

Committee on Resources

Witness Testimony

Testimony of Stan Grace Council Member

Montana Office, Northwest Power Planning Council Before the Subcommittee on Fisheries Conservation, Wildlife and Oceans July 24, 1997 Authority, Decision Making Processes, and Interagency Cooperation of the National Marine Fisheries Service Northwest Region

My name is Stan Grace, and I am one of two Montana members of the Northwest Power Planning Council, an interstate compact authorized by Congress in the Northwest Power Act of 1980 and subsequently created by the states of Montana, Idaho, Oregon and Washington. The Northwest Power Act directs the Council to prepare a program to protect, mitigate and enhance fish and wildlife that have been affected by the construction and operation of hydroelectric dams in the Columbia River Basin. The Council fulfills this direction through the Columbia River Basin Fish and Wildlife Program. The Council first adopted the program in 1982. Subsequent revisions were adopted in 1984, 1987 and 1994. In addition I am appointed by the Governor to serve as Montana's representative on the National Marine Fisheries Service (NMFS) Executive Committee. This is the upper level of the NMFS's three-tiered regional forum.

Section 4.(h)(1)(A) of the Northwest Power Act says that the Council's fish and wildlife program, "... to the greatest extent possible, shall be designed to deal with that river [the Columbia] and its tributaries as a system." The theme of my testimony today is that while the Council's fish and wildlife program treats the entire Columbia River Basin as a system, the federal government, particularly the National Marine Fisheries Service, does not. The Fisheries Service is the agency that implements the Endangered Species Act for salmon in the Snake River, the major tributary of the Columbia. In lieu of a recovery plan, the Fisheries Service has issued a series of Biological Opinions that direct the activities of federal river and hydroelectric power agencies to avoid further jeopardizing the listed salmon populations. These Biological Opinions have consistently failed to adequately address the impact of river operations on fish in Montana. As a result, on April 15, 1997 Montana pulled out of the river operations forum directed by the Fisheries Service and filed a lawsuit to force the Fisheries Service to abide by the scientifically credible river operations contained in the Council's fish and wildlife program. Montana also is taking action through its water quality agency against two federal dam-operating agencies, the Bureau of Reclamation and the U.S. Army Corps of Engineers, over operations at Hungry Horse and Libby dams that are directed by the Fisheries Service.

In short, the Fisheries Service must treat the Columbia River and its tributaries as a system, as the Council does. The Fisheries Service must stop harming fish in Montana's Columbia River tributaries with river flow operations with questionable benefit to salmon downstream.

The Council's fish and wildlife program enhances resident fish as well as salmon

The Columbia River and its tributaries drain a vast area -- 259,000 square miles including parts of six states and the Canadian province of British Columbia. Montana's chief Columbia tributaries are the Clark Fork and Kootenai rivers, which each have numerous tributaries. Through these river systems, Montana is a major contributor to the Columbia River.

Before the construction of mainstem dams that blocked their passage, anadromous fish -- mostly salmon and steelhead -- migrated to the farthest corners of the basin. Salmon and steelhead spawned in the desert plains of south central Idaho and northern Nevada, in the mountains of central Idaho and all the way to the headwaters of the Columbia in southeastern British Columbia, 1,200 miles from the Pacific Ocean. But salmon and steelhead never spawned in Montana's tributaries. Natural barriers such as waterfalls prevented anadromous fish ascending these rivers.

Construction and operation of the Federal Columbia River Power System contributed to the decline of both anadromous (ocean going) and resident fish species across the Columbia River Basin. Anadromous fish include salmon and steelhead while resident fish include cutthroat trout, sturgeon, rainbow trout, bull trout, kokanee and others.

Montana reservoir protections are part of the Council's program

As a member of the Council and, as I have said, a representative of a state that contributes a significant amount of water to the Columbia, I participated in the development of the Council's current fish and wildlife program. An important component of the program responds to the Council's legal mandate to treat the Columbia and its tributaries as a system. Through the Council's program, Bonneville expends funds to develop mitigation and protection strategies for the federally owned and operated hydropower facilities at Libby and Hungry Horse dams in Montana. Hungry Horse Dam, operated by the Bureau of Reclamation, is located on the South Fork Flathead River near Kalispell, and Libby Dam, operated by the U.S. Army Corps of Engineers, is on the Kootenai River near the city of Libby.

Research and development of these reservoir protection strategies started in response to the Council's first fish and wildlife program, which the Council adopted on November 15, 1982. In that program, the Council called on the Bureau of Reclamation, the Corps of Engineers and the Montana Department of Fish, Wildlife and Parks to "... develop operating procedures which will limit drawdown of Hungry Horse and Libby reservoirs for power purposes to protect resident fish to the fullest extent practicable."

