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November 6, 2008

## MEMORANDUM

**TO:** Council members

**FROM:** Patty O'Toole, Sandra Hirotsu, and Lynn Palensky

**SUBJECT:** Update on draft Fish and Wildlife Program amendment process

At the November Council meeting, staff will briefly review the timeline for developing the final Program, the comments on the draft to date and the consultation schedule.

### A. Timeline

The following is a general timeline and work strategy for developing the final Fish and Wildlife Program:

#### November Council meeting

Note: Written comment period remains open through December 1.

- Present a brief summary of comments received to date
- Review the key issues that are receiving significant comment (The comment period is still open so we do not propose resolving issues yet, but we can review these in terms of things to be thinking about for December)
- Review consultation schedule and progress
- Encourage review of comments and hearing transcripts

#### December Council meeting

Note: Written comment period closes December 1; period of *final consultation* continues through December 19<sup>th</sup>, after the Council meeting.

- Present a brief summary of comments and consultation meetings
- Review issues that received significant comment and discuss possible changes to the draft Program; initiate language development or changes at this meeting, consider tentative resolution of issues
- Review other language clarifications and additions

- Reserve (at least) a half-day of the December meeting for the discussion

#### January Council meeting

Note: Now in period of Council deliberation - no communication outside members and staff regarding the Program.

- Reserve (at least) a full day on the agenda for a complete review and discussion of draft program (staff plans to send Council members the revised draft with input from December meeting around January 5th or 6<sup>th</sup>)
- Resolve any outstanding issues

#### February Council meeting

Note: Still in period of Council deliberation - no communication outside members and staff regarding the Program.

- Will need to evaluate the need for a full day for the complete review and discussion.
- Final review of program and final language edits (Staff plans to send out final draft to members by February 3, earlier if possible)
- Final vote
- Begin development of the findings - anticipate completion in April (remember, the program amendment process is not complete until the Council adopts the findings on the recommendations as part of the Program)

### **B. Comments**

The staff will provide a general overview of the comments received to date during the public comment period on the draft Fish and Wildlife Program. Approximately 35 people provided oral comments at the hearings and we have received about fifteen written comments, either mailed directly to the Council or posted to the Council website. A brief summary of the comments received to date is attached to this memo (Attachment 1). This summary does not include each and every comment received thus far, but will provide a general sense of the comments. The staff anticipates many more written comments will be submitted near the deadline of December 1.

Some of the comments received will be simple to address, others will require additional time to work through. Many comments are related to recommendations and key issues that the Council has been considering since the amendment process began over a year ago. The staff encourages Council members to give the comments and issues careful consideration for the December meeting. At the December meeting, staff would like to understand where the Council desires changes to the draft Program. Staff will then prepare revised language accordingly for Council consideration and discussion at the January Council meeting. Following is a sample of the key issues that are emerging from the comments.

- Measures - where are they and clarify which are in, which are not
- Basinwide biological objectives- clarification, acceptance
- Artificial production and harvest strategies; US v. OR and HSRG issues;

- More definition regarding follow-on processes: biological objectives, wildlife, development of implementation plans, the CBFWA subbasin summary/templates and subbasin plan updates).
- Monitoring and evaluation and adaptive management

### **C. Consultation update**

Several consultations meetings are scheduled for November. Consultations with the Confederated Tribes of Grand Ronde, the Burns Piute Tribe, and the Shoshone-Paiute Tribe are confirmed. Consultation meetings with the Nez Perce Tribe and the Upper Snake River Tribes are also tentatively scheduled for later November and early December.

## **Attachment 1. Summary of comments received to date on Draft Fish and Wildlife Program**

(draft, November 6, 2008)

### A. Specific sections of the Draft Program commented on to date:

- Biological objectives
  - program lacks specific, quantitative goals
  - reference to working on biological objectives within 2 years is vague
  - program needs to include subbasin and province level biological objectives now
- Reference to five million fish
  - eliminate the five million fish goal entirely
  - don't retreat from the goal which was developed after analysis and where Power Act requires high deference to F&W managers' recommendations
- Connection of draft program to the BiOp and Accords
  - current draft language can be interpreted to mean program lives or dies depending on whether BiOp survives litigation intact
  - supports how the program adopts the Accords and the Nez Perce Tribe's action plan.
  - need to consider and include relationship to the Willamette Biological Opinion
- Fish Passage Center -
  - concerns about whether the Center can provide objective analysis
  - take out reference to the Center or make it more accountable
  - don't name the FPC specifically in the Program
- Hatcheries and harvest
  - supports the Council taking on issues regarding hatcheries and harvest
  - program must be consistent with *US v Oregon*, Accords, Pacific Salmon Treaty and Tribes' treaty rights
  - selective harvest measures should be included as a harvest strategy. This will open up harvest opportunities for recreational and commercial fishermen and prevent having to shut down fisheries
  - Council should not assume the managers will adopt or support the HSRG recommendations
  - Council should support IEAB recommendation to complete Phase II of hatchery evaluation.
- Protected Areas
  - supports draft language about protected areas.
  - re-evaluate to determine whether changes should be made to provide an opportunity for new hydro development given the interest in renewable resources
- Non-native species
  - supports language in draft program

