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Northwest **Power** and **Conservation** Council

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July 2, 2024

MEMORANDUM

TO: Council Members

FROM: Patty O'Toole, John Shurts

SUBJECT: Looking ahead to amendment of the Columbia River Basin Fish and Wildlife Program

BACKGROUND:

Presenter: Patty O'Toole, John Shurts

Summary: Staff will provide an overview of early planning tasks and considerations to amend the [Columbia River Fish and Wildlife Program](#) (Program).

Relevance: The Council amends its Program before updating its regional Power Plan. Both efforts will occur over the next few years.

Workplan: Fish and Wildlife Division 2024 Workplan: Program Planning and Coordination: Columbia River Basin Fish and Wildlife Program amendment (multiple tasks),

Background: The Northwest Power Act requires that prior to any review of the Council's Power Plan, the Council first call for recommendations to amend the Fish and Wildlife Program. The Fish and Wildlife Program amendment process, per the Northwest Power Act, is a tightly scripted step-by-step procedure that begins with a call to others for recommendations for program amendments,

At the July Council meeting the staff will review four general topic areas:

- The staff will provide a summary of [Northwest Power Act](#) (Act) requirements for how the Council amends the Program; this will be covered in more extensive detail with Council later this year. The staff will describe the intersection of the Fish and Wildlife Program with power planning and the Power Plan as envisioned in the Act. This information is important to understand the timeframe for the overall process and for specific steps.
- The staff will describe what is slated to be amended through this process as well as the types of measures and objectives in the Program. It will be important to understand what measures are being implemented so the staff will bring detailed Program implementation and performance information to the Council later this year.
- As the Council prepares for the upcoming Fish and Wildlife Program amendment process, it is important to consider the broader regional context in which the Program is amended and implemented. Staff will review several of these considerations with the members.
- Finally, the staff will review tasks that are either underway or upcoming to get the Council ready for the process, along with a draft calendar for that work and an overall estimated timeframe for the amendment process.

Substantive details on each of these topics will be found in the presentation and in future briefings which are scheduled from September through December of 2024 and into 2025.

Upcoming Fish and Wildlife Program Amendment

Columbia River Basin Fish and Wildlife Program
Northwest Power and Conservation Council

Council meeting discussion, July 10, 2024



Northwest **Power** and
Conservation Council

Today- an early overview

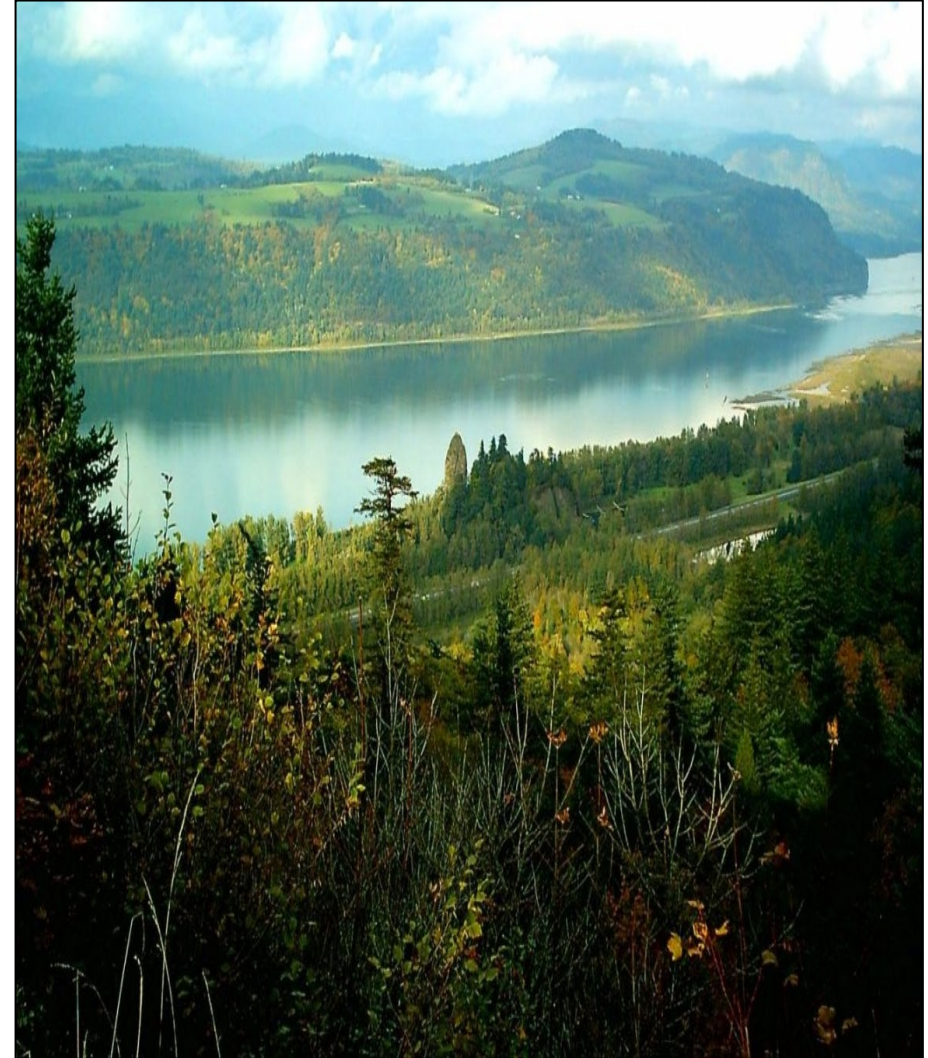
1. Fish and Wildlife Program amendment process
 - Northwest Power Act requirements: A summary
 - Intersection of the fish and wildlife program with power planning and power plan
2. 2014/2020 Fish and Wildlife Program
 - What will get amended?
 - What is in the Program? measures (strategies) and objectives: a summary
 - What is being implemented? Implementation and program performance details: a summary and timeline for sharing detailed information
3. Broader context - regional influences
4. Getting ready and timeframes