This work began with the collection of basic ecological data on the affected rivers and reservoirs. Biological and physical data were assembled and analyzed with the aid of innovative and sophisticated computer models. The results of the analysis lead the Montana Department of Fish, Wildlife and Parks and the Confederated Salish and Kootenai Tribes to propose operational rule curves for Libby and Hungry Horse reservoirs. These proposals underwent local and regional public scrutiny and were modified to incorporate public comments. The primary objective was to avoid deep drafts and refill failures and to restore more normative river flow conditions.

When finally adopted into the Columbia Basin Fish and Wildlife Program by the Northwest Power Planning Council in 1994, these recommendations were referred to as Integrated Rule Curves or IRCs. This name reflects the fact that the recommendations are a compromise between the authorized multiple purposes of the projects -- power, flood control, navigation, fish and wildlife, and recreation. Implementation of the rule curves would allow significant power production, adequate flood control, continued navigation, improved conditions in the rivers below the dams (including increased flows for salmon downstream), improved recreation and 55 percent to 72 percent of the optimum biological productivity in the reservoirs. The IRCs provide partial mitigation for damage to fish resources caused by construction and historic operations of Libby and Hungry Horse dams for power production and flood control.

Despite being in the Council's program, the IRCs have not been implemented

According to Section 4.(h)(11) of the Northwest Power Act, federal agencies responsible for managing, operating, or regulating federal or non-federal hydroelectric facilities in the Columbia River Basin shall exercise their responsibilities "... taking into account at each relevant stage of decisionmaking to the fullest extent practicable the program adopted by the Council." These federal agencies include the Corps of Engineers and the Bureau of Reclamation.

The IRCs concept has never have implemented. The reason is that the Corps and the Bureau have operated Libby and Hungry Horse dams in compliance with the demands of the NMFS Endangered Species Act process. The National Marine Fisheries Service implements the Endangered Species Act for ocean-going creatures, and is preparing a recovery plan for endangered Snake River salmon. In lieu of the recovery plan, the Fisheries Service issues biological opinions to other federal agencies on how to avoid further jeopardizing the listed species. In short, the 1995- 1998 Biological Opinion on Hydropower Operations currently runs the river. In that document, the Fisheries Service relies heavily on the concept of flow augmentation to help juvenile salmon migrate to the ocean. Flow augmentation means that water is released from behind upriver storage dams, like Hungry Horse and Libby, in the spring and summer to boost the volume and velocity of the Columbia downriver of its confluence with the Snake. The Biological Opinion sets flow targets for certain times of the spring and summer, and reservoirs are operated to meet these targets. Drawdown limits were set for Hungry Horse and Libby dams and the limit is 20 feet. These limits were set without

consultation with the State of Montana and no evaluation of the local ecosystems or native species.

Stalemate over IRCs is the basis of controversy between Montana and the Fisheries Service

The Biological Opinion claims to be an ecosystem management/adaptive management document but clearly is a single-species management approach that does not address species throughout the basin. Through the Council's fish and wildlife program, Montana neared implementation of mitigation for the 40 years of Hungry Horse and 20-plus years of Libby power and flood control operations. But the Fisheries Service stopped the implementation and arbitrarily established power operations, flood operations, and summer draft limits for salmon with no analysis of impacts to resident fish -- in Montana or anywhere else. This not only undermined the 12 years of research and analysis to correct power and flood operations, but it also exacerbated refill failure problems and moved the Kootenai and Flathead rivers away from normative conditions.

Here are two example of how the Fisheries Service ignores the needs of resident fish in Montana:

1. Management to a damage standard

First, the Biological Opinion relegates the management of resident fish in Montana to management by a damage standard. In other words, NMFS does not seek to protect the needs of Montana fish, but manages their ecosystem to a level of "acceptable impact". This is in direct contradiction to an ecosystem approach that would strive to improve all aspects of the ecosystem, not sacrifice one area of the region in an attempt to improve another. On Page 98, the Biological Opinion states: "The Fisheries Service did not find convincing the specific data that the operation contained in this measure would clearly damage resident fish and wildlife." Then, on Page 99, the Biological Opinion says that river operations to enhance survival of Snake River salmon " ... might have acceptable impacts on resident fish and wildlife." In the Biological Opinion, the Fisheries Service also admits that when crafting the Biological Opinion, "there was not time to analyze fully the impact of these elevations (20-foot summer drafts and refill failures) on resident fish and wildlife . . ."

