



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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October 31, 2006

Mr. Steve Wright
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Dear Mr. Wright:

The Columbia River Inter-Tribal Fish Commission, at the direction and on behalf of its member tribes, is providing comments on the BPA Long-Term Regional Dialogue Policy Proposal. Our comments raise significant concerns. We have also provided recommendations that would improve the proposal. We look forward to working with BPA to address our issues and to achieve a regional consensus that would allow the proposal to move forward.

The proposal provides certainty for BPA and its utility customers. Unfortunately, the proposal does not provide similar benefits or certainty for fish and wildlife and BPA's other public purposes. The BPA proposal is also not designed to assure full development of fish friendly resources. CRITFC is concerned that BPA has not analyzed the environmental impacts of its proposal, including the effects on fish and wildlife. We also raise concerns about the consistency of the proposal with the Northwest Power Act.

Our comments include recommendations that could address our concerns and allow BPA, the utilities, and our member tribes to build a consensus around a proposal that would provide certainty and benefits for the power system and fish and wildlife. CRITFC has attached a compact disk with a number of documents that are specifically referenced or otherwise support our comments. Please include these in the Regional Dialogue record.

We look forward to working with you.

Sincerely,

Olney Patt, Jr.
Executive Director

**Comments on the Bonneville Power Administration's
Long-Term Regional Dialogue Proposal**

By

The Columbia River Inter-Tribal Fish Commission

October 31, 2006

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CRITFC Comments on BPA Regional Dialogue Proposal

October 31, 2006

Summary

The Columbia River Inter-Tribal Fish Commission, on behalf of its member tribes, is providing comments on the BPA Long-Term Regional Dialogue Policy Proposal. The proposal would allocate BPA power and guide new power sales contracts with the region's utilities. BPA has been working to develop a regional consensus on this proposal that will avoid the need for litigation or legislation. Tribal staff and consultants have participated in the Regional Dialogue process since its inception and met several times to BPA staff. It should come as no surprise that our comments raise significant concerns. We look forward to working with BPA to address our issues and to achieve a regional consensus that would allow the proposal to move forward.

BPA and its customers are facing tremendous uncertainty. The current contracts between BPA and its customers expire in October of 2011. BPA's utility customers need certainty about how much power they will continue to receive from BPA. BPA and its customers need certainty about who will develop new energy resources to meet the future growth in electricity demand. Thirty years ago, these questions gave rise the Northwest Power Act, which resolved many key issues.

The proposal will provide tremendous benefits to BPA and its customers. It will provide certainty to utilities by guaranteeing an allocation of BPA's low-cost power for the next twenty years. The new power sales contracts will also make it much more difficult for the Administration and/or Congress to raise BPA's rates to market prices, as has been proposed in the past.

The proposal also fundamentally changes BPA's role in the region. Since 1937, BPA has served all of the electric power needs of public utilities. As energy needs increased, the Federal government built additional dams and BPA added power from a nuclear plant and a few smaller resources; the costs for the existing and new resources were melded together into a single rate. The 1980 Northwest Power Act provided some of the benefits of the BPA power system to customers of investor-owned utilities. It also established a new resources pool to serve the commercial and industrial loads of investor-owned utilities.

Under the proposal, public utilities would get an allocation of BPA's current power supplies (known in the proposal as Tier 1); these low-cost resources are currently 53 percent below market-based rates. Utilities that have growing electricity needs will benefit by getting certainty about how much low-cost power they will get from BPA and they will have the option of developing new power supplies independently or contracting with BPA for future growth. If contracted through BPA, the costs of these new resources would go into a separate rate (called Tier 2). Utilities that do not have much growth in

electricity use will receive a benefit because the costs for their existing power supply (Tier 1) will not go up to meet the load growth of other utilities.

BPA will also benefit by gaining certainty about its obligations to serve additional electricity needs. The process calls for BPA and its customers to sign contracts in 2008 that define, for each utility, the extent to which the utility and/or BPA will be responsible for meeting the future electricity growth. The proposed schedule would provide time for BPA to secure additional energy resources to meet its obligations under the new contracts.

Unfortunately, the proposal does not provide similar benefits or certainty for fish and wildlife and BPA's other public purposes. The BPA proposal does not provide any commitments that BPA will fully implement the Columbia River Basin Fish and Wildlife Program, the FCRPS Biological Opinion, or other programs to restore treaty resources.

BPA argues that the proposal is better for fish and wildlife than the status quo. BPA states that funding for fish and wildlife has been at risk when BPA rates have approached or exceeded market prices. Since the proposal is likely to keep the BPA low-cost Tier 1 rate below the market priced electricity, BPA concludes that the proposal should provide greater certainty for BPA's ability to fund its fish and wildlife obligations.

Our comments document the significant problems with the status quo. Salmon and steelhead populations are well below the goals set in the Columbia River Basin Fish and Wildlife Program. Some salmon runs have gone extinct. Based on current trends; most of the stocks listed under the Endangered Species Act are likely to go extinct. These weak stocks have constrained the tribal harvest that is supposed to be guaranteed in the 1855 treaties between our member tribes and the United States. The loss of salmon has had a devastating effect on tribal culture, religion, and economies.

Under the status quo, BPA and the Federal government have not honored commitments to our tribes. We document the multiple failures to meet the targets for flows to improve the survival of migrating salmon and steelhead and BPA's decisions to shift risks from the power system to fish and wildlife. We also detail the inadequacy of habitat and production actions to rebuild fish and wildlife.

BPA's proposal does not provide adequate certainty for fish and wildlife. BPA's rates have been well below market-priced power for years; yet during this period, BPA has eliminated or reduced protection, mitigation, and enhancement actions for fish and wildlife. BPA's current rates are well below market, but it is not meeting the biological objectives of the Council Program or its obligations to rebuild treaty resources.

The BPA proposal is also not designed to assure full development of fish friendly resources. The comments describe the CRITFC *Energy Vision for the Columbia River*. The *Energy Vision* outlines a set of resources that can be developed to meet future needs in a wise and cost-effective manner while reducing the region's energy dependency on the Columbia River hydroelectric system. The CRITFC comments also describe our

concerns about the energy efficiency and renewable resources provisions of the proposal. Failure to secure all cost-effective conservation and renewable resources will have an adverse effect on fish and wildlife.

The treaty tribes are concerned that BPA has not analyzed the environmental impacts of its proposal, including the effects on fish and wildlife. We have done a preliminary analysis of the Business Plan EIS and the Endangered Species Act that indicates that there are a number of issues that raise concerns about BPA proposal. For example, we believe that the Business Plan EIS is out of date; the models, data, and assumptions used in 1995 have changed. We also raise concerns about the consistency of the proposal with the Northwest Power Act. We reserve the right to expand on this analysis and raise other issues in subsequent proceedings.

Finally, we provide recommendations that could address our concerns and allow BPA, the utilities, and our member tribes to build a consensus around a proposal that would provide certainty and benefits for the power system and fish and wildlife.

Background

Interests of the Tribes

CRITFC and its member tribes are participating in this proceeding to protect their interests associated with their treaty-reserved rights, rights that must be proactively protected by Bonneville as an agency of the federal government. Bonneville's fiduciary duty to protect the tribes' treaty secured interests dictate that a higher standard of care must be exercised in this proceeding as it affects these tribal interests.

Since time immemorial, the Columbia River and its tributaries were viewed by the Columbia River Basin tribes as "a great table where all the Indians came to partake." *Seufert Brothers Co. v. United States*, 249 U.S. 194, 197 (1919). More than a century after the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Indian Nation, and the Nez Perce Tribe signed the treaties which created their reservations, the tribes' place at the table has been subordinated to energy production and other non-Indian land and water development. Today, the Columbia River treaty tribes struggle for a very small fraction of their reserved fishing rights. The treaties -- the supreme law of the land under the United States Constitution -- promised more.

The Columbia River treaty tribes reserved the right to fish at all usual and accustomed fishing stations "in common with" the citizens of the United States. The fishing right means more than the right of Indians to hang a net in an empty river. *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 679 (1979). Columbia River runs of sockeye, steelhead, coho, and spring, summer, and fall

chinook salmon have declined drastically since the mid-1800's.¹ Where once the Columbia River produced annual runs of at least 10-16 million salmon, the runs are now diminished to tens of thousands. *See generally, Confederated Tribes and Bands of the Yakima Indian Nation v. Northwest Power Planning Council*, 35 F.3d 1371, 1375-79 (9th Cir. 1994) (describing the effects of the development and operation of the Federal Columbia River Power System upon the Basin's anadromous fishery resources) (hereinafter cited as *Yakima Nation*).² The devastation of fish runs has been inimical to Indian treaties and the United States' trust responsibilities to tribes.

The treaty tribes have adopted a salmon recovery plan entitled: *Wy-Kan-Ush-Mi Wa-Kit-Wit, the Spirit of the Salmon*. This comprehensive plan describes the actions that must be taken to restore fish and wildlife and make progress toward meeting the tribes' Treaty rights. A copy is attached.

All of the Columbia Basin tribes participated actively in the preparation of subbasin plans pursuant to the Northwest Power and Conservation Council's 2000 Columbia River Basin Fish and Wildlife Program. The Council Program states:

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 and providing the benefits from fish and wildlife valued by the people of the region. 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. (*See Program at page 13*).

Effects of BPA Actions on Tribal Interests

The Bonneville Power Administration provides significant financial capability for Columbia River salmon recovery. Given the overwhelming impacts of the Federal Columbia River Power System on the Basin's salmon,³ this is appropriate. Salmon and steelhead stocks throughout the Columbia Basin are now listed under the Endangered Species Act. A new FCRPS Biological Opinion and recovery plans are in development by the National Marine Fisheries Service, Bonneville Power Administration, U.S. Fish and Wildlife Service, Army Corps of Engineers and others.

¹ A run is the annual return of adult salmon and steelhead trout. Total runs include those fish that are harvested prior to reaching any dams. *See Generally*, U.S. COMPTROLLER GENERAL, HYDROELECTRIC DAMS: ISSUES SURROUNDING COLUMBIA RIVER BASIN JUVENILE FISH BYPASSES, H.R. Rep. No. 90-180, at 8 (1990).

² Since publication of the opinion and the sources cited therein, Columbia River salmon stocks have generally continued to decline.

³ Eighty percent of the loss of salmon from these former runs sizes is attributable hydropower development and operation. *Id.* at 1376 *citing* Endangered and Threatened Species; Proposed Endangered Status for Snake River Sockeye Salmon 56 Fed. Reg. 14,055, 14,058 (1991).

The Council Program, federal salmon recovery plans, and actions under the Biological Opinion will be implemented during the period of the new contracts. Substantial portions of these fish and wildlife costs will be allocated to Bonneville as required by federal law. 16 U.S.C. 839b(h)(8)(B), 839b(h)(10)(C). Bonneville's proposal gives more weight to its policy of providing certainty for BPA and its customers and less weight to the concerns of salmon or fulfilling federal treaty obligations. Like the Northwest Power Planning Council in 1992, Bonneville has "sacrific[ed] the Act's fish and wildlife goals for what is, in essence, the lowest common denominator acceptable to power interests and DSIs." *Yakima Nation*, at 1395.

Tribes' Interest in Salmon Recovery

The Columbia Basin Treaty tribes—the Nez Perce, Umatilla, Warm Springs, and Yakama—signed treaties with the United States in 1855 that guaranteed the Tribes' rights to fish and hunt to support their culture, religion, and tribal economy. The loss of salmon has had a devastating effect on these tribes.

The Council Fish and Wildlife Program and the FCRPS Biological Opinions rely heavily on improving habitat as off-site mitigation for the dams. These efforts are especially important for the Columbia Basin treaty tribes. For at least the past four decades, these tribes have voluntarily imposed severe restrictions on their treaty-reserved fisheries to assist in rebuilding wild populations of salmon and steelhead. This action was taken based on the expectation that other relevant parties would also take actions to share the burden of wild stock conservation. The tribes are still waiting for many of these actions, particularly in the area of restoring habitat protection and improving the survival of salmon as they migrate through dams. These actions are critical to rebuilding sustainable, harvestable levels the wild runs that presently constrain treaty fisheries.

The tribes have been waiting a long time for the United States to fulfill this commitment in the treaties. The federal government has repeatedly asked the tribes to reduce their harvest and promised actions to promote the long-term rebuilding of salmon runs. The failure by the United States to exercise all of its authorities and powers to improve wild salmon runs has deprived the Columbia River treaty tribes of vast numbers of harvestable salmon that were guaranteed by the federal government in the treaties of 1855.

The treaty tribes were parties in BPA rate cases and spent considerable resources trying to convince BPA to include sufficient funding to fully implement the Council Fish and Wildlife Program and the FCRPS Biological Opinion. The CRITFC, the Umatilla Tribe and Yakama Nation are currently suing BPA in the Ninth Circuit because the 2002 rate case violated the Northwest Power Act; its rates were not sufficient to meet its costs, including fish and wildlife costs, and assure repayment to the Treasury as required by the Northwest Power Act. That case is currently pending. CRITFC, the Nez Perce Tribe, and the Yakama Nation have also appealed the 2007 rate case to the Federal Energy Regulatory Commission because the recent rate case had the same problems. Copies of these materials are attached.

Bonneville's Responsibilities

Bonneville's Fiduciary Responsibilities

Bonneville's fiduciary responsibilities to the tribes' and their treaty secured interests dictate that a higher standard of care must be exercised in this proceeding as it affects these tribal interests. Bonneville, like the federal government and its agencies, is subject to the United States' fiduciary responsibilities to tribes. *See e.g., Pyramid Lake Paiute Tribe of Indians v. United States Department of the Navy*, 898 F.2d 1401, 1411 (9th Cir. 1991); *Covello Indian Community v. FERC*, 895 F.2d 581, 584 (9th Cir. 1990); *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981), *cert. denied*, 454 U.S. 1081 (1981). All federal actions and the implementation of federal statutory schemes affecting Indian people, land or resources must be "judged by the most exacting fiduciary standards." *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). *See also United States v. Mason*, 412 U.S. 391, 398 (1973). The federal government, as "fiduciary" of tribal resources, must act with good faith and utter loyalty to the best interests of the Indians. *See Nevada v. U.S.*, 463 U.S. 110 (1983). If a statute or agreement requires federal action on behalf of tribal interests, the trust responsibility is specific and the courts generally impose a fiduciary duty on the agency to act with a high degree of care and responsibility. *U.S. v. Mitchell*, 463 U.S. 206 (1983); *Assiniboine & Sioux Tribes v. Board of Oil and Gas Conservation*, 792 F.2d 782 (9th Cir. 1986); *Pawnee v. U.S.*, 830 F.2d 187 (Fed. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988). Bonneville's funding levels for the Integrated Fish and Wildlife Program and operations of the FCRPS have not met its fiduciary responsibilities.

BPA's Responsibility under the Northwest Power Act

Under the Northwest Power Act, measures to protect, mitigate, and enhance fish and wildlife damaged by the hydroelectric development and operations in the Columbia River Basin are to be paid by the Bonneville Power Administration. 16 U.S.C. 839b(h)(8), 839b(h)(10). Section 16 U.S.C. 839b(h)(10) states:

The Administrator shall use the Bonneville Power Administration Fund and the authorities available to the Administrator under this Act and other laws administered by the Administrator to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subparagraph, and the purposes of the Act.

In addition, BPA, the Corps of Engineers, the Bureau of Reclamation, and the Federal Energy Regulatory Commission are also required to take the Northwest Power and Conservation Council's Columbia River Basin Fish and Wildlife Program "into account at each relevant stage of decision-making processes to the fullest extent practicable" 16 U.S.C. 839b(h)(11)(A)(ii).

