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October 4, 2007

DECISION MEMORANDUM

TO: Council members

FROM: Patty O'Toole, program implementation manager
Lynn Palensky, program planning and special projects coordinator
Tony Grover, director, fish and wildlife division
John Shurts, general counsel

SUBJECT: Council decision to release call for Fish and Wildlife Program amendment recommendations

PROPOSED ACTION:

The main action requested is for the Council to approve formally, by motion and vote, the letter requesting recommendations to amend the Columbia River Fish and Wildlife Program.

The staff also recommends, separately, that the Council approve certain material to guide the public in developing recommendations on particular topics related to program amendments, such as the topics of biological objectives and coordination. This material would be available to the public on the Council website. The Council may approve the posting of this guidance material informally, without formal motion and vote, unless the members desire to take the more formal path.

SIGNIFICANCE:

The first action will approve the letter to officially request recommendations for the Fish and Wildlife Program and allow staff to prepare for launching the program amendment process on November 1, 2007. The second action will provide the public with Council approved guidance on particular topic areas of the program that are likely to receive focused attention during the amendment process.

BUDGETARY/ECONOMIC IMPACTS

Workload increases during the Program Amendment process will require additional legal and technical temporary help with meetings, hearings, document management, database maintenance and issue analysis documents. The costs of these extra support services are anticipated to be within the fish and wildlife and legal divisions' budgets, but will require focusing the Council's fish and wildlife division resources primarily on the Amendment process for more than a year.

Economic and budget impacts outside of the Council are difficult to estimate, but are anticipated to be significant in the near term as entities divert their resources to prepare amendment recommendations.

Several factors related to but not directly driven by the amendment process have the potential to significantly increase fish and wildlife expenditures in the Columbia River Basin. Some, but not all, of these factors are: a new FCRPS Biological Opinion (BiOp), a new upper Snake River basin BiOp, a hatchery review process and possible long term settlements between Bonneville Power Administration and some fish and wildlife management entities in the Columbia Basin. These other processes and decision documents may be finalized sometime shortly after January 2008.

BACKGROUND

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 decided at the September Council meeting to initiate the next amendment process on November 1, 2007.

ANALYSIS

Attached for Council consideration and approve are several items. First, is the letter from the Council to the region that will serve as the official "call" for recommendations to amend the Fish and Wildlife Program. This letter provides a legal background for the amendment process, a glimpse of the 2000 program along with identification of particular areas of the program that could benefit from focused attention, possible implementation recommendations, recent developments for consideration and submission information.

Also attached for consideration are documents pertaining to province or mid-level biological objectives and regional coordination. These documents, if approved will be referenced in the letter and placed on the Council's webpage for program amendments, with the intent of guiding the public in the development of recommendations in these particular topic areas.

ALTERNATIVES

The Council members and staff reviewed previous drafts of the letter calling for recommendation and suggested edits have been incorporated.

If the Council is not supportive of providing guidance as presented in the attachments, staff could continue to work with the members on refinements and post to the web at a later time, or the Council could remain silent on these topic areas and provide no additional guidance.

ATTACHMENTS

- Letter calling for recommendations
- Guidance for province or mid-level biological objectives
- Guidance for regional coordination

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Request for Recommendations for Amendments to the Northwest Power and Conservation Council's *Columbia River Basin Fish and Wildlife Program*

Council Document No. 2007-__

To interested parties:

The Northwest Power and Conservation Council (Council) is requesting recommendations for amendments to the Council's *Columbia River Basin Fish and Wildlife Program*. The current Program may be found on the Council's website at

<http://www.nwcouncil.org/fw/program/Default.htm>. This letter describes the Council's expectations, requirements, and schedule for the amendment recommendations. The letter, associated materials, news, and information relating to the amendment process may also be found on the Council's website at www.nwcouncil.org/amend.

Legal 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. That is the purpose for this request for program amendment recommendations.

The Council must begin a program amendment process with a formal request in writing to the region's Indian tribes and state and federal fish and wildlife agencies 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.”

This letter serves as the required written request.

The Northwest Power Act also allows recommendations to be submitted by federal and state water management agencies, by the region’s electric power producing agencies and customers, and by the public. Thus, this letter also serves as notice for members of the public and other interested parties to submit their program amendment recommendations.

All recommendations must be accompanied by detailed information and data in support of the recommendations.

