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

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Oregon

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Oregon

August 7, 2018

MEMORANDUM

TO: Fish and Wildlife Committee Members

FROM: Patty O'Toole, Tony Grover and Laura Robinson

SUBJECT: Columbia River Basin Fish and Wildlife Program amendment process

- Committee discussion of general approach to development of draft amendments
- Committee discussion on requests for extension of due date for amendment recommendations

BACKGROUND:

Presenter: Staff

Summary: Staff will discuss two amendment topics with the Committee: the general approach to developing draft amendments and requests to extend the due date for recommendations.

Relevance: Pertains to the amendment of the Council's 2014 Columbia River Basin Fish and Wildlife Program.

Topic 1. Approach to development of draft amendments (discussion draft)

Background:

**Note: this discussion is based on the original timeline. Discussion to extend the recommendations due date is on page 4.*

The recommendations for amending the Columbia River Basin Fish and Wildlife Program are due just after the September Council meeting, on **September 14**. This is immediately followed by a 60-day comment period on the recommendations, both of which are the basis of the amendments to the program. Starting in October, the Council will have a considerable amount of work to do to amend the Program including working through the recommendations and the comments on the recommendations, and drafting amendments. This document is for discussion purposes and lays out suggestions for how to complete this work.

General process:

During amendment processes, the Council dedicates a portion of the Council meetings to amendment tasks. Depending on the task and the stage of the process, this generally requires anywhere from a few hours to several full days of meeting time for members and staff. Often, in past amendment processes, the work to amend the Program was performed by the full Council, in public work sessions. Most recently, in 2014, the Council's Fish and Wildlife Committee performed the bulk of the review and discussion of the recommendations and comments and drafted many of the amendments. For the 2018/2019 amendment process, the chairs of the Council and the Fish and Wildlife Committee are supportive of the Committee performing the initial work of developing the draft Program.

As the Committee members develop draft amendments, they should provide regular briefings to the Power Committee members and seek their input. Concurrently, the staff will provide periodic updates to the full Council. Once the Committee has completed its work (a few months are allocated for this) the Committee will forward draft amendments to the full Council that describes areas of consensus and any areas where consensus was not reached in the Committee. The decision to release the draft amendments will be made by the full Council. The decision to adopt the final Program is also made by the full Council.

Under Section 4(h)(5) of the Act, the Council must decide on amendments to the fish and wildlife Program based on:

- the recommendations,
- the comments on the recommendations, and
- consultations on the recommendations.

The Council adds the step of preparing a public review draft, thus the Council must also base their decision for the adoption of the final Program on:

- comments,
- public hearings, and
- consultations on the draft Program.

The full Council must make its decisions with appropriate consideration of the full administrative record (i.e. the five bullets above) and not solely on the recommendation of the Fish and Wildlife Committee. Adequate time must be provided for additional review and deliberation by the full Council after the Committee has completed its review.

Preparing draft amendments will impact Committee business from October 2018 through January 2019. Staff suggests that the Committee reserve two hours of meeting time in October to focus on the amendment process, and one or more *full days* in November, December, and January. A draft work schedule with estimated milestones and decision points will be reviewed with the Committee in the future, once dates are more certain.

Process details:

Described below are more detailed steps for how the amendment process will proceed and how draft Program amendments will be developed by the Fish and Wildlife Committee. It is the responsibility of the full Council to also review recommendations, comments and the draft amendments and ultimately approve the release of the draft and adopt the final amendments.

- A. The *purpose* of each work session of the program amendment process is for the Committee members and staff to work systematically together in public through the recommendations received, comments on the recommendations, and issues identified through the recommendations; and to consider draft amendments to the program language. The role of the members of the public in these work sessions is up to the Committee Chair, see H below.
- B. These work sessions are highly interactive and will be informed through work products such as *staff summaries* of the recommendations received, *topic issue papers* of various program components, and *draft program language*. Staff work products will be provided to the Committee members in advance of each work session, though in some instances may be updated through the course of a work session day or overnight.
- C. Prior to the release of the draft program the Committee may decide to share all, a portion, or none of the *staff work products* and developing draft language with the public. Even though the Committee will do its work in public, sharing this information is not required. Staff work products will rapidly evolve through conversations with the Committee, thus sharing these work products is not always helpful because they can change several times in a single work session. Staff will inquire as to the Committee's wishes about this at the appropriate time.
- D. The *duration* of each work session will depend on the needs at each stage of the process. This could range from a couple of hours to a full day or more.
- E. Committee members may attempt to reach *informal agreement* on issues presented during these work sessions at the appropriate times. This can be a simple head nod or indication of agreement on each section of the program as it is

drafted. If informal agreement cannot be reached, or if more discussion is necessary on a particular topic, the Committee chair may choose to send that topic to a delegated set of members and staff for additional consideration and recommendation back to the Committee.

