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March 29, 2004

MEMORANDUM

TO: Council members

FROM: Bruce Suzumoto

SUBJECT: Status of 2000 Biological Opinion remand

Rob Walton of NOAA Fisheries will brief the Council on the latest developments regarding the court-ordered Biological Opinion remand. Over the past several weeks NOAA has met with fish agency and tribal scientists to discuss technical and scientific issues regarding hydrosystem operations, dam passage, hatcheries, habitat and the estuary. The purpose of these meetings is to collaborate with co-managers to improve the scientific information and data used to modify the Biological Opinion. The process has three phases 1) scoping meetings where the status and purpose of each scientific issue is discussed; 2) co-manager review of data and work of NOAA scientists; 3) workshops to discuss issues resulting from the review of data and work.

As part of the discussion during the technical scoping meetings, NOAA presented a draft approach to the hydrosystem effects and jeopardy analysis that is significantly different from the current framework under the 2000 Biological Opinion. Under this new framework the existence of the dams and non-discretionary operations (i.e. flood control operations) would be included in the environmental baseline. The "action" in the effects analysis would consider only the operation of the hydrosystem with the dams in place. The operation of the hydrosystem would be evaluated as to whether the net effect to fish survival is appreciable enough to push the listed species into jeopardy. Under this new framework the FCRPS is not necessarily required to ensure the recovery of the listed populations, but instead only responsible for the part its operation plays in moving the stocks toward jeopardy. The primary technical issues here are what is the appropriate environmental baseline; what is the net effect on that the operation of the FCRPS has on fish survival; and what is the appropriate jeopardy standard. Attached are graphs outlining the new framework proposal and language from the ESA regulations that provides the basis for its application.

NOAA stated that this new framework approach is only a draft proposal and requested the co-managers make suggestions on how to improve it or to propose an alternative approach. The co-managers have met to discuss issues and concerns about the proposed framework. They have expressed serious reservations about the new framework approach and are interested in working collaboratively with NOAA to find something more agreeable. A group of co-managers are working on an alternative approach to the proposed framework and expect to have an alternative proposal by April 5. A work session is scheduled for April 12 to discuss the co-managers' framework proposal.