1. Fish and Wildlife Program amendment process:

- Northwest Power Act requirements
- Substance and process steps
- Interaction with power planning and power plan

Northwest Power Act

- Develop a Program to protect, mitigate and enhance the fish and wildlife affected by the development and operation of the hydropower dams, including related spawning grounds and habitat of the Columbia River and its tributaries....
- While doing so, also assure the region an adequate, efficient, economical and reliable power supply
- Provide for wide public participation in developing the Fish and Wildlife Program and facilitating the orderly planning of the region's power supply



Power Act definition of mitigation responsibility

1. Mitigation responsibility -all hydroelectric facilities in the U.S. portion of the Columbia Basin regardless of ownership or location
2. Protection and mitigation - achieved through onsite actions (hydrosystem water management, flows and passage measures) and offsite mitigation and enhancement actions (tributary and estuary habitat and production measures)
3. BPA to use its fund and authorities to protect, mitigate, and enhance fish and wildlife in a manner consistent with the Council's program
4. Other federal agencies (Corps, Reclamation, FERC) as well as BPA must take into account Council's program in decision making "to the fullest extent practicable at relevant stages of decisionmaking," while also treating fish and wildlife equitably with other authorized purposes of the dams

Program amendment process, Council's role in the Act is significantly different than the Council's work to review and adopt a power plan

- Program amendment process is tightly scripted, step-by-step, beginning with a call to others for **recommendations**
- Power plan review specifies substantive elements of the plan, with very little process requirement.
- Process is heavily dependent on input from others, beginning with **recommendations**, especially from the state and federal fish and wildlife agencies and region's Indian tribes.