The apparent lack of concern for resident fish seems to contradict one of the recommendations of the Independent Scientific Group, a panel of nine independent scientists who reviewed the scientific underpinnings of the Council's program in 1996. In their report, entitled "Return to the River," the scientists advised the Council: "We suggest that the Council's approach should be to 'protect, mitigate, and enhance' ecosystem properties that are consistent with the biological needs of salmon, steelhead and other native fish and wildlife species while providing for environmentally responsible energy production." As I mentioned earlier, the Northwest Power Act requires that the Council design its fish and wildlife program to "protect, mitigate and enhance" fish and wildlife, and related spawning grounds and habitat, of the Columbia River Basin that have been affected by the construction and operation of hydroelectric dams.

The willingness of the Fisheries Service to accept damage to resident fish in Montana as the result of Biological Opinion operations also appears to contradict a statement by the regional director of the Fisheries Service, Will Stelle, who said, on June 17, 1995 at Columbia Falls, Montana: "If the operations of the Biological Opinion are going to cause damage to resident fish or the ecology of these reservoirs, we have said, and I stand behind it, if that is the case we will change those operations, period."

Since 1993, when the Fisheries Service issued its first Biological Opinion on Hydropower Operations, Montana has contended that Biological Opinion operations will damage both the river and reservoir ecology. Montana repeatedly asked for assurances that our reservoirs and fish resources would receive the protection, mitigation and enhancement afforded by the law. We were promised an independent scientific study of the impacts, to be completed by June of 1996 -- in time to influence reservoir operations in August 1996. The study was not done in 1996. Finally, in February 1997, the Council's Independent Scientific Advisory Board (ISAB) provided a review to the Fisheries Service. The ISAB confirmed Montana's concerns, reporting that: "Drawdown of reservoirs adversely affects resident fishes. Flow augmentation in August leads to increased flows in the streams and lakes below [Libby and Hungry Horse] reservoirs and adversely affects resident fish populations to the points where the streams join the Columbia." Reservoir operations dictated by the Biological Opinion have resulted in loss of fish habitat and food web integrity in the Kootenai River from Libby Dam to Kootenai Lake and is correlated with the decline of Kootenai River white

sturgeon.

It has been six months since the ISAB completed its report, and so far the Fisheries Service has made no allowances for change in reservoir operations at Libby or Hungry Horse dams, even in a record water year such as we are experiencing in 1997. In fact, the Fisheries Service recently indicated they support the full Biological Opinion drawdown of 20 feet at Libby and Hungry Horse in August of 1997. It is clear that the Fisheries Service has chosen a damage standard for the management of resources in Montana. This standard is inconsistent with the recommendations with independent scientists and ignores Montana's requests to exercise flexibility in implementing the Biological Opinion.

2. The Fisheries Service ignored the impacts of Biological Opinion flows on resident fish

Ostensibly to help make river operation decisions, the Fisheries Service created what it called the Implementation Team and the Executive Committee. Issues that could not be resolved by the Implementation Team would be decided by the Executive Team. Both committees were chaired by the Fisheries Service. Montana participated in the so called EC/IT process, but found its participation increasingly frustrating because of the repeated failure of NMFS and their process to exercise flexibility and account for Montana's ecosystem needs and the continued lack of biological justification for the requested flows. On April 15, 1997 Montana withdrew from of the process.

Montana had requested that if there are no measurable changes in fish travel time or survival between river operations alternatives, the choice should be based on other factors. In such cases, the alternative with the lowest impact on other resources should be used, Montana suggested. The March 6, 1997, meeting notes of the Implementation Team reflect the outcome of this request -- it was rejected. A representative of the Fisheries Service said, "We don't intend to estimate survival relative to operating alternatives." Tim Hall, representing Montana, replied, "Montana would simply like to keep the door open to make the argument that, often, it is impossible to measure or detect the impact of an operation for anadromous fish, yet that impact is often very measurable for resident fish." Donna Darm, another Fisheries Service employee, responded, "You can make those kinds of arguments, but they won't get you anywhere. We're agreeing right up front that we can't measure those impacts."

It could not be clearer that Montana was being ignored.

Unwilling to participate in an unfair process, Montana discontinued participation

Not only did the Fisheries Service ignore Montana's reservoir operating requests, but it also attempted to delete any reference to the Council's integrated rule curves from the Kootenai River White Sturgeon Recovery Plan. The Kootenai River White Sturgeon Recovery team, composed of scientists and specialists in Kootenai River operations from the United States and Canada unanimously endorsed the use of the IRCs for sturgeon recovery. The Fisheries Service simply ignored this recommendation and tried to have it removed from the sturgeon recovery plan.

