



**NORTHWEST POWER AND CONSERVATION
 COUNCIL
 June 12-13, 2007**

At the Council's meeting in Bonners Ferry, general counsel John Shurts flagged hot spots in the new Proposed Action for salmon recovery and pointed out which parts of the Council's Fish and Wildlife Program are ripe for revision. Avista's Larry La Bolle said he was encouraged by recent work to resolve Residential Exchange issues, and Greg Delwiche reported "BPA isn't sitting on its hands" when it comes to Willamette Valley wildlife mitigation. Next Meeting: July 11-12 in Portland, Oregon.

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THE AGENDA



**Let's Take a Spin
 Through the 850-Page
 Proposed Action**

Staffer John Shurts walked the Council through his analysis of the federal action agencies' 850-page draft Proposed Action (PA) to recover Columbia Basin salmon and steelhead. While the PA was filed as a draft and will change, this set of documents is "the

geography, the raw material" that we'll be living with in the next few years, he said.

People "will fight like cats and dogs in court" over whether the PA is sufficient and whether it satisfies the Endangered Species Act, but this is the basic organization, Shurts stated. He said eight groups have filed responses to the PA and that the court will hold a status conference later in June on the PA and the responses.

The PA contains proposed actions in a number of categories for the years 2007 to 2017, and "sprinkled throughout" are

analyses of the possible benefits from them, Shurts explained. In the **hydro proposed action**, there is nothing dramatically new in terms of operations from the 2000 and 2004 Biological Opinions (BiOps), he said. One thing that is new is the summer operation at Hungry Horse and Libby, which comes directly from the Council's mainstem amendments, Shurts pointed out. In their responses, some people criticized this section of the PA for not containing much that is new, such as proposals for dam removal, he said.

The **habitat proposed action** looks like "the 2004 BiOp, plus," said Shurts, noting it has three main elements. The first is a list of tributary and estuary habitat projects already slated for implementation from 2007 to 2009, he stated. The second is a set of additional habitat actions in 2008 and 2009, which are fairly specifically defined, but not yet associated with F&W projects, Shurts said. The third is a promise of additional habitat actions in 2010 to 2017, but which are not yet specifically defined, he stated. Some of the people filing responses have said this section is not specific enough, Shurts added.

There are BPA funding commitments for habitat actions, including an additional \$11.5 million for tributary work and \$3 million for estuary work in 2008 and 2009, he said. There is an additional \$40 million to \$45 million per year from 2010 to 2017, Shurts explained. The PA discusses survival improvements and benefits expected from the habitat work, and we think this analysis will be a main issue of contention, he said.

This section is where the BiOp connects with the Council's program, said Council chair Tom Karier. It seems like the BiOp creates an opening for us to discuss these details and coordinate with BPA, he stated. Yes, it will be incredibly important to talk with BPA about this in the next six months, replied

Shurts. I've talked with BPA about having a focused BiOp-related project solicitation, and we'll have something for you on that at the July meeting, said staffer Tony Grover.

Is there anything in the PA about monitoring and evaluation (M&E) to allow determination of whether survival improvements are occurring? Melinda Eden asked. There is a section on tributary habitat improvements and M&E, but "it's fairly thin," replied Shurts.

A number of people have said the M&E section lacks specifics, and that will be a central question about the PA, he stated. One of my personal goals is to "crack the code" on M&E this year in our F&W amendment process, said Grover. Whether the BiOp is a launching point for that, or whether we will have to do it ourselves, I don't know yet, he added.

The **hatchery proposed action** contains two strategies, according to Shurts. The first strategy is to continue efforts to reduce the adverse impacts of artificial production, and the second is to bring positive benefits through maintaining, and in some cases increasing, ongoing supplementation and captive production programs and developing new production, he said. BPA is cited as the main funding source for all the actions related to these strategies, but there are no dollar amounts, Shurts pointed out. There isn't much information on benefits or survival improvements in this section, he said.

