



# United States Department of the Interior

BUREAU OF RECLAMATION  
Pacific Northwest Regional Office  
1150 North Curtis Road, Suite 100  
Boise, ID 83706-1234

**MAR - 3 2014**

IN REPLY REFER TO:

PN-1700  
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VIA ELECTRONIC MAIL ONLY

Mr. Barry Thom  
National Marine Fisheries Service  
525 NE Oregon Street Suite 300  
Portland, OR 97232

Subject: Bureau of Reclamation's Response – National Marine Fisheries Service –  
January 17, 2014, FCRPS Biological Opinion

Dear Mr. Thom:

Enclosed is the Bureau of Reclamation Pacific Northwest Region's 2014 Supplemental Decision Document to implement its portions of the January 17, 2014, Supplemental Biological Opinion for operation of the Federal Columbia River Power System.

If you have any questions relating to this document, please contact me at 208-378-5012 or Ms. Kate Puckett at 208-378-5089.

Sincerely,

Lorri J. Lee  
Regional Director

Enclosure

cc: Mr. Rock Peters  
Corps of Engineers, Northwestern Division  
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# RECLAMATION

*Managing Water in the West*

## **Pacific Northwest Region 2014 Supplemental Decision Document**

Following the

January 2014 NOAA Fisheries Supplemental Consultation on  
Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects  
in the Columbia Basin, and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation  
Program



U.S. Department of the Interior  
Bureau of Reclamation  
Pacific Northwest Region  
Boise, Idaho

February 2014

## **Mission of the Department of the Interior**

### **Protecting America's Great Outdoors and Powering Our Future**

The U.S. Department of the Interior protects America's natural resources and heritage, honors our cultures and tribal communities, and supplies the energy to power our future.

## **Mission of the Bureau of Reclamation**

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

## Table of Contents

	<u>Page</u>
Background .....	1
Reason for Decision .....	2
Decision.....	4
Citations.....	5

### Attachments

Attachment A – Decision Document dated June 11, 2010

On January 17, 2014 the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) issued the 2014 Supplemental Biological Opinion (2014 Supplemental BiOp) addressing the effects of the Federal Columbia River Power System (FCRPS) operations on several anadromous fish species listed for protection under the Endangered Species Act<sup>1</sup>. The Corps of Engineers (Corps), Bonneville Power Administration (BPA), and Bureau of Reclamation (Reclamation) (Action Agencies) together are implementing the provisions of the 2014 Supplemental BiOp, including the Reasonable and Prudent Alternative (RPA). This Supplemental Decision Document<sup>2</sup> outlines Reclamation's decision to implement the actions in the 2014 Supplemental BiOp for which it is responsible. This decision document incorporates by reference both Reclamation's 2010 (Reclamation 2010) and 2008 (Reclamation 2008) decision documents (Attachment A) that accepted the 2010 and 2008 FCRPS BiOps to the extent these are not inconsistent with this document.

## **Background**

On August 2, 2011, the U.S. District Court for the District of Oregon issued an Opinion and Order remanding NOAA Fisheries' 2010 Supplemental Biological Opinion with instructions to complete a new or supplemental biological opinion by January 1, 2014 (subsequently extended by Court order). On remand, the Action Agencies and NOAA Fisheries complied with the Court order and their substantive obligations under the Endangered Species Act (ESA). In the 2014-2018 FCRPS BiOp Implementation Plan, the Action Agencies identified actions to implement the RPA, in an adaptive management framework, through 2018, the term of the 2014 Supplemental BiOp. During the remand, NOAA Fisheries considered the need for more aggressive actions and produced a supplemental BiOp with an updated analysis that concluded the RPA, as amended, complies with the requirements of Section 7 of the ESA. During the remand, the Corps implemented the spring and summer spill operations consistent with prior court orders and produced monthly spill reports. The Action Agencies further continued to aggressively implement the 2010 FCRPS BiOp; and Annual BiOp implementation reports were submitted to the Court. These and other actions, as more fully reflected in the full administrative record on file with Reclamation, addressed and complied with the Court's 2011 order.

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<sup>1</sup> This 2014 Supplemental BiOp supplements NOAA Fisheries' 2010 Supplemental Biological Opinion, "Consultation on Remand For Operations of the Federal Columbia River Power System (FCRPS), 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program. The 2010 Supplemental BiOp supplemented the 2008 FCRPS BiOp and incorporated the Adaptive Management Implementation Plan (AMIP) into the Opinion.

<sup>2</sup> This decision document supplements Reclamation's June 11, 2010 decision (Attachment A) to implement its portions of the FCRPS RPA and incidental take statement terms and conditions set out in the 2010 Supplemental BiOp. It also supplements the September 3, 2008 FCRPS BiOp Reclamation Decision Document (Attachment 1 of Attachment A).

## Reason for Decision

Reclamation will implement its responsibilities under the 2014 Supplemental FCRPS BiOp because: 1) the weight of scientific and other information indicates that the RPA is not likely to “jeopardize the continued existence of any species” or “result in destruction or adverse modification of critical habitat;” 2) Reclamation can continue to successfully implement its portions of the RPA and Incidental Take Statement and can rely on the other agencies to do their parts; and 3) the RPA can be implemented consistent with other laws and regulations.

*Scientific and other information supports decision* – NOAA Fisheries (NOAA 2014a, b) completed a very thorough review of new information and RPA implementation to date; this included a comprehensive review of both the tributary and estuary habitat programs and the effects of climate change. This information supplements the review conducted in 2010 (NOAA 2010) and the extensive analyses conducted in 2008 (NOAA 2008a, b). Reclamation’s evaluation considered NOAA Fisheries’ work and the 2013 Comprehensive Evaluation (BPA et al. 2013a), the 2014-2018 Implementation Plan (BPA et al. 2014a), *FCRPS Improvements and Operations Under the Endangered Species Act – A Progress Report* (BPA et al. 2013b), *Science and the Evaluation of Habitat Improvement Projects in Columbia River Tributaries* (BPA and Reclamation 2013a), *Benefits of Tributary Habitat Improvement in the Columbia River Basin* (BPA and Reclamation 2013b). Reclamation also reviewed and considered information from other sources including comments provided on the 2013 Comprehensive Evaluation and the 2014-2018 Implementation Plan; the Action Agencies Response to Comments on the 2013 Comprehensive Evaluation and 2014-2018 Implementation Plan (BPA et al. 2014b); comments provided on the Annual Progress Reports; annual Fish Operations Plans; other agency decision documents; and the information provided by parties to *NWF v. NMFS* contained in pleadings including motions, briefs and declarations. This body of work<sup>3</sup> represents reasoned analyses of the status of salmon and steelhead, the effects of the proposed actions and implementation of the RPA, and supports the conclusion that the RPA is not likely to “jeopardize the continued existence of any species” or “result in destruction or adverse modification of critical habitat.” Reclamation is not aware of new information that would alter this conclusion<sup>4</sup>.

*Reclamation can implement its part of the RPA* – As documented in the 2013 Comprehensive Evaluation and 2014-2018 Implementation Plan, the Action Agencies have demonstrated

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<sup>3</sup> The full body of information considered by Reclamation in reaching its decision is contained in the Administrative Record and incorporated by reference herein (available by April 30, 2014).

<sup>4</sup> Subsequent to NOAA’s issuance of the 2014 Supplemental FCRPS BiOp, there has been additional information regarding the proposed spill test. This new information does not undermine NOAA Fisheries’ findings and conclusions in the 2014 Supplemental FCRPS BiOp (e.g., see ISAB 2014).

significant progress in implementing RPA actions<sup>5</sup>, and, especially with respect to habitat, have expanded their capacity to implement more projects. Reclamation will continue to operate the irrigation projects under consultation here consistent with the RPA, continue to implement and improve the tributary habitat program for salmon and steelhead, continue reforms at the Leavenworth Hatchery Complex, and continue to monitor the effectiveness of tributary habitat actions in the Methow Basin. In addition, Reclamation, in coordination with the Corps, will attempt to move Caspian terns away from Goose Island in Potholes reservoir to reduce predation on Upper Columbia steelhead and spring Chinook. Reclamation has been successful for many years at securing funding to carry out the above actions and will continue to seek the funds necessary to implement Reclamation's commitments in the 2014 Supplemental BiOp and RPA. Reclamation will continue to work cooperatively with the other Action Agencies to implement the RPA through the full BiOp period. Collectively, Reclamation will continue to implement the RPA in accordance with the 2014-2018 Implementation Plan.

Reclamation has also reviewed the 2014 Incidental Take Statement and will adhere to the Incidental Take Statement and any terms and conditions applicable to Reclamation. Reclamation interprets the Incidental Take Statement as described on pages 29-30 of Reclamation's 2008 FCRPS BiOp Decision Document (Reclamation 2008).

*The RPA can be implemented consistent with other laws and regulations* – Operating and maintaining Reclamation's FCRPS and other projects is a complex undertaking. While operating and maintaining Reclamation's FCRPS and other projects, Reclamation is responsible for ensuring consistency with a number of statutes, regulations, treaties, and other factors in its decision-making. Reclamation can implement the RPA consistent with these other laws and regulations (see pages 22-28, Reclamation 2008). There may be circumstances when Reclamation will need to balance among competing objectives of multiple laws and regulations.

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<sup>5</sup> For example, the 2013 Comprehensive Evaluation showed that Reclamation was able to operate Grand Coulee Dam, Banks Lake, and Hungry Horse Dam consistent with the RPA—including providing flow augmentation – (see Tables 7 and 9, Section 2, BPA et al. 2013a); that Reclamation's funding, technical assistance, and other efforts for improving tributary habitat was effective (see pages 51-68, Section 1, pages 143-177, Section 2, Attachment 2, Tables 1 through 3, Attachment 3, and Appendices A through D, BPA et al. 2013a); that hatchery reforms were implemented at Entiat and Winthrop hatcheries (pages 205, 211, 212, Section 2, BPA et al. 2013a); and that the tributary habitat research and monitoring informs our knowledge of habitat project effectiveness (for example, see pages 369 and 370, Section 2, BPA et al. 2013a).

## Decision

It is my decision that Reclamation will implement each component of the RPA and of the Incidental Take Statement that pertains to Reclamation. The RPA will be implemented in accordance with applicable laws and regulations.

Signed:  \_\_\_\_\_

Date: Feb. 26, 2014

Lorri J. Lee  
Regional Director, Pacific Northwest Region  
Bureau of Reclamation  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706-1234



## Citations

### Parenthetical Reference

### Bibliographic Citation

BPA et al. 2013a	BPA, Corps, and Reclamation. 2013. Endangered Species Act Federal Columbia River Power System, 2013 Comprehensive Evaluation - Section 1, Section 2, and Section 3. December 2013.
BPA et al. 2013b	BPA, Corps, and Reclamation. 2013. Federal Columbia River Power System Improvements and Operations under the Endangered Species Act – A Progress Report. September 2013.
BPA et al. 2014a	BPA, Corps, and Reclamation. 2014. Endangered Species Act Federal Columbia River Power System, 2014-2018 Implementation Plan. January 2014.
BPA et al. 2014b	BPA, Corps, and Reclamation. 2014. Response to Comments on the 2013 FCRPS Comprehensive Evaluation and 2014-2018 FCRPS Implementation Plan. January 2014.
BPA and Reclamation 2013a	BPA and Reclamation. 2013. <i>Science and the Evaluation of Habitat Improvement Projects in Columbia River Tributaries</i> . March 2013.
BPA and Reclamation 2013b	BPA and Reclamation. 2013. <i>Benefits of Tributary Habitat Improvement in the Columbia River Basin</i> . Results of Research, Monitoring and Evaluation, 2007-2012. July 2013.
ISAB 2014	Independent Scientific Advisory Board. Review of Proposed Spill Experiment. ISAB 2014-2. February 20, 2014.
NOAA 2008a	NOAA Fisheries. 2008. Endangered Species Act Section 7(a)(2) Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation. Consultation on Remand for Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program (Revised and reissued pursuant to court order, NWF v. NMFS, Civ. No. CV 01-640-RE (D. Oregon)). May 5, 2008.
NOAA 2008b	NOAA Fisheries. 2008. Supplemental Comprehensive Analysis of the Federal Columbia River Power System and Mainstem Effects of the Upper Snake and other Tributary Actions. May 5, 2008.

**Parenthetical Reference****Bibliographic Citation**

NOAA 2010	NOAA Fisheries. 2010. Endangered Species Act, Section 7(a)(2) Consultation Supplemental Biological Opinion. Supplemental Consultation on Remand for Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program. May 20, 2010.
NOAA 2014a	NOAA Fisheries. 2014. Endangered Species Act Section 7(a)(2) Supplemental Biological Opinion. Consultation on Remand for Operation of the Federal Columbia River Power System. January 17, 2014.
NOAA 2014b	NOAA Fisheries. 2014. NOAA Fisheries Responses to Comments from the Sovereign Review of the 2013 Draft Supplemental Biological Opinion. January 17, 2014.
Reclamation 2008	Bureau of Reclamation 2008. Pacific Northwest Region. Decision Document. Following the May 2008 NOAA Fisheries FCRPS Biological Opinion on Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program (Revised and reissued pursuant to court order, NWF v NMFS, Civ. No. CV 01-0640-RE (D. Oregon)). September 3, 2008.
Reclamation 2010	Bureau of Reclamation 2010. Pacific Northwest Region. 2010 Supplemental Decision Document. Following the May 2010 NOAA Fisheries Supplemental Consultation on Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin, and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program. June 11, 2010.

## **Attachment A**

**Decision Document dated June 11, 2010**

# RECLAMATION

*Managing Water in the West*

**PACIFIC NORTHWEST REGION**

## **2010 SUPPLEMENTAL DECISION DOCUMENT**

Following the

May 2010 NOAA Fisheries Supplemental Consultation On  
Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the  
Columbia Basin, and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program



U.S. Department of the Interior  
Bureau of Reclamation

June 11, 2010

## **Mission Statements**

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGION**

**SUPPLEMENTAL DECISION DOCUMENT  
FOLLOWING**

**NOAA FISHERIES' MAY, 2010 Endangered Species Act Section 7(1)(2)  
Consultation Supplemental BIOLOGICAL OPINION**

**SUPPLEMENTAL CONSULTATION ON REMAND FOR OPERATION OF THE  
FEDERAL COLUMBIA RIVER POWER SYSTEM,  
11 BUREAU OF RECLAMATION PROJECTS IN THE COLUMBIA BASIN AND  
ESA SECTION 10(a)(1)(A) PERMIT FOR JUVENILE FISH  
TRANSPORTATION PROGRAM**

TABLE OF CONTENTS

**I. Introduction..... 1**

**II. Background ..... 1**

**III. Adaptive Management Implementation Plan ..... 3**

**IV. 2010 Supplemental Biological Opinion ..... 4**

**V. Other Considerations..... 8**

**VI. Conclusions..... 9**

**VII. Decision ..... 10**

**VIII. Re-initiation of Consultation..... 11**

**IX. Literature Cited ..... 12**

Attachment 1: 2008 Decision Document

Attachment 2: The May 3, 2010 letter from the FCRPS action agencies requesting reinitiation of consultation.

Attachment 3: The May 4, 2010 letter from NOAA Fisheries confirming the reinitiation.

Attachment 4: Tributary Habitat Improvements

## I. Introduction

On May 20, 2010 NOAA Fisheries issued the 2010 Supplemental Biological Opinion (2010 Supplemental BiOp) on Federal Columbia River Power System (FCRPS) operations. This document supplements NOAA Fisheries' 2008 Biological Opinion "*Consultation on Remand For Operations of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program*" The 2010 Supplemental BiOp formally incorporates the Adaptive Management Implementation Plan (AMIP), completed in September, 2009, into the Opinion.

In its Decision Document dated September 3, 2008 [Attachment 1], Reclamation documented its decision to implement its portions of the FCRPS Reasonable and Prudent Alternative (RPA) and incidental take statement (ITS) terms and conditions set out in the 2008 FCRPS BiOp.<sup>1</sup> Reclamation made this decision because it determined that the RPA as analyzed by NOAA Fisheries met Reclamation's ESA responsibilities to ensure that its actions to operate the FCRPS did not jeopardize ESA-listed species and did not destroy or adversely modify designated critical habitat. Subsequent to the 2008 Decision Document, the Action Agencies proceeded to implement the 2008 FCRPS BiOp's RPA. The 2008 Reclamation Decision Document is attached in its entirety (Attachment 1) and this new 2010 Decision Document is supplemental to the 2008 Reclamation Decision Document.