Building on the existing Columbia River Basin Fish and Wildlife Program

In the 2000 Fish and Wildlife Program amendment process, the Council reorganized the program around a comprehensive framework of scientific and policy principles, the first step in what became a complete revision of the 20-year old program. The fundamental elements of the revised program framework are the *vision*, describing what the program is trying to accomplish with regard to fish and wildlife and other desired benefits from the river; *biological objectives*, describing the changes in environmental conditions and fish and wildlife population characteristics needed to achieve the vision; implementation *strategies*, guiding or describing the actions needed to achieve the desired ecological conditions; and a *scientific foundation*, linking these elements and explaining why the Council believes certain kinds of actions should result in desired habitat conditions and why these conditions should improve fish and wildlife populations in the desired way.

The 2000 program framework also organized the work of the program geographically, at four different levels: *basinwide*, 11 ecological *provinces*, the Columbia and Snake *mainstem* (cutting across the provinces), and the *subbasins* of the Columbia system consisting of the tributaries, estuary, and distinct mainstem reaches. In the 2000 program the Council adopted basinwide level program provisions, including the *vision* for the program, biological objectives, substantive strategies and implementation provisions for the program as a whole, and an overarching set of scientific principles tying the elements together.

The program framework amendments in 2000 set the stage for subsequent phases of the program revision process. In the 2003 Mainstem Amendments, the Council adopted specific objectives and measures for the river’s mainstem, consistent with the program’s basinwide vision,

objectives, strategies, and underlying scientific foundation. The Council then followed with the adoption of 57 Subbasin Plans into the program in 2004-05, consisting of technical assessments and then specific objectives and measures organized in management plans for the tributary subbasins, mainstem reaches and estuary. *See* www.nwcouncil.org/fw/program.

Parties submitting recommendations are free to recommend amendments to any part of this program. At the same time, the Council believes that the program amendment process will be more fruitful if parties focus their recommendations at certain elements of the program and not at others, as follows:

- **Program Framework and Basinwide Vision, Scientific Principles and Substantive Strategies.** The Council believes that the program framework continues to serve the program well. The Council believes many of the Basinwide provisions retain their general validity, but may need review and minimal revisions to bring them up to date. This includes the Basinwide Vision statement, the associated Planning Assumptions, the Scientific Principles, and the statements of rights and roles in the 2000 Program.
- **Certain Basinwide Strategies.** The Council suggests that parties focus their attention on the elements of the program clearly in need of significant revision or elaboration. This includes the Basinwide Strategies regarding Monitoring and Evaluation; Research; Data Management; Wildlife; Program Implementation, Management, and Coordination; and Project Review. Further guidance regarding these areas of the Program can be found on the Council's website at www.xxxx.
- **Performance Metrics and Reporting.** The Program has not previously focused upon performance metrics and reporting requirements. The Council requests parties to focus attention on the following questions: Should the Program goals only focus on performance metrics within the responsibility of the power system? What form would these goals and biological performance measures take for anadromous fish, resident fish and wildlife? Should the program focus more on trying to improve quantitative measurements of anadromous fish survival at and through the mainstem Snake and Columbia River hydropower projects or improved productivity in upstream habitat? How should the associated reporting requirements be addressed?
- **Province and Basinwide Biological Objectives.** The Council also requests that parties focus attention on confirming or revising the biological objectives of the program at the Basinwide level and on adding interim or long term Biological Objectives at the Province level that would be meaningful for evaluating and reporting program process. Further guidance may be found on the Council's website www.nwcouncil.org/amend concerning the topic of biological objectives.
- **Mainstem Objectives and Measures.** The Mainstem portions of the Fish and Wildlife Program are open for recommended amendments. In the past, the Council deferred that portion of the program to a separate amendment process. The Mainstem objectives and measures will be integrated with the other parts of the Program during this amendment process. Parties should consider whether the overarching approach to the mainstem

portion of the program that the Council followed in the 2003 Mainstem Amendments remains valid.

In the 2003 Mainstem Amendments, the Council recognized and incorporated into the program the measures in the biological opinions from NOAA Fisheries and the U.S. Fish and Wildlife Service for the operation of the Federal Columbia River Power System for the benefit of populations of salmon, steelhead, bull trout, and Kootenai white sturgeon listed as threatened or endangered under the Endangered Species Act. But the mainstem provisions of the program also included a set of habitat considerations, biological objectives, and strategies intended to protect, mitigate, and enhance *all* the fish and wildlife of the Columbia River Basin affected by the development, operation and management of the hydrosystem, whether listed or not, as required of the Council by the Northwest Power Act. The Mainstem Amendments also included provisions to subject all the mainstem measures, including those from the biological opinions, to systematic and rigorous monitoring and evaluation to determine if the measures have the biological benefits expected, represent the most cost-effective actions to achieve these benefits, and coordinate with an adequate, efficient, economical, and reliable power supply. If this approach to the mainstem portion of the program remains valid, as seems likely, parties should focus their attention on updating and improving how the Program addresses all species and associated biological requirements beyond the biological opinion measures.

