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July 7, 2026

MEMORANDUM

TO: Fish and Wildlife Committee Members

FROM: Patty O'Toole, Fish and Wildlife Division Director

SUBJECT: Discuss 2026 Fish and Wildlife Program next steps, implementation

BACKGROUND:

Presenter: Fish and Wildlife Division Staff

Summary: With the adoption of an amended Columbia River Basin Fish and Wildlife Program in June, staff proposes to meet with the Council's Fish and Wildlife Committee in July to discuss next steps and implementation.

Relevance: The 2026 Columbia River Basin Fish and Wildlife [Program](#) was adopted by the Council on June 16, 2026.

Background:

The Council adopted its final 2026 Columbia River Basin Fish and Wildlife [Program](#) in June. A [prepublication version](#) is available on the Council's website pending completion and adoption of the Findings and Response to Recommendations.

Work is underway by staff to draft the Findings and Response to Recommendations. As a reminder, the Council writes a response for each recommendation and adopts a statement of basis and purpose for the decision, which includes written response to comments on the draft amendments. The Fish and Wildlife Program amendment process is not officially ended until the adoption of the Findings and the Response to Recommendations. The decision to adopt the

Findings follows the same voting protocol as adopting the main Program document. Staff estimate that a draft of the Findings and Response to Recommendations will be available in September.

Turning to the implementation of the 2026 Fish and Wildlife Program, first, a reminder that the Council does not implement much of the Program on its own. We rely on federal agencies such as Bonneville, the Corps, and the Bureau of Reclamation implementing the Program through the standards of the Northwest Power Act. This requires working with many federal, tribal and state entities and others. We look for and create opportunities to bring the influence of the Fish and Wildlife Program into federal decision-making, also advancing policy discussions and supporting best available science.

From prior discussions regarding the Fish and Wildlife Division Work Plan, you will recall there are ongoing tasks the staff does on behalf of the Council and the Northwest Power Act. These include:

- Project Review and Recommendation (including follow-up and Step reviews, tracking project implementation and description of ongoing activities in Part Six of the 2026 Program)
- Assessing and reporting on Program Performance (including reporting on goals, objectives, indicators, and implementation, and description of activities in Part Seven of the 2026 Program)
- Coordination and collaboration with external entities (tracking and participating in various meetings, etc.) about the Fish and Wildlife Program, the Council and the Northwest Power Act.

To these basic responsibilities we add tasks associated with the implementation of the 2026 Fish and Wildlife Program. Staff suggest there are a few fundamental elements for developing a work plan for Program implementation. First, we consider the tasks included in the final Program decision, including directives noted at the time of decision, Program measures, and Program priorities for near-term implementation. Second, we can review the “tools” or ways the Council works to help get the Program implemented. Once we are familiar with the tasks and tools, we can apply the best tool to make progress on tasks, considering available resources, priorities, timeframes, etc.

Attached to this memo are a few documents for Fish and Wildlife Committee member consideration. Attachment A is a preliminary draft list of these tasks from the Program decision and document itself. Attachment B is a list of the tools (approaches and techniques) we have used, with a brief description and examples. Attachment C is background information regarding the Council and the Federal Advisory Committee Act.

For the July Fish and Wildlife Committee meeting we will review and discuss these documents and consider best approaches and discuss next steps. The staff suggests that incorporating opportunities to coordinate with federal and state fish and wildlife agencies and tribes early and often will be important.

Attachment A.

2026 Columbia River Basin Fish and Wildlife Program Task list (preliminary draft)

State of the Science Review (request from decision discussion June 16, 2026)

Examine summer hydro operations, taking into account and determining the relative importance of variables including but not limited to predation, water flow and temperatures, fish passage routes, stocks of anadromous and native fish, hatchery releases, biological benefits and power system impacts.