This 2010 Supplemental Decision Document sets forth Reclamation's decision to implement those actions in the 2010 Supplemental BiOp for which it is responsible.<sup>2</sup>

## II. Background

In May 2008, NOAA Fisheries concurrently issued Biological Opinions on the operations of FCRPS projects, operations of Reclamation's Upper Snake Projects, and the *United States v. Oregon* Harvest Management Agreement (collectively described as the "Prospective Actions"). The collective effects of these actions

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<sup>1</sup> The Action Agencies (Corps of Engineers, Bonneville Power Administration, and Reclamation) are together implementing the RPA.

<sup>2</sup> ESA regulations state that "following the issuance of a biological opinion, the Federal [action] agency shall determine whether and in what manner to proceed with the [proposed] action in light of its Section 7 obligations and the Service's biological opinion" [50 CFR Part 402.15 (a)].



were evaluated in the Supplemental Comprehensive Analysis that NOAA Fisheries issued simultaneously with the biological opinions listed above. NOAA Fisheries concluded that the combination of these Prospective Actions avoids jeopardizing listed species and the destruction or adverse modification of their designated critical habitat.

In the fall of 2008, the National Wildlife Federation (NWF) and others initiated a court challenge of the 2008 FCRPS BiOp.<sup>3</sup> Plaintiffs and the federal defendants filed cross-motions for summary judgment, which were heard by United States District Court Judge James A. Redden in March 2009. Soon after oral argument, the parties met with Judge Redden. As a result of that meeting, the Obama Administration agreed in April 2009 to review the 2008 FCRPS BiOp. In May 2009 Judge Redden also issued a letter to the parties providing suggestions and guidance for this review.

The Obama Administration's leadership at the highest levels of each of the involved agencies actively engaged in an extensive six-month review of the 2008 FCRPS BiOp.<sup>4</sup> They also met with all of the parties in the *NWF* case and engaged the services of independent scientists. BPA, the Corps, Reclamation and NOAA Fisheries worked closely with Administration officials to inform them of the complex, interconnected issues in the Columbia River basin. From this review, the Administration developed the AMIP.

On September 15, 2009 the Federal Defendants filed the AMIP with the Court. The AMIP, discussed in detail below, describes triggers, contingency actions, and improved monitoring and analytical tools.

On November 23, 2009 Judge Redden held a hearing to consider the parties' views on the AMIP. He noted that the AMIP was a very positive development, but expressed reservations about whether the AMIP was properly before the court pursuant to the Administrative Procedures Act (APA). He asked the parties to provide recommendations on how the AMIP could be made subject to judicial review under the APA to be considered in conjunction with the 2008 FCRPS Biological Opinion.

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<sup>3</sup> *National Wildlife Federation et al. v. National Marine Fisheries Service et al.* Civ. No CV 01-0640-RE (D. Oregon). Among other things, the Plaintiffs challenged the jeopardy standard, critical habitat analysis, climate change considerations, analysis of the effects on killer whales, and the failure to obtain CWA section 401 certifications from the states prior to the issuance of an incidental take statement.

<sup>4</sup> Four different Cabinet-level agencies and the White House were represented in this process. The lead official for each agency in this review was: NOAA Administrator Dr. Jane Lubchenco for the Department of Commerce; Council on Environmental Quality Chair, Nancy Sutley for the White House; Principal Deputy Assistant Secretary of the Army, Terrence "Rock" Salt for the Department of Defense; Associate Deputy Secretary, Laura Davis for the Department of the Interior; and, for the Department of Energy, Bonneville Power Administration Administrator Steve Wright.

In response to suggestions from the parties, Judge Redden sent a letter on February 10, 2010, offering to the federal defendants a limited voluntary remand of 90 days for the purpose of incorporating the AMIP and its administrative record into the 2008 FCRPS BiOp. Judge Redden in the letter also explained that “Federal Defendants must comply with the ESA in preparing any amended/supplemental biological opinion.” The United States accepted the offer, and on February 19, Judge Redden entered an order for a limited voluntary three month remand of the 2008 FCRPS BiOp.

During the course of the limited voluntary remand, the federal agencies reinitiated ESA section 7 Consultation on the operation of the FCRPS<sup>5</sup>. On May 20, 2010, the United States filed 2010 Supplemental BiOp and related documents to complete the limited voluntary remand.

### **III. Adaptive Management Implementation Plan**

In the course of its review, the Obama Administration carefully considered the Court’s suggestions in its letter to the parties of May 18, 2009<sup>6</sup>. The Court observed, and the United States agrees, “that the concept of ‘adaptive management’ is flexible enough to allow the implementation of additional and/or modified mitigation actions within the structure of the existing BiOp.”

Because the AMIP is an important component of the decisions documented herein, a detailed summary of the development and conclusions of the AMIP follows. The Obama Administration performed a thorough review of the 2008 FCRPS BiOp and RPA, the science on which they were based, the issues raised by litigants, and the issues outlined in the Court’s May 18, 2009 letter. The Administration determined that the science underlying the 2008 FCRPS BiOp was fundamentally sound. However, the Administration also determined that in light of the inherent uncertainties in some of the predictions regarding the future condition of the listed species, there was a need to better understand: (1) how climate change may affect these species and their habitats; (2) the impact of invasive species and predators on the listed species; and (3) the interactions among the listed species. The Administration directed the development of the AMIP to address these issues by accelerating and enhancing existing RPA mitigation actions. The AMIP:

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<sup>5</sup> Attachment 2 is The May 3, 2010 letter from the FCRPS action agencies requesting reinitiation of consultation. Attachment 3 is the May 4, 2010 letter from NOAA Fisheries confirming the reinitiation.

<sup>6</sup> See FCRPS Adaptive Management Implementation Plan, September 11, 2009, including Appendix 1.

- Describes the Administration’s process to understand the science and issues pertaining to the 2008 BiOp, which led to development of the AMIP (see also Appendix 1)
- Accelerates and enhances specific RPA implementation actions (Section II)
- Enhances Research, Monitoring and Evaluation (RM&E) actions to fill data gaps, including the development of an expanded life-cycle model which, among other uses, will aid in determining the suite of identified Rapid Response and Long-term Contingency Actions (see below) to be implemented if triggered (Section III)
- Establishes new biological triggers that, when exceeded, will activate near and longer term responses to address significant fish declines (Section IV)
- Identifies and establishes the process for implementing those near and longer term responses if a trigger is exceeded (termed Rapid Response Actions and Long-term Contingency Actions, respectively)(Section IV)
- Describes processes for transparency in adaptive management, scientific review, issue resolution, and reporting (Sections V and VI)

## **IV. 2010 Supplemental Biological Opinion**

During the limited voluntary remand, the Action Agencies formally reinitiated consultation with NOAA Fisheries on the 2008 FCRPS BiOp for the purpose of integrating the AMIP into the BiOp in a procedurally sound fashion and conducting a review of new and relevant scientific information not available at the time the 2008 FCRPS BiOp was completed. These activities together resulted in the 2010 Supplemental BiOp, which integrated the amended AMIP into the RPA as RPA action 1A.

### **Science Review**

To support its science review conducted under the limited voluntary remand, NOAA Fisheries solicited new scientific information from Northwest states and tribes, parties to the litigation, its Northwest Fisheries Science Center, and the Independent Scientific Advisory Board (ISAB). The new and relevant scientific information that was submitted and considered by NOAA included new information on: salmon and steelhead status; the physical and biological effects of climate change; impacts from avian predation; ecological interactions between hatchery and wild salmon and steelhead; harvest information; Southern Resident Killer Whales and the Southern DPS of North American Green Sturgeon. NOAA’s science review was extensive and complete.

New quantitative information on species status, which represent a partial data update, was found to be within the range of variability anticipated in the BiOp. As NOAA explained, these data updates cannot be directly compared to the 2008 BiOp analysis. The new information showed that species abundance improved (10 year average abundances were 17-160% higher than those used in the 2008 BiOp for most ESUs) and trends in abundance were stable or increasing for all listed species with the exception of Snake River sockeye salmon. The Snake River sockeye salmon abundance trend was “mixed” due to the degree of artificial propagation necessary to maintain the ESU. Other metrics showed either mixed results or decreases compared to the 2008 BiOp analysis. These tended to be lagging metrics and current indications are that these will improve in 2009, 2010 and possibly 2011 (2010 Supplement at p 32). As was described in the 2008 BiOp and associated documents, the metrics were meant to be considered together and with relevant qualitative information<sup>7</sup>. The 2008 BiOp anticipated that salmon population performance would exhibit significant variability within the 10 year period of the BiOp because fluctuations are a basic part of salmon population dynamics –the numbers will constantly be changing (2010 Supplemental Biop at p 32).

NOAA only used new population-level quantitative data for some populations because this was all that was available. Under the 2010 Supplemental BiOp’s RPA action 3, the Action Agencies will conduct a Comprehensive Evaluation of species status and BiOp implementation in 2013. The Comprehensive Evaluation will be more complete than what NOAA could do at this time for multiple reasons. One reason is that 2008 BiOp implementation effects have not yet shown up in the data. Salmon that go through the dams as juveniles do not return for 2-3 years so there is a lag between when actions are completed and when we see the effects of those actions in the adult return data; some habitat improvements, like riparian habitat improvements, take much longer to show up.

Climate change was a particular concern raised by many of the independent scientific reviewers and commenters during the voluntary remand process. After a thorough review of new climate science, the 2010 Supplemental BiOp concluded that the physical effects of climate change are likely to be within the

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<sup>7</sup> The 2008 Biological Opinion considered multiple metrics indicative of species status. Each of these metrics provides a complementary but slightly different view of the same underlying population processes. Each has its strengths and weaknesses. As NOAAF indicated in its July 12, 2006 jeopardy standard memo, “Because of the uncertainty attendant to any metric regarding the prospects for recovery and the difficulty in extrapolating from the population level on which those metrics are based, no one metric will be used to assess an ESU’s potential for recovery. Instead, NOAA will consider a number of metrics, including those generated in the recovery planning process, along with other qualitative biological information and apply its best professional judgment as to an ESU’s prospects for recovery.”

range of effects considered in the 2008 FCRPS BiOp. Also, as noted at section 8.1.3 of the 2008 FCRPS BiOp: "The full breadth of long-term climate change is unlikely to be realized in the ten-year term of this Opinion."

## **Amended AMIP**

In response to the new information NOAA considered, and consistent with the RPA and AMIP, the Action Agencies and NOAA developed the additional implementation actions noted below to amend and further enhance the AMIP. As a precautionary measure, these new actions are intended to further reduce uncertainties associated with climate change, the potentially adverse effects of hatchery fish, non-indigenous species and toxics. The specific actions are listed below.

### ***Amendment 1:***

"Under RPA Action 55 the Action Agencies will undertake selected hydrosystem research to resolve critical uncertainties. As part of this action, by June 2012, the Corps will complete a NOAA Fisheries Supplemental FCRPS Biological Opinion report to identify the use and location of adult salmon thermal refugia in the lower Columbia and lower Snake Rivers using existing information on adult migration, temperature monitoring data, and modeling efforts. Additional investigation or action may be warranted based on the results of this report."

### ***Amendment 2:***

"Under RPA Action 52, the Action Agencies will enhance fish population monitoring. As part of this action, in February 2011 the Corps will initiate a study at The Dalles and John Day Dams to determine a cost effective adult PIT tag detection system design and whether installation of PIT tag detectors will improve inter-dam adult survival estimates. The study will be completed by December 2012. Following the results of the study, by April 2013, the Action Agencies will determine in coordination with NOAA if one or both of these PIT tag detectors substantially improve inter-dam adult loss estimates. If warranted, the Action Agencies will proceed to construction. Funding will be scheduled consistent with the RPA requirement and priorities for performance standard testing and achievement of these performance standards at the projects."

### ***Amendment 3:***

"Under RPA Action 15, the Action Agencies are providing water quality information and implement water quality measures to enhance fish survival and protect habitat. As part of this action, the Action Agencies will contribute to regional climate change impact evaluations by providing NOAA past and future water temperature data from their existing monitoring stations, to be used as part of a regional temperature database. The Action Agencies will begin to provide

data to NOAA within 6 months following the establishment of a regional database and annually thereafter. NOAA anticipates having a regional database established no later than 2012.”

**Amendment 4:**

”Under RPA Action 35, the Action Agencies are identifying tributary habitat projects for implementation and consider potential effects of climate change on limiting factors. As part of this action, the Action Agencies will continue to coordinate with NOAA in its efforts to use existing tributary habitat effectiveness studies, IMWs, and the NOAA enhanced lifecycle modeling to track climate change impacts. Starting in September 2011, the Action Agencies will annually provide NOAA with study data to be used as part of a regional climate change database. After 2011, new climate change findings will be provided to the tributary habitat expert panels to apply and use to help identify and prioritize habitat improvement actions.”

**Amendment 5:**

“Under RPA Action 35, the Action Agencies are identifying tributary habitat projects for implementation based on the population specific overall habitat quality improvement identified in the RPA Action. As part of this action, after 2011, the Action Agencies will include as a consideration in the expert panel project evaluation process 1) the presence of invasive species NOAA Fisheries Supplemental FCRPS Biological Opinion and 2) site-specific toxicology issues, based on information made available by the appropriate state and Federal agencies.”

**Amendment 6:**

“Under RPA Action 64 and under the AMIP Hatchery Effects p. 22, the Action Agencies are supporting efforts to resolve hatchery critical uncertainties. As part of this effort, beginning in December 2010, the Action Agencies will assist NOAA to further develop or modify existing studies that address the Ad Hoc Supplementation Workgroup Recommendations Report and that additionally address potential density-dependent impacts of FCRPS hatchery releases on listed species. These studies would provide support for future hatchery management actions to reduce potential adverse hatchery effects. By December 2010, the Action Agencies will work with NOAA to convene a technical workgroup with fishery managers to discuss potential studies and potential management tools. The goal for the workgroup will be to complete its work by December 2011.”

## **Reasonable and Prudent Alternative**

The 2010 Supplemental BiOp integrated the amended AMIP into the RPA as RPA action 1A. RPA Action 1A is the FCRPS AMIP as modified by the six amendments described above. Reclamation will work with NOAA, the Corps, and BPA to implement RPA Action 1A and will continue to implement the RPA as per Table 3 of Reclamation's 2008 Decision Document. Reclamation's work with NOAA and the other Action Agencies on the AMIP amendments will focus on, rapid response actions, contingency plans, certain Intensively Monitored Watershed actions in the Methow River and amendments 3-6. In addition, Reclamation is contributing funds to help implement RPA action 47 to explore methods to reduce Caspian terns near Potholes Reservoir. The purpose of this action is to determine whether there are management actions that might reduce Caspian terns near Potholes Reservoir.

### ***Progress Implementing the Reasonable and Prudent Alternative***

The Action Agencies have diligently implemented the RPA since May of 2008 and continue to do so [2008 FCRPS Progress Report] and [draft 2010 FCRPS Implementation Plan]. This massive effort to improve the survival of salmon and steelhead listed under the ESA includes the use of spill and surface passage structures at dams, management of water releases from storage reservoirs, expanded control of predators that prey on young salmon, improvement of tributary and estuary habitat, and implementation of hatchery reform actions. In addition, the Fish Accords, which improve the certainty that habitat projects will be implemented, are well underway (see Attachment 4). Reclamation efforts during 2010-2013 focus on providing flow augmentation and other water management efforts; providing technical assistance for tributary habitat improvements; hatchery reform actions; and tributary habitat effectiveness research and monitoring.

Reclamation will continue to implement actions in the USFWS 2000 Biological Opinion for listed bull trout.

## **V. Other Considerations**

While operating and maintaining Reclamation's FCRPS and other projects, Reclamation is responsible for ensuring consistency with a number of statutes, regulations, and treaties, as well as other factors in its decision-making. The decision to implement the action in the 2010 Supplemental BiOp and the need to examine other responsibilities are consistent with considerations outlined in Reclamation's 2008 Decision Document. Other considerations include authority, compliance with other laws and regulations including (1) additional endangered species act compliance, (2) Tribal Treaty and trust responsibilities, (3) Clean

Water Act, (4) Magnuson Fishery Conservation and Management Act, (5) National Environmental Policy Act,<sup>8</sup> (6) National Historic Preservation Act, and (7) Pacific Northwest Electric Power Planning and Conservation Act.

Implementation of the RPA, including RPA Action 1A, remains consistent with the other statutes, authorities, treaties, and regulations for which Reclamation is responsible as set out in Reclamation's 2008 FCRPS Decision Document.

