

**Northwest Power and Conservation Council**  
**Fish and Wildlife Project Funding Recommendations to the Bonneville Power Administration**  
**for Fiscal Years 2007 through 2009**  
October 2006

## **Programmatic Issues and Recommendations**

This part contains the Council's recommendations for resolving a number of broader policy and programmatic issues that underlie or affect the project funding recommendations. These programmatic recommendations should be considered conditions that accompany the specific project funding recommendations.

### **1. Integration of projects implementing the FCRPS Biological Opinions**

Section 4(h)(10)(A) of the Northwest Power Act authorizes and obligates Bonneville to use its fund to protect, mitigate and enhance fish and wildlife affected by the Columbia hydrosystem, and to do so in manner that is consistent with the Council's program. This includes the activities to benefit fish and wildlife listed under the Endangered Species Act that have been the focus of the FCRPS Biological Opinions. This is what is known as integrating the ESA-based obligations into the broader Northwest Power Act program -- it is precisely the fact that Bonneville has funding authority for on-site and off-site mitigation under Section 4(h)(10)(A) that the biological opinions review and include actions directed at Bonneville to fund.

Recognizing this situation, the Council in this project review process, as in the recent past, has endeavored to deliver funding recommendations to Bonneville that satisfy Bonneville's ESA-based objectives balanced with its broader Northwest Power Act obligation to protect, mitigate and enhance any fish and wildlife affected by the hydrosystem. The Council believes that it has been quite successful in delivering the ESA-based project funding recommendations needed by Bonneville in the Council's past project review and within-year funding processes. A consistent message from the Council over the years has been that Bonneville needs to make its ESA-based requirements known as early as possible in the project selection process as possible so that those needs may be considered as part of the overall and broader fish and wildlife project recommendation package the Council develops. Also, the Council has consistently noted that Bonneville's ESA-based actions need to be held to the same level of scientific, public, and Council review under Section 4(h)(10)(D) of the Power Act as all other fish and wildlife actions funded by Bonneville, and that the best way to ensure this is to develop any specific ESA-based actions as part of the general project selection process. The benefits are substantial -- scientific rigor, public notice and comment, and budget scrutiny are products of this process. Once a project proposal is selected in this process, it will have secured scientific and public support, have a specific entity assigned to do the work, and an implementation budget associated with it -- presenting a strong case that the action is "reasonably certain to occur."

The Council's FY07-09 project solicitation and review process has moved forward under substantial uncertainty as to what Bonneville's ESA-based needs will be in this period. The 2000 and 2004 salmon Biological Opinions and the actions agencies' Final Updated Proposed

Action (UPA) reviewed in the 2004 FCRPS Biological Opinion have been declared to be legally invalid by the federal court. The latest decision is under appeal; the federal agencies are simultaneously engaged in a long collaborative process to develop a replacement biological opinion. That biological opinion may (or may not) call for more actions and greater survival improvements than in the past opinions. The schedule as of fall 2006 is to produce a final revised FCRPS Biological Opinion by February of 2007, well after the Council had to deliver its funding recommendations for FY2007, and even that schedule may well slip. Bonneville has been able to provide the Council with an indication of what projects it seeks funding for to be consistent with the final UPA/2004 BiOp, which is still in place pending the revised biological opinion, but obviously cannot know now what the new proposed action and biological opinion will require of the agency.

Even given this uncertain situation, the Council concludes that it is recommending for Bonneville funding a suite of mainstem, offsite mitigation, and monitoring and evaluation projects that (a) are consistent with the activities assigned to Bonneville's responsibility in the UPA reviewed under the 2004 FCRPS Biological Opinion, and (b) will form at least the backbone of any foreseeable set of actions required of Bonneville in the revised biological opinion. As for what more might be required of Bonneville funding in the revised opinion, if anything, the Council expects Bonneville, NOAA and the participants in the biological opinion remand process to coordinate those needs with the Council as they develop the proposed action and the new biological opinion. The Council has left unallocated a certain portion of the funds that Bonneville has made available for the next three years in part to be able to meet any additional needs that arise from the new FCRPS Biological Opinion. The Council expects that Bonneville will not commit funding to projects to implement those new biological opinion requirements without first engaging with the Council in a review designed to be consistent with Section 4(h)(10)(D) and to have the same high standards for scientific review and public review that attends the Council's general project selection process.

