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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

NATIONAL WILDLIFE FEDERATION, et
al.,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES
SERVICE, et al.,

Defendants.

Civil No. 01-0640-RE (Lead Case)
CV 05-0023-RE
(Consolidated Cases)

**JOINT RESPONSE TO PROPOSED
ACTION ON BEHALF OF THE
STATES OF WASHINGTON AND
MONTANA, THE CONFEDERATED
TRIBES OF THE COLVILLE
RESERVATION, THE KOOTENAI
TRIBE OF IDAHO, AND THE BPA
CUSTOMER GROUP**

The States of Washington and Montana, the Confederated Tribes of the Colville
Reservation, the Kootenai Tribe of Idaho, and the BPA Customer Group generally support the
Federal Government's Proposed Action ("PA"). While work remains to be done, it is a positive

step forward. To assist the Court with a better understanding of the progress that has been made, and to identify areas where work remains, we provide the following comments.

The PA represents a return to the core concepts originating in the 2000 Biological Opinion (“BiOp”), embracing an “all-H” approach responding to effects not only from the hydro-system, but also from the other 3 Hs, including harvest, hatcheries, and habitat. Yet, while the PA returns to the all-H model, it also advances that approach by substantially augmenting regional efforts to implement recovery strategies for these ESUs.¹ The PA (1) uses an all-H, scientific analysis that identifies and addresses the specific limiting factors affecting fish recovery; (2) establishes substantial and increased funding commitments which are reasonably certain to occur; and (3) implements the Court-ordered collaborative process as a model for a new governance process to oversee and ensure implementation of corrective measures.

The PA is the product of hard work by the sovereign parties who together comprise the collaborative remand effort ordered by this Court, including countless hours of scientific collaboration on issues affecting the evolutionary significant units (“ESUs”) that comprise the listed fish impacted by the Federal Columbia River power System (“FCRPS”).²

The PA moves the region closer to our collective goal of recovering these ESUs in a number of important ways. First, in contrast to prior proposed actions, this PA is clearly

¹ The Court has expressed support for the core concepts of the 2000 “all-H” BiOp but remanded it because proposed mitigation measures were not “reasonably certain to occur.” Since the Court remanded that BiOp in 2003, many ESU-level recovery plans have been drafted and have guided the analysis contained within the PA.

² 155 individual representatives from 26 separate entities participated in the Collaborative Remand Process. They held 272 meetings, including technical workgroup sessions, Policy Workgroup sessions, and all party meetings. An internet-based data base was created containing more than 1300 Policy Work Group documents, and upwards of 1500 Working Group documents.

premised on an evaluation of the specific needs of each individual ESU and constituent populations to determine how to best address the needs of listed fish. Under this approach, the PA proposes actions that will promote biological recovery of these species, based on an in-depth analysis of each of their limiting factors (biologically based impediments to recovery). The biological effects from each of the proposed actions is then analyzed to determine the degree to which the action itself will assist the ESU in achieving a “trend towards recovery” by overcoming the limiting factor(s) ascribed to its current status.³

Second, the PA uses the “best scientific and commercial data available” as required by ESA section 7(a)(2). The PA is based on a robust scientific collaboration between independent scientists, the regional sovereigns, the action agencies, and NOAA Fisheries. The collaborative remand process, and the PA that ensued therefrom, benefited from extensive scientific research and analysis provided by the Interior Columbia Technical Recovery Team (“ICTRT”), the NOAA Science Center, the Independent Scientific Advisory Board (“ISAB”) and the Independent Scientific Review Panel (“ISRP”). The ISAB was specifically requested to weigh in on the vexing scientific issue presented by latent ocean mortality, and was further requested to conduct a thorough scientific review of the COMPASS model upon which the hydro components of the PA is based.

Third, the PA utilizes an aggressive adaptive management regime that will be managed collaboratively by all regional sovereigns in efforts to follow the science as new data becomes

³ Information contained in the PA demonstrates that some of the ESUs appear to be on the path to recovery as a result of regional recovery efforts to date. Other ESUs continue to face substantial challenges. The PA advances critical information that would allow the action agencies and NOAA Fisheries through the collaborative remand effort to re-prioritize all actions in each of the 4Hs to address key limiting factors that are impeding their progress.