

DRAFT

Mr. Robert Lohn
Regional Administrator
NOAA Fisheries, Northwest Division
7600 Sand Point Way NE
Seattle, WA 98115-0070

Dear Mr. Lohn,

The Pacific Fisheries Management Council (Council) is one of eight regional fishery management councils established by the Magnuson Fishery Conservation and Management Act (Magnuson Stevens Act) of 1976 for the purpose of managing fisheries 3-200 miles offshore of the United States of America coastline. The Pacific Council is responsible for fisheries off the coasts of California, Oregon, and Washington.

We are writing to offer guidance on the re-write of the 2000 Federal Columbia River Power System (FCRPS) Biological Opinion (BiOp). Council area salmon fisheries have suffered severe declines as a result of hydro development in the Columbia Basin. It is imperative that NOAA Fisheries produce a BiOp that provides more certainty of restoring listed salmon ESUs to sustainable, harvestable levels - even when ocean conditions change from favorable to adverse, as they inevitably will.

The Council's recommendations reflect broad agreement within its constituent base. The Habitat Subcommittee and Salmon Advisory Subpanel have reviewed this letter. Public testimony was taken at the March Council meeting with strong support from those testifying. The Council feels that these comments not only reflect the best interests of our constituents, but also those of the resource itself, e.g., the salmon of the Columbia River.

GENERAL COMMENTS

The Council recognizes that the 2000 BiOp was invalidated because it lacked reasonable certainty to result in the recovery of listed ESUs.¹ The 2000 BiOp, dubbed an "aggressive non-breach" strategy by federal agencies, attempted to compensate for the harm caused by the operation of federal dams by focusing primarily on "offsite" improvements to habitat, hatchery, and harvest practices. We believe it would be foolhardy, as well as a waste of time and resources, to pursue the same failed strategy and simply issue a slightly modified "aggressive non-breach" BiOp with only minor changes. Instead, the Council recommends that NOAA Fisheries rewrite the BiOp with actions that can be demonstrated with a high degree of certainty (through modeling or analysis as well as experimentation) to result in benefits to and eventual recovery of listed ESUs through the full range of ocean conditions.

¹ National Wildlife Federation v National Marine Fisheries Service, 254 F. Supp 2d 1196 (D. Or. 2003).

The Council is also concerned about the degree to which state and tribal co-managers will be involved in the technical review discussions surrounding the BiOp rewrite. We are encouraged that NOAA Fisheries has agreed to engage the co-managers in the collaborative process described in a January 23, 2004 letter from the state of Oregon, et al., to U.S. Dept. of Justice.² We do not wish to find ourselves in the position of having to implement conservation measures that have not been subject to rigorous review and input from regional fishery experts.

The Council recognizes that while recent hatchery chinook returns are at high levels, wild chinook are still far from fully recovered. Wild runs that still require protection from fisheries harvest include Willamette Spring Chinook, Upper Columbia Spring and Summer Chinook, Winter Steelhead, Snake River Spring Chinook, Snake River Fall Chinook, Coweeman River Natural Tules, and Lewis River Wild Chinook. Each of these chinook stocks inhibits either Council fisheries, Southeast Alaska fisheries, or in-river, non-Council fisheries.³ Updates to the status of these and other listed ESUs must be peer reviewed by the co-managers prior to adoption by NOAA Fisheries.

Council decisions are required by law to include social and economic impact statements for the managed fisheries and associated communities. Employment in North of Falcon commercial salmon fisheries has dropped from 47,600 days/year on the average from 1976-1980 to 2,400 days/year in 2002. Lows during this period include 200 days in 1994, and 300 days in 1998. In recreational fisheries, the drop is from 490,600 angler trips to 107,200 during the same time period. Lows during the period are ZERO angler trips in 1994, and 15,400 in 1998.⁴

Thus, the Council concludes that past recovery measures have had little effect on salmon populations under poor (El Nino) ocean conditions. Similarly, despite the opportunity to take advantage of good ocean conditions in recent years, federal salmon recovery agencies have largely failed to implement and fund the recently invalidated BiOp. Given that the loss of in-river habitat and the configuration and operations of the hydropower dams are far larger sources of Columbia River salmon mortality than already stringently constrained harvests, it is unlikely that additional fishery restrictions will provide much additional survival benefit. If substantial additional survival benefit is to be obtained, particularly improvements in juvenile survival, it must come from major improvements in mainstem habitat and within the FCRPS itself. The Council therefore recommends that stronger measures than those required in the past be included in a new BiOp to recover wild salmon to self-sustaining, harvestable levels.