The Act also directs BPA to "exercise its responsibilities consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects in a

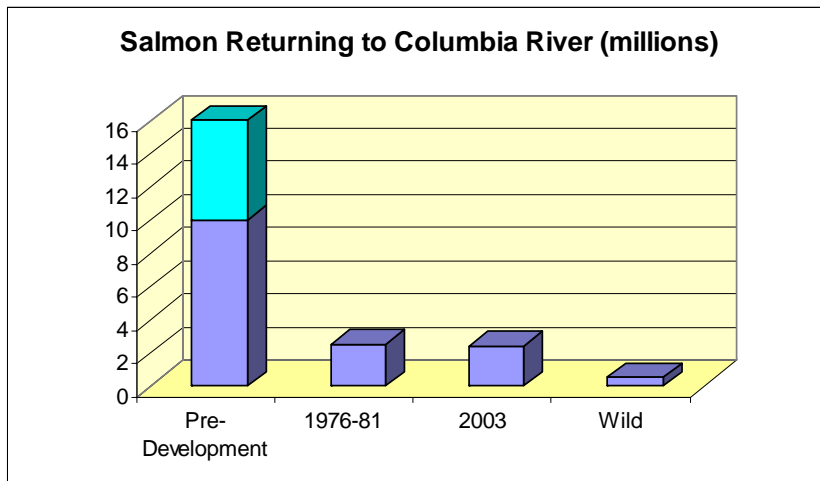
manner that provides equitable treatment for such fish and wildlife with other purposes for which such system and facilities are managed and operated.” 16 U.S.C. § 839b(h)(11)(A). Bonneville must also coordinate its actions with tribal, state, and federal fish and wildlife managers. 16 U.S.C. § 839b(h)(11)(B).

In addition, BPA must generally comply with other federal law. “All purposes of the Northwest Power Act, together with the provisions of other laws applicable to the Federal Columbia River Power System are all intended to be construed in a consistent manner. Such Purposes are also intended to be construed in a manner consistent with applicable environmental laws.” 16 U.S.C. 839. Section 7(a)(1) of the Northwest Power Act, 16 U.S.C. 839e(a)(1), requires that rates be “established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838) [16 U.S.C. 838g and 838h], section 5 of the Flood Control Act of 1944 [16 U.S.C.825s], and the provisions of this chapter.”

BPA’s Responsibility under the Council Program

Losses affected by the hydroelectric system: In the mid 1980s, the Northwest Power and Conservation Council (prior to 1996, it was known as the Northwest Power Planning Council) conducted an exhaustive study of the historical size and current status of salmon and steelhead populations. The Council also made policy decisions on what share of the losses were the responsibility of the hydroelectric system. The Council also set a goal for the Fish and Wildlife Program.

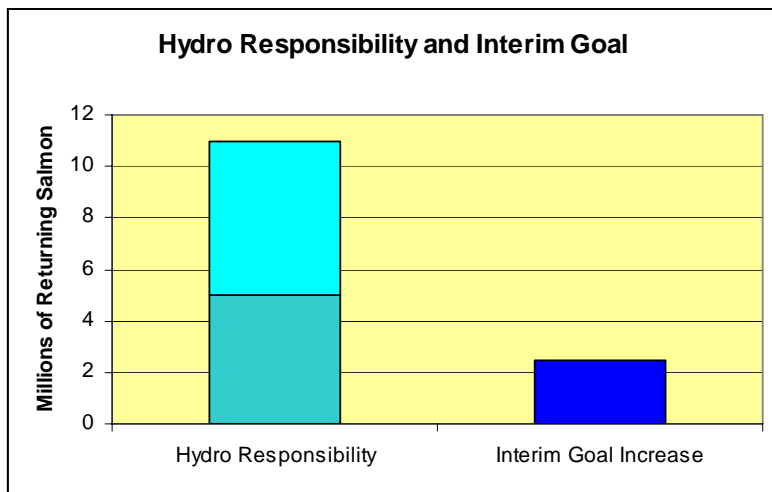
The study examined all of the historical information on salmon runs and concluded that ten to fourteen million salmon and steelhead used to return to the mouth of the Columbia River every year. In 1976 to 1981, an average of about two and a half million fish returned to the Columbia, five hundred thousand were naturally spawning fish—eighty percent of the runs came from hatcheries. The study concluded that salmon and steelhead populations had declined by seven to fourteen million and that natural salmon runs were less than five percent of historical levels.



The Council concluded that the dams were responsible for five to eleven million of the fish losses. As part of the rationale for the conclusion, the study found that about four million fish had used the habitat that had been blocked by the dams and that the operations of the dams accounted for the loss of another four million salmon. The Council noted it did “not take into account the accumulation of hydropower-related losses of salmon and steelhead year by years since hydropower development started. Such cumulative losses would be far greater than 5 to 11 million adult fish.”⁴

The Council set an interim goal of “doubling the runs.” According to the Council, “Doubling means increasing the current run size of about 2.5 million adult fish to a run size of about 5 million adult fish, as a result of implementation of this Program. The current run size was based on the five year average prior to the Council’s first Program in 1982⁵.

The figure below shows that this interim goal was designed to rebuild salmon and steelhead runs to about one-half of the low end of the range of the hydrosystem’s responsibility. The Council said it would reevaluate a higher goal once the interim target was achieved⁶.



The treaty tribes viewed the Program’s 1987 doubling goal as a compromise that would allow BPA to focus on an achievable interim goal and leave BPA’s ultimate responsibility to a future decision process.

Council 2000 Program Goal: In the goal was revised to include these biological objectives.

- Halt declining trends in salmon and steelhead populations above Bonneville Dam by 2005. Obtain the information necessary to begin restoring the characteristics of healthy lamprey populations.

⁴ See 1987 Columbia River Basin Fish and Wildlife Program, page 39.

⁵ Id., page 35.

⁶ Id. Page 39.

- Restore the widest possible set of healthy naturally reproducing populations of salmon and steelhead in each relevant province by 2012. Healthy populations are defined as having an 80 percent probability of maintaining themselves for 200 years at a level that can support harvest rates of at least 30 percent.
- Increase total adult salmon and steelhead runs above Bonneville Dam by 2025 to an average of 5 million annually in a manner that supports tribal and non-tribal harvest. Within 100 years achieve population characteristics that, while fluctuating due to natural variability, represent on average full mitigation for losses of anadromous fish.⁷.

The Program also established a number of scientific principles⁸, biological objectives⁹, and strategies¹⁰ to guide fish and wildlife restoration. The Program also set goals for the substitution of anadromous fish losses, resident fish losses, and wildlife losses.

The ultimate goal for the Federal government should be to address the requirements of the Endangered Species Act, the Northwest Power Act, and the Treaties, Executive Orders, and other commitments made to Indian tribes in the Columbia Basin. In the case of salmon and steelhead, we seek to implement the dual goals of recovery and delisting of salmonids listed under provisions of the ESA and the restoration of salmon populations to levels that provide a sustainable harvest sufficient to allow for a meaningful exercise of tribal fishing rights.

The Status Quo is not Rebuilding Treaty Resources

BPA has stated that the power allocation and contracts proposal is an improvement over the status quo. This section describes why the status quo is not adequate.

The Endangered Species Act

The Endangered Species Act, 16 U.S.C. 1531-1543, protects species listed as either endangered or threatened and imposes substantive duties on Bonneville. Bonneville must ensure that its activities, including power sales, are not likely to (1) jeopardize the continued existence of listed species or (2) adversely modify the critical habitat of such species. The ESA also prohibits Federal agencies from “taking” (e.g. harming) any endangered species. Bonneville has responsibilities in implementing the ESA to recover listed salmon and steelhead in the Columbia and Snake rivers.

In 1991, the National Marine Fisheries Service (now also known as NOAA Fisheries Service) first listed Columbia Basin salmon as threatened or endangered under the Act.

⁷ 2000 Columbia River Basin Fish and Wildlife Program at pages 16 and 17.

⁸ Id., page 15.

⁹ Id., page 16-18

¹⁰ Id., pages 19-33.

Currently, there are 13 salmonid species in the Columbia Basin have been listed for protection under the Act.

Under the Act, NOAA Fisheries Service is required to prepare a biological opinion on proposed actions by federal agencies. In this case, the biological opinions addressed whether the operation of the Federal Columbia River Power System (FCRPS) would jeopardize the continued existence of the listed species. If so, the biological opinion must include reasonable and prudent actions (RPAs) that the federal agencies must take to avoid the jeopardy.

A review of the status of wild salmon and steelhead listed under the Endangered Species Act shows that most listed stocks continue to decline. In a declaration for the litigation regarding the 2004 FCRPS Biological Opinion, Gretchen Oosterhout, Ph.D. states:

Even with adult returns for the past few years that are higher than recent averages for most (but not all) listed stocks, Columbia and Snake River salmon and steelhead still face an immediate and substantial threat to their continued existence. NMFS' scientists' most recent assessments of the long-term trends for Snake River steelhead¹, spring chinook, and fall Chinook, and Upper Columbia River chinook⁴ and steelheads⁵ (the upper basin ESUs) are discouraging. Although some ESUs have experienced short-term increases in adult returns, all ESA-listed ESUs are still experiencing a long-term population decline and remain at significant risk, especially in terms of abundance (number of adults) and productivity (reproductive success rate) (see Table 1; especially "BRT findings" column) (attached to these comments). The 2004 FCRPS BiOp itself shows that upper basin ESUs have fallen to such seriously low levels that only one major population group still exists for four of the 6 upper basin ESUs, and only one population exists for the other two.

In NMFS' last published report on the status of Upper Columbia River Steelhead before it issued the 2004 FCRPS BiOp, NMFS found that the level of survival improvement still required to achieve recovery targets was "high" and that "...the natural survival rate would have to increase nearly seven-fold to meet the indicator criteria under all assumptions and for all spawning aggregations" (Toole 2003, p. 8). NMFS' assessment of this ESU in the 2004 FCRPS BiOp is no more encouraging (NMFS 2004, section 8.8). "Although its status has been improving recently, most factors indicate high risk for the UCR steelhead, both range-wide and in the action area. Because of the single major population group and poor action-area status, caused largely by effects of the FCRPS and USBR projects that are included in the hydro portion of the environmental baseline (represented by the reference operation), tolerance for additional risk to this ESU is low." (NMFS 2004, p. 8-25).

Only one major population of UCR steelhead remains, and although the last few years have seen higher adult returns, its long-term trajectory is still a fairly dramatic decline (population growth rates for sub-populations of 0.63 to 0.93,

depending on assumptions, with a mean of 0.76 – or a 24% long-term decline since 1980) (Toole 2003, Table 13). Based on calculations I have made using current NMFS data (discussed more fully in section II), the longterm population growth rate (λ) calculated from 1980 – 2003 for this ESU overall is currently about 13% lower than when NMFS calculated it in the 2000 FCRPS BiOp.

The Snake River steelhead ESU faces a similarly serious decline. NMFS recently estimated an aggregate population growth rate of 0.73 to 0.87 (Toole 2003, Table 9), or a decline of 13% to 27% per year. This continued decline (which is approximately the same as the rate of decline NMFS calculated in 2000, see 2000 FCRPS BiOp at 9-221) is particularly discouraging since other ESUs have seen at least some improvement in long-term population trajectories from recent improved ocean survival.¹¹

The Federal District Court has found that status quo is not adequate and has struck down the FCRPS Biological Opinions three times. The Court opinion on the 2000 Biological Opinion cited a prior opinion:

In *IDFG*, the court found that the NMFS 1993 biological opinion for continuing FCRPS operations was insufficient to avoid jeopardy to salmon species. "[T]he process is seriously, 'significantly,' flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation-that is relatively small steps, minor improvements and adjustments-when the situation literally cries out for a major overhaul." *IDFG* at 900.

A key issue in the Court's opinions since the 2000 Biological Opinion has been whether the actions that the federal government was relying to avoid jeopardizing the continued existence of the species were reasonably certain to occur. To address this issue, the federal agencies will need to describe a clear process for securing the necessary permits for the proposed actions and demonstrate that adequate funding is available.

In 2005, the Court found that the 2004 Biological Opinion was illegal and ordered the Federal government to prepare a new plan that complies with the requirements of the ESA. The Court has also ordered interim operations to protect salmon.

In his Opinion on Remand, Judge Redden noted that valuable time that has been wasted since Marsh called for an overhaul. He also noted the continued dire status of the species:

The May 26, 2005, Opinion and Order demonstrated that the runs for all 12 listed species, and the one species proposed for listing, continue to dwindle. Four of the species are in danger of extinction, and the remaining nine threatened species are likely to become endangered in the near future. Opinion on Remand, page 6.

¹¹ Third declaration of Gretchen Oosterhout, Ph.D. dated February 10, 2005 (attached)

The Opinion on Remand also states:

If the Executive and Legislative Branches do not allow NOAA to follow the law of the land, NOAA and the Action Agencies will fail again to take the steps that are plainly necessary to do what the ESA requires and what the listed species require in order to survive and recover. *Id.*

Without real action from the Action Agencies, the result will be the loss of the wild salmon. Page 8.

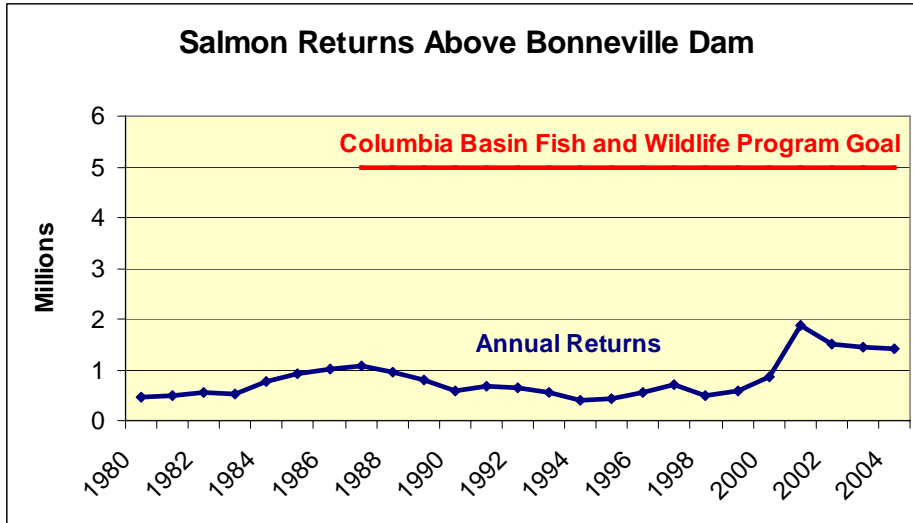
The Court's Remand Order called for a collaborative process among federal, state, and tribal agencies with responsibility for managing salmon. This effort is identifying the goals for salmon recovery, the gap between current survival and the goal, the allocation of the responsibility for filling the recovery gap, and the specific actions that will be needed in hydroelectric operations, habitat improvements, hatchery operations, and harvest. Based on the recovery gaps and status of salmon and steelhead populations, the treaty tribes expect that the Biological Opinion remand process will result in significant additional actions to meet the requirements of the ESA.

Northwest Power Act

The Pacific Northwest Electric Power and Conservation Council (Council) develops the Columbia River Basin Fish and Wildlife Program pursuant to the Section 4(h) of the Northwest Power Act. 16 U.S.C. § 839b(h). The scope of the Council Program addresses all fish and wildlife in the Columbia River Basin affected by the construction and operation of the hydroelectric system. As noted above, the Program's goal is to restore sustainable harvest levels of fish and wildlife to meet obligations under the Northwest Power Act, other Federal laws, and Treaties with Indian tribes and Canada. The Program is based on recommendations from the region's federal, state, and tribal fishery managers and others. The Council adopted Programs in 1982, 1984, 1987, 1992, 1994, and 2000. It also adopted amendments in 1995 specifically addressing resident fish and wildlife.

