



Department of Energy

Bonneville Power Administration
P.O. Box 3621
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ENVIRONMENT, FISH AND WILDLIFE

December 1, 2008

In reply refer to: KE-4

Mr. Bill Booth, Council Chair
Northwest Power & Conservation Council
851 SW Sixth Avenue, Suite 1100
Portland, OR 97204-1348

Dear Chairman Booth:

Thank you for the opportunity to comment on the (draft) amended *Columbia River Basin Fish and Wildlife Program* (Program). The Bonneville Power Administration (BPA) commends the Northwest Power and Conservation Council (Council) on its considerable effort in successfully integrating the numerous recommendations it received into a focused and effective Fish and Wildlife Program document. We particularly appreciate the integration of the Endangered Species Act (ESA) requirements of the Federal Columbia River Power System (FCRPS) biological opinions and the related Columbia Basin Fish Accords (Accords) with the broad resource protection, mitigation and enhancement objectives of the Northwest Power Act (NWP). Our remarks highlight broad areas of agreement and some areas of concern or clarification.

Program Focus: We commend the Council for retaining in the Program the broad, high-level and flexible approach to mitigation as opposed to the inclusion of earmarks to individual projects in the form of specific and precisely detailed measures, as had been recommended by some commenters.

ESA, NWP, and Fish Accord Integration: By incorporating the biological opinions that direct FCRPS operations, the relevant aspects of recovery and subbasin plans, and numerous agreements with the region's resource managers (including the recently negotiated Columbia Basin Fish Accords and the settlements for the public utility district dams), the 2008 Program lays a solid foundation for protection, mitigation, and enhancement of fish and wildlife affected by the hydropower system. For BPA, the Council's integration of ESA, NWP, and Fish Accord responsibilities is very helpful, because it addresses BPA's comprehensive and complementary mitigation/recovery objectives and commitments. This expanded suite of existing and additional projects also greatly advances overall Program purposes.

Science Review Based on an Ecosystem Approach: We support the Council's effort to ensure that all projects are grounded in solid science and support restoration and protection of ecosystem functions which benefit the environment as a whole and more specifically fish and wildlife. In this regard, we wish to again clarify the fundamental importance that FCRPS mitigation under the Program, in the form of habitat and hatchery actions, as well as related research and monitoring, be clearly related to the effects and impacts of the Federal dams and not a substitute for recovery actions by others.

BPA's observations and suggestions during this comment period are intended to contribute positively to Council deliberations in the weeks ahead, and to be of help in the substance and structure of an amended Program. We look forward to working with the Council on the many management and policy issues encompassed in amending, and effectively implementing, the *Columbia Basin Fish and Wildlife Program*.

Sincerely,

A handwritten signature in blue ink that reads "Gregory K. Delwiche".

Gregory K. Delwiche
Vice President, Environment, Fish and Wildlife

Enclosure:

BPA's comments on the draft amended *Columbia River Basin Fish and Wildlife Program*

Enclosure:
BPA's comments on the draft amended *Columbia River Basin*
Fish and Wildlife Program

Performance Framework

BPA is pleased to see that the Program is founded on a performance-based framework. BPA actions in the 2008 FCRPS Biological Opinion (BiOp) and Columbia River Fish Accords (Accords) reflect this fundamental commitment to performance standards using adaptive management (e.g. improved fish survival) rather than a prescriptive approach. Successful implementation of an expanded suite of existing and new projects should provide the means to achieve improved performance and advance Program purposes. This particularly includes the hydro and habitat performance standards in the FCRPS BiOp and the Accords.

We agree with the Program's approach to planning, implementation and assessment, and we support using a framework of tiered objectives to help manage mitigation projects. For example, in our ESA reporting, we will be collecting information by population, major population group, and ESU. This hierarchical approach supports adaptive management decisions based on performance, when judgments about relative priorities must be made and when trade-offs between types of work and competing funding requests may occur. The replacement project approach included in the Fish Accords also reflects this policy.