SPECIFIC COMMENTS

We recommend that NOAA-Fisheries concentrate its Reasonable and Prudent Alternative (RPA) on the modification and rehabilitation of the FCRPS and mainstem habitat of the Snake and

² Letter from David E. Leith, Assistant Attorney General, State of Oregon on behalf Columbia River Treaty Tribes, Washington Dept. of Fish and Wildlife, and the States of Oregon and Idaho to U.S. Dept. of Justice, January 23, 2003.

³ Preseason Report III; *Analysis of Council Adopted Management Measures for 2003 Ocean Salmon Fisheries*; Prepared by the Salmon Technical Team and Council Staff.

⁴ Pacific Fisheries Management Council, *2003 Review of Ocean Fisheries*, February 2003.

Columbia rivers. For eight salmon and steelhead ESUs, the 2000 BiOp concluded that the “...operation and configuration of the FCRPS...[is] likely to jeopardize the continued existence of [these ESUs] and to adversely modify [their] designated habitat.”⁵ However, the 2000 BiOp failed to address this concern.

The Council concurs with the key measures recommended recently by the Oregon Department of Fish and Wildlife (ODFW) to improve mainstem survival and production of anadromous fish as the minimum required of any new BiOp.⁶ We include these key measures in Appendix 1.

The Council cannot remain silent on the issue of the four Lower Snake river dams. As stated in Idaho Department of Fish and Game’s (IDFG) recent recommendations to Northwest Power and Conservation Council:⁷ “Analytical risk assessments by PATH and by NMFS CRI (Critical Risk Initiative) indicate that mainstem options that include breaching of the four Lower Snake River dams are most likely to recover listed Snake River populations, and are least risky across a broad range of uncertainties (Budy 2001; State of Idaho 2000a; NMFS 2000).⁸ Alternatively, the hydrosystem actions in the 2000 BiOp RPAs and the Northwest Power and Conservation Council’s Program are less likely to lead to recovery and have higher risk (Budy 2001; State of Idaho 2000; NMFS 2000).” We concur with this assessment.

We note that in addition to IDFG, both ODFW and the Columbia River Inter-Tribal Fish Commission (CRITFC) recommend planning for or moving forward with the breaching of the four lower Snake River dams. Our recommendation is that NOAA-Fisheries acknowledge its own science and immediately begin the necessary planning and evaluations required for the breaching of the four lower Snake River dams as a component in the RPA.

The Council maintains a commitment to providing social and economic benefits to non-Council fisheries in the Columbia River. We strongly urge NOAA-Fisheries to pay attention to the interests of the treaty tribes of the Columbia Basin as expressed by CRITFC: “The tribes look forward to restoration of sustainable fisheries at all their usual and accustomed fishing stations, not simply rebuilding salmon populations to keep them at the brink of extinction for decades to come. For the Commission’s member tribes and the United States, this obligation is over-arching. The responsibility of the United States is not simply to avoid jeopardizing the continued existence of salmon stocks listed under the ESA. Rather the United States has a higher duty. It

⁵ National Marine Fisheries Service, *2000 FCRPS Biological Opinion*, (December 21, 2000). Pp 8-1 to 8-26.

⁶ Oregon Department of Fish and Wildlife, *Recommendations of the State of Oregon for the Mainstem Columbia and Snake Rivers to be Adopted as Amendments to the Northwest Power Planning Council’s Fish and Wildlife Program*, June 15, 2001.

