

Northwest Power and Conservation Council Columbia River Basin Fish and Wildlife Program

Findings and Responses to Comments relating to the Council's decision to amend the Fish and Wildlife Program to add the Blackfoot River Subbasin Plan

February 2011 (document 2011-3)

Introduction

Under Section 4(h) of the Northwest Power Act, the Northwest Power and Conservation Council oversees the development, amendment, and implementation of a program to “protect, mitigate and enhance” fish and wildlife adversely affected by the development and operation of the hydroelectric facilities on the Columbia River and its tributaries, known as the *Columbia River Basin Fish and Wildlife Program*. The Council most recently amended the program in 2009. The current version is found on the Council's website at <http://www.nwcouncil.org/library/2009/2009-09/Default.asp>.

In the years 2002 to 2005, the Council led a planning effort to develop “subbasin plans” for the tributary subbasins of the Columbia basin, containing specific objectives and measures for the program at the subbasin level. The effort culminated in 2004-05 as the Council amended into the Fish and Wildlife Program the management plan elements of the subbasin plans for nearly all of the Columbia's tributaries. <http://www.nwcouncil.org/fw/subbasinplanning/Default.htm>.

Planners in a handful of tributaries did not complete subbasin plans at that time. The Council left open the possibility of further amending the program if subbasin plans came in at a later date, and has continued to support in the Fish and Wildlife Program the development of subbasin plans for tributaries still without plans.

In September 2009, the Council received a proposed subbasin plan for the Blackfoot River subbasin in Montana, which may be found at <http://www.nwcouncil.org/fw/subbasinplanning/bb.htm>. The Blackfoot Challenge and Trout Unlimited acted as the dual lead planning entities for the Blackfoot plan, working with more than a dozen governmental agencies and non-governmental organizations as partners and coordinating and consulting with many more. The planning team recommended the Blackfoot subbasin plan for adoption into the Council's Fish and Wildlife Program. Following review comments by the Council's Independent Scientific Review Panel, the Blackfoot subbasin planning team submitted a revised Blackfoot subbasin plan in January 2011. Further details of the Council and public review process are described in detail in the following section.

At this time, in February 2011, the Council is adopting the management plan elements of the Blackfoot River Subbasin Plan into the Council's Fish and Wildlife Program. This document explains the Council's disposition of the Blackfoot subbasin plan recommendation, and also explains how the Council responded to the public comments it received on the recommended program amendment. Note that the Council's subbasin plan decision in 2005 included a lengthy discussion of the Council's subbasin planning effort, the purpose and structure of subbasin plans, the legal requirements for amending the Council's Fish and Wildlife Program, required findings on the

recommended subbasin plans, and responses to comments on the proposed amendments. Subbasin Plan Amendments Findings and Response to Comments, <http://www.nwcouncil.org/library/2005/2005-13.pdf>. The 2005 decision document is incorporated here by reference, and its detail will not be repeated here. This subbasin plan decision document should be considered a supplement to the earlier decision document. Both decision documents are formally part of the Fish and Wildlife Program along with subbasin plans themselves.

Amendment Process and Decision

In September 2009, the Council received proposed subbasin plans for both the Bitterroot and the Blackfoot rivers in Montana for consideration as possible program amendments. As noted above, the Blackfoot Challenge and Trout Unlimited acted as the dual lead planning entities for the Blackfoot plan. The lead entities worked with governmental agencies and non-governmental organizations as planning partners, and coordinating and consulting with many more. The Bitterroot and Blackfoot subbasin plans as proposed may be found at <http://www.nwcouncil.org/fw/subbasinplanning/bb.htm>.