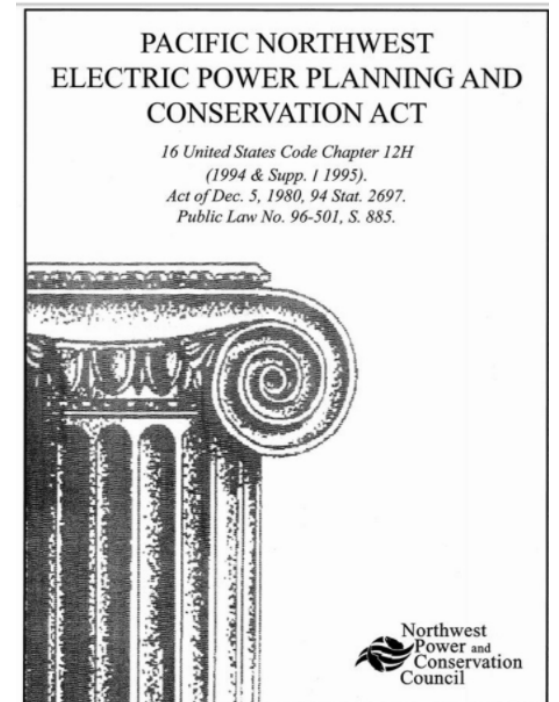
Northwest Power Act - continued

- Council has legal obligations to the recommendations, and to the activities, perspectives and legal authorities of the agencies and tribes.
- Recommendations, related information, comments on recommendations and draft amendments form the bulk of the **administrative record** for Council's decisions on the program.



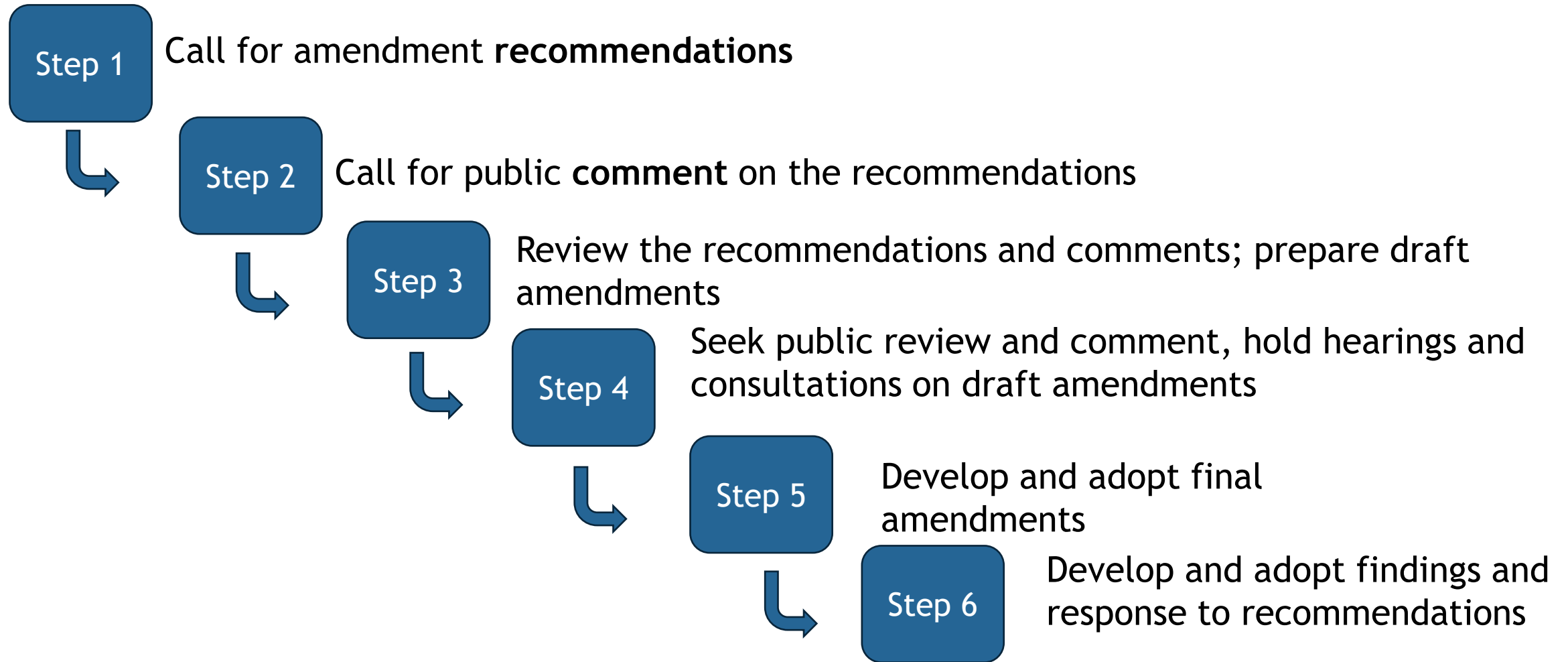
Amending the Fish and Wildlife Program

- Steps and procedures described in the Northwest Power Act:
 - Council reviews Power Plan at least every five years
 - *Prior to any review or major revision of Power Plan, Council is to call for and review recommendations for amending Fish and Wildlife Program*