⁷ Idaho Department of Fish and Game, Comments on NPCC Mainstem Amendments; <http://www.nwppc.org/library/recommend/mainstem/14.htm>

⁸ See: Budy, P. 2001. Analytical approaches to assessing recovery options for Snake River chinook salmon. UTCFWRU 2001(1):1-86. Utah Cooperative Fish and Wildlife Research Unit, Utah State University, Logan, Utah. Available at: www.r1.fws.gov/crfpo; State of Idaho. 2000a. Comments on Draft Biological Opinion of Operation of the Federal Columbia River Power System Including the Juvenile Fish Transportation Program and the Bureau of Reclamation’s 31 Projects, Including the Entire Columbia Basin Project (Dated July 27,2000). Submitted September 29, 2000; and National Marine Fisheries Service. 2000. FCRPS Biological Opinion, December 2000.

must restore salmon runs to support its treaty commitments. Where the United States can not successfully assure the long term existence of the salmon, by meeting a jeopardy standard under the ESA, The United States will surely fail to restore salmon to support our treaty fisheries.”⁹

SUMMARY

The Council is relieved that ocean conditions provide some relief from conditions experienced in the decade of the 1990s. Indeed, salmon harvest in council fisheries have risen dramatically since 1999.¹⁰ The bulk of the returning salmon continue to be hatchery bred, however, and not entirely dependent on inriver conditions. The Council is wary of declaring success in recovery efforts based on four years of relatively strong hatchery runs, particularly when currently unusually favorable ocean conditions are inevitably going to end.

The Council believes a BiOP that protects wild salmonid populations against adverse ocean conditions such as occurred in the 1990s is required. Measures such as spill and minimum flow should be mandatory at a minimum, and not at the discretion of agencies such as the Bonneville Power Administration or the NPCC.

The Council recognizes the controversial nature of breaching the four lower Snake River Dams but is nevertheless clear in recommending preparation for breaching as a mandatory measure. In NOAA Fisheries own words from the 2000 BiOP, “...breaching the four lower Snake River Dams would provide more certainty of long-term survival than would other measures.”¹¹ We could not have said it better ourselves.

Sincerely,

Donald K. Hansen
Chairman

⁹ Comments of CRITFC on Mainstem Amendments;
<http://www.nwppc.org/library/recommend/mainstem/01.htm>

¹⁰ Pacific Fisheries Management Council, *2003 Review of Ocean Fisheries*, February 2003.

¹¹ NMFS. *2000 FCRPS Biological Opinion*, December 2000. pg. 9-5.

APPENDIX 1

Oregon recommendations to Draft Mainstem Amendments:

1. Flow augmentation for juvenile migration and mainstem spawning - Improve inriver survival and production by implementing modified Biological Opinion and other operations to meet flow targets in the Snake and Columbia rivers; seek additional water to consistently meet flow objectives for all fish.
2. Spill - maximize fish passage efficiency and survival at all projects in the Snake and Columbia Rivers by implementing modified Biological Opinion spill including 24 hr. spill at all projects; conduct risk assessment of increasing spill in the short-term above 120% TDG waiver; modify projects to maximize spillway and project survival. (“Modified Biological Opinion spill” refers to Table 4, pp.33)
3. Juvenile fish transportation - implement “spread the risk” transport policy where no more than 50% of juvenile migrants are transported; improve in-river conditions by providing recommended flow and spill and improvements to bypass systems; bypass fish as needed to manage the proportion of fish transported.
4. Juvenile bypass improvements - continue to test and implement surface bypass and collection systems; evaluate and if necessary modify screen bypass and sampling systems and bypass outfalls to improve survival of bypassed fish.
5. Turbine improvements - operate turbines units at FCRPS dams for optimum fish passage survival; continue investigation and installation of minimum gap runners; implement Biological opinion actions to develop new turbine design and technologies to improve juvenile and adult survival.
6. Predator control - improve inriver survival by reducing predation losses to fish, avian and pinniped predators.
7. Planning for alternative actions if non-breach options fail to meet ESA requirements - conduct necessary planning and evaluations to ensure that alternative actions including breaching of Snake River dams can be implemented on a timely basis if non-breach alternatives fail to meet performance standards.