Under Section 4(h) of the Northwest Power Act, Fish and Wildlife Program amendment processes ordinarily begin with the Council sending a written request for program amendment recommendations to state and federal fish and wildlife agencies, Indian tribes, and others, allowing at least 90 days for a response. The Power Act also requires the Council to allow an opportunity for review and comment on recommended amendments. The Council decided to consider the proposed Bitterroot and Blackfoot subbasin plans as formal “recommendations” for program amendments, as that term is used in Section 4(h). It was thus incumbent on the Council to provide written notice and allow an opportunity for review and comment on those recommendations, and also to allow others an opportunity to submit formal amendment “recommendations,” too, if so desired. On that basis, in November 2009, the Council provided the following written notice required under the Power Act (*see* <http://www.nwcouncil.org/fw/subbasinplanning/bb.htm>):

In September 2009, the Council received subbasin plans for the Bitterroot and Blackfoot subbasins as recommended amendments to the Council’s Columbia River Basin Fish and Wildlife Program. Montana Water Trust recommended the Bitterroot subbasin plan. Trout Unlimited recommended the Blackfoot plan.

The Council now proposes to amend the Fish and Wildlife Program to incorporate the management plan portions of the recommended subbasin plans for the Bitterroot and Blackfoot subbasins.

For the next 90 days, the Council welcomes comments on these two plans and the ISRP’s review of the plans. The Council hopes to focus comments on the proposed plans as recommended and on the idea of incorporating them into the program. But you are also free under Section 4(h) of the Northwest Power Act to recommend alternative provisions for these two subbasin plans or even an entirely different subbasin plan for these two subbasins. Additional information about the requirements for subbasin plans can be found in Part VI of the Council’s 2009 Fish and Wildlife Program,

(www.nwcouncil.org/library/2009/2009-02.htm) and at the Subbasin Planning page (www.nwcouncil.org/fw/subbasinplanning).

Comments or recommendations related to the proposed subbasin plans for the Bitterroot and Blackfoot subbasins must be submitted to the Council by February 11, 2010, to ensure consideration by the Council.

Thus February 11, 2010, was the closing date for receipt of “recommendations” relating to the Bitterroot and Blackfoot subbasins. The Council did not receive any competing program amendment recommendations for either the Bitterroot and Blackfoot subbasins. Thus there was no reason to seek further public review and comment on competing recommendations.

The Council did receive a handful of written comments (and, later in 2010, oral comments) on the recommended Bitterroot subbasin plan, found at <http://www.nwcouncil.org/fw/subbasinplanning/bb.htm>, but not on the Blackfoot plan at that time.

As noted in the public notice, the Council also asked its Independent Scientific Review Panel (ISRP) to review both of the proposed subbasin plans for scientific soundness, as it did with all the previous subbasin plans. The ISRP reviewed the subbasin plans and met with the planners from each subbasin for presentations and a tour. The Panel released its review report on the proposed Bitterroot and Blackfoot subbasin plans late in November 2009. The Panel commented favorably on the Bitterroot plan, while it had more concerns about the proposed Blackfoot plan. <http://www.nwcouncil.org/library/isrp/isrp2009-46.pdf>. (The Council soon separated the Bitterroot River Subbasin Plan for consideration and subsequently adoption into the Fish and Wildlife Program, in September 2010. See <http://www.nwcouncil.org/fw/subbasinplanning/Default.htm>.)

The Council released the ISRP report for public review and comment as well, including any responses that might be necessary or desired from the lead planning entities. Trout Unlimited, a lead entity for the Blackfoot plan, submitted a written response to the Council in February 2010, explaining how the planners proposed to revise the Blackfoot plan in response to the ISRP’s comments. The letter is found at <http://www.nwcouncil.org/library/isrp/2009-46comments/tu.pdf>.

The Blackfoot planners submitted a revised Blackfoot River Subbasin Plan to the Council in January 2011, found on the Council’s website at <http://www.nwcouncil.org/fw/subbasinplanning/blackfoot/plan/default.htm>. Stan Bradshaw of the lead entity Trout Unlimited briefed the Council on the revisions at the Council’s 2011 meeting in Missoula, Montana, and requested that the Council adopt the Blackfoot plan as revised into the Fish and Wildlife Program. How the planners responded to the ISRP review comments is described in the next section.

The Council then opened a public review period until February 1, 2011 on the question of whether to adopt the revised version of the Blackfoot plan into the program. The Council also held a public hearing by teleconference on January 31, 2011. The Council received a small set of written and oral comments on the proposed plan, noted in the next section.