Priorities (2026 Columbia River Basin Fish and Wildlife Program)

1. Preserving Program integrity
 - Pg 137- **Bonneville** should provide the funding adequate to implement the ongoing work of the Program, including adequate and dependable funding for annual and long-term operation and maintenance of the direct Program's assets. This includes providing inflation adjustment factors for direct-funded projects.
 - The Council similarly expects the **Corps of Engineers** to increase its efforts to protect and rehabilitate the dam infrastructure important for effective juvenile and adult passage.
 - **The Council will** work with others to help the Corps obtain the necessary funds from Congress
2. Priorities: hydro operations (H 17, 33, 44)
 - Pg 138- **The Council is also committing** to help establish one or more work groups to investigate further changes in operations, including updating flood risk management for reservoir operations, evaluating the specific parameters of limiting or allowing system flexibility to alter flow regimes, considering additional changes to increase velocities, and plan for preserving and rehabilitating passage infrastructure (see Mainstem Hydrosystem Flow and Passage Operations)
3. Priorities: predation (PM 6, 7)
 - Pg 138- **The Council** commits to helping convene a work group for this ongoing assessment and to facilitate coordination efforts (See Predator Management)
4. Priorities: Habitat protection and restoration
 - Pg 138- **Bonneville** should continue the habitat restoration and protection efforts under the Program in the tributaries, mainstem reaches, and estuary at the same pace and scale as over the last decade at a minimum.
 - Pg 138- **The Council** also supports work in the ocean in order to understand this critical environment and how it influences program effectiveness.

- Pg 138- **The Council and others** will also support obtaining additional non-ratepayer funding for the Corps of Engineers, the Bureau of Reclamation, and other federal agencies to implement their existing and additional habitat protection and restoration activities, including significant mainstem habitat restoration activities.
 - Pg 138- **The Council** will convene and facilitate discussion to identify an order of new habitat actions to implement that have the best potential to effectively increase juvenile abundance and productivity
5. Priorities: general
- Pg 139- **The Council** will also work with the regional governments and others to help the Corps of Engineers obtain from Congress the needed appropriations to maintain and rehabilitate the dam infrastructure vital to effective dam operations and fish passage.
 - Pg 139- **The Council** is further interested in seeing that all the federal agencies - the Corps, the Bureau, NOAA, Fish and Wildlife Service, and the land management agencies – obtain appropriations and use their authorities to implement much of the needed increase in habitat and predator management activities with non-ratepayer, non-reimbursed funds.
 - Pg 139- **The Council expects** all the relevant federal agencies to increase their efforts to help implement the Programs near-term priorities to the benefit of Columbia River salmon and steelhead and other fish and wildlife.

Reporting

1. MS Hydrosystem Flow and Passage H 24- The Council ... supports continued investigations to refine operations at Libby and Hungry Horse dams that improve conditions for fish in or near those reservoirs and do not adversely affect fish in the lower river... **The Council will** assist in these discussions as necessary. Any significant findings or proposed changes should be reported to the Council.
2. Adaptive Management- Reporting- Bonneville should continue implementing a concise, useful template for annual reports for research and monitoring projects that can replace other, more cumbersome, more costly, and less useful reports for individual projects. **The Council will** continue to work with Bonneville and the ISRP to identify and assemble the information needed to produce **an annual summary of results for Council review**.
3. Part six- investments- The **Council** expects a cooperative process [with BPA] that allows for improved communication and transparency regarding funding (e.g., start-of-year budget, placeholders, unspent funds, priorities) to track implementation of the Program.
4. Part six- investments- **Bonneville shall provide timely notice** to the Council when Bonneville implementation decisions result in a material change in the scope, desired outcomes or budget of a project. In 2024, Bonneville staff agreed to regular communication in this way, an approach that the Council expects to be implemented in a

comprehensive way. **The Council will** review this information and assess whether further recommendations are warranted, including further ISRP review.

Workgroups/ Forums

1. MS Hydrosystem Flow and Passage H 17, H 33, H 44- fish travel time
2. Habitat Restoration and Protection HAB 49- develop... lists of habitat measures for other subbasins ...
3. Predator management PM2- develop both a short-term and long-term plan to address significant predators of salmon and steelhead and other native fish.
4. Non-native and invasive species NNIS 18- facilitate ... science/policy forums on non-native and invasive species issues, as appropriate.
5. Plume and nearshore ocean PNO 12- Ocean and Plume Science and Management Forum and science/policy exchanges
6. Artificial production AP 13- develop ... lists of hatchery measures for other subbasins ...
7. Adaptive Management- establish and convene science and policy workshops on topics relevant to contemporary decision making, implementation, or identified critical uncertainties, ...Near-term topics might include hydrosystem operations, predator management, invasive species, climate change and climate adaptation, or other Program topics.
8. Part Six- coordination- ...as needed, **the Council will** convene a forum of ... regional coordination representatives to discuss Program-related issues...
9. Part Seven- Performance indicators- **the Council will** convene the **workgroup** to discuss the feasibility of adding these candidate indicators to the Program Tracker. In addition, the workgroup may be convened to identify, evaluate, and refine other indicators in the future.