The Council's performance-based framework should help guide implementation choices and priorities based on the best available science and help focus implementation "on-the-ground" with increased effectiveness and efficiency.

Biological Objectives and the Numeric Anadromous Fish Goal

The draft Program describes an intention to organize around appropriate biological objectives. As noted in the draft, the Council is still developing objectives at a hierarchical level above subbasins or populations. We see objectives as having the potential to serve as a common currency capable of relating one kind of effect (the outcome of project efforts) to a different kind of effect (the impact of the hydrosystem). In terms of project outcomes, given that many offsite mitigation projects primarily focus on habitat restoration, we suggest the Council consider biological objectives that are landscape-based, such as being focused on environmental or physical characteristics, which is consistent with the ISAB recommendation in its 2001 review of the Program's biological objectives.¹ Alternatively, the Council's proposed "fish-in, fish-out" High Level Indicator could serve as an effectiveness indicator for habitat projects.

If, however, the Council wishes to continue having adult salmonid population-based objectives in Program language (such as the objective of 5 million adult fish, which came out of the 1986 Anadromous Fish Loss Assessments), it is absolutely critical that the Council partition and allocate the human-caused effects on fish populations, because the NWPA does not envision a BPA mitigation responsibility for the cumulative effects of 200 years of European settlement of the Pacific Northwest, and all the accompanying habitat degradation, the continued adverse effects of 19th and 20th century overharvest, nor the effects of a myriad of non-federal dams. The Council itself noted at the time of the 1986 loss assessments that "It does not reach conclusions on relative responsibilities for losses or specifically identify hydropower's contribution to those

¹ ISAB Report 2001-6 "Review of the Biological Objectives in the 2000 Fish and Wildlife Program," found at <http://www.nwcouncil.org/library/isab/isab2001-6.htm>

losses.”² While some may suggest that the 5 million fish goal did reflect a partitioning of losses, this now 22-year-old study lacks the scientific rigor and relevance needed to guide the 2008 Program. Given these limitations, goals or biological objectives derived from this study do not seem appropriate relative to the Program’s scientific foundation. The antiquated nature of this study also severely compromises its usefulness as a basis for setting appropriate numeric goals in an updated Program.

We also encourage the Council to use its biological objectives, along with performance standards, in its support for implementation and funding priorities. Implementation priorities (discussed below) by the federal agencies and others should be based on: 1) achieving biological objectives and performance standards; 2) reflect priorities based on biological benefits and feasibility; and 3) have clear linkage to hydro impacts.

Program Scope

Under the NWPA, the original intent of the Program was to provide a framework of objectives and measures to mitigate for the fish and wildlife impacts of federal and non-federal hydropower projects.³ All Program actions should be viewed through this legal lens, although the Program is properly “nested” as part of much larger ecosystem recovery initiative. As such, the Program should be about Council identification of “measures” to help fish and wildlife affected by the dams. BPA is supposed to act “consistent with” the Program and the other Action Agencies and the Federal Energy Regulatory Commission (FERC) are supposed to “take it into account to the fullest extent practicable.” We are concerned that, since the mid-1990s, the Program has been focused almost exclusively on BPA for both funding and implementation, rather than on objectives and measures relative to the effects of Columbia basin hydroelectric dams.

This perspective shows up in a number of places in the amended Program.⁴ We therefore respectfully request that the Council reconsider its conclusion that the purposes of the Program are to recommend measures to BPA and address only FCRPS impacts on fish and wildlife.⁵ The draft Program also does not always clearly distinguish between “the hydrosystem” and “the

² Council, Compilation of Information on Salmon and Steelhead Losses in the Columbia River Basin at 3 (Mar. 1986); *id.*, Appendix E, Numerical Estimates of Hydropower-Related Losses at 1. Council staff in the introduction noted that “*The focus of the [estimates of hydropower contribution is] to losses of salmon and steelhead and their habitat and not on the precise contribution of each individual hydropower project in that system. In several parts of the discussion, there are references to the approximate contributions of groups of projects to salmon and steelhead losses. These are included only for the purpose of estimating system hydropower-related losses, not to determine particular responsibilities within that system for mitigating the losses.*”