After full review and consideration of the recommendation, the public comments, and the other material in the administrative record, the Council is adopting the management plan elements of the Blackfoot River Subbasin Plan as part of the Fish and Wildlife Program. The Council adopts the Blackfoot plan consistent with and under the same terms as the Council's adoption of the management plan elements of the other subbasin plans. *See* <http://www.nwcouncil.org/library/2005/2005-13.pdf> (2005 subbasin plan amendments findings and response to comments); <http://www.nwcouncil.org/library/2010/2010-14.pdf> (Sept 2010 findings and response to comments adopting the Bitterroot subbasin plan); *see also* <http://www.nwcouncil.org/library/2009/2009-09.pdf> at 3-5, 57 (2009 Fish and Wildlife Program provisions describing role of subbasin plans) and <http://www.nwcouncil.org/library/2009/2009-09/2009-09F.pdf> at 3-5, 193-202 (discussion of role of subbasin plans in findings and response to comments on 2009 program amendments).

Because the Council is adopting the Blackfoot subbasin plan largely as recommended, with certain revisions promoted by the comments, there is no need here to provide the type of written findings required under Section 4(h)(7) of the Northwest Power Act when the Council decides *not* to adopt a program amendment recommendation as recommended. The following section does respond to the comments the Council received on the proposed Blackfoot subbasin plan.

Response to Comments on the Blackfoot River Subbasin Plan as Proposed for Adoption into the Council's Fish and Wildlife Program

**U.S. Fish and Wildlife Service, Montana Ecological Services Field Office
Confederated Salish & Kootenai Tribes
Forest Supervisor, Lolo National Forest**

The Council received three comments largely or wholly favorable to the proposed Blackfoot subbasin plan.

In an early comment letter otherwise devoted to the Bitterroot subbasin plan, the Fish and Wildlife Service's Ecological Services Office congratulated the Council in general for "continuing to pursue true basinwide planning efforts. We had previously pointed out that the Columbia Basin Subbasin Planning effort is not truly comprehensive so long as major portions of the Montana headwaters were excluded. The Blackfoot and Bitterroot plans will pick up major portions of the previously missing habitat, but we continue to note that the mainstem Clark Fork in Montana remains unplanned."

Lynn Ducharme of the staff of the Confederated Salish & Kootenai Tribes submitted a note to say that the Tribes' comments on the Blackfoot subbasin plan would be identical to those provided earlier on the Bitterroot subbasin plan. Those earlier comments may be summarized as noting that while not perfect, the subbasin plan should be of help in improving conditions for bull trout, a significant cultural species for these Tribes. The Tribes will be looking for opportunities to implement measures in the plan as mitigation for adverse effects of the hydrosystem on bull trout.

Finally, the Forest Supervisor of the Lolo National Forest submitted a letter in support of a decision to adopt the Blackfoot River Subbasin Plan into the Fish and Wildlife Program. The letter noted how the planners coordinated with Forest personnel and data in producing the technical assessment and management plan for the subbasin in a way that is also providing benefits to and complementing the Forest's watershed restoration work. The Forest Supervisor's letter also addressed an issue with regard to the specificity and scale of the assessment that will be noted below in regard to the response to the ISRP review. The Lolo Forest letter concluded that acceptance of this plan into the Council's Fish and Wildlife Program "coupled with the existing partnership efforts will have synergistic benefits to the Blackfoot watershed."

Independent Scientific Review Panel

The Council considered the ISRP's report to be a comment on the recommended Blackfoot subbasin plan, albeit a "comment" generated through a review requested by the Council under highly structured premises. The Council has asked the ISRP to evaluate all proposed subbasin plans for consistency with the Fish and Wildlife Program, especially with the Scientific Principles in the program, by using a list of review questions developed by the Council to help the Panel and the Council to determine the scientific soundness of subbasin plans. To complete the reviews, the ISRP itself created a review checklist derived from the Council's Subbasin Planning Technical guide and the review questions developed by the Council. The ISRP used the same checklist and review approach for the Blackfoot and Bitterroot subbasin plan review as it did for all the plans in 2004. As part of this review, the ISRP also met with planners for presentations and a tour of the subbasin in October 2009.