Updates on progress/ status of implementation

1. Objective S2- By the end of 2027, **the Council** requests a status update on the data needs and process to evaluate existing targets or develop new targets for other species and runs.
2. MS Hydrosystem Flow and Passage H 12- **The Council** will work with ... operating agencies, federal and state fish and wildlife agencies and tribes to review, update, and implement procedures that accommodate power system and dam operation emergencies with the least impact on ... fish ...
3. MS Hydrosystem Flow and Passage H 12- The **Council will** continue to investigate cost-effective power system strategies that improve ecosystem conditions for fish and wildlife, relax operational constraints adverse to fish and wildlife, and ensure the regional power system remains adequate, efficient, economical, and reliable.
4. Wildlife mitigation W 6- **The Council** will work with Bonneville and relevant fish and wildlife agencies and tribes to receive annual reports on progress toward completing settlement agreements for remaining construction and inundation losses.

5. Subbasin Plans - Where warranted, **the Council will** receive these updated plans and identify a path for scientific review and adoption into the Program.
6. Part Six- asset management- **The Council and Bonneville** should continue to coordinate and support the Strategic Asset Management Plan (SAMP) and its implementation for the Program's hatcheries, fish screens, and land acquisitions through a transparent and dependable annual process.

Work with Congress/ legislature

1. Part one: Legal and Social Context (Pg 14)- **Council** commits to working with other gov entities to ...seek... additional funding authorizations
2. Habitat Restoration and Protection HAB 65- **The Council** shall urge Congress to continue to provide funding... to protect and restore water quality in the Columbia River Basin...
3. Non-native and invasive species NNIS 21- Assist regional entities with legislative efforts to prevent the invasion and control the spread of non-native invasive species in the Columbia Basin.

Other

1. MS Hydrosystem Flow and Passage H 32- **The Council** will review the outcome of the [HCC] FERC proceeding and, as appropriate, include in the Program relevant provisions recognizing the operations to benefit fish below the Hells Canyon Complex as part of the baseline flow measures of the Program.
2. Habitat Restoration and Protection HAB 46- Engage an independent third party ...to develop a standardized approach to calculate resident fish losses due to C&I..."
3. Artificial production (rationale)- **The Council** will ensure that research, data collection, and reporting methods allow for meaningful evaluation of hatcheries and fish propagation measures at both the local and landscape level, to ensure consistency with Program goals and objectives.
4. Adaptive Management- Research- **The Council will**, with federal and state fish and wildlife agencies and tribes, review and update its research plan every five years. The Independent Scientific Review Panel and the Independent Scientific Advisory Board will assist with updating the critical uncertainties...

Attachment B.

Tools in the toolbox: Ways the Council works to help get the Program implemented

1. Staff work with federal agencies and others

Description: Telephone calls and emails and other communication tools combined with internal strategizing to make federal agency representatives and others aware of priority areas of program that need to be implemented and persuade them to implement. Inform and involve Council members on progress and any need for escalation.

Examples: Regular coordination meetings, calls. Monthly coordination meetings, day-to-day work.

2. Funding recommendations to Bonneville for direct program funding of measures

Description: The Council can make *special* funding recommendations for direct funding by the Bonneville Power Administration to make progress on specific program measures and priorities. This requires coordination and support from Bonneville, independent scientific review, public comments and policy recommendation of proposals. The Council can also support specific Program initiatives or make policy recommendations through its *regular*, periodic project reviews.

Examples: Special recommendations: [Predation \(2019\)](#), [Lamprey Conservation Initiative \(2017\)](#), [Request for Information \(study\) about White Sturgeon \(2017\)](#) [Innovative project solicitation \(2007\)](#), [Regular reviews](#) and recommendations: [Anadromous Fish Habitat and Hatchery Review \(2022\)](#).