In a December 9, 1996 letter to Fisheries Service and the U.S. Fish and Wildlife Service, which is preparing the recovery plan for Kootenai River sturgeon, Montana Governor Marc Racicot raised this issue. The Governor said the Fisheries Service was being inconsistent with the ecosystem management that was promised in the Biological Opinion. The Governor, based on the "Return to the River" report of the Independent Scientific Group, questioned the current water management approach of Snake River salmon recovery that has such a heavy reliance on the use of upper Columbia water for Snake River fish. He reminded the Fisheries Service that in September 1996, then-Secretary of Commerce Michael Kantor, in a letter to Montana Senator Conrad Burns, wrote, "... [the] Fisheries Service agreed to put the scientific question of the value of augmented flows to the Independent Science Advisory Board" and that a report was expected before the 1997 salmon migration season. Such a review has yet to occur. The federal response to the Governor's letter ignored most of the major issues and repeated promises of more process.

Frustrated by this response, and frustrated by the failure of the Executive Committee/Implementation Team process to address Montana's concerns, Governor Racicot informed the Fisheries Service on April 15, 1997, that the state would no longer participate. He noted that this process failed to recognize and embrace the concept of ecosystem management in that it failed to look at what operations result in the most good and the least harm to all elements of the Columbia ecosystem. He explained that Montana has been the largest contributor of storage water to salmon recovery but its

proposals for reservoir operations have been given no meaningful consideration. Further, Libby and Hungry Horse reservoirs have suffered chronic refill failures. When the reservoirs have refilled, they have been the last in the basin to do so and for the shortest duration.

The Governor's letter also pointed out that such operations were in contrast to those recommended by the Council in its fish and wildlife program, a program designed to protect, mitigate and enhance species across the basin. He explained that Montana's goal, and the goal of the Council, is not just recovery of the listed species but comprehensive ecosystem management that reverses the decline of all species. The Fisheries Service's Executive Committee/Implementation Team forum clearly lacks such a mandate and has been unwilling to use the flexibility available to it to achieve such goals.

The Fisheries Service responded to Governor Racicot but provided no indication that improvement in the process or consideration of Montana's concerns would be forthcoming. In fact, the Fisheries Service claimed the Biological Opinion reservoir operations actually worked to Montana's benefit and provided tangible results. The Fisheries Service cited the 1995 and 1996 "swap" of Libby water with Canada and "alternative" arrangements for Hungry Horse. In reality, the 1995 swap and alternative Hungry Horse operations came through direct negotiations between the U.S. Department of Justice and Montana, not from the Fisheries Service process. In 1996, no relief was provided Hungry Horse. In fact, because of the high water year, the reservoir was "surcharged" or overfilled for a short period. That additional water, plus the full Biological Opinion 20-foot drawdown, was drafted for salmon over the course of the summer, resulting in flows in the Flathead River more than 250 percent above natural flows. At Libby, the high-water year created conditions that imposed physical limits on how much water could be drafted from the reservoir. It would have not been possible to draft the full 20 feet without spilling water and violating Montana's water quality laws. The "swap" that did occur originated outside of the Fisheries Service process and was nearly stopped by the Fisheries Service process. In 1997, again an extremely high water year, the Fisheries Service has recommended the maximum draft despite the fact that Biological Opinion flow targets will be achieved. The Fisheries Service is simply wrong in declaring that the Biological Opinion process has considered Montana's needs.

These recent correspondences did not raise new issues. Montana's comments on the Reinitiation of the Biological Opinion (Feb. 10, 1995) and Comments on the Proposed Recovery Plan for Snake River Salmon (Nov. 9, 1995) are on the record and raise all of the same issues, including: The Fisheries Service is unable to detect changes in salmon survival as the result of Biological Opinion flows. Travel time changes as the result of the Biological Opinion are insignificant.

- The Biological Opinion emphasizes Columbia River flows over Snake River flows.
- Salmon migration-season management of the rivers is poorly structured and guided.
- The Biological Opinion flow operations may violate state and federal laws.

The Biological Opinion's reliance on flow augmentation is not biologically based or rigorously justified. There is no monitoring in place to evaluate the effects of changes in flows in the lower Columbia.

Montana reiterated these concerns in testimony before the Subcommittee on Science, Technology and Space on June 19, 1996. These official comments and testimony, along with a lengthy correspondence history, have failed to produce any meaningful change in the Fisheries Service approach to Snake River salmon recovery and the impact on natural resources in Montana. After exhausting such channels, Montana was forced to issue administrative orders to enforce our water quality laws and to file a lawsuit against the Corps of Engineers and the Bureau of Reclamation in the hope of influencing reservoir operations.

