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September 24, 2007

MEMORANDUM

TO: Council Members

FROM: Jim Ruff, Manager, Mainstem Passage and River Operations
Peter Paquet, Manager, Wildlife and Resident Fish
Mark Walker, Director, Public Affairs Division

SUBJECT: Follow-up actions from the Predator Control Panel discussion

BACKGROUND

The purpose of this memo is to provide Council members with a status report on various follow-up actions concerning predator control that were mentioned or discussed at the August Council meeting.

DISCUSSION

Avian Predator Control Follow-Up Actions

Caspian Terns – At the August Council meeting, staff provided a discussion of the problem and status of Caspian tern management actions in the Lower Columbia River. At that time, we reported that the Corps of Engineers was seeking authorization and funding to implement the relocation plan described in the final environmental impact statement. Since that time, the Corps has informed staff that they have now received the necessary authorization and funding to begin implementation of the plan, which will begin this year. Following the completion of environmental assessments, the Corps expects that relocation efforts at sites in Oregon (Fern Ridge and Summer Lake) could start before the end of this year. Additionally, they will begin to initiate consultations and planning for the relocation sites near San Francisco.

Double-crested Cormorants – At the August meeting, staff briefed the Council on the status of double-crested cormorant populations in the Columbia River Basin. Since 1989, when less than 100 pairs were present on East Sand Island, the breeding population of this species has increased there to 12,500 pairs in 2004, the largest colony in North America. Estimated juvenile salmonid

consumption by this species in 2004 was 6.4 million fish (range 2.5 – 10.3 million), a 25 percent increase over the 2003 estimate of 5.2 million smolts. Their predation level, coupled with that for Caspian terns, generated an estimated loss of 10 million juvenile salmonids in the estuary for 2004. Steelhead, coho, sub-yearling and yearling Chinook comprised the salmonids in their diet in 2004; sub-yearling Chinook represented the largest proportion of salmonids.

Management efforts directed toward double-crested cormorants nesting in the Columbia River estuary could achieve additional gains, perhaps comparable to or even greater than those associated with the proposed Caspian tern management plan. Further research efforts are necessary before work could begin on a required EIS that would be developed in conjunction with the U.S. Fish and Wildlife Service. The EIS would address potential population and habitat management actions for double-crested cormorants. Research into cormorant predation on juvenile salmonids, an evaluation of management needs, and an in-depth analysis of the regional double-crested cormorant population would support completion of the environmental review requirements for determination of future management actions, if warranted. Baseline research to determine the geographic limits of the cormorant population and their population level has been initiated by the Corps. This work needs to be completed before an EIS can be initiated.

Other Issues - The main focus of the August presentation was to initiate a discussion on whether the Council should take the lead in pursuing the development of a regional strategy for avian predator control. Ultimately, however, such a strategy will have to be developed and agreed to by the fish and wildlife managers. The Council's major concern is the economic and biological impact that increased avian predation will have on salmonid recovery efforts. Many fish and wildlife managers and environmental organizations are also concerned about the potential impacts to the bird populations due to increased efforts to reduce and relocate existing populations. There is also concern that these efforts, as currently envisioned, have the potential to increase the geographic range of some populations (terns in particular) into areas where they did not historically occur.

The focus to date has been primarily on Caspian terns in the lower river with some additional emphasis on Caspian tern populations in the upper river and on double-crested cormorants. In the upper river there are ongoing studies and there have been some attempts to control tern populations. Additionally, studies in the mid-Columbia indicate that Common mergansers and Ring-billed and California gulls are likely the primary problem in that area. For both legal and biological reasons most of these species are protected under the Migratory Bird Treaty and other state and federal legislation. Many of these species appear to be undergoing a shift from their historical geographic range or the populations are increasing from a depressed condition. In many cases, problem populations are associated with historically unavailable human-constructed habitats such as islands, riprap, parks, etc.