As described in the 2005 subbasin plan findings and response to comments, the Council has been particularly interested in the ISRP's views on the soundness of the technical assessment underneath whatever subbasin plan is on review (that is, the data and information on population status for the focal species and on the identification of habitat conditions supporting or limiting the productivity of these species) and then on how well the management plan links priority objectives and strategies to protecting productive habitat and addressing the limiting factors identified in the technical assessments. These concerns in particular became a fundamental dividing point for Council consideration of proposed subbasin plans. That is, if the ISRP found a proposed subbasin plans to have an inadequate technical assessment or to lack the appropriate linkage of priority objectives and strategies to the assessments, the Council deferred consideration of the plan for program adoption until the planners could improve the plan in response. Only if the ISRP had a largely favorable view of a plan's technical assessment and management plan "linkage" did the Council move those plans into a track for further consideration as program amendments. *See* <http://www.nwcouncil.org/library/2005/2005-13.pdf>, pp. 8, 12-13, 15-16, 38-39, 53 (discussion and treatment of proposed subbasin plans based in large part on the ISRP's comments regarding the adequacy of technical assessments and the appropriate "linkage" of priority objectives and strategies in the management plans to the technical assessments).

As highlighted above, with regard to the Blackfoot subbasin plan as originally recommended, the ISRP had concerns with both the technical assessment and the management plan. <http://www.nwcouncil.org/library/isrp/isrp2009-46.pdf>. The ISRP was particularly

concerned that the technical assessment lacked sufficient information on the population status of native salmonids and also needed a more spatially specific assessment of the native salmonids. And the panel was also concerned that the management plan did not adequately detail and prioritize existing restoration strategies and link them to the assessment -- essentially a problem arising out of the weakness in the assessment, in the ISRP's view -- or provide sufficient monitoring and evaluation elements. Even so, the Panel was by no means completely critical of the Blackfoot plan, finding significant portions of the plan well and clearly written and including a good description of the geographical, demographical, and environmental context of the Blackfoot. And the ISRP has no particular concerns about the plan's general consistency with the Council's Fish and Wildlife Program and its Scientific Principles. The Panel concluded, however, that "while the planners were conscientious, they have not yet completed an assessment at 6th code HUC for native salmonid focal species. Thus, they have not conducted the analysis needed to move from the assessment to a functional management plan. The draft Management Plan (and entire Subbasin Plan) is not yet specific enough to be particularly useful for the stakeholders in the Blackfoot Subbasin or the Council."

The planners revised and supplemented the Blackfoot plan in light of the ISRP's comments, and summarized the revisions as follows:

- a) Provided more detail in the assessment about the status of bull trout under the Endangered Species Act, and updated the text to reflect recent federal actions on the designation of critical habitat for bull trout (pp.41-44);
- b) Provided a more detailed description of the baseline data collection efforts as to: native salmonid populations and life histories; habitat assessments; investigations of westslope cutthroat trout genetic composition within the Blackfoot sub-basin; limiting factors identified on 182 streams throughout the basin (with a description of those streams at Appendix A), and other ongoing aquatic studies within the sub-basin (pp.79-97);
- c) In the inventory, more fully describe the conservation and monitoring efforts that have occurred in the sub-basin, and expands the gap assessment to describe some of the more challenging aspects of the restoration effort (p. 194 and pp. 210-211); and
- d) Substantially modified Part 5.4 on monitoring, evaluation and research, to fully describe the existing monitoring and evaluation effort (pp.244- 245).

In addition to the textual changes described above, we have added four additional appendices—J through M--to more fully incorporate the existing restoration efforts into the body of the plan.

