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January 29, 2009

DECISION MEMORANDUM

TO: Council members

FROM: Patty O'Toole, Program Implementation Manager
Sandra Hirotsu, Senior Council
Lynn Palensky, Program Planning and Special Project Coordinator
Tony Grover, Director Fish and Wildlife Division
John Shurts, General Council

SUBJECT: Decision to adopt the 2009 amended Fish and Wildlife Program.

PROPOSED ACTION: The staff recommends the Council vote to adopt the proposed final Fish and Wildlife Program at the February Council meeting in Portland, Oregon.

SIGNIFICANCE: The Northwest Power Act calls for the Council to amend its Fish and Wildlife Program prior to the review and revision of the Council's power plan, which occurs every five years. The Council called for recommendations to amend its Fish and Wildlife Program in November 2007. Over the last 13 months, the Council has developed the proposed final amendments to the Fish and Wildlife Program and will vote to adopt the program amendments in February.

BACKGROUND

Under the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act), Congress charged the Council with developing and periodically amending a fish and wildlife program for the Columbia River Basin to protect, mitigate, and enhance fish and wildlife affected by the development and operation of hydroelectric facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. The Council's current fish and wildlife program consists of the program framework and basinwide provisions adopted as the 2000 Fish and Wildlife Program, the 2003 Mainstem Amendments, and the Subbasin Plans adopted in 2004-05.

The Northwest Power Act requires the Council to call for recommendations to amend the fish and wildlife program at least every five years, prior to the five-year review of the Council's power plan.

The Council began its program amendment process with a formal request in writing to the region's Indian tribes and state and federal fish and wildlife agencies, and others for recommendations for:

- “measures which can be expected to be implemented by the [Bonneville] Administrator, using authorities under this Act and other laws, and other Federal agencies to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project on the Columbia River;
- establishing objectives for the development and operation of such projects on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and
- fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation, and enhancement of anadromous fish at, and between, the region's hydroelectric dams.”

ANALYSIS

Recommendations and comments

The Council called for recommendations to amend its Fish and Wildlife Program in November 2007. The Council received 65 sets of recommendations including those of fifteen tribes, one tribal coordinating entity, seven federal agencies and four state agencies. Recommendations were also received from local and other governmental organizations, non-governmental organizations, businesses and individuals. Collectively, the recommendations addressed nearly every aspect of the Council's program.

Many of the recommendations the Council received were lengthy and detailed, representing a substantial time and energy investment by the recommending entities. All of the amendment proposals are posted on the Council's website along with the 114 sets of comments on the recommendations received by the Council during a sixty- day initial public comment period.

Draft Program, public hearings, consultations and written comments

The Council drafted amendments to the Fish and Wildlife Program based on the recommendations the Council received as well as comments on the recommendations. The Council released the draft program for a 90 day public comment period in September 2008. During that time, the Council held 11 public hearings on the program amendments in Oregon, Washington, Idaho and Montana and received oral testimony from 35 individuals/entities. The Council and Council staff also consulted with various tribal and non-tribal entities around the Columbia River Basin regarding the program amendments. In addition to the hearings and consultations, the Council received 51 sets of written comments on the draft program which are also posted on the Council's website.

Since the close of public comment in December 2008, the Council has worked to finalize the Fish and Wildlife Program amendments. The Council is scheduled for a final decision at the February 2009 Council meeting.

Decision requirements

The rules for a final vote on the amended Fish and Wildlife Program are found in Section 4(c)(2) of the Northwest Power Act:

The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of--

(A) a majority of the members appointed to the Council, including the vote of at least one member from each State with members on the Council; or

(B) at least six members of the Council.

Following approval of the Fish and Wildlife Program, staff will prepare legal findings on the 2008 recommendations for amendments to the Fish and Wildlife Program and will present these to the Council for adoption along with the draft amendments. This final step will conclude the Fish and Wildlife Program amendment process.

ATTACHMENTS

The proposed final draft of the amended Fish and Wildlife Program will be mailed to Council members and staff separately.