

**COLUMBIA BASIN 2000 BIOLOGICAL PLAN FOR  
ANADROMOUS FISH RECOVERY**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON FISHERIES,  
WILDLIFE, AND WATER

OF THE  
COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

THE IMPLEMENTATION OF THE NATIONAL MARINE SERVICE'S 2000 BIO-  
LOGICAL OPINION FOR ANADROMOUS FISH REGARDING THE FED-  
ERAL COLUMBIA RIVER BASIN POWER SYSTEM

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JUNE 24, 2003  
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## **COLUMBIA BASIN 2000 BIOLOGICAL PLAN FOR ANADROMOUS FISH RECOVERY**

**TUESDAY, JUNE 24, 2003**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND WATER,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:31 a.m. in room 406, Dirksen Senate Building, Hon. Michael D. Crapo [chairman of the subcommittee] presiding.

Present: Senator Crapo.

### **OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. Good morning. This morning the Subcommittee on Fisheries, Wildlife and Water will receive testimony on the implementation of the December 2000 Federal Columbia River Power System Biological Opinion. This hearing will come to order. I want to first thank all of the witnesses who have made the effort to prepare testimony and to come here yet once again to testify about this critical issue.

In the more than 10 years that I have served in the U.S. Congress, recovering Pacific salmon has been one of my top priorities. I have held hearings and traveled throughout the navigation system on the Snake and Columbia Rivers, looking at the hydroelectric projects and fish passage systems. I have urged transparency by the Federal agencies in the development of the biological opinions and required them to produce documents when I did not believe they had proceeded in a transparent manner.

I have enlisted the help of the General Accounting Office in trying to understand how much and where salmon funding is spent. I have developed a funding plan of my own for implementing the December 2000 Biological Opinion. And every year, I have worked to secure funding for conserving and recovering these incredible fish.

I am certainly not suggesting that I am the only one, especially of those here in this room, who have been working hard over the last few years to help try to recover our salmon and steelhead. In fact, I know that we are joined here by witnesses and there are many others in the audience or who are listening in today who have spent as much time, if not more, in fact many their entire careers working on this critical issue and dedicating themselves to restoring salmon and steelhead.

My point in saying this is simply that here we are again trying to find the best path forward that will restore this incredible icon of the Pacific Northwest. Although I am disappointed and frustrated, as I am sure many of you are, that we have come this far and invested so much money that we must address the obstacles that are currently before us and recommit to doing the best we can to recover these fish.

Let me also say that understanding where we are with regard to the BiOp implementation is in my opinion almost, if not equally, important today as it was prior to the court's ruling of just a short time ago. I also realize that there is still a potential for an appeal of that decision so we do not know what will be the outcome. But if we go ahead, if there is an appeal and the decision is overturned, we are still working with the biological opinion. If there is not an appeal and there are proceedings under the court's current approach, then there is going to be a reevaluation of the Biological Opinion and there will be actions taken in some context to proceed with developing a biological opinion that will pass court muster.

One way or the other, our evaluation today of where we are and where we are headed with regard to implementation of procedures to save the salmon and steelhead in the Pacific Northwest is critical.

I want to also point out that from my perspective, one of the critical issues which was focused on by the court and which I believe we are all going to be focusing on in whatever context we move forward is the resources that we will need to bring to bear from the various sources of assistance that we can find to restore salmon and steelhead. That is one of the focuses that you will find that I will pay attention to throughout this hearing.

I would like to thank our witnesses today for taking the time to be with us. At this point, I am going to lay out the ground rules for the hearing and then we will proceed with the hearing. For those of you who have been in hearings with me before, you will know that I always try to encourage the witnesses to remember that there is a 5-minute clock in front of you. I know that you all have much more than 5 minutes worth to say, and believe me, we will get into some discussions and questions where you will be able to present your further thoughts. Your written testimony has been received and will be reviewed thoroughly, so don't feel that you have to read word for word your written testimony.

I would like you to pay attention to the clock. When your 5 minutes is up, try to wrap up wherever you are and summarize your statement. Then we will proceed with questions and answers from there. If you are like me and you sometimes to see the clock, I may tap the gavel up here a little bit to remind you to take a look at it.

With that, let's go ahead with our first panel. The first panel is Mr. Bob Lohn, the Administrator of the National Marine Fisheries Service; Mr. Steven J. Wright, who is the Administrator and CEO of the Bonneville Power Administration. We have Colonel Dale Knieriemen, who is the Deputy Commander of the Northwestern Division of the United States Army Corps of Engineers; and Mr. Williams McDonald, Regional Director of the Bureau of Reclamation.

Gentlemen, we thank you all for being with us. Let's go in the order that I said your names rather than the order that you are sitting. So Mr. Lohn, we will go with you first. Please proceed.

**STATEMENT OF BOB LOHN, ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE**

Mr. LOHN. Good morning, Senator, and thank you for convening this hearing. I also want to just testify to your interest and passion on this subject. I have enjoyed working with you and your staff.

For the record, my name is Bob Lohn, Regional Administrator of the Northwest Region of the National Marine Fisheries Service, also known as NOAA Fisheries. I appreciate the invitation to be here with regional colleagues, tribal, State and other Federal colleagues. I am going to try to briefly talk about three points, and certainly stand open for further questions on any of them. In addition, I have filed written testimony and I would appreciate if that could be entered in the record.

Senator CRAPO. Let me just interrupt and say that the written testimony of all witnesses will be accepted into the record without objection. Thank you, sir.

Mr. LOHN. Three subjects I would like to touch very quickly on are the status of the litigation involving the FCRPS biological opinion, the status of implementation, and finally briefly the status of the listed ESUs, sort of where we stand on three fronts.

As you know, over the last 14 years, NOAA Fisheries has listed 26 separate populations of salmon and steelhead as threatened or endangered under the Endangered Species Act in Idaho, Washington, Oregon and California. Of these listing, eight occur in the Federal Columbia River Power System, or FCRPS, including four in the Snake River.

When we list a species or a sub-species or a distinct population segment, which these are, we are required to conduct a Section 7 consultation with Federal agencies who are proposing to take any action that would be likely to jeopardize the continued existence of the species or adversely affect critical habitat. Out of that requirement, we conducted a consultation, and in the year 2000 issued what is at least the third in a series of biological opinions. The 2000 FCRPS Biological Opinion determined that jeopardy would flow from the action as proposed and called for 199 reasonable and prudent alternatives. So there are other actions if taken that cumulatively would avoid jeopardy.

Soon after its issuance, it was challenged in court by various interest groups. On May 7 of this year, Judge Redden ruled that the Biological Opinion was not adequate. I read the ruling and others may read it in different ways, as basically a technical opinion. I am not diminishing Judge Redden's expertise. I think he wrote it very carefully and very deliberately the way he did it, but a technical opinion in which in particular Judge Redden said the mitigation as described does not clearly fit into two categories established under a 1985 rule adopted to implement the Endangered Species Act. That rule requires that in looking at future actions, an agency such as ours look only at, first, Federal actions that have been subject to Section 7 consultation; and second, non-Federal actions that are, quote, "reasonably certain to occur." If things don't fit in those cat-

egories under that rule, Judge Redden would say we would not be allowed to take the into account.

In effect, this opinion says the judge is not certain how we categorized the various actions we were relying on. He is not certain whether they fit these categories, and in effect his direction to us at a minimum is to go back, review these actions, and determine whether (A), the actions fit in these categories; and (B), whether those that do fit are adequate to avoid jeopardy.

So on June 2, Judge Redden remanded the Biological Opinion to us for further action. The court has agreed to give us up to 1 year to revise the Biological Opinion in accordance with its rulings. Status reports are to be filed every 90 days followed 1 week later with a conference of counsel to determine whether further actions need to be taken.

Currently, as you noted, the court is considering a motion by the plaintiffs to vacate the Biological Opinion while it is undergoing revision. Briefing on that motion to vacate was completed last week. The court may rule at any time. A decision by the court to vacate the Biological Opinion could leave us without clear guidance in the interim as to what should be done and how the system should be operated. So certainly we would see that alternative as leading to chaos. I think the judge is well informed on that and we expect a decision shortly from him. I am certainly hopeful that it leaves the framework in place while we are revising the Opinion.

We are currently undertaking a very extensive review of the Biological Opinion. We are not just looking at patching up a few flaws, but we are going back and reviewing the models used, certainly updating the assumptions and the science used in it. It is too early to say what the outcome will be, but at a minimum I expect it to reflect the best available science, including science that has come available in the last couple of years.

The status of the current Biological Opinion is still relevant because whatever the constructs, Senator, I think the next opinion also will be a mixture of actions within the mainstem and a series of actions taken offsite, that is, in the tributaries of the Columbia and Snake. Given those actions, the pattern will be the same and it will be interested in implementing. The implementation status is reported in the material I have provided for you. I will simply leave it at that. I would say we are making good progress in most areas. Sub-basin planning will be critical. In that area, I want to give credit to the Power Planning Council and others for getting it underway. It has gotten off to a slower start through the fault of no one and certainly not the Council, but I would rate that as making good progress.

The second key element, monitoring and evaluation, the Administration has supported funding for it and did not receive it last year. Additional funding to the tune of \$15 million is in this year's budget. That will be important to measuring the effect.

Finally, Senator, there was a question about the status of stocks. I have provided a brief summary in the form of graphs that cover the status of the stocks since 1980. They show a sharp upward tick recently. I do not consider that success. I do consider it a sign that for the moment, the stocks are showing improvement, largely a function of ocean conditions, also reflecting changes we have made.



Is it convincing that the problem is solved? Certainly not. Until we now what the underlying problem is and really have identified at a specific level, we will not know if we have fixed it. It is too early to declare success.

Thank you, sir.

Senator CRAPO. Thank you very much, Mr. Lohn.

Mr. Wright?

**STATEMENT OF STEVEN J. WRIGHT, ADMINISTRATOR AND  
CEO, BONNEVILLE POWER ADMINISTRATION**

Mr. WRIGHT. Thank you, Mr. Chairman.

I am here today to discuss the implementation of the 2000 BiOp, and I would like to start by saying I think we have some good news to report. Despite the droughts of the last couple of years, the West Coast energy crisis, the bad economy that we suffered in the Northwest, and higher rates, NOAA Fisheries has recently concluded that the action agencies, the Corps, the Bonneville Power Agency, are implementing 95 percent of the Biological Opinion requirements of the reasonable improvement alternatives.

Juvenile fish survival in the river today is now at the same rate as in the 1960's before the implementation of many of the dams in the river. We have had excellent returns recently, including this year. This is the first class of 2001 to return and of course this is a great relief to me personally because 2001 was the year of the drought and the year in which we implemented many of the power system emergencies, reducing some of the BiOp implementation measures because of the West Coast energy crisis. We are making the BiOp work under extremely difficult circumstances.

The BiOp represents a fundamental change in thinking, I believe. It focuses on performance-based standards and allows cost effectiveness tests to be part of the equation as we go forward. This is important because we know that the people of the region want fish and wildlife in the rivers. We also know that they want the programs to be cost efficient. EPA costs currently exceed \$600 million annually for fish and wildlife mitigation efforts. It is not a small part of our budget. It is a significant portion of our cost structure. These costs reflect hydrosystem operations, support for the integrated program, and debt service on measures that we have implemented over the course of the last 20 years.

Two years ago, Bonneville implemented a 46 percent rate increase, and this year we are looking at another substantial rate increase in a region that has the highest unemployment in the Nation. We have sought cost efficiencies from every part of our budget, including fish and wildlife. Earlier this year, we worked with the Northwest Power Planning Council to manage the 2003 budget for fish and wildlife efforts. This was successfully completed and I am appreciative of the difficult work accomplished by the Council in getting us to where we needed to get to. Because we are looking at potential further rate increases to cover costs, I do not expect our efforts to manage costs to abate over the course of the next few years.

As a result of the funding issues, many in the region have sought greater predictability in funding from Bonneville. We have expressed a willingness to engage in discussions about a new funding

agreement, although spending levels must reflect both meeting our obligations and the state of the regional economy.

In this regard, I was pleased by the four Governors' recent statement and commitment to support defining objectives and a cost effective approach to meeting both our Endangered Species Act and Northwest Power Act objectives. We also agree with our Federal partners, the four Governors, and the Northwest Power Planning Council that sub-basin planning and research monitoring and evaluation are key components to moving forward. As Mr. Lohn indicated, that was a critical finding in the findings letter from NOAA Fisheries that came back to us.

Mr. Chairman, efforts to recover salmon and steelhead in the Northwest is one of the Nation's largest and most ambitious environmental recovery programs. We believe that we are seeing results as a result of the efforts that have been made over the course of the last 20 years and the increased funding that has been provided. In the face of some extremely challenging financial circumstances, we remain fully committed to meeting our obligations. We are focused on results and a cost effective approach for getting there.

Finally, Mr. Chairman, if I could make one comment with respect to your comments that you made earlier, I do want to say to you that it is certainly my expectation that no matter what the court rules with respect to vacating the Biological Opinion, it is our intent to continue to implement the existing Biological Opinion until at least we can come up with a new Biological Opinion and address the concerns of the court.

Thank you very much for the opportunity to appear here today. Senator CRAPO. Thank you very much, Mr. Wright.

Colonel Knieriemen?

**STATEMENT OF COLONEL DALE KNIERIEMEN, DEPUTY COMMANDER, NORTHWESTERN DIVISION, UNITED STATES ARMY CORPS OF ENGINEERS**

Colonel Knieriemen. Mr. Chairman, committee members and distinguished guests, I am Colonel Dale Knieriemen, the Deputy Commander of the Northwestern Division, U.S. Army Corps of Engineers. I am pleased to be here today to discuss the efforts to restore the Columbia River Basin's stocks of salmon and steelhead.

First, I would like to take this opportunity to thank the Congress and the Northwest delegation for your overall support of the salmon recovery efforts in the Columbia Basin. These efforts are well underway, and overall there is good news to report. We have made numerous improvements to dams and fish passage facilities throughout the system. One of our best success stories worth mentioning is the removable spillway weir or RSW at Lower Granite Dam. The RSW prototype allows juvenile salmon to pass the dam nearer the water surface under lower velocities and lower pressures.

The RSW has the potential to provide not only fish benefits, but also power savings to the region. We have tested for mechanical and biological effectiveness and gotten good results. The RSW, in conjunction with the surface collector and four-bay guidance structure at Lower Granite shows a seven-to-one effectiveness ratio

based on the first-year data. About 70 percent of the fish pass the spillway with only about 10 percent of the river flow.

Besides these new technologies, we continue to make improvements to existing fish bypass systems. NOAA Fisheries' research on Snake River spring-summer chinook indicates that between 50 and 60 percent of juvenile fish that migrate in-river now successfully pass the eight Corps dams. This survival is similar to when there were only four dams and is up from about the 10 to 40 percent in the 1960's and 1970's.

We continue to provide flows, spill, and other operational measures for fish during migration seasons. We are laying the groundwork for potential further operational adjustments. We barge the majority of the Snake River juveniles in accordance with the Biological Opinion. While this transportation system is not everybody's favorite, studies indicate that transport can increase fish survival as measured by smolt-to-adult return rates. This is especially true for wild fish. Returns for transported wild steelhead are about 85 percent greater than in-river migrants, and for wild chinook about 30 percent greater.

At Libby Dam, the Corps began implementing the variable discharge alternative flood control plan operation, also known as VARQ, on an interim basis in January of 2003. It is a key action to protect the Kootenai River white sturgeon and salmon through improved ability to provide spring and summer flows. We expect to continue this interim operation until the environmental impact statement on the potential long-term implementation is completed in 2005.

We are also making progress in habitat restoration. We appreciate the boost to estuary habitat restoration efforts in the 2003 appropriations. We continue to work with regional partners such as the Lower Columbia River Estuary Partnership and others on the planning efforts for several promising habitat projects in the Columbia River estuary. The Brownsmead project east of Astoria will restore tidal flows to about 9.2 miles of sloughs. We have initiated the Southwest Washington Stream Study to replace nine culverts that are restricting access to small tributary streams to the Columbia River. A project at Crims Island would acquire and restore approximately 425 acres of tidal emergent marsh, swamp, slough and riparian forest habitat in the Upper Columbia River estuary.

As we are collectively implementing regional efforts, we are witnessing some of the best adult fish returns we have seen in a while. While much of the credit may be due to ocean conditions, we can take some credit for getting more and more juveniles safely through the migration corridor. The 2003 returns of the spring chinook salmon were the fourth largest since we started counting at Bonneville Dam and the fourth year running of good numbers. This is in spite of the drought conditions the juveniles faced during the 2001 out-migration.

Challenges remain. There is still a long way to go. We are in the third year of a 10-year effort and must keep the momentum going. One Biological Opinion goal is to restore 10,000 acres of estuary habitat. This will be quite a push. Operation of Libby Dam will be a challenge to balance the needs of fish and those of the public living downstream. Research monitoring and evaluation measures in

the BiOp are progressing, but remain a complex task. We are pursuing potential opportunities for linking to State, tribal, local and other efforts of a similar nature as we set up these systems.

Overall, we believe the agencies are making very good progress. However, there is much work ahead of us. We are hoping for even better support from Congress as we progress toward the 2005 mid-point evaluation of our efforts. The President's budget for the Corps for Columbia River salmon activities is sufficient to keep us on track and we respectfully request your full support for that budget.

Mr. Chairman, this concludes my testimony.

Senator CRAPO. Thank you very much, Colonel Knieriemen.

Mr. McDonald?

**STATEMENT OF J. WILLIAM MC DONALD, REGIONAL DIRECTOR, BUREAU OF RECLAMATION, PACIFIC NORTHWEST REGIONAL OFFICE**

Mr. McDONALD. Thank you, Mr. Chairman.

For the record, my name is Bill McDonald. I am the Regional Director of the Bureau of Reclamation's Pacific Northwest Region. As the operator of two of the features of the Federal Columbia River Power System, Reclamation bears or shares responsibility for about one-third of the actions in the Biological Opinion's reasonable and prudent alternative. For my oral comments, I would like to focus on those responsibilities which we have for making habitat restoration improvements under Action 149 of the RPA. This action calls for a program to assist non-Federal water projects with passage so that there is proper migration paths at their diversion dams and also screening on these non-Federal structures.

While Reclamation has the authority to plan and design fish screens and passage facilities for non-Federal projects, we lack the authority to actually fund construction. In that regard, the Administration last October proposed legislation to Congress which, if enacted, would give Reclamation the requisite authority to provide financial assistance. I am pleased to report that Senator Smith just this past Friday introduced S. 1307 which largely reflects the Administration's proposal. We are certainly appreciative of the Senator's support for that proposed legislation.

I am frequently asked if the court's recent ruling to which you have referred, Mr. Chairman, still leaves us in a position to need that proposed legislation. What I would like to emphasize is that it very much does leave us needing that legislation. Among the things that the court found was that certain actions in the BiOp, in the reasonable and prudent alternative, were not reasonably certain to occur. The proposed legislation as now introduced by the Senator would allow us to provide financial assistance and is very important in that it would remove some of the uncertainty about which the court was concerned. So, we very much look forward to working with the Northwest delegation and Congress in moving forward a suitable bill because it is quite important to us still.

Finally, I would note relative to appropriations that Reclamation has received substantial increases. Our appropriation in fiscal year 2001 was about \$5.6 million. In the President's proposed budget for fiscal year 2004 it is about \$19 million. Most of that increase is to fund the offsite habitat mitigation for passage and screening, about

which I have just spoken. That funding is quite important to allow us to go forward. We are certainly appreciative of the congressional support for the program in that regard.

In conclusion, I would note that we are quite mindful of the importance and the magnitude of the task which lies before us, and my written statement reflects a number of details in that regard.

Thank you very much, Senator.

Senator CRAPO. Thank you very much, Mr. McDonald.

Mr. Lohn, I am going to start with you. As we have already discussed today, a Federal judge has recently declared the 2000 Biological Opinion invalid on the Columbia River hydrosystem, and basically gave your agency a year to rewrite the Biological Opinion. The court's decision specifically found that primarily the actions to improve the nonmigratory habitats laid out in the plan were too vague and were not reasonably certain to occur.

This, to me, would seemingly suggest at least two alternatives during this rewrite period, and that is either we need to ensure that these actions are reasonable and certain to occur or we need to craft a plan with stronger measures addressed to these habitats that are affecting the hydrosystem, or some combination of these two alternatives. Can you just give me your plan right now for where you are headed with regard to the new world we are approaching under the court's order?

Mr. LOHN. I think you have captured the two alternatives correctly. Actually, we are looking at both. As to where we are headed, as you know, these biological opinions have substantial technical underpinnings. We are taking the modeling and the technical tools we used last time, updating them with the most current information we have and looking at the results that will flow from that. We expect that to take approximately 3 months and it is well underway at the moment.

Following that, we will step back and see what that information is telling us as to whether or not we are still convinced that the measures we are doing as we are seeing them evaluated in practice are really the ones that are leading us to best success. The second thing, Senator, that we are doing is developing a model to give us greater precision in how we measure the effects of offsite mitigation, habitat improvements and the like. That is something where I think we need to do a better job and we are moving forward on that.

Along with that and parallel, the lawyers and others are working carefully to determine how each of the existing RPAs, the 199 specific measures, do or do not meet Judge Redden's standards for certainty and clarity, and what would be needed to in some instances re-phrase or properly categorize those. So in effect, we are going through the 1999 and determining which ones would fit these standards.

We expect a major decision point to be, again, three to 4 months from now when we have this information in front of us and look at what counts, what value we have, and what we are able to measure, and what the new science is showing us. At that time, I think we will have a decision as to whether the current Biological Opinion needs substantial amendment or whether in fact we need to write one with a different foundation.

Senator CRAPO. Thank you very much.

I personally believe that our objective in the Pacific Northwest should be to restore the fish not just to the standards that the Endangered Species Act requires to avoid extinction, but to abundant, self-sustaining, harvestable levels. With that goal in mind, what I am going to refer to right now occurred before your tenure at NMFS, and so I can say this without taking a personal shot at you, but I have had some problems with NMFS over the last few years. As the 2000 Biological Opinion was being developed, we held some hearings here in Washington to get into that because frankly at the time I felt that NMFS and the Federal Caucus were not working collaboratively at all with the States and the tribes. Frankly, there were decisions being made without the kind of collaboration and input that needed to be happening in the Pacific Northwest. I was very concerned about the 2000 Biological Opinion and what it was going to contain.

When it came out, it was a done deal. Frankly, I was not too critical of it because I felt that at least we had something to work with at the time and we needed to get going in trying to implement it. I did feel that it created some political potential for problems down the road in the way that it set up these mile-markers and that it essentially set up a situation in which if we did not adequately fund and implement its contents, that we could be facing serious questions that the Biological Opinion avoided at the time.

The reason I go through that background with you is because we are now at a time where perhaps we are going to be rewriting that opinion. I want to be sure that NMFS does not follow the same path that it followed before, to be honest with you, and that is to leave the States and the tribes out of the process and to fail to conduct itself in a collaborative manner. Could you comment on that please?

Mr. LOHN. Certainly. First of all, success, whether you are focusing only on endangered runs, and I agree that is the wrong focus. Legally, of course, the Act takes us to part of that, but we do not have to stop there. Whether you are focused on abundant runs, and I accept that as something we should be looking at, in order to get to success we have to rely not only on the efforts and knowledge, but the support of people far away from the Federal family. This is a regional effort, if we succeed. I will not be a Federal effort. We have to provide the underpinnings, the funding, an outline, but we need to draw on others.

In terms of how we get there from here, I think there are probably two elements. One, we do feel like we need to do a relatively thoroughly technical analysis just to hone in on what seems to be the problem. That we will do. The second question is, so as we look at the activities to be undertaken or as we review our own technical analysis, how much do we involve others? That is something that I am very interesting in reaching out to others. As I look at it in a practical sense, I have to weigh that against the time allowed by the court and the desire to get an opinion completed. But I will be very sensitive to that as we develop it, and I will look for mechanisms to seek not only just regional review, but greater regional collaboration. I will be mindful of that.

Senator CRAPO. Thank you very much, Mr. Lohn. I appreciate your commitment on that. I realize that you do not know exactly the kind of timeframes and dynamics you will be working within, but I encourage you very strongly to remember the States and the tribes in the process here this time around.

Let me go to one other aspect of this. It is my understanding that the use of both independent and Federal, State and tribal scientific analysis was very useful in the mid-to the late-1990's. At that point, I think we called it PATH or other scientific efforts were underway. I do not know that an exact reconvening of PATH is what I am talking about, but maybe. But I am wondering how and when you intend to include the State and tribal fisheries biologists in this process, as well as stakeholders.

Mr. LOHN. Senator, I would agree that PATH had a value in developing an understanding of the models used. I am afraid I do not share your same enthusiasm for some of the outcomes there. For example, the model that was developed by the larger group of participants in PATH by the coalition of States and tribes probably would have predicted that the runs we are now seeing were impossible. That is not to fault the process. It is simply to say there was both a process to understand and various agreements on modeling tools.

We did not get to complete agreement on modeling tools, and I am not suggesting our model was more perfect than the others. But I think in making decisions, it is difficult to get the scientific community united on a single model. I am willing to try to be open and transparent about what we are using and allow advice about the adequacy or criticisms of that to come in. I am not sure that what was attempted there was almost a model developed by committee, and it ultimately led to a division of models, rather than an integration of models.

Senator CRAPO. Thank you. I appreciate your response on that. I think my main objective here is to see that the States and tribal fisheries, biologists and their information is incorporated. This gets back to my other point about the fact that I felt last time around that we had a closed-door process.

The BiOp looks at whether downriver smolt migration is helped or hurt by summer spill. Do you know what the status is of the research on that, and are there any preliminary findings?

Mr. LOHN. Senator, that has been the subject of active discussion. Certainly, our planning council has suggested that we re-look at that. I agree we need to. The problem with summer spill is that in summer you have primarily fall chinook migrating. They are fish that are not necessarily on a fast track to the ocean, but will sort of spiral there, taking time to rear, choosing later to migrate. So the value of spill to those fish is probably less than it is to spring migrants who are looking for fast passage.

What we have determined is that in many instances late summer spill in particular is known to be relatively costly and the biological benefits are relatively low. That is, the number of fish aided by it are a small percentage of the run. The question is, is there a better way to achieve those biological benefits? That is really the heart of the discussion we need to have. I know there is interest in looking at it this year, and we are looking at what better alternatives we

might have to help those fish. So I agree it is an important question.

Senator CRAPO. Thank you very much.

I just want to go into one more thing with you, and I will probably go into this issue with each of the witnesses so you can play close attention here and start formulating your own answers. By way of prelude, one of the contentions that I have had over the years is that although we have a significant commitment of resources from the rate-payers in the region to salmon and steelhead recovery, and I think that is appropriate and I will be talking with Mr. Wright about that in a minute, I also believe that it is entirely appropriate and in fact necessary for the Federal Government to weigh in much more heavily in other contexts with support from the Federal budget.

The reason I say that is the actions that we are undertaking here are being undertaken under the United States Endangered Species Act, which is a policy that the U.S. Government has decided to implement in the entire country, and in this case in the region. Because we are accomplishing an objective that is not only important to us in the Northwest, but as a part of Federal policy it is proper that these mandates from the Federal Government be funded. It gets back into the unfunded mandates aspect of the debates we have been having here for a long time.

As you may know, I am sure you do, I have proposed a level of Federal support for funding of salmon and steelhead recovery that is far higher and above what the current level is, although I have to applaud the Administration for its significant increases in support over the last couple of years. I am going to continue working to lay the foundation to make the case to our Congress and to our President that we need, even in these difficult budget times, to step up to the bar and make certain that we provide the level of support for salmon and steelhead recovery that is necessary.

So my question is, in the first place, do you agree that there is a role for strong Federal support for these resources to be put into effect?

Mr. LOHN. Senator, I very much agree. Of course, I realize there are difficult budget decisions to be made within the Administration. At the end of the day, I need to support them. But without the very substantial support of yourself and other Members of Congress, we would not have made anywhere near the progress that we have made. It is critical.

Senator CRAPO. I appreciate that. My next question is one which may be encouraging you to climb out on a limb, and I would understand if you feel that you cannot answer this question, but I know that in the court's order, the court stated that one of the concerns the court had was that it was not clear at all that the funding for all of the Biological Opinion was going to be available, whether it be Federal funding or whether it be support from States and tribes and others that were expected in the Opinion. Do you believe that the level of Federal funding support is adequate?

Mr. LOHN. Senator, for the very short term, which I must admit is where I am focused at the moment, realizing that I am more interested in what we need to do to get through the next year while we are revising the Opinion, and then I think we will have a much



better idea of what is required. For the short term, if we can get the RM&E funding, I think we are at an adequate level. For the long term, it is difficult to say. What would make the picture clearer are two things. One, when we finish the further analysis, we will have a better idea of what matters and what doesn't. Two, I cannot overemphasize the importance of sub-basin planning. In effect, at a watershed level, that is identifying the problems that need fixing. At that point, as they become specifically identified, we have a much better picture of costs.

Having said that, I have no doubt that long term, the cost of addressing those problems will be significant and require expenditures that are perhaps higher than the ones we are making.

Senator CRAPO. Thank you very much, Mr. Lohn. I appreciate your forthright responses to my questions. I am confident that the level we are going to need to provide is much higher than what we are providing. I look forward to working with you in trying to obtain those levels of support.

Mr. Wright, let me turn to you and let's talk about the Bonneville Power Administration's role in all of this. First of all, could you go over with me, one of the issues that I know you are aware has been out there is the fact that with the difficult economic pressures that have been facing the Bonneville Power Administration in the energy arena and others has caused, I will put it in my words, a justifiable effort to look at how you can control costs within your own budget and then, as you know or as you have testified, propose a rate increase and manage the budget that you are dealing with. In this context, it is my understanding that the resources available for salmon recovery have actually gone down. Could you give me your perspective on that?

Mr. WRIGHT. I suppose I do have a different view of that. My perspective is that if you look at the accrual amounts, there has been an increase in funding going back to, recall, Senator, I think you were involved in the memorandum of agreement of 1996 that established the funding levels that Bonneville would provide for its overall fish and wildlife efforts. There was a steady increase there, with an average amount that was across the 1996-2001 period for the direct program of a little less than \$100 million a year. The direct program, which is the offsite habitat hatcheries and those sorts of efforts, we are currently funded at above \$135 million for 2002 and are headed, with the agreement that we have worked out with the Council toward a similar sort of level for this coming year for 2003. So I see an increase in funding there.

What we are seeking to do is manage the budget that we assure that we do not exceed the levels that we had anticipated. That is particularly important to us because we are struggling with our finances and trying to maintain liquidity. Things look a lot better now than they did a few months ago in terms of that. But we are also trying to keep the size of our rate increase as low as possible. We believe that level of funding does meet our objectives consistent with statute.

Senator CRAPO. The level, if I understand it, is, and I want you to make sure I get it correct here, but the level that has been reached is \$139 million, but as I understand it, it is not expected that there would be any fluctuation above that.

Mr. WRIGHT. That is what we are trying to, is manage the budget. Where we were headed earlier this year, in a letter that I sent to the Power Planning Council about a year and a half ago, it indicated we would provide \$150 million in expense money, which turns out to be \$139 million in accruals. For the \$139 million level, it appeared earlier this year that we were headed toward spending closer to \$180 million this year.

Our concern was it was unclear whether that was a spike or a plateau. If it was going to be a plateau, then we were going to greatly exceed the average of \$139 million through the period. So that is when we went to the Council and said we need to do something with respect to the spending for this year and try and make sure that we are not going to exceed the \$139 million average across the period. We did also ask the Council as to whether it would be possible to find efficiencies in the program and spend less than \$139 million a year.

Senator CRAPO. It seems to me that you are facing, I understand, very difficult financial pressures because of the market and how things have developed. Obviously, you are getting pressure from every quarter, in your cost control efforts, not to control the costs in their quarter. But it seems to me that salmon and steelhead recovery is one of those areas where it is going to be very difficult to justify either putting a cap on the necessary requirements that the Biological Opinion may impose, or reducing them. That is just my personal opinion.

The question I have is, have you given consideration to some other source of accounting for the salmon and steelhead recovery portion of your budget? What I am getting at here is, have you considered something like setting up a restoration fund that is managed differently so that it is protected from the vagaries of other market pressures and the like?

Mr. WRIGHT. That proposal has come to us in the past. It is difficult to figure how to do that because the Bonneville fund is a separate fund at the United States Treasury. We manage that fund as a whole fund and are expected to manage it in that way. Having said that, I think that the issue that fish and wildlife interests have raised, and it is a legitimate issue, is the predictability of funding from Bonneville; that there was a certain amount of predictability that came with the memorandum of agreement from 1996 to 2001, and there has been less predictability, I candidly admit, with respect to where we are today, particularly given the financial difficulties that we have encountered.

Where we have expressed a willingness to discuss with folks is, can we move forward with something. It may not be the same as the old MOA, which was a document that probably had 50 to 100 pages in it, but can we provide more predictability with respect to funding on a going forward basis. That is a discussion that we are interested in having. It was called for by the four Governors and their recommendations. We are supportive of that recommendation and want to figure out how to do that.

I will say that there are probably two parts to that. The first is how we move through the remainder of this rate period, through 2006, and then longer term, where we go post-2006. In that regard, the Governors made another set of recommendations that I

thought was extremely important, and that is defining clear objectives for us, not just for our Endangered Species Act goals, but also Northwest Power Act objectives. I think if we can create clarity with respect to ratepayers that here are our objectives and we are steadily moving toward accomplishing those objectives, it will create greater support, more broad support, let's say, across the Northwest for this program, which I think would be a good thing.

Senator CRAPO. I tend to agree with you, that if we can get that kind of certainty. A part of this I think gets back right into the court case, because as part of the court case is the concern about reasonable certainty or reasonable likelihood of the activities of the Biological Opinion to occur relates to whether there is funding for them. And if we have a static system which is not responsive necessarily to the needs of the Biological Opinion, I think it raises a legitimate question as to whether we can give certainty to the Biological Opinion.

On the other hand, I realized, and that is what I was talking to Mr. Lohn about, that in my opinion there should be much more to this than just the ratepayer aspect of the resources that are coming into the system. We have to get both figured out and we have to get both on a track where we as the public and those of us in policy positions and those in implementation positions are aware of what is expected, so that we can plug it in, and then start building the public support and confidence for it.

In that context, if I understood what you said, you are willing to work with the States, the tribes and the other members of the Federal family to put together some kind of an approach where we can get a handle on it, or another MOU if necessary, on how we will approach salmon and steelhead funding in the BPA portion of the budget.

Mr. WRIGHT. Yes, I am. Let me say that that is an important thing for us. I think we do need to accomplish that and I would like to get it done. I do need to say, as I said in my oral testimony, that there are some expectations out there with respect to level of funding from Bonneville which I think is beyond our ability to provide. So a critical part here is the balance between meeting our objectives, Northwest Power Act, ESA, tribal trust responsibilities, along with balancing the needs of the regional economy.

Senator CRAPO. I think that is correct. In fact, the General Accounting Office's testimony at the recent Senate Indian Affairs Committee hearing, and I believe you were at that hearing or testified at that hearing, their report highlighted what they called the inherent conflict between BPA's role as a supplier of economic electricity and as a protector or restorer of fish and wildlife. I think that is what we have been talking about here, is when you get budget pressures and financial pressures like we are seeing in today's market, that inherent conflict that you have to manage becomes very difficult. It seems to me that that conflict is likely to grow in coming years as power demands bump up against increased salmon and steelhead protection needs.

That is why I have proposed that you evaluate something like a separate fund or some kind of a specific structure that will enable you and all of us to identify over a multi-year period, and I am talking about working with the States and the tribes and the Coun-

cil and others to put this together, but it will help us all to build that partnership going forward and it will give us the certainty that we can then have to work toward building the rest of the pieces to this so that we have the resources committed to the salmon and steelhead that we need committed. So I appreciate your approach to that.

Mr. WRIGHT. If I could just add one thing, Senator.

Senator CRAPO. Yes?

Mr. WRIGHT. First of all, I hope what you heard from me is I do not quite know a way to do a separate fund, but I do think there is a way to do an MOA which I think will meet the objectives that you are talking about. If I could just say, though, with respect to the inherent conflict, there is an inherent conflict. There are a number of conflicts. We share the conflicts with our partners here. It is not just power and fish. It is navigation, irrigation, flood control and all of the things that we have to do in the system. I do not believe that because there is inherent conflict means that it can't be done. These are a set of objectives that the Congress has laid out for us. It is possible to satisfy these different objectives. That is our goal and to figure out a way to meet them all.