- concerns about resident fish substitution risk assessment language in draft
- Wildlife accounting and mitigation
  - glad Council is taking on accounting issue; want work that has already been done acknowledged; also should account for habitat benefits for wildlife from the mitigation efforts for fish
  - support a 2-1 wildlife crediting ratio. Program should accept some degree of responsibility for Willamette projects BiOp which assigns some responsibility to the hydro projects in the basin
  - encourage Council to defer to managers on the wildlife loss assessments and crediting issues
  - support creation of wildlife crediting forum and completion of operational loss assessments
  - Program should include criteria and methodology for loss assessments (operation)
  - draft language lacking the recommendations of states and tribes
- Land acquisition fund
  - support of draft program language
- Role of ISRP
  - support continued role of ISRP to ensure monies are well spent.
  - support of streamlining ISRP review
- RM&E - level of funding and level of detail
  - Council should more clearly scope RM&E
  - need to find ways to streamline RM&E and eliminate redundancies.
  - RME costs making up 40% of the program is too high.
  - support clear guidance on RM&E data collection and urged Council to incorporate RM&E framework and details contained in the CBFWA recommendation.
  - urge the Council to use the CBFWA recommendations for RM&E and adaptive management.
  - draft program language on adaptive management, science foundation and science principles is appropriate.
  - concern about how the M&E protocols and research priorities will be established
  - what process the draft program will use to maintain and improve RME data collection and application to management decisions
  - support of development of high-level indicators
  - Performance metrics and reporting measures are needed
- Multi-year implementation plans
  - support for the Council's decision to adopt the list of actions they submitted into the program.
  - support the language that indicates that these measures will be shaped into multi-year implementation plans in the near future and supports their completion
  - need to understand how the Council will work with recommending entities, Bonneville and others to shape the measures into multi-year implementation plans. Does this mean non-Accord entities will have a special process or consideration in project selection?

-Need to define elements of implementation plans

- Subbasin plans
  - support continuing to use subbasin plans as the basis for project review
  - need to streamline update process, update management plans with implementation plans
- Vision statement
  - applauds the AEERPS statement in the vision.
  - AEERPS statement implies a lack of commitment to the biological resources guaranteed in the Tribes Treaty Rights
- Predator control
  - support of draft language
- Mainstem provisions
  - support of predator control and mainstem habitat issues
  - There is disparity between the mainstem climate change considerations and the level of detail for the rest of the program
- Project review
  - comments and questions regarding how is the incorporation of everyone's measures into the program going to be handled in project review.
  - if there are no implementation plans before the 2010 provincial review, can projects still get implemented? Concern that projects will not be reviewed if the projects are not listed in an implementation plan
- Resident Fish Substitution
  - Concerns regarding Council endorsing ISAB risk assessment language
- Habitat strategy
  - Include thermal refuges in strategy
  - Expand stronghold concept to include areas the provide the ecological conditions need to support salmonids, even it they have few fish
  - Support for inclusion of strongholds
  - Concern projects being done are not using the latest proven technological or being effectively designed and implemented

B. General comments on the draft received at public hearings (as of 10/8/08):

- Clarity of language – Which measures are in, which measures are out?
  - draft was not clear on where the measures of the tribe reside in the program.
  - Need clarification on what constitutes an officially adopted “measure” in the program? Also, if all recommended measures are “in”, how will Council treat conflicting measures and how will Council deal with unfunded recommended measures?
- Program priorities and objectives
  - need clear program objectives in order to measure success.

- recommending prioritizing the areas of the basin with the unmitigated losses
- Need for clear decision-making criteria
  - Program lacks priorities and clear decision-making criteria.
  - need to continue to work on criteria to decide where the dollars should go so as to do more with fewer dollars
- Level of detail in program
  - support of the high-level nature
  - tribal measures should be incorporated into program and given deference
  - Draft program omits specific detail provided in recommendations without justification or explanation.
- Program funding
  - prioritization of expenditures is needed
  - Council should consider when determining funding levels, the wildlife mitigation already accomplished, fish projects that also benefit wildlife, regional fisheries enhancement groups that provide enhancement to fisheries as well as wildlife, other local, state, and federal programs implemented to enhance fisheries
- Concern about impact of program on power prices especially given the Biop and Accords Comments state that entities are counting on the Council to hold the line and be sure the money is well spent, and also to be sure F&W will actually benefit
- Hydropower as source of clean, renewable energy
  - concerns about cost of spill
  - federal hydro-system should remain a source of clean, renewable energy
  - Council urged not to make hydroelectric energy too costly or else it may cause economic damage to the region
- CBFWA templates
  - support inclusion into the program
- Only a small portion of the Columbia Basin is in Wyoming but the upper Snake River drainage is very important to the State of Wyoming. Reviewed the Draft program and requested to be kept informed of issues that may affect Wyoming
- The relationship of the FWP and subbasin plans to recovery plans
  - need to clearly state relationship to recovery plans
  - subbasin plans should be constructively used in project selection.
  - draft program is a 'luke warm embrace' of the subbasin plans. Council should be clear on adoption of subbasin plans
- Importance of local governments in the development of work plans

- Incorporation of other regional agreements such as *US v Oregon* Management Agreement and Pacific Salmon Treaty. Concerns about adopting HSRG recommendations without considering their effects on these agreements
- Education - support for the Yakima Environmental Education Program.
- Priority should be given to fish restoration, environmental impacts and tribal cultural sustainability.