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July 30, 2013

MEMORANDUM

TO: Council members

FROM: Patty O'Toole, Program Implementation Manager
Tony Grover, Fish and Wildlife Division Director
John Shurts, General Counsel
Laura Robinson, Program Implementation and Liaison Specialist

SUBJECT: Columbia River Basin Fish and Wildlife Program amendment process

1. General approach to development of draft Program and draft schedule (page 2)
2. Columbia Basin Fish and Wildlife Program: Role of ESA, Biological Opinions, Recovery Plans and Columbia Basin Fish Accords (page 8)

At the August Council meeting staff will be prepared to discuss two fish and wildlife program amendment topics with the Council. First we will review the basic approach to working through the amendment material and developing a draft program, and highlight some important milestones and decision points on our schedule. Second, we will discuss the relationship of the Council's mission and fish and wildlife program to the federal Endangered Species Act, biological opinions, recovery plans and the Columbia Basin Fish Accords.

Topic 1: General approach to development of draft Program and draft schedule

The recommendations for amending the Columbia River Basin Fish and Wildlife Program are due September 17, 2013. This is immediately followed by a 60 day comment period on the recommendations (the program is amended based on both the recommendations and comments on the recommendations). Starting in October, the Council will have a considerable amount of work to do to amend the fish and wildlife program including working through the recommendations, the comments on the recommendations and drafting an amended program. This document is for discussion purposes and lays out suggestions for how to complete this work. A draft work schedule with estimated milestones and decision points follows.

In the past the Council has dedicated a portion of the Council meetings to program amendment tasks. Depending on the task, this generally requires a few hours to one or more full days of meeting time for members and staff, depending on the stage of the amendment process.

The Fish and Wildlife Committee has offered to perform the initial work of developing a draft program through the Committee. This includes working through the recommendations, the comments on the recommendations and drafting the amended fish and wildlife program. This will impact Committee meetings from October 2013 through January 2014. Staff suggests that the Committee reserve 3 hours of meeting time in October and November to focus on the amendment process, with one or more *full* days needed in December and January. The Committee members will provide regular briefings to the Power Committee members and seek their input. The Committee will forward a working draft program to the full Council that describes areas of full consensus and areas where consensus was not reached in the Committee. The decision to release the draft program will be made by the full Council, tentatively scheduled for February of 2014.

Under Section 4(h)(5) of the Act, the Council has to decide on amendments to the fish and wildlife Program on the basis of the recommendations and the comments and consultations on the recommendations. Because we utilize the added step of a *draft* program, in adopting the final program amendments, the Council has to base their decision on the comments and consultations on the draft program as well. If the Council opts to use the Fish and Wildlife Committee to work through the recommendations and comments, consider the issues these raise, and then shape recommendations on draft program amendment language, we still must document that the full Council made its decisions after appropriate consideration of the full administrative record -- of the recommendations and comments and consultations, and not solely on the basis of the recommendation of the F&W Committee.

Basic approach elements:

- A. The *purpose* of each work session on the program amendments is for the Committee members and staff to sit together and work systematically through the recommendations received, the comments on the recommendations and issues as well as considering draft amendments to the program language.
- B. These work sessions will be informed through work products such as *staff summaries* of the recommendations received, *topic issue papers* of various program components, and *draft program language*. Staff work products will be provided to the Committee members in advance of each work session.
- C. Prior to the release of the draft program the Committee may opt to share all, a portion of, or none of the *staff work products* and developing draft language with the public. Sharing this information is not required. Staff will inquire as to the Committee's wishes about this at the appropriate time.
- D. The *duration* of each work session will depend on the needs at each stage of the process - from a couple of hours to a full day or more.
- E. Committee members may attempt to reach *informal decisions* on the particular issues presented during these work sessions at the appropriate times. These decisions can be a simple head nod or indication of agreement on each section of the program as it is drafted. If informal agreement cannot be reached, or if more discussion is necessary on a particular topic, the Committee chair may opt to send to a delegated set of members, for additional consideration and recommendation back to the Committee.
- F. Staff suggests that *formal voting* be reserved for the Council decision to release the draft program for public review and the decision to adopt the final program.
- G. Most of the discussion and agreement will take place during the Committee work sessions. If necessary, *additional, specially scheduled meetings*, either in person or via go-to-meeting, may be held in order to stay on schedule.
- H. The staff suggests that a portion of each meeting be reserved for receiving *feedback from the public*. This could be accomplished through formal public comment at the end of the work session or through informal discussions between Council members and interested public at the conclusion of the day's work session.
- I. Once the program amendment recommendation period closes (September 17, 2013) all program related communications and documents relevant to amending the program need to be circulated to all Council members and staff and need to make their way into the *administrative record*. More detail about this will be provided by John Shurts at the August Council meeting.

Program amendment work schedule (draft July 30, 2013)

Committee/Council meeting dates	Work session dates, Est. duration	Program amendment topics/activities for work sessions	Important related dates
March, May, June, and July	Already completed	Have discussed with Council or Committee to date: <ul style="list-style-type: none"> • Legal framework for the Program • Current program framework • The monitoring and evaluation, research, and reporting framework • Program level objectives 	Request for recommendations: March 26, 2013
Aug 6, 7 Council meeting, Bend	August 7 1 hour	<ul style="list-style-type: none"> • Discuss amendment process work plan • Discuss the role of ESA, BiOps, Recovery Plans and Accords under the Columbia River F&W Program 	Recommendations period still open - closes September 17 Draft FCRPS Biological Opinion, end of August
Sept 10, 11 Council meeting, Coeur d'Alene	Sept 10 1 - 2 hour	<ul style="list-style-type: none"> • Artificial production under the program adaptive management history and principles, food webs or strongholds (<i>tentative topic list</i>) 	Recommendations period closes September 17 Comment period on recommendations begins September 18
Committee meeting (Council meeting is Oct 8, 9 Council meeting, Helena)	Oct 8 3 hours	<ul style="list-style-type: none"> • Discuss program document format, organization. • Summary of recommendations (Part I) <i>Note: we cannot frame decisions or alternatives until after the comment period closes on November 18.</i> 	Comment period on recommendations still open - closes November 18 Committee review and recommendation on geographic review
Committee meeting	Nov 5 3 hours	<ul style="list-style-type: none"> • Summary of recommendations (Part II) <i>Note: we cannot frame decisions or alternatives until after the comment period closes on November 18.</i> 	Comment period on recommendations closes November 18 NOAA situation assessment report due

