



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 NE Oregon, Suite 200, Portland, Oregon 97232

Telephone 503 238 0667

Fax 503 235 4228

November 22, 2004

Ms. Judi Danielson, Chair
Northwest Power and Conservation Council
851 S.W. Sixth Ave.
Portland, OR 97204

VIA: John Ogan at jogan@nwcouncil.org

**RE: Request for Additional Comment on Issues Related to the Program
Amendment Process**

Dear Ms. Danielson,

On behalf and at the direction of its member tribes, the Columbia River Inter-Tribal Fish Commission provides the following comments on the additional issues relating to the Program amendment process and subbasin plans. These comments respond to Steve Crow's letter of October 22, 2004, requesting additional comment on several issues raised during the initial subbasin plan comment period.

The Commission notes that several of the additional issues relate or stem from the failure of the submitted subbasin plans to include specific recommended measures, which the Commission commented extensively on in its August, 14, 2004 comment letter. We hereby incorporate those comments again by reference. The Commission reiterates its request that the Council issue a new Request for Recommendations in compliance with section 4(h)(2) of the Power Act that requests a prioritized list of measures, along with a budget, as a final phase in the amendment process prior to adopting the subbasin plans into the Program.

The Commission's specific comments to the issues identified are as follows:

A. Level of specificity in the subbasin plans – some comments encourage the addition of more specific implementation plans or more specific implementation action to the subbasin plans

Concerning the level of specificity in the subbasin plans, the Commission commented extensively on this topic in its letter of August 14, 2004 and offered recommendations for correcting this deficiency. In addition, the Bonneville Power Administration noted the lack of specificity in its August, 2004, letter signed by Bill Maslen and suggested that the remedy for the problem was joint decisionmaking by BPA and the NPCC on the acceptability of projects. In effect, the Council performed a "bait and switch" operation whereby it stated one process in its legally adopted 2000 Fish and Wildlife Program and then in technical guidance and planning

contracts, the Council cautioned the technical staff and citizens to not use that Program process. The result was that very few subbasin plans contain the specific recommendations that were to be requested under the Northwest Power Act. Because the plans were not solicited in the manner required by the Act and, as a result, lack the specificity to guide funding decisions, they should not be incorporated into the Program from both a legal and policy standpoint.

The Commission has proposed that the Council issue a request for recommendations in conformance with the Act for the purpose of completing the subbasin plans and lawfully authorizing the Council to adopt the plans into the Program. The issue paper suggests an option that would utilize the 4(h)(10)(D) review process for defining implementation measures, objectives, coordination and funding needs. The issue paper ignores the flaw in the reasoning supporting this option. Section 4(h)(10)(D) complements the Program amendment process by providing a “review” process for projects called for in Program amendments. By its wording and its meaning in context, section 4(h)(10)(D) provides for an Independent Scientific Review Panel that carries out a “scientific” review of projects on the basis of scientific criteria. The Northwest Power Act, however, calls upon the fish and wildlife agencies and tribes to propose “measures” and “fish and wildlife management coordination and research and development (including funding),” not the ISRP.

Three of the four options propose that measures, objectives and budgets be developed “outside of a statutory Program amendment process.” The statutory Program amendment process was a carefully written process designed to balance the need for protection, mitigation and enhancement of fish and wildlife with the benefits of the hydro system. To bypass the statutory process is to ignore the need for balancing and the special expertise of the tribes and fish and wildlife agencies as managers of Columbia Basin fish and wildlife.

The Nez Perce Tribe, in a meeting with Council staff on September 15, presented a series of questions that address these issues (attached). We request that the Council prepare a written response to these questions in order to inform the Council’s decision making.

B. Roll-Up The relationship of subbasin plans to province or ESU objectives, to the basinwide biological objectives in the Council’s program, and to related matters of prioritization/allocation between subbasin plans.

We identified five questions in this section of the Council issue paper and address them as follows:

1) Do the plans “add up” to meet the objectives established at the basin level in the 2000 Fish and Wildlife Program?