Senator CRAPO. I certainly agree with you. I don't know how many times I have gone through the list of the various things that the Columbia and Snake River systems provide for the people in the Pacific Northwest, but it is everything from power to wildlife and fish and environment, to flood control, to recreation, to economic development, to irrigation, and the list just goes on and on. It is management of all of these critical aspects of our life in the Pacific Northwest that makes this such a difficult and yet such an important issue.

I certainly take my hat off to all of you and those in the room and throughout the country who have been putting so much of your life into this effort. I just want to continue to work with you on that, in the hope that we can build it so that it works out in a way that we can get the resources to the fish. I suppose one of the things that I am angling at here with regard to all aspects of this problem is that we have an Endangered Species Act that sets a Federal policy that the salmon and steelhead need to be protected and recovered and the court order is putting an exclamation point on this. We have got make sure we have the resources to do it and the plan that will make it happen. That is the primary purpose of this hearing, which is to again focus on that.

Let me ask you, do you think it would be helpful in this process as we approach the issue if your decisionmaking, and Mr. Lohn I might come back to you for an answer to this same question, if you had a clearer economic analysis than we have today that illustrated the economic benefits that the salmon and steelhead provide to the economy and to the region, as well as, you know, we always talk about them in terms of our environmental heritage. I know there have been a lot of studies and a lot of talk about having studies with regard to what they mean economically, but do you believe that having a thorough study of the economic meaning of restoring our salmon and steelhead would be of benefit as we put together this plan and this approach?

Mr. WRIGHT. I have to admit that that is a question that I have not given a lot of thought to. So I am not sure that I have real clear thoughts on it. I do know that there was a lot of work that went into the Corps EIS on removal of the Snake River dams that got to economic benefits of recreation, including fisheries. That has been useful to us, at least as we have thought about these issues. I think at least the starting point would be, what did we have there and is there something that we would use to build upon that.

Senator CRAPO. Thank you.

Mr. Lohn, what would your thoughts be on that?

Mr. LOHN. Senator, I would be very enthusiastic in support of that, because I share your belief, setting aside the ESA issues, that an investment in a more abundant fishery, something that provides a real basis for the local infrastructure and those who would go out to enjoy the fish and to harvest them, my suspicion is that that would provide benefits that far exceed the costs. Having a study that begins to demonstrate that would be valuable.

Senator CRAPO. Thank you very much.

Mr. Wright, I just have one last question and it is coming back to the question of summer spill. The question is, what is the lost revenue value of summer spill? Do you know?

Mr. WRIGHT. It is substantial. In an average water year, it is probably in the \$65 million to \$80 million range. If market prices were to stay where they are today, this year it could be in excess of \$100 million.

Senator CRAPO. All right. Thank you.

Mr. Knieriemen, you mentioned that one of the key aspects of what you do is made possible by the budget that the Congress and the President provide to you. I think in your testimony you encouraged our support of that budget, and I want to strongly tell you that at least I personally strongly support the budget, and I am going to be doing what I can to increase and strengthen not only that budget, but the other budgets of the Federal agencies.

I want to come back to that question I said I was going to get to with all the panel, and that is, do you agree, and I suppose that your testimony already indicates agreement, but do you agree that there is a strong needed role for Federal dollars to be coming into our salmon and steelhead recovery process?

Mr. KNIERIEMEN. Yes, sir, I do. I think it is absolutely imperative that we have a Federal contribution, that the Federal family take the lead in trying to do what is necessary to not only recover, but to, as you so aptly put it, make abundant the fish species that are endangered right now.

Senator CRAPO. Again, I will ask you that question that you are welcome to take a pass on if you don't feel you are in a position to be able to answer, but that is, do you feel that the current level of commitment is adequate?

Mr. KNIERIEMEN. To be truthful with you, if we are basing our numbers on the 2000 Biological Opinion, we believe our numbers are adequate to do what is necessary to bring the species back from the brink of extinction. But the question that really begs to be asked is how will the Biological Opinion change a year from now, and what are the actions that are going to be required to implement that, and that may be more expensive, we don't know. That

is reading a crystal ball that I don't have a very good ability to do, sir.

Senator CRAPO. I can appreciate that. I thank you for taking a stab at that tough question. It is always tough to put someone in your position on the spot with regard to whether we have done enough from our side of the podium here to do it.

Just another quick question. As I am sure you are aware, several months ago the salmon advocacy folks published their annual report card that indicated that they felt that the Biological Opinion was not proceeding very well. Can you explain the significant discrepancy between what the action agencies are saying in their testimony here today, and I am talking about mostly the written materials that we have received, and the salmon report card that came out?

Mr. KNIERIEMEN. Sir, I believe maybe Mr. Lohn could answer that a little better than I could. If he would be so willing to help me with this.

Senator CRAPO. Bob, do you want to help out here?

Mr. LOHN. Senator, I thought the Colonel was doing just fine.

[Laughter.]

Mr. LOHN. Sir, a couple of comments about that. First of all, much of that report was keying off of some cost estimates that were sort of back-of-the-envelope cost estimates developed very early on regarding the 2000 Biological Opinion. Those were rough estimates without really knowing what needed to take place in specific areas. They were just guesses of we might need to do so many examples of this thing, and this thing might cost a certain amount. In effect, one of the conclusions drawn by that report card was that not enough is being done because this level of money is not being spent. I suppose I would be more cautious than that because my desire is to see what really needs to be done, to measure it and identify it, and then attach a cost to it. I would say it is way too early to determine that.

The second observation is that that report card judged the BiOp I think in ways that were premature, perhaps unfair. It first of all looked at, the BiOp called for a series of things to take place over 10 years. The report card judged it as if all of those things should be done now, and so found fault in a number of areas that were not completed. In fact, of the as I recall 127 examples of things that the BiOp required to be done by a specific deadline and that deadline has passed, our review showed that all but seven of them were essentially on track. So we reached different conclusions than that.

Finally, Senator, an important difference was that in some instances the report used things that were set up in the Biological Opinion not as requirements, but goals, and determined even though those goals were acknowledged when they were set as things that you could not meet every year, the report basically declared a failure if, for example, all of the resources of the FCRPS had been used to deliver all of the available water to reduce temperatures in the Snake River, and at the end of it, having done all that could be done, the temperatures were not low, that report basically said that is a failure. We would say, no, holding the temperatures low was a target, but the Biological Opinion was specific

that you could only use the water that existed, and beyond that failure to sort of refrigerate the water of the Snake River was not a practical failure of the BiOp.

So for a series of reasons, I think we would reach a different conclusion. Nonetheless, I take it as a prod to say folks are watching. They are concerned about whether we are making progress and we have an obligation to report accurately and honestly to the public as to whether we are making that progress. So I take that side constructively.

Senator CRAPO. Thank you very much, Mr. Lohn.

Mr. McDonald, let me come to you now and ask you the question that I have been asking everybody else, and that is, do you agree with my contention that there is a strong role for Federal resources to be put into the system for salmon and steelhead recovery?

Mr. McDONALD. I certainly do, Senator. As I indicated in my testimony, both oral and written, the Administration has been very supportive of expanding our program in the last 3 years to undertake new activities required of us under the RPA.

Senator CRAPO. Do you feel that the current level of budget support that you are getting from the Federal budget is adequate?

Mr. McDONALD. Very much so.

Senator CRAPO. Let me ask you also, you had mentioned in your testimony Senator Smith's legislation. Can you explain that to me in a little more detail?

Mr. McDONALD. Yes. The key feature of the legislation introduced by Senator Smith is that it would provide Reclamation with the authority to itself construct, or to provide financial assistance to private parties to construct, fish passage and fish screening on their non-Federal water diversion structures when Reclamation determines that it is an activity we need to undertake to avoid jeopardizing a species under a biological opinion, either for the FCRPS Opinion that is in place, or for opinions on any other reclamation projects located in Oregon or Washington. We have other consultations underway and it is conceivable that the concept of offsite mitigation might apply in those other consultations.

Senator CRAPO. And does this apply only to Oregon and Washington?

Mr. McDONALD. That is the way the bill was introduced, yes. The Reclamation projects located in the Snake River basin in Idaho, and in Eastern Oregon for that matter, are not covered by this legislation.

Senator CRAPO. Are you aware of whether any opposition to this legislation has been raised? I am thinking particularly, I don't recall the specifics, but something is going on in the back of my mind that some of the water users had some concerns about this issue.

Mr. McDONALD. The water users had two or three reactions to the bill proposed by the Administration. One was that the water users under reclamation projects in Idaho did not want to be covered by the bill. That has been addressed by the form of the bill introduced by Senator Smith. Probably the second principal issue has been about the cost-sharing formula. The Administration's proposal would have requires 35 percent non-Federal cost sharing. The bill introduced by Senator Smith makes it a 100 percent Rec-

lamation cost. Those were the two major comments that I think the Senator received from water user constituencies.

Senator CRAPO. All right. Thank you. I do have a lot more questions, but this day is rapidly getting away from us and we need to get on to the other witnesses. I want to again thank all of you, not only for your preparation for and attendance here at the hearing today, but also for your efforts. I look forward to working with you on these issues.

Thank you.

We will call up our second panel. While they are coming up, I will announce who they are. The first member of the panel is Mr. Michael Bogert, who is counsel to the Governor of the State of Idaho, Governor Dirk Kempthorne. Our second witness is Ms. Judi Danielson, who is the Chairperson of the Northwest Power Planning Council; and third, Mr. Steve Huffaker, on behalf of the Columbia River Fish and Wildlife Authority. Again, three more folks who have been giving significant parts of their life to this effort. I appreciate not only that, but your effort to be here and prepared to present testimony today.

Mr. Bogert, if you are ready, you may proceed.

**STATEMENT OF L. MICHAEL BOGERT, COUNSEL, ON BEHALF OF GOVERNOR DIRK KEMPTHORNE, STATE OF IDAHO**

Mr. BOGERT. Mr. Chairman, thank you. I would be remiss if I did not begin by saying how much we have appreciated in Idaho working with Sharla Moffett Beall, who is going back to her home State of Oregon. She has been a great resource and an asset for us, Mr. Chairman. I know this is her second to the last hearing for you, and she is moving back to beloved Oregon and we will miss her dearly.

Senator CRAPO. Thank you. Before we start your time, I will say I appreciated her too. I just don't appreciate her going back to Oregon.

[Laughter.]

Mr. BOGERT. Mr. Chairman, I would like to take the committee through a PowerPoint presentation on the Four Governors Recommendations that has been referred to by the prior panel. I apologize in advance if the pace of this slide presentation begins to look like the Indy 500, but I am sensitive to the time.

Senator CRAPO. Go for it.

Mr. BOGERT. Mr. Chairman, I am going to provide you with a brief overview, a brief discussion of the recommendations that were directed toward fish and wildlife recovery as well as Bonneville Power Administration. And then I want to take you through the Commitment of the Governors portion of the agreement.

Briefly, Mr. Chairman, the context of the recent June 5 meeting was an effort by Governor Kempthorne to reach out to two new Governors who were not parties to the July 2000 agreement. We were pleased to host Governor Kulongoski and Governor Martz over in Boise on the fifth of June.

The meeting occurred less than a month after Judge Redden made his decision in the National Wildlife Federation case. The process had been underway far before then and the Governors decided that this was an appropriate time to not necessarily revise



the old document, but perhaps take a new look at some other aspects to the first Four Governors' Agreement.

The themes, Mr. Chairman, are first, a very strong commitment to the All-H approach with a very strong statement on avoiding dam breaching at all costs. Second, Mr. Chairman, the Governors discussed Biological Opinion coverage, which is very much at issue in light of the litigation. Third, fish and wildlife restoration—the document before was very much focused on anadromous fish, but this was particularly due to Governor Martz's leadership on the fish and wildlife piece. And finally, what we have already discussed today—concern over BPA's financial condition.

There are four separate pieces on the fish and wildlife restoration: fish and wildlife recovery, Federal agency funding, a statement by the Governors as it pertains to fish and wildlife programs, and results, not more process.

Dealing with the fish and wildlife recovery, the Governors renewed their commitment to the All-H approach, which included a very strong renewal and path forward on sub-basin planning which is already underway. Addressing recovery planning, the Governors made a very strong statement that they are hopeful that the Federal recovery planning process in the sub-basin plans be consistent.

Addressing recovery goals, the Governors asked that there be significant coordination between the technical recovery teams that are already in place, Mr. Chairman, and the sub-basin planning that is going on among the States. As you know, ESA assurances are very important to our folks in Idaho. The Governors spent some specific time addressing this and made a very strong statement about incentives to participate in ESA processes.

With respect to monitoring and accountability, the Governors indicated that they are hopeful that there will be an integrated and complementary monitoring system that includes research priorities.

On the Federal agency funding, the Governors were very strong on continuing support for Federal action agency projects that have All-H components in them. And something that you would be interested in, Mr. Chairman, the Governors strongly supported additional congressional funding as a region, for all the States.

Specifically, on the fish and wildlife programs, the Governors strongly endorsed the Council's fish and wildlife program, including the recent mainstem amendments, and our Chair will be speaking to that shortly. This was something that came up as well, Mr. Chairman, that the Governors called for a new funding agreement, and there was some prior discussion in an effort to make sure that we all in the States know that we have some certainty with respect to our project funding.

The Governors are grumpy about the process. They, too, Mr. Chairman, share your concern about results on the ground. They have asked that the Power Council prepare a report to the Governors on the status of the action items that the Governors have called for in the 2000 Recommendations. This was actually an innovative recommendation. They have asked the Federal consulting agencies for a State-by-State report on BiOp implementation by the States.

This was already touched on earlier, Mr. Chairman, but the Recommendations very much have a theme that the Governors are

strongly supportive of maintaining the integrity and the benefits of Bonneville to the region, this is our asset, this is our regional asset and we strongly want to solve our own problems. The pieces to that, Mr. Chairman, are protection of the regional and national economy, and a clarification of BPA's future in transmissions.

Addressing the regional and national economy, the Governors have asked that the parties continue to stay at the table with Bonneville, the publics and privates that are currently in discussion over the allocation of BPA's benefits. They asked that BPA, in consultation with the Council, report to the Governors on the status of what the Administrator was just talking about with respect to his internal management review.

Addressing BPA's future, the Governors asked for a continued regional dialog that be re-initiated between the Council and BPA on long-term sustainability, and that that agenda, Mr. Chairman, include among others long-term contracts and what you raised earlier in terms of meeting fish and wildlife responsibilities.

Finally, the Bonneville piece ends with the commitment by the Governors that if there is any restructuring of transmission by FERC or those on Capitol Hill, that it must be compatible with the infrastructure already in place at Bonneville and that those benefits be maintained in the region.

Finally, Mr. Chairman, the document concludes with a commitment by the Governors for a balanced approach, that no one is an advocate of power over salmon recovery or fish or vice versa. There is a strong statement again to reinforce that all the avenues need to be exhausted before dam breaching even becomes an option. The Governors were very strong in terms of outside folks taking a look into the affairs of BPA, and finally, a renewed commitment to protect the benefits of BPA within the region.

Mr. Chairman, that is my testimony.

Senator CRAPO. Thank you very much. I did not see any way you were going to make it through all of that in 5 minutes. I appreciate your being able to do it.

Ms. Danielson?

**STATEMENT OF JUDI DANIELSON, CHAIRPERSON,  
NORTHWEST POWER PLANNING COUNCIL**

Ms. DANIELSON. Thank you very much for the invitation, Mr. Chairman.

Mindful of the time that we have here, the issues that Michael Bogert brought up concerning some of the Council's activities in the mainstem are covered more in depth in our written testimony.

Senator CRAPO. And that is very good testimony and will be very helpful and it is reviewed. So thank you.

Ms. DANIELSON. Good morning again, Senator Crapo, and thank you for the opportunity to testify here today on implementation of the NOAA Fisheries 2000 Biological Opinion on hydropower operations for Endangered Species Act-listed salmon and steelhead in the Columbia River Basin. I am Judi Danielson and I chair the Northwest Power Planning Council. The Council is an agency of the four Northwest States of Idaho, Montana, Oregon and Washington. The Council was created by the State legislatures in 1981 under the authority of the Pacific Northwest Electric Power Plan-

ning and Conservation Act which the Congress approved in December 1980.

The Power Act directs the Council to prepare a program to protect, mitigate and enhance fish and wildlife of the Columbia River Basin that have been affected by hydropower dams, while also assuring the Pacific Northwest an adequate, efficient, economical and reliable electric power supply. The Council implements the Power Act through two broad integrated planning processes. One process is for a Northwest Conservation and Electric Power Plan and the other is for a Columbia River Basin Fish and Wildlife Program.

Today, I will focus specifically on how the program incorporates elements of the 2000 Biological Opinion issued by NOAA Fisheries for four Columbia and Snake River salmon and steelhead and the U.S. Fish and Wildlife Service for Kootenai River white sturgeon and bull trout. The Council committed in its 2000 revision of its fish and wildlife program to pursue opportunities to integrate program strategies with other Federal, State, tribal, Canadian and volunteer fish and wildlife restoration programs.

The Council also committed to use sub-basin planning to identify coordination needs and opportunities that arise from the Endangered Species Act and Clean Water Act, and also water and land management objectives affecting fish and wildlife. In this way, our program funding can be used to coordinate activities that address various legal requirements and provide the maximum benefit to fish and wildlife.

It is important to point out that even though the Power Act is a Federal law, the Council is not a Federal agency. Our fish and wildlife program is not a recovery plan for purposes of the Endangered Species Act. The Council develops the program and recommends projects to implement. Consistent with a specific directive of the Power Act, these projects are funded by the Bonneville Power Administration from the revenues it collects from electricity customers. Implementation of the Council's fish and wildlife program does not depend on consultations among Federal agencies or appropriations by Congress or Federal agencies.

The caveat to this is while Bonneville pays for most of the salmon recovery and mitigation efforts in the Columbia River Basin, some actions required by the BiOp address problems that were not caused by the hydrosystem. Therefore, electricity ratepayers should not be fiscally responsible for them. These actions include, for example, research needed to address some of the key scientific uncertainties identified in the BiOp. Last year, Congress denied a request for \$10 million for these Federal mandates. We urge Congress to provide funding for them through the NOAA Fisheries budget, which I think Director Lohn indicated was \$15 million this year. The Council's program is the only other source of funding and it should be reserved for actions that respond to hydrosystem impacts to avoid unintentional consequences of that system.

I have four main points to make today, and I am not going to get them all out, either.

[Laughter.]

First of all, I am optimistic about the partnership between the local, State, Federal and tribal governments that has developed to

implement the Council's fish and wildlife program and elements of the Biological Opinion.

Second, the Northwest Act authorizes Bonneville through the Council's fish and wildlife program to utilize offsite mitigation to accomplish the purposes of protecting, mitigating and enhancing fish and wildlife affected by hydropower systems.

Third, we are moving ahead with the sub-basin plans as a means of identifying specific fish and wildlife needs in each of the 62 sub-basins in the Columbia River Basin.

And fourth, the Council consistently has complied with the budgets established by Bonneville for implementing our fish and wildlife program, including significant funding reductions for 2003.

Mr. Chairman, we will continue to implement and move ahead with protection mitigation and enhancement of all fish and wildlife in the region affected by the hydroelectric system.

Thank you very much for allowing me this time.

Senator CRAPO. Thank you. And your written testimony, even though you did not get to cover it all, is here, it has been reviewed, and we will be going over it. So I appreciate your watching the clock.

Mr. Huffaker?

**STATEMENT OF STEVE HUFFAKER, ON BEHALF OF THE  
COLUMBIA RIVER FISH AND WILDLIFE AUTHORITY**

Mr. HUFFAKER. Mr. Chairman, thank you, and thank you for your ongoing interest in this very important project.

Senator CRAPO. Thank you.

Mr. HUFFAKER. I am here to represent the Columbia Basin Fish and Wildlife Authority. The Authority is composed of 14 Indian Nations, four States and two Federal agencies, and we work by consensus. I think you know how difficult it is to reach consensus with that many groups working together. So what I will say here reflects that consensus.

The Columbia and Snake Rivers used to produce 10 million to 16 million anadromous fish and other resident fish and wildlife benefits. After hydro development and the development of the Columbia River, we currently stand at about one million fish and a lot of other social benefits in the form of cheap electricity, navigation, flood control and other things that go with development. But in passing the Northwest Power Planning Act of 1980, the Federal Government made a promise to the fish and wildlife resources of the region to mitigate the losses that occurred due to the hydro development; all the losses, not just the ones that were attributable to the listing of endangered species.

There are a lot of management plans in the region currently. Obviously, NOAA Fisheries has a recovery plan for listed salmon. The Fish and Wildlife Service has recovery plans for bull trout and sturgeon. We have the Northwest Power Planning Council program, the Fish and Wildlife plans. Sub-basin planning is a very important process. We have tribal plans and State wildlife agency plans. All those need to come together.

I think the Four Governors document gives a very good template for the broad over-arching needs for what to do. But all those plans in order to be effective have to have three things. They have to be

coordinated and the implementers of those plans need to have accountability for what they said they were going to do. There needs to be monitoring and evaluation. That is how we keep score. And we have to have adequate funding and a commitment to that funding to get the job done.

In retrospect, it may have been naive in 1980 to think that Bonneville Power Administration could mitigate all the losses for the development that has gone on in the Columbia and Snake Rivers. Maybe the listing of so many species in the Northwest puts an exclamation point on that and correctly guides you to the conclusion that the Federal agency budgets need to deal with the ESA. Maybe that would free up Bonneville to deal with the broader mitigation responsibilities that are under the supervision and direction of the Power Planning Council.

I note that some of the Federal agencies have not been very well represented in the Northwest salmon arena, although they do a lot of work for salmon. Particularly the Department of Agriculture agencies have not been significant players, and perhaps it is time for them to step up and maybe to expand the GAO audit to look at what everybody does in the Northwest for salmon. NRCS, the Forest Service, BLM, they all spend a lot of money on salmon and maybe identifying and clarifying those roles and responsibilities across all the agencies would be insightful.

The agencies and tribes have developed and the four Governors and the Power Council have endorsed a monitoring and evaluation plan for how to keep track of benefits to fish and wildlife. We just need to get on with that and get it adequately funded and put it in place.

I can't completely let Bonneville off the hook. They may need some help, but I think they need to also look inwardly, Senator, and I will note that U.S. Fish and Wildlife Service administers a \$150 million Federal aid program to 50 States and as far out into the Pacific as Guam, with an overhead of \$3 million a year. So maybe somewhere between where Bonneville currently funds their overhead costs of the fish and wildlife program and where the Fish and Wildlife Services does it, there could be some room for improvements there.

Defined and measurable results committed through a repeat of the 1996 to 2001 MOA among Federal agencies, and perhaps expand it to additional agencies would I think help clarify for Congress and for ratepayers and for the citizens of the Northwest what all is going on for salmon. The Columbia Basin Fish and Wildlife Authority, the agencies and tribes, would be happy to help in any way we can help to bring that about.

Senator I will save you a couple of minutes.

Senator CRAPO. All right. Thank you very much. You get extra credit for saving a little time there.

I should announce to everybody that we expecting to have a vote on the floor at 11 o'clock a.m., which is going to come before I am done questioning this panel. So when that happens, what I will do is recess. I think it is only one vote so it should not take long. We will take a short break right then, and then we will come back and then continue.

Let me start out with you, Mr. Bogert. Let me first of all just go over some of the questions I have been going over with the members of the other panel. That is, do you agree that there is a strong role for Federal support? I think I saw it in your PowerPoint presentation, but I want to have you say it again.

Mr. BOGERT. Mr. Chairman, of course, because for us to assess the habitat improvement activities specifically that we have undertaken through the sub-basin planning process and that we have had funded through the Council's recommendations, we view that as essential in continuing the course for the projects and for the needs.

Let me answer it this way, Mr. Chairman. Judge Redden ruled that all of those activities were not reasonably certain to occur. As I briefed him on the decision, and he is fiercely proud of the fact that he is not a lawyer, he said, "Let me get this straight. All of those projects that we have been doing for the last two and a half years, this judge held were not reasonably certain to occur?" In his mind, and this is a very strong theme of the four Governors, we said are staying the course; we want Biological Opinion coverage for the agencies; we are going to stay the course; and we will work with our friends on the Hill to make sure that we can maintain the continuity of our projects.

Senator CRAPO. Thank you. In that context, I noted in the presentation you made, that the Governors are recommending that there would be not only support for Federal agency budgets that include the All H projects, but also support for funding to the States. Are you talking about something that does not exist right now? In other words, like us creating a Northwest fund that the States would administer?

Mr. BOGERT. Mr. Chairman, I think that we have seen the authorization legislation come out of the House for the Pacific Coast salmon recovery money.

Senator CRAPO. Right.

Mr. BOGERT. That is an effort that we have long looked at. I know the Governor has spoken with you extensively about this. As we move through that process, that should be included. Indeed, that was one of the themes of the region, making sure that there is strong support among the States to be included in the Pacific Coast salmon funding process. That is something that we would be looking at immediately, and there seems to be some effort to authorize the State of Idaho to be a part of that.

Senator CRAPO. As you know, we have tried that for several years now. We are going to keep trying and hopefully we will have success here in the Senate one of these days.

I have toyed around in my own mind and in discussion with other senators of creating an additional fund. Part of the problem we have with that fund is that in difficult budget times, as we all face in terms of budget pressures, the States who are already participating in that fund do not want to see their shares reduced by adding another State in. We don't have an easy way to find another piece of revenue to stick in there so that nobody gets hurt in terms of the fund.

I know we are working in creative ways to solve that, but I have also toyed around with the idea of creating another fund so that

States do not have to think they are getting short shrift of anything that is currently existing, and then trying to simply begin the process of finding the resources for that fund. I assume the Governors would be supportive of something like that as well.

Mr. BOGERT. Mr. Chairman, yes. I think this touches upon something Mr. McDonald mentioned in the last panel. I think some of the issues that our Idahoans have had with the proposed legislation is that we paused to consider Federalizing ESA implementation in the State of Idaho, to the extent that one of Judge Redden's concern was funding for this, a commitment to move forward for improvement, but not necessarily bringing in every action agency under Section 7 to get everything done where we want to incentivize this to private parties. We think that the funding source and the availability of dollars to get those things done on the ground would certainly improve the State of Idaho's position vis-a-vis the rest of the region.

Senator CRAPO. Thank you very much.

Now, shifting to the Bonneville side of this, the ratepayers form of the funding that comes, I also noted that there was a strong concern raised by the Governors with regard to the circumstances at Bonneville. I guess I would just like you to elaborate on that a little bit. What would the Governors like to see happen with regard to the fish and wildlife budget that comes out of Bonneville or the overall financial picture relating to Bonneville?

Mr. BOGERT. First, the Governors want to keep our problems within the region so that we can work through them, No. 1. So we are fiercely protective of our asset. Second, I think the Governors, and one of the themes that comes out of the document, are expecting, if the administrators are saying we are staying the course on the Biological Opinion, at least implementation for the short term, I think the Governors agree with that. The subset of that, Mr. Chairman, is making sure that the commitments that we have made to our Idahoans that we are going to get some work done for them can continue throughout the years.

If we have multi-or off-year budgeting commitments, I think the Governors strongly expressed some support for some certainty to that for fish and wildlife as well, Mr. Chairman, for that full commitment. I think that they are expecting to hear shortly about the interplay between that fish and wildlife commitment piece, the internal cost review that the Administrator just talked about, and then the path forward for full implementation and staying the course of the Biological Opinion.

Senator CRAPO. You heard Mr. Wright testify about the potential of another memorandum of understanding or the like that could help us get some handle on this entire issue. Do you support that? And also maybe you could give me your thoughts about the proposal of creating a separate fund at Bonneville that handles these issues.

Mr. BOGERT. Mr. Chairman, to address your first question first, I think the Governors spoke to a need to reconfigure the memorandum of understanding for that piece of certainty that we have been speaking about all morning. The separate fund, Mr. Chairman, it is a piece that at least for us in Idaho has not necessarily entered into the discussion, as far as I know. I know it did not spe-

cifically attract the attention of the Governors when we were addressing some of the recommendations to Bonneville, but I think it is a proposition that is worthy of consideration in the region.

The concept, it seems to me, would lend to that commitment toward certainty that the Governors strongly believed and became a part of the document a couple of weeks ago.

Senator CRAPO. Thank you very much.

I also noted in the presentation that the Governors are proposing that we have a State-by-State BiOp implementation report from the agencies, rather than a regional report. Could you flesh that out a little bit?

Mr. BOGERT. Mr. Chairman, I think the idea was that while regionalization and a commitment is fundamentally a good idea and that the Governors are committed to that approach, for us in Idaho, for example, it would be extremely useful for us to be working with the consulting agencies to see how our piece of the 199 separate action items called for, which belonged to Idaho, and how are we doing.

I think it is part of an overall effort for the Governors to prioritize those things that are important to be implemented, and are we being held accountable. I think the other context, Mr. Chairman, is that all the work we are doing on the sub-basin planning must be consistent with some of the recovery planning that is already being undertaken, and that the sum of the parts all add up to what we are all striving for, which is restoration and recovery of the species.

Senator CRAPO. Thank you.

Just one last area of inquiry, and that is, in my questions of Mr. Lohn, I indicated that over the last few years, primarily leading up to the Biological Opinion in 2000, that I had some significant concerns. If I remember at the time, the Governors testified that they had the same concerns about having adequate input into the process. Do you feel, of course this is just now starting again, potentially, with the court's order, but I guess speaking for the Governors, do the Governors feel that they had adequate input the last time around, and are they looking for some assurances that they will have a role in the development of the path forward under the court's order?

Mr. BOGERT. Generally for the Governors, I think there was some concern about continuing to be involved in the process at the highest possible altitude. But Mr. Chairman, I can say that since the December 2000 Biological Opinion was released, and given the Council's commitment to sub-basin planning, I can say that the Idaho case study on this is one that has proven very worthwhile and very valuable for us to develop a relationship with our fisheries folks, Mr. Huffaker's crew at the Idaho Department of Fish and Game, our tribes that have a treaty interest in the recovery issue, and all of the private stakeholders.

The sub-basin planning process has proven to be a way to begin a meaningful dialog of input, and that was clearly lacking, I think Mr. Chairman, prior to the release of the 2000 Biological Opinion. The short answer is, things have gotten better and we are greatly encouraged by the present Administration and their approach.

Senator CRAPO. Good. I appreciate that.



You just heard the bells go off. I am informed that we have two votes. So what I am going to do, these are 15 votes theoretically, and so I am going to wait about 10 or 12 minutes before I leave, and then I will try to go vote at the tail end of one vote and then catch the next vote. So hopefully I won't have to stay away and keep us shut down for the total period of two votes.

Mr. Danielson, let me turn to you. Let me ask you that last question while we are on the same thing. Do you feel that your role, the Power Council's opportunity to have input into the decision-making is improved over what it has been in the last five or 6 years?

Ms. DANIELSON. Well, Mr. Chairman, having not been on the Council from that vantage point, I would have to probably agree that it has improved. Do we need more improvement? More than likely we do in light of the BiOp that is in front of us. Regardless, yes, I do think that there can never been too much communication and collaboration.

Senator CRAPO. I want to talk to you about the same line of questioning that I have been going through with everybody. Partly, I am just lining things up here for efforts here to get these budgets strengthened, but I also want to make sure that we have everybody on record with regard to this. So the question I want to get into is the same one, namely, do you feel that there is a proper and strong role for Federal budget support for salmon and steelhead recovery?

Ms. DANIELSON. Mr. Chairman, absolutely. That has been a real confusing thing for the Council at best, in light of there being so many obligations regarding fish and wildlife, both for listed and non-listed species. We could see other stocks listed if we don't take care of those that are not currently listed, too. And there are so many mandates. Take, for instance, the BiOp mandates. If the Federal Government through appropriations does not fund those, then it falls to either not being done or it falls to the ratepayers, through Bonneville, to pay for those. Then it is a ripple effect. We have unintended consequences that will occur. And then, of course, there is always a push and pull in the region.

So not only does NOAA, I would say, need the extra funding, but if you go back to some of the things that you mentioned like summer spill, the Corps would definitely need some extra funding for that, too. I mean, if they could just have stable funding, too, it would make a big difference to the region.

Senator CRAPO. You mentioned the interplay between the Federal support and then the ratepayers through the Bonneville budgets. I note that you have expressed in a letter recently to Senator Campbell concern about the picture that we are facing with regard to the fish budgets at Bonneville. Could you elaborate? What kind of concerns does the Council have with regard to the ratepayer side of the funding that is being provided out of Bonneville?

Ms. DANIELSON. Mr. Chairman, it is an interesting balance that we have to strike under the Northwest Power Act. There is a certain element of protection for those ratepayers and that resource in the region. On the other hand, it is the Council's belief, too, that if we don't fulfill our obligations for fish and wildlife, we do put

those ratepayers at risk. Of course, no one wants to see Bonneville's financial stability more than the Council and the States.

But we are concerned that, and I think it goes back to the fish and wildlife funding agreement discussion with Bonneville, that we need to have some stability and certainty as far as budgets so you can go through the planning process. Our concern was that we may have been seen as reducing those budgets regardless of what the needs were, and that is not accurate. Quite frankly, I don't know if there will ever be enough money for all that needs to be done, but we can come very close.

Senator CRAPO. Thank you.

I have a question now. In fact, Mr. Wright, would you answer another question for me? You should have left the room, shouldn't you.

[Laughter.]

Senator CRAPO. No, this is a process question. Please feel free to take a chair. The question is, how does the budget for fish get established at Bonneville? In other words, is there a mandate? Are there certain things that have to be done, and whatever those costs, Bonneville has to do them? This is kind of a strange question to be asking, but I am not sure how Bonneville establishes what its commitment to salmon and steelhead recovery is.

Mr. WRIGHT. The way the current budget has been developed was, going back to the 1996 through 2001 period, we developed a process for figuring out how much money we were going to include in our rates. In that process, we developed a range for what is called the direct program that went from \$100 million to \$179 million. That was what was included in our rates.

In 2001, I sent a letter to the Council indicating that we wanted to manage to the mid-point of that budget, the \$139 million in accruals. It was our view, based on a look at what was required by the BiOp and what was going on with the recommendations of the Power Planning Council that \$139 million would meet our objectives. It still might be possible to do that.

Senator CRAPO. OK, let me interrupt then. So there are certain mandates that you have under the BiOp that you have to do. And there are certain recommendations or other proposals that come from the Council that you would like to do, but they are not necessarily legally mandated?

Mr. WRIGHT. There are recommendations from the Biological Opinion as well, although we have interpreted those as requirements. There are recommendations from the Power Planning Council that we take quite seriously a well, and try to figure out how we can implement. We believe that we have implemented many, if not most, of the recommendations of the Power Planning Council. If we get to a point where there is conflict in terms of not enough money, the \$139 million doesn't fund everything, then we go back and try to figure out how important were all the requirements in the BiOp and we work with Bob Lohn, and whether all of the things that are there are absolutely necessary to get done in the timeframe that is in the BiOp, and work with the Power Planning Council with respect to their recommendations, as we did this year for 2003 about what we can get done within the level of budget that we have.

Senator CRAPO. And then this process that you are talking about, where you do what you said, ultimately if you can you reach an memorandum of agreement among the relevant parties that you have it figured out right and then that is the memorandum of agreement under which you operate.

Mr. WRIGHT. That would be on a going-forward basis. We do not have a memorandum of agreement today, but yes, that certainly is available to us as a tool. Again, I believe it would be an effective way of creating predictability for the program.

Senator CRAPO. All right, thanks. You can slip away again if you would like.

[Laughter.]

Mr. WRIGHT. I should slip away further this time.

Senator CRAPO. I promise I won't come back again.

Let me go on to you, Mr. Huffaker. You raised a point that I find very intriguing, and that is, you felt, this, to me seems to be very intuitive, that it would be very helpful to identify the responsibilities across all the agencies and then, having identified those responsibilities, monitor whether they are being adequately funded and implemented. The reason that is intriguing to me is because when I tried to put together a proposal here for Congress for how much we needed to put into salmon and steelhead recovery, that is exactly what I had to do.

I had to go and look at every agency, what their role was, what the Biological Opinion required, and what recommendations were made from the Power Council. It was kind of a confusing thing because there were so many agencies, so many recommendations, so many proposals. We could the BiOp as a guide, but it wasn't necessarily the only thing to be working with, especially when the objective, as I have stated earlier, is not just compliance with the Endangered Species Act, but to achieve recovery to abundant and fishable and harvestable levels of steelhead and salmon.