Salmon and steelhead populations are well below the biological objectives established by the Northwest Power and Conservation Council¹². The figure below shows that many salmon and steelhead populations actually declined in the 1990s—the average run size above Bonneville Dam during the past twenty years was less than one million fish. The runs size in 2003 was about the same as the average between 1976 and 1981. So with conditions in the Pacific Ocean providing excellent feeding conditions for Columbia Basin salmon, we have seen the total salmon runs return to about where they were thirty years ago and wild stocks continue to decline. The region is a long way from achieving the Council Program goal of five million fish returning above Bonneville Dam.

¹² 2000 Columbia River Basin Fish and Wildlife Program at pages 16 and 17.



Based on the analysis of total runs size and the status of ESA listed stocks, the Federal agencies responsible for implementing the Council Program (BPA, the Corps of Engineers, the Bureau of Reclamation, and the Federal Energy Regulatory Commission) have not operated the hydroelectric system to protect and recovery listed species. They have also not achieved the goals set in the Council Program.

Tribal Harvest

In 1995, the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes adopted *Wy-Kan-Ush-Mi Wa-Kit-Wit*, the *Spirit of the Salmon*. This plan describes the actions needed to rebuild fish and wildlife that are important to the tribes.

The Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation are the only tribes in the Columbia Basin to have reserved rights to anadromous fish in 1855 treaties with the United States.

The people of these tribes have always shared a common understanding—that their very existence depends on the respectful enjoyment of the Columbia River Basin's vast land and water resources. Indeed, their very souls and spirits were and are inextricably tied to the natural world and its myriad inhabitants. Among those inhabitants, none were more important than the teeming millions of anadromous fish enriching the basin's rivers and streams.

Despite some differences in language and cultural practices, the people of these tribes shared the foundation of a regional economy based on salmon. To the extent the resource permits, tribal people continue to fish for ceremonial, subsistence, and commercial purposes employing—as they always have—a variety of technologies. Tribal people fish from wooden scaffolds and from boats, use set nets, spears, dip nets, and poles and lines. Tribal people still maintain a dietary preference for salmon, and its role in ceremonial life

remains preeminent. Salmon is important and necessary for physical health and for spiritual well-being.

Today, perhaps even more than in the past, the Columbia River treaty tribes are brought together by the struggle to save the salmon and by shared spiritual traditions such as the first salmon feast. (*Wy-Kan-Ush-Mi Wa-Kit-Wit*, page 2-1)

The plan also describes the importance of salmon to the tribes:

- Salmon are part of our spiritual and cultural identity.
- Over a dozen longhouses and churches on the reservations and in ceded areas rely on salmon for their religious services.
- The annual salmon return and its celebration by our peoples assure the renewal and continuation of human and all other life.
- Historically, we were wealthy peoples because of a flourishing trade economy based on salmon.
- For many tribal members, fishing is still the preferred livelihood.
- Salmon and the rivers they use are part of our sense of place. The Creator put us here where the salmon return. We are obliged to remain and to protect this place.
- Salmon are indicator species: as water becomes degraded and fish populations decline, so too will the elk, deer, roots, berries, and medicines that sustain us.
- As our primary food source for thousands of years, salmon continue to be an essential aspect of our nutritional health.
- Because our tribal populations are growing (returning to pre-1855 levels), the needs for salmon are more important than ever.
- The annual return of the salmon allows the transfer of traditional values from generation to generation.
- Without salmon returning to our rivers and streams, we would cease to be Indian people. (*Id.*, Page 2-4)

Tribal salmon harvest is not adequate

The dams, in combination with other human caused activities also significantly reduced the tribal harvest of salmon. The loss of salmon has had a devastating effect on the Tribes. Today, tribal fishers catch about 10 percent of the number of fish they caught in 1855 below the Snake River dams and only 1 percent of the number of fish they caught in 1855 above the Snake River dams.

A 1999 report entitled: *Tribal Circumstances and Impacts of the Lower Snake River Project on the Nez Perce, Yakama, Umatilla, Warm Springs and Shoshone Bannock Tribes* states that the dams have reduced the wealth, health, religious well being of Indian people and tribal self-sufficiency. The report cites the loss of salmon and the loss of land as the primary causes of these problems for tribal communities. The report states:

Viewed from the perspective of objective statistics, the peoples of the study tribes must today cope with overwhelming levels of poverty, unemployment that is between three and thirteen times higher than for the region's non-Indians, and age

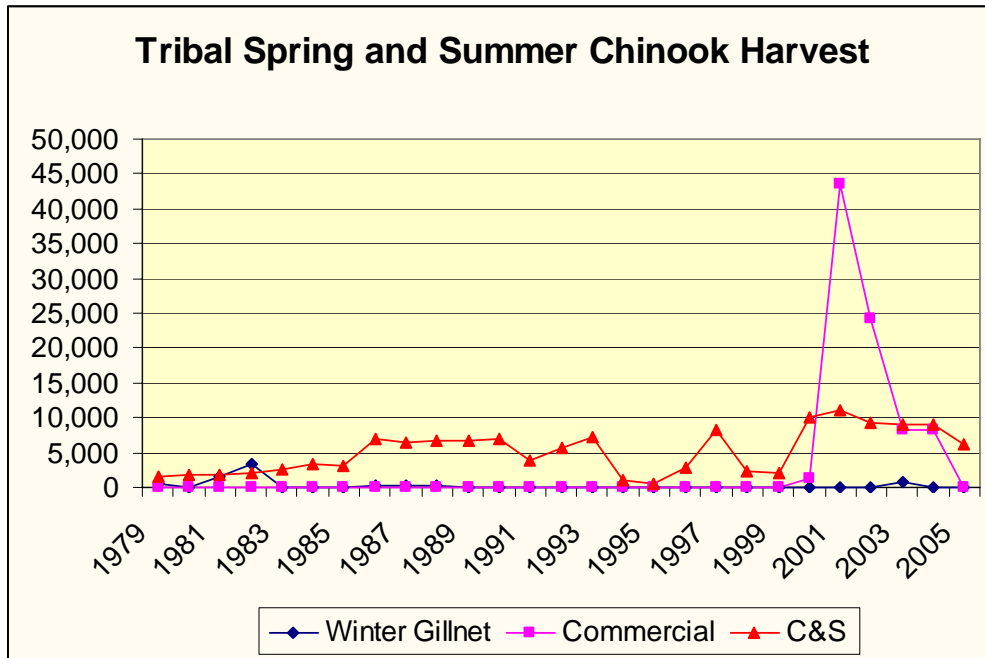
adjusted death rates from twenty percent higher to more than twice the death rate for residents of Washington, Oregon and Idaho as a whole. If located outside the United States, such conditions might fairly be described as “third world”.

A Comparison of Present Wellbeing of the Study Tribes and their Non-Tribal Neighbors

Indicator of Wellbeing	Shoshone/ Nez Perce		Bannock	Yakama	Warm Non-Tribal Peoples			
	Umatilla	Springs			Idaho	Oregon	Wash.	
Families in Poverty (%)	29.4	43.8	42.8	26.9	32.1	9.7	12.4	10.9
Unemployment (%)	19.8	26.5	23.4	20.4	19.3	6.1	6.2	5.7
:In winter	62.0	80.0	73.0	21.0	45.0			
Per Capita Income(\$'000)	8.7	4.6	5.7	7.9	4.3	11.5	14.9	13.4
Ratio of Tribal Death Rate to Non-Tribal Death Rate.	1.7	2.3	1.9	1.2	1.6	--	--	--

(Tribal Circumstances, page xi)

The tribes have stopped our commercial harvest for many years to protect returning salmon and steelhead. The tribal ceremonial and subsistence fishery has also been severely limited. During many years, there were not enough fish available for ceremonial and subsistence fishery and the tribes relied on hatchery surplus fish. The figure below shows the total tribal harvest of spring and summer chinook in the winter gillnet, commercial harvest, and ceremonial and subsistence fisheries.



We have a lot of promises from the Federal government and the states, but the action to improve habitat and survival as salmon migrate through the dams has not been sufficient and treaty fisheries are inadequate to meet the economic, cultural, and religious needs of the tribes.

BPA has not honored commitments to tribes

BPA has made a number of commitments to Columbia Basin tribes that have not been honored. We have attached tribal comments on a number of BPA processes, testimony to Congress, and other material that document these failures.

Bonneville and other Federal agencies committed to a funding level for fish and wildlife for the Fiscal Years 1996 through 2001 in the Memorandum of Agreement on Bonneville Power Administration's Financial Commitment for Columbia River Basin Fish and Wildlife Costs. Section VIII.h. clearly states that: "Any funds remaining in these accounts after close of Fiscal Year 2001 will not be re-programmed for any non-fish and wildlife use, but will remain available for expenditure for the benefit of fish and wildlife." By the end of Fiscal Year 2001, Bonneville and other Federal agencies had under-spent these funds guaranteed for fish and wildlife measures under the Fish and Wildlife Memorandum of Agreement by approximately \$227 million. Contrary to the agreement, BPA put these funds in its general reserve and they were not available for fish and wildlife. The CRITFC and the Yakama Nation testified repeatedly about this illegal use of MOA funds in the rate case, but Bonneville continued to include the funds in reserves for other uses. Bonneville used its reserve to pay for high-cost electricity to serve the additional loads it committed to, to pay utilities and industries to reduce their use of BPA power, to pay higher costs of operating the dam and nuclear plant, and to pay for higher costs at Bonneville. We repeat our position that this was an illegal use of the funds under the MOA that is contrary to commitments made to Indian tribes

Bonneville made repeated assurances to Indian tribes as part of the rate case process, between 1998 and 2000, that Bonneville would fully fund its fish and wildlife obligations, even if it had to raise its rates or defer its Treasury payments. For example, in a letter dated June 28, 1999, Judi Johansen, the Bonneville Administrator, described the various contingencies available and assured tribal leaders that "we believe this should provide a very high assurance that we can meet our share of the costs of whatever fish and wildlife plan is ultimately chosen." (the Johansen letter, dated June 28, 1999, herein incorporated by reference as attachment SN-03-E-CR-01T). Yet in 2001, Bonneville eliminated fish and wildlife river operations to meet its Treasury payment. Now it is considering limits on fish and wildlife funding through the remainder of the rate period, rather than raising rates to meet its funding obligations as it promised.

The Johansen letter also stated that its reserves at the end of the rate period were projected to be \$1.4 billion. These ending reserves are extremely important to position Bonneville to be able to fund the higher fish and wildlife protection measures after 2006. The ending reserve for FY06 is expected to be \$507 million. (BPA FY 2006 Third Quarter Review, page 1)

Bonneville has said that implementation of the spill and flow actions in river operations is a critical part of its efforts to provide equitable treatment for fish and wildlife. Yet in 2001, BPA decided to eliminate these protections to avoid raising rates or deferring payments to the Treasury. The limited mitigation Bonneville offered for the 2001 “emergency” has also been cut.

Bonneville and the Administration made commitments in 2000 that the Federal government would aggressively implement the habitat restoration activities and other reforms in the Biological Opinion. Yet, the treaty tribes’ analysis showed that Federal funding was not adequate to achieve a third of the actions that the Federal government committed to.

The Administration committed that the implementation of the Endangered Species Act would complement the obligation to restore our treaty fishery. Unfortunately, the Federal efforts focus almost exclusively on ESA species, not fish and wildlife for tribal harvest.

The Administration committed to fully fund both the Biological Opinion and the Fish and Wildlife Program. In reality, funding for resident fish, wildlife, and salmon and steelhead that are not yet listed has been eliminated or deferred in order to give priority to listed species. This will result in more listing as the species that are being ignored continue to decline.

Even the funding for listed species has been inadequate. In fact, more than \$130 million per year of the projects approved by the Independent Science Review Panel have been deferred in the latest round of the Council's project selection process due to lack of Bonneville funding¹³.

Operations are not adequate

Federal agencies have not met flow targets

Since 1995, the FCRPS Biological Opinions have included spring and summer flow targets at Lower Granite Dam on the Snake River and Priest Rapids and McNary dams on the Columbia. NOAA Fishery Services maintains a scorecard on whether the federal operating agencies meet these targets. The attached spreadsheet shows that the federal operating agencies have failed to meet the flow targets 53 percent of the time since 1995. This dismal record shows that status quo is not providing adequate protection for salmon migration.

It is also important to note that the flow targets are much lower than the natural conditions that supported healthy salmon and steelhead runs in the past. For example, the average spring flows in the lower Columbia River before the dams were built was 450,000 cubic feet per second. The NOAA targets call for 200,000 in low flow years and 250,000 in average and higher flow years—about half the historical flows. It used to take less than five days for salmon to migrate to the ocean; now it takes more than a month.

¹³ The ISRP review found on average \$267 million per year of the proposed projects to be scientifically sound for implementation.

These flows are important for salmon survival. Adequate mainstem flows are critical for spawning, incubation, rearing, and migratory habitat, including the estuary. The scientific evidence is clear that salmon survival is closely related to reducing fish travel time so that salmon and steelhead arrive at the estuary at the proper size and time. Increasing mainstem flows also increases turbidity, reduces predation, and reduces temperature; thereby improving survival.

BPA shifted risk to salmon

In the 2002 rate process, CRITFC, the Umatilla Tribe, and the Yakama Nation raised concerns that there was a risk that Bonneville had underestimated its loads and costs. The tribes raised this concern because Bonneville's rates were then approximately 40 percent below market rates and it seemed likely that regional utilities would place as much load on Bonneville as possible. We also expressed concerns that the costs of serving this additional load could be much higher than Bonneville had assumed.

Despite these concerns, Bonneville committed to serve 3,400 megawatts of power sales in excess of the resources that Bonneville had under contract. Bonneville estimated that serving the additional load cost \$3.9 billion from 2002 through 2006. Bonneville's decision to take on significant additional costs and risks without raising its base rates was the primary reason for its financial problems during the FY 2002 to FY 2006 rate period. (See What Led to the Current BPA Financial Crisis, A BPA Report to the Region, http://www.bpa.gov/corporate/docs/2003/Report_to_region.pdf).

Based on BPA's rate methodology, when Bonneville underestimates its costs or overestimates its revenues, it reduces the probability that it will be able to assure repayment to the Treasury after meeting its costs. This forces BPA to choose between making its Treasury payment and reducing its costs. In the past, when faced with these options, BPA has decided to reduce fish and wildlife protections and programs.

For example, during the 2001 drought BPA's rates were not sufficient to ensure payment to the Treasury after meeting its costs. BPA was faced with the choice of deferring payments to the Treasury or deferring fish and wildlife protection. BPA decided to declare an "emergency" and suspend the fish protection measures at the dams. The reason given for this action by the BPA Administrator was that "There would be political fallout. We want to operate without creating the view that taxpayers are subsidizing the federal Columbia River system, he said. If Congress thinks there is a subsidy, the region could lose control of the federal system." Bonneville's rationale for the emergency provisions was that "failure to make a Treasury payment would encourage administrative and congressional review and possible limitation on BPA operations." The Tribes and other parties raised significant concerns about these actions and the failure of Bonneville to mitigate for the elimination of the fish protection measures. We have provided copies in the attachments to these comments.

Subsequent biological analysis showed that the elimination of fish protections in 2001 had a devastating impact. (<http://www.fpc.org/documents/memos/200-01.pdf>). The study concluded:

Near record low flows produced poor migration conditions for juvenile salmonids this spring. NMFS flow targets were never met and the spill program was implemented at a fraction of BiOp levels. The combination of low spill and low flows resulted in very poor survivals and travel times for juvenile migrants.