Committee/Council meeting dates	Work session dates, Est. duration	Program amendment topics/activities for work sessions	Important related dates
(Council meeting is Nov 5, 6 Boise)			in the fall Council review and decision on geographic review
Committee meeting (Council meeting is Dec 10, 11 Council meeting, Portland)	Dec 9,10 Full day+	<ul style="list-style-type: none"> • Review comments • Review topic issues papers • Reach agreement on issues & revised program language • Discuss scheduling and procedures for public hearings and consultations (following release of draft amended program) 	
Committee meeting (Council meeting is Jan 14, 15 Council meeting)	Jan 13 & 14 1-2 days	<ul style="list-style-type: none"> • Review topic issues papers, • Reach agreement on issues & revised program language • Review draft plan for public hearings and consultations • Agree to move to full Council for release 	
TBD Special Council meeting	Late January 1-2 days	<ul style="list-style-type: none"> • Review the Committee recommendations, discuss draft program language 	
Feb 11, 12 Council meeting	Feb 11 Full day +	<ul style="list-style-type: none"> • Discuss draft amended program language • Decision to release draft program (tentative) 	
TBD Late February	Half – full day	<ul style="list-style-type: none"> • Hold in case need additional time for developing draft amended program 	
Mar 11, 12 Council meeting	TBD	<ul style="list-style-type: none"> • Take public comment on draft program • Hold hearings/consultations 	Public review underway, 60-day comment period
Apr 8, 9 Council meeting	TBD	<ul style="list-style-type: none"> • Take public comment on draft program • Hold hearings/consultations 	Public review underway, 60-day comment period
May 6, 7 Council meeting	Full day	<ul style="list-style-type: none"> • Review and discuss comments on draft program • Prepare final program 	

Committee/Council meeting dates	Work session dates, Est. duration	Program amendment topics/activities for work sessions	Important related dates
Jun 10, 11 Council meeting	Full day	<ul style="list-style-type: none"> • Prepare final Program <i>Ex parte period: During the last 3 weeks of preparing the final program Council members and staff are not allowed to entertain comments from external sources.</i> 	
Jul 8, 9 Council meeting	Full day	Council work session Council adopt final program <i>(tentative)</i>	
Aug 5, 6 Council meeting	TBD	Hold for Council adoption of final program if not complete in July.	
Sept 9, 10 Council meeting		**Statutory deadline for adopting amended program **	September 17, 2014
Oct 7, 8 Council meeting	TBD	Council meeting Decision to approve findings <i>(tentative)</i>	

Topic 2. Columbia Basin Fish and Wildlife Program: Role of ESA, Biological Opinions, Recovery Plans and Columbia Basin Fish Accords (August 2013)

Road map of discussion: Relationship of the Council's mission and Fish and Wildlife Program under the Northwest Power Act to the federal Endangered Species Act, Biological Opinions, Recovery Plans and Columbia Basin Fish Accords

1. Council's mission under the Northwest Power Act
2. Federal agencies' authority and relationship to the Council's Fish and Wildlife Program under the Northwest Power Act
3. Role of ESA and relationship to federal agencies' authorities (under the Northwest Power Act and elsewhere) and the federal agencies' responsibilities to the Council's Fish and Wildlife Program under the Northwest Power Act.
4. Meaning of FCRPS Biological Opinions in this context, and how the Council has understood and addressed Biological Opinions in the Fish and Wildlife Program
5. Meaning of recovery plans in this context, and how the Council has understood and addressed recovery plans in the Fish and Wildlife Program
6. What are the Columbia Basin Fish Accords in this context, and how the Council has understood and addressed the Accords in the Fish and Wildlife Program

Appendix: Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program

1. Council's mission under the Northwest Power Act

- Develop a program to protect, mitigate and enhance fish and wildlife affected by development and operation of the Columbia hydrosystem (Section 4(h))
- All fish and wildlife affected by the hydrosystem, not just listed species, but including listed species
- Goal is "protection" and "mitigation" -- undefined but not synonymous with goals on other laws, such as ESA (avoid jeopardy; delist)
- Not a regulatory program -- a protection and mitigation program to be implemented using the funds and authorities of federal agencies

2. Federal agencies' authority and relationship to the Council's Fish and Wildlife Program under the Northwest Power Act

- Bonneville's obligation and authority with regard to fish and wildlife is also in the Northwest Power Act, in Section 4(h)(10)(A): Bonneville is to use its fund and other authorities [e.g., contracting, capital financing, etc.] to protect, mitigate and enhance fish and wildlife affected by hydrosystem "in a manner consistent with" the Council's Fish and Wildlife Program

- Council’s program is thus a substantive plan or menu to guide how Bonneville implements its authority under the Northwest Power Act to spend money and do good things for fish and wildlife.
- Per Section 4(h)(11)(A)(ii), all federal agencies responsible for managing, operating, or regulating federal or non-Federal hydroelectric facilities (Corps of Engineers, Bureau of Reclamation, and FERC as well as Bonneville) are to “exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council.”
- The Council’s Program is an overlay on how these other federal agencies are to exercise their authorities found in other laws relating to these Columbia hydroprojects. This includes project authorizations to the Corps and Bureau to develop and operate projects for multiple purposes, including hydropower, flood control, navigation, irrigation, recreation, and fish and wildlife, and FERC’s authority to license non-federal projects under the Federal Power Act.

3. Role of ESA and relationship to the federal agencies’ basic authorities (under the Northwest Power Act and elsewhere) and to the federal agencies’ responsibilities to the Council’s Fish and Wildlife Program under the Northwest Power Act.

- ESA is *not* a separate source of authority to take actions to benefit listed fish and wildlife
- Instead, ESA is a regulatory overlay directing agencies how to use their authorities in the event their actions under existing authorities affect listed species (e.g., Section 7 consultation process and avoid jeopardizes the continued existence of listed species)
- Starting with Bonneville -- as noted above, Section 4(h)(10)(A) directs Bonneville to use its fund and other authorities to protect, mitigate and enhance fish and wildlife, while other provisions in the Bonneville Project Act, Transmission System Act, Northwest Power Act, etc., direct Bonneville how to do other things, such as sell power, transmit power, acquire resources, etc. ESA is a regulatory overlay on how Bonneville is to use those authorities when Bonneville’s actions under those authorities might affect listed species, guiding or directing Bonneville how to use those authorities to avoid jeopardizing and promote recovery of listed species.
- Thus, when Bonneville spends money on an action to protect, mitigate or enhance listed fish and wildlife affected by the hydrosystem, this is an event under Section 4(h)(10)(A) of the Northwest Power Act. And Bonneville must take that action in a way that is consistent with ESA requirements (from ESA) *and* “in a manner consistent with” the Council’s Fish and Wildlife Program (directly from Section 4(h)(10)(A)).
 - Neither law or obligation is superior over the other -- Bonneville is to comply with all the laws that apply to how it uses its fund and authorities when it uses its fund and authorities.