The following explains the ISRP's concerns and the planners revisions in response in more detail:

Technical Assessment

- The assessment does not provide a succinct description of the species (bull trout and westslope cutthroat trout) or subspecies level assessments that have been conducted by state, federal, or other biologists.
- Regarding habitat conditions and limiting factors for bull trout and westslope cutthroat trout, the assessment of environmental conditions is limited by being overly general and not transparent. The assessment is generally not specific enough on a spatial scale.

The planners provided a significant amount of additional information on the population status and spatial locations by stream and reach for the key native salmonids (bull trout and westslope cutthroat trout). This information is largely found at pages 79-97 of the assessment and in the appendices of the revised management plan, including population estimates and distributions of the target species. The planners also provided a list of priority restoration streams and stream reaches for native fish, although not yet an assessment to the 6th Code HUC level. The revised plan also broke down the viability assessments into bull trout and westslope cutthroat trout rather than grouping them together as “native salmonids.” With regard to bull trout, the sponsors added detail particularly as it pertains to the recent USFWS designation of critical habitat for bull trout and populations information from the USFWS Bull Trout Recovery Plan.

Planners admittedly did not have the time, tools or resources to complete a viability assessment at the 6th Code HUC level that the ISRP thought would be appropriate. However, the revisions to the technical assessment provided a significantly improved spatial assessment by stream reach of native salmonid status and limiting factors. The planners also provided more detailed information in the management plan appendices (J - M) that break the plan down into 182 stream reaches in the Blackfoot subbasin and score them based on native fish priorities, total fisheries priorities, biological priorities, and total restoration priorities, linked back to the additional information in the assessment. The planners expect to work with others in the basin to take the viability assessments to the 6th Code HUC level in the near future, and it is the very assessment work of the Blackfoot subbasin planners that is leading the effort in the basin to this level of specificity and tying the assessment to priorities. From the letter of the Forest Supervisor of the Lolo National Forest:

“These [Forest Service] projects were the result of meaningful Forest-level planning efforts that determined aquatic, terrestrial, and vegetative restoration needs within these areas. Currently our Montana Bull Trout Level I team is updating our Bull Trout Baseline data for every 6th Field HUC in Western Montana in addition to developing a Bull Trout Conservation Strategy. *Efforts in building this Subbasin Plan have helped shape and provide local data to these efforts. The development of this Subbasin Plan has facilitated a seamless assessment across all ownerships and will prove invaluable for implementing the right project in the right area to achieve desired objectives.*”

Inventory

The ISRP had no major issues with the inventory in the original draft, noting that the plan “documented partnerships and projects well.” To address a set of minor comments, the planners added sections further describing efforts that have occurred in the subbasin, including adding a number of appendices that more fully incorporate the existing restoration efforts into the plan.

Management Plan

- The draft Plan lacks empirical data and models, is not sufficiently quantitative where it needs to be, and is not based on a sufficiently fine spatial scale.
- Lists of strategic actions are given, rather than a logic path that indicates which actions need to be done first, second, third, and so on.

These comments by the ISRP reflected as much the weakness in the original assessment as anything -- the lack of specificity in the assessment made it hard to prioritize restoration actions linked to the assessment. And as noted above, the planners have added significant amounts of population and spatial assessment information to the technical assessment and the management plan, especially with regard to the key cutthroat trout and bull trout, and a significantly improved effort in the new appendices to the management plan to evaluate information, baseline data and restoration strategies on 182 stream reaches, tying the conclusions back to the assessment. The planners then did the work necessary to prioritize the streams and projects on this basis. For example, the strategic actions for bull trout and westslope cutthroat trout in the management plan incorporate the guidance found in the prioritization strategy (table 3.12 in the assessment), the Table of Potential Restoration Projects (Appendix M), and the 2002 USFWS bull trout recovery strategy (Appendix K).

- More details of the RM&E Plan should be provided.

