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May 1, 2018

MEMORANDUM

TO: Council Members

FROM: John Shurts

SUBJECT: Fish and Wildlife Program Amendment Process: Administrative record

At the May Council, we will follow the Council's decision to release the letter calling for recommendations to amend the Fish and Wildlife Program with a short briefing on how we compile an official administrative record of the amendment process and of the Council's final decision. **The key point is that all communications and documents relevant to the amendment process or to the issues in the amendment process need to make their way into the administrative record.**

This memorandum describes the contents of the administrative record and what responsibilities the members and the staff will have in helping us compile the record. We will use the time in front of the Council just to emphasize a few points.

A reminder that Section 4(h)(5) specifies that the Council develop the fish and wildlife program "on the basis of [program amendment] recommendations, supporting documents, and views and information obtained through public comment and participation, and consultation with the agencies, tribes, and customers." That provision in essence describes the administrative record for the program decision the Council will be making. In more detail, the administrative record consists of:

- 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

- Comments on the amendment process or on issues in the process, even if not connected to the particular events in the process (such as the recommendations or the draft)
- Final program and all of its associated documents
- Staff memos and other staff communications and documents to the Council throughout the process relevant to the program amendment process or to the issues in that process
- Council members' communications with 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)

With regard to communications from or with people outside the Council, note that we receive communications about the amendment process or the issues in the process in a number of ways:

- formal written recommendations
- formal written comments at key steps in the process (on recommendations and on draft program)
- informal written comments and communications - such as an email comment directed to one or more members or relevant staff about the process or an issue in the process
- written comments on the Council's website or social media posts relevant to the amendment process or issues in the process
- public testimony at official public hearings - we use court reporters and recordings to capture these comments, and produce transcripts for circulation and the record
- public testimony and comments made at Committee and Council meetings - captured in recording, notes, minutes, sometimes transcripts
- comments made by representatives of certain entities during consultations with the Council - someone on the Council staff will be designated to take notes of these consultations for the record
- informal oral comments made by phone or in person on the process or an issue in the process - if you are the recipient of such a comment, you must write a short note documenting the person who made the comment and the subject of the comment and forward it to those keeping the administrative record

All documents that are part of the administrative record are not only compiled for the record, we also make sure they are circulated to all the members and key staff if they originate with a subset of members and key staff. That is what ultimately makes a

document part of the administrative record - information about the process or its issues that comes before the Council and is the basis on which the Council makes its decisions.

Kendra Coles in the Fish and Wildlife Division will be the official keeper of the administrative record, as well as the person in charge of making sure material is circulated appropriately, with assistance from me, from Judi Hertz, and from others on the staff.

A few points to emphasize:

Because the Council members collectively are the decisionmaking body, what particularly matters for the administrative record are the documents and communications that come to the Council or to one or more individual Council members that are about the amendment process or the issues in the process or that the Council or individual Council members relied on or considered or had in front of them to consider in making the Council's final decisions. This includes similar types of communications *from* the Council 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 email or drafts, that never come before the Council or individual Council members, nor minor outside communications about the process to and from staff not relevant to or intended for the Council members and that never come to the 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.

If you are unsure whether something should be in the administrative record, assume that it is or might be, and send it along. I will make the call as to whether to include something in administrative record.