts.

In collaboration, parties from opposing sides work together to address the issues and find mutually acceptable solutions. The Spokane Tribe will continue to work with other participants in the collaboration process to ensure that the proposed action (or RPA) complies with the requirements of ESA and the orders and opinions of the Court on remand, and that the

valuable time and resources the Spokane Tribe (and others) have invested in the remand collaboration are not wasted.