Major Fish and Wildlife Program Amendment steps

(*not all detail)



Step 1: Call for amendment *recommendations*

- Request in writing for recommendations from state, federal fish and wildlife agencies and Indian tribes:
 - Measures
 - Objectives for the development and operation of the hydro-projects to protect, mitigate and enhance fish and wildlife...
 - Fish and wildlife management coordination, research and development (including funding)

839b(h)(2). The Council shall request, in writing, promptly after the Council is established under either subsection (a) or (b) of this section and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and from the region's appropriate Indian tribes, recommendations for—

Step 1: Call for amendment recommendations

- Others too: federal and regional water management agencies; region's electric power producing agencies; Bonneville customers; public
 - The Council shall adopt F&W Program amendments within one year after the time set for the submission of recommendations

839b(h)(9). The Council shall adopt such program or amendments thereto within one year after the time provided for receipt of the recommendations. Such program shall also be included in the plan adopted by the Council under subsection (d) of this section.
[Northwest Power Act, §4(h)(9), 94 Stat. 2710.]

Expect some recommendations



Step 2: Call for public *comment* on recommendations

- Give notice of the recommendations, make the recommendations and supporting information available for review
- Provide opportunities for public participation and comment, both oral and written on the recommendations and supporting documents

Step 3. Review the recommendations and comments; prepare draft or proposed amendments

- Council develops a draft program amendment based on recommendations, information submitted with recommendations, and comments on recommendations, along with other relevant information in the administrative record
- Release draft amendments for public review and comment

Step 4. Public review and comment and consultations on draft F&W Program

- Public review of the draft: take written comments, oral comments at public hearings, at Council meetings, consultations and in conversations with staff or members

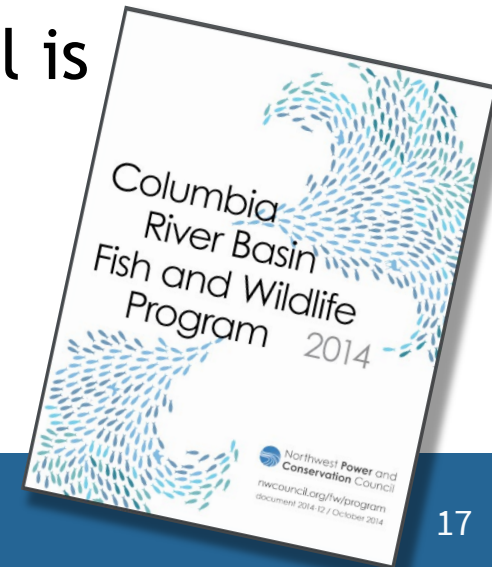


Step 5: Develop and adopt final amendments

- Council is to develop the final program “on the basis of recommendations, supporting documents, and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers”
- Program is to consist of measures to protect, mitigate and enhance fish and wildlife ... while assuring the Pacific Northwest an “AEERPS”
- Council is to include program measures on this basis that will complement the activities of the fish and wildlife agencies and tribes, be supported by “best available scientific knowledge,” improve survival for anadromous fish at the dams and via sufficient flows (passage and flow measures), among a handful of substantive criteria

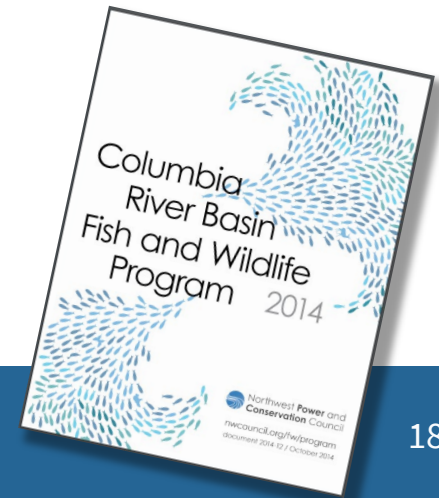
Step 6: Develop and adopt findings regarding the treatment of recommendations and response to comments