## **2. Monitoring and evaluation**

### **Regional monitoring plan/interim funding recommendations for regional and hatchery and supplementation m&e projects**

The Fish and Wildlife Program calls for a monitoring program to evaluate whether the individual actions in the mainstem and subbasins are achieving the objectives of the program stated at the basin, province and subbasin levels. In developing its project funding recommendations here, the Council has sought to prioritize monitoring activities and methods to evaluate the effectiveness of program activities and trends in fish and wildlife populations and habitat conditions. The Council has simultaneously pursued a regional discussion of the appropriate monitoring and evaluation framework for the program, an effort that will continue.

The difficulty is that the region does not yet have a regional monitoring and evaluation plan which, when implemented, will allow the Council to produce an annual evaluation report of the success of the program in meeting its objectives. The plan should also identify specific funding priorities. In particular, the Council needs to develop a coordinated monitoring and evaluation effort for the supplementation experiments taking place in the region. Consequently the Council recommends that all monitoring and evaluation project funding recommendations be considered

interim until a science-based, regional monitoring and evaluation plan is adopted by the Council. At that time the Council will make final funding recommendations for monitoring and evaluation for the remainder of the FY07-09 period consistent with the plan.

### **Habitat improvement projects and monitoring and evaluation**

Going into this project review process, the Council settled on a particular approach to monitoring and evaluation for habitat projects and provided guidance to project sponsors accordingly. The approach has been to de-emphasize the need to monitor and evaluate the effectiveness of every individual habitat project, on the grounds that this has proven to be expensive and yet not yield satisfactory results. The Council instructed project sponsors to limit the m&e elements of habitat projects to no more than five percent of the project budget as a general rule, and to focus project-specific m&e to ensuring project compliance. The Council intends instead to focus program efforts for at least the near term on a limited set of subbasin habitat m&e projects and on a set of broader regional projects to evaluate the effectiveness of on-the-ground habitat activities, improvements in habitat attributes and trends in fish and wildlife populations and habitat conditions.

The ISRP is concerned about this approach, criticizing a number of habitat projects for deficiencies in the monitoring and evaluation elements (deficiencies largely the result of the Council guidance). The ISRP's views culminated in a programmatic comment to the Council to rethink the entire approach, including the 5% budget proportion target for individual habitat projects.

The Council understands the ISRP's concerns, but the Council is also not persuaded that investing more heavily in project-specific m&e for the program's habitat work is a wise priority use of funds in the next rate period. Thus the Council recommends not changing the approach it has started on for the FY07-09 project funding recommendations. Except where noted in the comments on specific projects in the budget tables, the Council has not accepted the project-specific recommendations from the ISRP for different m&e elements for habitat projects, or for reduced funding of habitat projects on the grounds of a defective m&e plan. However, the Council will take a hard look at the merits and problems with this approach as it works with its regional partners to develop the m&e framework plan described above and, assuming the Council does not change course immediately, the Council will revisit this issue in the next project review process.

### **Project reporting**

The Council recommends that Bonneville ensure that all projects adequately report their accomplishments and the results of their monitoring and evaluation. The ISRP identified a number of on-going projects that did not adequately report results in their proposals for renewed funding, and identified a general weakness in the reporting of results as a programmatic issue.

Bonneville, in its role of developing and enforcing contracts, should ensure that project sponsors are given every opportunity to report results. If adequate reporting still does not occur, Bonneville should consider suspending, terminating or not renewing contracts and notifying the Council of this intended action.

### **Fish tagging programs**

In its programmatic report, the ISRP questioned how well the various fish tagging programs (coded-wore tags, PIT-tags, radio tags, and so forth) work together for efficient monitoring, evaluation and research. The ISRP called for a review of all these tagging projects, of their need and coordination and costs. The Council recommends that such a review take place and will work to ensure that it happens, coordinating with the Corps's AFEP research program and others.

### **Wildlife program monitoring and evaluation and HEP**

The ISRP recommended that the program use the Habitat and Evaluation Procedure (HEP) only for the purpose of evaluating the habitat units to be acquired against losses prior to acquisitions, and not use it for monitoring and assessing the gains to wildlife resulting from acquisitions. HEP is currently the common accounting tool used in the Program for assessing wildlife habitat quality. It does not measure population responses to changes in habitat quality. As part of the Council's overall monitoring and evaluation review described above, the Council will consider alternative monitoring methods and their costs for the wildlife program.