- If there is ever an apparent difference between what becomes specifically required of Bonneville under ESA and what the Council's Fish and Wildlife Program would have Bonneville do, it is proper to say that Bonneville has an obligation to try to resolve the conflict so that it can be consistent with ESA requirements as well as act in a manner consistent with the Council's Program as required by Section 4(h)(10)(A). [Examples] But the nature of the tie to the Council's Fish and Wildlife Program under the Northwest Power Act is such that it is fair to say that if there were ever an actual conflict, Bonneville would and should do what is required under ESA, and in doing so, and in documenting the reason for the deviation from the Program in this instance, Bonneville would likely be understood still to be complying with the Northwest Power Act (*see NEDC v. Bonneville* in 2007 concerning the Fish Passage Center).
- Bonneville's actions to address *listed* species that are also consistent with the Council's Fish and Wildlife Program does not relieve Bonneville of responsibility under Section 4(h)(10)(A) to use its fund and other authorities to protect, mitigate and enhance for the adverse effects of the hydrosystem on important fish and wildlife species that are not listed, especially as measures and objectives for this purpose are identified in the Council's. Nor relieve Bonneville of its responsibility to protect and mitigate listed species *beyond* the requirements of the ESA *if* the Council properly identifies such protection and mitigation measures and objectives.
- What does all this mean in practice? Bonneville is acting under Section 4(h)(10)(A) to implement an "integrated" program, integrated in the sense that it satisfies Bonneville's obligations under the Northwest Power Act to protect, mitigate and enhance fish and wildlife in a manner consistent with the Council's Fish and Wildlife Program while also satisfying the regulatory requirements of the ESA.
 - For listed species, compliance with ESA is not a legal obligation of the Council in crafting the Fish and Wildlife Program, and the Council does not analyze Program measures as to whether they satisfy the ESA nor adopt the conclusions of others about ESA sufficiency. But the Council develops the program with an awareness that compliance with ESA is a legal obligation of Bonneville and the other federal agencies. And so it behooves the Council to develop the program in recognition of, and to help the agencies comply with, the ESA requirements. The Council does. It's the Council's regional protection and mitigation program (made of mainstem and off-site protection and mitigation measures) that is the primary raw material of measures to be analyzed and shaped and refined and sized through the ESA analysis to also comply with ESA. And thus what is in the BiOps and recovery plans and etc. under ESA for Columbia fish and wildlife affected by the hydrosystem is built on the 30+-year foundation of mainstem and off-site protection and mitigation measures developed in the Council's program.
 - Also, to extent the actions funded and implemented now to address listed species are sufficient to comply with the ESA but do not ultimately result in protection and mitigation as those concepts are embedded in the Northwest Power Act, the Council and Bonneville and other agencies will have that continued obligation to implement.
 - For other species and population segments adversely affected by the hydrosystem -- including those that are not listed and those that were important but have been extirpated

from large portions of their range (i.e., in the blocked areas) -- the Council includes in the program protection, mitigation and enhancement measures and objectives to address those effects. As required by Section 4(h)(10)(A), Bonneville uses its fund and other authorities to address those effects. People at times have concerns about the *magnitude* of the effort aimed at these species as compared to the effort aimed at listed species. But we all recognize the obligation and have measures and objectives in compliance.

- The actions of the Corps and Bureau and FERC are governed by the same concepts: These agencies take these actions under their various governing authorities; the agencies must exercise these authorities in a way consistent with the requirements of the ESA; and the agencies must also exercise their responsibilities consistent with the requirements of Section 4(h)(11)(A) of the Northwest Power Act. The link to the Council's Fish and Wildlife Program may be less than the "consistency" requirement that applies to Bonneville in Section 4(h)(10)(A), altho is not insignificant. And this is true in any event, and does not change just because the relevant species is listed and the agency has ESA requirements to satisfy, too. The practical reality again has been the need to build a mainstem and estuary and tributary program that can be the raw material or foundation to satisfy ESA requirements as well, with work in turn by the federal agencies to harmonize the different requirements in the exercise of their authorities when possible. [Examples concerning reservoir operations from the 2003 Mainstem Amendments; Vernita Bar operations; Grand Coulee operations for resident fish; Bureau tributary work.]

4. Meaning of FCRPS Biological Opinions in this context, and how the Council has understood and addressed Biological Opinions in the Fish and Wildlife Program

- What are the Biological Opinions? People often focus just on NOAA's FCRPS Salmon and Steelhead BiOp. But other relevant biological opinions from NOAA cover Reclamation's Upper Snake projects and the Corps' Willamette projects. And the U.S. Fish and Wildlife Service has issued biological opinions covering the effects of Libby Dam operations on the Kootenai River white sturgeon and bull trout (2006); the effects on bull trout and other listed species from Federal Columbia River Power System operations more broadly (2000); and the effects of the Willamette projects on Oregon chub and trout (2008). *See* footnote 10 on page 34 of the Council's Program, Mainstem Plan, for the full list with the full titles.
- How to understand the role of the BiOps from the perspective of the Council's Fish and Wildlife Program and the Northwest Power Act? Begin with the above discussion. That is, Biological Opinions are an ESA analysis, and contain resulting ESA requirements, that function as a regulatory overlay over the regional protection and mitigation program that the Council helps to develop and which is implemented by Bonneville under Section 4(h)(10)(A) and by the Corps and Bureau under their existing authorities while heedful of the obligation to the Council's Program via Section 4(h)(11)(A). The nature of the mainstem water management and passage work or the tributary and estuary off-site mitigation work does not change dramatically because it is also part of an ESA consultation. It can't, as the ESA provides a way of assessing the exercise of existing authorities. What changes most are the specifics and the magnitude of implementation.