I found that at one point I thought, well, somebody has to have already done this. I started looking around, and you know what? Nobody has done it, at least to my knowledge. So I find it very refreshing that somebody is recommending that it be done. Because it seems to me that one thing that we ought to be doing in terms of salmon and steelhead recovery is identifying who the players are, what the actions are that need to be undertaken, and creating the grid, if you will, and then seeing where we are in terms of implementing that grid.

I am sure a lot of people who are listening to this are probably saying, well, that's already been done. A lot of people have created a grid. The Biological Opinion has a grid or something where you can go through what it talks about there. But my point is that we are not all working off the same piece of paper. There are a lot of people who have different approaches and different ideas to this.

So I agree with your proposal and perhaps, Mr. Lohn if you are listening, this is something that we could have done as we approach revisiting the question of what we are going to do under the Biological Opinion. It would seem to me that if we can get us all working off of the same page, that we can then look at whether we have adequate resources coming out of the Bonneville Power Ad-

ministration and the adequate resources coming out of the Federal Government. We can also then better monitor.

So I just wanted to tell you, I love your idea. I think that it will be very helpful.

I have just a couple of minutes left. If I just ask you a couple of quick questions, we might be able to wrap this panel up and then start the next panel when I get back.

The same question, do you feel that it is proper for a strong commitment of Federal funding in this whole process?

Mr. HUFFAKER. Absolutely. I think it is essential to get the whole job done. The Power Council and Bonneville need to focus on the broad mission of restoring fish and wildlife to the entire Columbia Basin, the unlisted stocks and the wildlife and the resident fish, as well as the listed anadromous fish. Other Federal agency budgets will be required to do that.

Senator CRAPO. And how would you recommend that State fish agencies and tribes be involved in the development of any new Federal salmon plan?

Mr. HUFFAKER. I think in the past, because of other Federal laws and rules and procedures, and FACA being at the head of the list I think, States to a lesser extent, but also tribes, were considered as part of the public. They were welcome to have input, but that input was considered along with all other public comments on the proposal, and the Federal family went into the Federal box and made the decisions.

I think in the case of fish and wildlife, the agencies and tribes have a lot of expertise, spend a lot of time on the ground, and have in many cases a lot more and richer data than the Federal agencies do. There needs to be some mechanism I think through Section 6 of the Act, of the ESA, to allow the States and the tribes more access to the Federal process of decisionmaking.

Senator CRAPO. I appreciate that answer and strongly agree with you. At this point, we are not likely to be able to statutorily do that because we haven't got the time or the votes to do much at all in terms of changing the Endangered Species Act at this point. But Mr. Lohn has indicated his understanding of this and I am hopeful that we will see some administrative approach to this that will help us be sure that the States and tribes are adequately involved.

I have less than a minute left before I have to vote over on the floor, so I am going to recess this committee at this point. I am going to excuse this panel because although I do have a lot more questions, we are as usual getting interrupted with other things that are going on during the day. When I get back, which will be as soon as I possibly can after the two votes that we take, we will convene our third and final panel, and then proceed with the hearing.

We are now at recess, and thank you for your testimony and your time today.

[Recess.]

Senator CRAPO. The hearing will reconvene. As you may have noted if you are following C-Span, they called off our second vote, so I was able to get back here just a little bit faster. I appreciate everybody holding on and letting us have the interruption for our votes.

We will now proceed to our third panel, which includes Mr. Anthony Johnson who is the Chairman of the Nez Perce Tribe, and Ms. Nancy Murillo, who is the Chairwoman of the Shoshone–Bannock Tribes. We welcome you both here with us, and we appreciate your willingness to come and provide your testimony and share your insights with us.

We will begin with you, Mr. Johnson. Please proceed.

**STATEMENT OF ANTHONY JOHNSON, CHAIRMAN, NEZ PERCE TRIBE**

Mr. JOHNSON. Good morning, Mr. Chairman. My name is Anthony Johnson. I am the Chairman of the Nez Perce Tribe. I would like to thank you for holding these hearings, first off. In my testimony, you will hear reference to two things, one being the package you have been provided on unfunded projects, the other item is the salmon plan report card as issued by the Save Our Wild Salmon.

Mr. Chairman, the importance of the Nez Perce Tribe salmon is more than as an icon of the Pacific Northwest. They are crucial to our culture, our way of life, our spiritual beliefs and our economy. In short, salmon encompasses our human rights, as the first peoples of America. The impacts of the Federal hydropower system on the salmon and our people have been devastating. Today, in large part due to the Federal hydropower system, every run of Snake River salmon that returns to the Nez Perce Tribe's usual and accustomed fishing places is either extinct or listed as threatened or endangered under the Endangered Species Act. These include Snake River coho, Snake River sockeye, Snake River spring, summer and fall chinook, and Snake River steelhead.

When the Nez Perce Tribe was placed on its reservation via treaty and cessations of lands, we were at that time placed on the best fishing lands in the Northwest. That is documented in our treaty minutes.

Today, you have invited me to speak on the implementation of the NMFS 2000 Biological Opinion regarding the operation of the Federal Columbia River power system. The Federal District Court's recent ruling that NMFS's Biological Opinion for the FCRPS is illegal should come as no surprise. In 1994, Judge Malcolm Marsh declared that the hydropower system was literally crying out for a major overhaul in one of the initial legal challenges to the FCRPS operation under the Endangered Species Act, Idaho Department of Fish and Games v. NMFS.

Senator Crapo, we know that you have carefully followed impacts of the FCRPS on salmon over the years. You, like us, watched as NMFS deferred the decision on a major overhaul for 5 years. You, like us, watched as NMFS discarded the closest thing to true collaborative approach in the Columbia Basin: the PATH process, which involved biologists from the States and the tribes, Federal Government and independent scientists. Senator Crapo, you will recall that the Idaho Department of Fish and Game testified before you concerning NMFS's departure from the conclusions reached by PATH. NMFS's departure from the PATH conclusion and its peer reviewed recommendations appeared to be motivated by the fact that the PATH had concluded that breaching the four lower Snake dams was the best means for restoring Snake River salmon.

NMFS's non-breach Biological Opinion appeared to the Nez Perce Tribe and other salmon managers in the Columbia Basin to be biologically flawed. While NMFS's Biological Opinion was billed as an aggressive non-breach approach, upon closer examination it was clear it was mostly hope and good intentions. The Nez Perce Tribe, along with the State of Oregon, has actively participated in this litigation to point out the flaws of the 2000 BiOp. One point the Nez Perce Tribe made is that no matter which side of the litigation the States and tribes ended up on in this litigation, the formal comments they submitted in the record all detailed the biological flaws with NMFS's approach.

The Federal court's ruling regarding the illegality of NMFS's BiOp under the ESA cries out for leadership, the kind that you, Senator Crapo, are showing by calling this hearing. Unfortunately, others in the region appear to be placing their heads in the sand. This lack of leadership will place the issue into the Nation's hands and increase the pressure for breaching the four lower Snake dams.

After the Federal court declared NMFS's Biological Opinion for the FCRPS illegal, the region's four Governors in a testament to the lowest common political denominator, pledged to ensure that breaching the four lower Snake River dams is not on the table because, in their words, the issue is polarizing and divisive. While paying lip service to supporting the Federal agencies budgets and additional appropriations necessary to meet the non-breach support, the Governors refused to do so if it means adjusting power rates sufficiently to meet the legal obligations under the Endangered Species Act or the Northwest Power Act's equitable treatment mandate.

BPA is frustrating salmon recovery. After the Federal court declared NMFS's Biological Opinion for the FCRPS illegal, Steve Wright, the Administrator of Bonneville Power Administration, testified before the Senate Committee on Indian Affairs regarding fish and wildlife obligations to the Northwest tribes. Amazingly, he completely failed to mention to the Senate that NMFS's Biological Opinion has been declared illegal.

At a time when the Federal court and salmon are crying out for more fish and wildlife recovery, not less, BPA has announced reductions in its fish and wildlife investments. BPA's indifference to salmon restoration makes it nearly impossible for an aggressive non-breach approach to occur. Simply put, the status quo is not good enough to satisfy the Endangered Species Act, to say nothing of the United States treaty trust obligation. The Save Our Wild Salmon Coalition in its detailed report card on the implementation of the BiOp found that Federal agencies received half the funding required for the non-breach plan and accomplished less than 30 percent of the work.

We are disappointed that they are not here today, as we believe they are partially responsible for this hearing occurring. To that end, we would request that you pay special attention to the Save Our Wild Salmon testimony which we understand has been submitted as part of the record. We request your leadership in three ways. First, monitor the development of the new FCRPS BiOp as in a way it rewrites its biological opinion. We urge you to monitor this process closely. Neither we nor the salmon can afford to waste

more time. We urge you to urge NMFS and action agencies to ensure that they embark on salmon recovery strategies that are economically feasible, scientifically credible, and realistically achievable. We urge you and the subcommittee members to monitor this process carefully.

Second, scrutinize BPA's commitment to salmon recovery. We urge your continued oversight of the actions of the Bonneville Power Administration with respect to its fish and wildlife funding obligations. The Nez Perce Tribe has shown its on-the-ground leadership in implementing salmon recovery projects funded by Bonneville, including award-winning habitat restoration actions and the cutting edge Nez Perce tribal hatchery. Bonneville's reluctance to fund fish and wildlife recovery projects undermines its commitment to a non-breach alternative. We urge you to urge the General Accounting Office to continue its ongoing investigation into Bonneville's financial status and its fish and wildlife obligations.

Third, continue to support the Pacific Coastal Salmon Recovery Program. Your support for the Pacific coastal salmon recovery has begun to show results with the projects implemented by the Nez Perce Tribe. We urge you to continue to ensure that this program is implemented, including actions being implemented by the Nez Perce Tribe.

In concluding my remarks, I would like to place before you and this subcommittee that we, the Nez Perce people, are committed to salmon recovery. As I stated, it is part of our human rights as indigenous people. As co-managers of the resource through court orders, we have committed to the survival of the salmon from the moment I was a boy in the early 1980's when we first started this process. I urge you to do all you can to save this precious resource.

Thank you very much for your time, sir.

Senator CRAPO. Thank you, Mr. Johnson.

Ms. Murillo?

**STATEMENT OF NANCY MURILLO, CHAIRPERSON, SHOSHONE-BANNOCK TRIBES**

Ms. MURILLO. Good morning.

Senator CRAPO. Good morning.

Ms. MURILLO. I am Nancy S. Murillo, the Chairman of the Fort Hall Business Council of the Shoshone-Bannock Tribes in Fort Hall, Idaho.

I first want to start out by asking you a question. We are a treaty tribe. We are a peace tribe. I would like to make note that Article 1, "From this day forward, peace between the parties to this treaty shall forever continue. The Government of the United States desires peace and its honor is hereby pledged to keep it. The Indians, the Shoshone-Bannocks, desire peace and they hereby pledge their honor to maintain it." Article 4 deals with our hunting and fishing rights.

I am here to provide the perspective of tribes regarding the impacts on tribal fish and wildlife management in the Pacific Northwest, the BiOp, the BPA Administration funding, FERC relicensing, and the need for additional funding to fully analyze and participate in the numerous Federal and private forums surrounding the operation of the Columbia River power system, and

its impact on the anadromous fish, and to implement the actions necessary to protect and restore the fish and wildlife resources of the Columbia River Basin.

We Shoshone–Bannock peoples were located in the headquarters of four major river systems in the Western United States. We lived long, utilized and traveled the rivers and tributaries of the Salmon and the Snake which feed the Columbia River system. But we also spent time on the rivers and tributaries leading to the Great Basin and into the Missouri as well as the Colorado Rivers. The vast majority of our peoples live on the Fort Hall Indian Reservation.

We hold entitlements to these river systems which were bequeathed to us not only by our ancestral historic patterns, but by treaties and other legal binding documents such as the Fort Bridger Treaty of 1868. Our tribes have been involved for many years in the numerous policy, production and management processes tied to the Columbia and Snake Rivers. We realize the importance of prioritization of the most important processes due to our limited staff and resources. This includes active involvement in prioritizing the absolutely critical threshold projects needed to implement a balance between a reliable and inexpensive energy supply with the fish and wildlife needs that are impacted by the Columbia River system.

One of the realities of the fisheries management is the fact that the Shoshone–Bannock Tribes cannot do any management without being completely absorbed by the Endangered Species Act. We spend so much time on the processes that exist, that little time or staffing is left to actually do production and management efforts to promote recovery of the salmon. NMFS and the U.S. Fish and Wildlife Service issue a Biological Opinion in December 2000 for the operation and maintenance of the Federal Columbia River power systems. We are concerned with the continuing modification of past plans before they are implemented. We have been involved with decades of planning that have not yet been implemented. Once again, the 2002 implementation plans for the 2000 BiOp have remained unsatisfactory to the needs of the endangered species, as well as the Shoshone–Bannock Tribes. Less than 30 percent of the measures which were required to be completed by 2002 have been accomplished. Yet water temperatures continue to increase and water flows continue to decrease. Funding allocation remain inadequate to correct these major deficiencies.

For example, I am going to discuss hydro, habitat restoration, hatchery reform and harvest. The Shoshone–Bannock Tribes have long advocated breaching the four lower Snake River Dams, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite Dams.

Habit restoration. The Shoshone–Bannock Tribes continuously attempt to put and keep clean cold water into the streams without migration barriers associated with irrigation diversions, de-watering and toxicity from mine effluent.

Hatchery reform. The tribes have been leaders in using low technology and inexpensive artificial propagation techniques. However, the ambiguous genetic theories of modern science continuously impede these efforts, even after several of the Pacific Northwest tribes



have shown major success stories of these hatchery reform techniques.

Harvest. The mixed stock interception fisheries are inadequate to the salmon resources and to our tribes. The Shoshone-Bannock Tribes harvest wish in these areas and at levels the populations of salmon can support, and we encourage all other entities to do the same.

Simply put, we are trying to put water into the creeks, and fish into the water. We are attempting to carry out the purposes of our tribal policies and treaty commitments made in the 1868 Fort Bridger Treaty by being actively involved in these forums to implement the ESA. It is our position that ESA must be implemented in accordance with our treaty.

We, along with other tribes in the region, must constantly analyze the Federal actions to make sure tribal goals and priorities have been incorporated in the action agency's plans. We are constantly involved with the scientific, technical and policy forums to protect our tribal treaty commitments. Both the process and the modern science results in a huge financial burden placed on the tribes and huge staffing needs to protect our concerns.

The Shoshone-Bannock Tribes received a \$100,000 add-on to the base fish and wildlife project management and development fund in 1992. The Bureau has not increased this at all, not even a cost of living increase. We have requested annually \$550,000 to try to maintain and keep up and have our needs met to our treaty obligations.

The Shoshone-Bannock Tribes' policy is to treat the Snake and Columbia Rivers as one river system that emphasizes the natural riverine ecosystem, rather than up-river versus down-river conflicts. FERC is considering new regulations that propose to establish a new consultation policy that sets forth how FERC will complete government-to-government consultation with Indian tribal governments. This is a step in the right direction since the present policy as FERC dictates does not allow any meaningful involvement by tribal governments and there is no mandate for consultation with any tribe. We urge you, Senator Crapo and your committee, to oversee this process and conduct hearings on this tribal involvement.

In summary, the Shoshone-Bannock Tribes emphasize the Columbia-Snake River systems as one river. The tribes promote the natural riverine ecosystem as a high significance to the Shoshone-Bannock people and the culture. We thank you for this opportunity. The Shoshone-Bannock Tribes are situated high at the headwaters of the longest-traveled anadromous fish species in the world and provide unique and proactive advice and techniques for the recovery and protection of these animals.

We invite the Senate committee, Mr. Crapo, your staff, to the Fort Hall Indian Reservation to see what we have been doing, as well as to our off-reservation areas to look at the management about our subsistence practices in the managements of our production and habitat and harvest.

I thank you for your time.  
Senator CRAPO. Thank you.

I thank both of you for your time and preparation of this testimony.

Mr. Johnson, I will start with you with my questions. First, I will get into the basic question I have been asking everybody. Do you also agree that there is a need for strong Federal support in terms of the funding provided to implement necessary actions to restore salmon and steelhead?

Mr. JOHNSON. Yes, sir. The Nez Perce Tribe and I am sure the tribes in the Columbia Basin all support whatever it takes to restore salmon to our usual and accustomed areas, benefiting the Indian people as well as non-Indian people.

Senator CRAPO. From looking at the materials you have provided here, I am assuming that your answer to the next question would be no, but do you believe that the current level of Federal support for this is inadequate?

Mr. JOHNSON. No.

Senator CRAPO. In looking at the materials you have provided here with regard to unfunded fish and wildlife projects, can you clarify for me what projects does this include. Are these projects required under the Biological Opinion, or does it include projects beyond those that are required under the Biological Opinion?

Mr. JOHNSON. Actually, my belief at this time is that it includes the holistic approach of salmon recovery. In looking at this document that is provided, the Nez Perce Tribe through the Columbia River Inter-Tribal Fish Commission, our joint efforts of the four Columbia Basin treaty tribes, has put this together for us so we could present it to you as a means of showing what is needed for recovery and what is lacking as far as the commitment to restore salmon holistically. If I could advocate one more thing, it would be to ask you to also accept the testimony of the Columbia River Inter-Tribal Fish Commission into this hearing as at least part of the record, because salmon recovery knows no State boundaries as at this point.

Senator CRAPO. Without objection, that testimony would be welcome.

We were talking earlier with Mr. Huffaker who was testifying about the need to approach or develop a comprehensive identification of what needed to be undertaken. At the time, I told him I suspected there were people in the audience or elsewhere who had already developed such grids, and this appears to be a very thorough approach at just that.

It seems to me that this kind of thing, you have even got it down to the financial cost of the projects that need to be undertaken. This kind of thing is exactly the kind of thing that we need to be looking at. So I appreciate your providing this information to us.

You have indicated strong concern in the three requests that you made at the conclusion of your testimony, a strong concern about the Pacific Coastal Salmon Recovery Fund and making certain that we get Idaho included into that fund and strengthen the fund in terms of the resources provided. I will just tell you I strongly agree with you on that, and in fact just had a conversation with Senator Craig on the floor of the Senate when we had the recess, about the status of those efforts. I will continue to advocate very aggressively that Idaho be included in that fund and that the fund's resources

be expanded so that the activities of other States not only are not harmed, but that everyone can get additional resources for salmon and steelhead recovery.

In that context, I would simply encourage you to use your resources through the tribes and their advocacy efforts to encourage our Appropriations Committee to support that effort this year in the Senate, because this is the year I am hopeful that we will be able to succeed.

Mr. JOHNSON. Thank you, sir. The Nez Perce Tribe will definitely help in that endeavor. And also, like our neighbors to the south, we would invite you to our homeland to come look at what we have actually done with that fund. You will see a lot of good work done in habitat road obliterations, streambed stabilization, and coho re-introduction. It is something you would definitely enjoy if you come out to our country to see it, sir.

Senator CRAPO. I definitely would. As a matter of fact, on the occasions when I am able to visit both of your reservations, I have been impressed by the level of commitment and the level of understanding of what needs to be done. I look forward to further and future opportunities to visit there.

Let me ask you, do you believe, and in fact this question I think I will ask both of you to respond to, so I don't just have to go through it twice. But do you believe that your interests and expertise has been fully ascertained and incorporated with respect to the past biological opinions and hydro-management decisions? Basically, I am talking about the development of the Biological Opinion in 2000 and other occasions of the kind.

Mr. JOHNSON. Sir, I think at this point to work into what I want to say, I want to go back to the beginning when we had the Bolt decision. The tribes were challenged at that time to develop the expertise needed to be seen as co-managers of the fisheries resource. Twenty-five years later, through the efforts of the Columbia River Inter-Tribal Fish Commission, the Nez Perce Tribe, we have jointly gotten to a point where we are standing on the cutting edge of science. We have our own salmon recovery program or plan, Wy-Kan-Ush-Mi Was-Kish-Wit [Spirit of the Salmon]—that was developed by the tribes and in a cooperative spirit. There is a lot of good work in there that was developed and took a holistic approach. You have heard terms like “ridge top to ridge top.” We have always declared that we were willing to share our expertise. If you look at where that comes from, it is a simple concept. It is the same traditional mother nature concept that the Earth has enjoyed since time immemorial. What we have done, and I use the example of our Nez Perce tribal hatchery, is to try to mimic nature. Our hatchery was developed to mimic Mother Earth.

So I would look at asking the Federal Government to not just look at one way of accomplishing the same mission, but let's take a step back and look at what Mother Earth had done for herself. In that manner, I would say we have a lot of expertise that has come to the table. I guess one of the weaknesses is at the level of participation. If we were, say, sitting at the table with the Power Planning Council to provide input as they deliberate or to answer concerns versus responding. It just seems to me that a higher level of coordinated decisionmaking by the tribes, States, and Federal

agencies is needed to save the salmon. That is what I would advocate for, sir.

Senator CRAPO. Thank you. I have visited that fish hatchery you talk about and it is very impressive. The potential for increasing the survivability of the smolt seems to me to be significant, and I am hopeful that the reality will show that that is the case.

Ms. Murillo, would you like me to re-state the question?

Ms. MURILLO. The need for a strong Federal support?

Senator CRAPO. Yes. The question here is, do you believe that you and your tribe's expertise and understanding has been adequately understood and incorporated into the decisionmaking process that we have gone through in the development of the salmon recovery plans?

Ms. MURILLO. I think it has been an arduous task for our people to be involved. As I mentioned, we have a lack of adequate staff; a lack of adequate funding to get our people from Southeast Idaho up to Portland whenever these meetings are. It takes a tremendous amount of time and effort and money. So there has been some support there, but not as much as I believe we should have had.

Senator CRAPO. You raise an interesting point in your testimony, and you just raised it again, that the endangered species process that we are engaged in is absorbing most if not all of your time and resources, just to be involved in the process, as opposed to on the ground recovery efforts. So I assume one of the recommendations that you would make, and that is my next question to both of you, what recommendations would you make in terms of how we would best improve the ability of the tribes to participate more effectively in our decisionmaking processes? I assume one of your answers to that would be to respond to you budget request to increase the support that we provide so that you can better participate.

Ms. MURILLO. That is correct. Increase the funding for the Shoshone-Bannock Tribes; in addition, to have the Federal agencies work and consult with the Shoshone-Bannock Tribes, and also to ensure that these plans are being transmitted accurately so there can be adequate responses to these; and to ensure that the tribes, as we are a treaty tribe, that we need that consultation. We need to preserve the habitat for our future and for the seven generations beyond that point. There needs to be more coordination. There needs to be some sound decisions and planning. Apparently, our staff is indicating these plans have been changed and modified, and it is a continuous thing to stay on top of this. I think that is an essential to have better planning.

Senator CRAPO. I agree with you.

Mr. Johnson, did you want to add anything about what can be done to better incorporate the tribes into the decisionmaking?

Mr. JOHNSON. Yes, sir. At this point, one of the weaknesses I see is in the consultation process with the Federal Government, and that being involved in not just "after the fact" consultation when a decision has been made, but actively involved in coming to a decision or evaluating options and having our input taken into those options. I think that would go a long way to address a lot of the weaknesses at all levels.

Senator CRAPO. Thank you.

Ms. Murillo, yes, go ahead.

Ms. MURILLO. I wanted to expand on my response to that on consultation. We have some consultation policies with some Federal agencies that we are pursuing, for example, BPA. We would like to see a technical consultation process and then a policy consultation process where the leadership would make the decisions on the policies. If there are technical communications, then we can have our technical biologists and those folks meet with the BPA.

We at times have BPA or any Federal agency for that matter, indicating that they have had discussions with the tribe, but they are at the technical level or the clerical level, as opposed to the policy decisionmaking level. So that needs to be stressed and implemented.

Senator CRAPO. That is an important point. So most of the interaction, then, at this point has been at the clerical or technical level, as opposed to the policy level.

All right. Let's get to the question on funding. You are the last ones I have not asked that of, and that is, do you believe that there is a proper role for strong Federal funding for salmon and steelhead recovery?

Ms. MURILLO. Senator Crapo, insofar as the Shoshone-Bannock Tribes, American Indian tribes, under our treaty, there is that trust responsibility and obligation of the Federal agencies, Congress, to ensure that our treaties are complied with; that there is that promise; there is that obligation. We are a peace treaty, Shoshone-Bannock Tribes, so there needs to be that type of consultation and support that we will be able to fulfill the needs.

As you know, we were put on reservations and we were a nomadic tribe and traveled vast areas. Reservations have kept us from our economics, and we are still trying to play on a catch-up basis.

Senator CRAPO. In terms of the need for Federal support, I think you have raised an interesting aspect of this; that is, Federal support to the tribes so that they can fulfill their treaty, their portion of the treaty responsibilities, and their role in salmon and steelhead recovery in terms of participating in the process. How about the resources that we need to actually implement salmon and steelhead recovery on the ground? Do you feel that the Federal support at that level has been adequate?

Ms. MURILLO. I do not believe it has, Senator Crapo, the Shoshone-Bannock Tribes. I believe we need to, and as the Chairman from Nez Perce has indicated, that they have a budget. We have some budgets tucked away, but we need to bring those out and give you some foundation of what is necessary for us to continue the work for the salmon recovery, and we will do that.

Senator CRAPO. I appreciate that. I will work with you to try to make certain that we provide the adequate resources. As I indicated, one of the endeavors that I have been involved in and many of us here in Washington have been involved in, is trying to get a handle on just what the level of commitment needs to be at the Federal level to help us achieve the objectives of salmon and steelhead recovery. That obviously does not involve the equally important question of what should be those undertakings. Mr. Johnson has provided a list of the holistic approach to the issue that

needs to be undertaken with regard to unfunded projects and activities that need to be undertaken.

There are a lot of other ideas out there as well, but the bottom line is that whatever the ultimate plan is, which the NMFS will guide as the lead agency on this, whatever that is, we need to make sure that we adequately implement it so that we know that we have made the commitment in the region to at least implement the BiOp and make certain that we are prepared to be confident in that level so the report cards that come out on implementation show adequate results, as well as our efforts to make certain that we have adequate procedural participation by all of the participants, by all of the stakeholders.

I have concluded the questioning that I have on this issue. Before I wrap up the hearing, since you are the last two panelists, I will give each of you an opportunity if you care, if there is anything that you feel like you have not had an opportunity to say that you would like to or would like to emphasize, I will give each of you an opportunity to conclude.

Mr. Johnson, is there anything further that you would like to add?

Mr. JOHNSON. Sir, all I would like to say is thank you for your leadership on this issue. The Nez Perce Tribe stands ready to assist, as well as the organizations that we are part of, the Columbia River Inter-Tribal Fish Commission. We have a whole wealth of knowledge ready to assist in restoring these populations to a sustainable, harvestable levels.

In closing, thank you, sir.

Senator CRAPO. Thank you.

Ms. Murillo?

Ms. MURILLO. Yes, on what other means can the Federal Government do, I think it is coordinating and emphasizing that Federal agencies have that trust responsibility to Indian tribes. Likewise on the easements for habitat restoration and preservation, that needs to be looked at for us, for the salmon recovery. The Federal agencies, there seems to be a barrier in working with Indian tribes. At least with the Shoshone-Bannock Tribes' experience, there is a lack of education on the treaties and what the responsibilities of the Federal Government are. I think there needs to be a whole 101 on it, or maybe a senior level for folks to realize that we Indian people are here and we are going to be here, just as the salmon will be here.

Thank you. I appreciate your time.

Senator CRAPO. Thank you. That is very well-stated. I believe that it is important for us to recognize that we not only operate under the Endangered Species Act, but that we have treaty responsibilities that must be implemented and met here. That is one of the reasons I wanted to have a separate panel with the sovereign tribes to represent their interests in this matter as we proceed.

As we conclude this hearing, I want to thank all of the witnesses again today for the time and effort that they have put into this. I note that most, if not all, of the witnesses from the previous panel have stayed and listened. I deeply appreciate that. I know that we have a lot of diversity of opinion on how to proceed, and we face the difficult issues that we have gone over thoroughly here in the

hearing today about how to finance proceeding on the plans that we have.

Ultimately, I hope that we can all agree on the objective, that we restore our salmon and steelhead to abundant, fishable, harvestable levels, and that that can be a significant economic benefit to our region, not just in terms of the important environmental heritage that we face the potential of losing if we do not take the appropriate actions quickly and effectively, but also that we learn the importance that it means to us economically.

I believe that sometimes those aspects of a decision are overlooked. I appreciate the support of everybody here today that has been expressed for the need for our Federal Government to become involved at even increased levels to make certain that we meet this commitment.

With that, this hearing will be concluded.

Thank you.

[Whereupon, at 12:13 p.m. the subcommittee was adjourned, to reconvene at the call of the chair.]

[Additional statements for the record follow:]

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Thank you Mr. Chairman for calling this important hearing today. I commend you for your leadership on this issue. I would just like to include this brief statement in the record because although Montana does not have salmon and steelhead, we are impacted by operations at Libby and Hungry Horse dams that are intended to benefit those species.

Mr. Chairman, Montana has often felt a bit left out of the debate over the operations of the Columbia River System. Montanans understand our obligations as part of the Columbia River Basin and the Northwest to do our part to help recover these magnificent fish. But Hungry Horse and Libby dams are extremely important to the economy of western Montana, for recreation, resident fish and wildlife, irrigation, and flood control. Operations of these dams pursuant to the requirements of the 2000 Biological Opinion for the aid and recovery of Columbia River salmon impact all of these Montana priorities.

I just want to make sure that Montana's needs and concerns are considered seriously by the Federal Agencies involved in implementing the Biological Opinion, and in adhering to their other duties under the Endangered Species Act and the Northwest Power Act. In particular, Montana has concerns about its own endangered, threatened and sensitive species of fish and how the operations of Libby and Hungry Horse dams impact those species. Montana also does not want to wait at the end of the line when it comes to sharing the benefits of the Columbia River System.

Again, I would like to thank the Chairman for holding this hearing, and I look forward to submitting questions for the record to the witnesses, particularly the Northwest Power Planning Council and the Bonneville Power Administration. I thank all of the witnesses for taking the time to be here today.

Thank you, Mr. Chairman.

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STATEMENT OF D. ROBERT LOHN, REGIONAL ADMINISTRATOR, NORTHWEST REGION, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman, and honorable members of the Committee. For the record, my name is Bob Lohn, Regional Administrator of the Northwest Region of the National Marine Fisheries Service (NOAA Fisheries). I appreciate the invitation to be here today with fellow regional Federal colleagues, tribal, and State interests to discuss the important subject of Pacific salmon, and specifically, the status of the Federal Government's progress in implementing the 2000 Federal Columbia River Power System (FCRPS) Biological Opinion.

In my comments today, I would like to briefly touch upon three issues relevant to our progress in carrying out the 2000 Biological Opinion on the operations of the FCRPS, including the four lower Snake River dams. Those three issues are: (1) the implementation status of the 199 action items contained in that Opinion; (2) a brief

update on the status of Columbia River and Snake River salmon, and (3) the status of funding for the Biological Opinion and salmon recovery.

Let me provide some context for today's discussion by first describing a few key events leading up to the issuance of the 2000 Biological Opinion and significant events that have occurred in the first 2 years since it was issued.

#### BACKGROUND OF THE BIOLOGICAL OPINION

As you know, over the last 14 years, NOAA Fisheries listed 26 separate populations of salmon and steelhead, termed Evolutionary Significant Units (ESUs), as threatened or endangered under the Endangered Species Act in Idaho, Washington, Oregon, and California. Of these listings, 12 ESUs occur in the Columbia River basin including 4 in the Snake River. Snake River sockeye were listed as endangered in 1991, Snake River spring and fall Chinook were listed as threatened in early 1992, and Snake River steelhead were listed in 1997.

Section 7 of the ESA requires Federal agencies that propose to take actions that may affect listed salmon and steelhead to consult with NOAA Fisheries to ensure the proposed action is not likely to jeopardize the continued existence of the fish or adversely modify designated critical habitat. The section 7 consultation process results in NOAA Fisheries issuing a Biological Opinion detailing how the proposed actions would affect the species, and what prescriptions the agency recommends to address any concerns.

NOAA Fisheries issued its first Biological Opinion for the Federal power system on the Columbia and Snake Rivers in 1992. The 1992 Biological Opinion, and another Opinion in 1993 called for measures to improve salmon survival and increased research and analysis of certain proposed improvements. The 1993 Biological Opinion was challenged in Federal court. By the time the case was heard, NOAA had issued a 1994–98 Opinion following the same general approach, and the court rejected the agency's plan. NOAA Fisheries responded by preparing an interim Biological Opinion and committing to develop a new Biological Opinion and long-term recovery plan by 1999. This new 1995 Opinion was also challenged, but the court ultimately decided the case in favor of the Federal plan. Consultation was reinitiated in 1999 and this led to the current Biological Opinion, issued in December 2000.

Soon after its issuance, the 2000 Biological Opinion was challenged by various interest groups in Federal district court. On May 7 of this year, Judge Redden ruled that the Biological Opinion did not take into account the proper "action area" and the Opinion did not adequately consider whether the various conservation measures discussed in the Opinion (reasonable and prudent alternatives (RPAs)) met certain standards that they developed. The Court found that NOAA Fisheries should not evaluate the future effects of actions in developing a reasonable and prudent alternative unless the results from either future Federal actions that have already undergone consultation under section 7 of the ESA or future non-Federal actions must be determined to be "reasonably certain to occur."

On June 2, 2003, Judge Redden remanded the Biological Opinion to NOAA Fisheries for further action. The court is considering a motion by the plaintiffs to vacate the Biological Opinion while it is undergoing revision. According to the briefing schedule, full briefing of this issue was to be completed June 20. The court has agreed to allow NOAA Fisheries up to 1 year to revise the Biological Opinion in accordance with the court's ruling, with status reports to be filed with the court every 90 days. In the meantime, the current Opinion continues to be implemented.

However, the court is now considering a motion by the plaintiffs to vacate the Biological Opinion while it is undergoing revision. Briefing on the motion was completed June 20 and the court may rule at any time. A decision by the court to vacate the Biological Opinion could have severe consequences on NOAA Fisheries, on the Federal Action Agencies and on the entire Federal Columbia River Power System. It would remove the incidental take protection that currently shields Federal employees from legal liability under the Endangered Species Act. It would also threaten the continuation of many Federal programs designed to help recover imperiled salmon runs such as the demonstrably successful juvenile transportation effort. Vacatur would destroy the current operational certainty for the highly complex power system, and replace it with institutionalized uncertainty. This uncertainty would arise from the continuing threat of judicial intervention to change current operations to meet the demands of the plaintiffs in the litigation regardless of the impacts of those changes on the power system or even on the imperiled fish. The reliability and economic efficiency of the power system would be damaged, with no clear benefit for fish.



It is premature to comment on the extent to which the current Biological Opinion may be revised over the next year. Nonetheless, today's discussion about the implementation status of the 2000 Biological Opinion may be relevant to the revised Opinion upon which we are now working.

#### STATUS OF BIOLOGICAL OPINION ACTION ITEMS

The 2000 Biological Opinion for the Columbia and Snake River hydro system concluded that jeopardy of listed salmon and steelhead could be avoided if certain conservation measures contained in a reasonable and prudent alternative were implemented by the Bonneville Power Administration, U.S. Army Corps of Engineers, and U.S. Bureau of Reclamation (known as the Action Agencies) over a 10-year period to 2010. In total, the Opinion's RPA contains 199 actions.

The RPA defined a rolling annual and 5-year planning, implementation and review process. The FCRPS Action Agencies produce annual and 5-year implementation plans (IP) that describe progress to date, lay out details of the short-and long-term plans for achieving performance standards, propose adjustments to the RPA Actions, and describe the rationale for those adjustments. NOAA Fisheries is required to review each year's annual Implementation Plan through the issuance of a "findings letter" to the Action Agencies.

In May 2002, the Action Agencies released a report detailing their progress in 2001 for implementing the 199 measures. As you know, 2001 water levels in the Columbia and Snake River systems were some of the lowest ever, and created great challenges for the Action Agencies to help meet water needs for listed fish as well as for Northwest power, irrigation, and recreational needs.