3. Staff/Council member/Council participation in implementation forums and decisions

Description: Participation in forums via personal attendance and written input to persuade the federal agencies to consider and implement program priorities. A logical example would be participation in the federal decisions and implementation forums regarding hydrosystem operations. The Council as an entity and via central staff use to be a major participant – even co-chair – of these forums. More of an observer lately, but the role is growing and could grow further with some pressure. Council members have been participating more on behalf of their particular states than on behalf of the Council and program – that would have to evolve.

Examples: [Technical Management Team](#) (and related processes), [Lamprey Technical Work Group](#), [Fish Screen Oversight Committee](#), Sockeye Technical Oversight Committee, USFS notices on actions, etc.

4. Letters and coordination

Description: The Council can write letters of support or advocacy for certain Council positions on key regional issues. These letters are signed by the Chair, after having been shared with Council members to seek concurrence. These typically have been for issues where there is strong unanimous Council support. Letters can be to Governors, Congressional delegates, federal, state or tribal agencies or others. Similarly, the Council and its members may directly communicate and advocate in person with regional leaders on various topics.

Examples: Asset Management support letters [July 2021](#) and [October 2021](#), [support for Lower Snake River Compensation Hatchery maintenance](#) (2020), funding for [invasive species check stations](#) (2019), [pinniped predation February 2015](#), [pinniped predation July 2018](#), [predation research funding support letter](#), [avian predation](#).

5. Council meeting - report or panel discussion

Description: The Council can agenda a panel of experts or policy representatives from various entities to bring information forward in a one – time or recurring manner, with information sharing and discussion at a Council meeting.

Examples: [Flex spill agreement \(2020\)](#), [Invasive species \(2020\)](#), [Northern Pike \(2017\)](#), [Upper Columbia Spring Chinook \(2016\)](#)

6. Council studies or development of information resources

Description: At times the Council has worked to advance certain topics by conducting or writing specific independent studies, plans, issues papers or reports. This work has been done directly by Council staff or by contracted experts.

Example: [Review of Fish Passage Technologies at High Head Dams](#) (2016), Development of the [Asset Management Strategic Plan](#) (2018), Climate change [resources](#) for project sponsors (2021), Council's hatcheries, screens, mitigation lands [website with overview, story map and infographics](#), [Northern Pike Storymap](#); [Toxics Storymap](#); [Program Retrospective](#) (2024)

7. ISAB Reviews and reports

Description: The Council can request independent scientific reviews of studies, reports, syntheses.

Examples: [Comparison of Research Findings on Avian Predation Impacts \(2021\)](#), [Predation Metrics Report \(2016\)](#); [Review of Phase Two Implementation Plan \(2022\)](#) , [Review of Columbia Estuary Ecosystem Restoration Program \(2013\)](#), [ISRP review of Ocean Synthesis Report \(2012\)](#). See [all ISAB reports](#).

8. Forum or workgroup, less formal but chaired, facilitated, can be ongoing or ad hoc

Description: If the Council wants to work with outside entities to get technical input or information – or to provide comments in an open comment process - then there is no need for a formal FACA chartered group. If the purpose of the group is information sharing and discussion without providing advice to the Council to use in decision making, then no need to formalize with FACA process and charter. The Regional Coordination Forum made up of members of the federal and state fish and wildlife agency and Indian tribe representatives may also provide useful.

Example: [Ocean Science and Management Forum \(3\)](#), Informal [Hatchery Work Group](#), [Regional Coordination Forum](#), Asset Management [Strategic Plan](#) / [Subcommittee](#), [Strategy Performance Indicator workgroup](#)

9. Advisory Committee, with formal charter

Description: Establish an Advisory Committee under FACA with a charter. If the Council wants to turn to outside entities to provide advice or recommendations to the Council to help the agency make policy decisions such as for a future amendment process or project review process, we need to have a chartered FACA group. If a work group is restricted to only government entities (feds, state, tribal governments) FACA is likely not necessary even if providing recommendations or advice to the Council in how to perform its functions.

See attachment 1.