- F. Staff recommends that *formal voting* be reserved for: 1) the Council decision to release the draft program for public review, and 2) the decision to adopt the final program.
- G. Some amendment work will be conducted in regular Committee meetings, as time allows. However, as the amendment work load increases, most of this work will take place in specially-scheduled work sessions outside of the regular Committee meetings.
- H. Staff suggests that a portion of each meeting be reserved for receiving *feedback from the public*. This could be accomplished through formal public comment at the end of the work session, through interaction with the public during the work session, and through informal discussions between Council members and members of the public after the work session.
- I. Once the program amendment recommendation period closes (September 14, 2018) all program-related communications and documents relevant to amending the program need to be circulated to all Council members and staff and need to be submitted to the *administrative record*.

Topic 2: Committee discussion on requests for extension of due date for amendment recommendations

The Council has received one written request, from the Spokane Tribe of Indians, to extend the recommendation period for amendments to the Columbia basin Fish and Wildlife Program by 90 days. Bonneville verbally expressed interest in a 30-day extension to staff. Staff has heard that other states and tribes may be considering proposing an extension, however none have been received at this time. This topic is scheduled for decision during the business portion of the August Council meeting.

The Council's amendment recommendations period opened on May 16, 2018. The Northwest Power Act directs the Council to provide 90 days for recommendations unless the Council opts to extend this period. The Council decided to extend that period to 120 days, with the deadline occurring on September 14, 2018.

Analysis:

An extension up to 90 days will not delay the anticipated schedule of adoption of a new Power Plan, now scheduled for the fourth quarter of 2021. Nor will an extension cause the Council to abbreviate the development, consideration or adoption of amendments. The Council has one year from the closure of the amendment recommendation period to adopt a final amended Columbia Basin Fish and Wildlife Program. For example, a 60-day extension would result in the new deadline for recommendations being November

16, 2018 (nearest Friday) and would result in final Council amendment deliberations occurring in the late fall of 2019, with the final amendments likely adopted in November 2019. A 90-day extension would result in recommendation due December 14th, 2018 (nearest Friday) and the final amendments likely adopted in December 2019.

Recommendation:

The schedule can accommodate up to a 90-day extension. A consideration for the Council is that travel during the winter months can be more challenging and is necessary in the final months of an amendment process. The Committee may want to discuss and make a recommendation to the Council for its decision on Wednesday.



Spokane Tribe of Indians

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August 2, 2018

James A. Yost, Chairman
Northwest Power and Conservation Council
851 S.W. Sixth Avenue, Suite 1100
Portland, Oregon 97204-1348

RE: Request for Extension of Time to File Amendment Recommendations for the 2014 Fish and Wildlife Program

Dear Chairman Yost,

The Spokane Tribe of Indians ("Tribe") received the Northwest Power and Conservation Council's ("Council") request for amendment recommendations for the 2014 Fish and Wildlife Program ("Program"). As a fish and wildlife manager and owner of portions of the Spokane and Columbia Rivers, the Tribe is very interested in and also able to provide a unique perspective on potential amendments for the 2014 Program. As you are aware, the Tribe participated in the development of the 2014 Program, and publicly expressed strong support for the Council's adoption of it. The Tribe went so far as to expend its limited resources in joining in the defense of the 2014 Program by intervening and assisting the Council in defending against the unsuccessful litigation attack on the 2014 Program's adoption in *Northwest Resource Information Center v. Northwest Power and Conservation Council, et al*, No. 15-71482, (9th Cir. 2017). In short, the Tribe has invested time and energy into the 2014 Program's adoption and implementation over the past five years, and plans to share its unique perspective on the Program and its implementation during this amendment process.

Unfortunately, due to the Tribe's small staff and limited budget we are unable to spend the necessary time and energy over the next several weeks to develop our proposed amendments. The Tribe's key staff is currently attending to fieldwork and other necessary priorities that they cannot be pulled away from without jeopardizing the Tribe's current projects and priorities. Accordingly, the Tribe respectfully requests that the Council extend the deadline for amendment recommendations to December 15, 2018. This extension will allow the Tribe's staff to focus on the necessary work that can only be conducted in the summer months, and will allow them the time to focus and provide the Council with a thoughtful set of amendment proposals. The Tribe hopes that the Council will utilize its broad discretion under 16 U.S.C. 839b(h)(3) to provide this necessary extension to ensure the Tribe adequate time to provide its proposed amendments to the Council. If you have any questions regarding this request please feel free to reach out to me at (509) 458- 6504.

Sincerely,

Carol Evans, Chairwoman
Spokane Tribal Business Council

COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM AMENDMENT PROCESS 2018/19

August 14, 2018

- General approach to development of draft Program
- Discussion of requests for extension on due date for Fish and Wildlife Program amendment recommendations



Generalized work flow

Recommendations

Comments on the recommendations

Staff summary (by strategy, topic or other)

Identify issues

Identify options to address issues and recommendations

Draft amended language

Public review draft comments

Staff summary, Council deliberate on changes

Adopt final amendments



COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM AMENDMENT PROCESS 2018/19

DRAFT TIMELINE