The **harvest proposed action** contains strategies for selective fishing and improved management of harvest, Shurts continued. BPA is noted as the funding source, but dollar estimates are not included, he said. There are quantitative estimates of survival improvements from harvest actions that took place from 2001 to 2006, but nothing for the 2007 to 2017 actions, Shurts added.

The PA has a **predator control proposed action**, which calls for "reducing" pikeminnow and other fish predation, "managing" avian predation, and "addressing" marine mammal predation, he pointed out. BPA would fund the first category, and the Corps the other two, Shurts said.

The PA also identifies a **research, monitoring, and evaluation (RM&E) proposed action** with nine strategies, he noted. No dollar estimates are provided, and BPA, as well as the Corps and Bureau of Reclamation, are identified as funding sources, Shurts said. The PA also has a "curious" section dealing with "accountability for results and risks" that describes implementation planning and reporting and sets out a performance framework with targets and milestones, he stated. It calls for establishing a federal, state, and tribal Regional Implementation Oversight Group "with a long list of duties" related to implementation, Shurts said.

But Wait, There's More Attached!

A biological analysis attached to the PA examines "base, current, and prospective conditions" for each fish population in an Evolutionarily Significant Unit (ESU) in terms of productivity, abundance, and extinction risk, he told the Council. This isn't an official NOAA Fisheries jeopardy analysis, but the action agencies used the metrics NOAA set forth in the "Lohn memo" on jeopardy, Shurts stated.

The goal at the end of a complex six-step analysis is to have every metric for every population in a desirable condition, and as you work through the tables in the PA, this is mostly achieved, he said. This analysis will be one of the main areas people will litigate and fight over, Shurts predicted.

He said some of the groups that filed responses to the PA said it doesn't add up to the significant changes needed to accomplish recovery, and some expressed especial concern about the proposed hydro action. There is also concern about whether the habitat work will result in the benefits projected and whether funding is sufficient, Shurts noted. Other groups said the PA needs more specifics, but that it looks like a positive step and the right way to be going, he added.

Does the schedule call for the BiOp to be done in July? Karier asked. I don't think anyone expects we'll have a BiOp by then, replied Shurts. The groups at the status conference are likely to discuss what a viable date would be, he said.

Residential Exchange: Letters Fly, Meetings Proliferate



Shurts reported June 18 is the deadline for BPA to file for reconsideration of the Ninth Circuit Court's decision invalidating the residential exchange settlement agreements. Some investor-owned utilities (IOUs) have said they plan to file, he noted. But, Shurts said, it doesn't seem to me to be an opinion that will catch the court's attention for reconsideration.

BPA has suspended the residential exchange payments and taken a lot of criticism for that, he stated. If I were a BPA attorney, I would have advised doing that, Shurts acknowledged.

There's been a flurry of letters on this issue between BPA and members of Congress, and BPA has been meeting with its customers, he continued. How the exchange can be resolved for the future is up for discussion, as is the question of how to deal with the

implications of the court's decision in the 2007-2009 rate case, Shurts said.

There is also disagreement about whether BPA should go forward with the Regional Dialogue now, he noted. Steve Wright has said it's important to wrap up the Record of Decision (ROD) at some point, according to Shurts. While the policy RODs are important, they are not legally binding in the way the long-term contracts will be, he observed. It is in the Council's interest to see that the core idea in the Dialogue, which is that BPA acquire resources under a tiered-rate structure, be retained, Shurts added.

Larry La Bolle of Avista told the Council that the IOUs have met with BPA and the public utilities and "pledged to do our best to solve this in the region and within the existing statute." BPA presented to us the administrative rule changes that will need to occur to make the residential exchange work, he said. The utilities told BPA they would try to reach agreement on the issues within a month or two, according to La Bolle.

Steve Wright is trying to provide interim benefits to the IOUs, but it's challenging, given the court's orders, he stated. We are continuing to meet with the publics, and we want a quick resolution of the issue, La Bolle said. I'm encouraged by the discussions we've had so far, he added.