Survival estimates for the reach from Lower Granite Dam to McNary Dam were the lowest since estimation using PIT-tags was begun, in 1993. Travel times for chinook and steelhead were longer than most historic values for the Snake River; and in the lower Columbia travel times doubled the historic average.

The impact of poor hydrosystem outmigration conditions as occurred in 2001 has been documented and analyzed. In January 2003 the State, Federal and Tribal fish salmon management agencies submitted an extensive summary analysis of the information available regarding flow and survival relationships for Salmon and Steelhead to the Northwest Power Planning Council. Those analysis showed that Water Travel Time (i.e. flow) significantly affected adult returns (smolt to adult returns) even when the affects of ocean and climate conditions were included.¹⁴ The affect of poor outmigration years such as 2001 can in general be seen in the adult count data at Bonneville Dam which shows a decline in adult returns since the adult return of 2001 for all stocks of anadromous fish.¹⁵

More recently, Bonneville raised concerns about the tradeoff between river operations to protect fish and repayment to the Treasury in the litigation regarding the 2004 FCRPS Biological Opinion. In his declaration regarding the proposed 2006 river operation, Mr. Paul Norman, Bonneville's senior vice-president for the Power Business Line stated that "The fundamental measure of BPA's financial integrity is the probability of making its annual debt service payment to the U.S. Treasury at the end of each fiscal year." Mr. Norman raised concerns that the proposed operation would increase the probability that it could not make these payments.

CRITFC, the Nez Perce Tribe, and the Yakama Nation raised concerns that BPA's risk mitigation mechanisms for 2007 through 2009 were not adequate to avoid this tradeoff between protecting fish and wildlife and BPA's financial obligations. BPA did not provide any analysis in the rate case record that demonstrates that it will be able to address higher fish and wildlife costs and maintain its standard for repaying the U.S. Treasury. For further analysis of these issues, please see the Tribes motion to the Federal Energy Regulatory Commission to appeal and intervene in the review of BPA's rate proposal.

¹⁴ State, Federal and Tribal Anadromous Fish Managers Comments on the Northwest Power Planning Council Draft Mainstem Amendments as they relate to Flow/Survival Relationships for Salmon and Steelhead, Final Document, January 2003

¹⁵ Fish Passage Center, 2005 Annual Report, July 2006

BPA power marketing and fish and wildlife

BPA states that it only markets the power that is available after implementing the fish and wildlife requirements under ESA and the Power Act. If these assertions are correct, it is not clear why BPA continues to claim power purchases that resulted from salmon protection operations under the FCRPS Biological Opinion. For example, according to the final studies in the BPA rate case, BPA will pay \$200 million a year to purchase power to provide flows and spill for salmon for FY 2007 through FY 2009. (WP-07-FS-BPA-05A, pages 99-101). If BPA has reduced its power sales to accommodate its fish and wildlife responsibilities, then why does it need to purchase \$200 million per year of power to meet those salmon operations?

Funding is not adequate

BPA has never provided adequate funding for fish and wildlife.

Fish and wildlife managers have developed several estimates of fish and wildlife costs. The first was prepared by the Columbia Basin Fish and Wildlife Authority (CBFWA) in 1998 as part of the Multi-Year Implementation Plan. That effort developed costs for implementing all of the elements of the Council Program and FCRPS Biological Opinion. The annual costs projections at the time were \$200 to \$225 million—this would be approximately \$275 million, adjusted for inflation.

In January of 2001, CRITFC, the Oregon NPCC office, and the Yakama Nation also developed estimates of the costs of implementing the 2000 FCRPS Biological Opinion and Council Program. This estimate was based on more aggressive habitat restoration activities to implement the “Aggressive Non-Breach Alternative” in the Biological Opinion and had an annual cost of \$356 million (approximately \$400 million adjusted for inflation to 2005 dollars). This figure assumed that all of the costs would be expensed; if CRITFC had assumed that some of the costs would be capitalized, the estimate would be similar to the CBFWA costs. *See* Tribe’s 2002 BPA Rate Case Testimony, WP-02-E-CR/YA-06, page 11).

In 2003, CBFWA and the Council conducted the Provincial Review to determine the costs of implementing projects that had been approved by the fish and wildlife managers, the Council, and the Independent Science Review Panel. The Provincial Review identified BPA revenue requirements (capital, reimbursable costs, and direct program) of \$310 million per year for FY 2003 through FY 2006 (\$329 million adjusted for inflation). *See* the Tribe’s 2003 Rate Case Testimony, SN-03-E-CR/YA-01, page 24.

We note that on February 21, 2003 the Council wrote a letter to Bonneville regarding its recommendations for fish and wildlife funding reductions for FY 2003. The letter states:

At this point, the Council stands by its earlier statement to you that it is concerned that a reduction in Bonneville’s spending commitment below \$139 million may jeopardize its ability to meet legal requirements under the Biological Opinions and the Northwest Power Act. Critical Biological Opinion check-ins are imminent. These are the funds that are necessary to implement many of the

important projects and programs that must be in place to succeed in those evaluations.

The Council letter also notes that cuts in Bonneville's fish and wildlife funding may risk its ability to meet its legal obligations:

Bonneville's many programs are not all equal. Some, such as the fish and wildlife program, respond to legal obligations that cannot be abandoned, even temporarily. Programs with such legal requirements must be viewed differently than programs that are useful and valuable but not legally required or unquestionably essential to Bonneville's core statutory missions. Moreover, to be equitable, you must assess where various program costs are today against their planned levels. Programs operating within planned budgets are penalized for their efficiency if this is not considered. Finally, because you are considering cost reductions in the context of the SN CRAC, the significance of a possible program reduction from a rate impact perspective must be understood. It makes little sense to increase legal risks to the durability of the power system because of a cost reduction that has essentially no impact on rates.

FY 2007-2009 Biological Opinion and Program cost estimates

The Columbia Basin Fish and Wildlife Authority formed a workgroup comprised of federal, state, and tribal fish and wildlife managers to prepare detailed estimates of the costs of implementing the subbasin plans, other Columbia River Basin Fish and Wildlife Program measures, and the FCRPS Biological Opinion.

The subbasin plans were the produce of a multi-year, \$13 million effort involving fish and wildlife managers, local stakeholders, and other interested parties. This effort developed plans for all of the subbasins in The Columbia River Basin. These plans assessed the current conditions in each watershed, the desired population levels, and the key limiting factors. The plans also included specific strategies and management plans to achieve the biological objectives for each subbasin. Each plan addressed the requirements of the Council's Program (See the Columbia River Basin Fish and Wildlife Program, pages 39 to 43). The Council formed technical and policy level groups to oversee the development of the subbasin plans and the plans were reviewed by the Independent Science Advisory Board.

The CBFWA workgroup coordinated the efforts of the Columbia Basin fish and wildlife managers in the development of detailed budgets to implement the subbasin plans. The CBFWA workgroup effort was based on the detailed analysis of the fish and wildlife managers of the production and habitat costs associated with implementing the Council Program and the FCRPS Biological Opinion. The workgroup compiled the cost estimates for 30 subbasins into province level costs; where costs were not available for a subbasin, the workgroup extrapolated costs from similar subbasins based on land area.

The workgroup incorporated the production and habitat costs into the other costs estimates that had been developed by the Council and Bonneville to develop an overall budget for the Integrated Fish and Wildlife Program. The CBFWA workgroup circulated its draft report in beginning in January of 2005 to the fish and wildlife managers, the Council, Bonneville, utilities, and others. The workgroup incorporated all of the comments it received and the review process improved the quality of the analysis. The workgroup specifically requested comments on whether there were any better assumptions or costs for the report. We did not receive any analysis from Bonneville or the Council that provided alternative costs for implementing the subbasin plans and other elements in the Program and Biological Opinion.

The CBFWA workgroup report is the most detailed estimate of the costs of implementing the Council Fish and Wildlife Program and the FCRPS Biological Opinions available. In fact, it is the most detailed estimate ever produced on this issue. The Yakama Nation provided this report to BPA staff several times, including April 29, 2005 comments on the Power Function Review and attached the CBFWA workgroup report.

The CBFWA workgroup found that implementing the habitat and production activities and other measures in the Council's Program had a total cost of \$1.5 billion and the cost of wildlife mitigation was \$300 million over the next ten years. Based on this work, CBFWA wrote to BPA and the NPCC on March 16, 2005 to support adequate funding for fish and wildlife in the next rate case. The letter states:

While CBFWA Members are continuing to review the detailed costs, the analysis completed to date provides a strong basis for increasing the funding for BPA's Integrated Program in the next rate case period to at least \$240 million per year. This figure assumes that BPA would use its borrowing authority for new production facilities and the acquisition of land and water to protect habitat. It also does not include a comprehensive assessment of costs for mainstem measures beyond those contemplated in the Updated Proposed Action or the NPCC Program. Additional mainstem measures are necessary to protect, recover, and restore anadromous fish impacted by the federal hydrosystem...

Based on our work to date, it is clear that the current spending levels are inadequate to protect, mitigate, and enhance fish and wildlife under the Northwest Power Act. Our analysis shows that at the current spending levels, it would take over 100 years to implement all the measures contemplated in the NPCC Program.

A key issue was the pace of implementation for the habitat and production activities. The workgroup developed realistic recommendations for implementation that would increase funding for implementation over the next four years. This would provide time to build the necessary staffing, programs, and other infrastructure for implementing the strategies in the NPCC Program. The workgroup recommended that FY 2006 funding should have been \$186 million—this is the level originally assumed in the 2002 Rate Case and the approximate planning target used by the BPA fish and wildlife division. The workgroup

also recommended that funding should ramp up to \$200 million in FY 2007, \$225 million in FY 2008, and \$240 million in FY 2009.

This funding level would put the region on a path to implement the subbasin plans in about ten years. This pace of implementation would have much lower biological risk to listed species and offers some hope of progress on restoring the treaty fisheries of the Columbia Basin Indian tribes.

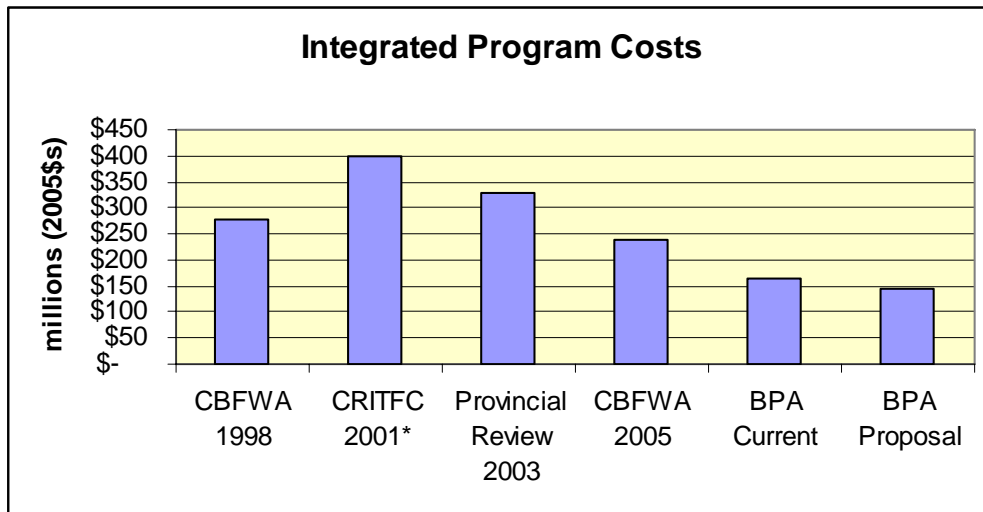
These recommendations would also minimize the biological risk to species in the Columbia River Basin; BPA should implement actions to provide the habitat conditions that these species need to survive as soon as possible. Many of the ESUs listed under the ESA have growth rates (λ s) that are less than 1.0—that means these populations are not replacing themselves and will continue to decline toward extinction.

The costs of acquiring or leasing land and water to protect and enhance habitat will continue to increase as human population grows. These costs will increase significantly faster than inflation, especially the acquisition of land in riparian areas to protect habitat.

Therefore, a ten-year implementation schedule for the subbasin plans has the lowest biological risk and the lowest long-term costs. Completing the subbasin plans as quickly as possible would provide a good start to the long-term habitat work that is likely to be needed to meet Program goals.

Bonneville did not incorporate these estimates in setting its budget for the Integrated Program. At the current pace of BPA implementation, it would take 40 to 80 years to implement the Council Program and FCRPS Biological Opinion. BPA's estimate is not based on the costs of implementing the subbasin plans or meeting the goals and objectives of the Columbia River Basin Fish and Wildlife Program.

The following figure has been adjusted for inflation and shows that BPA has never provided funding at the levels recommended by the fish and wildlife managers.



BPA current funding is inadequate

The Council and BPA are currently making decisions on fish and wildlife projects for FY 2007-2009. The figure below shows the reallocation proposed for FY 2007-2009 compared to the average for the Council's recommendation in FY 2004-2006. The reduction for areas with listed salmon and steelhead is \$11.96 million per year. All of the areas that will lose funding have listed salmon and/or steelhead. Based on this reallocation, the funding available to implement ongoing and new projects will be cut significantly.

Province	2004 - 2006 Average *	2007 - 2009 Reallocation**	Difference	Listed Salmon/Steelhead ESU
Blue Mountain	\$8,455,644	\$7,127,528	(\$1,328,116)	Sn R Stlhd, Fall, Spr, Su Chk
Columbia Cascade	\$3,560,981	\$3,001,663	(\$559,318)	Upper Col Spr Chk & Stlhd
Columbia Estuary	\$4,344,944	\$3,662,490	(\$682,454)	Yes
Columbia Gorge	\$6,302,475	\$5,312,554	(\$989,921)	Mid Col Stlhd
Columbia Plateau	\$25,800,679	\$21,748,203	(\$4,052,476)	Mid Col Stlhd
Intermountain	\$10,181,773	\$15,248,105	\$5,066,332	No
Lower Columbia	\$1,664,584	\$2,492,862	\$828,278	Yes
Middle Snake	\$2,253,008	\$3,374,079	\$1,121,071	No
Mountain Columbia	\$8,407,208	\$12,590,537	\$4,183,329	No
Mountain Snake	\$19,884,724	\$16,761,459	(\$3,123,265)	Snake Stlhd, Fall, Spr, Su Chk, Sockeye
Upper Snake	\$1,051,706	\$1,575,022	\$523,316	No
Systemwide ***	\$47,280,186	\$46,055,498	(\$1,224,688)	Yes
Basinwide	\$0	\$32,644,160		
Multi Province	\$0	\$13,411,338		
Total	\$139,187,912	\$138,950,000		
Salmon & Steelhead			-\$11,960,238	

* Council recommendations based on September 29, 2005 NPCC memo from O'Toole & Ogan
** Based on October 21, 2005 letter from Marker and Delwiche
*** BPA average expense from Tom Iverson

In October of 2006, the chairs of the Nez Perce Tribe, Umatilla Tribe, Warm Springs Tribe, and Yakama Nation wrote a letter to the Council with copies to BPA that concluded that the FY 2007-2009 funding level was arbitrary and inadequate:

We understand that Bonneville set, and the Council assented to, the fish and wildlife program funding level for Fiscal Years 2007-2009 quite some time ago. At that time we stated that Bonneville's proposal did not appear to have any discernable relationship to the 2000 Program Basinwide goals and objectives. We noted that the funding level was certainly not derivative of an analysis as to what it may take to begin implementing newly adopted subbasin plans. The Tribes and other fish and wildlife managers tried to work with the Council and BPA on a CBFWA effort to develop cost estimates for fully implementing the Program and Biological Opinion, but you never provided any input to our report. It also appears that the Council did not advocate adequate funding in various BPA processes. The funding level also seemed to be deaf to the Federal Court's continued admonition that more resources must be brought to bear on the salmon crisis. Simply put, the funding level established by Bonneville, and acquiesced in by the Council, was arbitrary. We recount this history because now, with the

Council's draft funding recommendations, we can see the unsettling consequences.