- If Council does not adopt a recommendation, it must explain why not in writing, *as part of the program*, in what we call the *Findings on Recommendations and Response to Comments*
- The Act also supplies a strict set of limited criteria for rejecting a recommendation, along with criteria for resolving certain conflicts in recommendations.
- If recommendations are inconsistent with each other, Council is to resolve inconsistencies “giving *due weight* to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes”

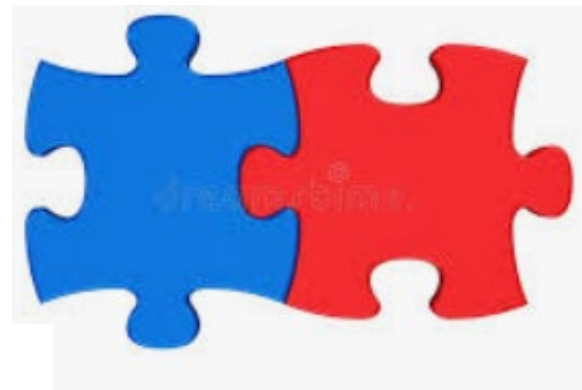


Step 6: Develop and adopt findings regarding the treatment of recommendations and response to comments

- Once Council adopts both Program text *and* findings on recommendations under the Act, amendment process is over.
- Council publishes notice in the Federal Register.
- This begins 60-day clock under the Act for filing petitions for judicial review with Ninth Circuit.



Intersection of the fish and wildlife program with power planning



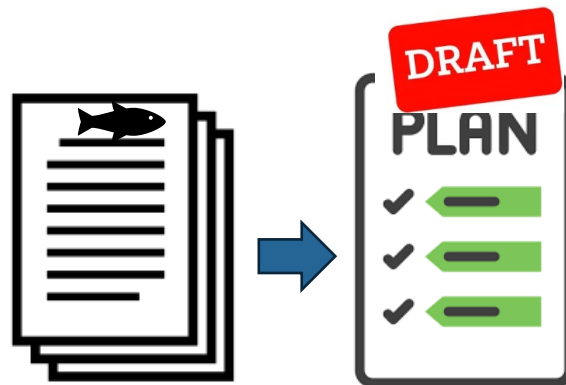
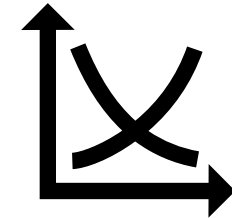
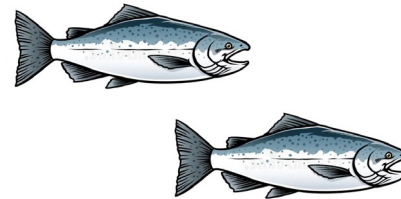
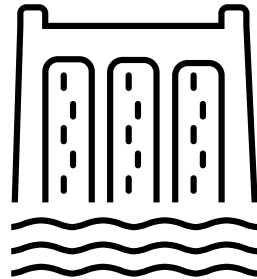
Interaction between Fish & Wildlife Program amendment process and power planning

- Act requires that prior to any “review” of the power plan, the Council first call for recommendations to amend the fish and wildlife program.

Recommendations leading to amended Program



Change



Interaction between fish and power ...

Timing considerations

- Timing
 - Act requires Council to “call for recommendations” to amend F&W Program prior to a “review” of power plan
 - Power plan “preparation” any time
 - But, Program should be adopted prior to developing draft power plan
 - Primary reason relates to hydrosystem operations

Interaction between fish and power ...