- **Subbasin Plans.** The Council continues to support subbasin plans as a basis for implementing the program. The Council encourages parties preparing recommendations to use the subbasin plans to help shape their recommendations. The subbasin plans can be found at www.nwccouncil.org/fw/subbasinplanning.

The Council does not believe this amendment process is the appropriate place and time for amending the adopted subbasin plans. Instead, the Council encourages parties to recommend a general process and schedule for how subbasin plans will be updated in the relatively near future. In general, the Council will defer to that subsequent process, recommendations that seek to change a particular subbasin plan.

The Council realizes there may be good reasons to recognize exceptions to this general principle. For example, it may make sense in this amendment process to consider adopting into the program and integrating into the subbasin plans the relevant portions of final recovery plans that are based on but have further developed the management plan elements of one or more subbasin plans. Please include in any such recommendations a clear explanation as to how a final recovery plan has added to or revised the subbasin plans that the recovery plan subsumes. The Council will continue to consult internally and with others on the most appropriate way to handle these kinds of recommendations.

The Council also anticipates receiving recommendations that will sharpen how subbasin plans are implemented in the next few years, either by recommending a near-term implementation action plan to add to the subbasin plans or by providing a more specific, definitive prioritization framework for a subbasin plan. Any such recommendations will be evaluated for consistency with the objectives, strategies, and priorities already in the subbasin plans. For more information, see the following section.

Possible Implementation Recommendations. The Council recognizes that recent events provide an incentive for parties to submit recommendations for measures that represent specific implementation action plans for the near term up to ten years. These events include the implications of the January and May 2007 decisions of the Ninth Circuit in *Northwest Environmental Defense Center v. Bonneville Power Administration* and *Golden Northwest Aluminum v. Bonneville Power Administration* and the fact that the upcoming revised FCRPS Biological Opinion is likely to include ten years' worth of actions related to the portion of the program addressing Endangered Species Act listed salmon and steelhead. For the Council to be able to consider recommendations of this nature, the recommending entity must explain:

- (a) how the actions recommended for implementation are consistent with the program, including the program framework, the objectives, strategies and priorities in the subbasin plans, and other relevant portions of the program;
- (b) for anadromous fish, what additional biological and legal objectives will be furthered by the recommended actions that are not already being addressed by the actions that Bonneville has committed to fund in the Proposed Action;
- (c) why the recommended actions represent the highest priority for implementation over the years recommended, compared to other actions that might be implemented consistent with the subbasin plans and other portions of the program; and
- (d) how the actions to be implemented will be accompanied by the right provisions for periodic scientific review, evaluation, and reporting to assure proper and legal accountability.

Developments to Consider in Formulating Recommendations

As you formulate the amendment recommendations, please consider the implications of a large number of recent and important policy, scientific, and legal developments that have occurred since the Council finished the last amendment process with the adoption of the subbasin plans. This includes:

- Developments related to the federal Endangered Species Act, including the culmination of a review of the Pacific salmon listings and re-listing of the Columbia ESUs, an approach to listing and to the review of hatchery influences on populations again called into question by the courts; the invalidation of the 2004 FCRPS Biological Opinion; more than two years of intensive work among representatives of federal, state, and tribal entities on a revised FCRPS consultation culminating at this point in a Proposed Action and draft 2008 Biological Opinion [draft is expected in November 2007]; and a wealth of technical analyses on the issue of recovery, and several draft and final recovery plans.
- A number of recent scientific reviews and reports that address many aspects of the Columbia River Basin, including the effects of climate change and population growth, the Council's research plan (2006-3) and monitoring and evaluation framework, a basinwide data center proposal, the results of a recent Science-Policy Exchange workshop hosted by the Council, and recent scientific reviews of key mainstem issues including latent mortality hypotheses and a new fish passage model, COMPASS. The Council's program amendment web page has gathered and made available many of these important reviews and reports at www.nwcouncil.org/amend. In addition, throughout the past year or so the

Council has heard numerous technical presentations on various subjects associated with the Fish and Wildlife Program. The technical information presented to the Council is posted on the Council's web page under the agenda headings for each meeting.

- Several decisions from the federal courts that have the potential to strongly influence the Council's fish and wildlife program.
- Policy developments regarding *in-lieu* limitations on funding by Bonneville, capital spending, and other areas have also emerged and have the potential to substantially influence fish and wildlife-related decisions.