We are surprised that the issue paper indicates that commentators have indicated that the subbasin plan goals, when rolled-up, would achieve the goals in the 2000 Fish and Wildlife Program. First, such a roll-up has not been completed and any conclusions about whether the plans are consistent with the Program goals are wholly premature. In fact, many of the plans for subbasins containing anadromous fish are yet to be completed. The basis for a Council decision that the subbasin plans achieve the Program goals cannot be found in the plans themselves.

Moreover, the Program goals depend on much more than the content of subbasin plans, including mainstem passage and hatchery actions. Program goals must be considered in a system-wide context, which addresses all facets of the salmon life-cycle. This work has not been completed, if it has even begun.

Second, the Commission and its member tribes' August comments addressed this question and reached the opposite conclusion, based on the information in the draft plans. For example, the Nez Perce Tribe's letter states:

in relation to the 2000 Program interim objectives for biological performance, the plans give no assurance that they can halt declining trends by 2005, restore the widest possible set of healthy naturally reproducing populations by 2012, or increase total runs above Bonneville Dam to 5 million salmon and steelhead annually by 2025. We certainly would not recommend the Council adopt the plans as a substitute for the objectives for biological performance it established in the 2000 Program until these larger issues are addressed.

As described in the Commission comments:

Biological objectives are incomplete for many populations. In some cases they are habitat-only objectives, in other cases there is not a clear connection and relationship between the habitat part of the objectives and the expected focal species response. In most cases the amount of habitat affected and the magnitude of the hypothesized focal species response is not quantified, thus it is impossible to measure progress toward the (unstated) objectives or to estimate the cost of implementing the plans.

As further described in the Commission comments:

Many plans are inconsistent with the Council's and fishery managers' regional objective of rebuilding healthy, naturally reproducing anadromous fish runs to produce 5 million adult returns in 25 years and which can withstand a harvest rate of at least 30%. These plans either propose only *status quo* or slightly larger run sizes or hatchery-fish-only harvest goals, if any. While subbasin plans may provide a basis for developing recovery plans under the ESA, they must go well beyond delisting levels to satisfy the mandate of the Northwest Power Act.

Third, the subbasin plans treatment of artificial propagation and out-of-subbasin effects is very limited and in some cases virtually non-existent. For instance, the ISRP/ISAB had this to say about artificial propagation:

a major shortcoming in nearly all subbasin plans is a failure to link artificial production activities in the subbasin with ongoing and proposed habitat improvement activities in either the Assessment or Management Plan sections.

ISRP/ISAB 2004-13, page iv. As noted in the Commission's August comments, the treatment of out-of-subbasin effects in various plans was deficient. These deficiencies were due to flaws in the EDT model and other factors. These flaws limit efficacy of subbasin plan goals, particularly in a system-wide context. Simply assuming subbasin plan goals overcome these scientific limitations is inconsistent with the best available science.

Fourth, it is our understanding that the ISRP/ISAB review of the draft subbasin plans did not fundamentally address the accuracy of the elements contained in the plans, rather their review focused on whether the certain plan elements and logical relations among these elements were present. With regard to biological objectives, the ISRP/ISAB observed that **“the Management Plans consistently confuse objectives, strategies, and actions.”**

Clearly, the strength of the subbasin plans lies their assessments of habitat conditions and the local involvement that occurred in preparing these documents. The Council should not try to make the plans into something that they are not. The key is to build on the strengths of the plans.

2) Because there are always limited resources, can the plans inform decisions about dedicating resources to one subbasin or type of strategy over another?

The plans as they currently stand do not address matters of priority among subbasins or among provinces. The planning process was not designed to achieve such a result.

Within subbasins, some of the individual plans, e.g. the Umatilla subbasin plan, make recommendations with respect to priority habitat actions that are likely to benefit multiple fish and wildlife populations. Other plans do not contain such well-documented within-basin prioritization. Because the effectiveness of different types of actions depends on the location of a subbasin relative the number of mainstem dams between the basin and the ocean as well as in-basin conditions, the Council should not attempt to generalize priority actions from a subset of plans. Please refer to our comments on section D.

