

Staff summary of Issues and Recommendations Long Term Agreements and Accords

*Preliminary draft, please refer to full recommendations for complete review

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I. 2009 Fish and Wildlife Program Section:

The 2009 fish and Wildlife Program acknowledges the Columbia Basin Fish Accords (Accords), harvest management agreements, such as the Columbia River Compact, the U.S. v Oregon Management Agreement, and the Pacific Salmon Treaty. In addition, wildlife mitigation agreements and Resident fish mitigation agreements (see Blocked anadromous/Resident fish substitution) are also acknowledged. Additional agreements are also mentioned such as Vernita Bar agreement and habitat conservation plans (HCPs)

II. Overview

The majority the recommendations received by the Council regarding agreements and Accords express the continued support and implementation of the agreed upon actions. In addition, the continued acknowledgement and importance of the US v. Oregon management Agreement was also prominent.

Long term agreement and settlements associated with wildlife actions also received much attention to ensure and encourage their use. Habitat Conservation Plans and their importance to the Columbia mainstem plan and the upper Columbia fish stocks was also addressed.

Several miscellaneous agreements addressing non treaty flow with BC Hydro and lamprey where also raised. In addition, one recommendation was received that proposed to eliminate the Council and the Accords, and the development of a strategy to restore the intent of the Power Act for salmon and salmon fisheries restoration.

III. Recommendation summary and synthesis:

- A. Accords. The Program to continue support and ensure commitment to their implementation (14) (15) (17) (19) (21) (23) (28) (35) (36)
 - a. The Council, Action Agencies, and co-managers should jointly develop an ISRP review process for mature projects, long-term projects , and the Fish Accords (3) (4) (19)
 - b. Ensure that the revised Program does not conflict with the Accords (44)
 - c. Recant support for the Accords (64)
 - d. Create and implement a review process for non-accord agencies for new projects (26)
 - e. As noted by ISAB work associated with lamprey has taken off and the

action agencies endorse the accords that reflect this effort (35)

B. Settlements

- a. Support and encourage wildlife settlement agreements (35) and long term settlement agreements (2) (4) (13) (24) (27)
- b. Continue to use offsite mitigation to achieve off-site protection and mitigation objectives through accords and wildlife settlements (35)

C. *U.S. v. Oregon* Management Agreement. The Program should reflect the importance and ensure commitment to support implementation. (17) (21) (35)

D. Habitat Conservation Plans (HCPs). The Program should recognize the important aspects and achievements of these plans to the objectives and measures of the Program, and how they contribute to the conservation and recovery of the upper Columbia River stocks. HCP's focus on the impacts of the hydroelectric system and avoid using SARs (45)

E. Power Act

- a. Eliminate the Council and develop a strategy to restore the intent of salmon and salmon fisheries restoration (61)

F. Miscellaneous

- a. Recognition in the Program of the agreement with BC Hydro regarding use of Non-Treaty storage for additional flow augmentation (35)
- b. USFWS Pacific Lamprey Conservation Agreement. As noted by ISAB work associated with lamprey has taken off and the action agencies endorse this plan (35)
- c. Amend into the Program the Willamette River Basin memorandum of Agreement Regarding Wildlife habitat Protection and Enhancement (35)

IV. Recommendations

Montana Fish, Wildlife and Parks (2)

- Habitat Strategies. Mitigating Construction and Inundation Losses - Permanent or long-term funding agreements should remain a priority for completing this work including all the key points outlined in the current program, and funding should be tied to approved loss statements or settlement agreements.

Oregon Department of Fish and Wildlife (ODFW) (3)

- Recommendation: Modify the current language in the Program as follows: Add a second bullet: "*The Council, Action Agencies, and co-managers should jointly develop a new ISRP review process for mature projects, long-term projects, and Fish Accords projects.*"

Washington Department of Fish and Wildlife (4)

- **Wildlife Impacts** Current Program: Page 22, Operational Losses
Suggested language: Encourage Settlement Agreements. The Council strongly encourages settlement agreements for construction and inundation including transmission lines, operational and secondary impacts. Settlement agreements should include the elements in section 6.a. The 2011 Wildlife Crediting Forum Report documents the difficulty encountered trying to come to a collective agreement on the resolution of wildlife credit accounting. The crediting ledger can be used to help resolve or make clear some of the outstanding crediting issues. However, there are many technical and record keeping issues with the crediting ledger, in combination with unresolved policy and implementation issues, which makes complete resolution of the ledger challenging; settlement agreements could extinguish these issues.
- Recommendation: Modify the current language in the Program as follows: Add a second bullet: *“The Council, Action Agencies, and co-managers should jointly develop a new ISRP review process for mature projects, long-term projects, and Fish Accords projects.”*

Yakima Basin Fish & Wildlife Recovery Board (8)

- The Program should specifically identify recovering all listed ESUs and DPSs to levels that meet recovery criteria in ESA-listed recovery plans as a Program goal
- The Recovery Criteria identified in ESA recovery plans should be specifically identified as Program objectives
- The Program should commit the Council and federal Action Agencies to continuing to work with local and regional partners (including Washington State’s recovery boards) to develop long-term implementation plans that, if implemented, would recover target species to levels that meet both ESA recovery criteria and the broader mandates of the Northwest Power Planning Act.