³ Congress said that the Program should address the impacts of *all* hydroelectric facilities in the Basin, as a system. “*The Council shall promptly develop and adopt. . . a program to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, on the Columbia River and its tributaries. Because of the unique history, problems, and opportunities presented by the development and operation of hydroelectric facilities on the Columbia River and its tributaries, the program, to the greatest extent possible, shall be designed to deal with the river and its tributaries as a system.*” 16 U.S.C. § 838b(h)(1)(A).

⁴ See, e.g., “*Measures implementing this program are funded by the Bonneville Power Administration through revenues collected from electricity ratepayers.*” Program, Draft for Public Review, September 2, 2008, at p. 7.

⁵ The Program’s measures were to include those that “can be expected to be implemented by [BPA], using authorities under this chapter and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat affected by the development and operation of any hydroelectric project on the Columbia River and its tributaries.” 16 U.S.C. § 838b(h)(2)(A). In obtaining recommendations for the Program from fish and wildlife managers, the Council is to give notice of the recommendations not only to BPA, but also to “Federal agencies responsible for managing, operating, or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility.” 16 U.S.C. § 838b(h)(4)(A).

FCRPS.”⁶ Using the two references interchangeably confuses the scope of ratepayer funding responsibility for mitigation of FCRPS impacts to fish and wildlife with the Federal and non-Federal hydrosystem mitigation that Congress envisioned. While BPA would like to see the amended Program more fully reflect the Act’s broader scope and purpose, but if the Council chooses to continue focusing the amended Program primarily on BPA for funding and implementation, then BPA suggests the Council narrow and reduce the Program’s goals, objectives and measures to mirror the reduced scope associated with BPA’s FCRPS mitigation responsibilities.

Offsite Mitigation and Enhancement

Under the Act, habitat and hatchery mitigation and research and monitoring included in the Program should have a definite nexus to hydropower impacts. While these types of activities are appropriate for inclusion in the Program as “offsite mitigation” for the dams, specific actions intended for implementation as FCRPS mitigation should have identified connections to the FCRPS impacts and to affected fish and wildlife resources. The draft Program seems to adopt a broad premise for offsite mitigation and protection actions.⁷ It includes “enhancement” measures that lack explicit connections to the FCRPS or to the fish and wildlife resources it adversely affects. The measures are based on the premise that direct mitigation at or around the dams themselves does not “...compensate for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries.”⁸ BPA believes that the Act’s mandate is narrower.

We support the Council’s responsibility of assuring that additional measures to mitigate non-FCRPS impacts get implemented. The Act expressly includes a provision for “additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs.”⁹ Consequently, BPA’s offsite mitigation authorization should not be read so expansively that it ignores the role of “appropriate parties” – those that caused the impact – to provide the effort and funding for these additional measures.¹⁰

In summary, BPA respectfully requests that the Council carefully examine and reconsider all references to offsite mitigation. We ask that the Council not defer this to the project recommendation phase of Program implementation as the draft suggests.¹¹ BPA’s interests are twofold: 1) to assure that the region’s ratepayers are not asked to bear costs of offsite mitigation that is inappropriately expansive and unlimited in nature; and 2) to ensure that offsite measures appropriately mitigate adverse impacts caused by the FCRPS, *and are in addition* to what others are authorized or required to undertake.

⁶ See, e.g., “*The Northwest Power Act establishes Bonneville’s obligation to fully mitigate for fish and wildlife impacts from the development and operation of the hydropower system.*” Program, Draft for Public Review, September 2, 2008, at p. 108.