There are several alternative actions the Council might take. One option is for the Council to let the issues play out under the auspices of the federal action agencies charged with implementing the new FCRPS BiOp. Another option is to take a lead role in developing a regional strategy for dealing with avian predation.

Still another option is for the Council to involve others in developing a regional strategy for predator control. If the Council chose to take on that facilitating role, staff recommends that the Council sponsor a workshop to bring the region's fish and wildlife managers and experts on avian predation together to discuss the merits of the options outlined above. The workshop would likely result in a recommendation(s) to the Council on the best course of action(s) to pursue. If such a workshop were convened staff recommends that at a minimum the following entities should be participants:

1. State and federal fish and wildlife agencies
2. Tribes
3. U.S. Army Corps of Engineers
4. Bonneville Power Administration
5. Bureau of Reclamation
6. Mid-Columbia PUDs
7. USDA, Wildlife Services
8. University of Washington, Dr. Julia Parrish
9. Oregon State University, Dr. Dan Roby

Marine Mammal Predator Control Follow-Up Actions

Section 120 Process

At the August meeting, the Council heard that the states of Idaho, Oregon, and Washington have pursued federal authorization under Section 120 of the Marine Mammal Protection Act (MMPA) to lethally remove individual problem animals, if necessary to protect ESA-listed salmon. The states' Section 120 application is subject to a federal review process that, if challenged in court, could take up to several years. Under this process, NOAA Fisheries has created a Pinniped-Fishery Interaction Task Force (PFITF) that consists of 18 representatives from the following entities:

- U.S. Department of Commerce
- NOAA Fisheries marine mammal scientist
- Three independent marine mammal scientists
- States of Oregon and Washington
- A member from each of the four lower Columbia River tribes
- Columbia River Inter-Tribal Fish Commission scientist
- Three conservation organizations
- Commercial fishing organization
- Recreational fishing organization
- Corps of Engineers

Schedule for the Section 120 Process

NOAA Fisheries has prepared a document called a "Section 120 Overview and Task Force Instructions," that is intended to provide the task force with background material, its role and schedule, as well as their instructions and charges (attached).

The PFITF met for the first time in Portland on September 4th and 5th and is scheduled to review the states' application and submit a recommendation to NOAA Fisheries within 60 days of that meeting, or by November 5th, as to whether to approve or deny the states' application under the

Section 120 process. Their recommendation would also include alternative management actions to be incorporated into the NEPA process that will be required before any sea lion control plan is implemented. NOAA Fisheries then has 30 days to accept or deny the task force recommendation(s).

In the meantime, NOAA Fisheries will begin preparation of an Environmental Assessment (EA) while the PTF is deliberating during September and October, with a draft EA and ESA authorization scheduled to be completed by early January 2008. After a 30-day public comment period, NOAA Fisheries is scheduled to complete all necessary NEPA and ESA documentation by the end of February 2008.

If take authority is granted under Section 120, then state fish managers would be allowed to remove a limited number of California sea lions that have been identified as preying on salmon and steelhead in the area below Bonneville Dam. The actual number of sea lions that might be targeted for removal will depend on various factors, but it would be less than one percent of the number that could be lethally removed without affecting the overall health of the population.¹ Renewed efforts to haze the pinnipeds away from the Bonneville Dam tailrace would precede any lethal removal, and an evaluation period would follow to determine effectiveness of the action(s) taken. It also should be recognized, however, that if take authority is granted under Section 120, legal challenges to that decision will likely be filed by marine mammal advocates. The lawsuits could stop or delay implementation of the decision.

Summary of First Meeting of the Pinniped-Fishery Interaction Task Force

Staff attended the September 4-5 meeting of the PFITF in Portland. Detailed meeting notes from that first meeting are being prepared and are expected to be available within two weeks at the following web site: <http://www.mediate.com/dsconsulting/pg17.cfm>. As meeting notes are finalized and agendas for upcoming meetings are produced, they will be posted to our site.