Coeur d'Alene Tribe (13)

- Long-term settlement agreements (i.e., Montana wildlife settlement, Willamette wildlife settlement)

Columbia River Inter-Tribal Fish Commission (14)

- Recommends that the Council continue to adopt the measures and actions included in the 2008 Biological Opinion for the FCRPS and 2008 Columbia Basin Fish Accord Memorandum of Agreement between the Three Treaty Tribes and FCRPS Action Agencies.

Colville Confederated Tribes (15)

- The CCT recommends that the Council, 20 as it did in the 2009 Program amendments, incorporate the actions in the CCT’s Accord, along with the FCRPS biological opinion actions, into the Program.
- Water and flow management actions, hydro spill and dam passage strategies, 58 performance standards, and inriver survival targets reflected in the 2008/2010 FCRPS biological opinion and the 2008 CCT Accord.

- Preclude any prioritization among anadromous fish, resident fish and wildlife programs and projects within the CCT Accords, once the biological opinion metrics for the Okanogan subbasin are met.
- Continue to apply protections for wild salmon to other native fish as provided in the Accord.
- Continue to identify, protect and restore habitat areas and ecological functions that are associated with productive spawning, resting, rearing, and migrating salmon and steelhead, white sturgeon, and other native fish in the Columbia River mainstem, including the Okanogan, Methow, Entiat, Wenatchee and the blocked area, as supported by the existing Accord.
- Continue to enhance the abundance and productivity of white sturgeon in the mainstem in order to rebuild self sustaining populations able to support harvest. Continue to operate the hydropower system in a manner consistent with FCRPS biological opinion that balances needs of anadromous fish, white sturgeon, and other native fish species in the Columbia River.
- Within parameters established in the 2008/2010 biological opinion and 2008 Accord, continue to provide the conditions necessary to protect and mitigate populations of native fish in, and adjacent to, Lake Roosevelt to levels capable of supporting harvest consistent with the goals in the CCT's management and mitigation plans and recommendations.

Confederated Tribes and Bands of the Yakama (17)

- Recommendations are intended to be viewed and construed as being consistent with, in furtherance of and complementary to actions set out and commitments made in the 2008 Columbia River Fish Accords, the 2008-2017 US v Oregon Management Plan and the FCRPS and Lower Snake BiOps for purposes of fish and wildlife mitigation

Confederated Tribes of the Umatilla Indian Reservation (19)

- In addition to those recommendations, the CTUIR joins in the recommendations of the Columbia River Inter-Tribal Fish Commission to the extent they are consistent with the Columbia Basin Fish Accord Memorandum of Agreement between the Three Treaty Tribes and FCRPS Action Agencies.
- Current Program VIII.H. Scientific Review- o. 65: a. Recommendation: In the first bullet at the top of p. 65, add "new" to read, "Review new projects proposed for Bonneville funding to implement the Council's Program." Second bullet: "The Council, Action Agencies, and co-managers should jointly develop a new review process for mature projects, long-term projects, and Fish Accords projects."

Confederated Tribes of the Warm Springs Reservation of Oregon (21)

- The Council and the Region is to continue to ensure the commitment to the Accords, Biological Opinions and *U.S. v. Oregon* Management Agreement and to support their expeditious and full implementation.....The Confederated Tribes of Warm Springs that the Accords continue to be adopted as Program measures in their entirety. To be clear, the recommendation is the MOA as

presented -- we are not offering the MOA as a “source” of recommendations that might be drawn from it.

Kalispel Tribe of Indians (23)

- Incorporate into the program the Kalispel Fish Accord
- Incorporate into the program the 2000 BiOp entitled Effects of Listed Species from Operations of the FCRPS - including the modifications to this BiOp resulting from consultation due to the 2010 designation of bull trout critical habitat.

Kootenai Tribe of Idaho(24)

- The Council shall coordinate project reviews, ISRP reviews, project guidance and funding recommendations in a way that recognizes the integrated nature of the Kootenai Tribe’s fish and wildlife program, encourages long-term agreements, and supports maximum flexibility and accountability within the Tribe’s program.