- And that is the best way to understand the role of the BiOps in the Council's Fish and Wildlife Program -- as a suite of proposed actions and standards to benefit listed species that represent measures and objectives of the Fish and Wildlife Program in implementation to benefit these species, actions that have been assessed and approved consistent with the ESA requirements and, as a result, are not mandated to avoid jeopardy.
- This is in fact how the Council has dealt with the BiOps in the 2009 Fish and Wildlife Program. Despite what people often say, the Council did *not* adopt the BiOp(s). What the Council did is recognize that the *actions* in the BiOp as also measures in the Program for implementation to protect and mitigate fish and wildlife affected by the hydrosystem that are listed. In the mainstem the Council also recognized the BiOp's *hydrosystem performance standards* (such as passage survival standards) as Program *objectives*, too. See discussion of how the BiOps fit into the Program at pgs. 14 (Basinwide Strategies); 34-36, 38, 40-41, 48 (Mainstem Plan Intro, Biological Objectives, Overarching Strategies and Specific Water Management Strategies); 59 (Implementation Provisions); 91 (Appendix E Program Measures); 5-9 of Appendix F Findings. These provisions are attached at the end.
- The Council did so while also recognizing that there are other measures and objectives to address effects on the other anadromous fish, resident fish and wildlife species and population segments that need to be implemented, too, and are generally of equal priority under the Northwest Power Act and the Council's Fish and Wildlife Program with the measures to address listed species. The program also recognizes in a conceptual sense that there are objectives and may be or will be measures that address the listed fish that go beyond what is needed for ESA in order to protection and mitigation in general under the Northwest Power Act, altho real consideration of that is to come.
- Note that the Council, in taking these actions, recognized the on-going litigation over the sufficiency of the FCRPS salmon and steelhead BiOp to meet ESA requirements. The litigation is essentially irrelevant in this context. As explained in the Findings, the Council was careful not to adopt or incorporate the FCRPS BiOp or the jeopardy analysis or conclusions into the Council's program, deciding instead that it is the *actions* reviewed in the BiOp that are part of the baseline measures in the Council's program as well. (So too, in this sense, are the spill measures ordered by the federal court within the BiOp litigation context.) These measures are now independently part of the Council's program. The Council has no reason to believe these measures will not continue to represent the basic core of the actions implemented by the federal action agencies in the near future for listed salmon and steelhead, even if the outcome of the litigation is that even more actions need to be drawn from the raw material of the Program and ESA planning and added to the implementation commitments.

5. Meaning of recovery plans in this context, and how the Council has understood and addressed recovery plans in the Fish and Wildlife Program

- Similar analysis. To a significant extent the recovery plans took the subbasin plans developed for the Council's Program as a foundation and then engaged in further planning

with regard to the listed species component to identify ESA population objectives for recovery and then identify a fleshed-out set of actions that might yield meet those objectives.

- The Council did not adopt the recovery plans into the 2009 Program. The subbasin plans and mainstem plans are still the cornerstone of the regional protection and mitigation program across multiple species, listed and not listed. What the Council did in the 2009 Program was recognize the recovery plans at this time as simply a suite of actions that represent Program measures to draw from in implementation to benefit the listed species. See especially the discussion of recovery plans at pgs. 5 (Intro), 58 (subbasin plans), and especially 91 (Appendix E Program Measures) -- all attached at the back. The Council did not adopt the delisting criteria or other objectives in the recovery plans, as these represent what it required by the ESA to achieve recovery and not necessarily what is required to achieve protection and mitigation under the Northwest Power Act.

6. What are the Columbia Basin Fish Accords in this context, and how the Council has understood and addressed the Accords in the Fish and Wildlife Program

- Similar analysis. The Accords include a suite of actions and an implementation commitment intended to benefit both listed *and* important non-listed species and population segments. Again, they are built on a 30+ year foundation of mainstem and off-site mitigation planning, measures and objectives in the Council's Fish and Wildlife Program under the Northwest Power Act. When Bonneville committed to the Accords, and when it takes an action to implement an Accord, this is Bonneville acting pursuant to Section 4(h)(10)(A) to protect, mitigate and enhance fish and wildlife in a manner consistent with the Council's Program -- in essence, implementation of the Program.
- This is how the Council understood the Accords in the 2009 Program -- the Council recognized these as an implementation commitment to suites of Program measures. See pgs. 5 (Intro), 14 (Basinwide Strategies), 59 (Implementation Provisions); 91 (Appendix E Program Measures); 5-9 of Appendix F Findings. Both the Accords and the 2009 Program recognize that the Accords must be consistent with and cannot override the law -- it is consistent with the Northwest Power Act for Bonneville to sign multi-year implementation commitments, but these Accords are still subject to Program amendment processes under Section 4(h) and project review process under Section 4(h)(10)(D), among all other requirements of law.

Appendix: Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program

I. Introduction

D. Implementation and Performance (pg. 5)

The Council comprehensively revised the Program in 2000 with the addition of the current Program framework, added specific measures and objectives for the mainstem in 2003, and then developed and adopted the subbasin management plans into the Program in 2004-05. Together, these elements provide a coordinated and integrated plan for fish and wildlife actions across the basin. The federal, state and tribal governments have been working since then with local partners to expand the subbasin plans into ESA recovery plans for areas of the basin that include ESA-listed populations. The Council is planning a subsequent amendment process in 2009-2010 to update the subbasin management plans and Program objectives to reflect these and other recent planning developments.

In 2007-08, Bonneville and other agencies of the federal government also agreed to implementation commitments built on this broader planning foundation, commitments to fund an extensive set of actions over the next 10 years to benefit listed and unlisted anadromous fish, resident fish, and wildlife across the Columbia River Basin. These include mainstem, estuary and tributary habitat, production, harvest, and monitoring actions. The agencies committed to these actions as part of the consultation resulting in the 2008 Biological Opinion for the Federal Columbia River Power System, and in the Columbia Basin Fish Accords (Accords) executed with certain Indian tribes and states. Thus many areas of the Council's Program already are covered by these multi-year implementation commitments. But these commitments do not cover all areas of the Program. Given the Council's obligation to adopt and oversee the implementation of the Program to protect, mitigate, and enhance all the fish and wildlife affected by the Columbia hydrosystem, including related spawning grounds and habitat, the Council is now adopting appropriate measures and will oversee the development of multi-year action plans for all areas of the Program.

All these implementation commitments are built on the mainstem and off-site mitigation foundations developed in the Council's Program over the past 27 years, from the water management and passage measures in the 1982 Program to the more recently adopted subbasin management plans. The Program has identified the basin's biological potential and the opportunities for improvements. As a consequence of the Accords and the biological opinions, there are significant financial commitments to implement actions during the next 10 years to try to capture that potential.

Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program (cont'd)

II. Basinwide Provisions

A. Vision for the Columbia River Basin

1. The Overall Vision for the Fish and Wildlife Program (pg, 6)

The vision for this Program is a Columbia River ecosystem that sustains an abundant, productive, and diverse community of fish and wildlife, mitigating across the basin for the adverse effects to fish and wildlife caused by the development and operation of the hydrosystem. This ecosystem provides abundant opportunities for tribal trust and treaty-right harvest and for non-tribal harvest and the conditions that allow for the recovery of the fish and wildlife affected by the operation of the hydrosystem and listed under the Endangered Species Act.

C. Biological Objectives

1. Basin-level Biological Objectives (pg.11)

- Significantly increase the total adult salmon and steelhead runs in the Columbia River Basin, especially those that originate above Bonneville Dam, in a manner that supports tribal and non-tribal harvest and complements regional harvest management agreements, such as the Columbia River Compact, the *U.S. v Oregon* Management Agreement, and the Pacific Salmon Treaty. Efforts to increase abundance must also be consistent with achieving recovery of ESA-listed populations and preventing additional ESA listings of species. Within 100 years, achieve population characteristics that, while fluctuating due to natural variability, represent on average full mitigation for losses of anadromous fish.