⁷ “... *the program identifies a comprehensive set of interrelated fish and wildlife problems and responsive strategies. [A]ll such strategies are within Bonneville’s authority to fund as offsite mitigation to address its mitigation obligation ...*.” 2008 Draft Program, at p. 10

⁸ “*The “nexus” to the hydrosystem that allows a measure to be an appropriate part of the program is whether the measure will provide protection or mitigation benefits for fish or wildlife adversely affected by the hydrosystem, benefits that can be said to compensate for effects not already mitigated.*” *Id.*

⁹ 16 U.S.C. § 839b(h)(8)(C).

¹⁰ “[A]dditional measures are to be implemented in accordance with agreements among the *appropriate parties* providing for the administration and funding of such additional measures.” *Id.* (emphasis added)

¹¹ Draft Program at 107.

In Lieu

BPA has strong legal concerns about the draft Program's new interpretation of the *in lieu* prohibition on BPA expenditures.¹² The interpretation offered in the draft Program appears to reduce qualifying language in the statute to insignificance. The *in lieu* provision is a matter of agency decision-making, and the Administrator must make all final determinations related to Section 4(h)(10)(A) of the Act. BPA funding of mitigation actions that another entity is clearly authorized or responsible to undertake is a violation of the Act. We therefore request the Council align the Program *in lieu* prohibition language with the purpose and intent of the Act.

Substitution

Mitigation for the loss of anadromous fish in areas blocked due to construction of particular hydropower projects has featured prominently in the Program since its inception. Successfully implemented, effective substitution programs can provide sustainable access to fishing opportunity through consumptive fisheries. The amended Program seems to place a premium on the use of native stocks to meet substitution objectives. While BPA supports an emphasis on native species where feasible, when ecosystems are irrevocably altered (e.g., where one or more critical life stages cannot be met for native stocks), BPA believes that the use of available habitat by non-native stocks is an appropriate mitigation alternative.

Research, Monitoring and Evaluation

BPA supports a more structured, regionally coordinated and cost-shared approach to research, monitoring and evaluation (RM&E). Because the level of effort for RM&E has rapidly become a major component of the Program,¹³ BPA supports a RM&E component that primarily focuses on the management questions, metrics and reporting requirements identified in the FCRPS BiOp and associated Biological Assessment, and the High Level Indicators currently being developed by the Council in collaboration with the Northwest Environmental Information Sharing (NWEIS) Executive Summit forum. BPA also believes that, given the large scope of the Program's RM&E component, an RM&E budget ceiling is critically needed to help guide prioritization of RM&E activities. One example of a budget ceiling could be a target for the percentage of overall Program spending on RM&E activities, such as the 25 percent target BPA has previously suggested to the Council.¹⁴

We also encourage the use of a common regional RM&E framework to better communicate, plan and implement RM&E and related data management strategies. A framework should include standard terminology for the different types of monitoring and research, and several standard categories of RM&E for organizing strategies. This standardization will foster more information sharing both within the Program and across the Pacific Northwest, resulting in cost efficiencies, more information of higher quality, better connectivity among RM&E projects, cost sharing agreements and improved integration among monitoring efforts. The funding responsibility for

¹² "Bonneville will only invoke the *in-lieu* provision under the Northwest Power Act when the expenditure, or potential expenditure, of Bonneville funds would clearly cause another *funding source* not to fund a project under this program." *Id.*, at 113 (emphases added).

¹³ See, *Summary of public comments on Fish and Wildlife Program budget (BPA Integrated Program Review)*, BPA presentation to the Council, September 16-17, 2008.

¹⁴ See 7/29/2005 letter from Gregory K. Delwiche to Melinda S. Eden, regarding suggestions for upcoming solicitation process that will guide project selection for the 2007-2009 time period.

this monitoring information is shared amongst other regional agencies, and if implemented properly, it would provide critical information and support of infrastructure for the effective management of the Program, along with FCRPS BiOp and other recovery efforts.