Spokane Tribe of Indians (26)

- Non-accord agencies have not been afforded the opportunity given to accord agencies to propose new projects. This has made it impossible for the Spokane Tribe of Indians to complete the objectives within the subbasin plan.
- ***Council will include the following guidance language in the Program directing BPA to fund new projects for non-accord agencies:*** The Council will create and immediately implement a review process for non-accord agencies to propose new projects.

Upper Columbia United Tribes (UCUT) (27)

- Wildlife Mitigation Create funding and project priorities in areas of the basin altered by the loss of anadromous fish by implementing long-term Wildlife Settlement Agreements or other mechanisms.

Upper Snake River Tribes Foundation (28)

- Recommendation: Modify the current language in the Program as follows:
 - First bullet at the top of p. 65, add “new” to read, “*Review new projects proposed for Bonneville funding to implement the Council’s Program.*”
 - Add a second bullet: “***The Council, Action Agencies, and co-managers should jointly develop a new ISRP review process for mature projects, long-term projects, and Fish Accords projects.***”

NOAA Fisheries (30)

- FCRPS Biological Opinion:
We appreciate that the Program already incorporates the 2008 Federal Columbia River Power System (FCRPS) Biological Opinion. We recommend that it be updated to explicitly incorporate the FCRPS Biological Opinion updates since that time, including the 2010 Supplemental Biological Opinion and Adaptive Management Implementation Plan, as well as the 2013 Supplemental FCRPS

Biological Opinion, which was released in draft on September 9, 2013, and which will be finalized in December, 2013.

- **Incorporate ESA Recovery Plans:**
We recommend that the Program explicitly incorporate ESA recovery plans for salmon and steelhead. ESA recovery plans are complete for 9 of the 13 listed salmon and steelhead species that spawn and rear in the Columbia Basin. The remaining species will be addressed in a proposed Snake River recovery plan in early 2014. These recovery plans build upon and advance the science in the Council's 2004/2005 subbasin plans and also address the species' recovery needs throughout their entire life cycle. The recovery plans include objective and measurable recovery criteria, identify limiting factors and threats and the site-specific actions needed to address them, and detail research, monitoring and evaluation priorities

Bonneville Power Administration (35)

- **Water and Flow Management:** Similarly, the Program should continue to reflect the flow management actions included in the 2008/13 BiOp and endorsed in the Accords. This should include recognition of the recent agreement with BC Hydro regarding use of Non-Treaty storage for additional flow augmentation, an action supported by the Accords and the Independent Scientific Advisory Board (ISAB) in its recent review.
- **Offsite Mitigation:** The Program should continue to use habitat protection and improvement in appropriate circumstances as a means to achieve off-site protection and mitigation objectives. This includes large-scale, biologically targeted habitat improvement projects, such as those reflected in the Accords and wildlife settlement agreements.
- **US v. Oregon:** The 2008-2017 Management Agreement is a Court approved mainstem Columbia harvest management framework and artificial production action plan. The Management Agreement is integral to many of the Accords and to the Biological Opinions, and the Program should reflect this clearly.
- **Lamprey:** As the ISAB noted in its recent report on the 2009 Program, lamprey work has taken off in the basin. Individual agency commitments for lamprey that should be included in the Program are reflected in the Accords by BPA, the Army Corps of Engineers (Corps), and the Bureau of Reclamation (Reclamation). These actions are also included in the lamprey agreement coordinated by the U.S. Fish and Wildlife Service (USFWS) in 2012, which the action agencies have endorsed.
- **The Willamette Basin:** After the Council amended the Program in 2009, BPA and the State of Oregon reached an historic agreement to address the effects of the Federal hydro projects in the Willamette Basin on fish and wildlife. Like the Accords, we recommend the amended Program include the Willamette River Basin memorandum of Agreement Regarding Wildlife habitat Protection and Enhancement between the State of Oregon and BPA. In addition, the NOAA Fisheries and U.S. Fish and Wildlife Service BiOps underpinning the Willamette MOA should also be included in the Program.
- **Accord Agreements to Amend into the Program:**<http://www.salmonrecovery.gov/Partners/FishAccords.aspx>