D. Basinwide Strategies (pg. 14)

Basinwide strategies are plans of action to accomplish the basinwide biological objectives. Strategies at the basin level consist of programmatic guidelines for planning and implementation at the subbasin and province level and also include specific measures that transcend specific subbasins and provinces, such as research, monitoring, and evaluation. Strategies to protect, mitigate, and enhance fish and wildlife should consider current as well as future environmental conditions.

Implementation of strategies at all Program levels will be more effective if developed further into coordinated, multiyear action plans with a sufficient funding commitment and clear obligations for ongoing performance review and reporting. In 2008 Bonneville and the other federal agencies

made such implementation commitments to certain elements of the Council's Program, including the commitments made in the FCRPS and Willamette Biological Opinions as well as in the Columbia Basin Fish Accords. As discussed in the Program's Implementation Provisions (Section VIII), the Council will work with Bonneville, fish and wildlife managers, and others to develop multi-year action plans for all areas of the Program. The Council will work with Bonneville to ensure reasonable implementation of all multi-year action plans.

Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program (cont'd)

VI. Mainstem Plan

A. The Context for the Mainstem Plan (pgs. 34-35)

At one time the Council's Fish and Wildlife Program included detailed hydrosystem operations for fish and wildlife. This is no longer necessary. The federal agencies that manage, operate, and regulate the federal dams on the Columbia and Snake rivers now have detailed plans for system operations and for each hydroelectric facility intended to improve conditions for fish and wildlife affected by the hydrosystem. These federal agency plans are described and reviewed largely in biological opinions issued by NOAA Fisheries (formerly the National Marine Fisheries Service) and the U.S. Fish and Wildlife Service for the operation of the Federal Columbia River Power System and the Bureau's projects in the Upper Snake.¹⁰

The main focus of these federal plans is to benefit populations of salmon, steelhead, bull trout, and Kootenai River white sturgeon listed as threatened or endangered under the federal Endangered Species Act (ESA). The plans also contain objectives and actions to benefit other fish and wildlife affected by the hydrosystem, consistent with the federal agencies' obligations under other authorities, including obligations to this Program under the Northwest Power Act. Additional mainstem operations and actions to benefit these species are found in the Columbia River Basin Fish Accords executed by the federal agencies in 2008 with five Indian tribes and two states and described in the basinwide provisions. Finally, operators of non-federal dams on the mainstem Columbia and Snake are implementing, or will soon implement, increasingly detailed plans to benefit Columbia and Snake fish and wildlife, agreed upon through the regulatory and relicensing processes at the Federal Energy Regulatory Commission.

The hydrosystem measures in these plans and opinions contain hundreds of pages of detail and hundreds of measures on system configuration, river flows, reservoir management, passage improvements, spill, juvenile transportation, predator management and more. These measures are built on foundations developed in the Council's Program over the last 28 years. In turn, the Council's mainstem plan is now built on recognizing these other plans and the biological opinions as containing the baseline objectives and measures for the mainstem portion of the Council's Fish and Wildlife Program.

¹⁰The relevant biological opinions include NOAA Fisheries, Consultation on Remand and Biological Opinion for Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program (May 2008); NOAA Fisheries, Consultation and Biological Opinion for the Operation and Maintenance of 10 U.S. Bureau of Reclamation Projects and 2 Related Actions in the Upper Snake River Basin above Brownlee Reservoir (May 2008); U.S. Fish and Wildlife Service, Biological Opinion regarding the effects of Libby Dam operations on the Kootenai River White Sturgeon, Bull Trout and Kootenai Sturgeon Critical Habitat (February 2006); U.S. Fish and Wildlife Service, Biological Opinion: Effects to Listed Species from Operations of the Federal Columbia River Power System (December 2000); NOAA Fisheries, Biological Opinion: Consultation on the "Willamette River Basin Flood Control Project" (July

2008); U.S. Fish and Wildlife Service, Biological Opinion on the Continued Operation and Maintenance of the Willamette River Basin Project and Effects to Oregon Chub, Bull Trout, and Bull Trout Critical Habitat Designated Under the Endangered Species Act (July 2008). Various ESA recovery plans and draft recovery plans across the basin incorporate these hydrosystem objectives and measures as well.

C. [Mainstem] Biological Objectives (pg. 36)

1. Overarching Objectives and Priorities for the Mainstem

The biological objectives stated here for the mainstem plan are based on and consistent with the biological objectives in the basinwide provisions of the Fish and Wildlife Program. These biological objectives and accompanying operational strategies are designed to improve the life-cycle survival of important populations of listed and unlisted salmon, steelhead, lamprey, resident fish, and wildlife. The Council's goal is to apply the available resources in the most effective way possible to achieve protection, mitigation, recovery, and delisting of threatened and endangered species in the shortest possible time. This demands that the Council set clear priorities for resource expenditures to protect, mitigate, and enhance fish and wildlife populations to assure that fish and wildlife benefits are achieved at the least cost to the region's financial and water resources.

As noted above, one of the overarching objectives for the Program is the recovery of ESA-listed anadromous and resident fish affected by development and operation of the hydrosystem. Federal hydrosystem operations to benefit fish now are focused on listed populations through the objectives for listed salmon and steelhead in NOAA Fisheries' 2008 FCRPS, Upper Snake and Willamette River Biological Opinions and the objectives for listed Kootenai River White Sturgeon, bull trout and Oregon chub in the U.S. Fish and Wildlife Service's FCRPS (2000), Libby Dam (2006) and Willamette River (2008) Biological Opinions (see footnote 10). Achieving the biological performance standards for listed species set forth in the biological opinions is a key biological objective of the Council's Program and this mainstem plan.

Under the Northwest Power Act, however, the Council has an obligation to protect, mitigate, and enhance all the fish and wildlife of the Columbia Basin affected by the development, operation, and management of the hydrosystem. Concern over the listed populations is only one part of the Council's broader mandate. Therefore, a goal of the Council's Program, as set forth in the Program's vision statement, is to provide habitat conditions that sustain abundant, productive, and diverse fish and wildlife populations that support the recovery of listed species and abundant opportunities for tribal trust and treaty-right harvest and non-tribal harvest.