“AEERPS” considerations

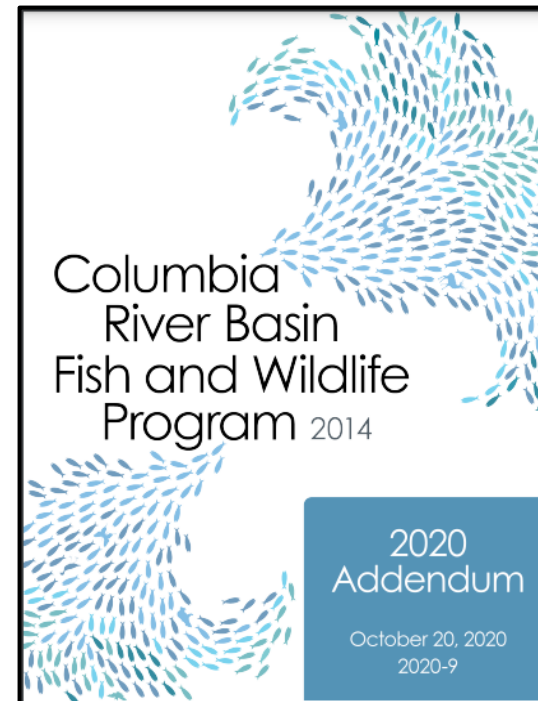
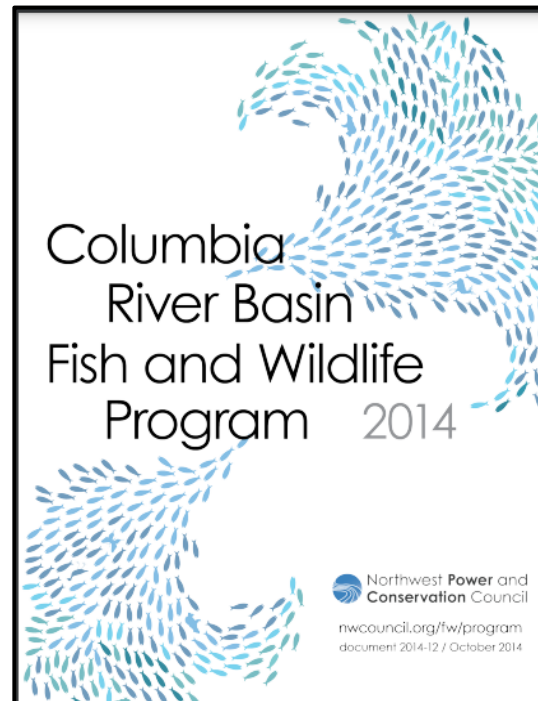
- AEERPS
 - Act requires the Council to adopt program measures to protect, mitigate and enhance fish and wildlife “while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply” (AEERPS)
 - Requires some analytical assistance from power division and conclusions by Council
 - Considerations include effects of operations and costs
 - Necessarily a preliminary assessment prior to power plan - power plan resource strategy intended by Act as part of an overarching strategy to implement fish and wildlife program that affects power supply

2. 2014/2020 Fish and Wildlife Program:

- What will get amended
- What is in the Program?
- What is being implemented?

Columbia River Basin Fish and Wildlife Program

- 2014/2020



The Fish and Wildlife Program includes:

- Measures describing actions
 - At the dams - ex: water management, flows, passage
 - Offsite (in mainstem/ tributaries/ estuary/ ocean) - ex: habitat protection and restoration, artificial production, predator management
 - Wildlife and resident fish mitigation through same types of measures
- Goals and objectives



Protection and mitigation for all Fish and Wildlife affected by the hydrosystem - not just listed species

2014/2020 Program

- Thousands of measures grouped into 23 strategies and 59 subbasin plan management plans
- Goals and objectives thoroughly reviewed and revised in 2020 Program
- Measures address mitigation through: hydrosystem operations/water management/dam passage, habitat protection and restoration, artificial production. Also measures address water quality, predation management, non-native and invasive species, consideration of fish and wildlife habitat from tributaries, mainstem rivers, estuary, plume and ocean, anadromous and resident fish and wildlife mitigation, research, monitoring and evaluation activities.

