

Additional Fish and Wildlife Follow-ups

Although BPA has said the integrated fish and wildlife program will remain relatively flat during the BP-18 rate period, are there costs related to habitat spending that can be reduced or reprioritized in light of progress in some areas and in light of litigation status?

BPA remains committed to implement habitat projects into the BP-18 rate period under court order and to address other legal commitments (e.g., Northwest Power Act). In the near term, habitat spending will remain focused on the geographic priorities described in the 2008 FCRPS BiOp, as supplemented in 2010 and 2014. As the development of a future proposed action for 2019 and beyond evolves in the coming months and years, there may be some opportunity to reduce and reprioritize costs related to habitat spending. However, it would be premature to make any such determination.

Given the uncertainty surrounding the 2018 BiOp and the recent ruling that gave minimal credit to the large investment that has been made in habitat improvements, is there a business case for this size of investment? How is the investment being valued? Is there specific risk you can identify from a lowered level of expenditure?

In the recent decision in *NWF v. NMFS*, the Federal Court held that the BiOp violated the Endangered Species Act in part because it did not include higher performance standards for fish survival benefits (*i.e.*, did not call for additional habitat restoration actions) to serve as a “cushion” to counterbalance documented scientific uncertainty in the scoring process for assigning numerical fish survival benefits to habitat restoration actions. Nevertheless, the Court acknowledged habitat improvement does provide “significant benefit” for fish and ordered the federal agencies to continue implementing the current BiOp, which includes performance standards for habitat actions, through 2018. As noted above, as the development and environmental analysis of a future proposed action for Columbia River System operations for 2019 and beyond evolves, there may be some opportunity to reduce and reprioritize costs related to habitat spending, though it would be premature to make any such determination.

Please identify any fish and wildlife programs or program levels not mandated specifically by law or court order?

All of the fish and wildlife projects and programs BPA funds are authorized by and help fulfill BPA’s legal obligations under one or more statutes. Only a few of these projects and programs are mandated specifically in a statute. The Lower Snake River Compensation Plan Program is an example. Broader, long-standing statutory mandates require BPA to pay the power share of appropriations for protection and mitigation actions taken by the Army Corps of Engineers and the Bureau of Reclamation for the effects of the FCRPS dams they own and operate.

Virtually all projects and programs funded by BPA are included in the Columbia River Basin Fish and Wildlife Program. For this reason it is sometimes called “the integrated program.” The Northwest Power Planning and Conservation Council developed the Fish and Wildlife Program as required by the Northwest Power Act. BPA must protect, mitigate, and enhance fish and wildlife affected by the development and operation of the FCRPS dams BPA markets power from and do so in a manner “consistent with” the Fish and Wildlife Program. Many of the projects and programs included in the Fish and Wildlife Program were first begun, or were expanded, to address legal

responsibilities under other statutes such as the Clean Water Act or the Endangered Species Act. The documents that BPA agrees to abide by to comply with such statutes, for example a biological opinion or National Pollutant Discharge Elimination System permit, include specific projects and programs. While not enumerated by name in a statute, these specific projects and programs must be implemented to fulfill distinct regulatory mandates.