Karier asked what issues could be resolved within the timeline of a month or two. Issues associated with the long-term Regional Dialogue, replied La Bolle. We want to find a fix for the residential exchange dilemma that stands the test of the statute, he said. We'd like the long-term agreement to inform an interim agreement that would exist for about a year and a half and then terminate with the signing of new long-term contracts, according to La Bolle.

Jim Kempton asked about having the Regional Dialogue ROD completed so it could be the umbrella for getting the certainty needed for long-term contracts. Some don't want the Regional Dialogue ROD issued, but the predominant opinion is that it should be because it would establish a tiered rate structure for the contracts, replied La Bolle. BPA has said that long-term contracts won't be offered to the publics until the issues related to the residential exchange are resolved, he stated.

FPC O-Board Gets a Roster



Staffer Jim Ruff said that in response to the Council's solicitation for people to serve on the Fish Passage Center (FPC) Oversight Board, the following nominations were received:

- The Kootenai Tribe of Idaho nominated Susan Ireland to represent the upper Columbia River Basin tribes;
- The Idaho Dept. of Fish and Game (IDFG) nominated Steve Yundt to represent the F&W agencies of Idaho and Montana;
- Oregon and Washington nominated Tony Nigro to represent the F&W agencies of the two states; and
- NOAA Fisheries nominated John Ferguson of the Northwest Fisheries Science Center as its representative.

Ruff said the Council has not received a nomination from the lower Columbia River tribes. Five nominations were received to represent the public member from the region's scientific community:

- Paul G. Wagner, a former Washington Dept. of Fish and Wildlife biologist;
- Brian Marotz, fishery biologist for the Montana Dept. of Fish, Wildlife and Parks;

- Dr. Dan Goodman of Montana State University, a former Independent Scientific Advisory Board (ISAB) and Independent Scientific Review Panel (ISRP) member;
- Dr. Richard Whitney, retired Univ. of Washington professor of fisheries and former ISAB and current ISRP member;
- Rod Sando, currently retired and serving on the Science and Policy Advisory Board of the Northwest Sportfishing Industry.

Bruce Measure, who will be the Council's representative on the Oversight Board and serve as its chair, moved that the Council approve the following people to serve on the board: Susan Ireland, Steve Yundt, Tony Nigro, John Ferguson, and an ex-officio member, Douglas Taki, from the Upper Snake River Tribes. The motion passed.

Measure moved that the Council approve Dan Goodman as the public member from the region's scientific community, and Richard Whitney as his alternate. That motion also passed.

Mainstem Will Be a Hot Button in F&W Amendments



Shurts presented an outline of the Council's F&W program, highlighting areas "where a lot of action will happen" during the upcoming amendment process. While the program has been successful over the years, our challenge now is to find areas of the program where there can be significant improvements, he said.

In the program's basinwide provisions, the first item Shurts flagged was "biological objectives." He said the Council has a lot of

thinking to do about what the basinwide program should look like with respect to biological objectives. Instead of using numbers of fish returns as previous programs did, I'd like to think about using performance objectives or standards that the Council or BPA can be held accountable to, said Karier. He suggested "survival through the hydro system" as an example.

In the basinwide program, Research, Monitoring, and Evaluation (RM&E) will be an area of major effort this time around, Shurts said. It's very important to get this section right, he added.

Staff recommends the Council not use a separate amendment process for the mainstem, as was done in previous programs, but the Council should think about that, Shurts said. In the mainstem section, staff thinks the overarching strategy of "BiOp, plus" still works, he stated. That means the Council's program incorporates BiOp operations as a baseline, but then adds on its own considerations, including protection of resident fish and non-listed anadromous fish, an emphasis on M&E, and fulfillment of the Council's power supply role in accord with the Northwest Power Act, Shurts said. There will be a significant amount of recommendations on mainstem issues, he predicted.

