



Bill Booth, Chairman
Northwest Power and Conservation Council
851 SW 6th Avenue, Suite 1100
Portland, OR 97204

June 12, 2008

RE: Recommendations to Amend the Columbia River Basin Fish and Wildlife Program

Dear Bill,

Thank you for the opportunity to comment on the proposed amendments to the Council's Fish and Wildlife Program. The Public Power Council (PPC) represents over 100 public power utilities that purchase power from the Bonneville Power Administration (BPA). These utilities and the customers they serve fund the Council's Fish and Wildlife Program through their rates and have a vested interest in ensuring the Council's Program is efficient and effective.

Along with other entities coordinating as the "Power Industry" we submitted an Executive Summary with our proposed amendments on April 4. This summary included five guiding principles for the proposed amendments. In our review of others' amendments, our principles are relevant to many of the submitted recommendations. Our comments are organized by the five principles from our proposed amendments and explain how amendments submitted by other entities comply or contrast with our recommendations.

1. The vision, objectives and strategies of the Program should address mitigation of hydropower impacts.

We and BPA both submitted comments recommending a modification to the vision, objective and strategies of the Program to better reflect its purpose of mitigating for the hydrosystem only. Further, BPA emphasizes in its comments that ratepayers should pay for hydrosystem mitigation only.

The Act directs the Council to establish a program comprised of "measures to protect, mitigate, and enhance fish and wildlife affected by the development, operation, and

management of [hydroelectric] facilities.”¹ It also requires that to the extent the Council seeks to expand its Program beyond measures that address the impacts of hydroelectric facilities, it must secure agreements for funding and administering those measures from the entities responsible for the impacts that are addressed.²

PPC believes the Council should accept our recommendation and that of BPA’s to modify the vision, objective and strategies in order to be consistent with the intent of the Power Act. Specifically, PPC supports modification to the vision and objectives along with inclusion of objectives for hydro system survival, and along with objectives for ecological indicators that should be used in place of numerical adult return goals.

Further, PPC believes the Council must reject the following proposals because they reach beyond hydrosystem mitigation and are therefore inconsistent with the intent of the Power Act.

- a. **Program objectives that require more than hydrosystem mitigation.** This would include any recommendation for inclusion of adult population and/or smolt to adult return goals. These objectives rely on many factors beyond the implementation of the Council’s Program and are insufficient for evaluating the success for hydrosystem mitigation, which is the purpose of mitigation under the Northwest Power Act.
- b. **Any vision or objective that is based on replacing or achieving historical conditions.** These visions and objectives are unrealistic and inconsistent with the purpose of the Power Act. This includes any recommendation for objectives based on historic performance. The ecosystem of the region is impacted by its growing population and land-uses, both of which are outside of the impacts of the hydropower system and beyond the ability of the Program to change. The Independent Science Advisory Board (ISAB) commented on the current adult population goal by stating it was unaware of any other program that endeavors to achieve historical conditions. The ISAB stated that it is improbable that any effort can return the ecosystem to pre-dam or pre-European American settlement conditions. In addition, courts have found that language essentially identical to the Northwest Power Act’s mandate to protect, mitigate, and enhance fish and wildlife does not require a restoration of the past in order to satisfy that obligation.

¹ *Id.* § 4(h)(5).

² *Id.* § 4(h)(8)(C) (“To the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.”).

- c. **Any research, monitoring, and evaluation that is not specific to hydrosystem mitigation.** This includes amendments that advance sole ratepayer funding of population status monitoring, regional coordination or compilation of population status information, and general ecosystem monitoring. The Columbia Basin Fish and Wildlife Authority (CBFWA) recommendation for RM&E is fundamentally inconsistent with the purposes of the Act because it recommends sole BPA funding for population and lifecycle assessments of fish and wildlife. The lifecycle is influenced by a multitude of non-hydrosystem impacts and therefore funding by ratepayers is not consistent with the Act.
- d. **Any recommendation for inclusion of plans that address all human actions and therefore are broader than the scope of the Program.** Amendments for inclusion of subbasin plans, summaries of subbasin plans or recovery plans are beyond the scope of the Program. PPC supports an appendix to the Program that includes subbasin plans and ESA Recovery Plans to be used as a reference for potential off-site mitigation measures.

2. The Council’s Program should be a high-level guidance document.

As a policy and guidance document, the Program should provide the direction and priorities for mitigating hydrosystem impacts. The Program should have the flexibility to adjust implementation as new information becomes available.

PPC believes the Council should reject any recommendations that are prescriptive or specific and limit the Council’s decision-making. This includes any recommendation that identifies specific projects or entities to be funded, or a requirement that actions be conducted by fish and wildlife managers. The Program should describe the outcomes that need to be achieved and provide the Council and BPA with the flexibility to implement the most cost-effective solicitation and project award process. Containing specific projects in the Program complicates the Council’s ability to ensure that the required scientific review of projects is provided.

3. The hydrosystem mitigation directed by the Program should complement other ongoing regional actions.

PPC recommends that the Council accept the recommendation of the Power Industry group to implement a comprehensive review by the Council of all hydrosystem mitigation actions. The Council is in a unique position to review and summarize all activities funded and implemented in support of FCRPS mitigation. This review will provide context for decisions surrounding fish and wildlife funding and assist in the prioritization of both on-site and off-site actions discussed under principle number five.

4. The Program should prioritize projects that directly benefit fish and wildlife and share costs with other agencies.

PPC has consistently encouraged and supported efforts to make fish and wildlife funding as effective as possible. PPC encourages the Council to accept our recommendation and that of BPA's to allocate the Program budget in a 70/25/5 manner: 70% to on the ground projects, 25% to RM&E, and 5% to coordination projects.

5. The Program should provide an ecologically based framework that creates clear priorities for project solicitation and selection.

The Northwest Power Act indicates that efforts to protect and mitigate fish and wildlife should occur primarily at the dams or in the adjacent reservoirs. Enhancement measures may be used only “in appropriate circumstances, as a means of achieving offsite protection and mitigation. . .”³ The current method for project solicitation and selection does not formally recognize the priority for on-site measures. The Program should reserve enhancement actions for occasions where on-site measures are deemed insufficient.

PPC encourages the Council to accept the following to assure that the Program has a strong scientific foundation and priorities that are consistent with the intent of the Northwest Power Act.

- a. **Any recommendation that will support the ability to develop priorities and determine when off-site mitigation is required.** Specifically, PPC suggests adoption of the BPA and Power Industry recommendations to develop hydro-based objectives that indicate when offsite efforts are required.
- b. **Any recommendation for inclusion of independent science review.** Specifically, we support recommendations to maintain Independent Scientific Review Panel evaluation of all projects, including those funded through the MOAs between BPA and state and tribal entities.

The membership of PPC takes its responsibility for fish and wildlife mitigation seriously. As BPA customers funding this Program, we will continue to be active participants in this amendment process. We look forward to working closely with you throughout the creation and implementation of these fish and wildlife program amendments.

Sincerely,

Scott Corwin
Executive Director, Public Power Council

³ *Id.* § 4(h)(8)(A) (emphasis added).