In light of these challenges, I commend the Action Agencies for their extensive efforts to coordinate with other Federal agencies, States, tribes, utilities and others during a difficult year. As a result of their hard work in 2001, NOAA Fisheries advised the Action Agencies in a July 2002 letter that necessary hydro improvements and offsite mitigation measures in the Biological Opinion were progressing sufficiently in 2001 through their "One Year Plan," such that the Biological Opinion was largely on track. That letter also emphasized certain areas where future efforts should be focused.

On May 14 of this year, NOAA Fisheries issued its second "findings" letter, reviewing the implementation status of each of the 199 RPA actions and whether the Action Agencies appear on track to meet the important 2003 "check-in" requirements set forth in the Biological Opinion (<http://www.salmonrecovery.gov/>). I am pleased to report to you that of the 124 actions that require definition, implementation, or completion by or before 2003, 117 are being implemented either as expected or with only minor modifications.

This leaves only seven out of 124 RPA actions (5 percent)—with implementation schedules that have been modified in ways that represent any concern. Finally, of the 75 Actions for which the Opinion provides no specific implementation schedule, 68 are currently underway or proposed for initiation in 2003.

This represents great progress, and I'd like to praise the Federal Action Agencies, the States, tribes, local organizations, and citizens of the region for their rapid mobilization and good work. I am convinced that salmon recovery in this region depends on this kind of widespread collaboration.

Some of the seven RPA actions that are behind schedule are of lesser consequence. There are, however, two areas of particular concern: development of subbasin assessments and plans for priority subbasins (Action 154) and effectiveness monitoring for offsite mitigation actions (Action 183 and Research, Monitoring, and Evaluation data base development identified in Action 198). Both of these areas are behind the anticipated schedule, and both play an important role in the overall success of the

#### *Biological Opinion*

Subbasin planning is the means by which the major limiting factors for listed salmon and steelhead are defined, locally supported plans to address those factors are established, and the foundation for comprehensive recovery plans laid. That ambitious process got off to a slow start, but is now rapidly coming up to speed. The Bonneville Power Administration has provided substantial funding for subbasin planning, and the Northwest Power Planning Council is devoting its energy and expertise to completing this effort.

Research, monitoring, and evaluation (RM&E) is the means by which NOAA Fisheries and the Action Agencies evaluate the biological effects of our efforts under the Biological Opinion, determine whether we are achieving the expected results, and modify our efforts to achieve the greatest beneficial effect. While a significant

amount of RM&E is taking place, we do not yet have the analytical infrastructure and tools needed to support this enormous recovery effort.

NOAA Fisheries is committed to working with the Action Agencies to develop and implement the research, monitoring, and evaluation program under the Biological Opinion. In the President's 2003 Budget request, \$12 million was proposed to fund the RM&E needed under this opinion. Unfortunately, no money was appropriated for this purpose in fiscal year 2003. The President's fiscal year 2004 budget includes \$ 15.1 million for this purpose, and we hope that Congress will honor this important request. In the meantime, NOAA Fisheries' Northwest Regional Office and Northwest Fisheries Science Center are working with the Columbia Basin Fish and Wildlife Authority and other regional interests to develop the best RM&E program possible using existing tools and programs, and low-cost innovation.

Despite the challenges to meet the Biological Opinion's requirements, I am very encouraged by new technological developments and other research efforts by the Action Agencies to pursue exciting initiatives to aid the passage of juvenile salmon through hydroelectric dams on the river system, such as the U.S. Army Corps' removable spillway weir at Lower Granite Dam. Early study results indicate this technology could allow more fish to pass faster through the dam while less water is being spilled.

Recently, NOAA Fisheries announced the creation of a new Salmon Recovery Division within our Northwest Region to focus on implementation of salmon recovery initiatives within this region and to provide coordinated support to the myriad of existing State, local and tribal salmon recovery activities throughout the Northwest. For example, in 2002, over 260 Federal caucus-sponsored habitat restoration projects were implemented in 25 subbasins, with high priority given to improved water quality and fish passage. In addition, over 2,000 salmon habitat restoration projects and activities in Washington, Oregon, California and Alaska have been funded since 2000 through the Pacific Coastal Salmon Recovery Fund and other State funds. This new office will work with the region to identify the unique limiting factors of salmon in specific watersheds and subbasins, pool existing and future resources, and prioritize recovery activities to address the greatest needs for salmon. I am confident that the new division will not only increase the effectiveness of our recovery effort, but will also allow the region to address its ESA responsibilities in more efficient and collaborative manner.

#### CURRENT STATUS OF COLUMBIA RIVER BASIN SALMON AND STEELHEAD

I'm pleased to report good news about the status of Pacific salmon in the Northwest, including listed species in the Snake River. Most Columbia River stocks are enjoying a substantial upswing. For example, the fall chinook harvest group known as Upper Columbia Brights—a group that includes both Hanford Reach and Lower Snake River fall chinook, is forecast to enter the Columbia River this year with 280,000 adults. If the forecast is realized, this year's return will be similar to last year's return, which was the largest return since 1988, and would be the fourth largest since 1964.

The ESA-listed runs in Idaho are also showing considerable improvement over the last few years. For example, in 2001, the most recent year for which we have complete results, 17,000 Snake River steelhead returned, versus a 5-year average of 9,400 at the time they were listed in August 1997. We also saw about 17,000 spring/summer-run chinook, compared to a 10-year average of 9,674 at the time of their listing in April 1992. And, 2652 fall-run chinook returned, compared to a 5-year average of 661 at the time of their listing in April, 1992. While the trends in Snake River sockeye are not as meaningful, since they are mainly a function of the number of hatchery-reared fish that are released, the 2002 return of 22 fish compares favorably with the 5-year average of only 3 at the time of listing. More importantly, the fact that we are getting any sockeye back at all is a hopeful indicator that the experimental captive brood program may be capable of eventually re-establishing this population.

While we will need to have the convincing assurance that these trends will continue before we are ready to declare any of these stocks to be recovered, the recent trends are encouraging. Undoubtedly, improved ocean conditions are the single greatest contributor to these increases. But I am firmly convinced that the additional protection and mitigation measures being implemented under this Biological Opinion and the myriad of local, State, and tribal conservation efforts—particularly those benefiting juvenile salmon—are playing a vital role.

## FUNDING OF BIOLOGICAL OPINION ACTIONS

In Fiscal Year 2003, the President's Budget requested a 19 percent increase over Fiscal Year 2002 appropriations for salmon-related Federal activities in the Columbia River Basin. The President's Fiscal Year 2004 discretionary appropriations budget continues the increased support provided in the Fiscal Year 2003 Budget for salmon-related actions in the Columbia River Basin. Our findings letter reports that all of the major action items called for in the Biological Opinion have been funded except for the research, monitoring, and evaluation RPA discussed above. This includes more than \$100 million in funding to the U.S. Army Corps of Engineers for its entire Columbia River Salmon Program over the last 2 years. This also includes substantial funding to the Bureau of Reclamation to assist in fish screening projects and to purchase water from willing sellers to increase in-stream flows. As Colonel Knieriemer's testimony notes, although past funding has been available, the Corps has a Fiscal Year 2003 shortfall in its funding for its Columbia River Fish Mitigation capital improvement items. There are two additional areas of concern, in addition to the RM&E funding.

First, the Biological Opinion contemplates that substantial mitigation activity will be undertaken by Federal land management agencies such as the Forest Service and the Bureau of Land Management. Although these agencies are not action agencies under this Biological Opinion, their continued protection and improvement of salmon habitat on Federal lands is an essential contribution to the range of habitat restoration actions needed to recover listed salmon and steelhead stocks in the Columbia River Basin. Some benefits for listed salmon species will be achieved through Bureau of Land Management and Forest Service actions through the National Fire Plan and Healthy Forests Initiative. Evaluation of those benefits and implementation of targeted salmon habitat restoration projects remain critical to the success of the Biological Opinion.

Second, the subbasin planning process is intended to identify the major limiting factors in each of the subbasins, and to propose locally supported solutions to those limiting factors. Subbasin plans are a key step in recovery planning. Just as it is unrealistic to estimate the cost of a new building until the blueprints are in hand, so, too, it is premature to forecast the costs associated with implementing the solutions developed in subbasin planning. Furthermore, the Bonneville Power Administration is faced with extremely difficult financial circumstances. Although Bonneville's costs in implementing this Biological Opinion have fallen within the range expected when the current power rates were set 3 years ago, we recognize that other factors, including heavy losses due to the power crisis of 2001, and the current lower-than-expected power revenues and snowpacks have placed them at risk financially. We are working closely with them to assure that this Biological Opinion is implemented in a manner that is both biologically effective and financially sustainable.

I am encouraged, however, by the generous environmental improvement programs in last year's Farm Security and Rural Investment Act of 2002 that offer an unexpected source of additional funding to protect and improve riparian habitat in agricultural lands. Since this is some of the most important habitat for salmon and steelhead, we see great potential in working with the Natural Resource Conservation Service to realize these on-the-ground benefits. We are just beginning to develop the kind of partnerships necessary to achieve these benefits, but the initial indications are encouraging.

Each year, the Federal agencies active in the Columbia Basin work together through the Office of Management and Budget and the Council on Environmental Quality on their combined salmon recovery budgets, in order to ensure that we have a coordinated budget. We will continue to compare the future mitigation needs for ESA-listed salmon and steelhead as soon as those additional needs are identified in the subbasin planning process or by other means—with the funding then available. Only then will we know the true level of funding needed to fulfill the expectations of this Biological Opinion.

In recent months, a number of parties have asserted that Federal agencies lack the financial resources to recover salmon and steelhead in the Columbia Basin, citing needs in the range of \$800–900 million per year. We believe the Federal dollars identified in the President's Budget submittals for Fiscal Year 2003 and Fiscal Year 2004 are adequate to do the job.

The hundreds of millions of dollars Federal taxpayers and regional ratepayers spend each year for salmon recovery make this one of the largest restoration programs in the Nation. It is our intention to use this funding effectively and efficiently to fulfill this Biological Opinion. The President's budget matches the tasks and as-

signments at hand, but there are still some areas where Congress has not approved proposed salmon budget items. We urge your support to fill these gaps.

Some additional comments may be appropriate here about the so-called "Salmon Report Card" issued by certain interests groups a few months ago. I am well aware that the positive outlook in our findings letter and in today's testimony may differ dramatically from the dire assessment presented in the report card released by certain interest groups.

The "Salmon Report Card" issued by these interest groups uses as its yardstick the Biological Opinion as they would like it to be—not as it actually is written. They confuse goal statements with requirements, when the Biological Opinion is quite clear that certain goals such as flow targets cannot be achieved under many conditions. Second, the authors of the Report Card did not seem to recognize that we are only a little more than 2 years into a 10-year Biological Opinion. Not all of the Opinion's measures will be fully implemented in its initial years nor does the Biological Opinion expect them to be. And finally, the Report Card simply includes incorrect information on what is actually being accomplished. The findings letter we issued in May tells a very different story.

Before I close, Mr. Chairman, because I know there is considerable interest in the status of hatchery fish, I would also like to briefly advise of the status of NOAA Fisheries' review of the 26 salmon and steelhead listings and hatchery listing policy.

#### NOAA'S HATCHERY LISTING POLICY AND STATUS REVIEWS

U.S. District Court Judge Hogan's decision in the 2001 case of Alsea Valley Alliance v. Evans led NOAA Fisheries to reevaluate how it treats hatchery fish in its ESA listing determinations. The Alsea decision rejected NOAA Fisheries' prior policy of excluding hatchery populations from listing decisions even though they were determined to be part of the same ESU as listed naturally spawned populations.

NOAA Fisheries is currently developing a new hatchery listing policy that we hope will more clearly articulate how the agency considers hatchery salmon in evaluating the risk of extinction for salmon and steelhead ESUs, in current and future listing determinations under the ESA. Initially, the revised hatchery listing policy was expected to be completed in late 2002. However, the agency has been carefully reviewing comments from State and tribal co-managers to ensure the policy is based on the best and most accurate scientific information available. We hope to have a draft policy completed in the very near future and available for public comment and review within a few months. We believe that artificial production facilities can make an important contribution to salmon recovery in the Northwest.

In addition, in 2002, NOAA Fisheries published notices that it would initiate status review updates for 27 ESUs of Pacific salmon and steelhead, including 26 listed ESUs and 1 candidate ESU. The status reviews were initiated in response to the Alsea Valley Alliance v. Evans decision, as well as separate listing and de-listing petitions for 14 ESUs. On December 31, 2002 we expanded the status reviews to also reconsider the relationship between steelhead and genetically indistinguishable resident trout, since our past practice of listing only anadromous fish in our 10 listed steelhead ESUs that also contain such resident trout is susceptible to legal challenge on grounds similar to Alsea. The comprehensive status review updates are anticipated to be completed as soon as possible following the adoption of the hatchery listing policy to provide guidance on the proper consideration of hatchery populations in ESA status reviews and listing determinations. The review is being conducted in two parts.

In part one, an expert team of Federal scientists, the Biological Review Team, is reviewing the status of the naturally spawning portion of each ESU. Another group of agency scientists is advising how closely related the hatchery stocks in each ESU are to the naturally spawning portion of the ESU. In part two, NOAA Fisheries will review overall extinction risks to the entire ESU, including hatchery spawned fish. As required by the Endangered Species Act, the final determination of whether an ESU should be listed will be based on the combined results of parts 1 and 2.

Recently, the science panel completed its preliminary report for part 1 and has shared it with State, tribal and Federal co-managers to ensure that the findings are technically accurate. These preliminary findings show the status of the naturally spawning portion of each ESU and report on the relatedness of associated hatchery populations. The preliminary findings do not take into account the future effects of ongoing salmon conservation and recovery efforts. My staff will use this information as part of our determination of which ESUs required continued protection as threatened or endangered species.

After the part 1 and part 2 reviews have been completed, NOAA Fisheries intends to publish its proposed findings on each ESU and the basis for the findings, and

will seek public comment on those proposed findings. NOAA Fisheries anticipates completing its review of all 26 salmon and steelhead ESUs, publishing those findings in the Federal Register, and seeking public comment before the end of 2003.

Again, thank you, Mr. Chairman, for inviting me here today, and also for your demonstrated commitment and leadership on Pacific salmon recovery and other environmental issues of concern to Idaho and the Pacific Northwest. I look forward to working with you to ensure that salmon recovery is successful, cost-effective and yields benefits for generations to come. Thank you for the chance to appear before you today. I would be pleased to respond to any questions, either at this hearing or in subsequent submissions for the record.

#### Columbia River Chum ESU

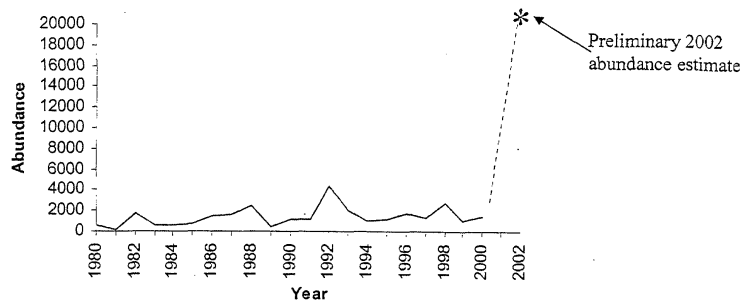


Figure 1. Estimated abundance of the Columbia River chum ESU. Abundance reflects naturally produced spawners only for 1980-2001. The Grays River chum hatchery program was initiated in 1998, with the first artificially produced returns in 2001 (note there is no estimate of 2001 abundance). ESU-level abundance estimated as the sum of the two populations for which spawner escapement data is available. This estimate may represent an underestimate as the quantity of spawning that occurs in the mainstem Columbia is not well estimated. The Columbia River chum ESU was listed as a threatened species under the ESA in 1999.

#### Middle Columbia River Steelhead ESU



Figure 2. Estimated abundance of the Middle Columbia River steelhead ESU. Abundance shown includes both natural and hatchery produced spawners in a given year. ESU-level abundance estimated as the sum of populations for which spawner escapement data is available, and may represent an underestimate of total ESU abundance. The Middle Columbia River steelhead ESU was listed as a threatened species under the ESA in 1999.

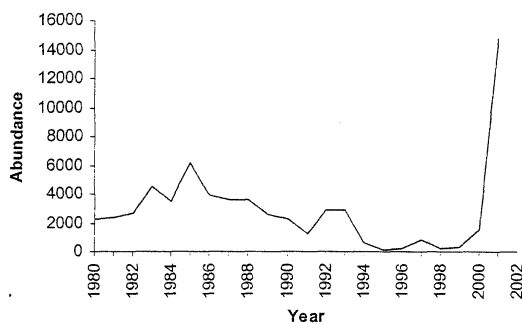
**Upper Columbia River spring-run Chinook ESU**

Figure 3. Estimated abundance of the Upper Columbia River spring-run chinook ESU. Abundance shown includes both natural and hatchery produced spawning adults in a given year. ESU-level abundance estimated as the sum of populations for which spawner escapement data is available (Methow, Entiat, and Wenatchee Rivers), and may represent an underestimate of total ESU abundance. The Upper Columbia River spring-run chinook ESU was listed as an endangered species under the ESA in 1999.

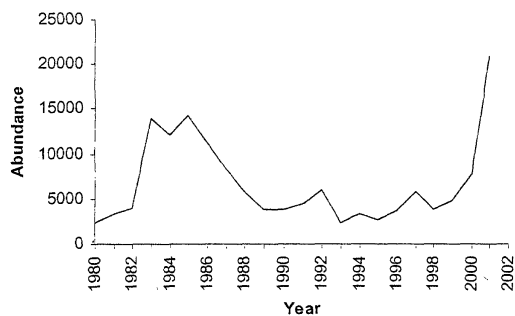
**Upper Columbia River Steelhead ESU**

Figure 4. Estimated abundance of the Upper Columbia River steelhead ESU. Abundance shown includes both natural and hatchery produced spawning adults in a given year. ESU-level abundance estimated as the sum of populations for which spawner escapement data is available, and may represent an underestimate of total ESU abundance. The Upper Columbia River steelhead ESU was listed as an endangered species under the ESA in 1997.

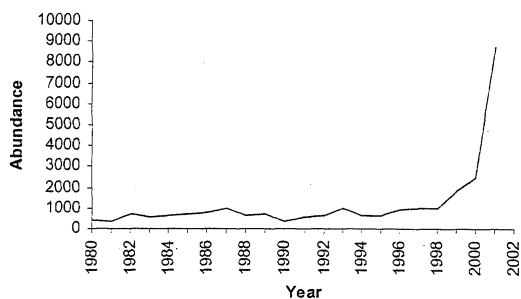
**Snake River Fall-run Chinook ESU**

Figure 5. Estimated abundance of the Snake River steelhead ESU. Abundance shown includes both natural and hatchery produced potential spawners returning over Lower Granite Dam in a given year. The Snake River fall-run chinook ESU was listed as a threatened species under the ESA in 1992.

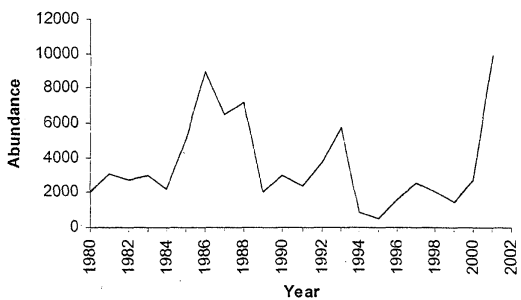
**Snake River Spring/Summer-run Chinook ESU**

Figure 6. Estimated abundance of the Snake River spring/summer-run chinook ESU. Abundance shown includes both natural and hatchery produced spawning adults in a given year. ESU-level abundance estimated as the sum of populations for which spawner escapement data is available, and may represent an underestimate of total ESU abundance. The Snake River spring/summer-run chinook ESU was listed as a threatened species under the ESA in 1992.

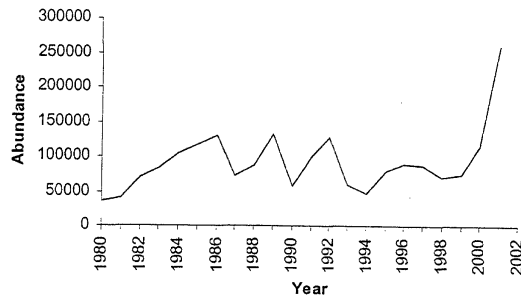
Snake River Basin Steelhead ESU

Figure 7. Estimated abundance of the Snake River steelhead ESU. Abundance shown includes both natural and hatchery produced potential spawners returning over Lower Granite Dam in a given year. The Snake River steelhead ESU was listed as a threatened species under the ESA in 1997.

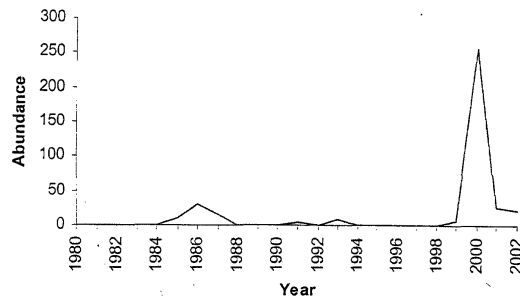
Snake River Sockeye ESU

Figure 8. Abundance of the Snake River sockeye ESU 1980-present. Abundance includes natural and artificially produced adults returning to Redfish Lake. The Redfish Lake captive propagation program was initiated 1991, with the first artificially produced adults returning in 1999, and a peak of 257 returns in 2000. The Snake River sockeye ESU was listed as an endangered species under the ESA in 1991.

STATEMENT OF STEPHEN J. WRIGHT, ADMINISTRATOR, BONNEVILLE POWER  
ADMINISTRATION

Mr. Chairman, and Members of the Committee. My name is Steve Wright. I am the Administrator of the Bonneville Power Administration (BPA). It is a pleasure to appear before you today to discuss the progress we have made in salmon recovery over the last 3 years, since the December 2000 release of Endangered Species Act (ESA) Biological Opinions (BiOps) for listed salmon, steelhead, sturgeon, and bull trout.

Overall, I have good news to report. Despite drought conditions in 2001, dry conditions at the start of this year, and BPA's poor financial circumstances, the Northwest region of the National Oceanic and Atmospheric Administration ("NOAA Fisheries") recently verified that the Federal Columbia River Power System (FCRPS) Action Agencies (i.e. BPA, the Bureau of Reclamation and the U.S. Army Corps of Engineers) are fully implementing over 95 percent of the measures called for in the NOAA Fisheries BiOp. These ESA actions are also helping to fulfill our responsibil-



ities under the Northwest Power Act to protect and enhance fish and wildlife affected by the FCRPS. As you know, the Federal District Court has remanded the NOAA Fisheries BiOp for revision, and NOAA has approximately 1 year to revise it in accordance with the court's ruling. While the BiOp is being revised, BPA will continue to meet its 2003 and 2004 commitments under the Northwest Power Act and the Endangered Species Act.

The court, however, is now considering a motion by the plaintiffs to vacate the Biological Opinion while it is undergoing revision. Briefing on the motion was completed June 20 and the court may rule at any time. A decision by the court to vacate the Biological Opinion could have severe consequences on NOAA Fisheries, on the Federal Action Agencies and on the entire FCRPS.

#### *Improved Fish Survival*

As NOAA Fisheries will testify, the steps the FCRPS Action Agencies have taken over the last decade have significantly improved juvenile fish survival through the Federal hydro system. Today, young fish survive their passage downriver at roughly the same rates as in the 1960's, when fewer dams were in place.

In addition to improved survival rates through the dams and reservoirs, we are seeing rebounds in the numbers of returning adult fish throughout the Columbia River Basin. For example, in 2001, the upriver Spring Chinook return of 405,500 fish counted by the Washington Department of Fish and Wildlife (WDFW) at the Bonneville Dam was the largest return on record (since 1938), and resulted in 172,000 fish counted by WDFW, over Lower Granite. This year (2003), we had the third-highest return on record 195,770 despite the severe drought and emergency power operations in 2001, when many of these returning adults were migrating to the ocean. For the first time in many years, there are enough surplus fish to allow full-scale commercial fisheries on this stock. Returns for other stocks have seen similar results. For example, upriver steelhead saw record returns of nearly 640,000 fish. Generally good to excellent returns and spawning have continued for most stocks in 2002 and so far in 2003.

Some of this recent good news is attributable to favorable ocean conditions, which are cyclical. However, we believe it also reflects the combined benefits of FCRPS Action Agencies' efforts to improve juvenile fish survival, habitat, hatchery management, and harvest control. We see these strong returns as indicators that we are on the right long-term path with our salmon recovery program.

Today, I will review our progress to date under the Northwest Power and Conservation Council's (Council) Fish and Wildlife Program and Endangered Species Act mitigation. Jointly, these actions are coordinated and carried out through the Council's Fish & Wildlife Program and are referred to as the Integrated Program. I will talk about the accountability that we have built into our fish and wildlife efforts, including our focus on monitoring and evaluation and other work that is laying the foundation for achieving biological benefits for the least cost. Finally, I will address BPA's financial situation and how it has affected our fish and wildlife efforts. We have continued to meet our fish and wildlife obligations despite our financial difficulties. But the unpredictability of water conditions and electricity prices will continue to cause BPA's revenues to fluctuate considerably from year to year. In the face of this continued volatility, we are taking steps to provide greater budget stability and predictability for our fish and wildlife efforts.

#### *A Performance-Based Approach to Salmon Recovery*

Before highlighting some of BPA's specific fish and wildlife accomplishments, I would like to summarize the approach we've been taking since the release of the 2000 BiOps. Earlier efforts, rather than targeting and measuring biological performance, merely specified actions habitat improvement, hatchery operations, and the like. Starting with the 2000 BiOp, we began using a performance-based, least-cost approach.

The transition to performance standards as the measure of fish enhancement has been difficult at times. BPA has taken a leadership role in showing that it is not how much money we spend that is the gauge of our success it is the results we have to show for the money spent. In the words of the Northwest Power Act, the Council's Fish and Wildlife Program seeks to "utilize, where equally effective alternatives means of achieving the same sound biological objectives exist, the alternative with the minimum economic cost . . . ." Under this approach, we are using a biological yardstick, while still keeping our eye on costs.

Consider spill for example. Under the BiOp, we are measuring the biological effectiveness of spill at individual dams. We have learned that spill is not a "one size fits all" formula. Spill amounts and patterns vary in their effectiveness in supporting fish survival. BPA, together with the U.S. Army Corps of Engineers (Corps)

and the Bureau of Reclamation (Bureau), has analyzed river operations looking for opportunities to achieve the BiOp performance standards while reducing costs. Research studies at John Day and Ice Harbor Dams have suggested that lower spill levels (from those called for in the BiOp) may enhance juvenile passage survival during spring and/or summer migration. This year, we are conducting tests of reduced spill levels at these projects, consistent with the BiOp implementation planning process, to determine optimum levels of spill for improved survival. In addition, we are working with the Council and others to carry out the summer spill test recommendations in the 2003 Mainstem Amendment to the Council's Columbia River Basin Fish and Wildlife Program.

In a related area, we have seen some promising results at Lower Granite Dam from the use of removable spillway weirs (RSWs), which may allow greater fish passage with less water spilled and less dissolved gas. As the Corps notes in its testimony, we are accelerating investigation of RSWs at key dams, with the endorsement of the Council.

*BPA's Recent Accomplishments Under the Biological Opinion*

I am proud of what BPA and its partners have accomplished for salmon recovery. Here are some of our notable actions in 2002:

*In the hydrosystem:*

1. With the Corps and Bureau, we completed ten major configuration projects at the Federal dams. With the completion of these measures, we have improved adult fish passage at Bonneville, Ice Harbor, and Lower Granite, assisted adult fish migration in the Lower Snake River, and improved juvenile fish passage at Lower Monumental and Lower Granite Dams.

2. Water management and fishery operations generally followed the expectations in the BiOp. Over 21 million juvenile salmonids were collected, and approximately 14 million of those were transported by truck or barge and released below Bonneville Dam. The remaining seven million went through a bypass system to the tailrace.

We managed flow and spill on the river to improve juvenile fish migration through the spring and summer seasons, using the storage in the upriver reservoirs to supplement natural stream flows.

*To improve habitat:*

3. BPA funded implementation of hundreds of new and continuing projects to protect and enhance habitats important to fish. Over 260 habitat projects were implemented in 25 subbasins.

Through the Council's Fish and Wildlife Program, BPA acquired at least 164 cubic feet per second (cfs) of instream tributary flow enhancements. We also removed or improved more than 70 fish passage barriers to open nearly 700 miles of habitat.

Also through the Council's program, we protected or enhanced over 198 river miles and 19,600 acres of riparian buffers and habitat.

*For hatcheries:*

- The new Nez Perce Tribal Hatchery was completed and began operation.
- BPA funded the operation and maintenance of over 30 major anadromous fish hatcheries.
- BPA funded four captive broodstock programs to protect the basin's most endangered populations.
- The Kootenai River White Sturgeon aquaculture program produced and released juvenile resident fish.
- BPA funded development of hatchery genetic management plans for the Grande Ronde and Tucannon spring/summer chinook safety net programs. The safety-net program is intended to provide artificial propagation contingency plans that, if implemented, would prevent further decline in the status of the most at-risk ESA-listed species, to buy time for other recovery measures to take effect.
- BPA funded the marking of key populations of hatchery fish, protecting listed fish by allowing more selective fisheries.

*For harvest:*

- BPA tested alternative fishing gears and provided improved gillnets to tribal commercial fishers.
- BPA funded the location and removal of eight submerged fishing nets that could have continued to take ESA-listed fish in the Columbia River.

*In addition:*

- Research, Monitoring and Evaluation (RM&E): We have developed a comprehensive RM&E program framework that will provide information to assess needs of fish and the effect of mitigation efforts and continued to fund monitoring and research programs for dams, habitat, and hatcheries.
- Subbasin Planning: Working with the Council, States, and Tribes, BPA has funded a regional process of subbasin planning for 62 watersheds, with plans that are locally developed under a common template, subject to independent science review, and coordinated with NOAA Fisheries and the United States Fish and Wildlife Service (USFWS) to ensure ESA consistency. This process is expected to be completed in 2004. Completed subbasin plans will further the protection of fish by identifying particular improvements and projects to undertake.

These efforts came at a substantial cost to the ratepayers of the Northwest. At an annual estimated cost exceeding \$600 million, BPA believes its efforts to preserve salmon and other fish and wildlife species is among the largest and most notable environment mitigation programs in the Nation. Fish enhancement has become one of our three largest responsibilities, along with power supply and transmission service.

*Funding for Fish and Wildlife*

BPA is currently managing through a difficult financial situation. Since the West Coast electricity crisis in 2000, we have had to raise rates by 46 percent. We have recently proposed another rate increase. Through cost cuts and deferrals in the remainder of the wholesale power rate period, as well as the turn in water and market conditions, we have managed to reduce the size of this rate increase to under 5 percent. We will continue to work with our cost partners to reduce this further.

Throughout our efforts to manage costs, we have sought efficiencies from all parts of our budget, including fish and wildlife. Key among these was that BPA faced a potential liquidity problem and needed to manage to the budgeted accrual level for the Integrated Program, which was \$139 million. The \$139 million is an increase of almost 40 percent over our direct program spending for fish and wildlife in the previous rate period. BPA also funds capital projects for fish and wildlife, including physical improvements at the dams to improve fish passage and similar capital projects. The Integrated Program level of available capital is \$36 million a 33 percent increase over the previous rate period.

In the fall of 2002, internal estimates indicated that forecasted expenditures for the Integrated Program in 2003 could be as high as \$180 million. The forecasted overage (amounts above \$139 million level) was the result of a number of complex factors. It was not the result of poor planning by the Council.

In December 2002, BPA asked that the Council in consultation with the region's fish and wildlife managers take the lead to ensure that spending for the Integrated Program did not exceed \$139 million in fiscal year 2003. In addition, we asked the Council to re-order priorities to create the opportunity to spend less than \$139 million annually for the remainder of the rate period, through 2006.

BPA emphasized that the Council's prioritization must assure that BPA meet its obligations to fish and wildlife. Core to these obligations, we said, were projects needed to meet the requirements of the various biological opinions that apply to BPA, in particular for the 2003 and 2005 check-ins for the 2000 FCRPS BiOp. We have made every effort in this process with the Council to ensure that our BiOp-related projects remain priorities.

I am pleased to report that the Council has responded affirmatively to our request. We are proceeding to work with the Council on implementing this approach, consistent with our statutory responsibilities, for fiscal year 2003 and the remainder of the rate period.

At the same time, the Council is understandably concerned about recent events. The States and other parties have asked BPA to consider development of a long-term agreement to govern spending for the Integrated Program in the post-2006 period. Regional tribes and the four Northwest Governors have also asked BPA to clarify the process for planning and management of the program for the remainder of the rate period. We agree this is an important matter to discuss. Our goal is to work toward creating greater funding predictability, while also assuring we can manage to budgets.

With the establishment of performance standards and related tools, we have made tremendous progress defining benchmarks for evaluating progress toward meeting the biological needs of ESA-listed species. To develop a successful long-term agreement for the fish and wildlife program, we must establish similar standards and tools to gauge progress under the Northwest Power Act. Such a discussion would make sense in parallel with the regional dialog discussions that we are having re-

garding BPA power service post-2006. I would hope it could clarify our joint objectives, priorities and a least-cost planning approach for the Integrated Program. It could also look at management options for navigating through financially difficult times, or during poor water years when the capability of the FCRPS is stretched.

*Regional Cooperation and Coordination*

With BPA's difficult financial situation and the demand on the capabilities of the FCRPS, BPA believes it is more important than ever that all of us work collaboratively to benefit the region's fish and wildlife in the most cost effective way possible. The recent recommendations from the four Northwest Governors underscore this same point.

A very positive foundation is our clear agreement with the States that successful BiOp implementation is critical to the region. BPA is working closely with NOAA Fisheries and others to ensure a coordinated position on what constitutes successful implementation. BPA is particularly focused on carrying out a legally and scientifically sound program, achieving successful check-ins mandated by the BiOp for 2003, 2005, and 2008. Not only is this essential to verify that the Integrated Program is achieving the desired biological results, it is also critical to ensuring that those results are achieved at the lowest cost.

We are in agreement with the four Northwest Governors that successful implementation of research, monitoring, and evaluation is key to assessing our progress toward accomplishing biological objectives and meeting and refining performance standards. We will work closely with our State, Federal, and tribal partners to take advantage of ongoing efforts in RM&E, and integrate them with the new ones that are needed.

Subbasin planning is also a key focus for BPA. With its watershed-by-watershed approach, subbasin planning maximizes local participation, knowledge and consensus, involving States, tribes, and local entities. Consistent with the four Governors' recommendations, BPA has provided substantial funding for development of subbasin plans throughout the region. We expect that subbasin plans will provide an important foundation for recovery planning throughout the Columbia River Basin, and that they will guide habitat, hatchery and harvest actions in the years to come.

In addition, it is important to keep in mind that BPA expenditures for salmon recovery are mitigation for the power effects of the dams not for the impacts caused by other users of the river basin. Every contributor to the salmon problem has a share of the responsibility for achieving improved recovery.

Finally, we support the NOAA Fisheries and Corps budget requests in the President's budget for fiscal year 2003 and fiscal year 2004 and the activities they are targeted to fund. We join those agencies in asking Congress to provide support for those requests. We also support the Bureau's request for authority to conduct fish restoration activities in the tributaries in the Columbia River Basin.

The other agencies in the Federal Caucus, including the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Bureau of Indian Affairs (BIA), the U.S. Forest Service (USFS), and the Bureau of Land Management (BLM), as well as the Federal Energy Regulatory Commission (FERC), have worked successfully together over the years to implement habitat, water quality, fisheries management, and the multitude of other actions that contribute to an "All-H" (hydro, habitat, hatchery and harvest improvements) approach to salmon recovery.

*Conclusion*

The effort to recover salmon in the Pacific Northwest is one of the nation's largest and most notable environmental recovery programs. We are collaborating on successful projects and implementing cutting edge actions throughout the Columbia River Basin. In the face of some very challenging financial circumstances, BPA remains fully committed to meeting our obligations. Together with our partners, we are focused on results, and we are getting them in the most cost effective way possible.

Mr. Chairman, I thank you for the opportunity to testify and would be pleased to answer your questions.

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STATEMENT OF COLONEL DALE KNIERIEMEN, DEPUTY COMMANDER, U.S. ARMY CORPS OF ENGINEERS, NORTHWESTERN DIVISION

Mr. Chairman, Committee members, and distinguished guests, I am pleased to testify on US Army Corps of Engineers (Corps) activities to restore Columbia River Basin salmon and steelhead stocks listed under the Endangered Species Act. The

Corps appreciates the support of Congress and the Northwest delegation for salmon recovery. Today, I have good news to report on these ongoing efforts.