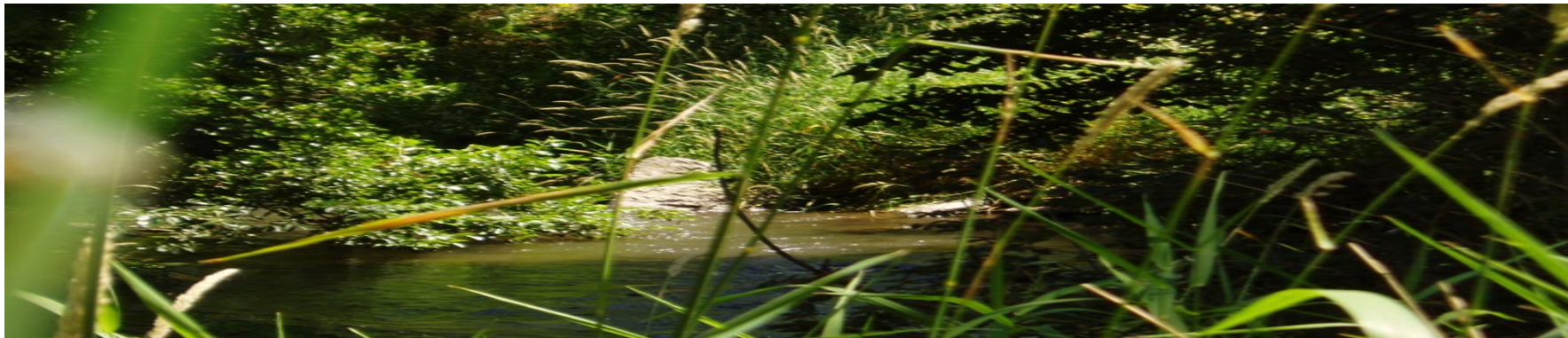
Program implementation

- Operations by Corps and Bureau, and Bonneville, F&W program investments and expenditures. But other elements too:
- Much of what gets implemented is now structured through various implementation agreements – these briefly discussed in next section
- Detail coming - through reports on our internal assessments of program implementation and performance



Pending staff reports on Program Performance: implementation assessment of:

- Program **Hydro** measures, related topics (September, 1.5 hrs)
- Program **artificial production** (hatchery) measures, related topics (October, 1 hr)
- Program **habitat restoration and protection, wildlife, invasive species, predator management** measures, related topics (November, 2 hrs)
- Staff report on Program **goals and objectives** and latest developments for the Program Tracker (December, 2 hrs)



Program Retrospective- staff report



Available on the Council's website

3. Broader context

What else is happening around the region that influences the Council's work on the program?

Partial list of considerations:

- ESA listings: including Biological Opinions with commitments to hydrosystem operations and offsite mitigation actions
 - Columbia River System (CRS) salmon; Upper Snake Reclamation salmon, CRS bull trout and sturgeon; Willamette
- Accords and related implementation commitments
- Two new similar agreements - P2IP implementation agreement; Six Sovereign/federal commitments/agreement
- Status of meeting mitigation goals and objectives. Concern over salmon abundance levels for some populations
- Columbia River Treaty developments
- Implications of Bonneville's work to develop and get agreement on new power sales contracts?

***More coming later this year.
Lots of experience with how
to treat these.**



Kootenai River White Sturgeon

4. Getting ready and timeframes

Calendar of topics by month (draft)

| Month | Council meeting agenda items |
|-------------------------|---|
| July (Portland, OR) | <ul style="list-style-type: none"> • Overview, early discussion on the amendment process, schedule for 2024 tasks, rough timeline for 2025 & 2026 (1.5 hrs) |
| August (Webinar) | <ul style="list-style-type: none"> • Update on Regional Coordination Meeting (July 11), other |
| September (Astoria, OR) | <ul style="list-style-type: none"> • Discussion of the Northwest Power Act’s legal decision framework and amendment procedures (Part I) (1.5+ hrs) • Staff report on Program performance: implementation assessment of Program Hydro measures, related topics (1.5 hrs) • ISAB report on review of 2020 Fish and Wildlife Program Addendum (30 min) (<i>might move to Oct</i>) |
| October (Portland, OR) | <ul style="list-style-type: none"> • Discussion of the Northwest Power Act’s legal decision framework and amendment procedures (Part II, External context for the Council's work on the program, including ESA listings and BiOps and Accords and other long-term implementation agreements) • Staff report on Program performance: implementation assessment of artificial production (hatchery) measures, related topics (1 hr) |
| November (Portland, OR) | <ul style="list-style-type: none"> • Staff report on Program performance: implementation assessment of Program habitat restoration and protection, wildlife, invasive species, predator management measures, related topics (2 hrs) • Discuss outline of letter calling for recommendations |
| December (Webinar) | <ul style="list-style-type: none"> • Staff report on Program goals and objectives and latest developments for the Program Tracker • Review draft letter calling for recommendations |