Example: [Regional Technical Forum](#) (power plan), [Ocean and Plume Science and Management Forum \(2\)](#), [Wildlife Crediting/Advisory Committee](#)

10. One time forum, science – policy exchange

Description: The Council has utilized science-policy exchanges to bring scientists and policy makers together to consider baseline information, new information and technology to grow understanding of technical issues. These consist of a single or multi day one-time event, sometimes resulting in recommendations for implementation or policy decisions.

Example: [Predation](#), [Eulachon](#), [Estuary](#), [Ocean and Plume Science and Management Forum \(1\)](#)

11. Support and contribute to conferences and workshops addressing key Program topics

Description: The Council can support through sponsorship or help staff conferences on particular topics of interest or priority.

Example: Council co-sponsored and contributed to a large conference in 2016 on [Heathy Floodplains, Living River](#), 2026 Western Division AFS.

Attachment C.

The Council and the Federal Advisory Committee Act (FACA)

Northwest Power Act of 1980: federal laws that apply to the Council: relating to “advisory committees” (FACA)

4(a)(4) For the purpose of providing a uniform system of laws, in addition to this Act, **applicable to the Council relating to** the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, **advisory committees**, disclosure of information, judicial review of Council functions and actions under this Act, **and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate.**

Northwest Power Act: required and additional advisory committees:

4(c)(11) The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

4(c)(12) The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this Act.

4(c)(13) The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.

Federal Advisory Committee Act (FACA)

- originally adopted in 1972
- included in 5 US Code, but as an appendix, not as a numbered section
<https://www.law.cornell.edu/uscode/text/5a/compiledact-92-463>

- FACA itself directly amended in 1976, 1980, 1982, 1997, 2010 – these amendments don’t change much from our perspective; some “amendments” from outside FACA are relevant (see below)

FACA Section 9: Establishment and Purpose

No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

When do you have an “advisory” committee subject to FACA?

FACA Section 3: Definitions

(2) The term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as “committee”), which is—

- established by statute or reorganization plan
- established or utilized by the President
- established or utilized by one or more agencies

in the interest of obtaining advice or recommendations for ... one or more agencies or officers of the Federal Government,

Except that such term excludes:

- (i) **any committee that is composed wholly of full-time [or permanent part-time] officers or employees of the Federal Government, and**
- (ii) **any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.**

FACA Management Regulations 41 C.F.R. §§102-3.10, -3.25, -3.40

FACA is “designed to assure that Congress and the public is kept informed of the number, purpose, membership, activities, and cost of advisory committees.”

“*Advisory committee* subject to the Act, except as specifically exempted by the Act or by other statutes ... means [1] any committee, board, commission, council, conference, panel, task force, or other similar group, [2] which is established by statute, or established or utilized by ... an agency official, [3] for the purpose of obtaining advice or recommendations ... [4] on issues or policies within the scope of an agency official's responsibilities.”

The following are examples of committees or groups that are not covered by the Act:

(h) Intragovernmental committees. Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government.

What does it mean if you have an “advisory committee” subject to FACA? FACA Sections 8-11, 14

- advisory committees must be established by the agency in a formal decision
- charter required
 - committee's official designation
 - objectives and the scope of its activity; description of duties
 - period of time necessary for the committee to carry out its purposes
 - agency or official to whom the committee reports
 - agency responsible for providing the necessary support for the committee

- estimated annual operating costs in dollars and people-time for such committee
- estimated number and frequency of committee meetings
- date charter is filed, and committee's termination date
- charters must be for no more than two years; then committee needs to be reauthorized
- agency must designate an employee to be the “advisory committee management officer” to supervise the establishment, procedures, and accomplishments of the committee and maintain the committee records; designated employee of agency must chair or at least attend every committee meeting
- agency chooses committee members; membership must be “fairly balanced” in terms of the points of view represented and the functions to be performed
- each advisory committee meeting shall be open to the public.
- agency must publish public notice of every meeting that ensures that all interested persons are notified of such meeting prior thereto
- interested persons shall be permitted to attend, appear before, or file statements with any advisory committee
- records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection
- detailed minutes of each meeting of each advisory committee shall be kept and be made publicly available; shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee; transcripts shall also be made available if requested