Implementation and Funding

BPA asks the Council to incorporate only measures into the Program that meet the Act’s clear statutory requirements for inclusion.¹⁵ As currently written, the draft indicates the Council’s intention to adopt all recommendations received,¹⁶ including numerous measures that appear to rely on science only tangentially and present no supporting data. We are similarly concerned about the adoption of measures regarding the *level of BPA funding*.¹⁷ The point-of-view that BPA’s “funding obligations in any particular rate period will be determined through the Program’s implementation provisions” is of particular concern. It would be more accurate to say that BPA will work closely with the Council and others in the region to determine both yearly direct program budgets and longer-term budget estimates and commitments. Various federal statutes vest the BPA Administrator with authority to determine BPA’s expenditures and establish financial policies.¹⁸ The substance of what BPA must include in its rates is determined by the procedural provisions and substantive criteria of Section 7 of the Act¹⁹ and the court cases that have interpreted it.

Land and Water Acquisition Funds

The draft Program calls for BPA to fund a basinwide land acquisition program.²⁰ BPA does not support expansion beyond the current riparian easement pilot, unless there is clarity and agreement on the scale of funding envisioned and the funding priorities beyond what is already being done. BPA already funds many entities to buy land and easements through individual fish and wildlife projects. If the Council carries this proposal into the final Program, BPA recommends the following adjustments:

- 1) Address long-term stewardship, monitoring and evaluation, and enforcement generally as recommended by the Land Trust Alliance, in *The Conservation Easement Stewardship Guide*, by Brenda Lind;
- 2) Ensure compliance with all laws applicable to purchasing real property with federal dollars;²¹
- 3) Clarify that ratepayer funds will not cover local taxes or fees on any acquisitions; and,
- 4) Identify the Council, rather than BPA, as the entity responsible for resolving regional policy issues that arise from this measure.

¹⁵ 16 U.S.C. §§ 839b(h)(3), (h)(6).

¹⁶ “The Council accepts these recommendations as measures that are part of the fish and wildlife program.” 2008 Draft Program at 106.

¹⁷ “... the extent of Bonneville’s funding obligations in any particular rate period will be determined through the program’s implementation provisions.” *Id.* at 10

¹⁸ *See, e.g.*, the Bonneville Project Act of 1937, codified at 16 U.S.C. §§ 832-832i; the Government Corporation Control Act, 31 U.S.C. §§ 9101-9110; and, the Administrative Procedure Act, 5 U.S.C. §§ 551-559.

¹⁹ 16 U.S.C. § 839e.

²⁰ 2008 Draft Program at 110-111.

²¹ *See, e.g.*, Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. §§ 4601-4605.

Mainstem Strategies

Spill

The draft promotes “determining the cumulative effects on fish survival of passing multiple dams and taking that information into account” to meet the stated Council purpose of maximizing improvements in life-cycle survival.²² We encourage some important further clarifications to this section, including the performance standards from the new FCRPS BiOp:

- 1) For adult fish, the performance standards are based on cumulative survival. They are intended to ensure that the current survival estimates, which meet or exceed targets that were laid out in the 2000 BiOp, are maintained. These cumulative survival estimates account for survival from Bonneville Dam to Lower Granite Dam, and include mortality associated with passage of the eight mainstem projects as well as some level of unaccounted loss due to harvest and straying; and,
- 2) For juvenile fish, the primary performance standard the federal agencies will be using for hydrosystem improvements is average dam survival (96% for ESA-listed yearling chinook and steelhead spring migrants and 93% for sub-yearling Snake River fall chinook summer migrants).

We will be collecting in-river and system survival information and assessing it as part of the COMPASS modeling exercise for cumulative progress reporting under the BiOp. BPA supports the Independent Scientific Advisory Board’s (ISAB) recommendation to focus on determining the appropriate balance between in-river migration and transportation.²³ Given limited RM&E funds, this research will be more useful in setting management strategies on the river than “determining the cumulative effects on fish survival of passing multiple dams and taking that information into account” to maximize improvements in life-cycle survival.²⁴

Adult Passage

The draft recommends installation of “adult PIT-tag detectors at key projects that do not have them.”²⁵ It is unclear whether key management questions (e.g., unaccounted harvest, straying rates) can be addressed by adding PIT detection at The Dalles and John Day dams, or if adding PIT detection in other locations such as the mouth of major tributaries would be a better solution. The recommendation seems premature and should be rewritten to account for existing uncertainties. The Action Agencies will be convening a workgroup that includes regional participants to evaluate the best methods and approach to address these key questions.