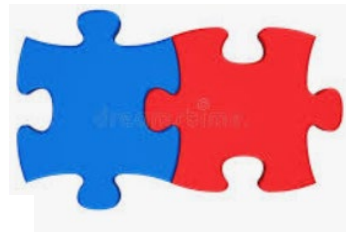
General timeframe-to be confirmed

Fish and Wildlife Program

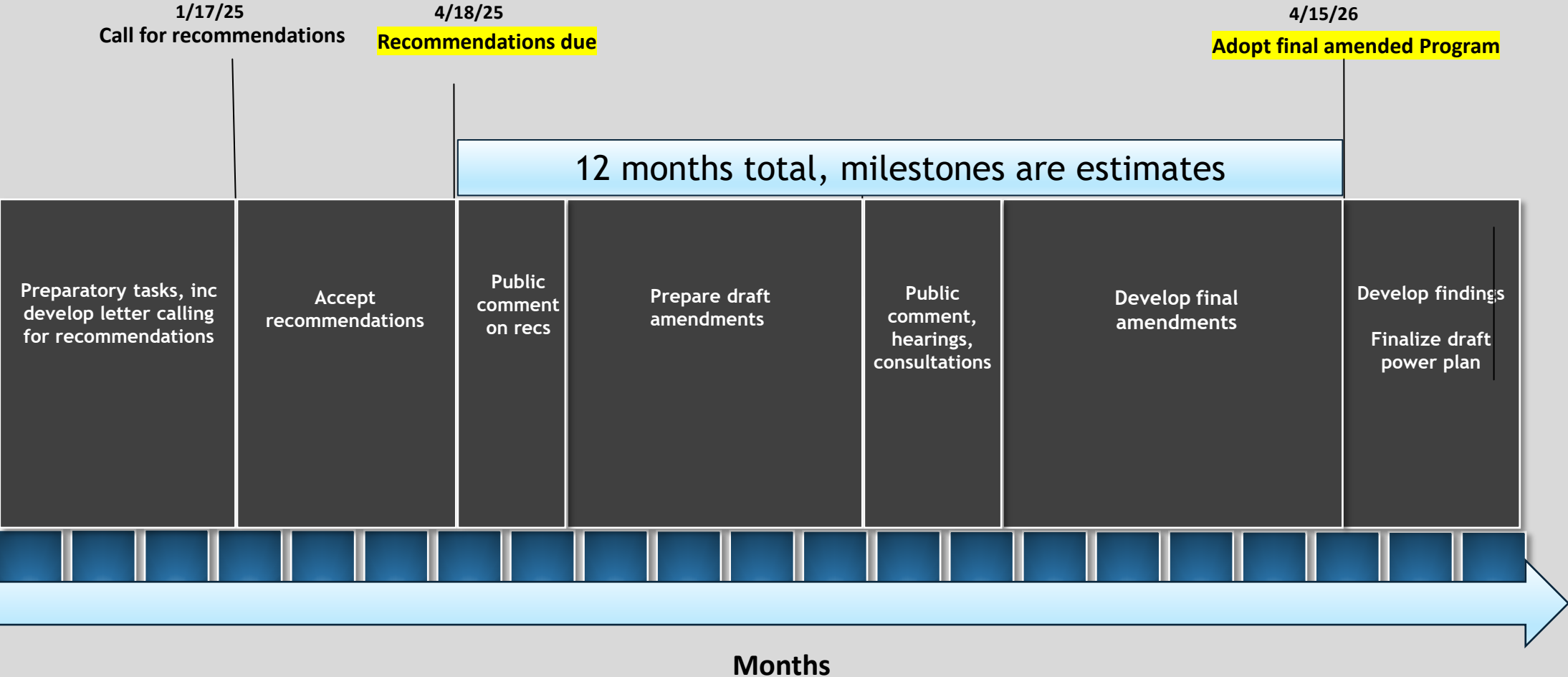
- Preparation July - December 2024
- Call for recommendations (kick off) - January 2025
- Adopt Program –spring 2026

Power Plan

- Draft Power Plan late spring/early summer 2026.
- Final Power Plan by end of 2026



Estimated timeline for Fish and Wildlife Program Amendment Process *for discussion purposes* **DRAFT**



Next steps

If the Council is comfortable with January call for recommendations, staff will develop a Program Amendment Work Plan accordingly, with additional detail on steps, milestones, etc.