## VI. Conclusions

Reclamation evaluated the related 2008 Decision Documents, the AMIP, the amended AMIP, and the 2010 Supplemental BiOp. Based on the full body of information available to us, I conclude that:

- 1) The Action Agencies' 2007 FCRPS Biological Assessment and Comprehensive Analysis continue to be a reasoned assessment of the effects of the proposed actions on each ESA-listed species and their critical habitat.
- 2) NOAA Fisheries' 2008 analysis appropriately concludes that the FCRPS action does not jeopardize the continued existence of any species or adversely modify or destroy critical habitat.
- 3) The analyses used by the 2007 FCRPS Biological Assessment and 2008 Biological Opinions comply with the decisions and orders of the Oregon Federal District Court in *NWF v. NMFS*.

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<sup>8</sup> Reclamation previously evaluated the environmental effects from FCRPS operations in three NEPA documents. Three environmental impact statements were prepared in the 1990s that analyzed operation of Federal projects, primarily to benefit salmon species listed under the ESA. The NEPA documents relevant to this decision include the *1992 Columbia River Salmon Flow Improvement Measures Options Analysis Environmental Impact Statement* (EIS) and its 1993 supplement, which analyzed alternatives to benefit salmon species listed under the ESA; and the *System Operation Review EIS* completed in 1997. Reclamation also prepared the *Upper Columbia Alternative Flood Control and Fish Operations EIS* (VARQ EIS), *Lake Roosevelt Incremental Storage Release Project FONSI and EIS*, and the *Banks Lake Drawdown EIS* (Banks Lake EIS 2004).

In addition to the NEPA documents addressed above, Reclamation reviewed and considered the Bonneville Power Administrator's Record of Decision 2008 Columbia Basin Fish Accords, dated May 2, 2008.

As individual actions in the 2008 Reasonable and Prudent Alternative and committed to in the 2008 Decision Document, and in the 2010 Supplemental BiOp and this Decision Document are programmed for implementation, site-specific NEPA analyses may be necessary to assure full compliance.



- 4) The Columbia Basin Accords among the Action Agencies, Tribes, and States result from collaboration encouraged by the District Court and provide additional benefits to fish that the Action Agencies' and NOAA Fisheries' ESA analyses take into account.
- 5) The FCRPS Action and 2008 FCRPS BiOp result from, and offer opportunities for, continued dialogue and collaboration.
- 6) The AMIP appropriately sets out contingency plans and enhanced measures for implementing the supplemental RPA.
- 7) NOAA Fisheries 2010 Supplemental BiOp (a) properly incorporates the AMIP into RPA as Action 1A, and (b) properly addresses the best available scientific and commercial data that has been developed or produced since completion of the 2008 FCRPS BiOp.
- 8) NOAA Fisheries' 2010 Supplemental BiOp appropriately concludes that the FCRPS action does not jeopardize the continued existence of any species or adversely modify or destroy critical habitat.
- 9) The FCRPS Action analyzed in the 2010 Supplemental BiOp is consistent with other Federal laws and responsibilities as outlined in section V (Other Considerations).

I conclude that the FCRPS proposed actions meet the regulatory requirements of Sec. 7(a)(2) of the ESA and the implementing regulations in that the proposed action is not likely to "jeopardize the continued existence of any species" or "result in the destruction or adverse modification of critical habitat proposed to be designated" for the listed species. In addition, the proposed actions are consistent with other laws and regulations.

## VII. Decision

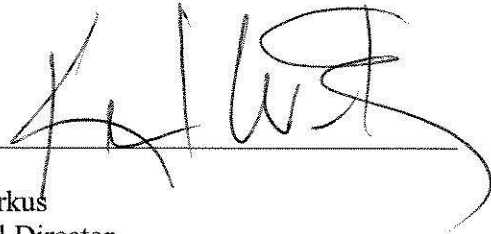
***Reasonable and Prudent Alternative.*** In light of the above conclusions, it is my decision that Reclamation will implement each component, that pertains to Reclamation, of the Reasonable and Prudent Alternative, including RPA action 1A of the 2010 Supplemental Biological Opinion, recognizing that the adaptive management framework may require adjustments to the actions to meet survival improvements identified in the 2008 FCRPS Biological Opinion. The Reasonable and Prudent Alternative will be implemented in accordance with applicable laws.

***Incidental Take Statement.*** Reclamation interprets the Incidental Take Statement (ITS) as described in Reclamation's 2008 Decision Document.

## VIII. Re-initiation of Consultation

Re-initiation of consultation is governed by regulations set forth at 50 CFR §402.16 and is required: “(a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) If a new species is listed or critical habitat designated that may be affected by the identified action.” Reclamation will, in cooperation with the other Action Agencies and NOAA Fisheries, apply these criteria to determine whether and when reinitiation of consultation is necessary.

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

6/11/2010

Karl Wirkus  
Regional Director  
Bureau of Reclamation

## IX. Literature Cited

<b>Parenthetical Reference</b>	<b>Bibliographic Citation</b>
NOAA Fisheries 2010	NOAA Fisheries 2010, Supplemental Consultation on Remand for Operations of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program, May 20, 2010
2008 FCRPS Progress Report	Protecting Salmon and Steelhead, Endangered Species Act, Federal Columbia River Power System, 2008 Progress Report, December 2009. Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration
Draft 2010 FCRPS Implementation Plan	Endangered Species Act, Federal Columbia River Power System, Draft 2010-2013 Implementation Plan, June 2010. Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration
NOAA Fisheries et al. 2009	FCRPS Adaptive Management Implementation Plan, Appendix 1, September 2009. NOAA Fisheries, Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration

# **Attachment 1**

# RECLAMATION

*Managing Water in the West*

**PACIFIC NORTHWEST REGION**

## **DECISION DOCUMENT**

Following the  
May 2008 NOAA Fisheries FCRPS Biological Opinion  
On  
Operation of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the  
Columbia Basin, and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program (Revised  
and reissued pursuant to court order, NWF v NMFS, Civ. No. CV 01-0640-RE (D. Oregon))



**U.S. Department of the Interior  
Bureau of Reclamation**

**September 3, 2008**

## **Mission Statements**

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

**U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
PACIFIC NORTHWEST REGION**

**DECISION DOCUMENT  
CONCERNING THE**

**NOAA FISHERIES' MAY 5, 2008, BIOLOGICAL OPINION**

**CONSULTATION ON REMAND FOR OPERATION OF THE FEDERAL  
COLUMBIA RIVER POWER SYSTEM,  
11 BUREAU OF RECLAMATION PROJECTS IN THE COLUMBIA  
BASIN AND ESA SECTION 10(a)(1)(A) PERMIT FOR JUVENILE FISH  
TRANSPORTATION PROGRAM**

**[Revised and reissued pursuant to court order, *NWF v. NMFS*, Civ. No. CV  
01-0640-RE (D. Oregon)]**

# TABLE OF CONTENTS

<b>I.</b>	<b>Introduction.....</b>	<b>1</b>
<b>II.</b>	<b>Background .....</b>	<b>2</b>
<b>III.</b>	<b>2007 FCRPS Biological Assessment and Comprehensive Analysis.....</b>	<b>6</b>
<b>IV.</b>	<b>The Columbia Basin Fish Accords .....</b>	<b>11</b>
<b>V.</b>	<b>2008 FCRPS Biological Opinion.....</b>	<b>13</b>
<b>VI.</b>	<b>Other Considerations.....</b>	<b>22</b>
<b>VII.</b>	<b>Conclusions.....</b>	<b>28</b>
<b>VIII.</b>	<b>Decision .....</b>	<b>29</b>
<b>IX.</b>	<b>Reinitiation of Consultation.....</b>	<b>31</b>
<b>X.</b>	<b>Literature Cited .....</b>	<b>33</b>
	<b>Attachment A .....</b>	<b>35</b>

# LIST OF TABLES

<b>Table 1 - Species Considered Under the 2008 FCRPS Biological Opinion .....</b>	<b>6</b>
<b>Table 2 – Columbia River Mainstem Effects were Considered at the Following Bureau of Reclamation Projects .....</b>	<b>8</b>
<b>Table 3 - On-Going and New Mitigation Actions by Reclamation.....</b>	<b>21</b>



# Abbreviations, Acronyms, and Definitions

TERM	DEFINITION
<b>Action Agencies</b>	U. S. Department of the Interior Bureau of Reclamation (Reclamation), U.S. Army Corps of Engineers, Bonneville Power Administration, the agencies responsible for management and operation of Federal hydroelectric projects in the Columbia and Upper Snake Rivers.
<b>Adaptive Management</b>	The process of adjusting management actions and/or directions based on new information.
<b>Anadromous Fish</b>	Species that are hatched in freshwater migrate to and mature in salt water and return to freshwater to spawn.
<b>Biological Assessment</b>	The Action Agencies' analysis of impacts of their proposed actions on species listed and proposed to be listed under the ESA. The Action Agencies produced biological assessments on projects in the Federal Columbia River Power System in the Columbia River and on projects in the Upper Snake River. See definition at 50 C.F.R. 402.02.
<b>Biological Opinion</b>	A document expressing NOAA Fisheries' opinion regarding whether and how a proposed action avoids jeopardy to listed species and the destruction or adverse modification of their critical habitat. See 50 C.F.R. § 402.02.
<b>BPA</b>	Bonneville Power Administration.
<b>Columbia Basin Accords (Accords)</b>	Agreements signed by the Action Agencies, four tribes, and two states to support the 2008 FCRPS BiOp and provide additional benefits to fish.
<b>Comprehensive Analysis</b>	The analysis conducted by the Action Agencies to assess impacts of proposed operation of major projects in the Federal Columbia River Power System (FCRPS). The CA provides the basis underlying the biological assessments on the FCRPS and Upper Snake projects.
<b>Corps</b>	U.S. Army Corps of Engineers.
<b>CRITFC</b>	Columbia River Intertribal Fish Commission.
<b>Cumulative Effects</b>	Effects of future state or private activities, not involving Federal activities, that are reasonably certain to occur. See definition at 50 C.F.R. 402.02.

<b>TERM</b>	<b>DEFINITION</b>
<b>EFH</b>	Essential fish habitat under the Magnuson Stevens Fisheries Management Act.
<b>EIS</b>	Environmental impact statement.
<b>Environmental Baseline</b>	Past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of state or private actions which are contemporaneous with the consultation in process. See definition at 50 C.F.R. 402.02.
<b>ESA</b>	Endangered Species Act, 16 U.S.C. 1531 <u>et seq.</u>
<b>ESA Recovery Plan</b>	A plan to recover a species listed as threatened or endangered under the U.S. Endangered Species Act (ESA). The ESA requires that recovery plans, to the extent practicable, incorporate (1) objective, measurable criteria that, when met, would result in a determination that the species is no longer threatened or endangered; (2) site specific management actions that may be necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions.
<b>Evolutionarily significant unit (ESU)</b>	A group of Pacific salmon or steelhead trout that is (1) substantially reproductively isolated from other specific units and (2) represents an important component of the evolutionary legacy of the species.
<b>FCRPS</b>	Federal Columbia River Power System.
<b>Federal Caucus</b>	Eight agencies operating in the Columbia River Basin that have natural resource responsibilities related to the Endangered Species Act (ESA). Through the Federal Caucus, these agencies coordinate their activities.
<b>ICTRT</b>	Interior Columbia Basin Technical Recovery Team.
<b>Jeopardize</b>	To reduce appreciably the likelihoods of survival and recovery of a species listed as threatened or endangered under the ESA. See 50 C.F.R. § 402.02 (definition of “jeopardize”).
<b>Multipurpose Facilities</b>	The Columbia River and the reservoir system are used for many purposes or uses. Projects that were authorized to serve a variety of purposes are referred to as “multipurpose.”
<b>NEPA</b>	National Environmental Policy Act.

<b>TERM</b>	<b>DEFINITION</b>
<b>NOAA Fisheries</b>	National Marine Fisheries Service, an agency within NOAA (also referred to as NMFS).
<b>NW Power and Conservation Council</b>	Pacific Northwest Electric Power and Conservation Planning Council, created under the Pacific Northwest Electric Power Planning and Conservation Act, which develops which develops power plans and a fish and wildlife programs to guide activities by the Bonneville Power Administration and other Federal and nonfederal entities in the Pacific Northwest.
<b>Reasonable and Prudent Alternative (RPA)</b>	Recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the purposes of the action, that is consistent with the scope of the Federal agency’s legal authority and jurisdiction, that is economically and technologically feasible, and that NOAA Fisheries believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. See definition at 50 C.F.R. § 402.02.
<b>Reclamation</b>	Bureau of Reclamation.
<b>Recovery</b>	Improvement in the status of a species to the point at which listing under the ESA is no longer appropriate.
<b>ROD</b>	Record of decision.
<b>RPA</b>	Reasonable and Prudent Alternative.
<b>Spill</b>	Water released from a dam over the spillway instead of being directed through the turbines.
<b>Supplemental Comprehensive Analysis (SCA)</b>	An analysis by NOAA Fisheries of the effects of three actions in the context of the environmental baseline and cumulative effects. The SCA provides the analysis underlying the evaluations in NOAA Fisheries’ Biological Opinions on operation of FCRPS projects, operation of Upper Snake River projects, and harvest activities under <i>U.S. v. Oregon</i> .
<b><i>U.S. v. Oregon</i></b>	Litigation under which Federal, State, and Tribal parties resolve differences respecting harvest levels of anadromous fish.

# I. Introduction

The Bureau of Reclamation (Reclamation) was authorized by Congress to construct, operate, and maintain multiple use projects in the Columbia River Basin for such purposes as irrigation, municipal and industrial water supply, flood control, hydropower generation, fish and wildlife, and recreation.

Some of these projects (or parts of projects) are operated in a coordinated manner with other Federal projects; the coordinated projects are referred to as the Federal Columbia River Power System (FCRPS). The FCRPS projects also operate in coordination with several public utility hydropower projects located along the mid-Columbia River and certain Canadian reservoir projects pursuant to the Columbia River Treaty between the United States and Canada. The FCRPS projects, located throughout the Pacific Northwest in the states of Idaho, Oregon, Montana, and Washington, provide a wide array of benefits to the citizens of the Northwest.

The operation and maintenance of the FCRPS projects affect species listed for protection under the Endangered Species Act (ESA). The ESA, Section 7(a) 2 requires that:

“[e]ach federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. . .”

The FCRPS Action Agencies (the Corps of Engineers (Corps), Bonneville Power Administration (BPA), and Reclamation), have engaged in several ESA consultations since the early 1990s with the National Marine Fisheries Service (NMFS or NOAA Fisheries) on actions concerning the operation and maintenance of the FCRPS projects that may affect listed anadromous species or adversely modify these species’ critical habitat.

After over two years of collaboration among regional sovereigns, on May 5, 2008, NOAA Fisheries issued the current biological opinion “*Consultation on Remand For Operations of the Federal Columbia River Power System, 11 Bureau of Reclamation Projects in the Columbia Basin and ESA Section 10(a)(1)(A) Permit for Juvenile Fish Transportation Program* [Revised and reissued pursuant to court order, *NWF v. NMFS*, Civ No. CV 01-0640-RE (D. Oregon)]” (2008 FCRPS Biological Opinion).

ESA regulations state “following the issuance of a biological opinion, the Federal [action] agency shall determine whether and in what manner to proceed with the [proposed] action in light of its Section 7 obligations and the Service's biological

opinion” [50 CFR Part 402.15 (a)]. This Decision Document sets forth Reclamation’s rationale for the decision to implement those actions for which it is responsible in the 2008 FCRPS Biological Opinion Reasonable and Prudent Alternative (RPA) and the terms and conditions of the Incidental Take Statement.

## II. Background

The Snake River sockeye salmon was the first anadromous fish species in the Columbia River Basin to be listed by NMFS (November 20, 1991). Since then, additional anadromous species have been listed. Reclamation and the other FCRPS Action Agencies have initiated numerous ESA Section 7 consultations to address the effects of the operation and maintenance of the FCRPS projects on listed salmon and steelhead and their critical habitat.

The National Wildlife Federation (NWF) and others filed an ESA challenge to the 2000 NOAA Fisheries FCRPS Biological Opinion, which the District Court ruled was arbitrary and capricious because it relied on (1) Federal mitigation actions that had not been subject to Section 7 consultation and (2) non-federal mitigation actions that had not been shown reasonably certain to occur [*NWF v. NMFS*, 254 F. Supp. 2d 1196, 1213 (D. Or. 2003)]. The court remanded to the agencies for a new Biological Opinion to correct these deficiencies, leaving the 2000 Biological Opinion in effect in the meantime.

