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November 30, 2006

To: Fish and Wildlife Committee

From: Doug Marker, Director
Fish and Wildlife Division

Subject: Discussion of next Fish and Wildlife Program amendment process

Purpose: This is an initial discussion of the possible scope and schedule for initiating and completing amendments to the Columbia Basin Fish and Wildlife Program. No action is sought from this meeting. The Fish and Wildlife central and state staff are meeting in a retreat on December 5 to develop more concepts for the Committee's discussion and for future agendas.

This discussion will also include a presentation on the comments the Council received on soliciting amendments for provincial objectives for the Program and incorporating such a process into a broader Program amendment. Lynn Palensky has attached a summary of the comments we received (Attachment B). This is also being discussed at our staff retreat.

Background: The current Fish and Wildlife Program has been amended in a sequence that began with the 2000 Program. In 2003, the Council adopted its Mainstem Amendments to the Program. In 2005 the Council completed the adoption of subbasin plans into the Program.

The Power Act requires the Fish and Wildlife Program to be opened for amendments prior to the Council's review of its Power Plan. The Council must review its Power Plan no less than every five years. The Fifth Power Plan was adopted in 2004 so the Council must again review its power plan no later than 2009. That means the Council must open the Fish and Wildlife Program for amendments before then.

Discussion:

Process for amending the Fish and Wildlife Program: John Shurts has prepared a summary of the Act's requirements and timelines for amending the Program (see attachment A). In general, a full year accommodates the Act's requirements. The process includes important standards for Council consideration of proposed amendments and roles for the Columbia Basin's fish and wildlife managers.

Structure of the Program: The Council based the 2000 Program on a framework developed over several years of regional discussion. The framework began with a clearly articulated *scientific foundation*. The framework then built onto that foundation a *vision* for the Program and then a set of *biological objectives* that begin with Basinwide objectives defined in the 2000 Program. The Program called for defining subbasin and province-scale objectives. The subbasin objectives were defined in the subsequent subbasin plans. Our discussion for the next amendment process includes completing the framework with province-scale objectives.

In addition to the objectives, the 2000 Program then adopted a set of *strategies* based on the scientific foundation. There were seven: habitat; artificial production; harvest; hydrosystem passage and operations; wildlife; ocean conditions; and research, monitoring and evaluation. The 2000 Program defined how subbasin planning would carry these strategies to the implementation at the tributary level.

What this meant was that the 2000 Program was a significant departure from earlier Programs. Those Programs adopted detailed individual measures for actions in specific tributaries, but lacked an overarching framework of scientific principles and biological objectives.

The staff will discuss maintaining and adding to this basic structure of the Program as a starting point for the scope of the next Program amendments.

Schedule for amending the Program: Given that the formal processes for amending the Program should take a year, one sequence would be to spend much of 2007 evaluating the current Program structure and strategies and plan to open the Program for amendment beginning in late 2007 for adoption of a new Program in late 2008.

Planning for the amending the Program: Amending the Program is complex and involves numerous regional participants. The staff is working on a suggested schedule for issue development and Council discussion leading up to the call for amendments.

Among potential topics are:

- **Structure and scope of the Program**
 - Maintaining the current structure of the 2000 Program
 - Incorporation of Endangered Species Act biological opinions and recovery planning
 - Integration with the Power Plan
 - Future subbasin planning
 - Provincial scale biological objectives
- **Evaluating Program strategies:**
 - Updating of hatchery and habitat strategies
 - Revisions to the mainstem passage and operation measures of the 2003 amendments
 - Program monitoring and evaluation, research and data management
 - Climate change, toxics, water quality and other emerging issues
 - Wildlife losses and resident fish substitution

- **Program implementation provisions**
 - Bonneville project selection and implementation
 - Operation and maintenance funding for past program investments
 - Program's ability to attract other funding sources
 - Program reporting

With a general schedule for amending the Program in place, the staff can propose a schedule of future agendas to work through chosen topics over the coming months. The staff will also discuss how to best involve other regional participants in these discussions with the Committee and Council.

