



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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October 8, 2004

D. Robert Lohn
Northwest Regional Administrator
NOAA Fisheries
c/o Joyce Howard
525 NE Oregon Street, Suite 500
Portland, OR 97232

VIA EMAIL: Joyce.Howard@noaa.gov

RE: Remand BiOp Comments

Dear Mr. Lohn:

The Columbia River Inter-Tribal Fish Commission (CRITFC) was created by the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Indian Nation and the Nez Perce Tribe. These four tribes possess rights reserved by treaties with the United States to take fish destined to pass the tribes' usual and accustomed fishing places. Among these fish are the anadromous species originating in the Columbia River and its tributaries. CRITFC provides these comments on behalf of and at the direction of its member tribes.

CRITFC appreciates this opportunity to comment on NOAA Fisheries' September 8, 2004 draft Biological Opinion for Operation of the Federal Columbia River Power System including 19 Bureau of Reclamation Projects in the Columbia Basin ("Draft BiOp"). If finalized, this Draft BiOp will mark a significant and adverse change in the operation and management of the FCRPS, and more importantly, the survival and recovery of the Snake and Columbia River salmon and steelhead upon which the Columbia River treaty tribes' fishing rights rely.

CRITFC has reviewed the Draft BiOp and provides the following general and specific comments in response. We have also reviewed the Updated Proposed Action (UPA) of the Action Agencies, and submit these comments to those agencies as comments on the UPA as well.

Judge Redden issued his formal opinion remanding the 2000 BiOp in May of 2003. The co-managers were given 30 days to comment on a complex product that NOAA Fisheries and the Action Agencies spent nearly a year and a half to produce. While the co-managers have had some opportunity to come to understand the new analysis that would be used in the Draft BiOp – through technical co-manager collaboration – that process did not allow for review of the actual numbers, analysis, or conclusions now contained in the proposed BiOp, nor many other details now contained within it. As a result, CRITFC’s comments do not contain the detail we would have preferred. Had additional time been available, CRITFC would have provided additional substantive technical comments.

While the technical collaboration process allowed more understanding of how NOAA intended to proceed, it did not meet our expectations. The state and tribal co-managers requested a “collaborative” opportunity (*see* December 18, 2003 letter from Washington Department of Fish and Wildlife and Columbia River Inter-Tribal Fish Commission; December 23, 2003 letter from Oregon Department of Justice). The state and tribal co-managers came into the collaborative process with a decision framework in mind – with the expectation that the 2000 FCRPS BiOp decision framework would be used and collaboration would occur on the technical analyses fitting within that framework (*see* Dec. 18, 2003 letter from WDFW and CRITFC).

Belatedly NOAA divulged that the framework would be changed. It was only after state and tribal co-managers insisted on having a workgroup specific to framework considerations that NOAA indicated a change might be forthcoming. Later NOAA provided the co-managers with a description of the revised framework. The co-managers then came to understand just how radically different the new framework would be. Moreover, it was evident that NOAA would not collaborate with the co-managers on the structure of this framework – the framework was already cast in concrete.

As the Tribes assessed in their memorandum from CRITFC dated March 8, 2003, the introduction of a new framework, along with the delayed timing of the framework workshops, made collaboration under this process extremely difficult. *See also* April 8, 2004 Letter from Christine Golightly (for tribal framework workgroup participants) to NOAA Fisheries – Framework Workgroup Participants, regarding Additional Questions and Issues Relating to Jeopardy Framework (regarding effectiveness of collaborative process in addressing key issues). The fact that along with the new framework came a new jeopardy standard, one that did not include recovery as a goal, proved to stifle productive collaboration: collaboration cannot move forward when the parties seek to achieve different goals. Additionally, the failure of the Action Agencies to put forth a proposed operation for discussion and analysis reduced the process to abstract discussion.

CRITFC’s substantive comments are set forth in a series of five appendices to this letter. Also attached are a number of documents to which our comments refer and that we are providing for NOAA’s reference. Due in part to the short time period granted for commenting, we are incorporating by reference the comments contained in the Letter to

Olney Patt, Jr., from the Fish Passage Center regarding Comments on Draft Biological Opinion, September 29, 2004 (attached as Attachment 1) which we adopt as our own.

In conclusion, the tribes must register their extreme disappointment with the draft BiOp. We ask that NOAA revise the BiOp to achieve recovery of listed salmon runs and assure rebuilding of tribal fisheries secured by treaty with the United States. Thank you for the opportunity to comment.

Sincerely,



Olney Patt, Jr.
Executive Director

APPENDICES AND ATTACHMENTS TO THESE COMMENTS:

Appendices:

- A - CRITFC's General and Section by Section comments
- B - CRITFC's Review of Framework Analysis
- C - CRITFC Comments on Ocean Conditions and Flows, Kyle Martin 9/27/04
- D - CRITFC Review of "Evaluating the Potential for Improvements to Habitat Condition to Improve Population Status for Eight Salmon and Steelhead ESUs in the Columbia Basin", Dale McCullough 10/8/04
- E - CRITFC Review of PAH Impacts to Salmon, Patti Howard

Attachments:

- 1 - Fish Passage Center Comments (with CSS comments attached)
- 2 - Fish Passage Center 4/16/04 Memo SAR Transport
- 3 - Joint Technical Staff 2/20/04 Cover Letter and Comments re Summer Spill Analyses
- 4 - Joint Technical Staff 4/9/04 Spill Comments
- 5 - Joint Technical Staff 6/14/04 Spill Comments
- 6 - Columbia Basin Fish and Wildlife Authority Columbia River Fish & Wildlife Program-Rolling Provincial Review Implementation 2001-2003
- 7 - Columbia Basin Fish and Wildlife Authority 3/26/04 Letter to Northwest Power and Conservation Council
- 8 - University of Idaho/Idaho Cooperative Fish & Wildlife Research Unit Report
- 9 - Phaedra Budy, Gary Thiede, et al. Report
- 10 - PATH Final Report FY 1998
- 11 - CRFM Budget Spreadsheet through 2010
- 12 - 12/15/00 Analysis of All-H Actions (Marmorek et al. 2000)
- 13 - 7/21/98 Department of Commerce Letter

- 14 – PATH Weight of Evidence Report
- 15 – 7/1/04 Findings Report on Action Agencies 2004/2004-2008 Implementation Plan
- 16 – Henry Yuen, Rishi Sharma Report
- 17 – Deriso, Marmorek, Parnell-Spring/Summer Chinook Differential Mortality
- 18 – Schaller et al., Productivity and Survival Rates
- 19 - Letter from Donald Sampson, CRITFC to Jeff Blackwood, USFS December 2/16/2000