For your information, the first meeting agenda and related pinniped reports are already posted at the site listed above. The first day of the meeting was spent giving task force members presentations by experts on background materials concerning relevant pinniped and fishery issues. Toward the end of the first day's meeting and into the second day, the task force began discussions on the first two of the following seven questions that they will need to address over the 60-day period. The questions are:

1. What criteria does the task force recommend to assist NMFS in the interpretation of "significant negative impact" and the extent to which pinnipeds are causing undue injury or impact to, or imbalance with, listed species?
2. If available and practicable, what non-lethal measures does the task force recommend be taken prior to implementing lethal removal?
3. If lethal removal is included in the recommendations, what criteria did the Task Force use to individually identify the specific animals to be removed and which animals meet those criteria at the time the Task Force completed its deliberations?
4. If lethal removal is included in the recommendations, does the Task Force recommend a limit to the number of sea lions that may be removed and if so what is the justification for that limit?

¹ The potential biological removal level for California sea lions is 8,511 animals.

5. If lethal removal is included in the recommendations, what limitations (if any) would the Task Force recommend on timing, location, take methods or duration of the authorization?
6. For purposes of post-implementation evaluation, what criteria does the Task Force recommend for evaluating whether the implementation of the Task Force recommendations have been successful in addressing the pinniped-fishery interaction?
7. Regardless of the outcome of this process, what might be the most effective means to achieve a long-term resolution to the pinniped-fishery conflict?

With respect to the second question, the innovative proposal by Smith-Root for an electric barrier and sonar detection for non-lethal pinniped deterrence was discussed briefly. Since some task force members were unfamiliar with this proposal, I forwarded it, as well as the ISRP's comments on the proposal, to the meeting facilitator for distribution to all task force members.

Most of the discussion focused on the first question and how to define what is a "significant negative impact on salmon?" A consensus of members agreed that the current 3-4 percent level of sea lion predation on spring Chinook salmon at Bonneville Dam is a recent negative effect that needs to be managed. How best to define an iterative process to manage that adverse effect will be a bigger issue for the task force. The task force also seemed to concur that the current level of pinniped predation on salmon below Bonneville Dam negatively affects or impedes salmon recovery, and a reduction in pinniped predation would significantly assist in salmon recovery.

One of the next steps for the task force is that the states of Oregon and Washington will provide additional information about the current status of particular salmon stocks, as requested by other members. Also, the states and the Corps would review available pinniped predation information to determine how best to identify, or profile, problem animals that have been marked.

The next meeting of the task force is scheduled for October 9-10 in Portland. The PFITF process timeline and tasks document is also posted on the above web site for your information.

Update on Congressional Action

As you are aware, Congressmen Brian Baird and Doc Hastings introduced legislation (H.R. 1769) to amend the Marine Mammal Protection Act by expediting the process to address aggressive sea lion behavior on threatened and endangered salmon and steelhead in the Columbia River and its tributaries. The legislation would establish a process that could allow states and tribes to apply to the Secretary of Commerce for permits for the lethal taking of sea lions. If approved, a permit would be effective for no more than one year and would authorize no more than 10 takings. The legislation also would waive existing environmental analyses required under NEPA. Due to the NEPA provisions, in particular, prospects for the legislation are uncertain.

On August 2, 2007, the House Subcommittee on Fisheries, Wildlife, and Oceans conducted a hearing on H.R. 1769. Witnesses included NOAA Fisheries, the Marine Mammal Commission, State of Washington, Columbia River Inter-Tribal Fish Commission, and the Humane Society. On July 23, the Council sent a letter to the members of the Subcommittee in support of the legislation. The apparent conclusion from the hearing is that the subcommittee wants to give the

existing Section 120 process an opportunity to work. If the process is delayed in any way that does not allow a final decision to be implemented by this coming spring, we can expect Congressman Baird and others to exert pressure on the subcommittee to move the bill (or an amended version).