In response to the remand, NOAA Fisheries issued the November 30, 2004 Biological Opinion on the operation of the FCRPS (2004 FCRPS Biological Opinion). On December 30, 2004, NWF filed a Second Supplemental Complaint challenging the 2004 FCRPS Biological Opinion. On May 26, 2005, the District Court held the 2004 Biological Opinion invalid followed by an October 7, 2005 Opinion and Order for NOAA Fisheries to engage in remand proceedings in accordance with the following instructions:

- 1) Correct its improper segregation of the elements of the proposed action NOAA Fisheries deems to be nondiscretionary;
- 2) Correct its improper comparison, rather than aggregation, of the effects of the proposed action on the listed salmon and steelhead;
- 3) Correct its flawed determinations as to whether the proposed action destroys or adversely modifies critical habitat;
- 4) Correct its failure to consider the effects of the proposed action on both recovery and survival of the listed species in determining whether the proposed action is likely to jeopardize the continued existence of listed salmon and steelhead; and,

- 5) Correct its past reliance on mitigation measures that are not reasonably certain to occur and/or have not undergone Section 7 consultation.

Further, the Court ordered NOAA Fisheries and the FCRPS Action Agencies to collaborate with regional sovereign States and Tribes to develop items to be included in the FCRPS proposed action, clarify policy issues, and reach agreement or narrow the areas of disagreement on scientific and technical information. Finally, the Order directed NOAA Fisheries to file periodic status reports with the Court, to provide preliminary information about the legal framework NOAA Fisheries intended to use in its jeopardy analysis, and the nature and scope of the proposed action or the reasonable and prudent alternative for the FCRPS.

On January 3, 2006, the Federal Defendant's First Remand Report was filed in which the Federal agencies committed to the Court that they would "apply the ESA, its implementing regulations and this Court's ruling of May 7, 2003 and May 26, 2005." In accordance with the District Court's remand order, the Federal, State, and Tribal entities outlined a collaborative process and formed a Policy Working Group, made up of one representative from each of the sovereign entities. The Policy Working Group established technical workgroups and policy subgroups to develop information concerning the status of the species, various State, Tribal and Federal actions, and the estimated effects of the various actions. There were more than 270 Policy Working Group and Technical Workgroup meetings involving more than 150 participants from 26 organizations. The Policy Working Group also provided ten briefings and discussions with other parties to the litigation at key milestones to keep them informed and to seek their input.

This collaboration process identified actions for salmon recovery, including an analysis of their effects that the FCRPS Action Agencies' could use in developing a Proposed Reasonable and Prudent Alternative. This process also identified actions to be taken by sovereign parties in coordinating regional salmon recovery efforts. The collaboration assisted the Action Agencies in the development of the FCRPS Biological Assessment and the Comprehensive Analysis.

A significant outcome of the collaboration process relied on in this consultation was the historic signing of the *Columbia Basin Fish Accords* (Accords). Reclamation and other parties signed the Accords on May 2, 2008.

***Comprehensive Analysis.*** The development of the Comprehensive Analysis responded to a ruling in *American Rivers v. NOAA Fisheries* [2006 U.S. Dist. Lexis 69442 (D.OR. Sept 26, 2006)] concerning the 2005 Upper Snake Biological Opinion. The District Court ruled that the analysis of effects in the 2004 FCRPS Biological Opinion remand be integrated with the analysis of effects for the Upper Snake River Biological Opinion remand. This would result in a "comprehensive

analysis" of the effects of the two actions on the listed species and designated critical habitat.

To address the District Court's concerns, the FCRPS Action Agencies and NOAA Fisheries embarked on a thorough lifecycle survival analysis that looks at the status of each of the listed species and the factors that have contributed to their decline, assesses the impact of the Federal agencies' proposed actions, and makes a determination of whether those actions and the actions of others will contribute to the recovery of these fish. The Action Agencies submitted the FCRPS Biological Assessment and Comprehensive Analysis to NOAA Fisheries on August 21, 2007. The analysis concluded that the Federal Agencies proposed actions would not jeopardize listed species or result in the destruction or adverse modification of their critical habitat.

NOAA Fisheries prepared a draft Biological Opinion with a Supplemental Comprehensive Analysis, which was released to the litigation parties and made available to the public on October 31, 2007. NOAA Fisheries received detailed and specific comments on the draft Biological Opinion. Responses to these are reflected in the final 2008 FCRPS Biological Opinion and Supplemental Comprehensive Analysis.

***Ninth Circuit Decision.*** The District Court's decision regarding the 2004 Biological Opinion was appealed to the Ninth Circuit. [*NWF v. NMFS*, 524 F.3d 917 (Ninth Cir. 2008)]. In its analysis, the Ninth Circuit examined what it means to "jeopardize the continued existence" of a listed species.

We have gleaned from the decision the following statements regarding agency action:

- A jeopardy analysis does not "have the effect of preventing any Federal action once background conditions place a species in jeopardy"
- "An agency may still take action that removes a species from jeopardy entirely or that lessens the degree of jeopardy."
- "An agency may not take action that will tip a species from a state of precarious survival into a state of likely extinction."
- "Even where baseline conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm."

The Ninth Circuit also held that the existence of the dams must be included in the environmental baseline while the operation of the dams is within the Federal agencies discretion, and that "[t]he proper baseline analysis is not the proportional share of responsibility the Federal agency bears for the decline in the species, but what jeopardy might result from the agency's proposed actions in the present and

future human and natural contexts” (524 F.3d at 930). The Court upheld the District Court’s conclusion “that the 2004 Biological Opinion impermissibly failed to incorporate degraded baseline conditions into its jeopardy analysis” (524 F.3d at 933). Further, the Ninth Circuit found that the “district court correctly determined that the 2004 Biological Opinion was legally deficient because its jeopardy analysis did not adequately consider the proposed action’s impacts on the listed species’ chances of recovery.”

In May 2008, NOAA Fisheries concurrently issued Biological Opinions on the operations of FCRPS projects, operations of Upper Snake Projects, and the *United States v. Oregon* Harvest Management Agreement (collectively described as the “Prospective Actions”). NOAA Fisheries’ 2008 FCRPS Biological Opinion recommended a Reasonable and Prudent Alternative with changes and additions from the action proposed by the FCRPS Action Agencies. The collective effects of these actions were evaluated in the Supplemental Comprehensive Analysis that was issued simultaneously. NOAA Fisheries concluded that the combination of these Prospective Actions avoids jeopardizing listed species and the destruction or adverse modification of their designated critical habitat.

NOAA Fisheries’ Supplemental Comprehensive Analysis used the same analytical approach and methodology provided in the Federal agencies’ Comprehensive Analysis, with updated information regarding species status as well as new modeling estimates and analysis to inform the 2008 Biological Opinion’s conclusions. The aggregated lifecycle analysis incorporated and considered all sources of salmonid mortality and assessed the effects of the Prospective Actions with the environmental baseline and the anticipated future state and private actions, or cumulative effects, on the listed salmon and steelhead that are reasonably certain to occur; and, analyzed whether, with these aggregate effects, listed species have a sufficiently low risk of extinction and an adequate potential for recovery.

## **2008 Biological Opinion Consultation Process**

The 2008 FCRPS Biological Opinion addressed a total of 15 species, all listed under the ESA between 1991 and 2007 (Table 1). In addition to ESA-listed species, the ESA requires designation and protection of their critical habitat. NOAA Fisheries previously designated critical habitat for 12 of the species and is currently working on the designation process for the Lower Columbia River Coho Salmon Evolutionary Significant Unit. No critical habitat rules have been published for the Southern Distinct Population Segment of the killer whale or Southern Distinct Population Segment of the green sturgeon (Table 1).



**Table 1 - Species Considered Under the 2008 FCRPS Biological Opinion**

<b>Species/ESU</b>	<b>Scientific Name</b>	<b>Status</b>	<b>Critical Habitat</b>
Snake River Sockeye Salmon	<i>Oncorhynchus nerka</i>	Endangered	Yes – final
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened	Yes – final
Snake River Fall Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened	Yes – final
Snake River Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	Yes – final
Upper Columbia River Spring Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Endangered	Yes – final
Upper Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	Endangered	Yes – final
Middle Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	Yes – final
Lower Columbia River Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened	Yes – final
Lower Columbia River Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	Yes – final
Columbia River Chum Salmon	<i>Oncorhynchus keta</i>	Threatened	Yes – final
Upper Willamette River Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened	Yes – final
Upper Willamette River Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	Yes – final
Lower Columbia River Coho Salmon	<i>Oncorhynchus kisutch</i>	Threatened	In process
Killer Whale Southern DPS	<i>Orcinus orca</i>	Endangered	No
Green Sturgeon Southern DPS	<i>Acipenser medirostris</i>	Threatened	No

### **III. 2007 FCRPS Biological Assessment and Comprehensive Analysis**

#### **2007 FCRPS Biological Assessment (and addendums) including Proposals to Improve Salmon and Steelhead Survival**

The Corps, BPA, and Reclamation jointly submitted the FCRPS Biological Assessment and Comprehensive Analysis to NOAA Fisheries on August 21, 2007. The FCRPS Biological Assessment and Comprehensive Analysis analyzed the effects of the Proposed Reasonable and Prudent Alternative for the operation of the FCRPS and the Proposed Action for the Upper Snake on 13 Evolutionary Significant Units (ESUs). Subsequent addendums to the FCRPS Biological

Assessments were provided to NOAA Fisheries on two more ESA listed species - the Southern Distinct Population Segment of the killer whale (orcas) and the Southern Distinct Population of the green sturgeon (green sturgeon).

The additions to the FCRPS Biological Assessment and Comprehensive Analysis included the:

- 1) Addendum to the “Comprehensive Analysis of the Federal Columbia River Power System and Mainstem Effects of Upper Snake and other Tributary Actions.” Analysis of Effects on Listed Killer Whale and Green Sturgeon Distinct Population Segments. April 2008.
- 2) Revised Addendum to the “Biological Assessments and Comprehensive Analysis of the Federal Columbia River Power System and Mainstem Effects of Upper Snake and Other Tributary Actions.” Analysis of Effects on Listed Columbia River Basin Salmon and Steelhead Populations from Proposed Memorandum of Agreement Actions. May 2008.

Together these documents assess the status of the 15 ESA-listed species, describe the action the Action Agencies proposed to undertake, identify the extent of the action area, discuss the process the Action Agencies applied in analyzing the effects of the action, and present a package of specific mitigation actions. The action proposed in the Biological Assessment/Comprehensive Analysis spans the 10-year time period from 2007 through 2017; through the consultation, this was later adjusted to 2008 to 2018.

The action proposed by the Action Agencies and analyzed in the FCRPS Biological Assessment consists of multiple, separate actions that include:

- 1) The operation and maintenance of the 14 Federal dams and powerplants that are operated by the Corps and Reclamation as an integrated system for flood control and power generation, two of which are Reclamation projects (Hungry Horse Project and Columbia River Basin Project which includes Grand Coulee Dam)
- 2) The operation of other Reclamation irrigation projects, to the extent they affect flows in the mainstems of the Columbia and Snake rivers.

The Reclamation irrigation projects in the Columbia River Basin whose mainstem effects are addressed under this consultation are listed in Table 2.

**Table 2 – Columbia River Mainstem Effects were Considered at the Following Bureau of Reclamation Projects <sup>1</sup>**

PROJECT NAME	STATE
<i>Upper Columbia River (upstream from Snake River confluence)</i>	
Hungry Horse	Montana
Columbia Basin	Washington
Chief Joseph*	Washington
Okanogan	Washington
Yakima	Washington
<i>Lower Columbia River (downstream of the Snake River confluence)</i>	
Crooked River	Oregon
Deschutes	Oregon
Wapinitia	Oregon
The Dalles*	Oregon
Umatilla	Oregon
Tualatin	Oregon
* Chief Joseph and The Dalles projects are irrigation works that are owned and operated by Reclamation. They are separate from The Dalles and Chief Joseph Dams owned and operated by the Corps.	

The operation and maintenance of Reclamation’s projects are described in the 2007 FCRPS Biological Assessment, Appendix B.1, including Attachments B.1-4 (Bureau of Reclamation Storage Projects)<sup>2</sup> and B.1-7 (Bureau of Reclamation Tributary Projects).

While the operation of the FCRPS and each of Reclamation’s projects, which are primarily (though not necessarily exclusively) authorized for irrigation purposes, are separate actions, and while the operation of each project is independent of the

<sup>1</sup> With the exception of the Columbia Basin Project, these Reclamation projects are not located on the mainstem Columbia River.

(a). The Bitterroot Project, located south of Missoula on the Bitterroot River in western Montana, was erroneously included in the 2008 Biological Opinion.

(b.) Reclamation is proceeding with Section 7(a)(2) consultations with NOAA Fisheries on the effects from operating and maintaining Reclamation Projects. These consultations, in combination with this FCRPS consultation, will provide coverage of all tributary and mainstem effects of those projects. Those Reclamation projects currently undergoing additional consultation include the Okanogan, Yakima, and Tualatin.

(c.) The projects that are collectively referred to as the Upper Snake River Projects are Minidoka, Palisades, Michaud Flats, Ririe, Little Wood River, Boise, Lucky Peak, Mann Creek, Owyhee, Vale, Burnt River, and Baker. A separate biological opinion was prepared for these projects; however, the effects of these projects were included in the Comprehensive Analysis and Supplemental Comprehensive Analysis.

(d) Small Reclamation projects having no measureable effects on the Columbia River mainstem include the Spokane Valley, Big Flat Units of the Missoula Valley, Frenchtown, Dalton Gardens, Avondale, and Rathdrum Prairie projects.

<sup>2</sup> As clarified by an email sent to NOAA Fisheries on April 15, 2008.

operation of any other project, all of these legally and factually separate actions were the subject of the 2007 FCRPS Biological Assessment and Comprehensive Analysis consultation at Reclamation's request as permitted, but not required, by 50 C.F.R. §402.14(c).

The Proposed Reasonable and Prudent Alternative included a variety of actions to address limiting factors throughout the anadromous species' lifecycles. The Proposed Reasonable and Prudent Alternative was not limited to hydrosystem improvements, but also improvements in habitat, hatcheries, harvest, predation management, and research, monitoring and evaluation actions that are directly interrelated with the operation and maintenance of the FCRPS. Additionally, adaptive management actions that describe commitments, performance standards, planning, reporting, research, monitoring, evaluation, oversight, and contingencies were included.

All proposed actions are within the scope of one or more of the Action Agencies' respective statutory authorities and their expected funding resources. In reaching the determinations set forth in this Decision Document, Reclamation relied on the description of the actions for which Reclamation is responsible as set forth in the 2007 FCRPS Biological Assessment and NOAA Fisheries' Reasonable and Prudent Alternative, unless specifically noted to the contrary.

## **Comprehensive Analysis**

The Action Agencies' Comprehensive Analysis reviews the effects of two actions: 1) the operation and maintenance of the FCRPS projects with actions to mitigate for these effects; and 2) the operation and management of Reclamation projects in the Upper Snake River. This combined analysis responds to direction by the district court to ensure a "comprehensive analysis" of the effects of both actions on listed species and their critical habitat. The following is a summary of the approach the Action Agencies used for the Comprehensive Analysis, with a thorough discussion of the approach located in the Action Agencies' Comprehensive Analysis.

The Comprehensive Analysis uses a life-cycle, aggregate approach, which considers the biological requirements for survival and recovery of the listed species. It evaluates whether the species are likely to survive and be placed on a trend toward recovery after considering the effects of the FCRPS Proposed Reasonable and Prudent Alternative and the Upper Snake River Proposed Actions aggregated with the environmental baseline and cumulative effects. As such, this lifecycle survival analysis necessarily considers all mortality factors affecting the listed species, as well as all actions that have an impact on the species' survival, productivity, and population growth rates. The Comprehensive Analysis takes into consideration the status of, and other information applicable to, each ESU.

Based upon this analysis, the Comprehensive Analysis concludes that the FCRPS action meets or exceeds the objectives of doing no harm and contributing to recovery. The Comprehensive Analysis also concludes that the primary constituent elements of listed species' designated critical habitat are expected to function adequately to serve their conservation role.

Subsequent to the submittal of the FCRPS Biological Assessment/Comprehensive Analysis, NOAA Fisheries received comments on the draft 2007 FCRPS Biological Opinion and draft 2007 Upper Snake River Biological Opinion. After review of these comments, NOAA Fisheries requested that the Action Agencies consider whether their actions may affect either the Southern Resident distinct population segment (DPS) of killer whales (orcas), or the Southern DPS of green sturgeon, in addition to the listed anadromous salmonids.

In response, the Action Agencies submitted an Addendum to the Comprehensive Analysis and determined that the Proposed Actions may affect, but are not likely to adversely affect, the Southern Resident DPS of killer whales, and that the FCRPS and Upper Snake dam operations may affect, but are not likely to adversely affect, the Southern DPS of green sturgeon.