The Corps, the Bureau of Reclamation and the Bonneville Power Administration (BPA), the "Action Agencies" for the Federal Columbia River Power System, are in our third year of activities under the National Oceanic and Atmospheric Administration (NOAA) Fisheries 2000 Biological Opinion on the Federal Columbia River Power System. We are making significant headway in implementing most of the measures in the Reasonable and Prudent Alternative. We have made and are making numerous improvements to dams and fish passage facilities throughout the system. We have implemented flow, release and other operational measures for fish during fish migration seasons, and we are laying the groundwork for potential further operational adjustments. Habitat restoration actions are proceeding. We are working closely with our partners to assure that our comprehensive research, monitoring and evaluation (RM&E) program will provide the answers we need to evaluate our progress and make course adjustments as we proceed. The Federal agencies also are working collectively to ensure our efforts are compatible with those of the States, tribes and others in this huge and very complex program.

The NOAA Fisheries Findings Letter for the Action Agencies 2003–2007 Implementation Plan identifies some areas of concern where the agencies have been delayed in implementation. Subbasin Plans, developed at the State and local level with Northwest Power and Conservation Council assistance and BPA funding, are underway but taking more time than initially projected. Completion of these non-Federal plans is important because they are intended to guide habitat restoration efforts in the basin and improve coordination. While slow to start, RM&E efforts now are coming together and plans are taking shape. RM&E is critical to the 2005 check-in to measure effects of the Action Agencies' restoration activities on recovering fish populations.

Columbia River Basin fish restoration is more than a one or 2 year effort. We must remain committed for the 10-year period covered by the Biological Opinion. Fish returns have been very good for the past 3 years, and we expect 2003 to be another good year for returning adult salmon. But we must continue looking beyond the immediate numbers and focus on the long-term trends. We have to sustain our commitment to hydro, habitat, hatchery and harvest improvements to give these fish a reasonable certainty of long-term recovery.

The Administration has supported the Corps Columbia River Salmon Program by requesting \$128 million and \$125 million for Fiscal Years 2003 and 2004 respectively. These amounts include funding the Columbia River Fish Mitigation project for configuration studies and actions at lower Columbia and Snake Dams, habitat studies and actions, Chief Joseph Dam gas abatement, Willamette River temperature control construction and the appropriated portion of operation and maintenance funding for fish facilities, juvenile fish transport and research. In addition we are receiving about \$33 million annually in direct funding from BPA for operation and maintenance of fish facilities. Our budget requests have been based on our estimated requirements for a program to fully comply with the Biological Opinion for the 10 year period through 2010.

The Fiscal Year 2003 Omnibus Bill funded specific Biological Opinion actions for habitat restoration in the Columbia River Estuary as authorized in Section 536 of the Water Resources Development Act of 2000, as well as gas abatement measures at Chief Joseph Dam and an investigation of System Flood Control under the Columbia River Fish Mitigation (CRFM) project. Each of these addresses important elements in the Biological Opinion, and assists the Corps in meeting fish restoration goals.

*NWF et al v. NMFS et al*

On May 7, 2003, Judge James A. Redden of the Federal District Court of Oregon issued an opinion ruling in favor of a coalition of environmental groups in National Wildlife Federation et al v. National Marine Fisheries Service et al. This case challenged the NOAA 2000 Fisheries Biological Opinion. The judge determined that the NOAA Opinion was "arbitrary and capricious." He has remanded the Opinion to NOAA Fisheries to address the deficiencies within 1 year and has required reports to the court every 90 days. The judge has not yet ruled on whether to let the 2000 Biological Opinion stand during this period or to "vacate" the Opinion. He has asked the parties to provide arguments that are expected to lead to a decision this summer. In the meantime, the Action Agencies will continue to implement the Biological Opinion.

The court is now considering a motion by the plaintiffs to vacate the Biological Opinion while it is undergoing revision. Briefing on the motion was completed June 20 and the court may rule at any time. A decision by the court to vacate the Biologi-

cal Opinion could have severe consequences on NOAA Fisheries, on the Federal Action Agencies and on the entire Federal Columbia River Power System. It would remove the incidental take protection that currently shields Federal employees from legal liability under the Endangered Species Act. It would also threaten the continuation of many Federal programs designed to help recover imperiled salmon runs such as the demonstrably successful juvenile transportation effort. Vacatur would destroy the current operational certainty for the highly complex power system, and replace it with institutionalized uncertainty. This uncertainty would arise from the continuing threat of judicial intervention to change current operations to meet the demands of the plaintiffs in the litigation—regardless of the impacts of those changes on the power system or even on the imperiled fish. The reliability and economic efficiency of the power system would be damaged, with no clear benefit for fish.

#### *Progress Made*

The Action Agencies recently released the Endangered Species Act 2002 Progress Report for the Federal Columbia River Power System. This report documents many accomplishments under the Biological Opinion, but two fish passage innovations stand out.

One is the Bonneville Dam Second Powerhouse Corner Collector, a \$55 million project (includes entire project costs from design to post-construction monitoring) with planned construction completion in December 2003. Federal biologists expect this high flow surface bypass facility for young salmon to provide a 1 to 3 percent increase in juvenile fish survival past the Bonneville Second Powerhouse. The corner collector will work in conjunction with the existing second powerhouse screened juvenile bypass system. Together, these nonturbine routes should guide about 90 percent of all juvenile fish at the second powerhouse and achieve an estimated survival rate exceeding 95 percent.

The other fish passage innovation is the Removable Spillway Weir, or RSW, a prototype juvenile fish passage improvement installed at Lower Granite Dam in 2001. Existing spillway gates at Lower Granite release water that is 50 feet below the surface at the dam face. Fish pass through these deep gates under high pressure and velocities. The RSW allows juvenile salmon and steelhead to pass the dam nearer the water surface under lower velocities and lower pressures, providing a more efficient and less stressful dam passage route. The RSW structure also is designed to be “removable” by controlled descent to the bottom of the dam forebay. This capability permits returning the spillway to original flow capacity during major flood events. Testing for mechanical and biological effectiveness has produced promising results. The Lower Granite RSW working together with the existing prototype powerhouse surface collector and forebay guidance structure shows a seven to one effectiveness ratio based on first year data. This ratio means that about 70 percent of the fish passed the spillway using about 10 percent of the river flow. Thus, the RSW has the potential to provide not only fish benefits but also power savings to the region. We continued testing the “stand-alone” RSW at Lower Granite (without surface collector or forebay guidance structure) in 2003. We are also evaluating potential implementation of an RSW at Ice Harbor Dam by 2005 at an estimated cost of \$24.3 million.

Besides these new technologies, we continue to make improvements to existing juvenile and adult bypass systems at the eight lower Columbia and Snake River dams. These improvements are in accordance with the Biological Opinion and include input from State, tribal and other Federal biologists and engineers through the System Configuration Team and other regional forums. The juvenile fish bypass systems guide fish away from turbines and through channels that run the length of the dam. The fish are bypassed to the river below the dam, or they are routed to a holding area for loading onto specially equipped barges or trucks. NOAA Fisheries research on Snake River spring/summer chinook indicates that between 50 and 60 percent of juvenile fish that migrate in-river successfully pass the eight Corps dams on the lower Snake and Columbia Rivers. This survival is similar to when there were only four dams, and is up from about a 10 to 40 percent survival rate in the 1960's and 1970's.

#### *Operations for Fish*

To the extent we can, the Action Agencies continue to operate the system of dams and reservoirs in accordance with the NOAA Fisheries and US Fish and Wildlife Service (USFWS) Biological Opinions. In this effort we get assistance from the Technical Management Team of State, tribal and Federal representatives who also receive input from other basin interests. Throughout the juvenile fish migration season, the team reviews flows, forecasts and fish movement and makes recommenda-

tions to adaptively manage the system to reflect changing conditions and demands on the system. Water conditions in 2002 were close to normal; target flow conditions were achieved for the most part, and spill was provided as planned.

The juvenile fish transportation program transported approximately 14.1 million juvenile fish from collector dams to a release point below Bonneville Dam where they continued their migration to the estuary and ocean. Most of these juvenile fish, approximately 13.7 million, were barged and the remainder were transported by truck. The estimated survival to the point of release was over 98 percent.

The Corps operates the juvenile fish transport program in accordance with the NOAA Fisheries Biological Opinion and with Technical Management Team input. Four Corps dams are equipped to collect fish for transport: Lower Granite, Little Goose, Lower Monumental, and McNary. Transported fish are released downstream of Bonneville Dam. Studies indicate that transport can increase fish survival as measured by smolt to adult return rates. This is especially true for wild fish (about 85 percent greater returns for transported wild steelhead versus inriver and about 30 percent greater for wild chinook).

The major issue is whether barge transportation can achieve the smolt-to-adult ratio needed to halt the population decline and move to recovery. Differential delayed mortality ("D") of transported fish is probably the single largest technical question regarding the role of transportation in salmon recovery. It is uncertain if differential delayed transport mortality is a natural process (i.e., some percentage of fish will die whether they travel in barges or in-river), or if it is actually caused by barging, for example, by releasing fish in the lower river without the experience of migration. There are numerous theories; however, the phenomenon is probably due to multiple causes rather than any single one. Regardless of "D," transported Snake River wild fish can return at a higher rate than those that remain in-river during their out-migration. Until these uncertainties are resolved the NOAA Fisheries Biological Opinion calls for the Corps to continue improvements for fish survival through all routes of passage (spillway, bypass systems, turbines and transportation).

In January 2003 the Corps began implementing the VARQ alternative flood control plan operation on an interim basis at Libby Dam. (VARQ stands for variable discharge, with being the standard engineering shorthand for discharge or flow.) Implementation of VARQ at Libby and Hungry Horse dams in Montana is part of both the NOAA Fisheries and USFWS Biological Opinions. It is a key action to protect threatened and endangered fish species including Kootenai River white sturgeon, salmon, and bull trout, through improved ability to provide spring and summer flows. Hungry Horse Dam, operated by the Bureau of Reclamation, began interim implementation of VARQ flood control in 2002. This operation reduces releases from Libby and Hungry Horse during the winter drawdown period of January through April in most years (depending on forecasted water supply), providing better assurance of reservoir refill in the summer. This is accomplished by transferring flood control storage requirements under some water runoff forecast conditions. Interim VARQ flood control will continue until the Corps and Reclamation complete an Environmental Impact Statement on potential longer-term implementation expected by 2005.

#### *Estuary Restoration Efforts*

Planning efforts for several habitat restoration projects in the Columbia River Estuary continue in close coordination with regional partners. The Brownsmead Project east of Astoria would restore tidal flow to about 9.2 miles of sloughs. We have initiated study of a project in Southwest Washington to replace nine culverts that are blocking or restricting access to small tributary streams to the Columbia River. A project at Crims Island would acquire and restore approximately 425 acres of tidal emergent marsh, swamp, slough, and riparian forest habitat in the upper Columbia River Estuary to benefit fish and wildlife. Another is a project at Lena's Lake with USFWS to create around 1000 feet of spawning channel for Chum salmon. USFWS, NOAA Fisheries and the Corps are pursuing a project at Julia Butler National Wildlife Refuge to restore approximately nine miles of secondary sloughs to fisheries access.

In addition to project-specific planning, the Corps is working with the States of Oregon and Washington, the Lower Columbia River Estuary Partnership and BPA to initiate a strategic master plan to identify long-range projects to improve the ecological health of the river. The Action Agencies also continue to fund much-needed research in the estuary.

*Challenges Remain*

We still have a long way to go. We are in the third year of a 10-year effort and must keep the momentum going. In the estuary, the Corps is pushing hard to meet the Biological Opinion measure to restore 10,000 acres of salmon and steelhead habitat. We will continue to work with Oregon and Washington through the Lower Columbia River Estuary Partnership to identify the most promising sites and leverage our resources to get the job done.

Operation of Libby Dam will be a challenge to balance the needs of both listed and non-listed fish as well as those of residents living downstream of the project, including Canada residents.

RM&E measures in the Biological Opinion are progressing but remain a complex task for the Action Agencies and NOAA Fisheries. We are pursuing potential opportunities for linking to State, tribal, local and other efforts of a similar nature as we set up these systems. NOAA Fisheries' parallel RM&E effort has been delayed due to constrained funding so we anticipate setbacks in the overall ability to monitor whether our actions are working for increased fish populations.

Our fiscal year 03 appropriation for funding CRFM actions under the Biological Opinion was \$85 million, a reduction of \$13 million from the budget request of \$98 million. Savings and slippage further reduced the funds available to just under \$70 million. We continue to meet with regional, State, tribal and Federal counterparts in the System Configuration Team (another of the NOAA Fisheries regional forums for coordinating Biological Opinion actions) to discuss and re-prioritize fish passage improvements, planned research activities and studies for the 2003 program. Some of our planned actions to comply with the Biological Opinion have been delayed.

*What help we need*

Overall we believe the Action Agencies are making very good progress toward the 2003 "check-in." However, there is much work ahead of us before we reach the 2005 mid-point evaluation. Continued progress in meeting the 2005 "check-in," which will include measuring and evaluating effects on fish populations, will depend upon resources and funding. The President's budget for the Corps for Columbia River salmon activities is sufficient to keep us on track, and we respectfully request your full support for that budget.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

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STATEMENT OF J. WILLIAM McDONALD, REGIONAL DIRECTOR, PACIFIC NORTHWEST REGION, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

My name is J. William McDonald, Regional Director of the Pacific Northwest Region of the U.S. Bureau of Reclamation. I am pleased to provide this progress report on Reclamation's implementation of actions to benefit Columbia and Snake River salmon and steelhead listed as threatened or endangered under the Endangered Species Act. Reclamation is responsible for the Grand Coulee and Hungry Horse Dams and Powerplants, which are two of the 14 projects which constitute the Federal Columbia River Power System (FCRPS). We work closely with the Army Corps of Engineers and the Bonneville Power Administration in the operation of the FCRPS and in addressing the ESA issues with which the FCRPS is confronted.

Reclamation has or shares responsibility for implementing over 60 of the 199 actions in the Reasonable and Prudent Alternative (RPA) in the National Marine Fisheries Service's (NOAA Fisheries') December 2000 Biological Opinion (FCRPS BiOp). This BiOp covers the continued operation and maintenance of the FCRPS and of Reclamation's Columbia Basin Project, and the aggregate hydrologic effects on mainstem flows of the 19 Reclamation irrigation projects located in the Columbia River Basin (exclusive of the Snake River Basin above Hells Canyon).

Reclamation is generally on track in implementing those actions in the RPA which are our responsibility.

Our hydro-electric generation efforts under the FCRPS BiOp include the operation of Grand Coulee and Hungry Horse Dams in a manner that assists in meeting certain flow targets and the annual acquisition of up to 427,000 acre feet of water in the Snake River Basin from willing participants to improve spring and summer streamflow conditions for juvenile fish migration.

Reclamation is on schedule on the implementation of the habitat restoration provisions of the RPA. As required by action 149 of the RPA, we have initiated programs in nine subbasins to assist with providing migration passage and screening on non-Federal water diversion structures, and securing water and water rights from willing sellers and lessors for instream flows in accordance with State law.



While Reclamation has the authority to plan and design fish screens and passage for non-Federal water projects, we do not have the authority to fund construction. Thus, Reclamation's ability to fully accomplish this work will be hampered unless we receive the statutory authority to construct, or provide financial assistance to others to construct, fish passage and screening on non-federally owned diversion structures beginning with fiscal year 2004.

In this regard, the Administration, in an October 30, 2002 letter from the Assistant Secretary for Water and Science, proposed legislation to the Congress which, if enacted, would give Reclamation the authority it needs to carry out activities in this BiOp. We continue to work with congressional staff on that proposal. In the meantime, others, including BPA and State agencies in Idaho, Oregon, and Washington, are providing some funding for the construction of these improvements at non-Federal water diversion projects.

Following the May 7, 2003, decision of the U.S. District Court for Oregon in *National Wildlife Federation v. National Marine Fisheries Service*, many have asked if this proposed legislation is still needed. I would like to emphasize the importance of and need for this legislation. Among other things, the court found that certain BiOp actions were not reasonably certain to occur. Reclamation's proposed legislative provision of financial assistance to private parties for the construction of fish passage and screening is one area where Reclamation is committed to the implementation of certain actions for which the BiOp's RPA calls. Thus, I would reiterate the need for this funding authority.

We are also implementing research, monitoring, and evaluation (RM&E) activities, primarily in priority subbasins. This is important for determining the effectiveness of our actions and the status of the listed fish.

Reclamation has received sufficient appropriations to date to fund actions required in the FCRPS BiOp. Our appropriation for the Columbia/Snake Salmon Recovery Program has risen from \$5.6 million in fiscal year 2001 to \$15 million in fiscal year 2003. The President's proposed level of funding is \$19 million for fiscal year 2004. Most of this increase is needed to fund our offsite habitat improvements (i.e., passage and screening on non-Federal water projects) in the tributary subbasins, and assumes enactment of legislation to provide the necessary authority. We appreciate your continued support of these efforts.

In conclusion, we are pleased with our progress to date in implementing the actions in the FCRPS BiOp for which we are responsible. At the same time, we are mindful of the importance and magnitude of the task which lies before us.

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STATEMENT OF JUDI DANIELSON, CHAIR NORTHWEST POWER PLANNING COUNCIL

Good morning, Senator Crapo, and thank you for the opportunity to testify here today on implementation of the NOAA Fisheries 2000 Biological Opinion on Hydropower Operations for Endangered Species Act-listed salmon and steelhead in the Columbia River Basin.

I am Judi Danielson, and I chair the Northwest Power Planning Council. The Council is an agency of the four Northwest States of Idaho, Montana, Oregon and Washington. The Council was created by the State legislatures in 1981 under authority of the Pacific Northwest Electric Power Planning and Conservation Act, which the Congress approved in December 1980. The Power Act directs the Council to prepare a program to protect, mitigate and enhance fish and wildlife of the Columbia River Basin that have been affected by hydropower dams while also assuring the Pacific Northwest an adequate, efficient, economical and reliable electric power supply.

The Council implements the Power Act through two broad, integrated planning processes. One process is for our Northwest Conservation and Electric Power Plan, and the other is for our Columbia River Basin Fish and Wildlife Program. Today I will focus my comments on implementation of our fish and wildlife program, and specifically on how the program incorporates elements of the 2000 Biological Opinions issued by NOAA Fisheries for Columbia and Snake River salmon and steelhead and the U.S. Fish and Wildlife Service for Kootenai River white sturgeon and bull trout.

The Council committed in its 2000 revision of its fish and wildlife program to pursue opportunities to integrate program strategies with other Federal, State, tribal, Canadian and volunteer fish and wildlife restoration programs. The Council also committed to use subbasin planning to identify coordination needs and opportunities that arise from the Endangered Species Act and Clean Water Act, and also water and land management objectives affecting fish and wildlife. In this way we can use

our program funding to coordinate activities that address various legal requirements and provide the maximum benefit to fish and wildlife.

It is important to point out, first, that even though the Power Act is a Federal law, the Council is not a Federal agency and our fish and wildlife program is not a recovery plan for purposes of the Endangered Species Act. The Council develops the program and recommends projects to implement it, as I will explain in more detail. Consistent with specific direction in the Power Act, these projects are funded by the Bonneville Power Administration from a portion of the revenues it collects from its electricity customers. Implementation of the Council's fish and wildlife program does not depend on consultations among Federal agencies or appropriations by Congress or Federal agencies.

I have four main points to make today, Senator Crapo:

First, I am optimistic about the partnership between local, State, Federal and tribal governments that has developed to implement the Council's fish and wildlife program and elements of the biological opinion. This implementation begins at the local level with locally developed plans. We are having successes, and our efforts are being noticed and copied elsewhere in the Nation.

Second, the Northwest Power Act authorizes Bonneville, through the Council's fish and wildlife program, to utilize offsite mitigation to accomplish the purpose of protecting, mitigating and enhancing fish and wildlife affected by hydropower dams. The Power Act, not the ESA, is the source of Bonneville's authority to pursue offsite mitigation activities in the Biological Opinion. The 2000 Biological Opinion acknowledges the importance of offsite mitigation as an aid to recovering threatened and endangered species. Thus, our program integrates Biological Opinion and Power Act requirements for enhancing and recovering fish and wildlife. This is cost-effective and helps avoid duplication while providing benefits for ESA-listed and non-listed populations.

Third, we are moving ahead with subbasin planning as a means of identifying specific fish and wildlife needs in each of the 62 subbasins of the Columbia River. This is one of the largest planning efforts of its kind in the world, and it is particularly significant because it is locally driven. Subbasin plans will focus implementation of our program and elements of the biological opinion to deliver the highest benefits at the lowest cost.

Fourth, the Council consistently has complied with the budgets established by Bonneville for implementing our fish and wildlife program, including a significant funding reduction for 2003. But we are concerned that continued reduced funding may jeopardize Bonneville's ability to meet its legal requirements under the Northwest Power Act and the ESA. It is important to give equal priority to ESA-listed and non-listed fish in our fish and wildlife program.

#### *Implementing the Fish and Wildlife Program and the Biological Opinions*

The Council's program is being implemented at the local level, in the tributary subbasins of the Columbia, and also in the mainstem Columbia and Snake rivers at the major hydroelectric projects. But most importantly for our purpose here today, the program is being driven by locally developed assessments of fish and wildlife mitigation needs. These plans account for elements of the biological opinion, as I will explain in more detail in my testimony. The degree of local/State/Federal collaboration is impressive and has been noticed by people elsewhere in the Nation who are adapting the structure we developed for their own fish and wildlife mitigation efforts. In the State where you and I live, Mr. Chairman, there are impressive collaborative efforts underway for the benefit of ESA-listed salmon and steelhead, and other fish and wildlife, in the Salmon and Clearwater basins. The Idaho Department of Water Resources is coordinating an effort to develop a statewide water transactions program to respond to a specific action item in the biological opinion RPA Action 151—that calls for experimentation with innovative ways to increase tributary water flows for the benefit of listed species.

Partners in these efforts include the local soil and water conservation districts, Indian tribes, Idaho State agencies, the Power Planning Council and Governor Kempthorne's Office of Species Conservation. Similar efforts are underway for the benefit of listed and unlisted species in Oregon, Washington and Montana. Throughout the Columbia River Basin, local entities are leading the planning efforts and successfully integrating Federal recovery efforts with local efforts.

Key to these efforts is a foundation of solid science and a credible and independent scientific review. The Council takes a science-based, collaborative approach to implementing its fish and wildlife program through projects that are designed to make progress toward the goals and objectives of the program and the biological opinion. Projects proposed for funding are reviewed by the Columbia Basin Fish and Wildlife Authority and the 11-member Independent Scientific Review Panel (ISRP).

All projects are treated equally in this review. Project proposal that respond to action items in the biological opinion do not get special preference in the ISRP reviews.

The Council created the ISRP in 1997 in response to an amendment to the Northwest Power Act. In this way, the Council is responding to a 1996 independent scientific review of the program that concluded, among other things, that the program lacked a process for prioritization of projects and provided, at the time, little guidance for annual implementation. The review recommended incorporating an integrated approach based on an overall, scientifically credible conceptual foundation. The Council incorporated such a foundation into its most recent revision of the program, in 2000. The 2000 Program expresses goals and objectives for the entire Columbia basin based on a scientific foundation of ecological principles.

Section 9.5 of the NOAA Fisheries 2000 Biological Opinion states that the development and implementation of the 5-year and 1-year implementation plans will be coordinated through existing processes. Mentioned specifically in Section 9.5 is the annual project prioritization conducted by the Council for implementation of our fish and wildlife program. The Council believes this prioritization process is well designed to coordinate ESA needs with other Bonneville fish and wildlife funding obligations, and that this can be the principal device for coordinating implementation among the many jurisdictions involved in the salmon restoration and recovery effort.

The Council is committed to collaboration with the NOAA Fisheries and the U.S. Fish and Wildlife Service in meeting requirements of the ESA and the Northwest Power Act. We can incorporate the implementation sequence in the NOAA Fisheries Biological Opinion into our fish and wildlife program implementation planning. The biological opinion sets out a sequence of 5-year and 1-year implementation plans. These are to be developed by the Action Agencies. The Council sees this sequence of planning, particularly the 1-year plans, as “check-in” points to verify that the Council’s schedule for implementation planning and program funding will address the requirements of the biological opinion as well as the objectives of the program.

The Council’s project review process, which is accomplished at the ecological province level (there are 11 ecological provinces in the Columbia basin) permits focused and considered scientific review and public involvement on Bonneville fish and wildlife funding decisions. The province-based review and approval process will lead to longer periods of funding approval—three years in most instances.

Because the Council’s fish and wildlife program is designed to benefit all fish and wildlife in the basin affected by the hydrosystem, it has been addressing ESA-listed species through a number of actions. Some portion of the annual budget for the direct program over the last 5 years has benefited species of concern under the Endangered Species Act.

The NOAA Fisheries 2000 Biological Opinion includes numerous specific measures in the hydrosystem and new initiatives for improving salmon and steelhead survival in the stages of their life-cycles that come before and after migration through the mainstem Snake and Columbia—what we call “offsite” mitigation. <http://epw.senate.gov/108th/Danielson—062403.htm> These measures are at the heart of the Council’s 2000 Fish and Wildlife Program.

The offsite measures include experimenting with new techniques, such as an experimental voluntary water rights brokerage, attempting to focus landowner enrollment in Farm Service Administration programs where salmon habitat needs the most help and protecting specific reaches of existing high-quality habitat through voluntary landowner agreements. The Council took primary coordinating responsibility for key elements of the offsite measures of the biological opinion for hatchery reform and subbasin planning. Both of those initiatives are well underway with considerable collaboration of State and tribal agencies and local interests. In short, many of the projects the Council recommends to Bonneville for funding implement actions in the Reasonable and Prudent Alternatives of the two biological opinions. I have included with my testimony a list of these projects from recent funding cycles.

Through our project selection process, independent scientific reviews and program implementation we recognized the need for better monitoring and evaluation, and data-gathering, than has been available in the past. Improved data management is key to improved and more focused decisionmaking in the future. I am pleased to say that the Council is moving ahead with a program to improve data management. We have been working with an independent contractor to develop a more comprehensive, Internet-based data collection and repository system for the Columbia River Basin, a system that will be available to all interested parties and that will store data in uniform formats.

*Subbasin plans are the means of integrating Power Act and ESA obligations*

The 2000 Program established basinwide objectives for biological performance and environmental characteristics. The 2000 Program also recognized that while impacts such as overfishing and destruction of spawning and rearing habitat contributed to the decline of salmon and steelhead runs prior to construction of the major hydro-power dams in the Columbia basin, significant losses of anadromous fish, resident fish and wildlife and their habitats have occurred as a result of the development and operation of the hydrosystem. Biological objectives based on these losses provide regional guidance for subbasin plans. For example, the 2000 Program—fs objectives include increasing total adult salmon and steelhead runs above Bonneville Dam by 2025 to an average of 5 million annually in a manner that supports tribal and non-tribal harvest. For resident fish, the 2000 Program recognizes the need for substitution for anadromous fish losses and restoration of native resident fish species (subspecies, stocks and populations) to near historic abundance throughout their historic ranges where original habitat conditions exist and where habitats can be feasibly restored. For wildlife, the 2000 Program calls for development and implementation of habitat acquisition and enhancement projects to mitigate fully for identified losses.

The Council recognizes that achieving these broad objectives is not the sole responsibility of the 2000 Program or Bonneville alone. Complementary actions by other governmental agencies and funding sources, including Canadian entities where appropriate, as well as the support and participation of the citizens of the Northwest, will be needed for these objectives to be fully achieved. However, the focus of the 2000 Program is limited to fish and wildlife affected by the development, operation, and management of the FCRPS.

The 2000 Program organizes the Columbia River Basin into 11 ecological provinces. Within these provinces there are groups of adjoining subbasins with similar physical and environmental conditions. These provinces are further subdivided into two or more tributary subbasins. In all there are 62 tributary subbasins. The 2000 Program is implemented principally at the subbasin level. It is at this subbasin level that the more general guidance provided by the larger province and basin-wide level visions, principles, objectives, and strategies is refined in light of local scientific knowledge, policies, and priorities.

Subbasin planning will facilitate, through a collaborative process, the development of scientifically credible, locally implementable subbasin scale plans to serve the following purposes:

1. Protect, mitigate and enhance fish and wildlife and related spawning grounds and habitat impacted by the development and operation of the FCRPS;
2. Guide Bonneville—fs expenditures by giving priority to strategies for ESA recovery activities as Bonneville implements the Council's 2000 Program through subbasin plans.
3. Provide a context for scientific review of program measures;
4. Provide the foundation for NMFS/USFWS ESA recovery planning efforts;
5. Provide stability and certainty for local planning efforts during Federal recovery planning;
6. Improve coordination of other State, tribal, Federal and private fish and wildlife mitigation efforts within the Columbia River Basin; and
7. Integrate Bonneville funding with funding from other sources such as the Federal Energy Regulatory Commission (FERC), U.S. Forest Service (USFS), Bureau of Reclamation (BOR), and Bureau of Land Management (BLM).

The Council will evaluate subbasin plan recommendations for their consistency with biological objectives and strategies at the basin and province levels. Similarly, as subbasin plan measures are adopted into the 2000 Program, higher-level objectives and strategies may be modified to reflect and accommodate the information and initiatives of each plan.

The Council believes subbasin plans will establish scientifically sound restoration strategies that rely on local leadership and clear implementation schedules. These plans, once completed, will be the foundation for recovery planning under the Endangered Species Act as well as a broader base of credibility for the Council—fs program.

Subbasin plans will include three key elements: 1) an assessment of historical and existing environmental conditions including abundance of fish and wildlife populations; 2) a clear and comprehensive inventory of existing projects and past accomplishments; and 3) a 10–15 year management plan. Subbasin planning will be coordinated by the States and tribes with local governments. The technical review teams appointed by NOAA Fisheries will be involved to ensure consistency with

ESA recovery planning. Development of the plans will be funded by Bonneville and administered by the Council.

We expect that subbasin plans will provide the basis for future implementation, monitoring and evaluation of the fish and wildlife program. Subbasin plans also will serve to meet ESA requirements in the short term. They will empower State, tribal and local efforts in coordination with ESA recovery planning. And they will provide a credible basis for other funding sources for fish and wildlife recovery, including congressional appropriations.

In its 2000 Biological Opinion, NOAA Fisheries commits to rely heavily on the Council's subbasin planning process to identify offsite habitat mitigation opportunities. The heart of the Council's offsite mitigation strategy is to complete subbasin plans in each of the Columbia's major tributaries. Earlier this month, the four Northwest Governors endorsed subbasin planning as a means of consolidating recovery and enhancement actions. Specifically, the Governors said:

The hub for this Federal/regional/State/tribal effort is the subbasin planning called for by the Council's program. The biological opinions should continue to look to these subbasin plans to guide habitat, hatchery, and harvest actions in the watersheds throughout the Columbia Basin in the coming years.

#### *The Fish and Wildlife Budget*

The Council believes that Bonneville's funding obligation for the ESA is part of its overall fish and wildlife responsibilities under the Northwest Power Act, and therefore is tied to the adverse impacts caused by the hydrosystem. While Bonneville's obligation and financial resources may be significant, Bonneville funds should not be the exclusive source of ESA funding in the Columbia basin. Bonneville funds for ESA-based actions should be combined with funds from other entities, especially Federal agencies, that have legal and financial obligations to protect and enhance threatened and endangered species. Some of the actions required by the biological opinion address impacts on the listed species that are not the result of hydrosystem impacts—reducing predation by birds on juvenile salmon and steelhead, for example, and implementing selective-harvest fisheries to reduce commercial fishing pressure on the listed stocks. These actions should be funded by agencies other than Bonneville—by the nation's taxpayers, not the region's electricity ratepayers.

While the Council supports using the Bonneville fund for offsite mitigation, the fund has limits. The Power Act does not permit the Bonneville fund to be used "in lieu" of funding responsibilities of other entities. In addition, the Council notes that Bonneville's funding as part of its overall fish and wildlife funding obligations is limited by its ability to ensure the region an adequate, economical, efficient, and reliable power supply. Federal agencies carry some of the responsibility for the loss of salmon and their habitat through the actions of NOAA Fisheries, the U.S. Fish and Wildlife Service, the Army Corps of Engineers, the Bureau of Reclamation, and the Forest Service, quite distinct from the hydropower system. Therefore some part of the financial responsibility for recovering endangered fish in the Columbia Basin rests with the Federal Government.

In the past, we advocated a supplemental appropriation for actions that address the reasonable and prudent alternatives in the biological opinions. We also urged NOAA Fisheries to work with us to integrate ESA needs with others to be funded by Bonneville in a way that permits Bonneville to meet all of its fish and wildlife obligations in a cost-effective manner.

Until October 1995, there was no formal budget agreement for implementing the Council's fish and wildlife program. Late that month a draft agreement negotiated by Bonneville Administrator Randy Hardy, National Marine Fisheries Service Regional Director Will Stelle and Power Planning Council Chair Angus Duncan was memorialized in a letter from the Federal Office of Management and Budget to U.S. Senator Mark Hatfield (R-Oregon). This was to forestall a legislated budget cap and "sufficiency" language regarding the fish and wildlife program budget. It took another year, until September 1996, to negotiate and execute the MOA institutionalizing the budget commitment.

The commitment was for an average budget of \$252 million per year—\$127 million to implement the Council's program and measures in the 1995 Biological Opinions (\$100 million in direct expenses and \$27 million in capital funding), and \$125 million per year for fish-related expenditures that Bonneville reimburses other Federal agencies (primarily the Corps of Engineers and the Bureau of Reclamation). The two 1995 Biological Opinions were issued by the National Marine Fisheries Service (NMFS) for Snake River salmon and the U.S. Fish and Wildlife Service for Kootenai River white sturgeon. Bonneville also accepted the financial impact of power system operations that result from the biological opinions, estimated at \$183 million per year. The budget figures were incorporated in a 6-year Memorandum of

Agreement in September 1996, signed by the Secretaries of the Army, Commerce, Energy and the Interior.

The MOA resolved three key funding issues: 1) it provided greater financial certainty through a stable, multi-year budget; 2) it identified a budget sufficient to meet Bonneville's obligations under the fish and wildlife program and the biological opinions, and 3) it provided mechanisms to ensure the money was spent wisely and efficiently.

In early December 2001, following expiration of the MOA, the Bonneville Administrator said the agency would increase its spending during the current rate period to an average of \$36 million per year in capital funding and \$150 million per year in expense funding for the Council's program and implementation of the 2000 Biological Opinions. Thus, the annual average would increase from \$127 million to \$186 million. The Administrator said the commitment to \$150 million for the expense part of the budget likely would yield an annual average of \$139 million in actual expenditures ("accruals," in Bonneville's accounting terminology) consistent with projections in Bonneville's September 1998 Fish and Wildlife Funding Principles. <http://epw.senate.gov/108th/Danielson—062403.htm>

But a year later, in December 2002, the Administrator stated in a letter to the Council that "already in the first year of the new rate period, Bonneville's expense accruals were \$137 million" and that "this rapid increase in program spending has surprised us. He asked the Council, in consultation with the region's fish and wildlife managers, to take the lead to achieve at least three goals: 1) take steps to assure that spending for the fish and wildlife program not exceed \$139 million in expense accruals in fiscal year 2003; 2) prioritize program spending "to create the opportunity to spend less than \$139 million in expense annually through the 2003–2006 period, and 3) establish criteria for setting priorities among projects that seek funding to implement the program. He stated a preference for projects that would help implement the biological opinions: "We believe that core among these are projects needed to meet the requirements of the various biological opinions that apply to Bonneville, in particular the 2003 and 2005 check-ins for the 2000 Federal Columbia River Power System Biological Opinion and to preserve previous important investments of the Fish and Wildlife Program." <http://epw.senate.gov/108th/Danielson—062403.htm>

The Council began this assignment with the understanding that Bonneville's power purchase costs during the energy crisis of 2000 and 2001 are at the heart of the agency's financial crisis, not fish and wildlife costs. In Fiscal Year 2001, during the West Coast energy crisis, Bonneville spent nearly \$3 billion on power purchases, causing the agency's cash reserves to decline by more than \$800 million. In November 2002, the Administrator announced Bonneville faced a revenue gap of \$1.2 billion for the 2002–2006 rate period.