- Over the next three years we will be committing less to fish and wildlife than in Fiscal Year 2006. Cost increases in materials, fuel, personnel more than consume the negligible program funding level increase. The fish and wildlife program is eroding.
- The Fish and Wildlife Program has been whittled down to little more than an inadequately funded ESA-listed salmon program. Lamprey, sturgeon, bull-trout, and unlisted salmon work would essentially disappear. All of these species are impacted by the hydrosystem. Many of your recently adopted subbasin plans feature these species. Failure to protect, mitigate, and enhance the full suite of affected species is not consistent with the Act, the Program or the Four Governors' letters.
- Your independent science panel says that the strategy of stripping out monitoring and evaluation to try to slow the erosion of actual on-the-ground projects is putting the Program on thin-ice scientifically.
- The tribes have provided analysis that the current level of effort is not likely to achieve the biological objectives of the Council Program. The region has not achieved the Council's first objective to stop the decline of salmon populations and is not on track to rebuild populations to five million fish above Bonneville Dam by 2025. In fact, at the current pace of implementation the Council subbasin plans will not be implemented for 40 to 80 years.

The letter concludes:

The tribes have previously provided extensive analysis demonstrating that the current funding is not adequate. We have also demonstrated that the Council's proposed decisions will cause major cuts in efforts to protect, mitigate, and enhance salmon and steelhead at the same time federal, state, and tribal governments are working hard to develop a new biological opinion that will require even greater effort. It makes no sense to terminate projects in October 2006 and then incur added costs to restart them again when the new biological opinion is completed next spring.

The treaty tribes expect that the FCRPS remand will result in a significant increase in the projects needed to "fill the survival gap" and recover listed salmon, steelhead, and sockeye. These efforts will increase funding needs. Given the inability to fund ongoing projects and the cuts proposed for provinces with listed species, BPA's current efforts are clearly not adequate.

Concerns with BPA Proposal

The BPA proposal does not provide any commitments that BPA will fully implement the Council fish and wildlife program or the FCRPS biological opinion. Tribal representatives have sought such commitments to send a clear signal to the utilities signing new contracts that the cost-based rates will include higher fish and wildlife costs.

BPA argues that the proposal is an improvement over the status quo. As discussed above, the status quo is not providing adequate protection, mitigation, and enhancement for fish and wildlife. While the proposal does have some advantages, the problems described above are likely to continue.

Operations

As described above, BPA's 2001 over commitment to utilities increased BPA's costs by \$3.9 billion from FY 2002 through FY 2006 and forced BPA to eliminate fish and wildlife programs and river operations in 2001 and cap protection, mitigation, and enhancement actions through FY 2006.

This proposal would limit BPA's long-term obligations to utilities. Over the 20 year contracts, BPA could reduce its allocations to utilities if it did not have enough low-cost power. However, the proposal still has a risk that within a rate period (typically three to five years), BPA could be forced to incur higher costs to serve its commitments.

We also note that this process is not coordinated with fish and wildlife decisions. The BPA proposal may allocate the federal power, based on current river operations, prior to the completion of the current FCRPS Biological Opinion remand process. The remand may limit the power that can be generated from the federal dams; if BPA has already committed that power through the rate period then it would be required to acquire additional electricity for several years—this would create a risk for other BPA funding such as fish and wildlife. It is possible that a future remand process could also create this problem.

Therefore, the risks that caused BPA to eliminate or reduce fish protections in the past could be repeated under the proposal. BPA also does not explain how the proposal would improve the ability to meet the flow targets in the Biological Opinion. Given that the Federal operating agencies have failed to meet 53 percent of these targets since 1995, this is an important issue.

Funding

BPA is below market and funding is not adequate

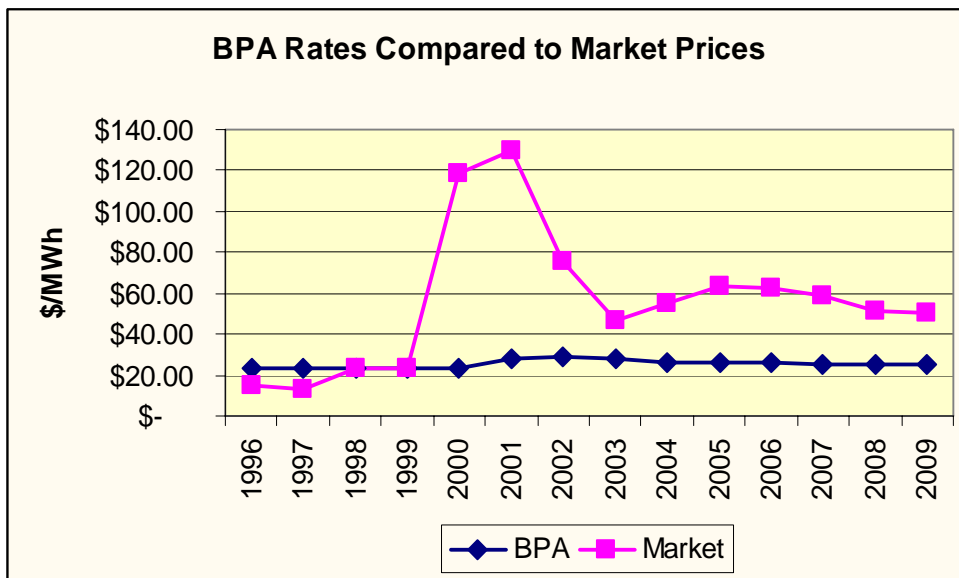
The only reference to fish and wildlife in BPA's proposal is found on page 4:

With respect to fish and wildlife, the proposal would bring greater certainty to BPA’s ability to fund its obligations. Historically, this funding has been most at risk when BPA rates have approached or exceeded market prices, and BPA Customers have reduced their purchases from BPA. This proposal largely removes that risk for power supplied at the Tier 1 rate.

The Tribes agree that the proposal will ensure that the low-cost existing power (Tier 1) will continue to be below the market price of electricity. Under the status quo, if BPA added resources to serve additional utility needs and melded the costs with the existing power from the dams, the cost of the melded power would go up. If these costs approached the price of market-based power, then BPA would need to constrain all of its costs, including fish and wildlife. Therefore, BPA argues that proposal is a benefit compared to the status quo.

However, keeping BPA rates below market-based prices will not ensure adequate fish and wildlife funding. BPA is currently limiting fish and wildlife funding while it is 53 percent below market rates. For more information on BPA compared to market rates please see the attached report: *Can BPA Afford Salmon Recovery?*.

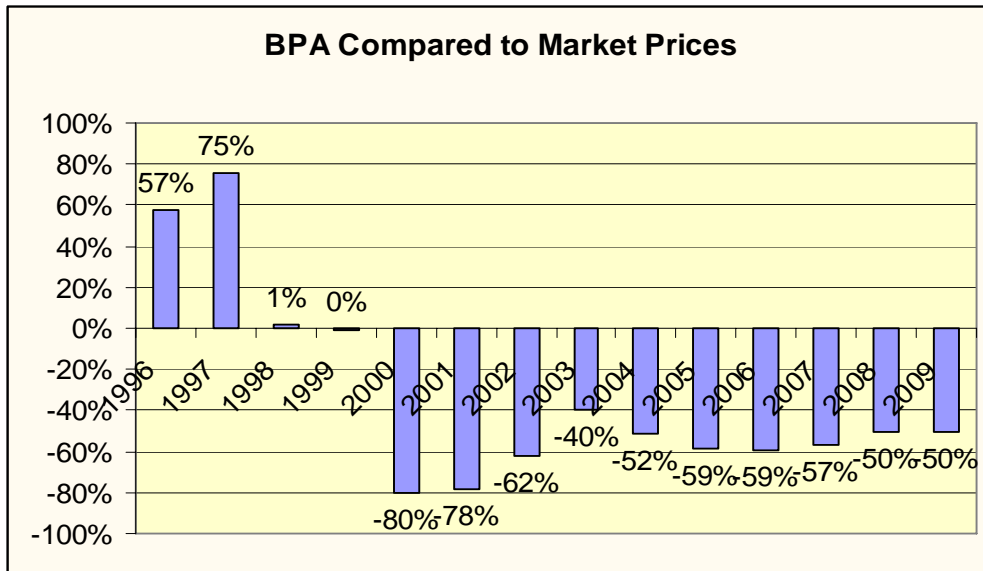
The figure below compares BPA’s wholesale rates with the historical and projected wholesale rates reported by the Northwest Power and Conservation Council. It shows that in the late 1990’s, BPA rates were above or at market prices¹⁶; however, beginning in 2000, market prices increased significantly. As a result, BPA’s actual rates and the projected rates for 2008 and 2009 are significantly below West Coast market prices.



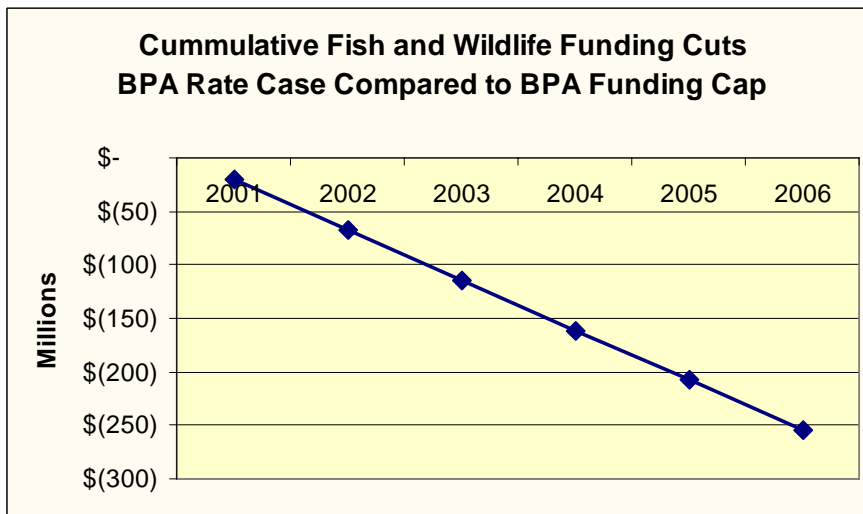
The figure below shows the percentage difference between BPA rates and West Coast market rates. It shows that in 1996 and 1997, BPA rates were above market prices. BPA

¹⁶ During this period BPA rates were significantly below the cost of building new resources.

was approximately at market prices in 1998 and 1999. Between 2000 and 2006, BPA rates were below market rates by an average of 61 percent.

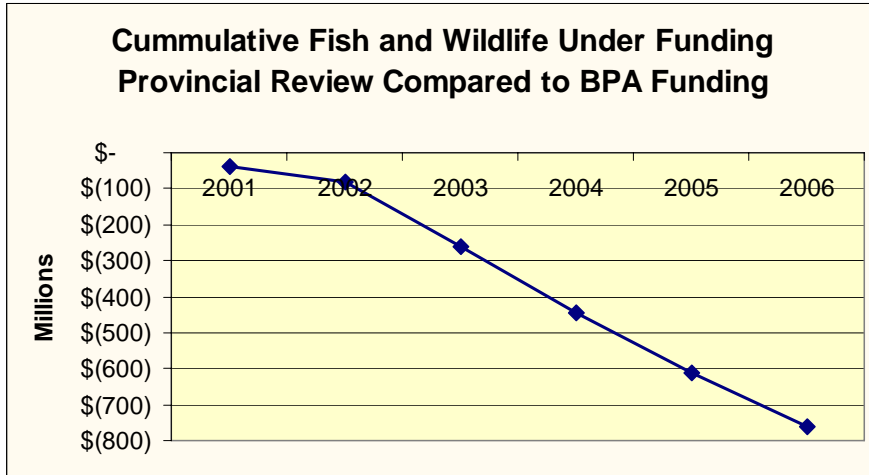


The figure below shows the cumulative cuts to fish and wildlife funding from 2001 through 2006 totaling \$250 million. It is based on the funding level that BPA established in the 2002 rate case of \$186 million per year and the cap imposed by BPA of \$139 million per year. It is important to note that BPA had committed to the Tribes that the \$186 million level was a planning target and that BPA would increase funding if necessary.



The figure below shows the cumulative cuts to the fish and wildlife manager's recommendations for BPA fish and wildlife funding for FY 2003-2006. These cuts are based on the Provincial Review prepared by the region's fish and wildlife managers and reviewed by the Independent Science Review Panel compared to the cap on funding

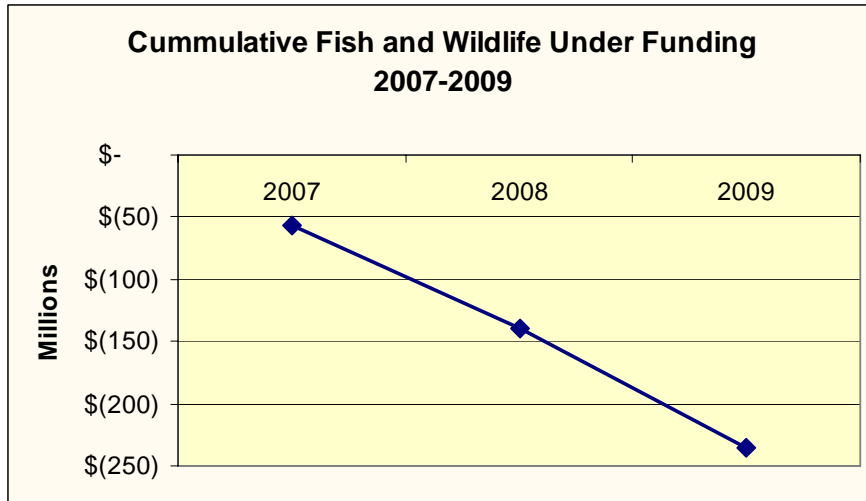
imposed by BPA. During the period when BPA was 61 percent below market rates, its funding was \$750 million below the levels recommended by the fish and wildlife managers in the Provincial Review. A comparison to the Tribe's recommendations in the 2002 rate case would show that gap between those recommendations and BPA funding was even larger.



This analysis demonstrates two things. First, BPA's statement above is not historically correct. While it is true that when BPA rates are at or above market rates it puts pressure on all of BPA's costs; BPA fish and wildlife funding during 1996 through 2001, when BPA's rates were at or above market, was subject to a MOA. The Tribe's have concerns about how the MOA was administered, but the funding level was maintained. A new enforceable MOA based on a clear workplan, an aggressive schedule, and adequate funding would provide certainty for future fish and wildlife implementation.

Second, keeping BPA rates below market does not assure adequate fish and wildlife funding. BPA rates averaged 61 percent below market between 2000 and 2006; during that period, BPA eliminated salmon protections in 2001 and reduced fish and wildlife funding below the inadequate levels assumed in the 2002 rate case; the funding was well below the levels recommended by the fish and wildlife managers.

BPA is projected to be below market rates in 2007 through 2009, yet it did not incorporate adequate funding levels in its rate proposal. The figure below shows the cumulative under funding for fish and wildlife based on the costs of implementing the FCRPS Biological Opinion and Council Program recommended in the tribes' rate case testimony compared to BPA's funding levels. It shows that with BPA rates projected to be 53 percent below market rates, BPA's funding level is a total of \$236 million below the budget recommended by the Tribes.



Our analysis shows that BPA’s fish and wildlife funding for FY 2007 through 2009 will be more than \$370 million below the total for the projects that were approved by the Independent Science Review Panel over the next three years. These are scientifically approved projects that are ready to be implemented.