Water Management

The draft includes several references to shaping and load following that raise substantial concerns for BPA. In several places it suggests that “problems associated with fluctuation of the hydroelectric system” be reduced or eliminated, and that restrictions be placed on daily, weekly, and seasonal load following.²⁶ BPA cannot agree that requirements to manage flow to minimize reservoir fluctuations and ramping rates in addition to those included in the 2008 FCRPS BiOp

²² Program at p.77

²³ See *ISAB Latent Mortality Report* (ISAB 2007-1).

²⁴ Program at p.77

²⁵ Program at p.80.

²⁶ Draft 2008 Program at pages 21, 63, 69, 83, 86, and 87.

are appropriate under the NWPA, because of their uncertain or unspecified biological benefits, significant adverse effects on an economical and reliable power supply, and potential implications for carbon emissions and renewable resource development – particularly wind integration. As expressed previously by BPA,²⁷ further limits to load following has implications for system reliability, would increase power costs for the region, and likely require construction of more carbon producing peaking resources.

BPA recommends adding language to the final Program stating that load following is necessary to the operation of any electrical system, and eliminating the general language concerning “fluctuation of the hydrosystem.”²⁸ With regards to “fluctuations” of hydro project outflows, we recommend that the Program refer to specific examples of operations that establish set project outflows rather than the more general language used.

Predation

BPA believes that the draft Program language addressing marine mammal predation is overly broad and should be revised. Specifically, the Council’s direction to evaluate predation “*from below Bonneville Dam to the mouth of the river*”²⁹ implies a broader commitment than included in the 2008 BiOp, which requires monitoring immediately below Bonneville Dam. The benefits and trade-offs inherent in a broadly expanded monitoring effort, including costs and appropriate cost-share contributors, should be identified and evaluated before incorporating a project expansion of such magnitude as a new Program measure.

In addition, the Council’s conclusion, regarding lethal removal³⁰ is also too broad because it goes beyond the Action Agencies’ required activities under the BiOp. BPA is only responsible for monitoring sea lion presence, location, abundance and predation rates, and the effectiveness of deterrent activities.

Mainstem Monitoring and Evaluation

In the draft, the Council incorporates into the Program the BiOp’s juvenile and adult passage performance standards for federal mainstem dams. BPA commends the Council for recognizing that the BiOp represents the best available science, and acknowledging the value that strong performance standards provide for the region. The dam-specific survival standards of 96 percent for ESA-listed yearling spring chinook and steelhead, and 93 percent for sub-yearling Snake River fall chinook, were developed expressly for those stocks, and are the focus of already extensive assessment efforts. The same is also true for the other performance objectives listed in the 2008 BiOp. The COMPASS model that was used to develop and evaluate the in-river survival metric can be relied upon to give results for Snake River spring chinook, Snake River steelhead, mid-Columbia steelhead, and Upper Columbia chinook and steelhead. Under the BiOp, data from some stocks are currently used as surrogates for other stocks. While we recommend that the Program endorse the use of available data for listed fish as a surrogate for

²⁷ See, e.g., letter from Gregory K. Delwiche to Doug Marker, *et al*, regarding proposed load-following study, dated July 12, 2005.

²⁸ *Id.* at 21, 63, 83, 86, 87, and 121.

²⁹ *Id.* at 91.

³⁰ “Lethal take to control marine mammal predators consistent with state and federal law is appropriate when non-lethal methods of control are not successful and the adverse impacts are significant.”

the unlisted fish, we are also concerned about a blanket application of these standards for “unlisted salmon passing federal dams.”