In addition, the science relating to the rebuilding of Pacific salmon indicates that success in protecting and enhancing abundant and diverse naturally spawning populations of salmon and steelhead and other native fish requires an emphasis on protecting, enhancing, connecting, and restoring habitats and populations that are relatively productive. This is a priority for actions that should be equal to protecting migration and spawning conditions for ESA-listed populations. This priority includes, for example, protecting and improving mainstem migration conditions for important non-listed tributary populations in the middle part of the river such as spring Chinook in the John Day and Deschutes rivers. Also, historically the most productive populations in the Columbia system were those that spawned in the mainstem or the lower parts of the tributaries, as

described in the basinwide habitat objectives and strategies above, and that have been either extirpated (for example, those that spawned in the mainstem above Chief Joseph Dam or in the area now inundated by John Day Dam) or remain relatively productive (for example, Hanford Reach fall Chinook). Accordingly, this plan emphasizes protecting and restoring mainstem spawning and rearing habitats and populations. These general objectives for the mainstem are consistent with, and incorporate, the basinwide vision, biological objectives, and the habitat and hydrosystem strategies.

2. Specific Objectives and Performance Standards for Habitat Characteristics and for Population Performance [one example]

b. Migration and passage conditions for anadromous fish (pg. 38)

- Improve the survival and production of anadromous fish in the mainstem by enhancing the inriver migration, habitat, and water-quality conditions consistent with the biological objectives of this Program and with the efforts to meet ESA requirements in the FCRPS Biological Opinion and state and federal water-quality standards under the Clean Water Act.
- The NOAA Fisheries 2008 FCRPS Biological Opinion includes hydrosystem survival performance standards for inriver passage of affected life stages of ESA listed salmon and steelhead through the eight federal dams in the lower Columbia and lower Snake rivers. The Program adopts these objectives. Achieve these objectives at the minimum economic cost.

D. Mainstem Strategies

1. Overarching Strategies (pgs. 40-41)

NOAA Fisheries and the U.S. Fish and Wildlife Service have developed various biological opinions for the operation of the Federal Columbia River Power System for the benefit of populations of salmon, steelhead, bull trout and Kootenai white sturgeon listed as threatened or endangered under the Endangered Species Act. The measures in these opinions represent the recommendations of the federal fish and wildlife agencies with jurisdiction over the operational needs of these listed species. The Council accepts these measures as part of the Fish and Wildlife Program for the near term. However, many of the biological opinions' measures must be subject to systematic and rigorous monitoring and evaluation, as described below and in the more specific strategies, to determine if the measures have the biological benefits expected and represent the most cost-effective actions to achieve these benefits. Based on these evaluations, the Council may recommend to the federal operating and fish and wildlife agencies operations that differ from those in the biological opinions if the Council concludes the different operations provide the same or greater benefits to listed fish and wildlife than current operations at a lower cost. The Council is confident that changes in operations of this nature can be made consistent with the flexibility built into the biological opinions.

The biological opinions' operations may not be optimal when the needs of fish and wildlife other than listed species are taken into account. Based on the vision, the biological objectives, and the overarching strategies stated earlier, the Council is adopting water-management and other specific strategies to benefit all fish and wildlife affected by the hydrosystem, not just listed species. Where the strategies intended to benefit non-listed species appear to conflict with the biological opinions, the Council does not mean that the federal operating agencies should act contrary to the biological opinions in order to implement strategies in this Program. The Council intends instead that the federal operating agencies make every effort practicable to use the operational flexibility in the biological opinions to meet the biological opinion requirements and implement the other strategies in the Council's Program. The exception is where the Council calls for explicit scientific testing of a particular operation in the biological opinions. The Council is confident these changes also can be made consistent with the flexibility built into the biological opinions without adverse effects on listed species and will lead to a more broad-based, sustainable, and cost-effective protection and recovery of fish and wildlife in the Columbia Basin. The Council expects the federal operating agencies and fish and wildlife agencies to consult with the Council, states, and tribes on the implementation of these strategies

2. [Mainstem] Strategies in Specific Areas [one example]

Water Management

Baseline operations of the Federal Columbia River Power System established in the 2008 Biological Opinions (pg. 48)

NOAA Fisheries' 2008 Biological Opinions for the FCRPS and the Upper Snake federal projects include a series of measures concerning water management for the benefit of listed juvenile salmon and steelhead, while the U.S. Fish and Wildlife Service's 2000 and 2006 Biological Opinions include a set of measures concerning water management for the benefit of listed bull trout and Kootenai River white sturgeon. The water management measures in these biological opinions are incorporated as part of this Program, and the Council concurs that these are appropriate operations to protect, mitigate, and enhance those anadromous and resident fish listed under the Endangered Species Act and affected by the Columbia hydropower system. The Council may adopt additional water management strategies to protect, mitigate, and enhance all fish and wildlife affected by the hydrosystem and meet the biological objectives and vision of its Program. To the extent these water management strategies appear to conflict with the biological opinions, the Council does not mean that the federal operating agencies should act contrary to the biological opinions in order to implement the strategies in this Program. The Council intends instead that the federal operating agencies make every effort practicable to use the operational flexibility in the biological opinions to meet the biological opinion requirements and implement the water management strategies in this Program.

Hanford Reach/mainstem and estuary spawning, rearing, and resting habitat

Manage flows, while maintaining consistency with this mainstem plan's flow and reservoir operations, to protect, improve, and expand spawning, rearing, and resting habitat in the mainstem and estuary. In particular, the federal and non-federal project operators should provide suitable and stable flows to establish and protect the habitat conditions necessary for spawning and rearing in the Hanford Reach on an equal basis as managing water to support the migration of listed species....

Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program (cont'd)

VII. Subbasins

D. Updating Existing Subbasin Management Plans (pg. 58)

The Council recognizes work has continued in some subbasins to refine and update management plans. The Council also recognizes that work has continued outside the Program, such as recovery planning, that is built on the subbasin plans and that will influence implementation of the Council's Program at the subbasin level. The Council also received detailed recommendations in 2008 from fish and wildlife managers to include, as part of the subbasin plans, tables summarizing the biological objectives, population status, limiting factors, threats, strategies, and measures for anadromous and resident fish. The Council understands in some instances the tables included new objectives and other information in addition to summarizing information already contained in subbasin plans.

VIII. Implementation Provisions

A. Implementing Measures Recommended for 2008-2018 (pg. 59)

In 2007-08, Bonneville and other agencies of the federal government committed in a number of decisions, documents, and agreements to fund an extensive set of actions over the next ten years to benefit listed and unlisted anadromous and resident fish across the Columbia River Basin. These include mainstem, estuary, and tributary habitat, production, harvest, and monitoring actions committed to by the agencies as part of the consultation resulting in the 2008 Biological Opinion for the Federal Columbia River Power System and in the Columbia Basin Fish Accords ("Accords") executed with certain Indian tribes and states.