3) What is the preferred process vehicle – should it be initiated as a Power Act amendment process?

In August, we recommended that the Council solicit recommendations for Program amendments to address the programmatic issues that are associated with the roll-up of the Plans, which include the need for site-specific actions and a system-wide approach to fulfilling the Northwest Power Act's Program mandates. We continue to adhere to that recommendation.

The Council needs to deal with Program framework elements such as the integration of artificial propagation with habitat objectives, aggregation of planning objectives across subbasin boundaries, system-wide research monitoring and evaluation, program-wide biological objectives, project selection processes, programmatic benchmarks, funding allocations among project categories, and other related matters. These topics are best dealt with through program amendment proceedings.

Among other things, 2005 will mark the fifth year since the last review of the Program. Notably, the Act requires the Council to periodically solicit the recommendations of the tribes and other managers as the mechanism for initiating a Program amendment process. As we have previously commented, the subbasin planning process was not initiated with a solicitation for recommendations as prescribed by section 4(h)(2) of the Act. Adoption of the subbasin plans cannot suffice the requisite Program update requirements of the Act.

4) Is there technical or scoping work that should be undertaken before a formal amendment process is started?

The Council, Fish and Wildlife managers, and BPA should undertake a series of scoping sessions to refine the understanding and approaches to address programmatic issues. Some of these can occur immediately, such as the meeting scheduled on November 22nd at the Commission offices. Others may occur during the statutory minimum period of 90 days during which the fish and wildlife managers prepare their recommendations for Program amendment.

5) Should subbasin “roll-up” precede adding more specifics (Issue A above) to subbasin plans that have been developed?

“Subbasin roll-up” is an incompletely understood concept that the Council and others have yet to define. Moreover, there is yet to be a meeting of the minds among, state, federal, and tribal managers as to what constitutes “roll-up”. As we see it, a roll-up entails technical analysis and policy decision making. The policy decision making must be undertaken consistent with the Program revision processes of sections 4(h)(2)-4(h)(7) of the Act. Technical analyses needed to address the limitations noted by the ISRP/ISAB, The Commission and its member tribes, and others needs to be carefully scoped. Some of that analysis is already underway (e.g. subbasin plan “fix-its”), some of that work is planned (e.g. APRE integration analyses), and other tasks have yet to be fully identified (e.g. needs described in the Commission’s and ISRP/ISAB’s August comments).

C. Project review and recommendation process

Section 4(h)(10)(D) provides for the Council to establish an Independent Scientific Review Panel and Scientific Peer Review Group to carry out a scientific review of projects proposed to be funded on the basis of scientific criteria. As this language clearly directs, the review is to be of already proposed projects and cannot be used to initially propose projects. As noted above, the Northwest Power Act calls upon the fish and wildlife agencies and tribes to propose such “measures” and “fish and wildlife management coordination and research and development (including funding).”

While section 4(h)(10)(D) provides some criteria for review, further guidelines are necessary in the final project recommendation and selection process. Such guidance should be defined in the Program itself, through Program amendment proceedings. Such is the purpose behind the congressional direction set forth in section 4(h)(2)(C) of the Act, which requires the Council to solicit recommendations from the fish and wildlife managers for fish and wildlife management coordination.

Program guidance is appropriate for matters including allocation of resources: 1) between project categories, 2) across provinces, or 3) across focus categories (i.e., 2000 Program goal of 70% anadromous fish, 15% resident fish and 15% wildlife, or BPA's draft MOA proposed 70% on-the-ground, 5% coordination and 25% RM&E categories). General planning principles such as equity, proportionality, and addressing unmet needs should be applied to assign a percentage allocation of the total Program to each of the categories.

A key factor in describing a project selection process is defining the roles and responsibilities of each of the participants in the process. The program framework should contain guidance for the adequacy of the planning documents in meeting certain needs. The main point is that a project selection process should not be undertaken until the full context of that process within the whole Program can be determined. Also, by clearly defining the decision making process for the Program, we can insure efficient use of all participants' time and resources. If this is the case, then a Rolling Province Review may be a much more focused and discrete project selection process than the previous iteration.