## **3. Data management**

The Council and its regional partners are currently working to resolve a number of outstanding problems with data management in the region. Establishing a coordinated data management system with clearly described standards is the goal of these ongoing efforts. The Council considers its project funding recommendations regarding all data management projects to be interim until these data management issues are resolved and the Council can issue final, comprehensive recommendations in this area.

## **4. Coordination funding**

The Council will conduct a review of historical spending and current obligations by Bonneville to support regional coordination activity. The review will also include an outline of regional tasks that are appropriate for Bonneville funding for agency and tribal participation. The Council has established a "regional coordination placeholder" in the Basinwide projects category pending the completion of its review. Five project proposals that involve regional coordination activities are subject to that placeholder and have no budget recommendations at this time. The Council will work expeditiously to complete its review, possibly at its November 2006 meeting. Upon the completion of the Council's review, the Council will make its final project funding recommendations for regional coordination activities for the FY07-09 period.

## **5. In lieu provision**

Bonneville has a legal obligation under the Northwest Power Act to protect, mitigate, and enhance fish and wildlife adversely affected by development and operation of the Columbia hydrosystem. This is Bonneville's *responsibility*. To help meet this obligation, Bonneville has the *authority* to fund on-site protection and mitigation actions, offsite habitat and production

enhancements, and associated monitoring, evaluation and coordination activities. Section 4(h)(10)(A) of the act then *limits* that authority in one particular way, in what is called the “in lieu” provision: “Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.”

The Council has encouraged Bonneville over the years to develop a policy to help guide Bonneville, the Council and project sponsors through in lieu situations. Bonneville has been working to develop such a policy, the most recent version communicated to the Council in an August 3, 2006, letter from Greg Delwiche, Vice President for Environment, Fish and Wildlife. While there is still work to do before the policy is final, it is a satisfactory place to start. The policy is particularly sound by emphasizing that in situations in which an entity other than Bonneville has overlapping authority to do the type of work represented by a project proposed for Bonneville funding, the key inquiry will be one of proof about expenditures -- that is, whether it can be shown that Bonneville’s funds would be coming in addition to the expenditures of the other entity and not in lieu of or supplanting the funds of the other.

The Bonneville in lieu policy is also sound in recognizing that “[r]easonable cost-sharing (where Bonneville funding is a portion of the overall proposed budget for a proposal) can demonstrate that Bonneville’s funding is not supplanting that of another entity already authorized or required to undertake the activity.” On the other hand, the Council believes the policy is not yet sound in the way it overemphasizes per-project cost sharing as the primary or preferred or default way of proving the absence of an in lieu problem. There are other ways of equal legal validity to prove that Bonneville’s funds are in addition to and not in lieu of the funds of another entity with overlapping authority. The most obvious, and likely the most common, would be at a scale or level above individual projects, situations in which Bonneville and the other entity are funding activities in parallel or in complement (such as different riparian improvement projects in the same area, or different aspects of a monitoring program), even if no particular project is cost shared. Bonneville has developed just such an approach in a recent Memorandum of Understanding with the Forest Service; there is no reason the approach cannot work elsewhere, and it need not be implemented only by agreement. The Bonneville letter does recognize the need to consider other “remedies” besides per-project cost sharing for an in lieu concern, and the Bonneville staff are committed to working with the Council staff to develop these concepts further for consideration by the Council and Bonneville management. The Council expects further to be able to consider a further policy proposal early in FY07.

Bonneville’s August 3 in lieu letter also provided preliminary in lieu ratings for all new project proposals. A small number of the projects prioritized for funding by the local review groups are on the list of projects with serious in lieu concerns. To the extent the Council’s final funding recommendations include any of these projects, the Council will work with Bonneville and the project sponsors to try to address these concerns, as it appears that funding will not begin until that happens.

Early in October 2006 Bonneville then presented the Council with its preliminary “in lieu” ratings for all on-going projects in the Council’s draft funding recommendations. The Council has not had sufficient time to review these ratings in any depth, and they played no role in the Council’s final project recommendations. Bonneville confirmed that it was not planning to use these preliminary ratings as a reason not to contract and fund on-going projects in FY07. The

Council and Bonneville will work together with the project sponsors and others in the next few months to address these concerns.