## **Relationship to the Conceptual Framework**

In addition to its aggregated lifecycle analysis, the Comprehensive Analysis also considers the Conceptual Framework developed during the FCRPS Biological Opinion Remand's Collaboration Process among the sovereigns. The Framework approach attempted to estimate the relative magnitude of mortality factors affecting Interior Columbia River Basin salmonid populations for which adequate data was available.<sup>3</sup> That assessment was intended to define the "relative expectation of the FCRPS for recovery."<sup>4</sup> As noted in the Comprehensive Analysis the Conceptual Framework "can be understood to represent the Collaboration parties' view of the appropriate contribution of the FCRPS toward long-term recovery of the listed ESUs in the Interior Columbia River Basin" (Comprehensive Analysis at § 3.1.3.2, p. 3-10).

The Framework approach provides another "metric" for use in considering the impacts of the Proposed Reasonable and Prudent Alternative on a listed species'

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<sup>3</sup> The Interior Columbia River Basin species addressed by the Conceptual Framework are Snake River fall Chinook salmon, Snake River spring and summer Chinook salmon, Upper Columbia River spring Chinook salmon, Upper Columbia River steelhead, and Middle Columbia River steelhead. The two Interior Columbia River Basin species for which adequate scientific data is not available are Snake River sockeye and Snake River steelhead. The Conceptual Framework did not address Lower Columbia River and Willamette River species.

<sup>4</sup> "Interim Report: Relative Magnitude of Human-Related Mortality Factors Affecting Listed Salmon and Steelhead in the Interior Columbia River Basin," prepared by Framework Work Group of the *NWF v NMFS* Collaboration Process (May 4, 2006), p. 1, quoted in Comprehensive Analysis, § 3.1.3.2, "Comparison to the Remand Collaboration's Conceptual Framework," pp. 3-9 – 3-10 and corresponding sections for each listed species, e.g. § 4.3.5, p. 4-15, for Snake River fall Chinook.

prospects for recovery. In the Comprehensive Analysis, the Action Agencies compare the expected effects of the Proposed Reasonable and Prudent Alternative to the level of effort needed to achieve the goals set by the Policy Working Group in the Conceptual Framework. This comparison provides one means of assessing the degree to which the Proposed Reasonable and Prudent Alternative will advance a species' prospects for recovery. The Comprehensive Analysis concludes that the Proposed Reasonable and Prudent Alternative reaches or exceeds the Conceptual Framework's goals for the FCRPS for all Interior Columbia species for which adequate data are available to support the analysis.

The Conceptual Framework was intended to provide a link to recovery efforts and “can be understood to represent the Collaboration parties’ view of the appropriate contribution of the FCRPS toward long-term recovery of the listed ESUs in the Interior Columbia River Basin” (Action Agencies’ Comprehensive Analysis, § 3.1.3.2, p. 3-10).

#### **IV. The Columbia Basin Fish Accords**

The District Court directed the Federal agencies to collaborate with regional sovereign States and Tribes to reach agreement or narrow areas of disagreement on scientific and technical information in the formulation of a Reasonable and Prudent Alternative that complies with the ESA. After many months of concerted efforts to accomplish this objective for the ESA consultation, the Action Agencies entered into agreements with four Tribes and two States to improve fish survival and habitat, and to advance fish recovery in the Columbia River Basin. The *Columbia Basin Fish Accords* address fish affected by the operation of the FCRPS projects, with a focus on salmon and steelhead fish listed under the ESA.

The Accords are specific and binding plans that contain a clear, definite commitment of current and future resources that will result in hundreds of new projects and dedicated funding for certain on-going projects throughout the Columbia River Basin for the next 10 years. These Accords also signal to the region the recognition by the signatories that a collaborative partnership is necessary to successfully meet the needs of the region’s fish.

Specifically, the Columbia Basin Fish Accords are:

- An agreement between the Action Agencies and the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation, the Confederated Tribes and Bands of the Yakama Nation, and the Columbia River Inter-Tribal Fish Commission. These Tribes and the Columbia River Inter-Tribal Fish Commission are collectively referred to as the “Three Treaty Tribes.”
- An agreement between the Action Agencies and the Confederated Tribes of the Colville Indian Reservation (Colville Tribe)

- An agreement between the State of Idaho and the Action Agencies
- An agreement between the State of Montana and the Action Agencies

Under the terms of the Accords, the Action Agencies committed to implementation of hydrosystem actions, both structural and operational improvements to the FCRPS projects. Additionally, the Action Agencies and the signatory Tribes and States are committing to implementing non-hydro projects, funded primarily by BPA, for the benefit of fish affected by the FCRPS.

The Columbia Basin Fish Accords also provide for actions to help other fish, including non-ocean-going (resident) stocks in Montana such as bull trout, as well as for non-listed anadromous and resident species in the Basin, including Pacific lamprey. The actions committed to in the Accords were developed to work in concert with the 2008 FCRPS Biological Opinion and the Upper Snake Biological Opinion.

## **Reclamation Commitments in the Columbia Basin Fish Accords**

In the 2008 FCRPS Biological Opinion, the Action Agencies have committed to holding annual forecast performance reviews looking at in-place tools for seasonal volume forecasts and reporting on the effectiveness of experimental or emerging technologies and procedures. In the Three Treaty Tribes-Action Agency agreement, the parties negotiated additional actions to improve forecasting methods such as convening a forecast and data committee to include technical representatives from these Tribes.

Pacific lamprey, though not a listed species, are of considerable importance to the Three Treaty Tribes, who use the fish for food and medicine. The parties agreed upon a suite of actions to address concerns about the decline in lamprey populations, both to address the tribal interests and to help avoid a listing of the species in the future. The parties agreed to study lamprey impacts associated with Reclamation projects in the Columbia River Basin. Following this study, the parties have agreed to work together to develop a Pacific lamprey implementation plan to help address the study findings.

In the Three Treaty Tribes agreement, the parties seek to improve spawning and rearing habitat in order to increase productivity of specific population groups of salmon and steelhead. Projects will be focused in the upper Columbia tributaries, as well as the Grande Ronde, Umatilla, and Walla Walla Rivers. Reclamation will continue to provide technical assistance at 2007 levels for habitat improvements in both the Grand Ronde and the John Day basins.

The Confederated Tribes of the Colville Reservation have a particular concern about how dry year (low water) operations of the FCRPS will be conducted; dry

year operations affect Lake Roosevelt, which inundates a portion of the Colville's reservation. In the Colville agreement, the parties provided additional details as to how summer drafting and other dry year operations studies will be carried out, and provided expressly for the inclusion of the Colville Tribes in those analyses.

Under the Colville-Action Agency agreement, Reclamation will annually fund the purchase of up to 500 acre-feet of water from willing sellers in the Okanogan Project in Washington to provide instream flow for listed steelhead in Salmon Creek.

## V. 2008 FCRPS Biological Opinion

NOAA Fisheries released the 2008 FCRPS Biological Opinion simultaneously with the Upper Snake Biological Opinion and the *United States v. Oregon* Harvest Management Agreement Biological Opinion. The Supplemental Comprehensive Analysis serves as the scientific foundation for all three biological opinions.

In the preparation of the final 2008 FCRPS Biological Opinion, NOAA Fisheries analyzed the information submitted in the Action Agencies' Biological Assessment/Comprehensive Analysis, the Addendums noted above, as well as other scientific information and comments received on the draft Biological Opinion. In so doing, notable changes to the draft Reasonable and Prudent Alternative were made, including the following:

- Actions to improve survival of Snake River B-run steelhead populations.
- The Snake River Steelhead Kelt Management Plan was added to improve the productivity of interior basin B-run steelhead populations.
- More conservative summer spill cessation triggers
- Forecasting improvements for flow augmentation and climate change
- Transport operations to increase survival benefits for Snake River steelhead as compared to the Biological Assessment and as modified by the Biological Opinion, subject to continued performance review.
- Chum spawning flows.

In the final Biological Opinion, NOAA Fisheries addressed the Court's remand instructions directly:

- "NOAA Fisheries' analysis aggregates the effects of the FCRPS Proposed Actions, which are incorporated in the Reasonable and Prudent Alternative, the Upper Snake basin proposed actions, the transportation permit and the *United States v. Oregon* Harvest Management Agreement (all together referred to as "Prospective Actions"), with the continuing



effects in the environmental baseline and anticipated future state and private actions (termed Cumulative Effects) on the listed salmon and steelhead, as reported in Chapter 8 of the Supplemental Comprehensive Analysis for each species.

- NOAA Fisheries revised the 2004 analytical treatment and effects of the Proposed Action on critical habitat, as reported in Chapter 8 of the Supplemental Comprehensive Analysis for each species.
- NOAA Fisheries addressed the prospects for both recovery and survival for each species in evaluating the effects of the Proposed Action.
- NOAA Fisheries' determination relies on measures included in the Reasonable and Prudent Alternative, which is the subject of the Section 7 consultation. Actions outside of this Reasonable and Prudent Alternative, such as Federal, State, and Tribal measures that are already taking place or are reasonably certain to occur, are considered as part of the Environmental Baseline or on a qualitative basis, as part of a cumulative effects analysis (2008 FCRPS Biological Opinion).

## **Supplemental Comprehensive Analysis**

The 2008 FCRPS Biological Opinion Reasonable and Prudent Alternative (as modified from the draft Biological Opinion) is supported by the analysis in NOAA Fisheries' Supplemental Comprehensive Analysis (Supplemental Comprehensive Analysis). While the Supplemental Comprehensive Analysis is consistent with the Action Agencies' Comprehensive Analysis, it includes updated biological information and modeling, using new and revised estimates of impacts on salmonid survival, thus providing additional assurance that NOAA Fisheries' recommended Reasonable and Prudent Alternative avoids jeopardizing listed species and the destruction or adverse modification of critical habitat.

The Supplemental Comprehensive Analysis aggregated lifecycle analysis incorporates and considers all sources of salmonid mortality, and assesses the effects of the Prospective Actions with the environmental baseline and anticipated future state and private actions that are reasonably certain to occur (cumulative effects), on listed salmon and steelhead. It also analyzes whether, with these aggregate effects, listed species have a sufficiently low risk of extinction and an adequate potential for recovery.

NOAA Fisheries analytic methodology considered not only survival, but also the listed species' potential for recovery. The analytic approach used in the Supplemental Comprehensive Analysis is conceptually similar to that employed in the 2000 Biological Opinion, but has been refined to reflect the continuing accumulation of new data and scientific analysis. For example, the Biological Opinion and Supplemental Comprehensive Analysis benefit from a much

expanded set of data compared to the 2000 Biological Opinion's analysis. The more recent analyses avail themselves of a variety of metrics, taking advantage of the relative strengths and weaknesses of each to form a more complete picture of the present and future status particularly for the interior-listed ESU and Distinct Population Segments where adequate information is available. In this manner, NOAA Fisheries developed its methodology using the best science available, and also addressed the court rulings interpreting the ESA, including *NWF v. NMFS* [524 F.3d 917 (Ninth Cir. 2008)].

The Supplemental Comprehensive Analysis concludes that the Prospective Actions provide sufficient benefits in that they will improve, not degrade, the current status of listed species. The aggregate analysis indicates the listed salmon and steelhead are expected to survive with an adequate potential for recovery. The Supplemental Comprehensive Analysis also concludes that the Prospective Actions will improve habitat so that critical habitat which is presently functional will remain functional; other critical habitat will retain its current ability for Primary Constituent Elements to become functionally established and serve its conservation role for the species. Consequently, the Prospective Actions avoid jeopardizing the listed species, and the destruction or adverse modification of designated critical habitat.

NOAA Fisheries' completed the biological opinion after extensive collaboration with Pacific Northwest States and Tribes, meetings with all interested entities, and thorough consideration of comments received on the draft Biological Opinion including those submitted by parties to the *NWF v. NMFS* litigation. NOAA Fisheries addressed comments in its May 2, 2008, memorandum entitled, "Comments on the 2007 Draft FCRPS Biological Opinion." Contemporaneous with the 2008 Biological Opinions, NOAA Fisheries produced "Issue Summaries of the FCRPS 2008 Biological Opinion," presenting a reasoned consideration of diverse views and explains the approach taken in the Biological Opinions.

***Responses to Comments.*** Some commentators have criticized the methodology used by NOAA Fisheries in its Supplemental Comprehensive Analysis, and contrast it to the approach used in the 2000 Biological Opinion. For instance, in both the 2000 and 2008 Biological Opinions, NOAA Fisheries considered the listed species' risk for extinction with estimates for 24-year and 100-year timeframes. The 2000 Biological Opinion placed its primary emphasis on extinction risk estimates over a 100-year timeframe, whereas, the 2008 FCRPS Biological Opinion's Supplemental Comprehensive Analysis and the Comprehensive Analysis placed emphasis on risks over a 24-year timeframe. This was done in part because the precision of the risk estimate decreases over a longer time horizon. This is especially true in the case of Columbia River Basin salmon populations, since the available data only supports reliable risk estimates 5

to 10 years into the future. (See discussion in the Supplemental Comprehensive Analysis, Aggregate Analysis Appendix at page 9.)

***Use of ICTRT Data.*** Contrary to some commentators' assertions that the Interior Columbia River Basin Technical Recovery Team (ICTRT) information was not used in the 2008 Biological Opinion's Supplemental Comprehensive Analysis, NOAA Fisheries relied heavily upon the ICTRT's work. Both analyses used the ICTRT spawner-recruit datasets. Both analyses used the ICTRT metrics, such as average recruit-per-spawner productivity that were derived from the underlying datasets. Both analyses carefully considered the ICTRT's status assessments and assessments of Viable Salmonid Population factors other than abundance and productivity. Both analyses relied upon the ICTRT's recommendations for ESU-level viability in determining whether an ESU as a whole avoided jeopardy based upon a consideration of status of individual populations within that ESU. Again, the Supplemental Comprehensive Analysis and the Comprehensive Analysis relied upon the best available scientific information in reaching their respective conclusions.

***Quantitative Analysis.*** Some commentators suggest that the 2008 BiOp's potential for recovery analysis bears no logical or analytical connection to any scientifically based recovery criteria. They suggest that NOAA fails to first determine the point at which survival and recovery are placed at risk and therefore cannot demonstrate that the likelihood of achieving both will not be appreciably reduced.

With regard to recovery, the Federal agencies' CA uses widely accepted measures of population growth and productivity to inform its conclusions. For example: "A population with an average long-term population growth rate  $>1.0$  is, by definition, a population whose size is increasing, not decreasing. A population that persists with an average growth rate  $>1.0$  over an extended period of time will eventually recover. It is, in short, on a trend towards recovery." CA at 3.1.2.4. Of course, this statement is true only if recovery criteria are not set at an unrealistically high level. If the level of abundance deemed to be needed for recovery is beyond the maximum capacity of the available habitat, for instance, the population is unlikely to ever maintain itself at those levels. But that is more a function of analytic error in the setting of recovery levels than one of basic population dynamics.

For populations at historically low levels of abundance, the CA's conclusion holds. The point at which a population's growth rate changes from one of decline (mean  $R/S^5 < 1.0$ , for instance) to increase (mean  $R/S \geq 1.0$ ) is a significant threshold when considering both the likelihood of survival and the potential for recovery of that population. NOAA's BiOps and Supplemental Comprehensive Analysis, too, consider impacts on recovery. For each listed species, the SCA

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<sup>5</sup> Replacement rate from one generation to the next.

considers the species' potential for recovery. (Page 26 of 38 Bonneville Power Administration Record of Decision on 2008 FCRPS Biological Opinion.)

Second, some commentators incorrectly contend that NOAA does not rely upon its quantitative analysis in determining whether the RPA jeopardizes listed species. A jeopardy determination must ultimately rely both upon quantitative analysis and a host of considerations that are largely qualitative. This is the case for many reasons, including uncertainty in the quantitative estimates used in the analysis. Other reasons include, but are not limited to, the fact that for many listed ESUs, insufficient information exists to support a quantitative analysis, so conclusions are almost entirely based upon qualitative considerations. Also, even for those ESUs for which sufficient information is available, the quantitative portion of the analysis is done at the level of individual populations within an ESU. Evaluating the status of an ESU based upon estimates of the status of individual populations within that ESU requires the exercise of qualitative judgment. Finally, the use of multiple metrics, while providing a more complete basis for reaching conclusions respecting survival and potential for recovery, necessitates a qualitative consideration of the metrics themselves, since each metric has its own particular strengths and weaknesses (see Chapter 3 of the CA). The 2000 BiOp used only one metric ( $\lambda$ ) so the quantitative analysis here is more complete and extensive. Past biological opinions have necessarily taken a qualitative approach to section 7(a)(2) determinations. The 2000 FCRPS BiOp had this to say: "...NMFS relies on this [quantitative] analysis primarily to provide a standardized measure of risk against which to judge the significance of the action to the continued existence of the ESU. In the end, however, NMFS' determination of consistency with ESA Section 7(a)(2) is qualitative, informed to the extent possible by standardized quantitative analysis." 2000 BiOp at 1.3.1.1. Likewise, the 2008 BiOp clearly describes a qualitative approach to a jeopardy determination. FCRPS BiOp at 1-10 et seq. The Action Agencies conclude that NMFS has appropriately relied upon both quantitative analysis and qualitative (i.e., best professional) judgment in reaching its conclusions.