D. Relationship to recovery planning under the federal Endangered Species Act

The Council indicates that it is pursuing the development of subbasin plans for the sole purpose of meeting statutory obligations under the Power Act. However, the Council notes that the plans will likely form the foundation or serve as interim direction for recovery plans under the Endangered Species Act.

Subbasin plans can only contribute to one small facet of the recovery planning process. See attached Powerpoint presentation: *Integrating Pacific Salmon Recovery and Multiple Subbasin/Watershed Plans* by Nora L. Berwick and Lynn Hatcher. Nonetheless, the Council must remain cognizant of recovery planning during Program adoption. Section 4(h)(6) of the Power Act requires the Council to include in the Program measures that will "complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes." Recognizing the role subbasin plans will play in recovery planning, the Council is obligated under the Power Act to include in the Program measures that will complement the impending recovery planning process.

Section 4(f) of the Endangered Species Act describes the recovery planning process. The section requires the Secretaries to develop and implement recovery plans for the conservation of listed species. The plans must give priority to species that are most likely to benefit from recovery plans, particularly those species that are or may be in conflict with construction projects or other projects or forms of economic activities. The elements of a recovery plan must include, to the maximum extent practicable:

- A description of site-specific management actions as may be necessary to achieve the plan's goals
- Objective, measurable criteria which would result in a determination that the species be removed from the list

- Estimates of the time and money needed to carry out the measures called for in the plan

“Recovery” is defined as “improvement in the status of a listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1)” of the ESA. 50 C.F.R. 402.02. Those criteria include:

- Present or threatened destruction, modification, or curtailment of its habitat range
- Overutilization for commercial, recreational, scientific, or educational purposes
- Disease/predation
- Inadequacy of existing regulatory mechanisms
- Other natural or manmade factors affecting the species’ continued existence

In order to complement recovery plans as mandated by the Power Act, the Council needs to include site-specific measures, measurable criteria, and time and funding estimates as part of the Program. The measures should address the factors underlying the listings in the first place. Including such aspects in subbasin plans would greatly improve the plans and be consistent with the Power Act requirement that the Program contain measures and complement future Federal, State, and Tribal activities.

E. Improving subbasin plans – the “living document”

Progress toward meeting goals will vary between subbasins, strategies (both within and between subbasins), and at aggregated spatial scales. An adaptive management approach must be flexible enough to accommodate these variable and unpredictable needs for modification. The challenge is to maintain scientific integrity, enable an adaptive management process, and provide transparency of the process as plans are updated. These criteria can be met using a combination of clear guidance and Internet applications.

Maintaining the scientific integrity of the updating process involves describing the key necessary elements and providing examples of technically credible plans. The ISAB/ISRP can provide this guidance based upon their recent review of draft subbasin plans. The scientific integrity of plan updates can also be reviewed by the ISRP as part of their review of project proposals (which should be based upon the current version of the subbasin plan, including updates).

Enabling adaptive management involves ongoing attention and resources but has generally not been maintained over time. Funding has been focused at individual projects and actions more than on evaluating groups of actions and projects. When funds have been made available, planning has been a sporadic event conducted at infrequent intervals in a crisis atmosphere. Rather than being guided by local stakeholders in response to local needs, planning has been imposed on them as an extra activity to meet external needs. Effective adaptive management requires regular ongoing support at each level of spatial resolution.

Internet technology is an effective tool for ensuring that adaptive management and updating plans are open processes. Interested parties can access status reports and background documents,

share schedules, organize meetings and comment on proposed changes more easily than ever, while also reducing the time needed to travel and attend meetings.

We believe that effective adaptive management of subbasin plans can only occur if stakeholders have resources and responsibility for updating plans. Requiring them to serve additional Program amendment processes will be counterproductive. We will work with the Council to develop details for an effective adaptive management process that meets these criteria.

Thank you for considering our comments on these additional issues in the Program amendment process. We look forward to working with you to resolve these issues.

Sincerely,

Olney Patt, Jr.
Executive Director