The proposal could put pressure on fish and wildlife funding

The proposal will limit the increase in BPA’s low-cost power rates (Tier 1) compared to the status quo. In the long term this could be an improvement over the status quo; however, in the short term the proposal could put additional pressure on cutting fish and wildlife funding because it includes provisions that could increase the cost of BPA power.

For example, the proposal has the potential to add up to 1,100 megawatts of power into the cost-based rates to serve existing and new utility needs and the DSIs (aluminum smelters). BPA could add up to 300 megawatts to serve the needs of existing utilities, up to another 250 could be added to serve new utilities. BPA has also said that it has the option to also add up to 567 megawatts if BPA decides to serve the DSIs; however, it has not proposed to serve the DSIs at this point, that decision would be made later. These additional resources would raise BPA rates. Adding the 450 MWs, the maximum level BPA has proposed, could raise rates from \$25 per megawatt-hour to \$28 per megawatt-hour—a 12 percent increase. If BPA also decided to serve the DSIs, the increase could be 27 percent.

The figure below summarizes these potential impacts for augmenting to serve existing customers, current and new utility customers, and current and new utility customers and the direct service industries.

Impact of Adding Resources to Tier 1				
Augmentation to serve current utilities				
	MW	MWh	Rate	Increase
Existing	7,100	62,196,000	\$ 25.31	
New	300	2,628,000	\$ 76.56	
Combined	7,400	64,824,000	\$ 27.39	8%
Augmentation to serve current and new utilities				
	MW	MWh	Rate	Increase
Existing	7,100	62,196,000	\$ 25.31	
New	450	3,942,000	\$ 76.56	
Combined	7,550	66,138,000	\$ 28.36	12%
Augmentation to serve current and new utilities and DSI				
	MW	MWh	Rate	Increase
Existing	7,100	62,196,000	\$ 25.31	
New	1,100	9,636,000	\$ 76.56	
Combined	8,200	71,832,000	\$ 32.19	27%

Long-Term Cost Control

The BPA proposal includes a provision for an expanded Regional Cost Review to replace the Power Function Review. The treaty tribes have participated in the PFR and provided extensive comments about the need to increase fish and wildlife funding. This process has taken significant time and resources; however, BPA has not adequately addressed our concerns and has not provided an opportunity to challenge BPA's decisions under Section 9(e) of the Northwest Power Act. Apparently, based on utility comments during the Regional Dialogue, the PFR has also not engaged enough of the utility community to develop a broad understanding and consensus on BPA's costs. We hope any new process will be an improvement.

The treaty tribes oppose the Cost Management Group alternative that was proposed by some utility customers. The alternative would create an inappropriate group to provide recommendations to BPA. For example, it contemplates appointment of one or two tribal representatives onto a group where utilities would have a majority of the votes. It was not clear who would appoint the tribal representatives or how one or two people could represent the all the sovereign tribal governments in the Northwest; our member tribes would never agree to participate in a process that could adversely affect our treaty resources.

Other Impacts on Fish and Wildlife

The BPA proposal is not designed to assure development of fish-friendly resources. In 2003, CRITFC included the *Energy Vision for the Columbia River* as a companion to *Wy Kan Ush Mi Wa Kish Wit (Spirit of the Salmon) Plan for Columbia River Anadromous Fish Restoration*. The *Energy Vision* defined a set of strategies and resources that are

much healthier for the Columbia Basin's fish resources, and provide better protection against unforeseen events, such as drought or other extreme weather, that affect both the environment and consumers. In addition, the report indicated how this vision can be met without raising rates in the Northwest. This vision outlined a set of resources that can be developed to meet future needs in a wise and cost-effective manner while reducing the region's energy dependency on the Columbia River hydroelectric system. Since the *Energy Vision* was published, there have been further improvements in the cost and technology for energy-efficiency, renewable resources, distributed generation, transmission and distribution improvements and other actions that would improve fish and wildlife protection. For more information on the CRITFC *Energy Vision* see <http://www.critfc.org/legal/tev.pdf>.

We believe that the BPA proposal will make it more difficult to implement the actions in the *Energy Vision*. As examples, the sections below describe our concerns about the energy efficiency, renewable resources, and other resource development provisions of the proposal.

Energy Efficiency

Improving energy efficiency through conservation programs has the least impact on fish and wildlife. These programs produce no greenhouse gases or other pollution that can adversely affect fish and wildlife. According to the Northwest Power and Conservation Council, in 2004, these programs lowered carbon emissions by an estimated 13 million tons.

Many energy efficiency measures also reduce the peak demand for electricity. For example, a well insulated residential or commercial building will use less electricity on a cold or hot day. This reduces the need for peaking operations at the federal hydroelectric dams that cause fluctuations in river operations; large fluctuations kill millions of salmon every year.

Energy efficiency programs also cost less than other alternatives. These resources would minimize BPA's costs of meeting additional electric energy demands. According to the Northwest Power and Conservation Council, the region has saved 3,000 megawatts since 1981 through energy efficiency programs, codes, and standards at a cost that is about half of fossil or nuclear energy. In 2004, these programs saved consumers \$1.25 billion.

Energy-efficiency programs are supposed to be given the highest priority under the Northwest Power Act.

Interim conservation proposal creates disincentives

We are concerned that the proposal's treatment of conservation through 2011 will cause some utilities to defer energy efficiency programs because they will reduce the amount of low-cost power that they will get from BPA. For example, Yakama Power, the tribal utility serving part of the Yakama Reservation, has said that the proposal creates a

disincentive and that it will not implement BPA energy-efficiency programs until its allocation from BPA (high water mark) is set.

BPA's proposal fundamentally changes some economic choices for utilities. Under the status quo, with melded rates, a customer that implements conservation would reduce its net requirements and BPA would deduct those savings from the utility's right to purchase BPA power; otherwise, the utility would be getting more power than it needed and BPA policy prohibits resale of Federal power. However, the utility still saves money since its power acquisition and distribution costs have been reduced. Moreover, BPA provides a discounted wholesale power rate to encourage conservation acquisition; they would lose the discount if they don't implement these programs. Also, the conservation costs the utility less than the power they are losing from BPA, and there is no penalty of higher cost power down the road. For example, a utility can run a conservation program that costs \$10-\$20 per megawatt-hour (MWh) and reduce its access to \$25 per MWh BPA preference power; in the future, the utility could purchase more preference power at approximately \$25 under the melded rate¹⁷.

BPA's proposal to create a two-tiered rate may change the decision about whether to implement conservation programs for some utilities. For the purpose of defining future rights to the low-cost rate (Tier 1), a utility that runs a BPA funded conservation program through 2010 losses access to 50 percent of the savings at the \$25 per MWh Tier 1 price and will have to replace it with \$76 MWh Tier 2 power (at BPA current rates). This is a significant disincentive for some utilities.

As an example, we have analyzed the economics for a utility with a 10 average megawatt load in 2006 that is deciding whether to do one megawatt of conservation in 2007-10. We have assumed that the one megawatt is equal to their load growth from 2007 to 2010, that BPA's Tier 1 rate in 2012 is \$30 per MWh, and that the conservation costs the utility \$1 million (about \$100,000 per year or \$13/MWh). We have also analyzed the hypothetical utility's cost in 2015 with another 1 MW of load growth between 2010 and 2015 under three alternatives:

Alternative One—Do BPA conservation: The net requirement in 2012 is 10 megawatts, so High Water Mark is 10.5 megawatts (with BPA proposal). In this case the utility's power supply costs in 2012 will equal $(10 \times 8760 \times \$30) + \$100,000 = \$2.728$ million. In 2015: Power supply costs are $(10.5 \times 8760 \times \$30) + \$100,000 + (0.5 \times 8760 \times \$76) = \$3.192$ million.

Alternative Two—Don't do BPA conservation: The net requirement in 2010 would be 11 megawatts, so the High Water Mark is 11 megawatts. In 2015, the power supply costs are $(11 \times 8760 \times \$30) + (1 \times 8760 \times \$76) = \$3.555$ million

Alternative Three—Defer Conservation. The utility does not implement the conservation before 2010 in order to maximize the high water mark; it then implemented conservation programs to meet load growth after the high water mark had been set. In

¹⁷ The melded rate will go up if BPA adds resources, but the annual increase is likely to be small.

this alternative the 2015 power supply costs would be $(11 \times 8760 \times \$30) + \$100,000 = \$2.991$ million. The annual net savings from maximizing the high water mark and doing conservation after 2010 to serve additional load growth in 2015 would be \$201,000. This alternative provides the greatest benefit to the utility under the BPA proposal.

Alternative Four—The 100 percent solution: The following alternative describes the economics with the same starting assumptions as described for alternatives 1-3. In this case, BPA changes its policy to allow utilities to keep 100 percent of their Tier 1 allocation, even if they implement BPA funded conservation. In this alternative, the net requirement in 2012 is 10 megawatts, but the High Water Mark is 11 megawatts. In this case the utility's power supply costs in 2012 will equal $(10 \times 8760 \times \$30) + \$100,000 = \$2.728$ million. In 2015: Power supply costs are $(11 \times 8760 \times \$30) + \$100,000 = \$2.991$ million. The utility costs are similar to the defer conservation alternative, but the utility would have implemented one megawatt of conservation prior to 2010 and helped BPA meet its regional targets.

These examples show that BPA could address this problem with the “100 percent solution”. BPA could allow utilities to implement BPA energy-efficiency programs without losing any of their BPA allocation. This approach would maximize utility incentives for conservation. The only disadvantage is that utilities that do not participate in the BPA programs would not receive benefits but would pay part of the higher costs of augmenting the Tier 1 power to maintain the full allocation for utilities that did implement the energy-efficiency program. These programs benefit everyone in the region. Since every utility has the opportunity to run the BPA programs, it makes sense to provide an incentive to fully implement these programs, even if it penalizes those that do not implement conservation programs.

BPA is not meeting conservation targets

Based on our analysis, we are concerned that BPA's current funding for energy-efficiency programs is not adequate to achieve the Council's Power Plan conservation targets. Any perceived disincentive could make the problem worse through 2010.

BPA is not meeting the Power Council's conservation goals. The 2005 Power Plan called on BPA to acquire all cost effective conservation—this is also the requirement of the Northwest Power Act. The Power Plan makes it clear that the strategy with the lowest costs and lowest risks is for BPA to acquire as much conservation as fast as it can.

The target for BPA is at least 52 megawatts a year. According to the BPA Redbook, BPA secured only 40 megawatts in 2005 and we understand that BPA will achieve similar levels in 2006. Therefore, BPA is currently missing the targets by more than 20 percent.

When we compare BPA's performance to the Energy Trust of Oregon we find that energy-efficiency programs for the customers of Oregon's investor-owned utilities secured 39 megawatts of savings last year, almost as much as BPA's programs for all the public utilities in the region.

Long-term conservation issues

BPA has not made any commitment to energy-efficiency funding beyond 2011. Therefore, it is not clear how BPA plans to meet its responsibilities under the Council Power Plan and the Northwest Power Act. BPA has provided no analysis that shows it will achieve the conservation goals. We believe such analysis is essential.

The BPA's proposal does not require that utilities implement their share of the regional conservation targets. BPA also does not require that utilities that decide to meet their own load growth will give first priority to energy-efficiency. Without these requirements, it is not clear how BPA can assure that the targets will be achieved. Clearly, access to BPA's low-cost power is a significant benefit for any utility. BPA should require that these utilities implement all cost effective conservation and secure savings that meet or exceed the Power Plan targets as a condition of receiving the low-cost BPA power.

Renewable resources

We are also concerned that BPA has not budgeted enough to meet its renewable resource targets for the region. We note that Oregon has established an ambitious goal of securing ten percent of the state's electric energy supplies from renewable resources by 2012. To meet this goal, Oregon will need about 45 megawatts per year. The target for BPA in the Power Plan is approximately 100 megawatts of renewable resources per year through 2012. Under the BPA proposal, it will spend up to \$21 million per year to the extent necessary to meet its renewable targets. This funding level during the next rate case for all of BPA's customers is approximately the same as the Energy Trust's budget for the customers of PGE and PacifiCorp in Oregon, yet BPA's target is twice as large. It is not clear how BPA will meet these targets and it has provided no analysis on this issue.

The BPA proposal does not require utilities that decide to meet their own load growth to implement renewable resources. Without such a requirement in the BPA contracts it is not clear how BPA will ensure that these regional targets are met. BPA has not provided any analysis that it will meet these targets.

New generating resources

If BPA and its customers fail to get all cost-effective conservation and renewable resources, then they will need to develop resources that have more adverse environmental impacts to meet future load growth. Again, the BPA proposal does not require utilities that sign the new power sales contracts to develop new resources based on the Council Power Plan and the priorities of the Act. This could lead to the development of resources that will have higher costs and/or more adverse impacts on the environment and fish and wildlife. It will also make it more difficult to implement the actions CRITFC identified in the *Energy Vision*.

Legal and Policy Concerns

BPA has not addressed the environmental consequences of its proposal

The Tribes are concerned that BPA has not analyzed the environmental impacts of its proposal, including the effects on fish and wildlife. The Tribes have done a preliminary analysis of the Business Plan EIS and Endangered Species Act concluded that there are a number of issues that raise concerns about BPA proposal. We reserve the right to expand on this analysis and raise other issues in subsequent proceedings.

NEPA analysis is needed

BPA has said that it expects that the proposed long-term power allocation and contracts policy will fall within the scope of the Market-Driven Alternative evaluated in the 1995 Business Plan EIS and BPA may tier its decision under NEPA in this process to the Business Plan ROD. CRITFC believes that there are a number of issues that raise concerns about this approach.

The Business Plan is out of date: First, the Business Plan EIS was prepared more than ten years ago. The models that it relied on are now out of date. For example, the power system analysis was done using the System Analysis Model (SAM). The Northwest Power and Conservation Council and BPA have developed more sophisticated models for analyzing the risks and benefits of different power resources. Those new tools provide important new capabilities to address economic, environmental, and risk mitigation issues.

The Business Plan relied on the System Operation Review to determine the amount of hydropower available to BPA. The operations were based on the 1994-1998 FCRPS Biological Opinion (1995 Business Plan ROD, page 4-6) The models and operating assumptions have changed significantly since the SOR and 1994 Biological Opinion.

The data used in the EIS are also out of date. For example, the 2005 Northwest Conservation and Electric Power Plan identified new data for conservation, renewable resources, and gas-fired and coal-fired technologies.

There is also considerably more information and interest regarding global warming since the 1995 EIS. For example, CRITFC has summarized trends in climate (i.e., temperature and precipitation) and stream flow for the last 100 years for select sub-basins co-managed by the Columbia Basin Treaty Tribes—the Deschutes, John Day, Umatilla, and Imnaha Basins of Oregon; Clearwater and Salmon Basins of Idaho; Walla Walla, White Salmon, Wenatchee, Methow, and Okanogan Basins of Washington. Analysis of these trends shows that timing of the freshet (i.e., spring snow-melt sequence) has moved to 1-17 days earlier in the last 100 years. The spring-summer volume of runoff has shifted to autumn-winter by 3-26%.¹⁸

¹⁸ See Dittmer, <http://www.law.uoregon.edu/org/nwtwc/docs/agenda.pdf>.