In agreeing to help Bonneville identify fish and wildlife cost reductions and deferrals, the Council made clear that:

- The financial burden is being borne by ratepayers, and Bonneville's current financial uncertainty adds to that burden.
- The direct fish and wildlife program is not over budget, but is within planned spending levels.
- The Council would review Bonneville's program management and accounting procedures and recommend reforms.
- While Bonneville committed to use \$36 million per year in borrowing authority to capitalize fish and wildlife projects, less than one-third of that amount has been made available. Failure to provide the \$36 million, or shifting fish and wildlife funding from capital to expense, increases Bonneville's cash requirements and exacerbates its current financial difficulties.
- Reducing expenditures below \$139 million per year jeopardizes Bonneville's ability to meet its obligations under the Endangered Species Act and Northwest Power Act.

The Council developed the following principles to guide its cost review:

- Maintain critical elements for the Biological Opinions' 2003 and 2005 "check-in" requirements.
- Maintain past investments in tributary passage and protection of currently productive habitat (Operations and Maintenance, and Monitoring and Evaluation).
- Maintain current fish production programs as approved by the Council (Operations and Maintenance, and Monitoring and Evaluation).
- Balance other habitat investments within the budget allocations that remain in the 11 ecological provinces.
- Projects that are focused on research, investigation or status reviews, and not defined as critical for Biological Opinion check-ins, are given lower priority and deferred.

- Projects that do not immediately contribute to the productivity of a species affected by the hydrosystem are given lower priority and deferred.
- Projects that were not reviewed by the Independent Scientific Review Panel and/or explicitly approved by the Council will be terminated (if ongoing) or deferred (if new) unless specifically designated as critical for Biological Opinion “check-ins” in 2003 or 2005.

On February 21, 2003, the Council responded with what could be called a cash management approach to meet Bonneville’s \$139 million spending target for the fish and wildlife program. In general, three categories of projects were identified that would yield savings in 2003, as well as one specific spending discrepancy that had been resolved as a matter of policy last year. The three project categories that yielded reductions were:

- Projects that were planned for funding in 2002 but were carried over to 2003. Unfinished Fiscal Year 2002 work cannot be caught up in Fiscal Year 2003 while also performing all anticipated Fiscal Year 2003 project tasks.
- Projects that were not reviewed by the Independent Scientific Review Panel or prioritized in the Council’s project review process. The Council recommended that these projects not be funded because they did not meet scientific review and endorsement standards on a par with those that were reviewed. Within this category are three projects, totaling \$900,000 that must be added to Bonneville’s internal overhead.
- With regard to Biop projects, the Council staff focused on those identified by NOAA Fisheries and Bonneville as critical for the upcoming check-ins. While the Council and region put an emphasis on Biop implementation in the provincial reviews, this “critical-for-check-in” standard is a higher standard than was employed during the provincial reviews.

The specific discrepancy was:

- Bonneville’s spending projections assumed that the implementation of the “water brokerage program” (RPA 151) would be funded from the fish and wildlife expense program. This is inconsistent with specific Council action taken last year. At the January 2002 Council meeting in Vancouver, the Council recommended that \$2.5 million of “Action Plan” funds made available by Bonneville’s Power Business Line to address the impacts of the 2001 power emergency on anadromous fish be protected in a placeholder for the specific purpose of funding the water brokerage program which is required by the 2000 Biological Opinion. Bonneville has projected spending on this program to be \$700,000 for Fiscal Year 2003. This cost must be funded from another source.

After applying the rules and standards noted above, the Council staff estimated Fiscal Year 2003 spending for expense projects at \$114,614,422. When placeholders for funding subbasin planning, independent science functions, and addressing “gaps” for research, monitoring and evaluation required by the 2000 Biological Opinion and Bonneville’s overhead are added, the total projects spending forecast for Fiscal Year 2003 is \$137,364,422.

As I said, this is a cash-management response to Bonneville’s request and in no way should be construed as a Council reprioritization of fish and wildlife program spending. To make this approach successful, Bonneville is going to have to follow actual project performance and its project and placeholder spending much more closely than it ever has before. Bonneville must be able to report current project and program-level spending twice a month beginning immediately. We see this as a necessary element in managing the program accounting under the “accrual” accounting rules currently imposed by Bonneville.

This is an important point. Bonneville changed its accounting procedures for the fish and wildlife program in 2002. On November 20, 2002, Bonneville’s fish and wildlife director announced in a memorandum addressed to the Power Planning Council and the Columbia Basin Fish and Wildlife Authority that “we are moving our administration of the [fish and wildlife program] from obligation-based budgeting to accrual-based budgeting.” The memorandum stated that under an obligations form of management, “funds are made available for the full value of a project or contract when it is approved even if all of the deliverables and resulting payments will not be made during the budget year the funds were first made available (obligated).” In contrast, under an accruals form of management, “funds are made available for the amount of deliverables that will actually be received and paid for (accrued) by BPA during the budget year.” Bonneville decided to make this change because the fish and wildlife program was the last large program at the agency still managed on an obligations basis, and “by managing on an accrual basis, we can better ensure that funds are available when needed without tying up potentially millions of dollars in any 1 year for activities that do not need the money.”

Importantly, according to the memorandum, “under the accrual-based system, unspent funds from fiscal year 2002 are not carried over” to 2003. These unspent but obligated funds totaled about \$40 million, compounding the difficulty of prioritizing, deferring and cutting program spending to fit within the spending cap of \$139 million in accruals imposed by the Administrator for Fiscal Year 2003. In a December 31, 2002, letter to project contractors, Bonneville set guidelines for contract renewals, including a request that the contractors eliminate all “carry over” funding (contracted project balances) from Fiscal Year 2002 to Fiscal Year 2003. The accounting change also came without reliable tracking information to monitor and compare the consistency of project implementation with ISRP-reviewed and Council-recommended scopes of work.

To recap, in December 2001 Bonneville committed to an average annual budget of \$186 million for the current rate period. Subsequently in 2002, the Council recommended a suite of new and ongoing projects, including approximately \$40 million in obligations carried over from the previous rate period, that totaled about \$170 million well within the budget established by Bonneville. Then, in November 2002 Bonneville announced it would change its financial management of program expenses from an obligations basis, which allowed carry-over from 1 year to the next, to an accruals basis, which does not. A month later, Bonneville announced it would not allow accruals to exceed \$139 million in Fiscal Year 2003 and asked the Council to take the lead in “reprioritizing” existing and proposed new projects to fit within the reduced budget.

Mr. Chairman, our review of Bonneville’s fish and wildlife spending uncovered other issues that must be dealt with. First, we are tremendously concerned about Bonneville’s overhead cost increases. In Fiscal Year 2001, Bonneville’s overhead costs for this program were \$ 7.4 million. Bonneville insists that it requires \$12.1 million for its overhead costs in Fiscal Year 2003. This is an increase of 64 percent. It is difficult to accept this rate of expansion, especially when these overhead costs compete with on-the-ground fish and wildlife projects. Bonneville has not been effective in reducing its overhead costs. In addition, it has taken a great deal of time and discussion to win Bonneville’s commitment to a more cost-effective approach to monitoring and evaluation. This is not a problem created entirely by Bonneville. However, we are calling on Bonneville to break free of the forces that would ignore and compound the problem, and work with us on a solution.

As I have noted, the Council is concerned that a reduction in Bonneville’s spending commitment below \$139 million per year may jeopardize its ability to meet legal requirements under the biological opinions and the Northwest Power Act. Critical biological opinion check-ins are imminent, assuming the Court allows the opinion to continue in force while NOAA Fisheries addresses the offsite mitigation issues identified by the court. These are the funds that are necessary to implement many of the important projects and programs that must be in place to succeed in those evaluations. The reductions precipitated by Bonneville’s immediate switch to its “accrual rules” of accounting are going to have an impact on our fish and wildlife restoration efforts. We are concerned that deeper and sustained cuts in the out-years may have serious impacts that could retard the progress we have been making.

We expect that as Bonneville’s financial situation improves, fish and wildlife funding will return to the level the Administrator committed to in December 2001 for the current rate period and that the current-year funding reduction would be treated as a deferral that would be repaid to the program in future years. This would be consistent with Bonneville’s agreement with its investor-owned utility customers to defer \$55 million in 2003 payments until 2007. We also believe that paying back the fish and wildlife program should be accomplished without a rate increase. The fish and wildlife budget is a small but critically important portion of Bonneville’s total spending, and restoring full funding to the fish and wildlife program should not be an excuse to raise rates.

We also are concerned about increasing financial pressure on Bonneville from the salmon and steelhead biological opinion. Bonneville appears to want to pour all funds possible into implementing that plan and, as a result, squeeze out critical work for non-listed salmon, wildlife and resident fish that must be accomplished under the Northwest Power Act. Bonneville coined the term “Integrated Program” to describe a vision of a coordinated and balanced approach to its Endangered Species Act and Northwest Power Act obligations. But this is problematic in that the Council’s program responds to the Power Act, not the ESA, and Bonneville’s offsite mitigation obligation authority is in the Power Act, not the ESA. Bonneville needs to look more to the Council to make the vision of a coordinated and balanced approach a reality. The current Federal drift to a listed-salmon only fish and wildlife program is not consistent with Bonneville’s vision of a coordinated and balanced approach and is not supported by sound science, sound public policy, or the law.



The Governors, in their recent recommendations, were critical of the increasing focus on ESA-listed species. The Governors wrote:

“The Northwest Power Act requires the Council to prepare a program to protect and enhance fish and wildlife and mitigate habitat losses caused by the development and operation of the hydrosystem. For the last decade, we have been largely preoccupied with ESA-listed fish species in the Columbia Basin. Frequently, because of limited resources, these two efforts are portrayed as being in opposition to each other so that project funding for ESA-listed species is viewed as competing with mitigation actions for non-listed species.

“In our judgment, too much of a distinction between ESA-listed and non-listed fish and wildlife species is being made in fish and wildlife planning and implementation activities. When species are listed under the ESA, it means we may have failed in our management responsibilities. By focusing planning and implementation on all species, the Council’s proactive approach can work to prevent future listings of fish and wildlife species under the ESA while addressing, as a subset, those that are listed.

“We strongly endorse the Council’s Fish and Wildlife Program as a comprehensive, integrated and preventive approach to address fish and wildlife issues in the Columbia Basin.”

The Council expects that full funding of our fish and wildlife program will be restored in future years as Bonneville’s finances improve. We also expect this to be accomplished in a way that does not require a rate increase. Fish and wildlife spending was not the root cause of Bonneville’s financial crisis, and the fish and wildlife budget should not be permanently reduced in response to a temporary crisis that evolved from Bonneville’s power supply contracts with its customers and the agency’s exposure to the volatile prices of the West coast wholesale power market.

Mr. Chairman, thank you for the opportunity to speak here today. The Council is moving quickly, but carefully, in collaboration with State and Federal fish and wildlife agencies and Indian tribes, and the Federal hydrosystem operating agencies, to develop and implement a scientifically credible, locally developed fish and wildlife program. The Council is implementing the Northwest Power Act and the relevant portions of the 2000 Biological Opinions in a manner that benefits all fish and wildlife of the Columbia River Basin—ESA-listed populations and unlisted populations, too.

I will close my testimony by reiterating a portion of the commitment the four Northwest Governors made in their recommendations on fish and wildlife recovery. I think it precisely expresses the Council’s commitment, as well:

We acknowledge that the FCRPS benefits have come with a cost—adverse impacts on the Columbia Basin’s fish and wildlife. With our locally based efforts in the watersheds, we are following through on our commitments while we are avoiding becoming sidetracked by issues that will only divert and divide us as a region. We will stay the course and solve our problems as a region. We will continue to pursue full implementation of the biological opinions to recover our salmon, steelhead and freshwater species not only because it is the right thing to do, but also because the failure to do so will jeopardize the Federal hydropower system.

Biological Opinion Projects recommended by the Council since Fiscal Year 2001

Note: As of the date of this hearing, Bonneville has not made funding decisions on the Council's mainstem/systemwide project recommendations

FY	Review cycle	Project ID	Title	Council recommend.	BPA funding decision
2001	Columbia Gorge	CG2001000021015	Riparian Buffers	73414	73414
2001	Columbia Gorge	CG2001198805304	Hood River Production Program—ODFW M&F	438000	431331
2001	Columbia Gorge	CG2001198805307	Hood River Production Program: Powderdale, Parkdale, Oak Springs O&M (88-053-07 & 88-053-08)	949198	727733
2001	Columbia Gorge	CG2001199304000	Fifteen mile Creek Habitat Restoration Project (Request For Multi-Year Funding)	223371	220040
2001	Columbia Gorge	CG2001199506325	Yakima/Klickitat Fisheries Project Monitoring And Evaluation (Klickitat Only)	447723	447723
2001	Columbia Gorge	CG2001199705600	Lower Klickitat Riparian and In-Channel Habitat Enhancement Project	313318	313318
2001	Columbia Gorge	CG2001199801900	Wind River Watershed Restoration	658532	658532
2001	FY 2001 High Priority	HP2001000023001	Protect Bear Valley Wild Salmon, Steelhead, Bull Trout Spawning and Rearing Habitat	320000	320000
2001	FY 2001 High Priority	HP2001000023002	Ames Creek Restoration	170000	170000
2001	FY 2001 High Priority	HP2001000023007	Conservation Easement, Baker Ranch, Salmon River East Fork	1415000	1415000
2001	FY 2001 High Priority	HP2001000023012	Arowleat/Methow River Conservation Project	2500000	2500000
2001	FY 2001 High Priority	HP2001000023032	Return Spawning/Rearing Habitat to Anadromous/Resident Fish within the Squaw Creek to Pa- poose Creek Analysis Area Watersheds.	420000	
2001	FY 2001 High Priority	HP2001000023036	Evaluate live capture selective harvesting methods for commercial fisheries on the Columbia River.	384285	384285
2001	FY 2001 High Priority	HP2001000023045	Gourley Creek Dam Fish Ladder	200119	200119
2001	FY 2001 High Priority	HP2001000023046	Increase In Stream Flows to De-watered Stream Reaches in the Walla Walla Basin	590000	590000
2001	FY 2001 High Priority	HP2001000023048	Install Fish Screens to Protect ESA-listed Steelhead and Bull Trout in the Walla Walla Basin	461700	461700
2001	FY 2001 High Priority	HP2001000023053	Wagner Ranch Acquisition	2658774	2658774
2001	FY 2001 High Priority	HP2001000023054	Forrest Ranch Acquisition	4184185	4184185
2001	FY 2001 High Priority	HP2001000023056	Farmers Irrigation District Mainstem Hood River Fish Screen Project	500000	500000
2001	FY 2001 High Priority	HP2001000023073	Purchase Perpetual Conservation Easement on Holiday Ranch and Crown Ranch Riparian Cor- ridors and Uplands.	481800	
2001	FY 2001 High Priority	HP2001000023094	Acquire 27,000 Camp Creek Ranch at Zumwalt Prairie	2000000	2000000
2002	Blue Mountain	BM2002000027001	Asotin County Riparian Buffer and Couase and Tennialle Creeks Protection and Implementation Project.	241000	241000
2002	Blue Mountain	BM2002000027002	Assess Salmonids in the Asotin Creek Watershed	316885	316885
2002	Blue Mountain	BM2002000027014	Protect and Restore the Asotin Creek Watershed	121000	121000
2002	Blue Mountain	BM2002000027018	Oregon Plan Blue Mountain Province Fish Screening/Fish Passage.	153314	153314
2002	Blue Mountain	BM2002000027021	Adult Steelhead Status Monitoring—Imnaha River Subbasin	148967	148967
2002	Blue Mountain	BM2002000027022	Wallowa County Culvert Inventory	170603	170603
2002	Blue Mountain	BM2002198402500	Grande Ronde Basin Fish Habitat Enhancement Project	349386	349386
2002	Blue Mountain	BM2002198805301	Northeast Oregon Hatchery Master Plan	1000000	1000000
2002	Blue Mountain	BM2002198805305	Northeast Oregon Hatcheries Planning (ODFW)	79376	79376

2002	Blue Mountain	BM2002199202601	Implement the Grande Ronde Model Watershed Program Administration and Habitat Restoration Projects.	961620	961620
2002	Blue Mountain	BM2002199202604	Investigate Life History of Spring Chinook Salmon and Summer Steelhead in the Grande Ronde River Basin and Monitor Salmonid Populations and Habitat.	888087	888087
2002	Blue Mountain	BM2002199401805	Continued Coordination and Implementation of Asotin Creek Watershed Projects	271000	271000
2002	Blue Mountain	BM2002199608300	CTUR Grande Ronde Subbasin Restoration	200000	200000
2002	Blue Mountain	BM2002199701501	Imnaha Smolt Survival and Smolt to Adult Return Rate Quantification	241570	241570
2002	Blue Mountain	BM2002199800702	Grande Ronde Supplementation: Lostine River O&M and M&E	545693	545693
2002	Blue Mountain	BM2002199800703	Facility O&M And Program M&E For Grande Ronde Spring Chinook Salmon and Summer Steelhead	640181	640181
2002	Blue Mountain	BM2002199800704	Northeast Oregon Hatcheries Implementation (ODFW)	206048	206048
2002	Blue Mountain	BM2002199801001	Grande Ronde Basin Spring Chinook Captive Broodstock Program	676906	676906
2002	Blue Mountain	BM2002199801003	Spawning distribution of Snake River fall chinook salmon	174162	174162
2002	Blue Mountain	BM2002199801004	Monitor and Evaluate Yearling Snake River Fall Chinook Released Upstream Of Lower Granite Dam.	287307	287307
2002	Blue Mountain	BM2002199801005	Pittsburg Landing (199801005), Capt. John Rapids (199801007), Big Canyon (199801008) Fall Chinook Acclimation Facilities.	682440	682440
2002	Blue Mountain	BM2002199801006	Captive Broodstock Artificial Propagation	164260	164260
2002	Columbia Plateau	CP2002000025003	Forrest Ranch Acquisition	169851	169851
2002	Columbia Plateau	CP2002000025004	Acquisition of Wagner Ranch	108217	108217
2002	Columbia Plateau	CP2002000025006	Provide Coordination and Technical Assistance to Watershed Councils and Individuals in Sherman County, Oregon	71000	71000
2002	Columbia Plateau	CP2002000025010	Regional Stream Conditions and Stressor Evaluation	80000	80000
2002	Columbia Plateau	CP2002000025011	Assess Riparian Condition Through Spectrometric Imaging Of Riparian Vegetation	175000	175000
2002	Columbia Plateau	CP2002000025013	Restore Riparian Corridor at Tapteal Bend, Lower Yakima River	160500	160500
2002	Columbia Plateau	CP2002000025014	Establish Riparian Buffer Systems	67119	67119
2002	Columbia Plateau	CP2002000025017	Fabricate and Install New Hunstville Mill Fish Screen	120000	120000
2002	Columbia Plateau	CP2002000025021	Implement Actions to Reduce Water Temperatures in the Teanaway Basin	172950	172950
2002	Columbia Plateau	CP2002000025022	YKFP Big Creek Passage & Screening	175280	175280
2002	Columbia Plateau	CP2002000025023	Yakima-Klickitat Fisheries Project—Manastash Creek Fish Passage and Screening	632835	632835
2002	Columbia Plateau	CP2002000025024	Yakima-Klickitat Fisheries Project—Wilson Creek Snowden Parcel Acquisition	206580	206580
2002	Columbia Plateau	CP2002000025025	YKFP Secure Salmonid Spawning and Rearing Habitat on the Upper Yakima River	2300000	2300000
2002	Columbia Plateau	CP2002000025026	Yakima Tributary Access and Habitat Program (YTAHP)	750000	750000
2002	Columbia Plateau	CP2002000025029	Westland-Ramos Fish Passage and Habitat Restoration Pilot Project	203020	203020
2002	Columbia Plateau	CP2002000025032	Wenas Wildlife Area Inholding Acquisitions	706143	706143
2002	Columbia Plateau	CP2002000025036	The Impact of Flow Regulation on Riparian Cottonwood Ecosystems in the Yakima River Basin.	225495	225495
2002	Columbia Plateau	CP2002000025047	Morrow County Buffer Initiative	75086	75086
2002	Columbia Plateau	CP2002000025049	Numerically Simulating the Hydrodynamic and Water Quality Environment for Migrating Salmon in the Lower Snake River.	207360	207360
2002	Columbia Plateau	CP2002000025056	Conduct Watershed Assessments for Priority Watersheds on Private Lands in the Columbia Plateau.	1259725	1259725

**Biological Opinion Projects recommended by the Council since Fiscal Year 2001—Continued**

Note: As of the date of this hearing, Bonneville has not made funding decisions on the Council's mainstem/systemwide project recommendations

FY	Review cycle	Project ID	Title	Council recommend.	BPA funding decision
2002	Columbia Plateau	CP2002000025058	Fish Passage Inventory and Corrective Actions on WDFW Lands in The Yakima Subbasin	205300	205300
2002	Columbia Plateau	CP2002000025059	Develop Progeny Marker for Salmonids to Evaluate Supplementation	149655	149655
2002	Columbia Plateau	CP2002000025060	Burbank Sloughs and Mainstem Columbia River Shoreline/Side Channel/Wetland Habitat Restoration.	116000	149665
2002	Columbia Plateau	CP2002000025062	Growth Rate Modulation in Spring Chinook Salmon Supplementation	313294	345088
2002	Columbia Plateau	CP2002000025064	Investigating passage of ESA-listed juvenile fall chinook salmon at Lower Granite Dam during winter when the fish bypass system is inoperable.	176000	176000
2002	Columbia Plateau	CP2002000025066	Manage Water Distribution in the Walla Walla River Basin	552525	
2002	Columbia Plateau	CP2002000025067	Manage Water Distribution in the John Day Basin	251261	
2002	Columbia Plateau	CP2002000025068	Rock Creek watershed road and riparian corridor improvement project.	96500	
2002	Columbia Plateau	CP2002000025069	John Day Salmonid Recovery Monitoring Program	164133	164133
2002	Columbia Plateau	CP2002000025073	Wheeler SWCD Riparian Buffer Planning and Implementation	75086	75086
2002	Columbia Plateau	CP2002000025078	Acquire Anadromous Fish Habitat in the Selah Gap to Union Gap Flood Plain, Yakima River Basin, Washington.	875000	
2002	Columbia Plateau	CP2002000025080	Gilliam SWCD Riparian Buffers	75086	75086
2002	Columbia Plateau	CP2002000025081	Improve Upstream Fish Passage in the Birch Creek Watershed	374572	
2002	Columbia Plateau	CP2002000025082	Walla Walla River Flow Restoration	478000	478000
2002	Columbia Plateau	CP2002000025086	Purchase Perpetual Conservation Easement on Holiday Ranch and Crown Ranch Riparian Corridors and Uplands.	22950	
2002	Columbia Plateau	CP2002000025092	Restoration of Healthy Watershed to Palouse River Drainage in Idaho	100200	
2002	Columbia Plateau	CP2002000025097	Salmon and Steelhead Habitat Inventory and Assessment Project (SSHAP)	522710	
2002	Columbia Plateau	CP2002000025100	Protect Normative Structure and Function of Critical Aquatic and Terrestrial Habitat	349000	349000
2002	Columbia Plateau	CP2002000025102	Columbia Plateau Water Right Acquisition Program	149368	149368
2002	Columbia Plateau	CP2002198402100	Protect and Enhance Anadromous Fish Habitat in The John Day Subbasin	448500	448500
2002	Columbia Plateau	CP2002198506200	Passage Improvement Evaluation	103400	103400
2002	Columbia Plateau	CP2002198710001	Enhance Umatilla River Basin Anadromous Fish Habitat	350000	350000
2002	Columbia Plateau	CP2002198710002	Umatilla Subbasin Fish Habitat Improvement	300264	300264
2002	Columbia Plateau	CP2002198902401	Evaluate Juvenile Salmonid Outmigration and Survival in the Lower Umatilla River Basin	286427	286427
2002	Columbia Plateau	CP2002198903500	Umatilla Hatchery Operation and Maintenance	889240	889240
2002	Columbia Plateau	CP2002199000500	Umatilla Fish Hatchery Monitoring and Evaluation	626178	626178
2002	Columbia Plateau	CP2002199102900	Understanding the effects of summer flow augmentation on the migratory behavior and survival of fall chinook salmon migrating through L. Granite Res.	630375	630375
2002	Columbia Plateau	CP2002199105700	Fabricate and Install Yakima Basin Phase II Fish Screens	159889	159889
2002	Columbia Plateau	CP2002199107500	Yakima Phase II Screens—Construction*	600000	600000
2002	Columbia Plateau	CP2002199206200	Yakima Nation—Riparian/Wetlands Restoration	1416580	294548

2002	Columbia Plateau	CP2002199306600	Oregon Fish Screening Project	660870	660870
2002	Columbia Plateau	CP2002199401806	Implement Tucannon River Model Watershed Plan to Restore Salmonid Habitat	252625	252625
2002	Columbia Plateau	CP2002199401807	Garfield County Sediment Reduction and Riparian Improvement Program	80000	80000
2002	Columbia Plateau	CP2002199404200	Trot Creek Habitat Restoration Project	358845	358845
2002	Columbia Plateau	CP2002199506325	Yakima/Klickitat Fisheries Project Monitoring And Evaluation	3835036	3835036
2002	Columbia Plateau	CP2002199601100	Walla Walla River Juvenile and Adult Passage Improvements	465300	465300
2002	Columbia Plateau	CP2002199603501	Satus Watershed Restoration Project	352966	352966
2002	Columbia Plateau	CP2002199604601	Walla Walla Basin Fish Habitat Enhancement	259660	259660
2002	Columbia Plateau	CP2002199703400	Monitoring Fine Sediment Grande Ronde and John Day Rivers	40829	40829
2002	Columbia Plateau	CP2002199705100	Yakama Nation Yakima/Klickitat Fisheries Project (YKFP) Yakima Side Channels	565136	565136
2002	Columbia Plateau	CP2002199705300	Toppenish-Simcoe Instream Flow Restoration and Assessment	225000	225000
2002	Columbia Plateau	CP2002199801600	Monitor Natural Escapement & Productivity of John Day Basin Spring Chinook	1067328	1067328
2002	Columbia Plateau	CP2002199801700	Eliminate Gravel Push-up Dams in Lower North Fork John Day	98333	98333
2002	Columbia Plateau	CP2002199801800	John Day Watershed Restoration	447050	447050
2002	Columbia Plateau	CP2002199802000	Assess Fish Habitat and Salmonids in the Walla Walla Watershed in Washington	163879	163879
2002	Columbia Plateau	CP2002199802200	Pine Creek Ranch	172000	172000
2002	Columbia Plateau	CP2002199802800	Trot Creek Watershed Improvement Project	122115	122115
2002	Columbia Plateau	CP2002199803300	Restore Upper Toppenish Watershed	196460	196460
2002	Columbia Plateau	CP2002199803400	Yakama Nation Yakima/Klickitat Fisheries Project (YKFP) Reestablish Safe Access into Tributaries of the Yakima Subbasin	230000	230000
2002	Columbia Plateau	CP2002199901000	Mitigate Effects of Runoff and Erosion on Salmonid Habitat in Pine Hollow and Jackknife	21980	21980
2002	Columbia Plateau	CP2002199901300	Altatum Creek Watershed Assessment	206999	206999
2002	Columbia Plateau	CP2002200001500	Oxbow Ranch Management and Implementation	291898	291898
2002	Columbia Plateau	CP2002200001900	Tucannon River Spring Chinook Captive Broodstock Program	94509	94509
2002	Columbia Plateau	CP2002200003100	North Fork John Day River Subbasin Anadromous Fish Habitat Enhancement Project	228726	228726
2002	Columbia Plateau	CP2002200003900	Walla Walla Basin Natural Production Monitoring and Evaluation Project	498886	498886
2002	Mountain Columbia	MC2002000024001	Lake Pend Oreille Predation Research	141000	136000
2002	Mountain Columbia	MC2002000024009	Assess Feasibility of Enhancing White Sturgeon Spawning Substrate Habitat, Kootenai R., Idaho	350000	350000
2002	Mountain Columbia	MC2002198806400	Kootenai River White Sturgeon Studies and Conservation Aquaculture	1160000	1160000
2002	Mountain Columbia	MC2002198806500	Kootenai River Fisheries Recovery Investigations	825391	825391
2002	Mountain Columbia	MC2002199101903	Hungry Horse Mitigation	982850	982850
2002	Mountain Columbia	MC2002199404700	Lake Pend Oreille Fishery Recovery Project	362000	362000
2002	Mountain Columbia	MC2002199404900	Improving the Kootenai River Ecosystem	710891	710891
2002	Mountain Columbia	MC2002199500400	Mitigation for the Construction and Operation of Libby Dam	805000	805000
2002	Mountain Snake	MS2002000028001	Evaluate Factors Influencing Bias and Precision of Chinook Salmon Redd Counts	198738	198738
2002	Mountain Snake	MS2002000028008	Riparian Conservation Easement Purchase of Scarrow Property on Lake Creek a Tributary to the Seesech River, Idaho.	68500	68500
2002	Mountain Snake	MS2002000028016	Restoration of the Yankee Fork Salmon River	150000	150000
2002	Mountain Snake	MS2002000028021	Lower Clearwater Habitat Enhancement Project	125000	125000
2002	Mountain Snake	MS2002000028025	Pottlatch River Watershed Restoration	200000	200000

Biological Opinion Projects recommended by the Council since Fiscal Year 2001—Continued

Note: As of the date of this hearing, Bonneville has not made funding decisions on the Council's mainstem/systemwide project recommendations

FY	Review cycle	Project ID	Title	Council recommend.	BPA funding decision
2002	Mountain Snake	MS2002000028034	Chinook Salmon Smolt Survival and Smolt to Adult Return Rate Quantification, South Fork Salmon River, Idaho.	500000	500000
2002	Mountain Snake	MS2002000028036	Holistic Restoration of Critical Habitat on Non-Federal Lands in the Pahsimeroi Watershed, Idaho	445000	445000
2002	Mountain Snake	MS2002000028037	Holistic Restoration of Critical Habitat on Non-Federal Lands in the Lemhi Watershed, Idaho	332176	332176
2002	Mountain Snake	MS2002000028038	Holistic Restoration of Critical Habitat on Non-Federal Lands, East Fork Salmon Watershed, Idaho	50000	50000
2002	Mountain Snake	MS2002000028039	Holistic Restoration of Habitat on Non-Federal Lands, Middle Salmon-Panther Watershed, Idaho	115000	115000
2002	Mountain Snake	MS2002000028040	Holistic Restoration of Critical Habitat on Non-Federal Lands, Upper Salmon Watershed, Idaho	120000	120000
2002	Mountain Snake	MS2002000028045	Evaluating stream habitat using the Nez Perce Tribe Fisheries/Watershed Monitoring and Evaluation Plan.	200000	200000
2002	Mountain Snake	MS2002000028047	Restore and Protect Red River Watershed	95811	95811
2002	Mountain Snake	MS2002000028048	Protect and Restore Crooked Fork Creek to Colt Killed Analysis Area	174482	174482
2002	Mountain Snake	MS2002000028050	Protect and Restore Little Salmon River	162896	162896
2002	Mountain Snake	MS2002000028059	Restoring anadromous fish habitat in the Lapwai Creek watershed.	372060	372060
2002	Mountain Snake	MS2002000028061	Safety-Net Artificial Propagation Program (SNAPP)	523000	523000
2002	Mountain Snake	MS2002198335000	Nez Perce Tribal Hatchery	3583000	3583000
2002	Mountain Snake	MS2002198335003	Nez Perce Tribal Hatchery Monitoring And Evaluation	1791000	1791000
2002	Mountain Snake	MS2002198909800	Idaho Supplementation Studies	996726	996726
2002	Mountain Snake	MS2002198909801	Evaluate Supplementation Studies in Idaho Rivers (ISS)	126320	126320
2002	Mountain Snake	MS2002198909802	Evaluate Salmon Supplementation Studies in Idaho Rivers-Nez Perce Tribe	402038	402038
2002	Mountain Snake	MS2002198909803	Salmon Supplementation Studies in Idaho-Shoshone-Bannock Tribes	213569	213569
2002	Mountain Snake	MS2002199005500	Steelhead Supplementation Studies in Idaho Rivers	550982	550982
2002	Mountain Snake	MS2002199102800	Monitoring smolt migrations of wild Snake River sp/sum chinook salmon	336050	336050
2002	Mountain Snake	MS2002199107100	Snake River Sockeye Salmon Habitat and Limnological Research	426277	426277
2002	Mountain Snake	MS2002199107200	Redfish Lake Sockeye Salmon Captive Broodstock Program	825000	825000
2002	Mountain Snake	MS2002199107300	Idaho Natural Production Monitoring and Evaluation	827419	827419
2002	Mountain Snake	MS2002199202603	Upper Salmon Basin Watershed Project Administration/Implementation Support	333401	333401
2002	Mountain Snake	MS2002199204000	Redfish Lake Sockeye Salmon Captive Broodstock Rearing and Research	713000	713000
2002	Mountain Snake	MS2002199303501	Enhance Fish, Riparian, and Wildlife Habitat Within the Red River Watershed	209515	209515
2002	Mountain Snake	MS2002199401500	Idaho Fish Screen Improvement	1000000	1000000
2002	Mountain Snake	MS2002199405000	Salmon River Habitat Enhancement M & E	248160	248160
2002	Mountain Snake	MS2002199604300	Johnson Creek Artificial Propagation Enhancement Project	1098227	1098227
2002	Mountain Snake	MS2002199607702	Protect and Restore Lolo Creek Watershed	236296	236296
2002	Mountain Snake	MS2002199607703	Protecting and Restoring the Wawatainnima (Fishing/Squaw) Creek to 'Imnaamatoon (Legendary Bear)(Ponose) Creek Watersheds Analysis Area.	413288	413288
2002	Mountain Snake	MS2002199607705	Restore McComas Meadows/Meadow Creek Watershed	332000	332000

2002	Mountain Snake	MS2002199608600	Clearwater Focus Program	103626	103626
2002	Mountain Snake	MS2002199700100	Captive Rearing Project for Salmon River Chinook Salmon	610500	610500
2002	Mountain Snake	MS2002199703000	Chinook Salmon Adult Abundance Monitoring	666000	666000
2002	Mountain Snake	MS2002199703800	Preserve Salmonid Gametes and Establish a Regional Salmonid Germplasm Repository	288496	288496
2002	Mountain Snake	MS2002199706000	Clearwater Subbasin Focus Watershed Program—NPT	218000	218000
2002	Mountain Snake	MS2002199901400	Little Canyon Creek Subwatershed—Steelhead Trout Habitat Improvement Project	203340	203340
2002	Mountain Snake	MS2002199901500	Restoring Anadromous Fish Habitat in Big Canyon Watershed	60000	60000
2002	Mountain Snake	MS2002199901600	Protect and Restore Big Canyon Creek Watershed	222380	222380
2002	Mountain Snake	MS2002199901700	Protect and Restore Lapwai Creek Watershed	436600	436600
2002	Mountain Snake	MS2002199901800	Characterize and quantify residual steelhead in the Clearwater River, Idaho	101950	101950
2002	Mountain Snake	MS2002199901900	Holistic Restoration of the Twelvemile Reach of the Salmon River near Challis, Idaho	336050	336050
2002	Mountain Snake	MS2002199902000	Analyze the Persistence and Spatial Dynamics of Snake River Chinook Salmon	151700	151700
2002	Mountain Snake	MS2002200003500	Rehabilitate Newsome Creek Watershed—South Fork Clearwater River	287732	287732
2002	Mountain Snake	MS2002200003600	Protect & Restore Mill Creek	74915	74915
2003	Columbia Cascade	CC2003000029026	Hanan—Detwiler Passage Improvements	85000	85000
2003	Columbia Cascade	CC2003000029027	Comprehensive Inventory and Prioritization of Fish Passage and Screening Problems in the Wenatchee and Entiat Subbasins	277436	277436
2003	Columbia Cascade	CC2003000029033	Design and Conduct Monitoring and Evaluation Associated With Reestablishment of Okanogan Basin Natural Production	480152	480152
2003	Columbia Cascade	CC2003199604200	Restore and Enhance Anadromous Fish Populations and Habitat in Salmon Creek	365819	365819
2003	Columbia Cascade	CC2003200000100	Improvement of Anadromous Fish Habitat and Passage in Omak Creek	121098	116530
2003	Columbia Cascade	CC2003200001300	Evaluate An Experimental Re-introduction of Sockeye Salmon into Skaha Lake	18096	18000
2003	Columbia Estuary	CE2003000030001	Historic habitat opportunities and food-web linkages of juvenile salmon in the Columbia River estuary: Implications for managing flows and restoration.	597559	597559
2003	Columbia Estuary	CE2003000030004	Blind Slough Restoration Project—Brownsmead, Oregon	173550	173550
2003	Columbia Estuary	CE2003000030005	Grays River Watershed and Biological Assessment	474734	474734
2003	Columbia Estuary	CE2003000030006	Effectiveness monitoring of the Chinook River estuary restoration project	124804	124804
2003	Columbia Estuary	CE2003000030011	Preserve and Restore Columbia River Estuary Islands to Enhance Juvenile Salmonid and Columbian White-tailed Deer Habitat	585473	585473
2003	Columbia Estuary	CE2003000030015	Lower Columbia River and Columbia River Estuary Ecosystem Monitoring and Data Management	260000	260000
2003	Columbia Estuary	CE2003000030016	Implement the Habitat Restoration Program for the Columbia Estuary and Lower Columbia River	1000000	1000000
2003	Lower Columbia	LC2003199801400	Survival and Growth of Juvenile Salmonids in the Columbia River Plume	1767855	1748970
2003	Lower Columbia	LC2003199306000	Select Area Fishery Evaluation Project	1679564	1679493
2003	Lower Columbia	LC2003199902500	Sandy River Delta Riparian Forest, Wetlands, and Anadromous Estuary Restoration	155562	155562
2003	Lower Columbia	LC2003200001200	Evaluate factors limiting Columbia River gorge chum salmon populations	255211	246820
2003	Lower Columbia	LC2003200105300	Re-introduction of Lower Columbia River Chum Salmon into Duncan Creek	381671	381671
2003	Mainstem/Systemwide	SW2003000030007	Evaluate Restoration Potential of Snake River Fall Chinook Salmon Spawning Habitat	564200	564200
2003	Mainstem/Systemwide	SW2003000030012	Spatial scales of homing and the efficacy of hatchery supplementation of wild populations	370100	370100
2003	Mainstem/Systemwide	SW2003000030019	Develop and Implement a Pilot Status and Trend Monitoring Program for Salmonids and their Habitat in the Wenatchee and Grande Ronde River Basins	1515000	1515000