Northwest Power Act of 1980: Section 4(a)(4): federal laws on advisory committees apply to Council

4(a)(4) For the purpose of providing a uniform system of laws, in addition to this Act, **applicable to the Council relating to** the making of contracts, conflicts-of-interest, financial disclosure, open meetings of the Council, **advisory committees**, disclosure of information,

judicial review of Council functions and actions under this Act, **and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate.**

- non-federal entity subject to FACA – may be the only one!
- e.g., compare to Columbia River Gorge National Scenic Area Act

4(c)(11) The Council shall establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

4(c)(12) The Council may establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions and responsibilities under this Act.

4(c)(13) The Council shall ensure that the membership for any advisory committee established or formed pursuant to this section shall, to the extent feasible, include representatives of, and seek the advice of, the Federal, and the various regional, State, local, and Indian Tribal Governments, consumer groups, and customers.

Council and FACA advisory committees

Power – e.g., standing advisory committees

- Conservation Resources Advisory Committee
 - Demand Forecasting Advisory Committee
 - Demand Response Advisory Committee
 - Generating Resources Advisory Committee
 - Natural Gas Advisory Committee
 - Resource Adequacy Advisory Committee
 - System Analysis Advisory Committee
 - Regional Technical Forum (RTF)
 - RTF Policy Advisory Committee
- Council has *lots* of experience in identifying, establishing, chartering, organizing, running, exempting, etc. advisory committees under FACA

Why so few with regard to the fish and wildlife work of the Council?

- have had some: e.g., Fish Operations Executive Committee (FOEC) (early 90s); Fish Tagging Forum (2010s); Ocean Forum (original iteration)
 - but comparatively fewer, especially fewer standing committees – why?
- F&W Program development: relationship to federal and state agencies and tribes and their recommendations
 - plus, highly structured, highly open public process with required consultation with specific entities and public engagement
- implementation-related groups that for various reasons fell outside FACA boundaries, such as:
 - relationship to Bonneville in implementation: Bonneville/Council groups (e.g., cost savings group)
 - direct relationship to fish and wildlife agencies and tribes in implementation (e.g., Fish Passage Center Oversight Board)
 - ad hoc or non-advisory information workgroups – (e.g., Artificial Production Review (90s); Regional Coordination Forum (also f&w agencies and tribes); asset management subcommittee; ocean forum (current iteration); informal hatchery workgroup

in most cases, especially of the latter type, make as functionally equivalent to FACA as can - very public & open
- ISRP and project review
 - Northwest Power Act Section 4h10(D)(iii): Panel and Peer Review Group members may be compensated and shall be considered subject to the conflict of interest standards that apply to scientists performing comparable work for the National Academy of Sciences ... All expenses of the Panel and the Peer Review Groups shall be paid by BPA as provided for under paragraph (vii). **Neither the Panel nor the Peer Review Groups shall be deemed advisory committees within the meaning of the Federal Advisory Committee Act.**
- Independent Scientific Advisory Board:
 - ESA Section 4(f)(2) (recovery plans): The Secretary, in implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. **Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.**
 - relevance to ISAB: exempt from FACA
- program performance: Strategy Performance Indicators Workgroup

- outgrowth of program development workshops
- fish and wildlife agencies and tribal representatives

What about federal/state/tribal workgroups? Unfunded Mandates Reform Act of 1995: Section 204

(a) In general

Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) Meetings between State, Local, Tribal and Federal officers

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

- (1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and
- (2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

FACA Management Regulations 41 C.F.R. §102-3.40

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(g) Intergovernmental committees. Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal

programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002)

Examples:

- ESA implementation structure: RLOG/SCT/etc.
- Columbia Basin Collaborative (and prior MAFAC) is *not* an example – has/had non-governmental reps

What if Council as an entity is part of that group?

- issue – Council often excluded on FACA rationale
- doesn't make sense to us...

Northwest Power Act of 1980: Section 4(a)(4) federal laws/advisory committees/FACA

For the purpose of providing a uniform system of laws, applicable to the Council relating to advisory committees and related matters, the Federal laws applicable to such matters in the case of the Bonneville Power Administration shall apply to the Council to the extent appropriate.