***Snake River Sockeye.*** Commentators raised contrary views concerning the conclusions in the 2008 Biological Opinion on Snake River sockeye. The Action Agencies believe that NOAA Fisheries' Reasonable and Prudent Alternative proposes appropriate and timely steps to continue the process of bringing these fish back from the brink of extinction.

In addition to effects associated with hydroelectric development, Snake River sockeye have suffered from a variety of influences, including a state-sponsored program in the 1950s and 1960s aimed at eradicating sockeye from lakes in the Stanley Lakes basin (Biological Opinion at 8.4-3 and Comprehensive Analysis at 6.1). By the time of listing, the ESU had been reduced to a small remnant population that some considered functionally extirpated. An experimental captive

brood stock program was initiated in an attempt to save the species from extinction. In contrast, sockeye runs in the Upper Columbia, which are also above multiple Federal and non-federal dams, are relatively healthy and remain unlisted under the ESA.

The sockeye captive brood stock program is coordinated through the Stanley Basin Sockeye Technical Oversight Committee (SBSTOC). Members of the SBSTOC have concluded that the program has succeeded in its original goal of preventing extinction and "[t]he SBTOC has determined that the next step toward meeting the goal of re-establishing and amplifying the wild population is to increase the number of smolts released" (2008 FCRPS Biological Opinion at 8.4-9).

Reclamation concludes that the 2008 FCRPS Biological Opinion's Reasonable and Prudent Alternative is likely to increase the numbers of returning adult sockeye by significantly expanding the number of smolts produced and released from the captive broodstock program, improving in-river survival for Snake River juvenile and (potentially) adult sockeye, and by improving long-term understanding of the factors negatively affecting survival of these fish.

**Killer Whales.** Commentators also suggested that NOAA Fisheries did not consider certain FCRPS operations effects on Southern Resident Killer Whales such as reduced numbers of adult salmon, compressed adult run timing of hatchery fish, and the potential lower nutrient value of hatchery Chinook compared to wild fish.

The Action Agencies' April 2008 *Analysis of Effects on Listed Killer Whale and Green Sturgeon Distinct Population Segments* showed a trend of increasing abundance since 1980 of Chinook salmon (believed to be a preferred food source for killer whales) returning to the mouth of the Columbia River. This analysis looked at the total number of fish produced from the Columbia, both listed and non-listed, and both natural and wild. Chinook salmon returns to Bonneville Dam, while showing significant variation between years, have overall remained remarkably constant since 1938, when most of the FCRPS did not exist. This analysis shows that neither the existence nor the operation of the FCRPS has had a significant effect on that portion of the killer whales' prey base that originates in the Columbia River Basin. NOAA Fisheries also presented an analysis showing that FCRPS-funded hatchery production in the Columbia River Basin more than compensates for the estimated effects of the FCRPS on salmon abundance.

Concerning the compressed run timing of hatchery-origin adult salmon, an additional statistical analysis conducted by Hinrichsen, *Detecting a Shift in the Arrival Distribution of Adult Chinook Salmon at Bonneville Dam Fish Ladders*, evaluated whether the distribution of arrival times for Chinook salmon has changed since adult salmon counts began at Bonneville Dam in 1938. This

analysis shows that there have been only slight changes in the distribution of arrival times since adult counts began. The fall Chinook run has actually become slightly more extended (by 4 days) during the recent period than was the case from 1939 to 1955, thus increasing the period of time during which these fish are hypothetically available to killer whales feeding off of the mouth of the Columbia River. These changes are likely not biologically significant from the standpoint of killer whales.

Concerning the potential nutritional value differences between hatchery and wild fish, commentators cite a report *State of Washington Status Report for the Killer Whale* (2004), which notes that overall salmon size has decreased “during the past few decades.” The report notes several factors that may play a role in this reduction, such as the major and prolonged shift in North Pacific Ocean and climate conditions that occurred in the mid-1970s, reduced ocean productivity, intense harvest pressures, genetic changes and even hatchery practices. Finally, a plain analysis of killer whale population trend data shows that this population has trended upwards since 1971 when the species reached a low of 67 animals (due to extensive live capture for marine parks that ended around 1973). The latest population estimate was 88 as of November 2007 (Center for Whale Research).

Having reviewed this information and the best available scientific information contained in the 2008 FCRPS Biological Opinion, Reclamation, together with the other Action Agencies, considers NOAA Fisheries’ conclusions concerning the effects of the operation of the FCRPS on orcas reasonable.

**Action Area.** In the 2008 FCRPS Biological Opinion, NOAA Fisheries addressed the action area in this consultation as defined in the joint implementing regulations, “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action” (50 CFR Section 402.02). The Biological Opinion states that “[t]he action area is not delineated by the migratory range of the species affected by the project unless that area is also directly or indirectly affected by the proposed action” (2008 FCRPS Biological Opinion at p. 4-3). In a May 2003 decision, Judge Redden ruled that the action area should include not only the area impacted by FCRPS operations but locations where the Action Agencies would conduct off-site mitigation habitat, harvest, and hatchery actions.

The FCRPS Action Agencies and NOAA Fisheries defined the action area to include “[a]ll additional spawning areas above Bonneville Dam that are accessible to listed adult salmon or steelhead that are affected by the FCRPS Reasonable and Prudent Alternative,” as “[t]he hydrosystem could have an indirect effect on the amount of marine derived nutrients returning to spawning and rearing areas due to a reduction in the number of adult fish returning to spawn and die” (2008 FCRPS Biological Opinion at p. 4-4).

## **The Reasonable and Prudent Alternative**

The Reasonable and Prudent Alternative can be described as the operation and maintenance of the FCRPS and 11 Reclamation Projects as described in the 2007 FCRPS Biological Assessment and as modified by NOAA Fisheries Reasonable and Prudent Alternative Table as described in the 2008 FCRPS Biological Opinion.

Specific mitigation actions are completely described in the Reasonable and Prudent Alternative Actions Table (Appendix in the 2008 FCRPS Biological Opinion) which itemizes the specific actions and reporting obligations that will be implemented and met over the term of the 2008 FCRPS Biological Opinion. The Reasonable and Prudent Alternative Action Table organizes actions according to overall objectives and strategies in the areas of adaptive management, hydropower, habitat, hatcheries, predation, research, monitoring, and evaluation.

Reclamation will work with the Corps and BPA to implement our actions consistent with the adaptive management process and regional coordination. Table 3 lists the specific ongoing and new mitigation actions undertaken by Reclamation in consideration of the 2007 FCRPS Biological Assessment and the 2008 FCRPS Biological Opinion.

**Table 3 - On-Going and New Mitigation Actions by Reclamation**

<b>Reasonable and Prudent Alternative Number</b>	<b>Reclamation Role in Reasonable and Prudent Alternative implementation</b>	<b>Comments</b>
1 - 3	Work with other Action Agencies	Reporting requirements; Adaptive Management
4 (Hydro)	Grand Coulee; Hungry Horse; Banks Lake	On-going and new operations to benefit salmon and steelhead while considering resident fish; Columbia River Water Management Plan
6 (Hydro)	Grand Coulee; Hungry Horse; Banks Lake	In-season water management
7 (Hydro)	Work with other Action Agencies	Improve forecasting
8 (Hydro)	Work with other Action Agencies	Emergency operations
14 (Hydro)	Grand Coulee; Hungry Horse; Banks Lake	Explore opportunities to improve conditions for listed fish in dry years
15 (Hydro)	Grand Coulee	Water temperature modeling at Grand Coulee as it relates to EPA's Total Maximum Daily Load
16 (Hydro)	Entire Reasonable and Prudent Alternative	Complete tributary consultations
17 (Hydro)	Possible Grand Coulee	On-going action for chum
34 & 35 (Habitat)	Specific actions identified in the 2007 FCRPS Biological Assessment for 11 Interior Columbia River Basin tributary subbasins as modified in the 2007 FCRPS Biological Assessment	Added Grand Ronde and Pahsimeroi basins because Snake River steelhead and spring Chinook gaps were large and habitat actions address limiting factors that improve tributary habitat spawning and rearing conditions
39 (Hatchery)	At Leavenworth National Fish Hatchery complex – develop funding criteria	Ensure hatcheries do not impede recovery of ESA-listed fish.



Reasonable and Prudent Alternative Number	Reclamation Role in Reasonable and Prudent Alternative implementation	Comments
40 (Hatchery)	At Leavenworth, work with operators to implement certain hatchery reforms as described in the FCRPS BA	Requested by NOAA Fisheries (after 2007 FCRPS Biological Assessment) to improve conditions for Upper Columbia steelhead
56 (RME)	Methow pilot study	Evaluate whether habitat actions have intended effect
57 (RME)	Work with other Action Agencies	Ensure habitat action effectiveness
71 (RME)	Work with other Action Agencies	Regional research, monitoring, and evaluation coordination
72 (RME)	Work with other Action Agencies	Research, monitoring, and evaluation database management
73 (RME)	Work with other Action Agencies	Implementation and compliance monitoring

## VI. Other Considerations

Operating and maintaining Reclamation’s FCRPS and other projects is a complex undertaking and Reclamation is responsible for ensuring consistency with a number of statutes, regulations, and treaties, as well as consideration of other factors in its decision-making. The decision to implement the actions in the 2008 BiOp RPA includes an examination of these other responsibilities.

### Authority

Reclamation has sufficient authority to operate the 11 Reclamation projects in the manner described in the 2007 FCRPS Biological Assessment and to carry out those habitat and hatchery actions for which it is responsible.

### Appropriations

Reclamation prepares an annual budget request approximately 2 years before actually receiving an appropriation from the Congress. Interim program modifications may require funds that were not listed in the annual request; further, Congress may appropriate less than the amount requested by the Administration.

Funding shortfalls are possible. If this happens, Reclamation will work with NOAA Fisheries, other Federal and State agencies, and Tribes to prioritize the work using available funding. Congress occasionally adds funding to the Administration's budget request. Reclamation will also work with NOAA Fisheries to prioritize use of these ESA implementation funds.

## **Litigation**

In view of the contentious history of these issues in the region, litigation will likely occur during the implementation phase of this 2008 FCRPS Biological Opinion. Reclamation will work with NOAA Fisheries to address and coordinate any delays in scheduling resulting from litigation.

## **Emergencies**

Power emergencies, safety considerations, emergency/critical maintenance, drought, and other natural disasters can occur and may require modifications in operations at Reclamation projects. Reclamation will coordinate to the extent feasible any deviations in operations with NOAA Fisheries and other parties affected by the actions.

## **Development of Implementation Plans**

It is impractical to detail all implementation and schedule requirements for the Reasonable and Prudent Alternative action items in this Decision Document. Therefore, Reclamation will use the Reasonable and Prudent Alternative implementation plans process to coordinate actions and identify work with the other Action Agencies. These plans will serve as blueprints for anticipated actions for respective periods of time; the plans will be updated periodically and coordinated with NOAA Fisheries, other appropriate Federal agencies, State agencies, and Tribes. These plans are not decision documents but will be used as planning tools. Prioritization of work and any changes in schedule will be addressed in the plans. These plans will also be used to identify and coordinate actions from the Incidental Take Statement (2008 FCRPS Biological Opinion Section 14).

## **Compliance with Other Laws and Regulations**

### **Additional Endangered Species Act Compliance**

There may be individual actions in the Reasonable and Prudent Alternative that require additional consultation. For instance, the effects of individual habitat actions will be assessed, and if there are short-term, site-specific, or other effects to listed species which were not addressed in the 2008 Biological Opinion,

Reclamation will consult with NOAA Fisheries to supplement the 2008 Biological Opinion.

**Recovery.** Section 4(f) of the ESA directs NOAA Fisheries to develop and implement recovery plans for the ESUs addressed in this Opinion. Reclamation agrees with NOAA Fisheries that recovery plans will have a greater likelihood of success if developed in partnership with other stakeholders, including those that have the responsibility and authority to implement recovery actions. Many of the habitat actions in the Reasonable and Prudent Alternative were developed with input from regional parties involved in recovery planning through the collaborative process. Current efforts that will provide a strong foundation for ESA recovery plans in the Columbia River Basin include the Accords signed between the Action Agencies and several Tribes and States; the Northwest Power and Conservation Council's subbasin plans; and the State of Washington's regional recovery plans. Reclamation intends to work with NOAA Fisheries and the other Action Agencies to assist in furthering these efforts as they develop assessments, strategies, and actions.

**USFWS FCRPS Consultation.** Reclamation and the other agencies also engaged in ESA consultation with the U.S. Fish and Wildlife Service (USFWS) during 1999-2000 on the effects of the FCRPS project on listed bull trout and Kootenai River white Sturgeon.<sup>6</sup> Reclamation and the other action agencies have determined that the FCRPS operations called for in the 2008 FCRPS Biological Opinion will not affect bull trout, Kootenai River white sturgeon, or other USFWS-listed species or critical habitat in a manner or to an extent not previously considered; therefore, reconsultation with the USFWS on operations of the FCRPS is not required. Reclamation will continue to implement actions identified in the USFWS 2000 FCRPS Biological Opinion. As individual actions in the 2008 Reasonable and Prudent Alternative and committed to in this decision document are prepared for implementation, site-specific consultation with the USFWS may be necessary to address localized effects. Reclamation will continue to coordinate with the USFWS on annual and 5-year implementation plans as required by the USFWS 2000 FCRPS Biological Opinion.

## **Tribal Treaty and Trust Responsibility**

The United States Government recognizes the sovereign status of Native American Tribes. Treaties between the United States and some Columbia Basin Tribes document agreements reached between the Federal Government and the Tribes. In exchange for ceding most of their ancestral land, the Government established reservation lands and guaranteed that the Government would respect the treaty rights including fishing and hunting rights. The treaties provide, in part,

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<sup>6</sup> The Corp reinitiated consultation with USFWS on the Kootenai River white Sturgeon and have a 2006 Biological Opinion for Kootenai River white Sturgeon.

the exclusive right of taking fish in the streams running through and bordering the reservations and at all other usual and accustomed stations in common with citizens of the United States. The Federal Government has a trust responsibility to protect the tribal rights under these treaties.

Reclamation will comply with the Executive Order on Consultation and Coordination with Indian Tribal Governments. In formulating and implementing activities that have Tribal implications, Reclamation will consult with the affected Tribes.

## **Clean Water Act**

In developing the Proposed Reasonable and Prudent Alternative, the Action Agencies considered the respective ecological objectives and requirements of the ESA and the Clean Water Act. In many instances, actions implemented to attain water quality standards (e.g., reducing Total Dissolved Gas and improving water temperature) will also benefit ESA-listed species. Reclamation operates its dams to comply with both the ESA requirements, determined by NOAA Fisheries and USFWS, and the State and Tribal water quality standards. Below is specific information about compliance with these standards:

### ***Hungry Horse***

The Hungry Horse Dam and Reservoir are located on the South Fork of the Flathead River in Montana. Two Montana water quality standards are at issue with Hungry Horse operations:

- **Total Dissolved Gas (TDG):** The Montana TDG standard is 110 percent (the total concentration of dissolved gas cannot exceed 110 percent of saturation at atmospheric pressure). Water spilled through the hollow jet valves at Hungry Horse Dam can cause an increase in TDG. Hungry Horse Dam is operated to the extent possible to limit spill through the hollow jet valves to 15 percent of total outflow (the rest of the outflow is through the turbines) to avoid exceeding the standard. A TDG/spill correlation developed by Reclamation using 1996 winter/spring and 2002 summer data shows that if spill as a percent of total flow remains below 21 percent, the TDG level will remain below 110 percent (VARQ EIS 2006).
- **Temperature:** Montana has established water quality standards for temperature. In 1995, with input and recommendations from the State of Montana, Reclamation installed a selective withdrawal system at Hungry Horse Dam to improve temperature condition for aquatic life below the dam (Reclamation 1994; Cavigli et al. 1998; Christenson et al. 1996; Marotz et al. 1994). Water stored in the reservoir stratifies at different temperatures, with colder water near the bottom. The selective withdrawal system consists of a series of outlets on all four unit penstock intakes to

allow releases of water at varying temperatures. From June 1 to the end of October, the system is used to increase the water temperature in the South Fork to correlate with temperatures in the North and Middle Forks of the Flathead River. Operators use thermometers located on the face of the dam to determine reservoir temperatures and the correct elevation for the control gates to capture the desired discharge temperature. The selective withdrawal system allows the temperature of released water to mimic the temperature of nearby natural flows (Reclamation 2006).