Current climate change is accelerating as evidenced with more extremes in the weather each year. These extreme weather changes (e.g., longer dry spells, more intense rain events) will adversely affect fish and wildlife. For the first half of the 21st Century, Pacific Northwest climate is expected to warm 1.1 degrees Fahrenheit by 2020 and 1.6 degrees Fahrenheit by 2040¹⁹, relative to the 2000 baseline. Precipitation is expected to increase 10% to 20% during that time. Snowpacks will continue to decline including the permanent loss of low-elevation snow and a severe loss of mid-elevation snow. The probability of drought will double. Forest fires and pest infestations will increase. The net effect on the salmon includes steadily increasing water temperatures (and more frequent violations of state water quality standards), increased predation from more warm-water exotic species, shift in the timing of the freshet, and less water for migration during spring and summer. The collapse of our current Northern Hemisphere climate is a real possibility during the second half of the century, if current trends continue. Therefore, programs that reduce or eliminate greenhouse gases are important to the long-term success of rebuilding Treaty resources. Any action that builds resiliency and adaptability to mitigate for climate change and variability is highly desirable.

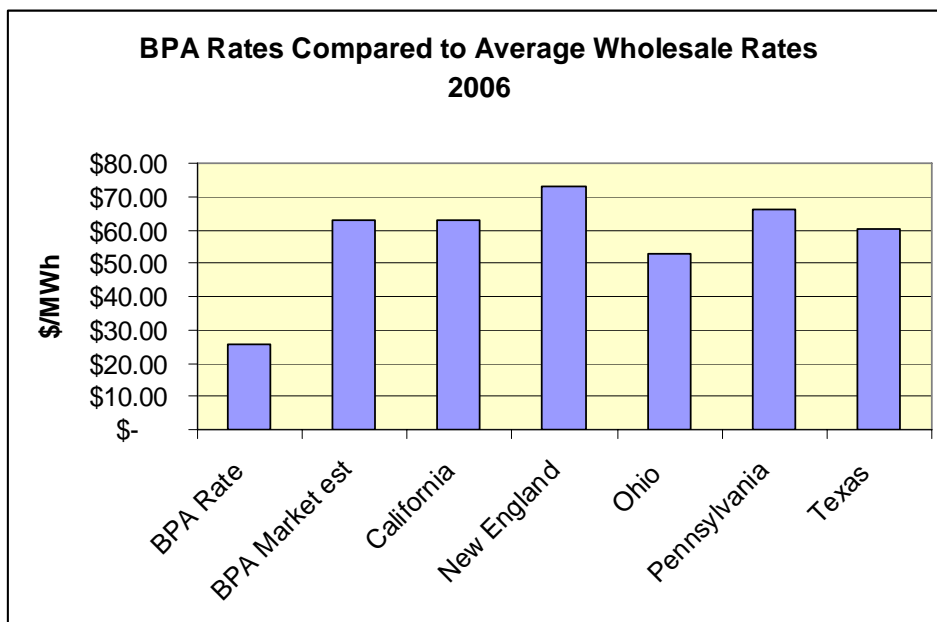
It is interesting to note that the discussion of the impacts of thermal generation in the 1995 EIS does not include carbon dioxide or its effects on global warming. (Business Plan EIS, Chapter 5, page 72).

Assumptions about market prices were wrong: Second, at least one of the basic premises of the 1995 EIS has changed dramatically. BPA assumed that changes in the market would lead to significantly lower prices for wholesale electric power that would compete with BPA's prices. (Business Plan ROD, page 2). The figure on page 29 compared BPA's wholesale rates with the wholesale rates reported by the Northwest Power and Conservation Council. It showed that in the four years after the Business Plan EIS was completed, BPA rates were above or at market prices; this was consistent with BPA's assumptions. However, as the figure showed, beginning in 2000, market prices increased significantly. As a result, BPA's actual rates and the projected rates for 2008 and 2009 are significantly below West Coast market prices.

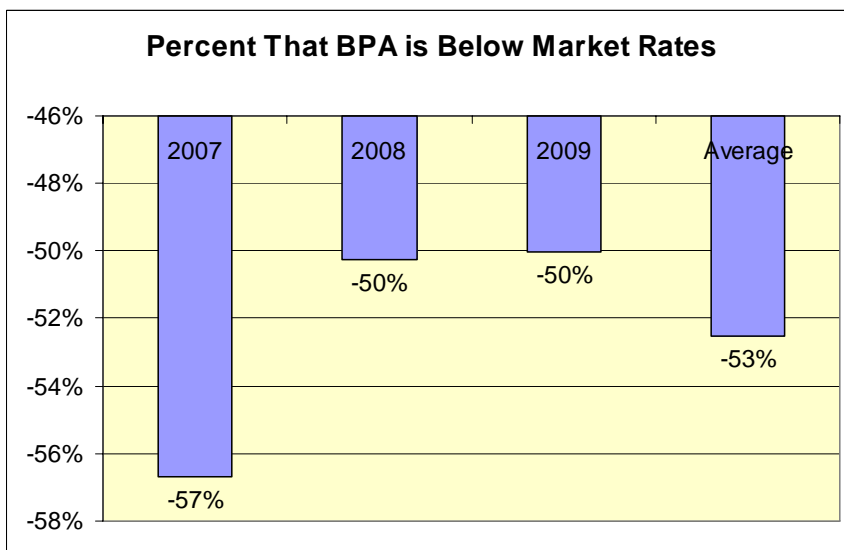
The figure on page 30 showed the percentage difference between BPA rates and West Coast market rates. In 1996 and 1997, BPA rates were above market prices. BPA was approximately at market prices in 1998 and 1999. Between 2000 and 2006, BPA rates were below market rates by an average of 61 percent.

BPA rates are also much lower than other wholesale rates in the United States. The figure below is based on 2006 data from the U.S. Department of Energy's Energy Information Administration. It shows BPA rates compared to average wholesale market rates in California, New England, Ohio, Pennsylvania, and Texas. BPA rates are 59 percent below California wholesale rates, 65 percent below the rates in New England, 51 percent below Ohio, 61 percent below Pennsylvania, and 57 percent below wholesale rates in Texas.

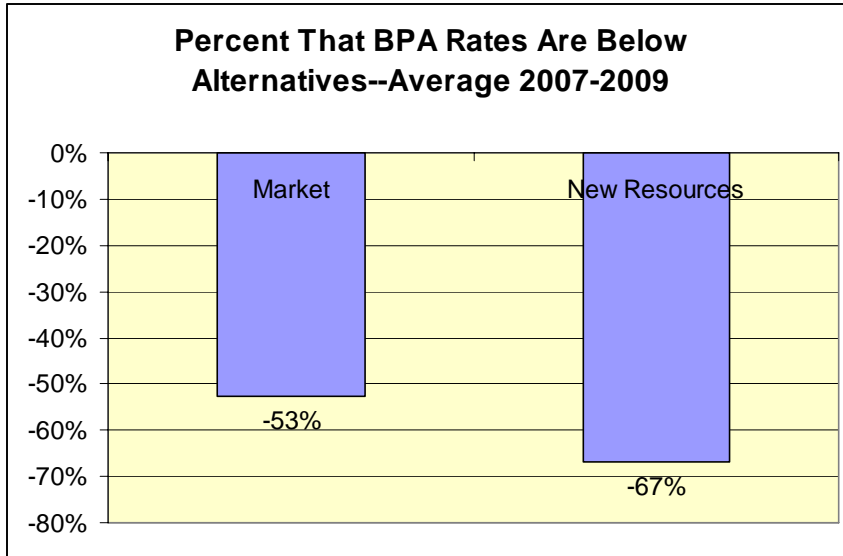
¹⁹ See Climate Impacts Group, <http://www.cses.washington.edu/cig/pnwc/cc.shtml>



In the current rate case, BPA has assumed that market rates will decline between 2006 and 2009. BPA's assumption about a reduction in market costs makes BPA's proposed rates for 2007 through 2009 slightly closer to market rates. Using BPA's assumptions, its rates would be 53 percent below market rates on average over the next rate period.



In BPA's final rate decision, it has increased its New Resources rate for FY 2007 through FY 2009. Based on these new rates, BPA's standard rates will be 67 percent below its cost for new resources.



Given the change in the market price for electricity and its impact on BPA’s competitiveness, BPA should not rely on the analysis in the Business Plan.

Assumptions about meeting mandates were wrong: Third, BPA assumed that the BPA Market-Driven Alternative would provide the financial strength necessary to fulfill its mandate under the Northwest Power Act and other organic statutes. (Business Plan, page S-3) As discussed above, BPA has not fully implemented the Fish and Wildlife Program and Power Plan under the Northwest Power Act, or its responsibilities under the Endangered Species Act, or met its treaty and trust obligations to Columbia Basin Tribes.

A new EIS should fully evaluate this issue and analyze alternatives that would result in BPA fulfilling its legal mandates and treaty obligations.

BPA’s proposal will affect the environment: Fourth, BPA also did not analyze whether its proposal would promote the fish-friendly resources called for in the *Energy Vision for the Columbia River*. For example, if BPA’s policies constrain implementation of an energy-efficiency program and other actions called for in the CRITFC *Energy Vision*, there will be added pressure to operate the FCRPS in ways that damage fish and wildlife; for example, to meet higher peak and seasonal demands. Failure to fully achieve the energy efficiency and renewable resource targets could also result in adding resources that produce greenhouse gases. These issues are discussed in detail in the *Energy Vision for the Columbia River*, including ways to move toward more normative river conditions called for by the Independent Science Advisory Board in *Return to the River*²⁰. It is important to note that these important policy and scientific documents (*Energy Vision* and *Return to the River*) were completed after the 1995 Business Plan EIS.

²⁰ See: <http://www.nwcouncil.org/library/return/2000-12.htm>.

The BPA proposal may also result in independent resource development that is not consistent with the Northwest Electric Conservation and Power Plan and the priorities of the Northwest Power Act.

We have reviewed the supplemental ROD adopted in February 2005 and concluded that it did not adequately address the changed circumstances and impacts to the environment discussed in these comments.

For all of these reasons, the tribes conclude that the long-term Regional Dialogue will have significant effects on the environment that have not been adequately analyzed under the National Environmental Policy Act. BPA should prepare an EIS using the most current models, information, and data. At a minimum, such analysis should address the issues raised in the *Energy Vision* and provide detailed analysis on the effects of BPA's proposal on carbon dioxide emissions and the effects of global warming. The new EIS should also address BPA's ability to meet its legal mandates and treaty obligations.

Endangered Species Act compliance is required

As discussed above, the BPA proposal is a major Federal action that could have a significant effect on listed species. BPA has not consulted with NOAA Fisheries Services or the Fish and Wildlife Service under Section 7 of the Endangered Species Act.

BPA's critical role in the Northwest means that the power allocation and power contract policies and decisions will have a fundamental effect on how the Northwest deals with load growth and how energy production will affect the demands placed on the Columbia River system. Given this key role and the dire status of the salmon and steelhead listed species, we believe that it is essential to conduct a programmatic consultation on the proposal under Section 7 of the ESA. Such a consultation should, at a minimum, address the issues raised in the CRITFC *Energy Vision* in evaluating how alternative approaches to resource development can minimize the adverse effects on listed species. The consultation should also address whether actions to avoid jeopardizing the continued existence of these species is reasonably certain to occur.

Once BPA has determined a proposed action, it should initiate a programmatic consultation with NOAA Fisheries Service. Such a consultation should be conducted in consultation with CRITFC, its member tribes, and other fish and wildlife managers.

Consistency with the Northwest Power Act

Objective 7 of the BPA proposal is to avoid new legislation (see BPA proposal, page 4). However, the proposal raises a number of questions about how BPA can implement the proposal without violating various provisions of the Northwest Power Act (Public Law 96-501, 94 Stat 2697). The Tribes have conducted a preliminary analysis of the Act and its legislative history which raised a number of issues. We reserve the right to expand on this analysis and raise other issues in subsequent proceedings.

Melded versus Tiered Rates

A key part of the BPA proposal would implement tiered rates. Since 1937, BPA has served public utilities with melded rates. As energy needs increased, BPA added additional dams, a nuclear plant, and a few smaller resources; the costs for the existing and new resources are melded together into a single rate.

The Northwest Power Act directed BPA to serve Northwest utilities:

Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the Region [subject to restrictions in subsections A and B] (section 5(b)(1); 16 USC 839c(b)(1))

Congress mandated that these power sales will be at rates established in Section 7 of the Act. Relevant sections include:

The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements²¹ of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources. 16 USC 839e(b)(1)

Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portion of Federal base system resources, purchase of power under section 5(c) of this Act and additional resources, which, in the determination of the Administrator, are applicable to such rates. 16 USC 839e(g)

The Senate Energy and Natural Resources Committee report on S. 885, the legislation that would eventually become the Northwest Power Act²², includes an appendix to explain how this provision was to work.

Section 7 (b) through (h).—The description and methodology for developing the revenues to be recovered through rates under this section 7 are covered in

²¹ The term “general requirements” as used in this section means the public body, cooperative, or Federal agency customer’s electric power purchased from the Administrator under section (5)(b) of this Act, exclusive of any new large single loads. See 16 USC 839e(b)(4)

²² The relevant language in the Senate bill was virtually identical to the final language incorporated into the Act.

Appendix B except as noted below. The specific configuration or form of the rates shall be adopted by the Administrator under subsection 7 (a).

At the request of the Committee, the Administrator has prepared an analysis of the rate provisions of the introduced legislation with certain amendments proposed to the Committee, and it is included as Appendix B. This analysis was widely circulated in the region and as become an important part of the common understanding about how the costs of resources would be distributed as a result of the legislation. The Committee takes notice of these understandings and the importance they played in the development of regional expectations for all classes of customers. (Committee Report Number 96-272, page 31)

In Appendix B, BPA provided analysis that compared the wholesale power rates to various BPA regional customers under the proposed legislation:

Under the proposed legislation there are three basic rates for power sold by BPA but not particular rate form has been assumed. One rate (Regional Rate) is calculated on the cost of the Federal Base System resources and, as needed, IOU exchange power, and future resource additions and will apply to all preference customers and Federal agency loads, exclusive of new large industrial loads, and to investor owned utilities (IOU's), residential and small irrigation loads up to the first 400 horsepower for any farm. A second rate (New Resources Rate) is applicable to all other utility sales and will be based on cost of resources acquired by BPA under the proposed legislation, and any FBS resources not required by Regional Rate Customers. Finally, after June 1985 the rate applicable to BPA direct service industrial customers (DSI's) will be based on the retail rates applicable to industry served by BPA preference customers. (Committee Report, page 56)

Section 7(b) of the House of Representatives version of the Northwest Power Act was identical to the version adopted by the Senate; however, the House placed the rate test language in a separate section 7(b)(2).

The House Interior Committee Report section by section analysis for section 7(a) states:

- A. The lowest rates will be reserved for the normal loads ("general requirements") of preference utilities and for the power sold to utilities under the section 5(c) exchange provisions for service to their residential and small farm loads.
- B. A higher rate will apply to the load growth of the region's investor-owned utilities and for the power needed by preference utilities to meet any "new large single loads" [loads in excess of 10 megawatts] that they may have. (House Interior Committee Report Number 96-976, part II, page 36)

This melding of power was controversial and was opposed by some members of Congress. For example, the Interior Committee Report included dissenting views by

Congressmen Jim Weaver, Peter Kostenmeyer, Bruce Vento, Edward Markey, and George Miller. The dissenting view included a section entitled: Price Melding that states:

The third part of the trinity-like centerpiece of S. 885 is the wholesale price melding that is required of BPA. First, BPA is obligated to serve the utilities; second, it must acquire new resources to do so; and third, it must average the cost of the new very expensive thermal power with its existing extraordinarily cheap hydropower...(The obvious answer to this dilemma is the institution of a two-tier pricing scheme; an amendment to do just that was defeated in the Interior Committee on a 21-21 tie vote). (Emphasis added, House Interior Committee Report, page 87.)