Other Specific Program Areas

Annual and In-Season Decision Making

The draft suggests a joint sponsorship or co-chair role for the Council in the current Regional Forum.³¹ The draft should acknowledge the 2008 FCRPS BiOp RPA, which calls for continued collaboration between the Federal government, state governments, and tribes in the adaptive management of the BiOp.³² These sovereign entities have convened a Regional Implementation Oversight Group (RIOG) that has defined a new structure to replace or modify parts of the current Regional Forum.

Several specific operational suggestions in the draft should be modified or eliminated:

- 1) Refill is not the highest priority at Libby dam.³³ VaRQ, flood control, sturgeon operations, and minimum flow requirements are all higher priorities.³⁴
- 2) The suggestion that Libby “reduce the frequency of refill failure” compared to “historic operations” is confusing.³⁵ Given the historic causes of refill failure at Libby – flood control, sturgeon operations and minimum flows – there is often no flexibility to reduce the frequency of failure.
- 3) The April 10 refill objective at Grand Coulee is not a flood control elevation that is required for controlling springtime flooding.³⁶ Rather, its purpose is to support augmentation of flows for spring juvenile outmigrants.
- 4) Drafting Grand Coulee evenly from the target elevation of 1278 or 1280 feet by the end of August³⁷ will likely produce flows at The Dalles that are inconsistent with the outcome desired of the FCRPS BiOp operations.
- 5) It is not clear what “attempt to maximize water retention times from June to December of 40 to 60 days, or the maximum historically achievable for each month”³⁸ means.

Wildlife

BPA relies on the Council to provide mitigation strategies that help determine the appropriate kinds of wildlife mitigation projects for implementation. Several elements in the amended wildlife provisions of the draft Program expand beyond this function and raise significant implementation, management, and policy issues, which may interfere with existing agreements and policies.

We note that the draft Program supports 2:1 crediting as recommended by CBFWA. CBFWA noted in its recommendation for 2:1 crediting that “past mitigation agreements have credited

³¹ 2008 Draft Program at 98.

³² 2008 FCRPS BiOp RPA 1, referencing 2008 Biological Assessment section 2.1.

³³ 2008 Draft Program at 84.

³⁴ Established VaRQ, flood control and sturgeon operations are all based on earlier forecasts. The sturgeon operation is not adjusted for changes in forecast, and Libby will frequently not refill on minimum flows.

³⁵ *Id.* at 85

³⁶ *Id.*

³⁷ Draft Page 87:

³⁸ *Id.*

projects at a 1:1 credit ratio for those projects, but do not change the Program strategy of mitigation 2 HUs for each HU lost.”³⁹ In most cases, however, these “past mitigation agreements” are still in effect; and by accepting ratepayer funding—notably capital dollars—for habitat acquisitions under these existing agreements, the wildlife managers have, by contract, implicitly reaffirmed their acceptance of 1:1 crediting.

Over six years ago the Administrator extensively documented BPA’s rationale for why BPA follows 1:1 crediting as an internal policy and procedure.⁴⁰ Since then CBFWA has not identified new information or changed circumstances that would support BPA revisiting its policy and cutting the crediting ratio in half. Absent supporting documentation or scientific evidence on the need to alter the long-standing crediting ratio,⁴¹ and also taking into account the wildlife managers’ acceptance of 1:1 crediting in past mitigation agreements, we believe the Council owes no “due weight” to the CBFWA’s crediting recommendation.

Another of BPA’s concerns is that calling for operational and secondary loss assessments,⁴² in addition to the applicable loss assessment(s) in the 2000 Program, contradicts the Program’s longstanding emphasis on habitat protection. The 2000 Program provides guidance on wildlife mitigation needs.⁴³ The Council, wildlife managers and BPA have all supported mitigating wildlife using *habitat* as the touchstone. The assessments for construction and inundation habitat losses reflected in the 2000 Program considered all habitat losses up to and including full reservoir pool levels. To the extent reservoir operations adversely affect habitat, those impacts generally occur below full pool, so operational losses would occur where the habitat has already been counted as lost. Consequently, calculating operational losses would amount to a double counting of FCRPS mitigation responsibilities. BPA encourages the Council to strictly limit efforts to initiate operational loss assessments to circumstances where FCRPS operations are known to directly cause habitat impacts above the full reservoir pool line.