These actions are largely built on the mainstem and offsite mitigation foundations developed in the Council's Program over the past 27 years, from the water management and passage measures in the original 1982 Program to the more recent adoption of subbasin plans. The Council recognizes these actions as measures that Bonneville and the other federal agencies have committed to fund and implement under Sections 4(h)(10)(A) and 4(h)(11) of the Northwest Power Act, even as these measures also address needs under other federal laws as well, such as the Endangered Species Act.

The Council's Program is broader in scope and covers a greater geographic area and a more extensive set of affected fish and wildlife populations than will benefit from the actions in the 2008 Biological Opinions and the Accords. The Council also received recommendations containing extensive lists of measures for implementation in the next 5-10 years relating to these

other areas of the Program. These recommendations include for example, habitat and production measures to benefit resident and anadromous fish in the subbasins of the Intermountain, Mountain Columbia, and Middle and Upper Snake provinces and in the Clearwater subbasin in the Mountain Snake, as well as measures to implement the wildlife elements of the Program. Again, these recommended measures appear to be based on the foundations already developed in the Council's Program. The Council also accepts these recommendations as measures that are part of the Fish and Wildlife Program. A list of the sources of all these measures may be found in Appendix E and is displayed with the appropriate subbasin along with the subbasin plans at www.nwcouncil.org/fw/subbasinplanning/Default.htm.

Beginning in early 2009, the Council will work with recommending entities, Bonneville and others to shape the measures recommended for all areas of the Program into multi-year action plans similar to those implementation plans in the 2008 Biological Opinion and the Accords. The Council will then work with Bonneville and relevant entities to estimate multi-year implementation budgets and secure funding commitments that ensure adequate funding for these action plans.

Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program (cont'd)

Appendix E. Subbasin and Basinwide Measures (pg. 91)

Section A of the Implementation Provisions above describes the types and sources of recommendations the Council received for action measures to be considered for implementation in the next 5-10 years consistent with the subbasin plans and broader elements of the Program. The Council accepts these recommendations as measures that are part of the Fish and Wildlife Program.

This Appendix is a list of the sources of these recommended measures, with links to the appropriate documents containing the measures. These may also be found on the Council's website. Sources of habitat, production, and subbasin-specific monitoring and evaluation measures are organized by province and subbasin. At the end is a list of the sources of basinwide and mainstem research, monitoring, evaluation, and data-management measures. Final recovery plans recommended to the Council are listed as sources of actions proposed for implementation to the extent consistent with the subbasin plans and broader Program elements. The Council has not yet adopted the recovery plans (or recovery plan elements) as planning documents that replace or supplement the subbasin plans. That will be a subject for the subsequent subbasin plan update process described in Section D of the Subbasin section of this Program. The recommendation submitted collectively from the Columbia Basin Fish and Wildlife Authority (Authority) is also listed as a source of measures, but only to the extent the Authority's recommendation provides specific actions to consider for implementation from agencies or tribes that are not contained in or in conflict with the recommendations from individual agencies or tribes. Not incorporated here are the more generally stated measures in the Authority's recommendation that are akin to the subbasin plan strategies. Nor does this include the general provisions in the Authority's recommendation that relate to the basinwide objectives and strategies, which have been considered and addressed in the amendments to the basinwide provisions.

Relevant provisions of 2009 Columbia River Basin Fish and Wildlife Program (cont'd)

Appendix F: Findings on Recommendations

*** [pgs. 5-9:]

General Finding No. 3: Recommendations and comments relating to the Biological Opinions and Columbia Basin Fish Accords. Related to the topic above, various entities recommended that the Council incorporate, include, or recognize in the program the recent spate of biological opinions adopted by the federal agencies in 2008 under the federal Endangered Species Act to address the needs of listed species affected by the hydroelectric facilities of the Columbia River Basin. The Council received similar recommendations concerning the Columbia Basin Fish Accords, a set of agreements between the federal action agencies (Bonneville Power Administration, U.S. Army Corps of Engineers, and the Bureau of Reclamation) and two states and four Indian tribes to fund actions to benefit listed and non-listed species. The Fish Accords accompanied the release of the Federal Columbia River Power System, Upper Snake Basin, and *U.S. v Oregon* Biological Opinions. The action agencies and a fifth tribe finalized an additional Fish Accord during the comment period on the draft amendments. The Council also received recommendations and comments opposed to or cautious about the Council recognizing or incorporating into the program the biological opinions and the accords.

The Council decided to accept as specific measures and objectives in the program the specific actions and hydrosystem performance standards called for in the federal agencies' proposed actions analyzed in the biological opinions and the actions called for in the Columbia Basin Fish Accords. The Council's decision is described and explained at, among other places, <http://www.nwcouncil.org/library/2009/2009-02.pdf>, pp. 12, 28, 64-65, 67-68, 71-73, 74-77, 81, 82, 84, 90-91, 101, 114-16.

The Council first confronted the question of how to understand the biological opinions and recommendations relating to them in the context of adopting the 2003 Mainstem Amendments after the federal agencies adopted the 2000 FCRPS Biological Opinion. In the findings for the 2003 amendments, the Council explained at length how and why it handled these ESA developments within the context of the Northwest Power Act's protection and mitigation program. See <http://www.nwcouncil.org/library/2003/2003-11b.pdf>, pp. 58-66. The Council remained consistent in its treatment of the ESA-related decisions in this amendment process, as described in the pages cited above, and so the explanation from the 2003 findings remains valid and is incorporated here. To summarize: The Council has been careful not to adopt or incorporate the biological opinions or the accords themselves into the program, nor the analyses or conclusions relating to what is required to satisfy the requirements of the ESA. Those matters are in litigation, and they are not within the Council's purview in any event. The Council also is not concerned with or in any way commenting on the litigation settlement aspect of the Columbia Basin Fish Accords, which again is a matter outside of the Council's purview.

Instead, what the Council is recognizing and incorporating into the program are the specific actions and hydrosystem performance standards from the biological opinions and the actions in the accords, as baseline implementation commitments of the federal agencies to address the needs of species adversely affected by the Columbia hydrosystem and in need of protection and mitigation under the Northwest Power Act. These actions are largely built on the mainstem and offsite mitigation planning and implementation work of the Council over the last 25 years and are consistent with and based on the strategies and biological objectives in the program's basinwide provisions and in the mainstem and subbasin plans. The Council included these actions and standards as measures and mainstem objectives of the program subject to certain conditions described above, such as periodic independent scientific review and performance and reporting accountability, to ensure Northwest Power Act and program consistency. The Council included these elements in the program also subject to the explicit condition that the federal agency commitments in the biological opinion and accords "must not come at the expense of sufficient funding for other program priorities." To help achieve relatively comparable status for all important priorities of the program, the Council committed to work with others to develop multi-year action plans for all parts of the program, similar to the implementation plans committed to in the 2008 FCRPS Biological Opinion and the Columbia Basin Fish Accords, and then to work to secure funding commitments that ensure adequate funding for these action plans. 2009 revised program, <http://www.nwcouncil.org/library/2009/2009-02.pdf>, p. 116.