Therefore, based on the language of the Act, the relevant committee reports, and the Appendix prepared by BPA, it appears that Congress intended that preference customers' current and future loads would be served by the regional rate described in section 7(b)(1) which would meld the cost of the Federal Base System resources and, as needed, IOU exchange power, and future resource additions. This rate would apply to all preference customers and Federal agency loads, exclusive of new large industrial loads, and to investor-owned utilities' residential and small irrigation loads. The new resources rate in section 7(g) would apply to all other utility sales and be based on cost of resources acquired by BPA under the proposed legislation, and any Federal Base System resources not required by regional rate customers. It also appears that Congress considered a tiered-rate provision, but the proposal failed in the House Interior Committee. This raises significant questions about how BPA can implement this proposal without new legislation.

Fish and wildlife

When Congress enacted the Northwest Power Act, 16 U.S.C. 839-839h, it acknowledged "that no longer should fish and wildlife be given a secondary status. *Yakama Nation v. NPPC*, 35 F.3d 1371 at 1377, *citing* 126 Cong. Rec. H10681 (1980) (Rep. Dingell).

The [Act] marked an important shift in federal policy. Continually declining fish runs had revealed the failures of previous legislative efforts requiring that "equal consideration" be given to fish and wildlife affected by resource exploitation. The [Act] ensured the "equitable treatment" of fish and wildlife; it marked the shift of the burden of uncertainty - of proving specific harm to salmon from particular activities - from the salmon to the hydropower system, or so was its intent. In doing so, it created a new obligation on the region and various Federal agencies to protect, mitigate, and enhance fish and wildlife.

Id. at 1377-78 (citation omitted, emphasis added).

The Act placed a premium on prompt action, allowing decisions to be made on the best available scientific knowledge. It also limited the role of economic considerations in decision-making. Most importantly, however, the Act acknowledged fish and wildlife as an irreplaceable finite resource.

Bonneville has specific obligations to implement the Columbia River Basin Fish and Wildlife Program developed by the Northwest Power Planning Council:

The Administrator shall use the Bonneville Power Administration Fund and the authorities available to the Administrator under this Act to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, if in existence, the program adopted by the Council under this subsection, and the purposes of this [Act]. 16 U.S.C. 839b(h)(10)(A).

In addition, the Act requires:

The Administrator and other Federal agencies responsible for the managing, operating, or regulating Federal or non-Federal hydroelectric facilities located on the Columbia River or its tributaries shall—exercise such responsibilities, taking into account at each relevant stage of decision making processes to the fullest extent practicable, the program adopted by the Council pursuant to this subsection. 16 U.S.C. 839b(h)(11)(A).

Bonneville did not analyze its equitable treatment obligations or other fish and wildlife in its proposal. In other administrative proceedings, Bonneville has taken the position that it relies on its implementation of the Council's Fish and Wildlife Program is a significant contribution to meeting Bonneville's equitable treatment responsibilities. *See Northwest Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 117 F.3d 1520, 1533 (9th Cir.1997).

Bonneville has argued that it must balance power needs with the needs of fish and wildlife. The proposal provides significant certainty for BPA and utilities about future power supplies. There are no comparable commitments that BPA will fully implement its fish and wildlife responsibilities with certainty.

As discussed above, the proposal commits BPA to supplying power to its utility customers during a rate case even if its available resources are reduced. At the same time, BPA's operation plan would allow BPA to trigger a power system emergency and curtail fish and wildlife protection. The tribes' brief in the 2007 BPA rate case describes a situation where BPA could curtail fish and wildlife protections while not increasing its rates to its utilities:

In Bonneville's rebuttal testimony it has proposed the Emergency NFB Surcharge. This provision would trigger if activities related to the FCRPS Biological Opinion litigation increase Bonneville's costs in a year when its probability of repaying the Treasury is below 80 percent. The amount Bonneville proposes to attempt to collect would be limited to the impact of the litigation-

related action and not designed to meet a specific TPP. *See* WP-07-E-BPA-34, pages A-3 to A-5.

The Tribes requested that Bonneville “provide any information regarding whether BPA has any system emergency provisions; for example, the policy that BPA used during the 2001-2002 period to eliminate river operations for salmon because of a “financial emergency.” Bonneville responded:

The Emergency NFB Surcharge protects fish and wildlife obligations from financially harming the agency if a NFB trigger event took place in a dry year and the agency was facing a difficult financial situation. There is no formal plan or policy for system emergency provisions that the NFB is attempting to replace or augment. The reference to the 2001-2002 Operation Plan is attached [as JP13-BPA-023].

The Operation Plan described the criteria for triggering a power system emergency. According to Bonneville’s document “The financial criterion for a power system emergency is exceeded when the probability of FCRPS financial reserves being \$0 or less after meeting all expected financial obligations exceeds 20% for any of the next 12 months.” If this criterion is met, Bonneville could curtail fish and wildlife protection river operations. *See* Federal Agencies’ 2001 Operations Plan, page 10.

Bonneville’s proposal could create a situation where its self-imposed limits on the Emergency NFB Surcharge could result in a TPP of less than 80 percent. At the same time, the financial criterion for a power system emergency and Bonneville could curtail fish and wildlife protections. Bonneville has designed a process that could reduce the survival of fish and wildlife while limiting the rate impacts on utility customers and continuing to sell electricity that is significantly below market prices. Such actions are not consistent with equitable treatment requirements under the Northwest Power Act. 16 U.S.C. § 839b(h)(11)(A)(i), and Bonneville must structure its WP-07 rates to avoid such outcomes in the future. (The Tribes’ Initial Rate Case Brief, page 71)

BPA discussed equitable treatment in its 1995 Business Plan ROD. That document stated:

Under all alternatives, BPA would manage hydro operations to provide equitable treatment for fish and wildlife along with power production, and would continue its commitment to fund fish and wildlife mitigation measures. However, high power costs due to changes in hydro operations, or adverse developments in power markets, could reduce BPA’s ability to generate sufficient revenues to fund fish and wildlife measures, and consequently, BPA’s ability to provide equitable treatment for fish and wildlife. (1995 Business Plan ROD, page 11)

BPA has provided 100 percent of its contracted power to its utility customers since 1995, or paid its customers to reduce contracted power. During the same period, BPA and other Federal agencies have failed to achieve the flow targets in the FCRPS biological opinions 53 percent of the time. As discussed above, BPA's rates have averaged 61 percent below market rates since 2000, but BPA has not fully implemented the fish and wildlife protection, mitigation, and enhancement measures.

Conservation and renewable resources

The House Interior Committee Report makes it clear the BPA is required to implement all cost-effective conservation measures:

S. 885 contains a variety of comprehensive and interrelated energy conservation provisions designed to encourage and achieve cost-effective conservation within the Pacific Northwest.

As noted above, section 6(a) of the legislation requires the Administrator of BPA to implement all conservation measures and acquire consumer-installed renewable resources as are cost-effective, through a variety of measures including loans and grants to consumers for insulation and weatherization. (House Interior Committee Report Number 96-976, part II, page 36).

Section 6(a) requires BPA to acquire all conservation resources (including renewable resources installed to reduce loads of residential consumers or small commercial consumers) and to implement all conservation measures that BPA determines are consistent with the plan...(Id. page 49)

The House Commerce Committee Report adds:

Section 6(b) stresses the BPA, in acquiring these other resources, shall not reduce efforts to achieve greater conservation. (House Commerce Committee Report Number 96-976, part I, page 65).

It is not clear how the proposal will assure that BPA implements all conservation measures that are cost effective, as required by the Northwest Power Act.

Recommendations

1. BPA should commit to fish and wildlife implementation

The treaty tribes are seeking a binding commitment from the Bonneville Power Administration and action agencies that they will fully implement a Comprehensive Plan that includes the FCRPS Biological Opinion, including changes in hydro operations, the Columbia River Basin Fish and Wildlife Program adopted by Northwest Power and Conservation Council, and other measures. The Comprehensive Plan must protect and recovery salmon and steelhead listed under the ESA and assure a sustainable salmon harvest in fulfillment of the tribes' treaty rights. The following are a set of parameters

that would be necessary to achieve a binding commitment through an MOA or similar agreement. The agreement would commit to:

A Comprehensive Fish and Wildlife Plan:

1. Assure sustainable salmon harvest by the tribes in accordance with treaty rights now and in the future and protection and rebuilding of other treaty resources (*e.g.* lamprey, sturgeon), together with assuring non Indian harvest.
2. Fill the survival gaps caused by the FCRPS, based on the agreed remand framework filed with the U.S. District Court, and reverse the downward trend of listed salmon populations with performance standards that are clearly and objectively linked to these goals. Demonstrate that salmon are a priority for operation of the FCRPS and operate the system to recover the weak ESA-listed stocks that constrain the tribal fishery including a means of equally sharing, among all the H's, the conservation burden of protecting and recovering these fish.
3. Meet the biological objectives of the current Columbia River Basin Fish and Wildlife Program The biological objectives in the 2000 Program were to:
 - Halt declining trends in salmon and steelhead populations above Bonneville Dam by 2005. Obtain the information necessary to begin restoring the characteristics of healthy lamprey populations. (The region has not met this important objective; the plan must address this).
 - Restore the widest possible set of healthy naturally reproducing populations of salmon and steelhead in each relevant province by 2012. Healthy populations are defined as having an 80 percent probability of maintaining themselves for 200 years at a level that can support harvest rates of at least 30 percent.
 - Increase total adult salmon and steelhead runs above Bonneville Dam by 2025 to an average of 5 million annually in a manner that supports tribal and non-tribal harvest. Within 100 years achieve population characteristics that, while fluctuating due to natural variability, represent on average full mitigation for losses of anadromous fish
4. Integrate the FCRPS Biological Opinion and the Council Program with other salmon management processes in the region. The Comprehensive Plan would include the measures in the Council Program, including the subbasin plans, the FCRPS Remand, the NOAA Recovery Plans, and *US. v. Oregon*. The Plan would mandate clear fish and wildlife rebuilding goals and milestones to achieve them and as noted later a method of ensuring compliance by all parties
5. The Comprehensive Plan must be acceptable to the treaty tribes. The treaty tribes are working with the other fish and wildlife managers in the FCRPS remand process and *US v. Oregon* to develop specific actions. These actions are expected to include the existing efforts, including the Lower Snake Compensation Program, all of the supplementation projects, measures in *US v. Oregon*, and the Council subbasin plans. These actions are also expected to include new, additional habitat, hydro, and

production measures. It is contemplated that the components of this plan would be implemented through the U.S. v Oregon case and its framework.

Full Implementation of the Comprehensive Plan

1. BPA, the action agencies, and the fish and wildlife managers would develop a detailed workplan, schedule and budget for implementing the Comprehensive Plan. BPA and the fish and wildlife managers would work together to develop a budget for the Council Program within 60 days of finalizing the MOA and integrate the budget for the Biological Opinion within 30 days of its completion.
2. BPA would commit to increase funding for the integrated fish and wildlife program to a level that assures completion of the measures in the Comprehensive Plan within ten years.
3. The parties would implement the FCRPS Biological Opinion in addition to, not at the expense of, fish and wildlife projects proposed or implemented pursuant to other authorities, including the Council Program.
4. Adequate funding would be provided by BPA to fully implement programs producing fish that fulfill treaty requirements, the Council Program goals and other obligations of the United States to mitigate for destruction of upriver runs as a result of Columbia River development, including those programs designed to supplement natural runs.

Adaptive Management

1. BPA and fish and wildlife managers would develop an adaptive management program that would monitor progress in achieving the biological objectives. BPA would commit to implement program revisions if the biological objectives are not accomplished by established milestones in the Comprehensive Plan.
2. Treat the tribes as sovereign partners in this process, including resolution of disputes on a binding basis.
3. The agreement would include enforceable remedies to ensure compliance with the commitments of the MOA.

2. Revise BPA energy-efficiency programs

BPA should modify its proposal to allow utilities to implement BPA energy-efficiency programs through 2010 without losing any of their BPA allocation.

BPA should commit to adequate funding to meet the Council Power Plan energy-efficiency targets.

3. Require utilities to develop resources consistent with Power Plan and Act

As a condition of receiving the low-cost BPA power, BPA should require that utilities implement all cost effective conservation, secure savings that meet or exceed the Power

Plan conservation targets, and secure renewable resources that meet or exceed the Plan's targets.

BPA should require utilities that sign the new power sales contracts to develop new resources based on the Council Power Plan and the priorities of the Act.

4. BPA should assist tribal utilities

CRITFC supports the comments of its member tribes on modifications to the proposal regarding tribal utilities, including the allocation of low-cost power to Yakama Power.

Attachments to the Columbia River Inter-Tribal Fish Commission's Comments on BPA's Regional Dialogue Proposal

CRITFC has attached a number of documents for inclusion in the Regional Dialogue Record. We reserve the right to use any of the information in these documents in subsequent proceedings. In some cases, we have provided links to electronic versions of documents.

1. *Wy-Kan-Ush-Mi Wa-Kit-Wit, the Spirit of the Salmon*
http://www.critfc.org/oldsite/text/TRP_text.htm.
2. Columbia Basin Fish and Wildlife Program and appendices
<http://www.nwcouncil.org/fw/program/Default.htm>
3. Northwest Power and Conservation Council Subbasin Plans
<http://www.nwcouncil.org/fw/subbasinplanning/Default.htm>
4. Northwest Conservation and Electric Power Plan and appendices
<http://www.nwcouncil.org/energy/powerplan/default.htm>
5. *Compilation of Information on Salmon and Steelhead Losses in the Columbia River Basin*, Northwest Power Planning Council 1987.
<http://www.nwcouncil.org/library/2000/2000-19/TechAppF/Default.htm>
6. 2002 Rate Case testimony, briefs
7. 2003 Safety Net CRAC Rate Case testimony, briefs, appeals, and exhibits.
8. 2007 Rate Case testimony, briefs, appeals, and exhibits.
9. Status Report: Columbia River Fish Runs and Fisheries 1938-2000
http://www.dfw.state.or.us/OSCRP/CRM/reports/status_report/2000_status_text.pdf
10. Status of Fisheries Gretchen Oosterhout, Ph.D. Biological Opinion litigation declaration.
11. BiOp Remand litigation materials
12. Fisheries Harvest Rates spreadsheets
13. NMFS Biological Opinion Flow Scorecard.
14. What Led to the Current BPA Financial Crisis, A BPA Report to the Region,
http://www.bpa.gov/corporate/docs/2003/Report_to_region.pdf).

15. Impact of 2001 River operations. (<http://www.fpc.org/documents/memos/200-01.pdf>).
16. BPA 2007 Rate Case Final Studies WP-07-FS-BPA-05A, pages 99-101
17. CBFWA funding letter.
18. FY 2007-2009 funding letters from CRITFC, Four-Chairs, and each tribe.
19. CRITFC PFR and PFR 2 comments
20. Yakama PFR and PFR 2 comments
21. Can BPA afford salmon recovery
22. Testimony of the Yakama Nation to the Senate Indian Affairs Committee Hearing on Salmon Restoration Issues in the Northwest, June 4, 2003
23. Tribal Circumstances and Impacts of the Lower Snake River Project on the Nez Perce, Yakama, Umatilla, Warm Springs and Shoshone Bannock Tribes, 1999.
24. Yakama Nation letter to BPA on Financial Choices, September 18, 2002
25. Equitable Treatment materials
26. ESA materials
27. Tribal Energy Vision
28. Fish Passage Center, 2005 Annual Report, July 2006
29. State, Federal and Tribal Anadromous Fish Managers Comments on the Northwest Power Planning Council Draft Mainstem Amendments as they relate to Flow/Survival Relationships for Salmon and Steelhead, Final Document, January 2003
30. Effects of Hydropower Operations on Spawning Habitat, Rearing Habitat, and Stranding/Entrapment Mortality of Fall Chinook Salmon in the Hanford Reach of the Columbia River, Final Report, August 10, 2006