Biological Opinion Projects recommended by the Council since Fiscal Year 2001—Continued

Note: As of the date of this hearing, Bonneville has not made funding decisions on the Council's mainstem/systemwide project recommendations

FY	Review cycle	Project ID	Title	Council recommend.	BPA funding decision
2003	Mainstem/Systemwide	SW20030000035029	Transfer IHN virus genetic strain typing technology to fish health managers	116479	
2003	Mainstem/Systemwide	SW20030000035033	Collaborative, Systemwide Monitoring and Evaluation Program	968800	
2003	Mainstem/Systemwide	SW20030000035039	The influence of hatcheries and their products on the health and physiology of naturally rearing fish.	303448	
2003	Mainstem/Systemwide	SW20030000035046	Estimate juvenile salmon residence in the Columbia River Plume using micro-acoustic transmitters.	96300	
2003	Mainstem/Systemwide	SW20030000035047	Evaluate Delayed (Extra) Mortality Associated with Passage of Yearling Chinook Salmon Smolts through Snake River Dams.	1100000	
2003	Mainstem/Systemwide	SW2003198201301	Coded-Wire Tag Recovery Program	2028757	
2003	Mainstem/Systemwide	SW2003198201302	Annual Stock Assessment—Coded Wire Tag Program (ODFW)	217881	
2003	Mainstem/Systemwide	SW2003198201304	Annual Stock Assessment—Coded Wire Tag Program (WDFW)	319137	
2003	Mainstem/Systemwide	SW2003198331900	New Marking and Monitoring Techniques for Fish	41900	
2003	Mainstem/Systemwide	SW2003198712700	Smolt Monitoring by Federal and Non-Federal Agencies	1910000	
2003	Mainstem/Systemwide	SW2003198810804	StreamNet	2261033	
2003	Mainstem/Systemwide	SW2003198906500	Annual Stock Assessment—CWT (USFWS)	119268	
2003	Mainstem/Systemwide	SW2003198909600	Monitor and evaluate genetic characteristics of supplemented salmon and steelhead	593900	
2003	Mainstem/Systemwide	SW2003198910700	Statistical Support for Salmomid Survival Studies	265850	
2003	Mainstem/Systemwide	SW2003199007700	Northern Pike/minnow Management Program	1435000	
2003	Mainstem/Systemwide	SW2003199008000	Columbia Basin Pit Tag Information System	2431442	
2003	Mainstem/Systemwide	SW2003199009300	Genetic Analysis of Oncorhynchus nerka (modified to include chinook salmon)	126436	
2003	Mainstem/Systemwide	SW2003199105100	Monitoring and Evaluation Statistical Support	394655	
2003	Mainstem/Systemwide	SW2003199302900	Estimate Survival for the Passage of Juvenile Salmonids Through Dams and Reservoirs of the Lower Snake and Columbia Rivers.	1884200	
2003	Mainstem/Systemwide	SW2003199305600	Assessment of Captive Broodstock Technologies	1468100	
2003	Mainstem/Systemwide	SW2003199403300	The Fish Passage Center	1302904	
2003	Mainstem/Systemwide	SW2003199601900	Second-Tier Data base Support	275111	
2003	Mainstem/Systemwide	SW2003199602000	Comparative Survival Rate Study (CSS) of Hatchery PIT Tagged Chinook & Comparative Survival Study Oversight Committee	1736542	
2003	Mainstem/Systemwide	SW2003199602100	Gas bubble disease research and monitoring of juvenile salmonids	16885	
2003	Mainstem/Systemwide	SW2003199606700	Manchester Spring Chinook Broodstock Project	877600	
2003	Mainstem/Systemwide	SW2003199900301	Evaluate Spawning of Fall Chinook and Chum Salmon Just Below the Four Lowermost Mainstem Dams.	779586	
2003	Mainstem/Systemwide	SW20032000000700	Infrastructure to Complete FDA Registration of Erythromycin	160919	
2003	Mainstem/Systemwide	SW2003200001700	Kelt Reconditioning: A Research Project to Enhance Iteroparity in Columbia Basin Steelhead (Oncorhynchus mykiss).	555121	



2003 .....	Mainstem/Systemwide ...	SW2003200100300 .....	ISO Adult Pit Interrogation System Installations .....	1972106 .....
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In May, U.S. District Judge James Redden of Portland remanded the 2000 Opinion to NOAA Fisheries, agreeing with plaintiffs in a lawsuit that the agency may rely on offsite mitigation actions by non-Federal agencies, like those in the Council's fish and wildlife program carried out by States and Indian tribes, only if the actions are "reasonably certain to occur." The plaintiffs asserted, and the judge agreed, that while it is likely that subbasin plans will be completed and will direct non-Federal offsite mitigation actions, this is not a certainty and, similarly, it is not certain that the non-Federal actions will be sufficient to avoid further jeopardy to the listed species.

Letter of Dec. 3, 2001, from the Administrator to the Chair of the Power Planning Council, Page 3: "On a planning basis for fiscal year 2002-2006, an annual average of \$150 million a year of expense dollars is estimated by BPA for funding the offsite ESA mitigation as described in the 2000 FCRPS BiOps and revised Council Program. This amount is 50 percent greater than the previous MOA and consistent with the funding range assumed in the power rate case and with the Fish & Wildlife Funding Principles that projected an annual average of \$139 million in accruals for purposes of setting BPA's revenue requirement. The \$139 million represents a weighted average of the 13 modeled alternatives having a range of \$109-\$179 million as identified in the fiscal year 02-06 rate period."

Letter of Dec. 10, 2002, from the Administrator the chair of the Council, Page 2.

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STATEMENT OF L. MICHEL BOGERT, COUNSEL, OFFICE OF GOVERNOR DIRK  
KEMPTHORNE, STATE OF IDAHO

RECOMMENDATIONS OF THE GOVERNORS OF IDAHO, MONTANA, OREGON AND WASHINGTON FOR PROTECTING AND RESTORING COLUMBIA RIVER FISH AND WILDLIFE AND PRESERVING THE BENEFITS OF THE COLUMBIA RIVER POWER SYSTEM

*I. Introduction*

Three years ago, the Governors of Idaho, Montana, Oregon and Washington released a landmark series of consensus policy recommendations for protection and restoration of fish in the Columbia River Basin.

Issued in July 2000, the Four Governors' Recommendations for the Protection and Restoration of Fish in the Columbia River Basin (2000 Recommendations) acknowledged a broad regional responsibility and commitment to fish and wildlife recovery. We also sought to provide useful guidance to Federal decisionmakers and Federal action agencies.

Since we made our earlier recommendations, we have seen significant new pressures on the Bonneville Power Administration (BPA) stemming from the 2001 drought and the high power prices that year, with lingering regionwide price impacts including increases in power rates to BPA customers.

In the Columbia River Basin, fish and wildlife are inextricably linked to the hydropower system, which provides a majority of the electricity produced in the region. This statement builds upon our 2000 Recommendations and goes further to address Columbia River system issues important to all Northwest citizens. We hereby make the following specific policy recommendations on the resolution of issues related to the operation of the Federal Columbia River Power System (FCRPS), including the role of the region's Federal power marketing agency, the BPA.

*II. The Four Governors' Recommendations for Protection and Restoration of Fish and Wildlife*

In December 2000, the National Marine Fisheries Service (now NOAA Fisheries) and the United States Fish and Wildlife Service (USFWS) issued final Endangered Species Act (ESA) biological opinions covering salmon, steelhead, bull trout and white sturgeon in the FCRPS. The steps in the biological opinions were largely consistent with our July 2000 Recommendations, and many of our consensus policies at that time have been carried out by the implementing Federal agencies with our States as partners.

The Pacific Northwest has subsequently had nearly 3 years of experience in implementing the biological opinions and the "All-H," full-lifecycle strategy we endorsed in July 2000. There have been some improvements in the fresh water and ocean environments, and these improved conditions are yielding larger returns of some salmon and steelhead runs. While the increases in some anadromous stocks certainly are attributable to more favorable ocean conditions, we believe that the investments made by the region in habitat improvements and mainstem passage are contributing to the positive results.

While we are pleased with the progress made since we offered our 2000 Recommendations, we are not complacent. There are new and additional pressures that have come to bear on the tools we have at our disposal to achieve fish and wildlife recovery. A recent Federal ruling questioned the adequacy of the NOAA Fisheries 2000 FCRPS Biological Opinion. The judge identified some shortcomings that may need to be addressed under the Endangered Species Act, including the need for stronger Federal commitments to species recovery and assurances that recovery activity will indeed occur.

Even though the court is being asked to vacate the biological opinion, we support continued ESA coverage for the Federal action agencies during the interim as well as implementation of the species conservation measures already undertaken. We also believe the Federal Government should address the court's concerns by taking positive, measurable and cost-effective steps to benefit fish. These steps can be accomplished in the next year and continue to demonstrate the Federal Government's good-faith commitment to fish recovery.

As we discussed in our 2000 Recommendations, discussion of breaching the four lower Snake River dams is polarizing and divisive. The Pacific Northwest made a commitment to pursue a proactive fish and wildlife recovery strategy that avoids the breaching of dams, and it remains a strategy we continue to strongly endorse.

We will continue to pursue full implementation of the biological opinions to recover our salmon, steelhead, and freshwater species because it is not only the right thing to do, but also because the failure to do so can jeopardize the Federal hydro-power system and re-ignite the controversy over dam breaching. The recommendations that follow will provide our region with confidence that the Northwest will continue on the course upon which we have already embarked and that we intend to pursue the components of a workable and successful species recovery strategy.

#### *A. Fish and Wildlife Recovery*

##### *1. The "All H" Approach*

Background: Our 2000 Recommendations identified the key elements of a regional approach to the recovery of salmonids and other aquatic species such as bull trout and white sturgeon. Those recommendations remain just as valid today. We continue to believe that the recovery and restoration of fish in the Columbia Basin must consider the entire life cycle of the species and that the burden of their conservation must be born equitably across the "H's"—Habitat, Hydroelectric System, Harvest, and Hatcheries.

We also must continue to recognize that there is "Fifth H"—the human element. We cannot recover fish without obtaining the participation and support of those who live and work in the watersheds. To do that, we must continue to insist upon clear and reasonable goals to measure our successes and the means to ensure that we are accountable for the actions that we take.

Further, we must build and rely upon partnerships to plan and implement recovery actions and ensure that those plans and implementing actions are based on sound science. Securing the advantage of local knowledge and support for this work and developing our information and objectives from the "bottom up" is essential to this effort. The specific recommendations that we make below build upon these key principles.

Recommendations: The Federal agencies have made an important commitment to improving habitat in the Columbia River tributaries in a manner consistent with, and within the broader context of, the Northwest Power and Conservation Council's (Council) Columbia River Basin Fish and Wildlife Program. At the State level, and through the Council, we also are working with the regions' Tribes as full partners in the recovery effort. The Council in turn has emphasized the importance of implementing the fish and wildlife program in a manner that is integrated with each State's processes dealing with ESA-listed species, other fish and wildlife species and watershed issues.

The hub for this Federal/regional/State/tribal effort is the subbasin planning called for by the Council's program. The biological opinions should continue to look to these subbasin plans to guide habitat, hatchery, and harvest actions in the watersheds throughout the Columbia Basin in the coming years.

While we acknowledge the current legal uncertainty surrounding the biological opinion for anadromous fish, fish and wildlife recovery in the Columbia Basin cannot occur without the subbasin planning program that has been put into place in the Columbia Basin. It is an essential component of the All-H approach.

Through this program, a substantial investment of time and money has been made by State and local governments, Tribal governments, volunteer groups and individual citizens. We need to honor and respect this commitment to fish and wildlife recovery at the local level. We will do a great disservice to our fish and wildlife re-

covery effort and those involved with that effort if it is invalidated. We are on the right path and must stay this course.

### *2. Recovery Plans*

**Background:** Under the Council's Fish and Wildlife Program, subbasin planning is underway in most of the Columbia Basin's 62 subbasins. A template has been provided to guide the components that must be included in the subbasin plans, including those habitat restoration and hatchery strategies that address ESA needs. After these plans are submitted to the Independent Scientific Review Panel (ISRP) for review, and after approval by the Council, completed subbasin plans, consistent with the template, should be incorporated by NOAA Fisheries and the USFWS in integrated draft recovery plans at the population and evolutionarily significant unit (ESU) scales.

Each State does not now have clear guidance from the Federal Government about the full suite of actions that constitutes a draft recovery plan so that their own processes can be used to develop the plans. In addition, USFWS bull trout recovery planning efforts are not adequately coordinated with other plans.

**Recommendation:** Guidelines consistent with the ESA for both population-scale and ESU-scale recovery plans may be prepared and submitted to NOAA Fisheries and USFWS at the discretion of the individual States based on completed subbasin plans. These Federal agencies should endorse such guidelines in a timely manner—within 6 weeks of their submittal by individual States. The States have confirmation from NOAA Fisheries that the subbasin planning template provided by the Council is adequate for population-scale recovery plans, but we require a similar confirmation that our guidelines for developing ESU-scale recovery plans will be accepted.

By September 1, 2003, NOAA Fisheries should indicate by name those individuals who will work with each State's organizations responsible for recovery planning so that they have continuous, accurate guidance from them as to what constitutes an approved recovery plan. The USFWS should continue to work with each State to ensure that its expertise is available to subbasin planners and to ensure that subbasin plans and ESA planning under its charge are consistent.

### *3. Recovery Goals*

**Background:** We are particularly concerned that the pace of the Interior Columbia Technical Recovery Team's (TRT) efforts to establish the requisite fish and wildlife recovery goals in the Columbia Basin is not well synchronized with each State's fish and wildlife recovery and protection planning.

The subbasins are developing their respective fish and wildlife subbasin plans based on the template provided by the Council and with only interim abundance based salmon recovery goals from NOAA Fisheries. Subbasin planning is proceeding as rapidly as is possible and prudent, largely to meet the NOAA Fisheries demand in its 2000 FCRPS Biological Opinion.

We need to avoid a situation where the subbasin plans are finished on schedule next spring only to find that they do not adequately address new or different recovery goals set forth in the separate TRT process that appears to be disconnected from and on a slower schedule than subbasin planning.

**Recommendation:** The TRT process must ensure Federal recovery efforts are integrated with each pertinent State's subbasin and regional processes, both substantively and in scheduling. Technical coordination between the TRT and State subbasin planners and regional processes must occur as early as possible. The policy implications of TRT products should be considered carefully and in coordination with State, Tribal and local governments before release. There may be several alternatives to resolve this situation, including a contracting arrangement with each individual State in order to meet these objectives.

### *4. ESA Assurances*

**Background:** Fish recovery under the ESA incorporates numerous actions involving local governments and private landowners on a geographic scope never before attempted. Local governments and landowners are willing to develop incentive-based programs that address listed species concerns but, in so doing, they want assurance that they will be afforded some degree of legal protection under terms of the ESA. In the absence of progress or such protection, there is little practical incentive to become active partners in a Federal recovery plan.

**Recommendation:** By the end of the year, NOAA Fisheries and USFWS should resolve with the Council and appropriate State organizations what types of legal assurances will be provided for approved subbasin plans and their implementation in the Columbia Basin. As part of that resolution, NOAA Fisheries and USFWS should

define any procedural and/or review requirements that they believe are necessary for each type of assurance that they will provide.

#### *5. Monitoring and Accountability*

**Background:** We are engaged in a long-term sustained initiative to recover salmon, steelhead, white sturgeon and bull trout in the Columbia Basin which involves considerable effort and funding. Recognizing that steps have been taken in this direction, a comprehensive and integrated monitoring system needs to be put in place so that we know whether—and the degree to which—we are making progress, and whether we are getting results for the money expended. This is an important component for both biological opinions.

Efforts to design a monitoring and evaluation program to date have been dominated by the Federal agencies without appropriate regard for the work and programs already being designed or implemented by the States and without an appreciation for the reliance that a comprehensive monitoring and evaluation system will have on State, Tribal and local entities for implementation.

**Recommendation:** By this fall, the Council should convene meetings with the four States, the Federal agencies and the fish and wildlife managers to design, by year's end, an integrated, complementary and scientifically sound monitoring system for counting fish that includes budgets and priorities. Also, the Council, working closely with States, Federal agencies and Tribes should develop, again by year's end, a draft systemwide research plan with budgets and priorities. An equitable plan for funding the implementation of this program needs to be a part of what is provided. The Council should report to the Governors on its progress in meeting this goal.

#### *B. Federal Agency Funding*

**Background:** The Federal ESA action agencies—BPA, Bureau of Reclamation, and the Corps of Engineers—all have substantial commitments to fish and wildlife recovery in the region. While we recognize that we are in an era of constricted Federal budgets, commitments for fish and wildlife funding need to be completed if we are to comply with the requirements of the ESA and Northwest Power Act while meeting the broader economic and societal objectives in the region.

**Recommendation:** We support Federal agency budgets that reflect commitments made to Columbia Basin fish and wildlife and the “All-H” approach. We also will work as States with regional partners and with the Council, to secure congressional support for separate appropriations—including additional appropriations to the States—to meet these commitments.

#### *C. Fish and Wildlife Programs*

**Background:** The Northwest Power Act requires the Council to prepare a program to protect and enhance fish and wildlife and mitigate habitat losses caused by the development and operation of the hydrosystem. For the last decade, we have been largely preoccupied with ESA-listed fish species in the Columbia Basin. Frequently, because of limited resources, these two efforts are portrayed as being in opposition to each other so that project funding for ESA-listed species is viewed as competing with mitigation actions for non-listed species.

In our judgment, too much of a distinction between ESA-listed and non-listed fish and wildlife species is being made in fish and wildlife planning and implementation activities. When species are listed under the ESA, it means we may have failed in our management responsibilities. By focusing planning and implementation on all species, the Council's proactive approach can work to prevent future listings of fish and wildlife species under the ESA while addressing, as a subset, those that are listed.

**Recommendation:** We strongly endorse the Council's Fish and Wildlife Program as a comprehensive, integrated and preventive approach to address fish and wildlife issues in the Columbia Basin.

The Council recently adopted a new Mainstem Plan as part of its Program with a core principle being that the entire Columbia Basin ecosystem and hydroelectric system must be considered as a whole. We urge the Federal action agencies to fully implement the Council's Fish and Wildlife Program including the Mainstem Plan as soon as is practicable.

The Council and Bonneville, in consultation with the four Northwest Governors and the other Federal agencies, should develop a new funding agreement to provide more predictability and certainty for fish and wildlife spending over the next few years. This agreement should be in place for the next fiscal year beginning in October 2003.

#### *D. Results, Not Process*

Background: The challenge for the Columbia Basin is to overcome the propensity for paralysis. The Basin consists of multiple jurisdictions involving international, Federal, State, local and Tribal governments, and businesses and private land-owners. We have initiatives underway for power, fish and wildlife, ESA, and predators, as well as the U.S. v. Oregon litigation dealing with hatcheries and harvest. The challenge is how to effectively move forward together in all of these areas without getting bogged down where process substitutes for results.

Recommendation: In regard to ESA-listed species and the Council's Fish and Wildlife Program, we need to set clear goals for what we want, clear schedules for when we want it, clear direction for who is responsible for taking action, clear identification of cost-effective approaches to meet our goals, and clear accountability to measure whether or not we have accomplished what we set forth to do.

Our first step in this regard is to request that the Council provide us with a report on the status of these recommendations by the end of the year. We also request a report from the Council and from NOAA Fisheries and USFWS on the implementation of the biological opinions in each State as part of this report. We also endorse the use of the Council's Regional Coordination Group to coordinate and oversee subbasin planning where issues can be raised and solutions recommended regarding implementation of the subbasin plans and planning and the relationship of those efforts to ESA-based requirements.

### III. BONNEVILLE POWER ADMINISTRATION

The Bonneville Power Administration (BPA) was created 66 years ago. It was the product of visionary leadership that believed the Columbia River could provide enduring social and economic benefits for our individual States and for our region as a whole.

The Federal Columbia River Power System (FCRPS) brings renewable and non-polluting electricity to our homes and businesses, and provides 75 percent of the region's highest-voltage transmission. It provides a major navigation highway for the Northwest and the Interior West, its flood control system protects our land and cities, and its water irrigates our crops and provides recreational opportunities. The Columbia River not only ties us together as a region but also ties us to Canada and California as part of a vast, integrated electricity system.

The BPA markets the power generated by the FCRPS. The FCRPS provides us not only with a formidable economic engine for the region, but also with the ability to meet our environmental and treaty obligations. It is our system, built by our leaders and workers on our waterways and across our landscapes, and we must protect this valuable legacy.

We follow in the footsteps of earlier leaders who have stepped forward to meet the challenges faced simultaneously by BPA and the FCRPS. Today, we again face new threats to BPA, and threats to the customers who rely upon BPA. We have several recommendations in these areas.

#### *A. Protect the Regional and National Economy*

##### *1. BPA's Benefits*

Background: The Pacific Northwest—and the nation—benefit from the FCRPS. Recent events, including the combined effects of the volatile Western energy market, lack of generation capacity, drought, BPA's current financial position and unrealized savings and revenues anticipated in prior rate making decisions, have placed serious pressure on our power system and our State economies. In many areas, electricity rates have increased significantly and are not expected to decline for the foreseeable future. We are at risk of losing the advantages the region has enjoyed from low power rates for over a half century.

Controversies over the allocation of Federal-based power continue to arise. BPA must work within the region to ensure implementation of solutions to protect the benefits of the Federal hydropower system.

Recommendation: We urge BPA's customers, including public and private utilities, to reach agreement on the sharing of BPA's benefits. Parties to these discussions should stay at the table and continue to work to find a solution that can enjoy broad agreement and minimize or avoid the currently proposed BPA rate increase.

##### *2. BPA Operations Review*

Background: BPA faces tremendous financial challenges this year resulting from the California and regional energy crisis and near record drought of 2001 and the projected rate increases this year for its customers. To deal with this situation, BPA

has looked for ways to cut back on spending, including funding for the offsite habitat work called for in the biological opinions.

Given the vulnerable State of our regional economy, we believe Pacific Northwest electricity customers are not prepared to absorb another large wholesale rate increase. BPA must do everything within its power to avoid or minimize rate increases now and for the remainder of the current rate period and place the agency on a path to stable and affordable rates soon. We believe these efforts must include securing all available efficiencies without compromising its essential functions.

We understand the need to find cost reductions in all areas, including fish and wildlife. However, we are concerned that sustained or deep funding reductions by BPA in its Fish and Wildlife Program could jeopardize the recovery progress we have made and put BPA at legal and financial risk.

**Recommendation:** We acknowledge the difficulties currently confronted by BPA managers, and we encourage their continued efforts to resolve them. We call upon BPA, in consultation with the Council, to undertake a process to establish priorities within its operations, and to focus its resources on those areas that are most critical to its mission and bring the greatest benefit to the Pacific Northwest. Such a process should involve BPA management and employees, working with the Council, and should provide external validation through participation and review by independent persons with knowledge of and experience in energy, fish and wildlife operations, budgeting, management experience and other relevant areas. We request that BPA provide a report to the Governors on its progress on this matter by the end of the year.

#### *B. Clarifying BPA'S Future*

**Background:** For several years, the region has been engaged in discussions over the future of BPA, including the 1996 Comprehensive Review of the Northwest Energy System. Last fall the region's utilities unveiled a proposal to address BPA's future.

The Council and BPA jointly engaged in a regional dialog on the proposal, which is consistent with a recommendation of the Comprehensive Review and other efforts to address BPA's future. The Council submitted recommendations to BPA to resolve some of the most important electricity policy questions currently facing the region, especially the need to clarify responsibility for building new generating resources to support load growth.

**Recommendation:** BPA must address its future in the region. There is considerable consensus among BPA's customers and among regional energy policy leaders as to the direction BPA should follow. We believe that the regional dialog should be reinitiated immediately under the joint auspices of the Council and BPA. Joint responsibility is necessary to afford credibility to the final results of the dialog.

We stress the importance of achieving a role for BPA that is sustainable for the long term. The Council's recommendations provide direction and include:

1) Long-term contracts to demonstrate a continuing commitment to meet the costs of the Federal power system and related stewardship obligations. Committing to long-term contracts will help preserve these benefits for the Pacific Northwest;

2) A limited role for BPA in serving the load growth of its customers. In most cases when BPA accepts the obligation to meet load growth, it should be on a bilateral basis with customers bearing the full cost of resources acquired to meet their needs;

3) Fulfillment of existing fish and wildlife obligations; and

4) Pursuit by BPA of regionwide conservation and renewable resource opportunities.

Until we accomplish these objectives construction of resources to meet new load growth will be delayed, placing the region at risk of another electricity crisis.

#### *C. Transmission*

**Background:** Electricity in the Northwest is highly integrated with the BPA system that operates 75 percent of the highest voltage lines of the region's transmission system. In recent years, the Federal Energy Regulatory Commission (FERC) has attempted to continue standardizing the electric wholesale market and the structure of the transmission system. The proposed rulemaking on Standard Market Design is the most recent attempt. The debate on these issues has uncovered differences in regional electricity markets and spotlighted the need for practical regional solutions rather than a single national design.

**Recommendation:** The FERC and Congress must ensure that any restructuring of the transmission system in the Northwest is compatible with our regional system as defined by our regional processes. For the Northwest, the FERC should support the voluntary formation process of Regional Transmission Organizations (RTOs).

The Governors expect that any changes that are made to the operation of the transmission system in the Northwest will benefit the region.

#### IV. OUR COMMITMENT

The vitality of BPA and the health of our fish and wildlife in the Columbia Basin are mutually dependent. We cannot focus on one side or the other, or promote one at the expense of the other. Our leaders saw the necessity for this balanced approach between power and fish and wildlife two decades ago during the debate over the Northwest Power Act. We remain committed to this balanced approach.

We acknowledge that the FCRPS benefits have come with a cost—adverse impacts on the Columbia Basin’s fish and wildlife. With our locally based efforts in the watersheds, we are following through on our commitments while we are avoiding becoming sidetracked by issues that will only divert and divide us as a region. We will stay the course and solve our problems as a region. We will continue to pursue full implementation of the biological opinions to recover our salmon, steelhead and freshwater species not only because it is the right thing to do, but also because the failure to do so will jeopardize the Federal hydropower system. Breaching the four lower Snake River dams must not be an option.

The Columbia River and all its tributaries have provided immense benefits to the Northwest in natural resources and hydropower production. Despite the fact that the hydropower system is indelibly woven into our region’s economy and natural environment, threats continue from outside the region that challenge our right to our own resource. Certain interests outside the Pacific Northwest continue to covet the benefits of the Columbia Basin, challenging our right to cost-based power and not fairly crediting BPA with its assistance to California during that State’s energy crisis.

The Pacific Northwest Governors and other public officials of the region will maintain a united front to oppose any challenge to degrade the regional benefits provided by the Federal hydropower system in the Pacific Northwest. Reliable, cost-based energy of the FCRPS is the bedrock of our regional economy, and the revenue it produces is the lifeblood for financing the restoration and protection of our fish and wildlife as well as for meeting our Tribal treaty responsibilities.

We have accepted financial responsibility for this system, including the attendant natural resource stewardship for many decades, and we will continue to do all we can to protect and preserve the benefits of the Federal Columbia River Power System.

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STATEMENT OF STEVEN M. HUFFAKER, DIRECTOR, STATE OF IDAHO DEPARTMENT OF FISH AND GAME, REPRESENTING COLUMBIA BASIN FISH AND WILDLIFE AUTHORITY

#### *Introduction*

Mr. Chairman and members of the Subcommittee, on behalf of the Members<sup>1</sup> of Columbia Basin Fish and Wildlife Authority I would like to thank you for the opportunity to testify on the implementation of the National Marine Fisheries Service’s 2000 Biological Opinion for listed anadromous fish regarding operation of the Federal Columbia River Power System. The 2000 Biological Opinion is the central document directing anadromous fish recovery efforts in the Columbia River Basin, and it affects the work of all fish and wildlife managers in the basin. Implementation of this Biological Opinion is of great importance to us.

As fish and wildlife managers we expect our efforts to result in recovered, healthy, fishable populations of anadromous fish in the Pacific Northwest, just as we expect as citizens that the lights will illuminate each time a switch is turned on. But the inextricable linkage of fish and wildlife resources and hydropower in the Pacific Northwest complicates our efforts and calls for great collaboration, commitment, and

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<sup>1</sup>The Columbia Basin Fish and Wildlife Authority was established in 1987 to coordinate the efforts of its Members to protect and enhance fish and wildlife resources of the Columbia River Basin through joint planning and action. The Authority provides a forum to facilitate the exchange of information among Members on matters affecting anadromous fish, resident fish, and wildlife resources and their habitat. The Authority Members include: Burns–Paiute Tribe, Coeur d’Alene Tribe, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Idaho Department of Fish and Game, Kalispel Tribe of Indians, Kootenai Tribe of Idaho, Montana Department of Fish, Wildlife and Parks, National Marine Fisheries Service, Nez Perce Tribe of Idaho, Oregon Department of Fish and Wildlife, Shoshone–Bannock Tribes, Shoshone–Paiute Tribes, Spokane Tribe of the Spokane Reservation–Washington, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Confederated Tribes and Bands of the Yakama Nation.



devoted implementation in order to progress toward fish and wildlife recovery. We compliment your leadership, Mr. Chairman; in resolving the many issues the region faces planning and implementing recovery actions. Your first-hand knowledge of the people and fish and wildlife resources of the Pacific Northwest is a real asset to resolving the complicated and controversial issues we are addressing today.

My testimony will address a regional, integrated fish and wildlife program and its relationship to the 2000 Biological Opinion. Fish and wildlife management does not divide actions into discrete categories of Biological Opinion implementation versus other mitigation or management actions. The fish and wildlife managers view the Columbia River as “one river”, an ecosystem which must be managed in its entirety. Implementation of the 2000 Biological Opinion, which concerns only ESA-listed anadromous fish, is part of a very large integrated effort to restore all fish and wildlife and the habitats they depend on in the Columbia River Basin. The Northwest Power Planning Council’s (NWPPCC) Fish and Wildlife Program<sup>2</sup> addresses both ESA-listed and unlisted species. Subbasin planning efforts led by the NWPPCC are intended to further integrate Federal, State, tribal and private efforts on behalf of fish and wildlife resources.

We believe that satisfactory restoration of Columbia River Basin fish and wildlife resources, with several resource plans functioning simultaneously, requires that the following three conditions be met:

1. action implementers must be better coordinated and be held more accountable for their actions;
2. there must be rigorous monitoring and evaluation protocols in place; and,
3. there must be adequate funding to get the job done appropriately. I will elaborate on each of these three conditions.

#### *Coordination and Accountability*

The fish and wildlife managers are concerned that roles and responsibilities of all appropriate Federal agencies involved with implementation of the 2000 Biological Opinion have not been defined, and coordination of activities among all Federal agencies has not satisfactorily occurred. Specifically, the roles and responsibilities of U.S. Department of Agriculture agencies do not appear to be adequately coordinated with the 2000 Biological Opinion. Defining the roles and responsibilities of the various 2000 Biological Opinion Action Agencies<sup>3</sup> and other Federal agencies is critical to improving coordination and accountability. Clearly defined responsibilities will help accomplish several things: defined responsibilities will reduce duplication of efforts among agencies and other action implementers and help assure that no tasks are forgotten, defined responsibilities can serve as standards against which Federal agency and other action implementer performances can be evaluated, allowing the region to answer the question, “Are the agencies getting their tasks done?”, and defining the responsibilities of all of the implementers will start addressing an important concern of Bonneville Power Administration, that it should not have full responsibility for recovering ESA-listed species and mitigating for fish and wildlife losses in the Columbia River Basin.

NOAA Fisheries has made an important first step in defining responsibilities for ESA-listed anadromous fish in its 2000 Biological Opinion, and is starting the effort to hold the Action Agencies accountable with the 2003, 2005, and 2008 check-ins. The 2000 Biological Opinion also states “Failure to achieve the population performance standards could trigger a number of options for the Federal Columbia River Power System, including re-consultation and pursuing the dam breach option.”<sup>4</sup> At a workshop this spring on Federal agency budgets hosted by NOAA Fisheries’ Implementation Team, several important Federal agencies did not participate, and among those that did, most were unable to provide useable information on how much they had spent or intend to spend on ESA-related work in the basin. A special effort should be made to review Federal budgets in order to track spending on Columbia River Basin fish and wildlife recovery. We recommend the initiation of a GAO review of what is being done in the Columbia River Basin by all Federal agen-

<sup>2</sup>Northwest Power Planning Council Columbia River Basin Fish and Wildlife Program. Council Document 2000-19.

<sup>3</sup>The Action Agencies are U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, and the Bonneville Power Administration.

<sup>4</sup>Endangered Species Act—Section 7 Consultation, Biological Opinion, Reinitiation of Consultation on Operation of the Federal Columbia River Power System, Including the Juvenile Fish Transportation Program, and 19 Bureau of Reclamation Projects in the Columbia Basin. Consultation Conducted by: National Marine Fisheries Service Northwest Region. Date Issued: December 21, 2000.

cies for anadromous fish and other species and the costs associated with those actions.

The Governors of Idaho, Montana, Oregon and Washington (Four Governors) recent recommendations<sup>5</sup> for preserving the benefits of the Columbia River power system make several excellent suggestions for improving accountability and are a start at defining the States' responsibilities to Columbia River Basin fish and wildlife. The region's States and tribes have their own fish and wildlife responsibilities and plans to meet them. We support the Governors' commitment to subbasin planning as the means to integrate these State and tribal plans with Federal and private fish and wildlife restoration efforts.

#### *Monitoring and Evaluation*

From a manager's perspective, a sound monitoring and evaluation program is necessary to both evaluate the status of the resource being managed and assess the effectiveness of actions implemented to improve the resource. This is especially true for the 2000 Biological Opinion, where a large number of offsite mitigation actions are called on to benefit anadromous fishes in the basin. The Four Governors recommended that a strong, integrated monitoring and evaluation program be in place to assure that efforts to restore fish and wildlife are working and are cost-effective. We agree with the Four Governors' recommendation. The Columbia Basin Fish and Wildlife Authority Members have developed a comprehensive plan for collaborative monitoring in the Columbia River Basin. The NWPCC recently recommended this project for funding to the Bonneville Power Administration (BPA), and implementation is being negotiated with BPA and the NWPCC. This project would focus on the issue of system wide monitoring and evaluation of fish status, addressing requirements of NOAA Fisheries and U.S. Fish and Wildlife Service Biological Opinions and Recovery Plans as well as the NWPCC Fish and Wildlife Program.