Montana's concerns are justified

The Endangered Species Act protects Kootenai River white sturgeon as well as Snake River salmon. These fish are affected by the operation of Libby Dam. Despite the unanimous scientific support of the White Sturgeon Recovery Team for integrated rule curves at Libby Dam to protect sturgeon, and despite the availability of other water sources to aid salmon, the Fisheries Service has attempted to influence the sturgeon recovery plan. The Fisheries Service has no expertise in the biology of the Kootenai River system yet has sought to overrule the findings of scientists who do. The Independent Scientific Advisory Board (ISAB) validated that hydropower operations have had negative effects on the

ecology of the Kootenai River. The scientists cite studies that show that biological diversity and the food web in the river have declined just since the mid-1980s. The ISAB reports that the loss of habitat and food web integrity is correlated with the decline of the Kootenai River white sturgeon. The Fisheries Service has not demonstrated flexibility to accommodate these scientific findings.

The ISAB report cites scientific reviews of bull trout that suggest they are at high risk of extinction throughout their range. Additional studies specific to Montana bull trout populations in the Kootenai and Flathead systems are also cited. In the Kootenai system, the overall risk to extinction is believed to be high. In the Flathead system, the overall risk is perceived as medium. Segments of each system are rated as having the highest risk of extinction allowed by the scoring system.

Cutthroat trout recently were the subject of a petition for Endangered Species Act protection. Both the Flathead and Kootenai river systems contain native populations of these fish.

Montana does not claim that the Biological Opinion operations are the sole reason for the decline of these important native species. In fact, many of the same land use practices and river alteration issues that have contributed to the decline of salmon have also adversely effected native resident fish in Montana. Of great concern to Montana, however, is that the Fisheries Service has failed to recognize this fact. Rather than institute a solution that contributes to solutions in both the headwaters and the mainstem of the Columbia River, the Fisheries Service has chosen to exacerbate problems in the headwaters region.

For Montana, the Biological Opinion means endless bureaucratic process and no results

As noted previously, Montana raised a number of concerns in comments on the Biological Opinion in early 1995. Also in 1995, the Fisheries Service stated that the region "needs to have a genuine and substantial opportunity for governors' representatives to participate with us as we change the plan and implement it."

To date, Montana has been faced with endless process and no results. The Fisheries Service hired a facilitator who oversaw extensive river modeling exercises. The resident fish alternative modeled in this effort provided protection at Libby, Hungry Horse, Grand Coulee and Dworshak. This alternative had no effect on summer flows in the lowest water years and only marginal reductions in flow in medium to wet years and saved the power system \$27 million relative to the cost of the Biological Opinion. The facilitator had several recommendations which included directing the Fisheries Service to "determine what constitutes a biologically significant change with respect to flow augmentation." He also recommended that the region must resolve the species trade- off controversies relating to flow augmentation for salmon and protection for resident fish. The Fisheries Service did not take the advice of the facilitator and has refused to even consider small changes in flow augmentation or the legitimate needs of other fish species, some which have now advanced toward Endangered Species Act listing.

Inflexible Biological Opinion implementation is at the heart of Montana's disagreement with the Fisheries Service

In conclusion, Montana tried repeatedly in numerous processes to resolve the controversy over the impact of Biological Opinion reservoir operations on resident fish in Montana. Satisfactory reservoir operations, such as those provided by the Integrated Rule Curves, would address the needs of Snake River salmon and also ESA-listed upriver species such as Kootenai River white sturgeon. Such operations could also help avoid additional ESA listings of bull trout, cutthroat and other species.

However, because the Biological Opinion has taken control of the river, no progress has been made toward a long-term solution. Montana has been forced to withdraw from the Fisheries Service processes and seek legal solutions.

It appears that the Fisheries Service structured its river operations decision-making processes so that the only implementable alternative will be the Biological Opinion. The Fisheries Service is inflexible in its interpretation of the Biological Opinion. And finally, the Fisheries Service ignores all recommendations that are contrary to its perspective. This entrenched attitude and inflexibility is what forced Montana to seek legal remedies.

RECOMMENDATIONS:

This committee, Congress, and The Administration should direct the National Marine Fisheries Service and the Federal Agencies who operate the Federal Columbia River Power System to implement an ecosystem management approach that includes the needs of Montana aquatic ecosystems and fish species. This can be done through implementation of the Northwest Power Planning Council's Fish and Wildlife Program which is designed to protect, mitigate and enhance all species.

###