## **6. Use of Bonneville's capital borrowing authority**

As described above, Bonneville will make up to \$36 million available per year during FY07-09 for capital investments. This latter amount, often referred to as "capital" funding, is subject to particular rules and standards prescribed by Bonneville in its "Fish and Wildlife Capitalization Policy." Bonneville recently clarified its policy and then reviewed the FY07-09 project proposals against the policy, communicated in a letter to the Council dated August 24, 2006. The Council based its capital and expense funding recommendations for FY07-09 on the policy as clarified.

The Council has differed with Bonneville in the recent past over aspects of the capital policy. Those differences have narrowed substantially, with thanks to Bonneville personnel for continuing to work on these issues with the Council. One remaining difference of significance remains the issue of whether a "crediting" mechanism must be in place before a land acquisition to protect habitat for fish may be eligible for capital funding and, if so, of what type. Outside of the context of the Hungry Horse and Libby mitigation programs, Bonneville has not been willing to capitalize land acquisitions to protect habitat for fish on the grounds that the program lacks a quantitative crediting mechanism for these acquisitions. The Council continues to believe what Bonneville requires in the way of a crediting mechanism may be more strict than the law or accounting standards or sound policy require. The Council has instructed the staff to continue to work with Bonneville on this matter.

## **7. Step review**

The Council first developed the three-step review in response to recommendations in the first report of the Independent Science Review Panel in 1997. The Council originally conceived of the three-step review as an interim process pending the completion of a comprehensive review of artificial production policy across the basin. The Council conducted that Artificial Production Review, adopted the final report, and embedded the recommendations from the review in the 2000 Fish and Wildlife Program. Following that, the Council decided (in 2001) that it made sense to continue the three-step review sequence for all new production proposed, and for other large, complex implementation projects under the program. Any three-step review is now guided as well by the subbasin plans recently adopted into the program, which provide a broader local context of subbasin objectives and habitat and production strategies. And future three-step reviews will also be informed by the results of ongoing efforts to develop quantitative biological objectives for key species at the ecological province scale and to develop a comprehensive reformed monitoring and evaluation framework for the basin.

The Council will continue to employ the three-step review process for new artificial production and other major projects. But it will also work to ensure that a new and heightened emphasis be put on timely delivery of step products -- deadlines and performance reporting will be required in an effort to put an end to projects languishing within the process. Discussions with the Council indicate a need to encourage and hold accountable the projects that are placed

into the step review process. The Council directs staff to make sure that each of the three steps have standardized milestones informing the Council and Bonneville of progress being made. Performance must be a criterion for justifying future funding; no project should be allowed to indefinitely strive to get to the next step.

## **8. Water conservation projects**

The Council has recommended funding for several projects during the FY07-09 period that will conserve water for the purpose of enhancing flows in tributaries for fish. In order to ensure that these projects provide long-term benefits to fish it is essential that Bonneville verify that these projects will result in a legally protected increase in instream water flows. We encourage Bonneville to utilize the experience developed by the National Fish and Wildlife Foundation's Northwest office to verify the permanence of in-stream flows before beginning these projects. The ISRP provided a similar recommendation to the Council in the panel's programmatic comments.

## **9. Funding for operations and maintenance**

### **O&m for wildlife acquisitions/interim funding recommendations**

Neither the Council nor Bonneville have conducted a detailed review to determine appropriate funding levels for past acquisitions to mitigate for the loss of wildlife. Consequently the Council recommends that all wildlife o&m funding recommendations be considered interim until this analysis can be conducted. At that time the Council will make final funding recommendations for wildlife o&m for the remainder of the FY07-09 period.

The ISRP's programmatic report contained a related recommendation -- that the Council investigate incentives to stimulate project sponsors to design land acquisition proposals that include self-sustaining operation and maintenance components. The Council will investigate this idea as part of its wildlife o&m review.

### **Funding the operating and maintenance costs of a maturing program**

The fish and wildlife program is in its third decade of implementation. Over the years, program implementation has included the development of infrastructure that is durable, providing ongoing fish and wildlife benefits. The Council and Bonneville have overseen investments in hatcheries, riparian improvements, fish-friendly structures and screens, interests in land, and so forth on the expectation and even commitment that Bonneville would provide funding to operate and maintain these facilities to continue the flow of fish and wildlife benefits over a long period of time. Because the Council and Bonneville have legal obligations to achieve fish and wildlife protection, mitigation and enhancement, and those obligations extend over time, this program has always sought to ensure that the flow of benefits from initial investments in infrastructure continue over time as well.