#### *Adequate and Stable Funding*

The fish and wildlife managers need assurances that adequate funding is available and accessible to implement priority actions for restoring and protecting all fish and wildlife resources and their habitats. The NWPCC, under their Fish and Wildlife Program, recently completed a review of all subbasins in the United States portion of the Columbia River Basin. This review included a call for proposals regarding actions necessary to restore and protect fish, wildlife and habitat resources in the basin. Over \$344 million in annual projects that met rigorous scientific, management and public scrutiny were identified. These are opportunities that exist today for recovery of listed species as well as protection and restoration of non-listed species. The NWPCC subbasin planning effort will provide a more definitive estimate of the costs of resource restoration in the basin, costs that are likely to be even larger.

Current funding to implement these projects is insufficient. During Federal fiscal year 2003, the BPA has limited spending in the NWPCC Fish and Wildlife Program to less than \$139 million. Considering this funds BPA overhead for \$12 million, subbasin planning for \$10 million and independent science review for \$1 million, less than \$126 million supports for on-the-ground projects that directly benefit fish and wildlife. Confounding this situation is the fact that insufficient funding has been authorized for implementation of the 2000 Biological Opinion. Thus the NWPCC Fish and Wildlife Program, which addresses all fish and wildlife resources in the basin, must now compete against the 2000 Biological Opinion for funds. This creates a situation where funds are shifted from other Federal fish and wildlife mitigation obligations to the 2000 Biological Opinion.

It is important to us as fish and wildlife managers that the needs of all species be met. The needs of resident fish and wildlife, particularly in areas blocked by the dams, are not less important than the needs of ESA-listed anadromous species. The first step to meeting these needs is assuring that adequate funding is available to meet the Federal mitigation obligations. From 1996 to 2001 funding of Columbia Basin fish and wildlife activities was guided by a Memorandum of Agreement<sup>6</sup> (MOA) among the Federal Parties. That MOA resolved policy and procedural issues related to funding Federal mitigation obligations. No new MOA was established fol-

<sup>5</sup>Recommendations of the Governors of Idaho, Montana, Oregon and Washington for Protecting and Restoring Columbia River Fish and Wildlife and Preserving the Benefits of the Columbia River Power System. Delivered to the President of the United States, June 5, 2003.

<sup>6</sup>Memorandum of Agreement Concerning the Bonneville Power Administration's Financial Commitment for Columbia River Basin Fish and Wildlife Costs. Signed by the Secretaries of Energy, the Army, Commerce, and the Interior on September 13-16, 1996.

lowing expiration of the 1996–2001 MOA, and many of the policy and procedural issues that led to that MOA are now re-appearing.

We believe a new MOA must be negotiated and established so that time, money and energy currently spent on process issues can be redirected to on-the-ground resource enhancement actions. The MOA must resolve key issues such as budgeting procedures, capital expenditure planning, habitat crediting, and the integration of regional budgets with the congressional appropriations process. Also, the MOA must define the responsibilities of all parties, including the U.S. Government trust and treaty responsibilities to the tribes, and its development must include full consultation with the fish and wildlife managers in the basin.

The establishment of a formal MOA is also supported by the NWPCC. In a recent publication,<sup>7</sup> the NWPCC stated: “. . . the re-establishment of a process to develop formal memoranda of agreement that would specify funding levels for Bonneville rate periods, or some other period of time, would be welcomed in assuring the region’s fish and wildlife interests that Bonneville’s obligations will be met.” We agree with the NWPCC that to ensure adequate funding levels “. . . a transparent process that involves all regional entities and the public must be established . . .”.

In addition to assurances of meeting the current Federal fish and wildlife mitigation obligations, we need assurances that there will be adequate funding to satisfy future needs. As mentioned in our introductory comments, the region is actively engaged in subbasin planning under the NWPCC Fish and Wildlife Program. We are seeing BPA funds that support NWPCC Fish and Wildlife Program activities being diverted to implement the 2000 Biological Opinion. Because of this, there is no certainty that funds will be available to complete development of the subbasin plans, implement the actions that they recommend, and monitor and evaluate the results. We are involving the public and building public trust in the subbasin planning process, and do not wish to see this trust destroyed because lack of a funding-vision brought subbasin planning to an end.

#### *Closing Statement*

In closing, Mr. Chairman, I would like to assure you that the fish and wildlife managers fully appreciate the importance and value of anadromous fish to the Pacific Northwest. I am sure you are well aware how in Idaho the improved salmon and steelhead returns in recent years have created and supported both tribal and sport fishing opportunities, and how small local communities have benefited from the economic stimulus provided by the fisheries. That theme was repeated in other areas of the Columbia River basin that salmon and steelhead migrate through or have access to, and we would like to see it extended to all areas of the basin for all species.

Direct expenditure on fish and wildlife restoration is a very good investment. Many of the dollars go directly into local communities throughout the basin, paying salaries and buying services and products. Economists can apply multipliers to the dollars spent and show how their value increases as they circulate through the local economy. Until recently the intangible number was the interest gained on that investment. Recent surveys<sup>8</sup> have shown us that the return on those investments easily could be in the millions of dollars. Healthy fish and wildlife populations attract people for a variety of reasons. That attraction leads to a redistribution of money to small rural economies. There is a great societal benefit to restoring our natural resources to healthy levels.

We urge you to strive for adequate funding concomitantly for both Biological Opinion implementation (regardless of what Biological Opinion is considered) and existing Federal mitigation obligations. Funding should not only be provided through the BPA mitigation for the Federal Columbia River Power System, but by all Federal agencies responsible for implementing the 2000 Biological Opinion. Adequate funding is an important step for integrating Federal, State, and tribal efforts to restore and protect our fish and wildlife resources. We can manage the Columbia River basin as an ecosystem and achieve basin-wide results only through a fully integrated program.

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<sup>7</sup>Northwest Power Planning Council Recommendations on the Future Role of Bonneville in Power Supply. December 17, 2002. Council Document 2002–19.

<sup>8</sup>For example, the December 2002 report “The Economic Impact of the 2001 Salmon Season in Idaho” prepared by Ben Johnson Associates, Incorporated, for the Idaho Fish and Wildlife Foundation estimated the total economic impact of the 2001 salmon season in Idaho was \$89,880,015.

## STATEMENT OF NEZ PERCE TRIBAL CHAIRMAN ANTHONY D. JOHNSON

## INTRODUCTION

Good morning, Chairman Crapo. My name is Anthony Johnson and I am Chairman of the Nez Perce Tribe. I would like to thank you and the members of the subcommittee for holding this hearing.

## THE SALMON'S IMPORTANCE TO THE NEZ PERCE TRIBE

The Nez Perce Tribe has fished since time immemorial, and in our 1855 Treaty with the United States, our ancestors expressly reserved the right to take fish at all our usual and accustomed places throughout the Columbia River Basin. For the Nez Perce Tribe, salmon are more than an icon of the Pacific Northwest; they are crucial to our culture, our way of life, our spiritual beliefs, and our economy. Without them, we are not Niimiipuu.

## THE IMPACTS OF THE FEDERAL HYDROPOWER SYSTEM HAS LED TO SALMON BEING LISTED AS "ENDANGERED" OR "THREATENED"

The impact of the Federal hydropower system on the salmon, and on our people has been devastating. Today, in large part due to the Federal hydropower system, every run of Snake River salmon that returns to the Nez Perce Tribe's usual and accustomed fishing places in the Columbia River Basin is either extinct, or listed as threatened or endangered under the Endangered Species Act. These include Snake River coho, Snake River sockeye, Snake River spring, summer, and fall chinook, and Snake River steelhead.

## TODAY'S HEARING THREE POINTS

Today, you have invited me to speak on "The implementation of the National Marine Fisheries Service's 2000 Biological Opinion regarding the operation of the Federal Columbia River Power System." I would like to make three points.

## FIRST, THE FCRPS BIOLOGICAL OPINION HAS BEEN DECLARED ILLEGAL!

The Federal district court's recent ruling that NMFS' Biological Opinion for the FCRPS is illegal should come as no surprise.

The ESA has highlighted that FCRPS cries out for a major overhaul. In 1994, Judge Malcolm Marsh declared that the hydropower system "was literally crying out for a major overhaul" in one of the initial legal challenges to FCRPS operations under the Endangered Species Act. (*Idaho Department of Fish and Game v. NMFS*).

*NMFS has avoided facing reality shown it by the Basin's salmon managers*

Senator Crapo, we know that you have carefully followed impact of the FCRPS on salmon over the years. You, like us, watched as NMFS deferred its decision on a "major overhaul" for 5 years. You, like us, watched as NMFS discarded the closest thing to a true collaborative approach in the Columbia Basin: PATH (Plan for Analyzing and Testing Hypotheses), which involved biologists from the States, the tribes, the Federal Government, and independent scientists known as. Senator Crapo, you will recall that the Idaho Department of Fish and Game testified before you concerning NMFS' departure from the conclusions reached by PATH. NMFS' departure from the PATH conclusions, and its peer review, appeared to be motivated by the fact that PATH had concluded that breaching the four lower Snake River dams was the best means for restoring Snake River salmon.

NOAA's flawed approach NMFS' "non-breach" biological opinion appeared to the Nez Perce Tribe and all the other salmon managers in the Columbia Basin to be biologically flawed. And, while NMFS' biological opinion was billed as an "aggressive non-breach" approach, upon closer examination it was clear that it was mostly hope and good intentions.

The litigation has exposed the biological concerns with NOAA's approach. The Nez Perce Tribe, along with the State of Oregon, has actively participated in this litigation to point out the flaws in the 2000 FCRPS BiOp. One point the Nez Perce Tribe made is that no matter which side of the litigation the States and tribes ended up on in this litigation, the formal comments they submitted in the record, and all detail the biological flaws with NMFS' approach.

## SECOND, WHERE DO WE GO FROM HERE?

Leadership Is Needed The Federal court's ruling regarding the illegality of NMFS' BiOp under the ESA cries out for leadership, the kind you, Mr. Crapo, are showing, by calling this hearing. After the Court's ruling, I stated that, "The decision gives

the Columbia Basin's sovereigns a tremendous opportunity to ensure that salmon are recovered by actions, not words."

The Lack of Leadership Will Place The Issue in the Nation's Hands, and Increase the Pressure for Breaching the Four Lower Snake River Dams Unfortunately, others in the region appear to be placing their heads in the sand.

The Governors' Lowest Common Political Denominator After the Federal court declared NMFS' Biological Opinion for the FCRPS illegal, the regions' four Governors, in a testament to the lowest common political denominator, pledged to ensure that breaching the four lower Snake River dams is not on the table, because, in their words this issue is "polarizing and divisive." While paying lip service to supporting Federal agency budgets, and additional appropriations necessary to meet the "non-breach" approach, the Governors refused to do so if it meant adjusting rates to meet the legal obligations of the Endangered Species Act or the Northwest Power Act's equitable treatment mandate.

BPA is frustrating salmon recovery After the Federal court declared NMFS' Biological Opinion for the FCRPS illegal, Steve Wright, the Administrator of the Bonneville Power Administration, testified before the Senate Committee on Indian Affairs (on June 4, 2003) regarding fish and wildlife obligations to the Northwest Tribes. Amazingly, he completely failed to mention to the Senate that NMFS' Biological Opinion had been declared illegal. At a time when the Federal court and the salmon are crying out for more fish and wildlife recovery not less BPA has announced reductions in its fish and wildlife investments. BPA's indifference to salmon restoration makes it nearly impossible for an "aggressive non-breach" approach to occur.

More than the status quo is required Simply put, the status quo is not good enough to satisfy the Endangered Species Act, to say nothing of the United States' treaty and trust obligations. The Save Our Wild Salmon Coalition, in its detailed "Report Card" on the implementation of the BiOp, found that Federal agencies received half of the funding required by the "non breach" plan and accomplished less than 30 percent of the work. We are disappointed that they are not here today, as we believe they are partially responsible for this hearing occurring. To that end, we would like to be sure that you pay special attention to the Save Our Wild Salmon testimony, which we understand has been submitted as part of the record.

#### THIRD, WE CALL ON YOUR LEADERSHIP TO PROVIDE WHAT IS NEEDED

We request your leadership in three ways.

First, monitor the development of the new FCRPS BiOp As NOAA rewrites its Biological Opinion for the FCRPS, we urge you to monitor this process closely. Neither we, nor the salmon, can afford to waste more time. We urge you to urge NMFS and the "Action Agencies" (Bonneville, the Bureau of Reclamation, and the Corps of Engineers) to ensure that they embark on a salmon recovery strategy that is economically feasible, scientifically credible, and realistically achievable. We urge you and the subcommittee members to monitor this process carefully.

Second, scrutinize BPA's commitment to salmon recovery We urge your continued oversight of the actions of the Bonneville Power Administration with respect to its fish and wildlife funding. The Nez Perce Tribe has shown its on-the-ground leadership in implementing salmon recovery projects funded by Bonneville, including award-winning habitat restoration actions and the cutting edge Nez Perce Tribal Hatchery. Bonneville's reluctance to fund fish and wildlife recovery projects undermines its commitment to a "non breach" alternative. We urge you to urge the General Accounting Office to continue its ongoing investigations into Bonneville's financial and fish and wildlife obligations.

Third, continue to support the Pacific Coastal Salmon Recovery program Your support for Pacific Coastal Salmon Recovery has begun to show results with the projects implemented by the Nez Perce Tribe. We also support your efforts, and those of other members of the Idaho delegation, to see that the State of Idaho is included as a full participant in this critical program. We urge you to continue to ensure that this program is reauthorized for another 6 years, with increased funding for the tribes and States, in support of coordinated salmon restoration efforts, including the actions being implemented by the Nez Perce Tribe.

#### CONCLUSION

I appreciate this opportunity for the Nez Perce Tribe to testify. I will be submitting amended written testimony for the record and ask that you also allow the written testimony of the other Columbia River treaty tribes to be included in the record.

## STATEMENT OF NANCY MURILLO, CHAIRMAN, SHOSHONE-BANNOCK TRIBES

Mr. Chairman, Members of the Committee, on behalf of the Shoshone-Bannock Tribes, I appreciate the opportunity to submit these comments to you on the impacts on Fish and Wildlife Management Programs in the Pacific Northwest.

As Chairman of the Fort Hall Business Council, governing body of the Shoshone-Bannock Tribes, I provide the perspective of the Tribes regarding the impacts on Tribal Fish and Wildlife Management Programs in the Pacific Northwest. The Tribes' testimony will focus on the Federal Columbia River Power System Biological Opinion (BiOp); the BiOp Implementation Plans; the Bonneville Power Administration funding of the Columbia River Basin Fish and Wildlife Program through the Pacific Northwest Power and Conservation Council under the Pacific Northwest Power Planning and Conservation Act; Federal Energy Regulatory Commission relicensing; and the need for additional funding to fully analyze and participate in the numerous Federal and private forums surrounding the operation of the Columbia River Power System and its impact on anadromous fish and to implement the actions necessary to protect and restore the fish and wildlife resources of the Columbia River Basin.

In historic times, Idaho's Shoshone and Bannock speaking peoples were located at the headwaters of four major river systems in the western United States. They lived along, utilized, and traveled the rivers and tributaries of the Salmon and Snake, which feed the Columbia River system; but they also spent time on the rivers and tributaries leading to the Great Basin and the

Missouri, as well as, the Colorado Rivers. The vast majority of people descended from these Idahoans now live on the Fort Hall Indian Reservation in southern Idaho as enrolled members of the Shoshone-Bannock Tribes. We hold entitlements to these river systems which were bequeathed to us not only by our ancestors historic patterns of use but also by the treaties and other legally binding agreements made with the government of the United States (e.g., the Fort Bridger Treaty of 1868 (15 Stat. 673)). The Shoshone-Bannock Tribes have treaty rights on all unoccupied lands of the United States; and we manage our fisheries through our Treaty priority right in conjunction with our efforts in the Federal case, U.S. v. Oregon.

The Shoshone-Bannock Tribes have been involved for many years in the numerous policy, production and management processes tied to the Columbia and Snake rivers. We realize the importance of prioritization of the most important processes due to our limited staff and resources. This includes active involvement in prioritizing the absolutely critical and threshold projects needed to implement a balance between a reliable and inexpensive energy supply with the fish and wildlife needs that are impacted by the Columbia River Power System. The Shoshone-Bannock Tribes are full supporters of the Columbia Basin Fish and Wildlife Authority as a coordinating body for much of these activities.

*Endangered Species Act and the Columbia River Hydropower system*

One of the realities of Fisheries Management is the fact the Shoshone-Bannock Tribes cannot do any management without being completely absorbed by the Federal Endangered Species Act. We spend so much time on the processes that exist, that little time or staffing is left for actual production and management efforts to promote recovery of the salmon. However, the Shoshone-Bannock Tribes continue to prioritize on-the-ground implementation of actual production, hatchery reform, and harvest management activities despite the overwhelming burden of process. Our production efforts are also accomplished through U.S. v Oregon management agreements, by ESA through National Marine Fisheries Service NOAA Fisheries (NMFS) processes, and often by unresolved scientific (i.e., genetic) uncertainty and political infighting of the various governance structures.

The National Marine Fisheries Services (NMFS) and the U.S. Fish and Wildlife Service (USFWS) issued Biological Opinions (BiOps) in December 2000 for the operation and maintenance of the Federal Columbia River Power System (FCRPS). This complex of dams and reservoirs is operated by the U.S. Army Corps of Engineers (Corps), the U.S. Bureau of Reclamation (Reclamation) and the Bonneville Power Administration (BPA), referred to

collectively as the Action Agencies. The Action Agencies first implementation plan (The ESA Implementation Plan 2002-2006) was published as a draft in July 2001 and circulated for review; the 2002-2006 5-year plan was followed by the release of the first annual implementation plan. The NMFS BiOp also calls for annual progress reports as well as comprehensive check-ins in 2003, 2005, and 2008.

The Shoshone-Bannock Tribes are concerned with the continuing modifications of past plans before they are implemented. We have been involved with decades of planning that have not yet been implemented. Once again, the 2002, implementa-

tion plans for the 2000 BiOp have remained unsatisfactory to the needs of the endangered species and the Shoshone–Bannock Tribes. Less than 30 percent of the measures required to be completed by 2002 were accomplished; yet, water temperatures continue to increase, water flows continue to decrease, and funding allocations remain inadequate to correct these major deficiencies. For example:

1) Hydro system—the Shoshone–Bannock Tribes have recognized for many years that the Columbia River Power System of dams and reservoirs impede salmon migration and return to over 900 miles of river system, and requires major system configuration modifications. The Shoshone–Bannock Tribes have long advocated breaching the four lower Snake River dams (Ice Harbor, Lower Monumental, Little Goose and Lower Granite dams), not only for the benefits to anadromous fish, wildlife and clean water, but also for the major economic benefits that will result from more efficient alternative energy sources, additional recreation opportunities, preservation of tribal cultural resources, and associated long-term savings in fish and wildlife mitigation. The Shoshone–Bannock Tribes have long maintained that the hundreds of millions of dollars being spent on “fixing” these dams is a great waste, and that the expenditures would be significantly less if instead the investment were to fix the river by mothballing the dams.

2) Habitat restoration—the Shoshone–Bannock Tribes have tried to acquire land as conservation easements to return fragmented habitat for fish and wildlife connectivity. The Shoshone–Bannock Tribes have continuously attempted to put and keep clean, cold water into the streams, without the migration barriers associated with irrigation diversions, dewatering, and toxicity from mine effluent.

3) Hatchery-reform—the Shoshone–Bannock Tribes have been leaders in using low technology and inexpensive artificial propagation techniques that attempt to use hatchery-origin fish to rebuild wild, naturally spawning populations of anadromous fish. These efforts include side-stream egg incubators, and adult and smolt outplants of hatchery fish into wild fish areas. However, the ambiguous genetic theories of modern science continuously impede these efforts, even after several of the Pacific Northwest tribes have shown major success stories of these hatchery reform techniques.

4) Harvest the mixed stock interception fisheries are inequitable to the salmon resource and the Shoshone–Bannock Tribes. Selective fisheries should be initiated based on fishing area rather than gear restrictions. Releasing harvested salmon after being caught does not aide salmon recovery. The Shoshone–Bannock Tribes harvest fish in areas and at levels the populations of salmon can support and encourage all other entities to do the same.

Simply put, the Shoshone–Bannock Tribes are trying to put water into the creeks, and fish in the water. The Shoshone–Bannock Tribes attempt to carry out the purposes of our Tribal Policies and the Treaty commitments made in the 1868 Fort Bridger Treaty by being actively involved in the numerous forums that are designed to implement the ESA. It is our position that the ESA must be implemented in accordance with our Treaty.

It is difficult for Indian people to understand why the Northwest doesn't recognize what the native people have long known; fish need clean natural rivers to survive, just as the human being needs clean water to replenish our bodies. The Federal Action Agencies implementation plan does not promote clean, cool water for anadromous fish. Storage reservoirs have not been refilled, salmon flow targets have not been met, Potlatch continues to discharge 90 plus degree water and tributary habitat continues to be degraded. Likewise, the Treaty commitments and Trust Responsibility that has been statutorily assigned to the Federal family has not been upheld. The Shoshone–Bannock Tribes along with other tribes in the Region must constantly analyze the Federal actions to make sure that the Tribal goals and policies have been incorporated in the Action Agencies plan(s). In addition, we are constantly involved with the scientific, technical and policy forums to protect our Tribal Treaty commitments. Both the process and the modern science results in a huge financial burden being placed on the Tribes and a huge staffing need to protect our concerns.

#### *Bonneville Power Administration Fish and Wildlife Funding*

The Shoshone–Bannock Tribes have received funding for Fish and Wildlife projects pursuant to the Pacific Northwest Power and Conservation Council's (Council) processes for several years. We are very concerned with the political influences that impact Bonneville Power Administration (Bonneville) funding of the Columbia River Basin Fish and Wildlife Program. The Shoshone–Bannock Tribes have been sponsors of several fish and wildlife project proposals that ranked higher in both the fish and wildlife managers' and the Independent Scientific Review Panel review and prioritization based on scientific validity, only to get bumped out of the process

by lower scientifically ranked proposals, due to recommendations made by Governor-appointed Council members. For example, in the East Fork Salmon River, the Shoshone-Bannock Tribes proposed to use Bonneville funds to purchase land that included fish acclimation ponds and prime fish and wildlife habitat as a conservation easement, including the suspension of irrigation to allow more water to remain in the stream and tributaries. This proposal ranked very high and was recommended for Bonneville funding in both scientific reviews, yet the Council did not recommend funding to Bonneville. The Idaho Governors Office of Species Conservation sponsored a similar proposal further up the East Fork Salmon River, for a similar amount of land but that did not include fish acclimation ponds and did not suspend irrigation. The Governor's Office proposal ranked low and was not recommended for funding in either of the scientific reviews, yet moved forward from the Council with a recommendation to fund. To the best of our knowledge, now, 2 years later, the acquisition of the property the Governor's office sponsored has fallen through because the landowner cannot maintain his private-only use of the property as was proposed and as is not allowed with Federal funds. This is from the Shoshone-Bannock Tribes view as well as the expertise of independent scientific peers, is but one of many examples of the politically driven funding decisions that are not critical for fish and wildlife recovery, and that resemble fraudulent waste of Federal funds.

*Bureau of Indian Affairs Fish and Wildlife Funding*

The Shoshone-Bannock Tribes received a \$100,000 add-on to the base Fish and Wildlife Program Management and Development fund in 1992. Despite repeated requests for at least \$550,000 annually to meaningfully participate in the myriad of process and implementation activities related to anadromous fish management, the Shoshone-Bannock Tribes have received no additional funding for over a decade. Inadequate funding prevents the Shoshone-Bannock Tribes from meaningfully participating in ocean harvest forums (Pacific Fisheries Management Council and U.S.—Canada Treaty); Pacific Northwest Power and Conservation Council activities; Columbia River Power System forums and processes (Fish Passage Advisory Committee, Fish Passage Center Oversight Board, System Configuration Team, Technical Management Team, Implementation Team, Executive Committee, Water Quality Team), Action Agency forums, and FERC relicensing.

The Shoshone-Bannock Tribes policy is to treat the Snake and Columbia rivers as one river system that emphasizes the natural riverine ecosystem, rather than upriver (storage reservoirs, resident fish species) versus downriver (riverine, anadromous fish species) conflicts. The Shoshone-Bannock Tribes were major participants in the Watershed Equity Team that drafted a way to operate and configure the Columbia River Power System to meet both the upriver and downriver biological objectives. The Tribes also were leaders in working with the 13 federally recognized Columbia Basin Indian Tribes to develop a draft Unified Tribal Vision Paper on the Columbia River fish and wildlife resources and how to achieve that vision; and a Red Paper on river governance that afforded the technical, policy and legal authorities and responsibilities to the three sovereigns (tribal, State and Federal). These past activities were supported by the BIA funding, which now is severely constricted due to the significant increase in process for the Columbia River basin fish and wildlife management and recovery.

*FERC Re-licensing and the Federal Energy Bill*

The proposed Energy Bill, Title V, Federal Power Act Amendments—The proposed changes would affect some tribes directly: those with dams on their Reservations. This includes the American Falls Reservoir and its impacts on the Fort Hall Indian Reservation and also down river flows for salmon. The bill would amend in two ways Sections 4(e) and 18 of the Federal Power Act as they relate to mandatory conditions imposed on licensed projects to protect Indian Reservations and fish passage. First, additional procedural protections would be granted to hydro licensees. Second, licensees would have equal status as governmental agencies to propose conditions for the protection of Indian Reservations and fish. Section 4(e) requires that the Federal Energy Regulatory Commission (FERC) take measures to protect Indian Reservations when hydro projects are located within and, affect those Reservations. It provides that the FERC can impose mandatory conditions on the license as recommended by the Secretary of the Interior:

“Provided, that licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation.”



Clearly, when viewed alone this proposed section is designed to arm hydro developers with further procedural mechanisms to challenge conditions imposed to protect Indian people and fish. This will further delay and frustrate the implementation of measures to protect Tribal interests. However, when viewed together with additional rights hydro developers would have under this bill, their rights would become even more oppressive. What is remarkable is proposed Section 33 of the bill. It would allow licensees the opportunity to recommend their own proposed protective measures under Sections 4(e) and 18. The criteria for acceptance of the developers' proposals will include cost reduction and improved electricity production. This bill would give licensees greater rights than sovereign nations and would reduce consideration of Tribal interests considerably. Disputes on whether to accept the developers' proposals would be referred to the FERC's Dispute Resolution Service. The non-binding advisory of the Dispute Resolution Service would go to Secretary of the Interior for acceptance or rejection, which is then submitted into the FERC record. At that point, the procedural protections discussed above would apply. This bill would significantly dilute Tribal interests and would defer the protection of Federal trust obligations to private parties. Only Congress can abrogate protections of tribal trust resources which must be done expressly and specifically. This bill sets a dangerous precedent.

FERC is considering new regulations that propose to establish a new Consultation Policy that sets forth how FERC will complete Government-to-Government consultation with Indian Tribal governments. This is a step in the right direction since the present process does not allow for any meaningful involvement by Tribal governments and there is no mandate for consultation with any Tribe. We would urge this Committee to oversee this process and possibly conduct hearings on Tribal involvement.

In summary, the Shoshone-Bannock Tribes emphasize the Columbia and Snake river systems as one river system. The Tribes promote the natural riverine ecosystem as a High Significance to the Shoshone and Bannock people and culture. We appreciate the opportunity to provide this testimony to the U.S. Senate Committee on Environment and Public Works Subcommittee on Fisheries, Wildlife, and Water.

The Shoshone-Bannock Tribes are situated high at the headwaters of the longest-traveled anadromous fish species in the world, and provide unique and proactive advice and techniques for the recovery and protection of these animals. We invite the Senate Committee and staff to travel to the Fort Hall Indian Reservation and to the off-Reservation management areas to learn more about our subsistence practices, and the management of our production, habitat, and harvest programs.

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STATEMENT OF PAT FORD, EXECUTIVE DIRECTOR, SAVE OUR WILD SALMON

On behalf of the Save Our Wild Salmon Coalition (SOS) and our combined membership of more than four million people nationwide, I thank Chairman Crapo and members of the subcommittee for holding this hearing today. Northwest sport and commercial fishermen and women, fishing businesses and conservationists thank you for this leadership.

Chairman Crapo, you render a service to your State and region by inquiring into the status of Columbia and Snake River salmon and steelhead recovery efforts, including the status of current Federal and regional financial investments. Wild salmon and steelhead are an icon of the Northwest, deeply woven into the lives, communities, economies, and cultures of its people. Salmon and steelhead support many thousands of family wage jobs, bring hundreds of millions of dollars into Northwest communities every year, help assure community stability and health, signify and assure clean water for millions of people, and nourish the spiritual and material cultures of the Northwest. We also note that abundant wild salmon and steelhead in the rivers and streams of the Columbia Basin constitute a major part of the solemn promises made in the treaties between our country and the native people of the Northwest. Those promises have been sorely neglected. We thank you for seeing further and more deeply into the real stakes, values, and benefits of salmon and steelhead recovery.

This subcommittee has asked those testifying to assess the status of Columbia and Snake River wild salmon and steelhead recovery. Since December 2000, the Federal salmon plan—also known as the 2000 Biological Opinion for the Federal system of dams—has governed those efforts. This plan acknowledged that partial removal of four dams on the lower Snake River is the surest scientific means to restore Snake River salmon, but opted instead for an everything-but-dam-removal approach. Federal, State, and tribal representatives estimated the plan's implementation cost at nearly \$1 billion annually. Its implementation requires close coordina-

tion amongst 13 Federal agencies, 13 federally recognized Indian nations, four States, and many local governments and private entities. Most Northwest elected leaders, including yourself, Mr. Chairman, generally supported this plan—but you were one of the few to note at the time the profound managerial and fiscal challenge that implementing it presented.

Your fears were justified. In 2001 and 2002, Save Our Wild Salmon released detailed report cards on Federal implementation of this plan. We found that the Federal agencies are implementing less than 30 percent of the plan's required measures, and receiving about 50 percent of its required funding. Those two Report Cards are attached here for the record.

If this pattern of failure to implement the plan is examined more closely, one finds the failure greatest in precisely those measures which scientific analyses have repeatedly shown are the most beneficial to salmon and steelhead: those which restore stream, river, and estuary habitats,

including of course the critical migratory habitat. Put simply, fish need water, Fish need functioning rivers. Yet these are the areas where the least has been done to protect fish.

Others have reached similar conclusions. In 2002, the U.S. General Accounting Office (GAO), at your request, analyzed salmon recovery spending to date and what that spending had accomplished. GAO found that more than \$3.3 billion had been spent on salmon recovery in the previous 20 years, with little to no measurable improvement for that investment.<sup>1</sup> NOAA Fisheries (formerly the National Marine Fisheries Service) released a report finding that, despite recent adult salmon returns, wild Snake River salmon are in as bad shape now as when they were listed more than 10 years ago.<sup>2</sup> NOAA's recent analysis of the implementation of the Federal salmon is also illuminating. That analysis states ". . . unless we can quickly develop alternative means of assessment, at the 2003 check-in NOAA Fisheries will need to evaluate whether there will be greater uncertainty associated with the Opinion's reliance on offsite mitigation that will remain beyond the 2005 check-in and any significance for avoiding jeopardy."<sup>3</sup> And, as we now know, the salmon plan which the Administration has failed to implement was itself not sufficient to meet the test of law; a Federal court has ruled it illegal.

As you know, in recent months, the flurry of concern around BPA's management of both its fiscal and public purpose responsibilities has been swirling. Congress has requested GAO reports that focus on BPA's financial situation and fish and wildlife obligations. Similarly, regional concern (noted in editorials, hearings, etc.) has risen greatly. Earlier this month, GAO testified before the Senate Indian Affairs Committee stating that "BPA's two roles, as supplier of economical and reliable power and as protector of fish and wildlife, inherently conflict . . . [this conflict] will likely become more intense if growing power demands bump up against increased efforts to mitigate damage to fish and wildlife."<sup>4</sup> BPA's financial troubles are exacerbating this conflict of interest.

None of this is surprising. In 1995, a NOAA Fisheries endorsed group of independent, tribal, State, and Federal biologists, after 4 years of investigation and \$7 million, found that partial removal of the four lower Snake River dams was the surest and best means to restore abundant Snake River salmon. In 2000, the Northwest Power Planning Council's Multi-Species Framework Approach for the Columbia River Basin showed that lower Snake River dam removal would significantly increase Snake River salmon populations at a competitive cost when compared with other alternatives that would require costly and truly aggressive "offsite" measures involving significant water acquisitions and severe land management restrictions.<sup>5</sup> And just earlier this month, the scientific journal, *Conservation Biology* published a study by a U.S. Fish & Wildlife fisheries biologist that shows once again that partial dam removal was the surest and best option for recovery of Snake River salmon

<sup>1</sup> United States General Accounting Office, *Columbia River Basin Salmon and Steelhead: Federal Agencies' Recovery Responsibilities, Expenditures and Actions*, July 2002 (GAO-02-6 12).

<sup>2</sup> Northwest Fisheries Science Center, Biological Review Team *Draft Report of Updated Status of Listed ESUs of Salmon and Steelhead*, 2003.

<sup>3</sup> National Marine Fisheries Service, *Findings Regarding Adequacy of the Endangered Species Act 2003/2003-2007 Implementation Plan for the Federal Columbia River Power System*, May 14, 2003.

<sup>4</sup> Jim Wells, Director, Natural Resources and Environmental Team, U.S. GAO, *Testimony before the Senate Indian Affairs Committee* (June 4, 2003).

<sup>5</sup> Northwest Power Planning Council, *Human Effects Analysis of the Multi-Species Framework Alternatives*, February 2000.

and steelhead.<sup>6</sup> Taking science and law together, we have just two real options for salmon recovery—partial removal of the lower Snake River dams or significant water acquisition and severe land management restrictions.

The Northwest Governors recently sent a letter to President Bush suggesting that the rewrite of the Federal salmon plan should largely stay on the current course. We strongly disagree. As a matter of law and treaty, minor changes will not suffice. The people and communities of the Northwest need a real plan. Staying the course ensures several things that none of us wants: it ensures the ultimate extinction of salmon in the Snake River and the jobs and communities dependent upon them. Staying the course means the ship of salmon recovery will hit the rocks and break apart. Clearly the sirens of the status quo were singing and clouding the judgment of our regional leaders.

We urge you to close your ears to those sirens of status quo, to chart a safer, more productive path for the future of Pacific Northwest salmon. We urge you to press this Administration to craft a plan that is achievable; that follows the science; and that protects salmon-based communities and our nation's treaty obligations by ensuring self-sustaining harvestable salmon.

In particular we ask you to:

- (1) secure an Administration process on the rewrite of the Federal salmon plan that formally involves the States and Tribes, and that provides opportunity for public comment;
- (2) ensure that all options for salmon recovery are on the table, including the partial removal of the four lower Snake River dams;
- (3) urge an independent regional economic analysis of the benefits now derived from salmon and steelhead, and the benefits available if abundant harvestable wild salmon and steelhead are restored to the Columbia and Snake River Basin;
- (4) support an assured, multi-year, dependable salmon investment fund at BPA in the amount of at least \$230 million/year, with fishery agencies and Tribes sharing formal decisionmaking on its spending with the Federal representatives.

As the bicentennial of Lewis and Clark begins, we hope that this hearing is simply the start of our nation's efforts to chart a new course on salmon recovery, to think critically, act honestly, and restore fully salmon and steelhead to the Snake and Columbia rivers. These fish—the same fish that saved the Lewis and Clark expedition from starvation—are a part of our nation's history, the essence of our moral and legal obligations to the Native Peoples of the Northwest, integral to cultures and religions, and essential to the economic fabric of the region.

Thank you again for holding this hearing and for beginning a process to shed light on how best to protect this economic, religious, and magical resource for generations to come. SOS stands ready to assist you in those efforts.




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<sup>6</sup>Wilson, Paul H., Using Population Projection Matrices to Evaluate Recovery Strategies for Snake River Spring and Summer Chinook Salmon, *Conservation Biology*, Vol. 17, No. 3, June 2003.