- Three Treaty Tribes and CRITFC
 - Colville Tribes
 - Shoshone Bannock Tribes
 - Kalispel Tribe of Indians
 - Idaho
 - Montana
 - Washington/Estuary
- **Spill and Dam Passage:** The Program should once again incorporate the hydro spill and dam passage strategies, performance standards, and inriver survival targets reflected in the 2008 FCRPS BiOp, as modified by the draft 2013 Supplemental BiOp, which the Accords adopt through the term of the Accords (September 30, 2018).
 - **Water and Flow Management:** Similarly, the Program should continue to reflect the flow management actions included in the 2008/13 BiOp and endorsed in the Accords.
 - **Lamprey Passage:** The Program should also reflect the lamprey passage improvements at federal dams that are occurring based on commitments in the Accords, which are now also reflected in the U.S. Fish and Wildlife Service Lamprey Conservation Plan. This is consistent with the ISAB comments on hydro strategies.
 - **Offsite Mitigation:** The Program should continue to use habitat protection and improvement in appropriate circumstances as a means to achieve off-site protection and mitigation objectives. This includes large-scale, biologically targeted habitat improvement projects, such as those reflected in the Accords and wildlife settlement agreements.
 - **Hatchery Strategies:** The Program should continue to support a balanced and flexible approach to the use of hatcheries, including the current artificial production strategies for minimizing potential adverse hatchery effects, using supplementation and conservation hatcheries, using hatcheries for reintroduction and reestablishment of extirpated runs, and species substitution in blocked areas.² The Program’s vision and objectives are implemented throughout the Columbia River Basin through the Program, the Accords, the FCRPS biological opinions, and other regional efforts.
 - **Climate Change:** BPA supports numerous on-going actions that address FCRPS impacts to fish and wildlife in response to a changing climate: hydrosystem modeling, dry year strategy; flow variation and refill; temperature control; predator management, research; and habitat protection and improvement. The Accords include projects that support water transactions, land acquisitions, and development of riparian buffers along streams to help create cold-water refugia for salmon, minimize temperature increases, and ameliorate the effects of climate change. These approaches are embedded in the 2008 NMFS FCRPS BiOp.....
 - **High Level Indicators:** For consistency in reporting, the Program’s High Level Indicators (HLIs) should employ the data (metrics) rolled up to report on the

Action Agencies' progress under the FCRPS BiOp, as well as streamlined indicators for the Columbia River Basin alignment with other federal and state performance metrics. Examples of performance metrics used in the biological opinions and Accords include the following:

- acre-feet of water protected
- miles stream with improved complexity
- acres of riparian habitat treated or improved
- fish screens installed or addressed for fish protection
- miles of improved access to fish habitat

Adopting performance metrics from the BiOps and Accords for use as the HLIs to measure Program performance could facilitate a more collaborative regional approach to implementing our data management strategy and standardizing input to any regional data exchange as it comes on line across the region.

Bureau of Reclamation (36)

- Council continue to incorporate the BiOps and Accords into the Program

PPC/NW RiverPartners/PNGC Power/NRU (44)

- The Program has substantial overlap with the FCRPS BiOp and the “Fish Accords” negotiated with many of the region’s states and tribes. The Council needs to insure that the revised Program does not conflict with these important legal requirements and concurrent binding contracts that do not expire until 2018.

Chelan County PU (45)

- The District is providing these recommendations to highlight important aspects of our HCPs. These include:
 - A recognition that the comprehensive approach of our HCPs and their embedded programs should be considered a part of the baseline objectives and measures in the Program’s Columbia mainstem plan;
 - The role the HCPs play in contributing to the conservation and ultimate recovery of listed upper Columbia River stocks;
 - A recognition of the achievements of the HCPs and the parties that have played a role in those achievements; and
 - The HCP’s focus on impacts of the hydroelectric system that can be reasonably and effectively addressed and avoid attempting to use measurements such as SARs that are impacted by out-of-basin factors.

Northwest Resource Information Center, Inc. (61)

- The Council should propose in its draft program amendments and subsequently adopt an amendment formally recanting its support for the *Columbia Basin Fish Accords*¹⁴ which, among other fatal flaws, appear to
 - a. Violate the Ethics in Government Act;
 - b. Constitute a conspiracy to illegally use federal funds to subvert the ESA and Northwest Power Act;
 - c. Violate the recent Supreme Court decision holding illegal the use of federal funds for one purpose to force recipients to take unrelated actions.

This program amendment should include a requirement that Bonneville pay the Accord/MOA-promised funds but declare null and void requirements that recipients support subverting the Northwest Power Act and other federal laws.

- The Council should propose in its draft program amendments and subsequently adopt an amendment formally petitioning the U.S. Congress to amend the Northwest Power Act to:
 - a. Summarily eliminate the Council;
 - b. Have the Secretary of the Interior appoint a panel of independent experts vested with fiduciary duty and accountability to develop within 180 days a strategy and milestones for achieving the salmon and salmon fisheries restoration intent of the Power Act within a period not to exceed 10 years;
 - c. Strip Bonneville of its power of the purse over the Fish and Wildlife Program which it has used with devastating effect to subvert the law, corrupt the public decision making process, debase the role of science and perpetrate an ecological, economic and social disaster of epic proportions.