The planners modified the monitoring and evaluation section of the plan to more fully describe the monitoring and evaluation efforts in the basin, including information related to long-term water quality monitoring and the Blackfoot Watershed Status and Trends Monitoring Network. The ISRP's critique of the monitoring and evaluation elements of the Blackfoot subbasin plan (and the Bitterroot subbasin plan) are similar to the Panel's criticism of nearly all the subbasin plans developed in 2004-05 as well, an issue the Council has largely decided to treat not by immediate revisions to individual plans but through the ongoing efforts at improving the regional monitoring and evaluation framework. <http://www.nwcouncil.org/library/2005/2005-13.pdf>, 8, 11-12.

In conclusion, the Council concludes that the planner's revisions and additions to the subbasin plan substantially strengthened both the technical assessment and the management plan in ways directly in response to the ISRP's concerns. The technical assessment include sufficient information on the native salmonid populations of particular conservation concern, including a spatial viability assessment at a stream reach level appropriate in this case for identifying priority restoration activities, which has been done in the management plan and linked to the assessment in an adequate fashion. It would be even better, as suggested by the ISRP, to take that spatial viability assessment further, to the 6th Code HUC level, and the Blackfoot planners eventually hope to do that. However, not all of the technical assessments for the other subbasin plans adopted into the Fish and Wildlife Program assessed and planned to the 6th Code HUC level. The revised assessment and management plan here is within the range of spatial assessment specificity deemed appropriate, especially in the context of these upriver basins that provide some mitigation opportunities but are likely not to be home to huge amounts of Bonneville-funded restoration work. Based on the way in which the planners have revised the Blackfoot subbasin plan to respond to the ISRP's review comments, and on its own review of the full record, the Council concluded that the Blackfoot subbasin plan satisfies

the requirements for subbasin plans in the Fish and Wildlife Program consistent with the Council's review of and decisions on the earlier subbasin plans.

Dave Statler, Nez Perce Tribe
Charles Pace

Both of these comments questioned whether any nexus exists between the problems and opportunities identified in the proposed Blackfoot River Subbasin Plan and adverse effects to fish and wildlife caused by the development and operation of the Columbia hydrosystem, justifying adoption of the Blackfoot subbasin plan into the program.

The Council has already responded to similar comments during the 2004-05 subbasin planning effort, during the 2009 Fish and Wildlife Program amendments and, directly on point, as part of the decision to adopt the Bitterroot River Subbasin Plan, also a tributary of the Clark Fork River. *See* 2005 Subbasin Plan Amendments, Findings and Response to Comments, <http://www.nwcouncil.org/library/2005/2005-13.pdf>, 36-37, 66-67; 2009 Fish and Wildlife Program, <http://www.nwcouncil.org/library/2009/2009-09.pdf>, 7; 2009 Fish and Wildlife Program Amendments, Findings and Response to Comments, <http://www.nwcouncil.org/library/2009/2009-09/2009-09F.pdf>, 21, 25, 28-29; Sept 2010 Findings and Response to Comments relating to the Council's decision to amend the Fish and Wildlife Program to add the Bitterroot River Subbasin Plan, <http://www.nwcouncil.org/library/2010/2010-14.pdf>, 9-11 Those discussions are incorporated here as responses, and all the detail will not be repeated. To summarize in one paragraph:

Bull trout populations in the upper Columbia in particular have been adversely affected by the Columbia hydrosystem, federal and non-federal projects alike. Westslope cutthroat populations as well. And so it is appropriate under the Northwest Power Act to ask the subbasin planners in upper Columbia tributaries, including the Blackfoot River, to identify offsite mitigation opportunities to compensate for damage caused to native resident salmonid populations that cannot be fully mitigated at the dams, and appropriate under the Power Act to adopt the subbasin plan into the Fish and Wildlife Program under the same premises. Those offsite mitigation opportunities will by definition address and remedy problems not caused by the hydrosystem. Yet the Council remains careful not to equate the totality of the offsite mitigation opportunities for native salmonids identified in this subbasin plans with the hydrosystem mitigation obligation. Whether any particular mitigation measures in this subbasin plan are implemented under the program will depend on the extent to which the proposed action can be shown to be able to improve native salmonid survival and productivity and boost numbers to an extent not yet addressed and compensated for in other hydrosystem mitigation activities, direct and off-site.