For the most part the recommendations and comments dealt with this topic in general, and not in terms of supporting or opposing particular actions in the biological opinions and accords. One exception, seemingly the only one in this amendment process, involved the recommendation from the Oregon Department of Fish and Wildlife (ODFW) that the Council adopt spill, flow, and other mainstem passage operations that differed from the operations specified in the FCRPS Biological Opinion. ODFW based its recommendation on a difference of opinion with the federal agencies and others as to what are the optimum operations to benefit listed (as well as non-listed) salmon and steelhead. The Council did not adopt this recommendation. (While the Council adopted most of the 2009 revised program in a unanimous vote, the Oregon members voted against the adoption of the mainstem portion of the revised program, largely out of disagreement with the rest of the Council over the treatment of the Oregon mainstem passage recommendations.) The Council explained its reasons for rejecting similar hydrosystem operations recommendations in the findings on the 2003 Mainstem Amendments, *see* <http://www.nwcouncil.org/library/2003/2003-11b.pdf>, pp. 60-64. Those findings are repeated by reference here, with particular emphasis on the rationale in this passage:

By rejecting the recommendations that would have the Council call at this time for additional or different flow, spill and passage measures for salmon and steelhead, the Council does not mean or imply that it has evaluated the science underlying the different positions and concluded that NOAA Fisheries is correct and the Oregon and Idaho agencies and the Commission are incorrect, or that the Council gave greater weight to the biological judgments of the federal agencies and less or none to the judgments of the others. Program amendment recommendations from all fish and wildlife agencies and tribes are due special consideration by the Council under the Power Act. The Council recognizes that the different positions are based in legitimate differences in opinion as to the meanings to be drawn from imperfect scientific information and from different managerial perspectives and assumptions of risk. Time and more information may reveal that the federal agencies are correct in the

decisions about what is needed to prevent extinction and recover listed salmon and steelhead, or that these state agencies and tribes are correct, or that neither is correct. The difficulty for the Council was how to decide what the Council's program should say at this time about mainstem configuration and operations for salmon and steelhead in light of the different recommendations from the federal and state fish and wildlife agencies and tribes. The standards for adopting and rejecting recommendations in Section 4(h) of the Power Act are essentially premised on the assumption that the recommendations of the fish and wildlife agencies and tribes will coincide, and that any conflicts found in the recommendations will be between fish and wildlife managers and other river users. The standards are not well adapted to situations in which the federal salmon agency differs from state and tribal salmon agencies as to what are the appropriate measures for salmon and steelhead. One reason the Council gave at least presumptive weight to the federal agency recommendations, at least as the baseline or starting point for the measures in the program, is because the ultimate focus is on adopting a set of operations that the Council can expect the federal operating agencies to implement to benefit salmon and steelhead. The systemwide operational measures from the federal fish and wildlife agencies with ultimate jurisdiction under the ESA for listed species carry by far the most weight with the federal operating agencies and, in fact, are now the basic set of hydrosystem operations that those agencies have adopted in their Records of Decision for operations, and thus are the operations for the Council to establish as the baseline for the program. The issue then has been what to do with the different or additional recommendations of the state and tribal managers.

The Council concluded that the hydrosystem measures in the biological opinions themselves held a key to resolving this dilemma. The biological opinions represented the culmination of a complicated multi-year process by the federal fish and operating agencies to evaluate the effects of hydrosystem operations on the listed fish species spread throughout the Columbia. That process included a thorough airing of the different scientific and policy views of the federal, state and tribal fish managers as well as the views of environmental groups, industry groups and others, resulting in an extensive administrative record and resolution of key issues by NOAA Fisheries and U.S. Fish and Wildlife Service, the agencies with ultimate responsibility to determine what are the appropriate actions to take to protect and improve the conditions for listed species. Most important here, the hydrosystem part of the NOAA Fisheries' salmon and steelhead biological opinion recognized the uncertainties and legitimate differences in opinion. The biological opinion included measures and mechanisms to test key assumptions and uncertainties about flow, spill, passage and system configuration; to monitor progress in reversing the population trends; and to adapt management prescriptions as more is learned about the status of the stocks and the effects of measures taken. The biological opinion measures thus internalized the debates and left room for the evaluation and possible implementation of precisely these recommendations of the state fish and wildlife agencies and tribes. The Council did not believe the region would be well served by having the Council adopt program amendments now calling for the federal operating agencies to engage in the different operations recommended rather than allowing the evaluation and adaptive management process of the biological opinions to work. The Council chose instead to emphasize evaluating the current extensive set of operations against a set of alternatives before firmly deciding on new directions.

<http://www.nwcouncil.org/library/2003/2003-11b.pdf> , pp. 61-62.

The context in 2003 also included the possibility that a federal court might rule that the FCRPS Biological Opinion did not satisfy the requirements of the ESA, and remand or vacate that opinion, which is what in fact happened with the 2000 and 2004 FCRPS Biological Opinions. We are in a possibly similar situation now – the federal district court has under review challenges to the 2008 FCRPS Biological Opinion as the Council adopted the 2009 revised program. The Council’s treatment of this situation in the findings on the 2003 amendments also remains valid, *see* <http://www.nwcouncil.org/library/2003/2003-11b.pdf> , p. 59 n.3. The possibility that federal courts may strike down all or some aspect of the 2008 FCRPS Biological Opinion does not affect the Council’s decisions here. As noted above, the Council was careful not to adopt or incorporate the FCRPS Biological Opinion into the Council’s program, deciding instead that the *actions* reviewed in the opinion are the baseline measures in the Council’s program as well. These measures are now independently part of the Council’s program. The Council has no reason to believe that these measures will not continue to represent the basic core of the actions implemented by the federal action agencies in the near future for listed salmon and steelhead. The issues raised in the biological opinion litigation focus largely on the jeopardy analysis used by NOAA Fisheries. The plaintiffs do not assert that the actions have no benefit to listed species or are too extensive. It may be that if the litigation is successful, the plaintiffs or the court or the federal agencies may pursue additional measures to benefit salmon and steelhead in the mainstem, tributaries or estuary, but no party is arguing that the measures already in the 2008 FCRPS Biological Opinion are inappropriate or should not be implemented. Thus these measures likely remain the starting point or baseline for further considerations. To the extent the litigation produces a dramatically different context for action, the Council will need to revisit its program decisions.

2014 Fish and Wildlife Program Amendment Timeline

Revised June 21, 2013