Finally, the draft Program notes only that annualization may result in additional losses; however, annualization may also result in additional gains. The explanation offered in the draft employs an overly one-sided view of annualization - a complex issue that will be confusing and difficult to quantify. If the Council maintains this concept in the final Program, BPA encourages the Council to at least include the definition of annualization in the final Program’s glossary.⁴⁴

Resident Fish

BPA would like the Program to become better grounded in biological and environmental objectives that are the basis for the outcomes expected of projects. BPA does not support resident fish loss assessments in part because the draft measure lacks a scientific basis. The draft Program does not identify an appropriate methodology for resident fish assessments, and the

³⁹ CBFWA comments on the Program amendment recommendations, Attachment 1 at 6 (June 12, 2008).

⁴⁰ Letter from S. Wright, BPA Administrator/CEO to Larry Cassidy, Council Chairman, (Mar. 5, 2002) (regarding wildlife crediting history and policy). <http://www.efw.bpa.gov/IntegratedFWP/WildCredMar02.pdf>

⁴¹ 16 U.S.C. §§ 839b(h)(3),(h)(6)(B).

⁴² If the Council retains provisions calling for operational and secondary loss assessments, it should include clear definitions of both to enable BPA to ascertain whether the losses are related to the FCRPS and whether they pose *in lieu* funding problems.

⁴³ See 2000 Program at Table 11-4.

⁴⁴ BPA included comments and recommendations on the glossary in an accompanying document.

fisheries managers did not agree on protocols for employing one. As with wildlife, data for pre-dam resident fish population or habitat conditions are at best sparse and at worse unreliable. Absent good pre-dam data, the assessments would rely on unverifiable assumptions. In designing projects, a rigid adherence to loss assessments and not to the (multi)species benefits leads to weak assumptions about what makes a project effective.⁴⁵ The Program should instead emphasize performance results and those results reported as progress toward articulated, expected biological and environmental outcomes for resident fish.

Before undertaking an expensive and time consuming new assessment process, BPA suggests the next steps in resident fish mitigation planning begin with calculating the resident fish mitigation done to date. The Council could then review the resident fish elements of the subbasin plans where the Council finds a need for more resident fish measures. Then, in updating the subbasin plans, as discussed in the Implementation Provisions of the draft Program, the Council can target additional resident fish mitigation in areas that have a clear nexus to the FCRPS and need further attention.

Future Direction - A Focus on Performance and Accomplishments

BPA believes the focus of annual reporting on “an accounting of [BPA’s] fish and wildlife expenditures and hydropower operation costs”⁴⁶ should be broadened to include the reporting of the biological benefits and environmental changes resulting from BPA-funded projects. Appropriate high-level indicators could jump start this transition in reporting emphasis, while simultaneously helping tailor a level of investment in research, monitoring and evaluation sufficient to inform both future reporting and decision-making. The Council has guided BPA for more than 25 years in mitigation, protection and enhancement measures that total nearly \$10 billion in fish and wildlife mitigation costs. Without clear documentation that shows the Program’s successes in its first three decades, it will be hard to define priorities for the coming decade. Together, it is important to quantify the Program achievements, overcome barriers to success, and work together to further enhance the effectiveness and results associated with Program implementation.

⁴⁵ For example, “Habitat losses [for resident fish] are most effectively mitigated through the perpetual ... easement or acquisition of *at least* equivalent habitat that was lost.” *F&W Program Recommendations (CBFWA)*, at p. 59 (emphasis added).

⁴⁶ 2008 Draft Program at pp.111-12.