Karier asked about the possibility the new BiOp would call for a lower level of spill than the current BiOp, and said if so, it could be useful for the Council to attempt to sort out the scientific evidence with respect to spill and transportation. The spill reductions aren't major, but there is new interplay between spill and transportation in the Proposed Action, and yes, that may be an area where we can make some progress, replied Shurts.

Staff doesn't think this amendment process should include revising the subbasin plans,

he continued. But it will be important to establish the right process and schedule to regularly update and amend those plans, Shurts added. It has been suggested that each subbasin plan have a uniform executive summary that discusses target species, limiting factors, and other elements, said Karier. This will be a major area to think about, Shurts told the Council.

Finally, from a budget standpoint, the Council will have to figure out how to deal with the "giant pile of stuff" – actions called for in the subbasin plans, projects funded through the F&W program – plus all the actions required in the mainstem and off-site mitigation elements of the new Proposed Action and BiOp, he said.

Staff recommends the Council schedule consultations with affected entities to hear what they think the scope of the F&W amendments should be, Shurts stated. He also said if the final Proposed Action and BiOp are released in December or January, the Council would need to consider how that relates to the F&W amendment schedule.

Northwest's Population Explosion Hurts Salmon



Dr. Susan Hanna of Oregon State University presented the key findings from a new ISAB report, Human Population Impacts on Columbia River Basin Fish and Wildlife. She said the population is growing in all four Northwest states and will continue to grow at least through 2030. Population growth means increasing water demands and more conversion of forest and agricultural lands to residential and commercial development, Hanna noted.

Urban development changes the characteristics of stream ecosystems, and in

most cases, these changes are detrimental to native aquatic biota, including salmonids, she said. Exurban – low density, semi-rural residential – development has been the dominant settlement trend in the West since 1970, with homes being built in areas of productive soils and close to water, according to Hanna. This type of development tends to result in degraded habitat for F&W, she added.

The Council is in a unique position to demonstrate leadership on the question of how F&W restoration can be integrated with human population growth, Hanna stated. The production, distribution, and consumption of power are important factors influencing economic development, and F&W recovery plans can buffer Columbia Basin ecosystems from intensified patterns of land and water use, she said.

The subbasin plans, except for the Willamette, had weak coverage of the subject of human population growth, Hanna noted. The ISAB recommends the subbasin plan updates be required to address population and settlement patterns, she stated.

The Council should create a dialogue to address the issue of exurban sprawl head-on, Hanna said. Other recommendations from the ISAB are: focusing actions on "protecting the best," especially in areas of rapid population growth; curbing the movement of aquatic invasive species via shipping, recreational boating, and other pathways; and assessing new market-based protection mechanisms for protecting F&W.

Overall, the strategies we recommend recognize the benefits of permanent protections, partnerships with private landowners, the power of economic incentives, and the need to anticipate the combined impact of population growth and climate change, she said. The effect of

increasing water demand in the region will be exacerbated by the effect of climate change on the quantity and temperature of summer streamflows in many subbasins, Hanna stated.

The ISAB also recommended: the establishment of permanently protected refugia "strongholds" to minimize interactions between salmon and human activities; protection of areas that will restore headwater sources of cool water in warm streams; incentives to private landowners to protect F&W habitat; and investment in the permanent protection of instream flow.

No Cement Shoes for BPA in the Willamette



Greg Delwiche reported on BPA's latest thinking on several issues related to wildlife crediting in the Willamette Valley. At your last meeting, you heard that the Habitat Evaluation Procedure (HEP) used to assess wildlife losses resulting from hydro development is an out-dated procedure, given the state-of-the-art today in wildlife mitigation, he told the Council. BPA thinks a new methodology, the Combined Habitat Assessment Procedure (CHAP), has promise and is worth further exploration, Delwiche said.