### **Grand Coulee**

Grand Coulee Dam is located in north central Washington State on the mainstem of the Columbia River. This dam is also operated to address TDG and temperature issues:

- **TDG:** To reduce TDG below Grand Coulee Dam releases in excess of the powerplant capacity are performed in the following order:
  1. If the water surface elevation is above 1260 feet, Reclamation releases the water evenly across the 11 spillway gates. Flows over the spillway can strip gas from the water up to a certain point.
  2. Below elevation 1260 feet water must be released through the low-level outlets. If the water surface elevation is below 1260 feet, Reclamation seeks a generation swap with Chief Joseph Dam, the next dam downstream from Grand Coulee. Spilling at Chief Joseph Dam generates much less TDG than spilling through the low-level outlets at Grand Coulee Dam (GCL/CHJ Joint Operation Subcommittee 2001). The Corps is installing flow deflectors at Chief Joseph Dam that will further reduce the generation of gas at the dam; when this work is completed, Reclamation will transfer as much spill as possible to Chief Joseph Dam when Lake Roosevelt falls below elevation 1260 feet.
  3. If water must be released through the outlets, it is released evenly through the upper and lower gates. If only two gates are required, then an upper gate and the lower gate immediately below it will be used.
- **Temperature:** In 2008, EPA reinitiated development of the Lower Snake Columbia River Temperature TMDL (Total Maximum Daily Load). Reclamation is participating in this process and has committed to further evaluation of the opportunities for managing water temperature below Grand Coulee Dam. In 2003, as part of the initial TMDL effort, Reclamation performed a preliminary evaluation of three strategies for managing water temperature at Grand Coulee Dam (Reclamation 2003).

Reclamation will continue to provide information on water temperature at Grand Coulee to assist the four Northwest States, Tribes, and EPA in this TMDL process.

Reclamation's obligation to comply with the Clean Water Act is also directly implicated when we implement our habitat improvement actions. These projects are all covered on a case-by-case basis with individual permits in place prior to implementation.

## **Magnuson Fishery Conservation and Management Act (MSA)**

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established procedures designed to identify, conserve, and enhance Essential Fish Habitat (EFH) for those species regulated under a Federal fisheries management plan. The 2007 FCRPS BA includes a section on the MSA.

## **National Environmental Policy Act (NEPA)**

Reclamation previously evaluated the environmental effects from FCRPS operations in three NEPA documents. Three environmental impact statements were prepared in the 1990s that analyzed operation of Federal projects, primarily to benefit salmon species listed under the ESA. The NEPA documents relevant to this decision include the *1992 Columbia River Salmon Flow Improvement Measures Options Analysis Environmental Impact Statement (EIS)* and its 1993 supplement, which analyzed alternatives to benefit salmon species listed under the ESA; and the *System Operation Review EIS* completed in 1997. Reclamation also prepared the *Upper Columbia Alternative Flood Control and Fish Operations EIS (VARQ EIS)* and the *Banks Lake Drawdown EIS (Banks Lake EIS 2004)*.

In addition to the NEPA documents addressed above, Reclamation reviewed and considered the Bonneville Power Administrator's Record of Decision 2008 Columbia Basin Fish Accords, dated May 2, 2008.

Reclamation reviewed the biological requirements of the listed species and the operations described in this Decision Document. Reclamation believes that the effects are within the range of the analyses conducted in the NEPA documents noted above. These effects include improved survival of listed salmonids, bull trout, and Kootenai River white sturgeon; reduction in hydropower generation; mixed effects on recreational opportunities; mixed resident fish and wildlife impacts; effects on water quality including TDG levels and water temperatures; and additional exposure of cultural resources at certain projects. As individual actions in the 2008 Reasonable and Prudent Alternative and committed to in this Decision Document are programmed for implementation, site-specific NEPA analyses may be necessary to assure full compliance.

## **National Historic Preservation Act (NHPA)**

The Corps, BPA, and Reclamation are developing a final draft of a “*Systemwide Programmatic Agreement for the Management of Historic Properties Affect by the Multi-Purpose Operations of Fourteen Projects of the Federal Columbia River Power System for Compliance with Section 106 of the National Historic Preservation Act*” (PA). This draft PA will satisfy the three lead agencies responsibilities under Section 106 of NHPA for the effects caused by all authorized purposes of the Projects, as well as operation and maintenance activities required for current and future operations of the FCRPS.

Ten regional Tribes, four State Historic Preservation Offices, the Advisory Council on Historic Preservation, and other affected Federal land managing agencies have been provided the opportunity to consult during the development of this draft PA. The terms of the draft PA have been considered in implementation of the action items stipulated in this Decision Document.

## **Pacific Northwest Electric Power Planning and Conservation Act**

Under the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), Reclamation is to exercise its responsibilities for operating the FCRPS in a manner that provides equitable treatment for fish and wildlife with other purposes for which Reclamation facilities are operated and managed, and to take into consideration in its decisionmaking the Northwest Power and Conservation Council’s Fish and Wildlife Program to the fullest extent practicable.

Reclamation considered the Council’s Amendments to the Fish and Wildlife Program in the preparation of the Reclamations’ operations and mitigation actions included in the FCRPS Biological Assessment’s Proposed Reasonable and Prudent Alternative. The 2008 FCRPS Biological Opinion’s Reasonable and Prudent Alternative includes these operations and Reclamation plans to move forward with implementation as provided for in this Decision Document. These operations include actions that not only provide benefits to listed anadromous species, but also assist in meeting the needs of other fish species including ESA-listed resident fish species, such as bull trout and Kootenai River white sturgeon; and, non-listed resident and anadromous species.

## **VII. Conclusions**

Reclamation evaluated the 2007 FCRPS Biological Assessment, addendums, and clarifications; the Comprehensive Analysis; the FCRPS Biological Opinion and Supplemental Comprehensive Analysis; the Columbia Basin Fish Accords; and

other documents (e.g., Attachment A). Based on the full body of information available to us, I conclude that:

- 1) The Action Agencies' 2007 FCRPS Biological Assessment and Comprehensive Analysis are a reasoned assessment of the effects of proposed actions on each ESA-listed species and their critical habitat.
- 2) NOAA Fisheries' analysis appropriately concludes that the FCRPS action does not jeopardize the continued existence of any species or adversely modify or destroy critical habitat.
- 3) The analyses used by the 2007 FCRPS Biological Assessment and 2008 Biological Opinions follow the decisions of the *NWF v. NMFS* District and Appellate Courts.
- 4) The Columbia Basin Accords among the Action Agencies, Tribes, and States result from collaboration encouraged by the District Court and provide additional benefits to fish that the Action Agencies' and NOAA Fisheries' ESA analyses take into account.
- 5) The FCRPS Action and 2008 FCRPS Biological Opinion result from, and offer opportunities for, continued dialogue and collaboration.
- 6) The FCRPS Action is consistent with other Federal laws and responsibilities.

I conclude that the FCRPS proposed actions meet the regulatory requirements of Sec. 7(a)(2) of the ESA and the implementing regulations in that the proposed action is not likely to "jeopardize the continued existence of any species" or "result in the destruction or adverse modification of critical habitat proposed to be designated" for the listed species. In addition, the proposed actions are consistent with other laws and regulations.

## VIII. Decision

***Reasonable and Prudent Alternative.*** In light of the above conclusions, it is my decision that Reclamation will implement each component of the Reasonable and Prudent Alternative that pertains to Reclamation, recognizing that the adaptive management framework may require adjustments to the actions to meet survival improvements identified in the 2008 FCRPS Biological Opinion. The Reasonable and Prudent Alternative will be implemented in accordance with applicable laws.

***Incidental Take Statement.*** Reclamation interprets the Incidental Take Statement as follows:

"Incidental take from the FCRPS operations and hydropower actions as they pertain to Reclamation will be considered authorized if flow



operations are implemented as described in Reasonable and Prudent Alternative Hydro Strategy 1” (FCRPS Biological Assessment Section 2.2.1 at p. 2-17).

Reclamation intends to operate Grand Coulee and Hungry Horse dams consistent with the Incidental Take Statement.

Reclamation similarly concurs with NOAA Fisheries that implementing the terms and conditions and reasonable and prudent measures identified in Section 14.5 of the 2008 FCRPS Biological Opinion will reduce and minimize the level of take associated with implementing the Reasonable and Prudent Alternative.

Reclamation will implement those terms and conditions that are relevant to Reclamation; these relate largely to annual reports, comprehensive evaluations, items 1 and 2 under improving juvenile and adult passage; research, monitoring and evaluation actions; and habitat actions.

***Conservation Recommendations.*** In its 2008 FCRPS Biological Opinion, NOAA provided a conservation recommendation that “Reclamation, on its own and in coordination with State and Tribal water management entities, identify opportunities and implement actions to conserve water and to ensure that a substantial portion of such conserved water accrues to streamflow to benefit listed species.” Reclamation cannot fully implement this recommendation because state law and other considerations often limit the amount of conserved water that can remain instream. However, increased instream flows are often realized in our water conservation projects. Reclamation will continue to pursue water conservation projects that may result in improved instream flows for listed fish through our two water conservation programs:

- 1) The Water for America - Water Conservation Field Services Program provides cost-share and technical assistance to Reclamation irrigation districts for relatively small scale improvements, which in some cases benefit ESA-listed species.
- 2) The Challenge Grant Program provides cost-share assistance on larger scale water conservation projects, system optimization review studies to identify potential operational improvements, advanced water treatment demonstration projects, and projects that improve conditions for ESA candidate species.

In general, both are West-wide cost-share programs that provide funds to implement water conservation improvements to stretch limited water supplies.

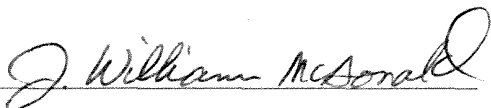
***Columbia Basin Fish Accords.*** Reclamation will implement those actions agreed to by Reclamation in the Columbia Basin Fish Accords.

***Magnuson Fishery Conservation and Management Act.*** NOAA Fisheries concluded that the Reasonable and Prudent Alternative as originally identified in the Biological Assessment would adversely affect Essential Fish Habitat (EFH)

for Columbia Basin Chinook and coho salmon, and effects to designated EFH for coastal pelagic and groundfish (English sole, starry flounder, the northern anchovy, and the Pacific sardine) may also be adverse. Pursuant to the §305(b)(4)(A) of the MSA, NOAA Fisheries is required to provide EFH conservation recommendations to Federal agencies, including itself, regarding actions that would adversely affect EFH. NOAA Fisheries recommends the Action Agencies implement the final Reasonable and Prudent Alternative actions to avoid, minimize, mitigate, or otherwise offset potential adverse effects of operating the FCRPS. Pursuant to the MSA [§ 305(b)(4)(B)] and 50 C.F.R. § 600.920(j), in issuing this Decision Document, Reclamation is informing NOAA Fisheries of the intent to implement the EFH conservation recommendations.

## IX. Reinitiation of Consultation

Reinitiation of consultation is governed by regulations set forth at 50 CFR §402.16 and is required: “(a) If the amount or extent of taking specified in the incidental take statement is exceeded; (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (d) If a new species is listed or critical habitat designated that may be affected by the identified action.” Reclamation will, in cooperation with the other Action Agencies and NOAA Fisheries, apply these criteria to determine whether and when reinitiation of consultation is necessary.

Signed:  Date: Sept. 3, 2008

J. William McDonald  
Regional Director  
Bureau of Reclamation

## X. Literature Cited

<b>Parenthetical Reference</b>	<b>Bibliographic Citation</b>
Cavigli et al. 1996	Cavigli, J., L. Knotek, and B. Marotz. 1998. Hungry Horse Dam Fisheries Mitigation: Minimizing zooplankton entrainment at Hungry Horse Dam: Implications for operation of selective withdrawal. Prepared for the U.S. Bureau of Reclamation, Agreement No. 1425-5-FG-10-01760 and Bonneville Power Administration, Contract No. 91-19-03. Montana Department of Fish, Wildlife and Parks. Kalispell, Montana.
Christenson et al. 1996	Christenson, D.J., R.L. Sund, and B.L. Marotz. 1996. Hungry Horse Dam's successful selective withdrawal system. <i>Hydro Review</i> 15(3):10-15.
GCL/CHJ Joint Operation Subcommittee 2001	Grand Coulee Dam/Chief Joseph Dam Joint Operation Subcommittee. 2001. Grand Coulee Dam and Chief Joseph Dam Joint Operation Gas Abatement Analysis. Prepared for the System Configuration Team, May 2001.
Hinrichsen 2008	Hinrichsen, R.A. 2008. Detecting a Shift in the Arrival Distribution of Adult Chinook Salmon. Hinrichsen Environmental Services, Seattle, Washington.
Marotz et al. 1994	Marotz, B.L., C.L. Althen, and D. Gustafson. 1994. Hungry Horse Mitigation: Aquatic modeling of the selective withdrawal system - Hungry Horse Dam, Montana. Prepared for Bonneville Power Administration. 36 pp. Montana Department of Fish, Wildlife and Parks. Kalispell, Montana.
Reclamation 2006	Bureau of Reclamation. 2006. Hungry Horse Selective Withdrawal System Evaluation 2000-2003. U.S. Department of Interior, Technical Services Center, Hydraulic Laboratory Report HL-2006-06.
Banks Lake EIS 2004	Bureau of Reclamation. 2004. Banks Lake Drawdown Final Environmental Impact statement. U.S. Department of Interior, Bureau of Reclamation, Upper Columbia Area Office, Ephrata, Washington and Pacific Northwest Region, Boise Idaho.
Reclamation 2003	Bureau of Reclamation. 2003. Initial Review of Three Strategies to Manage Water Temperature at Grand Coulee Dam. Technical Services Center, Draft Discussion Paper.

Reclamation 1994      Bureau of Reclamation. 1994. Finding of no significant impact and final environmental assessment. Hungry Horse Dam selective withdrawal. U.S. Department of Interior, Pacific Northwest Region Bureau of Reclamation, Boise, Idaho. PN FONSI 94-02.

VARQ EIS 2006      U.S. Army Corps of Engineers. 2006. Upper Columbia Alternative Flood Control and Fish Operations Final Environmental Impact Statement. U.S. Corps of Engineers, Seattle District, Seattle Washington.

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# Attachment A

## Chronology of Principal Documents Relevant to Decision

For easy reference, a chronological list of principal documents leading to this decision follows. The descriptions are those appearing on the Federal Caucus' Salmon Recovery website at <http://www.salmonrecovery.gov/index.cfm>. The Federal Caucus is a group of eight agencies operating in the Columbia River Basin that have natural resource responsibilities related to the Endangered Species Act (ESA).

*2005, 2006, 2007, and 2008: Collaboration.* Meetings and Collaboration among Federal Agencies, States, and Tribes.

*September 6, 2007: Biological Assessments.* The Action Agencies made available 2007 FCRPS Biological Assessments of proposed reasonable and prudent alternatives for operation and configuration of the Federal Columbia River Power System and the Upper Snake projects, including a comprehensive analysis of the impacts of these actions proposed for listed Columbia River Basin salmon and steelhead. They are available at [http://www.salmonrecovery.gov/biological\\_opinions/fcrps/ba-ca/index.cfm](http://www.salmonrecovery.gov/biological_opinions/fcrps/ba-ca/index.cfm) and [http://www.salmonrecovery.gov/Biological\\_Opinions/FCRPS/2008\\_biop/action.cfm](http://www.salmonrecovery.gov/Biological_Opinions/FCRPS/2008_biop/action.cfm).

*October 31, 2007: Draft Biological Opinions.* NOAA Fisheries today released draft Biological opinions for the Federal Columbia River Power System and the Upper Snake projects. In the *NWF v. NMFS* litigation, the Court set January 4, 2008, as the deadline for close of comment to NOAA Fisheries on these draft Biological opinions.

*April 2008: Federal Action Agencies Submit Addenda to their Comprehensive Analysis.* The Action Agencies submitted two supplements to their comprehensive analysis of the effects of FCRPS and Upper Snake Project actions. To address possible effects on additional listed species, one Addendum is an "Analysis of Effects on Listed Killer Whale and Green Sturgeon Distinct Population Segments." To address prospective conclusion of agreements with Pacific Columbia River Tribes and States, the other Addendum is an "Analysis of Effects on Listed Columbia River Basin Salmon and Steelhead Populations from Proposed Memorandum of Agreement Actions."

