



Federal Agencies Submit Substantially Improved “Proposed Action”

Background – On May 21, 2007, the federal action agencies (Bonneville Power Administration, Army Corps of Engineers, Bureau of Reclamation) submitted a draft Proposed Action (PA) to Judge Redden in the U.S. District Court of Oregon. The draft proposes how the federal hydrosystem will be operated over the next ten years (2007-2017). It includes scientific analysis and identifies measures to benefit listed salmon and steelhead.

Overview - The PA includes significant new or revised measures in the hydro and habitat arenas: \$290+ million in BPA funding for habitat improvements for listed stocks; added hydro operational changes and significant capital investments at facilities, survival or performance standards that must be met at each facility, increased predation controls (birds and sea lions). It identifies research and monitoring activities and contingency plans should measures not perform as expected. The PA also proposes a major change in “governance” or oversight of recovery measures modeled on the current remand process which includes all the Sovereigns, promotes collaboration, includes policy representation along with technical, and thus should result in a stronger, more accountable oversight process.

However, there is little to nothing on harvest; the federal agencies maintain they have limited jurisdiction in this area, and point to the ongoing U.S. vs. Oregon consultation process which is conducted behind closed doors. Also, hatchery impacts are identified as a major factor affecting listed stocks, however, the necessary reforms to be undertaken are unclear. In summary, the PA is very strong in two “H’s” – habitat and hydro – and weak in the hatchery and harvest areas.

Not the “Status Quo” - As expected, the environmental plaintiffs and some parties in the litigation have characterized the filing as “status quo.” Such statements are patently false. The federal agencies’ process and analytical approach in the 2007 consultation, as well as the substance of the PA, are entirely different than in the past, and respond to Judge Redden’s ruling and comments on how the 2007 Biological Opinion (BiOp) should be done. Some examples:

- The 2007 consultation is unique and unprecedented. As ordered by the court, and diligently carried out by the federal agencies, it involves all the northwest “Sovereigns”, four northwest states, multiple up and downstream Indian tribes, and the federal agencies.
 - In past efforts, the federal agencies met and developed a plan amongst themselves, without any outside input and, once drafted, issued it.
- The analysis undertaken to determine whether fish are jeopardized by hydrosystem operations and other factors is much more comprehensive and science-based:
 - It includes complex modeling of various hydro operational regimes agreed to in the collaborative process to evaluate impacts and benefits to fish.
 - It includes a comprehensive scientific evaluation called the ESU by ESU (evolutionary significant unit) approach, which examines all factors affecting salmon productivity, including harvest, hatchery, hydro and habitat factors, on a species-specific basis.
 - This responds to the Judge’s direction to “put the fish first”.

- It also responds to Judge Redden’s ruling that the “jeopardy” analysis must take into account whether listed salmon and steelhead stocks are on a path to recovery. The ESU by ESU approach – a major improvement over past analyses – evaluates listed stocks ability to recover over time and whether they are trending towards recovery, or not, and strategies to assure increases in populations.
- The Proposed Action includes substantial new measures in hydro operations. It incorporates additional spill over the dams in summer (this was ordered by the court in 2005/2006 as an interim measure and is a significant operational change for the 10-year period of the BiOp).
 - However, the PA also includes a mechanism to shut-off spill if less than 1,000 fish are present for three consecutive days, recognizing there are serious questions about the biological validity of spill in late summer when few fish are present and costs high.
- The PA includes major new habitat funding commitments of over \$290 million in the next ten years to be funded by Bonneville Power. These funds will be used to improve degraded habitat and purchase water rights and easements, among other items.
 - This responds to Judge Redden’s ruling against the 2000 BiOp based on a concern that measures were “not reasonably certain to occur.” This funding is substantial and, because it will occur through BPA’s rates, is certain to occur.

Next Steps - Comments on the submittal are due to the court and other parties June 11, 2007, with an in-person status conference before Judge Redden on June 20, 2007. Ultimately, a final PA and Biological Assessment will be submitted to NOAA Fisheries which then takes the information, conducts its own independent analysis, and submits the “Biological Opinion” to the court. Three previous BiOps have been found lacking; the hope is this one will have sufficient substance and regional support to be deemed sufficient by the court, although it will be challenged in any event. The timeframe for a new BiOp is fluid; nothing is expected before year’s end.

Federal Agencies' May 21st Proposed Action: High-Level Summary

Hydro

- The PA includes continued implementation and evaluation of 2006 court-ordered spill, and as agreed to by BPA with the downstream treaty tribes and the Colville tribe on 2007 federal hydrosystem operations;
- A provision that summer spill timing be driven by fish presence (1,000 fish over two consecutive days) to warrant continued spill;
- Performance standards for each mainstem facility with 95% survival on average for spring migrating fish and 93% average survival for summer fish;
- Added dam modifications for each of the mainstem projects based on performance standards and whether they are being reached;
- Added powerhouse and spillway improvements to aid fish survival;
- Continued transportation of fish, but based on new protocols that are linked to recent fish survival information (e.g., the possibility of more transport in summer given poor in-river conditions);
- Incorporates NW Power and Conservation Council (and Montana) amendments relating to water releases at Libby and Hungry Horse for resident fish species.

Habitat

- For 2007-2009, increased BPA habitat funding (above current Power Council fish and wildlife program) for all ESUs of \$11.5 million;
- For 2010-2017, BPA funding increases to \$40-\$45 million average annual, including funding for estuary projects;
- The 2007-2009 funding includes dollars earmarked to state of Washington's Basin Water Transactions Program for water/riparian acquisitions;
- Funding to be provided based on ESUs in most need with significant increases in projects in the estuary.

Hatchery

- Adopt programmatic "funding criteria" and apply "best management practices" to FCRPS hatcheries; request NOAA conduct site-specific ESA consultations with hatchery operators;
- Hatchery reforms to occur after basin-wide reviews are completed by the Columbia River Hatchery Scientific Review Group and U.S. Fish and Wildlife;
- Expedite operational changes on aspects of the Leavenworth hatchery, identified by NOAA as an immediate concern;
- Continue use of safety-net programs to assist in recovery of listed stocks and expand the sockeye safety-net program;
- Include funding for Northeast Oregon Hatchery contingent on NOAA's approval.

Harvest

- Add PIT tag detection in mainstem Columbia fisheries;
- Implement Colville tribes selective fisheries project to help ascertain harvest impacts on natural spawners.