Parties should consider the implications of these developments carefully as they formulate program amendment recommendations.

A glossary of terms can be found on the Council's website at www.nwcouncil.org/amend to assist anyone making program amendment recommendations.

Submittal of Program Amendment Recommendations

Recommendations for amendments must be submitted by 5:00 p.m. Pacific time on February 1, 2008. If you are interested in submitting a program amendment recommendation, please fill out the online recommendation form. The form and instructions are at www.nwcouncil.org/amend. You will receive a confirmation email after you submit your completed recommendation. Completed recommendation will be stored by the Council, and made available for public review and comment shortly after February 1, as required by the Northwest Power Act. Check back at the above link for news and updates regarding the amendment process and for notification of public meetings.

Please remember recommendation forms must be completed and submitted to the Council by the close of business on February 1, 2008.

Council's Fish and Wildlife Program Amendments of 2007-2008
Biological Objectives Guidance (October, 2007)

The Council asks that parties make recommendations on interim or final Biological Objectives for the Fish and Wildlife Program at the Basinwide and Province level that would be meaningful for assessing program success.

Program Framework for Biological Objectives

The fish and wildlife program consists of the 2000 program, the mainstem amendments of 2003, and 57 subbasin plans adopted in 2004-05. See www.nwcouncil.org/fw/program. The program is based on a science and policy framework. Elements of the framework are the *vision*, or desired accomplishments; *biological objectives*, the changes in environmental conditions and fish and wildlife populations to achieve the vision; implementation *strategies*, the actions needed to achieve the biological objectives, including monitoring and evaluation; and a *scientific foundation*, linking the elements and explaining why certain actions should result in desired habitat conditions and improvements in fish and wildlife populations.

Biological objectives have three components: (1) biological performance, based on the response of populations to habitat conditions, such as capacity, abundance, productivity and diversity, (2) environmental characteristics, which describe the environmental conditions or changes sought to achieve the desired population responses, and (3) the timeframe to achieve the biologic objective. Biological objectives should also help determine the cost effectiveness of program strategies, and provide a basis for monitoring, evaluation and accountability.

Biological objectives should be science based and should:

- Provide quantitative benchmarks for measuring, evaluating and reporting program performance
- provide guidance for policy and resource allocation decisions (i.e. artificial production)
- provide guidance for later basin and subbasin level revisions of the program

That is biological objectives should be currently or potentially measurable in “real time”, be amenable to management actions, able to demonstrate project outcomes, help guide decision making, be understandable to the general public, define FCRPS obligations, encourage partnerships with other ongoing actions, and include hydro, habitat, harvest and hatcheries.

Possible categories of biological objectives that fit the Program framework include:

1. **Population Objectives for Focal Species** (adult abundance, ratio of natural to hatchery fish, artificial production, life history diversity/population structure, productivity) may be expressed in trends, probabilities, averages or ranges as in absolute numbers.
2. **Species Habitat Potential** (habitat productivity and capacity)
3. **Environmental Objectives** (A small set of high-level indicators such as increases in streamflow, improvements in water quality, improvements in channel structure and complexity or removal of barriers.)

Coordination

The Council is considering adopting into the Program the following approach to the subject of “coordination.” We welcome recommendations and comments that either concur with this approach or that recommend a different approach and why:

The Council’s Fish and Wildlife Program benefits from the coordinated efforts of many entities, groups, committees and organizations in implementing elements of the Council’s program on an ongoing basis. “Coordination” is not an action or a subject by itself -- it is incidental to the need to make progress on a substantive program area that requires the coordinated work of more than one entity. What type of “coordination” needs to occur in any particular instance is wholly dependent on the work that needs to be accomplished and the particular entities identified that need to work together to accomplish it. For example, the entities and levels of effort involved in coordinating regional data management are different than the entities and levels of effort needed to coordinate the revisions of a subbasin plan, and so forth. The program will determine the needed levels of coordination and coordination funding as incidental to and bound up in the particular program areas. That is, the substantive sections of the Program will identify where coordination is needed, at what level, among what entities, and by whom funded. No existing entity will receive “coordination” funding disconnected and not incidental to the program element to be coordinated. No group of entities will exist just to provide a coordination function *unless* the entities that need to coordinate a particular program element find it efficient to form such a group for that particular purpose.

The Council seeks recommendations in the area of coordination for:

- 1) The most efficient and cost effective approach for delivering coordinated recommendations, reviews and other program-related work from the managers to Council.
- 2) At what level should these approaches be funded under the Council’s program?