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March 6, 2018

### MEMORANDUM

**TO:** Fish and Wildlife Committee Members

**FROM:** Patty O'Toole, Program Implementation Manager; Tony Grover,  
Director- Fish and Wildlife Division, John Shurts, General Counsel

**SUBJECT:** Fish and Wildlife Program Amendment Process

### BACKGROUND:

**Presenter:** Patty O'Toole, Tony Grover, John Shurts

**Summary:** Staff will review three topics with the Fish and Wildlife Committee: 1) the draft schedule and basic amendment steps, 2) the history of Fish and Wildlife Program amendments and relevant regional developments, and 3) information about the administrative record requirements.

**Relevance:** This information will assist in preparing the Committee for the upcoming Program amendment process.

**Background:** At the March Fish and Wildlife Committee meeting, staff will provide an update on the upcoming Program amendment process. Staff anticipates that the Independent Scientific Advisory Board will conclude its review of the 2014 Columbia River Basin Fish and Wildlife Program in late March, and will provide a presentation to the full Council at the April Council meeting. Given this schedule, the staff recommends that the Council request recommendations no earlier than May. To prepare for the upcoming process the staff will be providing some information to the

Committee in three topic areas: 1) the draft schedule and basic amendment steps, 2) the history of Fish and Wildlife Program amendments and relevant regional developments, and 3) information about the administrative record requirements.

### Part 1. Draft schedule and key steps

Staff will review the six key steps to an amendment process established by the provisions of the Northwest Power Act, and identify when these key steps are likely to occur based on a May 2018 start.

Staff will review the following basic steps:

- Step 1. Call for Fish and Wildlife Program amendment recommendations
- Step 2. Public review/comment on recommendations
- Step 3. Council/staff review of the recommendations and comments on recommendations; prepare draft or proposed amendments
- Step 4. Public review, comment, and consultations on draft Fish and Wildlife Program
- Step 5. Council/staff - develop and adopt final amendments
- Step 6. Develop and adopt findings regarding the treatment of recommendations as well as responses to comments

### Part 2. History of amendments

The Council has completed 18 Fish and Wildlife Program amendment processes since the enactment of the Northwest Power Act. Staff will explore with the Committee a brief history of these amendment processes, along with important regional developments that were part of the context for each amendment process. This history sets the stage for the upcoming amendment process.

#### **1982 Program**

- 1982 Program – first F&W Program (1)
- 1984 Amendments to 1982 F&W Program (2)

#### **1987 Program**

- 1987 Program – comprehensive amendments to the F&W Program, including anadromous fish loss assessments (3)
- 1988 Protected Areas - amendments to the 1987 Program (4)
- 1989 Wildlife Mitigation - amendments to the 1987 Program, including wildlife loss assessments (5)

#### **1991- early 1994 comprehensive revision of the F&W Program, in 4 phases:**

(follows first ESA listings of Snake River chinook and sockeye)

- 1991 Phase 1 - high priority anadromous fish habitat/production amendments (6)
- 1991 Phase 2 - anadromous fish mainstem passage and flows (7)

- 1992 Phase 3 - additional anadromous fish provisions, in the mainstem and (mostly) habitat and production measures (8)  
[The sum result of Phases 2 and 3 was called the Strategy for Salmon]
- 1993/Jan 1994 Phase 4 - non-anadromous fish measures (9)

**1994-95 comprehensive revision of the F&W Program, in two steps:**

- 1994 amendments - anadromous fish and program-wide elements of the program (10)
- 1995 amendments - resident fish and wildlife amendments, and some reconciliation amendments (11)

**2000-05 comprehensive revision of the F&W Program, in three steps:**

- 2000 F&W Program -- beginning of comprehensive revision of F&W Program; developed new program framework; basinwide provisions (12)
- 2003 Mainstem amendments - specific objectives/measures for mainstem (13)
- 2004-05 Subbasin Plan amendments (14)

**2009 program:**

- 2009 F&W Program - all parts of program except subbasin plans; integration of decade of planning at Council and NOAA (15)
- 2010 - added Bitterroot subbasin plan (16)
- 2011 - added Blackfoot subbasin plan (17)

**2014 F&W Program:** all provisions open to revision; comprehensive reorganization; basic substance remains the same; no changes to subbasin plans (18)

Part 3. Administrative record requirements

Once the Council begins a Fish and Wildlife Program amendment process by releasing the letter requesting recommendations, we begin to compile an official administrative record of the amendment process and of the Council's final decision. All communications and documents relevant to the amendment process or to the issues in the amendment process need to be included in the administrative record. This includes:

- Council's letter requesting recommendations, and any related documents (such as requests for extensions and decisions on extensions)
- Recommendations for program amendments, and any supporting documents
- Comments on recommendations, written and oral
- Draft fish and wildlife program
- Comments on the draft program, whether written or oral
- Final program and all of its associated documents
- Staff memos and other staff communications and documents that go to the Council members throughout the process and that are relevant to the program amendment process or to the issues in that process

- Council members' communications to other Council members, to staff, and to outside people and entities about the program amendment process or about issues in the process
- Agenda, tapes, minutes and other documents produced for or during Committee and Council meetings throughout the amendment process that are relevant to the amendment process or issues in the process
- Documents, reports, studies, etc., relevant to the program amendment process or to the issues in the process that come before or are used by the Council or Council members (an example will be the ISAB's review of the program and other ISAB or other scientific documents that become involved in or inform the Council during the amendment process)

Because the Council members collectively are the decision-making body, of particular importance for the administrative record are the documents and communications that come to the Council or to individual members. These include documents and communications that are about the amendment process, the issues in the process, or information that the Council or individual members relied upon or considered or should consider in making the Council's final decisions. This also includes similar types of communications *from* the Council, either collectively or from individual members about the process or the issues in the process. We do not include in the administrative record staff-to-staff communications, such as staff-to-staff email or drafts that never come before Council members.

Note that once we are in a program amendment process, email communications and documents that come to and from the Council or to and from individual members that are relevant to issues in the amendment process are part of the administrative record and need to be forwarded to the record *even if* they are generated in or relevant to some other process. For an example, many Council members participate in the ESA-based implementation forums. Communications relevant to issues in that forum that are also relevant to issues in the program amendment process need to be included in the program amendment administrative record.