Attachments:

- A: Amending the Fish and Wildlife Program: Section 4h of the Northwest Power Act
- B: Memo from Lynn Palensky summarizing public comment on provincial objectives for the Program

Attachment A

Amending the Fish and Wildlife Program: Section 4h of the Northwest Power Act

- **Call for amendment recommendations.** An amendment process begins when the Council requests in writing from fish and wildlife agencies and tribes and others their recommendations for amendments to the program. The Act requires that we allow at least 90 days following the request for recommendations for people to submit their recommendations. The Council may always decide to allow more time.
- **Public review of recommendations.** The Power Act then requires that the Council give notice of the recommendations, and an opportunity for review and comment on those recommendations, to Bonneville, fish and wildlife agencies and tribes, the other federal agencies involved in the hydrosystem, Bonneville customers, and the general public. The act does not specify a particular time for public review of the recommendations. This means (under general principles of administrative law) that it has to be a reasonable notice and review period that allows interested or affected entities a meaningful opportunity to review the recommendations and submit comments. The Council's usual practice is around a 60-day review.
- **Council review of the recommendations and comments; draft or proposed amendments.** Section 4h moves next to the Council adopting program amendments. But the Council has always layered in an additional step, as a practical necessity and to be consistent with the rulemaking procedures of the federal Administrative Procedures Act (which we have reason to believe applies to the Council's actions, at least to a certain extent). This is the step of developing *draft* program amendments based on the recommendations and comments and other material properly in the administrative record, and then releasing these draft amendments for public review. It often takes the Council two months after receiving the comments on the recommendations to develop and approve draft amendments
- **Release the draft amendments for public review and comment. Hold public hearings in all four states.** No specific time for this step is specified in the Power Act or the APA. The Council usually allows for a comment period on the draft amendments of around 60 days (sometimes less, sometimes more) for a meaningful public review process, which often includes informal consultations with interested entities as well as written comments. We also use this time to hold at least one public hearing in each of the four states on the recommendations and draft amendments. This is a requirement in the Section 4d(1) of the Power Act for power plan amendments, and the fish and wildlife program is explicitly labeled as part of the power plan.
- **Develop and adopt final amendments to the fish and wildlife program.** The Council then has to review all the material in the administrative record, from the recommendations to the comments on the draft amendments, and then adopt final amendments based on that review, guided by the standards of the act. This usually takes another two months or so, if not more for controversial or extensive amendments.
- **Develop and adopt findings regarding the treatment of recommendations and a response to comments.** The program amendment process is not officially concluded under the Power Act until the Council adopts written findings explaining its treatment of the original recommendations. At the same time the Council adopts a statement of "basis and purpose" for the decision, which includes written responses to comments, consistent with the APA. This can take another couple of months.

c:\z-js\amending the program apr 2006.doc (John Shurts)

Attachment B

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November 30, 2006

MEMORANDUM

TO: Council Members

FROM: Lynn Palensky

SUBJECT: Summary of Comments - Provincial Objectives Issue Paper

PURPOSE

This memo includes: 1) a summary of comments received on the issue paper on developing provincial objectives; and 2) discussion of the next steps in developing objectives and the program amendment process. This is part of a larger discussion on program amendments that Doug Marker will cover in this agenda item, and staff will be addressing at its retreat next week.

ACTION REQUESTED

None at this time.

BACKGROUND

Comments on provincial objectives:

At the August meeting the Council released an issue paper on developing biological objectives for ecological provinces under the program and requested public comment on the approach and schedule. The primary objectives of the issue paper were to:

1. Describe the current state of affairs influencing the timing and approach for developing the objectives
2. Review the need and use for provincial objectives
3. Ask for public comment on the planned course, schedule and general approach.

We received a total of seven comment letters by the end of October 2006. Commenters included: the Pacific Northwest Utilities Conference Committee (PNUCC); Bonneville; Columbia Basin Fish and Wildlife Authority (CBFWA); Columbia River Inter-Tribal Fish Commission; Public Power Council (PPC); U.S Fish and Wildlife Service (USFWS), and the NW River Partners. Staff provided a brief summary of the comments to the Fish and Wildlife Committee at the November meeting.

Attachment B

In general, all agree with the concept of developing biological objectives for the program. Not everyone agreed with what scale the objectives should be set, and specifically what form the objectives should take. Three other common themes were: 1) that technical work needs to take place prior to an amendment process; 2) that the Council should expect full participation by the managers (the managers also urged the Council to consult with them in developing objectives); and 3) that mitigation responsibility associated with the federal hydropower system must be defined. Also, commenters said the Council should consider other approaches and data for deriving objectives.