The costs to operate and maintain the infrastructure built up under the fish and wildlife program are growing, consuming a larger share of the available expense budget each year. If this trend continues without a significantly expanding expense budget, there will be diminishing flexibility in the program to start new projects directed at emerging or shifting priorities.

It is time for the Council, Bonneville and others to consider alternative approaches for developing and funding the continued operation and maintenance costs of the infrastructure built as part of the program. Trust funds, capitalization, benchmarking costs, explicit maintenance plans and other vehicles should be explored as part of an effort to develop a cohesive and comprehensive maintenance plan for a maturing program, with more creative and efficient ways to fund that maintenance plan. This would be in contrast to the way o&m has been handled so far -- developed on a project-by-project basis, with each project identifying its requirements but without really presenting a long-term maintenance plan and without any form of uniform or standard operations activities and costs guidelines.

The Council directs the staff to work with Bonneville, the fish and wildlife managers, and others on this issue as a priority before the next project review process, and present alternatives to the Council and Bonneville management for consideration. The Council's Fish and Wildlife Committee tentatively endorsed a proposal by the staff to tackle this matter in three steps, and is to oversee the staff's work on this matter:

- Step 1 : Develop a common definition for what activities within the program are considered operations and maintenance.
- Step 2: Identify o&m activities that the program should support and benchmark the costs of those actions.
- Step 3: Develop a range alternative vehicles or approaches for delivering the actual long-term o&m funds.

At each stage the staff is to report to the Committee and then the Council with the results of its inquiry and a recommendation for consideration and approval. The Council will also need to decide as the review progresses how best to engage the public perhaps through a series of issue papers for public review and comment.

The staff should initiate this review soon after the Council finalizes its FY07-09 recommendations. The review of wildlife o&m described above seems a likely place to begin, for its own sake and as a pilot project for the whole program. The goal is to have a long-term o&m plan as described here in place before beginning the next project review process for FY 2010.

**10. Within-year program budget tracking and adjustment process during FY07-09**

Late in FY2004 Bonneville, the Council and the Columbia Basin Fish and Wildlife Authority formed a Budget Oversight Group (BOG) to conduct a budget-tracking process and recommend for Council and Bonneville considerations within-year adjustments as needed. The Council expects that during FY07-09 there will continue to be a within-year process led by the BOG, and



that this process will remain largely as it has in the recent past. Bonneville and Council staffs continue to work on proposed refinements to the process, which may be brought before the Council in November 2006 for review.

### **11. Future project selection**

The staff discussed in some depth with the Fish and Wildlife Committee and the full Council possible changes to the project solicitation and review process in the future, as documented in the staff's rolling issue memorandum throughout the FY07-09 review process. Those discussions will continue following the Council's decision on its FY07-09 funding recommendations. The ISRP provided the Council with a number of programmatic comments and recommendations for how to conduct the project review process in the future. The Council will carefully consider those comments at that time.

### **12. ISRP: Innovative projects placeholder**

The ISRP urged the Council to budget for an innovative projects category, as the Council has recommended in the past. The Council is reserving a placeholder for innovative projects, as part of the Basinwide project recommendations. The Council will work with Bonneville and others on the appropriate criteria and solicitation and the process for reviewing and selecting proposals.

### **13. ISRP: Artificial production**

The ISRP's programmatic report recommended that the Council consider issuing two Requests for Proposals -- one to evaluate the effects of large-scale production programs intended for harvest on naturally spawning populations; and, the second to conduct an experiment on the long-term fitness effects on supplementation. The panel also suggested a specific workshop to help the design of a coordinated evaluation of supplementation to follow up to the April 2006 ISAB supplementation workshop. The Council is continuing to discuss with staff and others the outcomes of the supplementation workshop and what next steps to take, and is not ready at this time to respond to the ISRP's specific recommendations.

### **14. ISRP: Habitat projects**

The ISRP's programmatic report included a number of recommendations regarding habitat project implementation. Most are discussed above. The panel also recommended that the Council investigate what lessons might be learned from successful Model Watershed programs in the Columbia Basin and elsewhere, and similarly evaluate the effects of the Conservation District projects funded by the program. The Council intends to evaluate certain aspects of the program as part of preparing for the next program amendment cycle. The Council will consider these panel recommendations at that time; evaluating the benefits of the habitat work funded under the program will be an important consideration.