The loss assessments done previously for the Willamette Valley were qualitative and depended on a HEP application that is inconsistent with how HEP was used subsequently in the region, he stated. BPA thinks there are significant flaws in the loss assessments for the Willamette and that they overstate our loss obligation, Delwiche said. A spot audit the Council did of the Willamette several years ago recommended a re-assessment of losses there and that it be done without HEP, he noted.

BPA is considering other mitigation tools and strategies that could be used in the Willamette, Delwiche continued. We could enter into more partnerships with landowners to help them change ranching and agricultural practices to benefit wildlife, he said. We could explore partnerships with the U.S. Forest Service and non-governmental organizations like the Nature Conservancy, Delwiche suggested.

Some mitigation could be shifted to east of the Cascades where land prices are lower, he said. We could also look at the wildlife benefits associated with existing fish projects and see if credit could be given for those benefits, Delwiche added.

BPA has purchased a permanent conservation easement for 1,200 acres of land outside Eugene, Oregon, at a price of \$4.9 million, despite not having a loss assessment in place for the Willamette that BPA agrees with, he pointed out. We "haven't sat on our hands" despite a fair amount of uncertainty about crediting and loss assessments, Delwiche stated.

We may do another significant acquisition this year, he said. "So BPA hasn't been wearing cement shoes when it comes to wildlife mitigation in the Willamette," Delwiche added.

FY 2008 Budget Is Getting Closer



Staffer Patty O'Toole reported on recent meetings with BPA in preparation for developing a FY 2008 budget for the F&W program. BPA is putting together a table of Council recommendations and BPA budget decisions that will be posted on its web site and updated periodically, she said. FY 2008 issues that need more discussion include "in

lieu" projects and projects related to the draft Proposed Action, O'Toole noted.

The Council made "interim" funding recommendations for a few categories of FY 2007-2009 F&W projects, such as coordinated data management, regional coordination, and wildlife operations and maintenance, she said. We have told BPA we'll have our final recommendations for those categories ready in July, O'Toole told the Council.

Don't Drive Spikes Into the Spawning Beds, Please



Chip Corsi of the IDFG described the Lake Pend Oreille fishery recovery project and noted that between BPA, Avista, and IDFG-funded programs, over \$2 million per year is being spent to recover the kokanee fishery in the lake. That fishery has an estimated value of \$17 million annually, he said.

Corsi discussed prospects for kokanee recovery given the amount of predation on kokanee by trout in the lake. We are at a tipping point for the kokanee population – we are trying to address predation and provide optimal spawning conditions, he said. If we lose the kokanee, the sport fishery at the lake will decline substantially, Corsi added.

Corsi described an incident that occurred at Bayview, Idaho, in April when a marina developer pounded steel spikes into kokanee spawning beds in the lake. He said the state has required the developer who damaged the spawning beds to restore the site.

Beth Reinhart of the Corps of Engineers described the terms of the permit given to the developer. We didn't realize how the work would be performed, she said. This has been

a huge lesson to us, and we've taken steps to put more rigid conditions in our permits to make sure something like this never happens again, Reinhart stated.

Did you ask the state to approve your permit? Karier inquired. IDFG reviewed the permit and had concerns, replied Reinhart. We said "don't do pile driving," Corsi said. We felt it was a problem from the beginning, he added.

Skip Wilcox of the Bayview Chamber of Commerce described efforts by citizens to get a cease-and-desist order when they observed the developer's actions. The developer has said that he has asked to clean the spawning beds out, vacuum up the sediment, and dump it in the middle of Lake Pend Oreille, he noted. "I'm sure our agencies will approve and if they do, God help us," Wilcox said.

END NOTES

IEAB News Flashes. The Council appointed John Duffield of the University of Montana to the Independent Economic Analysis Board to replace Ken Casavant who resigned. The Council also approved conflict-of-interest guidelines for the IEAB.

Council 2007 Calendar

July 10-12	Portland, OR
August 14-16	Washington
September 11-13	Portland, OR
October 16-18	Missoula, MT
November 13-14	Coeur d'Alene, ID
December 11-13	Portland, OR