The issue paper listed five specific questions for comment (below). Comments are summarized in more detail below for each of the questions:

Key Questions for Comment

1. *Should the Council continue working toward the goal of adopting quantitative biological objectives as described here into the Fish and Wildlife Program through a program amendment process under Section 4(h) of the Northwest Power Act?*

This was the area of greatest agreement. Nearly all commenters feel that by having measurable biological objectives for the program may help to measure success of program implementation; guide resource allocation; evaluate cost effectiveness of implementation and help shape clear priorities for the program.

2. *Is the premise correct that the effort to add biological objectives of this type and scale to the program is likely to be successful only if the Council and its regional partners first complete the technical preparation described here?*

This multi-part question generated multiple ideas. First, on the subject of adding biological objectives of this type and scale: There was agreement by the commenters that the type and scale of the objectives are not yet defined. In fact, there were suggestions for scale and type, but also suggestions that we look at all the options for scale and type. The Council will need to seek clarity on what the biological objectives would look like and what we use as “common currency” across the basin. The utilities organizations commented that responsibilities under the program should be apportioned while this technical work is undertaken.

As for the second part of the question (will the addition of those objectives be successful only if we complete the technical work described?), the technical work we described involves the use of the All-H Analyzer, which pulls information and data from existing subbasin plans, biological opinions, harvest records and hatchery programs. There was support for using the tool, however, at least one commenter encouraged us not to “put all of our eggs in the one basket,” and to try to simplify whatever tool we use so that it is accessible and adaptive.

3. *More precisely, would the proposed amendment process to add biological objectives to the program benefit from waiting until the products are available from the NOAA Hatchery Review and the NOAA Technical Recovery Team and recovery planning efforts, even if that means a delay until 2008 in the amendment process.*

Three commenters responded to this question directly. Two were adamant about the need to integrate final products from NOAA. The other felt that the use of existing

Attachment B

quantitative information was adequate under an “adaptive management framework.” That is, if an adaptive management framework was set up, then updated information and data could be incorporated as it becomes available. All three commenters feel that clearly defining the breadth and scope of objectives needs to occur in 2007 to inform program amendments in 2008.

4. *Is there a different approach and schedule that makes more sense for the Council to pursue to add objectives of this type to the program?*

As far as the schedule, most commenters see the need to proceed with program amendments as contemplated in 2008. With regard to the approach, one option offered was strategic planning to shape program activities based on subbasin plans. In addition, that effort could take into account other influences like climate change, population growth and demographics, and land use. Another approach offered was the development of an adaptive management framework starting with existing information and updating as information becomes available. In using the adaptive management framework, establishing common metrics is an imperative.

5. *On what basis could the Council pursue objectives if it proceeded without completing the technical work described here?*

Several commenters believe the technical work described in the issue paper and the integration of information developed by NOAA is essential to complete prior to moving into an amendment process. Others offered alternative approaches (see Question Four above) that did not necessarily require information developed by NOAA to be integrated as part of the technical work in 2007.

Discussion of next Program amendment process

Fish and Wildlife Committee
December 12, 2006

Discussion:

- Amendment schedule requirements
- Current Program framework
- Provincial objectives
- A 2008 timeline
- Program evaluations in 2007

Year long amendment sequence:

Call for amendment recommendations	3 months
Public review of recommendations	2 months
Council review of recommendations and comment; develop and release draft program amendments	2 months
Public review of draft amendments - comment and public hearings	2 months
Develop and adopt final amendments	2 months
Develop and adopt findings and responses to comments	1-2 months

Program Framework

- The 2000 Program adopted a framework based on Scientific Foundation
 - Vision, Biological Objectives and Strategies at each program level
 - Basinwide Objectives and Strategies
 - Specific objectives and strategies/measures in 2003 Mainstem Amendments and Subbasin Plans
 - Province-scale objectives were intended to complete framework

Provincial objectives

- Comment received agreed on taking more time
- Technical work continues through Waldo hatchery reform process
- Comment to Council recommended more work on type and scale of objectives
- We can work on options in early 2007

Possible timeline

- Schedule call for amendment recommendations by the end of 2007?
- Amendment process would run through late 2008
- Use 2007 for evaluating current Program
- Incorporate provincial objectives into 2008 schedule

Evaluate current Program in 2007

- Structure and function of Program
- Role of ESA requirements
- Future subbasin planning
- Current Program strategies
- Implementation provisions

Next steps

- Recommend timing of amendment process
- Guidance on analytical/evaluation needs from ISAB, staff, others
- More discussion of scope and structure of the Program
- Recommend calling for provincial objectives with Program amendment recommendations – more discussion of objective types.