*May 2, 2008: Columbia Basin Fish Accords.* A tribal ceremony today celebrated the signing of the Columbia Basin Fish Accords, ending years of divisiveness on fish issues. The action agencies, four Northwest Tribes and two States signed agreements for 10 years of projects that will deliver specific biological results for

fish, recognizing the Tribes' proven scientific and resource management expertise. The Accords are available at [http://www.salmonrecovery.gov/Biological\\_Opinions/FCRPS/2008\\_biop/ColumbiaBasinFishAccords.cfm](http://www.salmonrecovery.gov/Biological_Opinions/FCRPS/2008_biop/ColumbiaBasinFishAccords.cfm). See also the May 2, 2008, BPA Administrator's Record of Decision on these Accords.

*May 5, 2008: Final Biological Opinions.* NOAA Fisheries has issued final biological opinions and a Supplemental Comprehensive Analysis for the Federal Columbia River Power System and the Upper Snake projects and Columbia River harvest under *United States v. Oregon*. NOAA Fisheries finds that, with the actions in the FCRPS Reasonable and Prudent Alternative, salmon and steelhead are on a trend to recovery. The agency noted that these new Biological opinions have broader support among tribes and states than ever before. These Biological opinions are available at <http://www.nwr.noaa.gov/Salmon-Hydropower/Columbia-Snake-Basin/final-BOs.cfm>. The documents at this site include an Executive Summary, an Issues Summary, and a May 2, 2008 Response to Comments on the Draft FCRPS Biological Opinion. The Issues Summary and Response to Comments describe how the 2008 FCRPS Biological Opinion took into account the comments filed by litigants on the draft Biological Opinions.

# **Attachment 2**



IN REPLY REFER TO



US Army Corps  
of Engineers®  
Northwestern Division

May 3, 2010

Mr. Barry Thom  
Acting Regional Administrator for  
Northwest Region, NOAA  
7600 Sand Point Way, NE.  
Seattle, WA 98115

Dear Mr. Thom:

The U.S. Army Corps of Engineers, Bureau of Reclamation, and Bonneville Power Administration, collectively referred to as the Action Agencies, are conducting a reinitiation of consultation with NOAA Fisheries to consider, among other actions, integrating the Federal Columbia River Power System (FCRPS) Adaptive Management Implementation Plan (AMIP) into the 2008 FCRPS Biological Opinion (2008 BiOp).

The Action Agencies and NOAA Fisheries are conducting this reinitiation under a limited voluntary remand order issued by Judge Redden in *National Wildlife Federation v. NMFS* (Order of February 19, 2010, in Nos. CV 01-00640-RE, CV 05-0023-RE, D.Or.). That Order gives the Federal agencies three months (until May 20, 2010) to consider, among other actions, integrating the AMIP and its Administrative Record into the 2008 BiOp. That Order further requires the filing of a supplemental administrative record thereafter as soon as practicable. The Court noted in its ruling that it had made no formal ruling on the validity of the 2008 BiOp pending completion of this voluntary remand.

The Action Agencies understand that NOAA Fisheries is conducting a thorough consideration of all relevant factors to ensure that this reconsultation is conducted to meet NOAA Fisheries' responsibilities under Section 7(a)(2) of the Endangered Species Act (ESA) and its consultation regulations. The Action Agencies further understand that this reinitiation contrasts with an original consultation because it considers the information and analysis developed for the 2008 BiOp, and its purpose is instead to update or supplement that BiOp. Thus, it is reasonable to expect that the analysis for this reinitiation can be conducted within the time available during this remand.

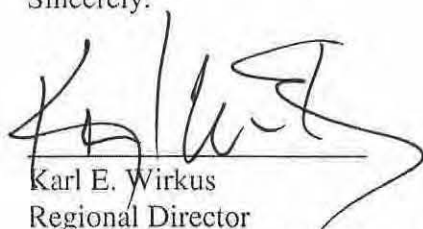
The Action Agencies are requesting NOAA Fisheries consider the AMIP and supporting information, including new information, in completing this consultation pursuant to the February 19, 2010 Order. We understand that NOAA Fisheries has solicited new science



information from the parties to the litigation as well as several independent scientists, and is currently reviewing their responses. In addition to the AMIP and its appendices, the Action Agencies, in accordance with the NOAA BiOp, are providing NOAA Fisheries with a number of documents that summarize science and implementation information developed since the issuance of this BiOp. At your request, the Action Agencies are also compiling information for NOAA Fisheries' consideration for this remand and will submit this information in the near future. It is our understanding that NOAA Fisheries is considering this information and the Action Agencies are not required to prepare a new biological assessment for the preparation of the supplemental Biological Opinion. The Action Agencies also are asking that NOAA Fisheries confirm that it is relying upon the Action Agencies' 2007 Biological Assessment and Comprehensive Analysis, the NOAA 2008 BiOp and Supplemental Comprehensive Analysis (SCA), the AMIP, and new scientific information and data in NOAA's review of its conclusions regarding the avoidance of jeopardy and the modification and/or destruction of critical habitat for the listed species in the 2008 BiOp.

In sum, the Action Agencies are requesting reinitiation of consultation as contemplated in the February 19, 2010, Order, resulting in a supplemental Biological Opinion that will be completed by May 20, 2010, and a Notice of Completion of Remand will be provided to the Court. We also are requesting confirmation from NOAA Fisheries that the approach described above is consistent with its regulations and practice under the ESA.

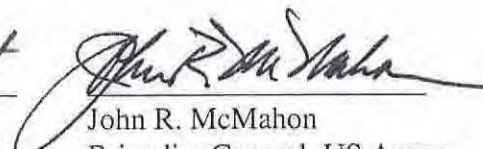
Sincerely:



Karl E. Wirkus  
Regional Director  
Bureau of Reclamation



Stephen J. Wright  
Administrator & CEO  
BPA



John R. McMahon  
Brigadier General, US Army  
Division Commander

# **Attachment 3**



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
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May 4, 2010

Steven Wright, Administrator  
Bonneville Power Administration  
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Witt Anderson, Director, Programs Directorate  
U.S. Army Corps of Engineers  
PO Box 2870  
Portland, Oregon 97208-2870

Karl Wirkus, Regional Director  
U.S. Bureau of Reclamation  
1150 North Curtis Road, Suite 100  
Boise, Idaho 83706

Re: Reinitiation of Consultation

Dear Sirs:

This confirms that our agencies are conducting a reinitiation of the ESA Section 7(a)(2) consultation concluded in 2008 for the Federal Columbia River Power System (FCRPS) as you requested in your joint letter to me of May 3, 2010. We agree that your request properly characterizes the nature of the proceeding in which we are currently engaged during the court-ordered limited voluntary remand described in your letter.

By reinitiating consultation, NOAA Fisheries Service reconsiders the determinations it made in the preceding ESA § 7(a)(2) consultation for each ESA listed species and designated critical habitat affected by the action as documented by its previous biological opinion as well as any newly listed species or designated critical habitat that may be affected. NOAA considers the administrative record for the previous consultation including biological assessments and NOAA's previous analysis, as well as the best scientific and commercial data currently available.

We plan to complete this reinitiation by May 20, 2010, in time to meet the deadline set by the Court's remand order of February 19, 2010. Neither the ESA statute nor regulations relevant to a §7(a)(2) consultation set particular procedural or substantive requirements for a reinitiation of consultation. While NOAA's decision resulting from the reinitiation must evaluate whether the agency action is likely to jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat taking into account all of the information



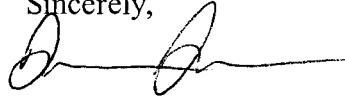
described above, it is NOAA's interpretation of its own consultation regulations, in particular 50 C.F.R. §§ 402.16 and 402.14, that a reinitiation may be scaled to the analytical needs of particular consultation. Indeed, it has been NOAA's and the U.S. Fish and Wildlife's practice to scale reinitiations to the analytical needs of the particular consultation, as consistent with guidance in their joint Consultation Handbook.

In this remand, NOAA is reconsidering all of its ESA determinations concerning the effects of the FCRPS as operated in accordance with NOAA's 2008 reasonable and prudent alternative (RPA) for each listed species or designated critical habitat considered in that BiOp.<sup>1</sup> As you know, in 2009 the Action Agencies, together with the Northwest region of NOAA Fisheries Service, proposed and the NOAA Administrator approved an Adaptive Management Implementation Plan (AMIP) for the FCRPS 2008 RPA. This reinitiation is considering the effects of the RPA as implemented in accordance with that AMIP. This remand has several purposes. First, as stated by the Court's order of February 19, 2010, one of the objectives is "integrating the Adaptive Management Implementation Plan and its administrative record into the 2008 BiOp." Further, we are also gathering and considering information that has become available since the 2008 consultation or which merits our further consideration.

NOAA concludes that this reinitiation can adequately be completed by May 20, 2010, the deadline established by the Court for responding to this remand. NOAA's reinitiation analysis relies upon its legally valid 2008 FCRPS BiOp, its Supplemental Comprehensive Analysis and administrative record. NOAA's analysis for this reinitiation builds upon the substantial record already developed through years of consultation for the FCRPS with extensive collaboration with the states, tribes and public of the Pacific Northwest. While we find that a new biological assessment by the Action Agencies is not required, you are providing additional information which supplements your assessments in the existing consultation record.

We look forward to a successful conclusion of this reinitiation with the issuance of NOAA's Supplemental Biological Opinion by May 20, 2010.

Sincerely,



Barry A. Thom  
Acting Regional Administrator

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<sup>1</sup> NOAA is also considering these effects on the recently designated critical habitat for the Southern Distinct Population Segment (DPS) of Green Sturgeon. NOAA has also recently listed the Southern DPS of Pacific Eulachon, becoming effective May 13, 2010, and we understand the Action Agencies are now evaluating the nature of any FCRPS effects on this species and will initiate consultation as appropriate.

# **Attachment 4**

## **Attachment 4. Tributary Habitat Improvements**

The Action Agency tributary habitat program has ramped up significantly since 2008 and projects are getting implemented on-the-ground by a host of partners. It is important that the program be given enough time to work because the front end work takes time; this is partly why the survival improvements were anchored to 2018. There is a lag between when some of the habitat improvements are made and when the benefits show up as survival improvements that can be measured; it is also true that some improvements, like increases in streamflow, have immediate benefits. Below we briefly review the status of the current program, as supported by the Fish Accords, and describe how it is moving forward successfully.

### *The Columbia Basin Fish Accords among the Action Agencies and Tribes and States Significantly Support the Tributary Habitat Program*

Since the 2008 BiOp, the Action Agencies have: (1) identified specific habitat projects beyond 2009 for implementation in the 2010-2012 period; (2) committed substantial funding for implementation of habitat projects through the Fish Accords, contracts, and other agreements; (3) identified specific habitat implementation partners; and (4) identified and are implementing specific points of scientific review during habitat project selection. Together, these actions increase the certainty that habitat actions will have the intended benefits for ESA-listed salmon and steelhead.

The project selection process for 2008 BiOp implementation is designed to ensure that the best available science is used to determine the biological value of habitat improvements to salmon and steelhead. The 2008 BiOp RPA's habitat measures use an adaptive management framework designed to meet specific habitat quality improvement performance standards by 2018. See RPA Nos. 35 and 51, for example. The Action Agencies, including Reclamation, are implementing these RPA measures, are actively monitoring progress, and are making any needed adjustments through adaptive management to remain on course for successful completion of the RPA measures by 2018.

Substantial on-the-ground momentum has now been built in many areas to support fast-paced habitat project implementation in 2010-2018. For example, in the Upper Columbia area, and with our Fish Accord partners, the Action Agencies are moving forward with a significant effort to build habitat projects. This work is being coordinated with the Intensively Monitored Watershed effort and other research and monitoring so that we can test the effectiveness of the habitat improvements. These improvements should provide significant support for the Upper Columbia ESA-listed salmon and steelhead.

With respect to the method developed through the regional collaboration to assess benefits of tributary and estuary habitat actions, the majority of tribal, state, and federal scientists involved in the collaboration support the method adopted in the 2008 BiOp. The Action Agencies' Comprehensive Analysis, in Appendix C and Section 7.2.2 in the 2008 BiOp, provide a comprehensive overview of the analysis used to estimate habitat improvement and survival benefits. The benefits assigned to tributary habitat improvements are reasonable because they are based on expert judgment informed by scientific data and because the benefits are specific to the project, population and limiting factors being addressed.

The Administration reviewed the methods used to estimate survival benefits from habitat projects and stated its conclusion that they are sound and retain the needed flexibility to respond to evolving scientific data, as well as to implementation challenges and opportunities.

*A Scientific evaluation and review helps ensure tributary habitat project effectiveness.*

The Action Agencies are actively implementing the extensive program of tributary habitat actions called for in the 2008 RPA. Projects for the 2007-2009 implementation cycle that were specifically identified in the 2007 BA are now either completed, being implemented, or being replaced by more feasible projects and projects for the 2010-2012 implementation period are underway.

Project selection in the tributaries occurs in multiple ways, each of which incorporates independent scientific review and information gathered through ongoing research, monitoring and evaluation:

- (1) Consistent with RPA Action 35, the Action Agencies regularly convene expert panels comprised of state, tribal and federal specialists familiar with local habitat condition. The expert panels identify specific habitat actions to be implemented or available for implementation, evaluate the limiting factors addressed, and estimate the associated habitat improvements. In 2009 these panels were convened for the populations listed in bold type in RPA Action 35, Table 5. The panels evaluated the habitat improvements estimated from 2007-2009 completed implementation and estimated habitat improvements from projects identified for 2010-2012 implementation. Based in part on this expert assessment, the Action Agencies have selected projects for 2010 – 2012 implementation. Consistent with RPA Action 35, the expert panels will be reconvened in 3-year cycles to identify projects for each remaining implementation period of the BiOp. Beginning in 2011, the expert panels will also be provided climate change, temperature, invasive species and toxics information consistent with AMIP amendments 4 and 5 to apply and use as they identify and prioritize habitat improvement actions.
- (2) Tributary habitat actions funded under the Accords are linked to biological benefits based on limiting factors for ESA-listed fish, consistent with recovery plans and subbasin plans. In the areas where habitat expert panels are convened, the habitat projects advanced

under the Accords will be reviewed by these panels to confirm habitat improvements and survival estimates.

- (3) The past several years of tributary habitat implementation experience have led the Action Agencies to conclude that certain technical studies improve the odds of biologically successful project construction. Based on this information, and considering adaptive management, Reclamation is completing “tributary and reach assessments.” These studies characterize ecosystem and baseline conditions, geomorphic parameters, and other factors to help identify, prioritize, and implement successful habitat improvement projects.
- (4) All projects funded by BPA are subject to scientific review by the Independent Scientific Review Panel. Most actions implemented with Reclamation technical assistance also receive funding from BPA and therefore undergo ISRP review. The small numbers of actions funded through other sources are reviewed by the Upper Columbia Salmon Recovery Board Regional Technical Team or the Pacific Coast Salmon Recovery Fund implementation program.

The independent science reviews and assessments common to these project selection processes help ensure that the most knowledgeable experts are reviewing potential projects for their biological value to salmon and steelhead and incorporating the results of RM&E in that process. These RM&E activities, implemented under the 2008 RPA Actions 56 & 57, involve status and trend monitoring to improve the general understanding of productivity and abundance for specific salmon and steelhead populations, and effectiveness monitoring to better quantify improvements in habitat quality and the survival of salmon and steelhead populations from tributary habitat projects. Specific scientific investigations in six tributary subbasins, called Intensively Monitored Watersheds (IMWs), aim to contribute empirical information that ultimately can be used to inform the tributary habitat survival estimates developed through the collaboration process. For example, the IMW efforts are expected to produce estimates of juvenile salmon growth and survival (and various other data) before and after the implementation of different kinds of habitat improvement projects; these data will then be presented to the expert panels and others to help inform future estimates of project benefits.

Finally, two separate activities help address the inherent uncertainties associated with tributary habitat benefits. The first is that, though adaptive management, new information available from RM&E (particularly from the Intensively Monitored Watersheds), recovery plans, the scientific literature, and other sources will inform future tributary habitat project benefit estimates (see RPA Actions 35, 56, and 57 and AMIP amendments 4 and 5). That is, the most recent data will be used to help determine the estimated benefit from habitat projects and this assessment will in turn guide future implementation so that the benefits in the RPA table will be achieved. The second is that the AMIP includes contingencies in the event that salmon adult abundance does not respond as estimated by the 2008 BiOp, which includes the habitat benefits.