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March 2, 2007

## MEMORANDUM

**TO:** Council Members

**FROM:** John Shurts, with the assistance of Jim Ruff

**SUBJECT:** Reinvigorating the Fish Passage Center Oversight Board and related matters

The goal of this agenda item is to settle a few points necessary to reanimating the Fish Passage Center Oversight Board, as well as ask the Council for the necessary guidance on a couple of related matters. The topics covered in this memorandum beginning on the next page are as follows:

**Oversight Board Membership**

**Choosing the New Members**

**Status of the Oversight Board Bylaws**

**CBFWA and the Fish Passage Center**

**The Technical Advisory Committee**

**Mainstem Peer Review Group**

**The Program's "Water Management Measures" and the Fish Passage Center**

We plan to step briskly through these topics during this item. Each has a recommendation or alternatives to consider and resolve, some by formal motion and vote, some by general guidance.

## Oversight Board Membership

The Council's Program calls for "an oversight board for the Fish Passage Center, with representation from NOAA Fisheries, state fish and wildlife agencies, tribes, the Council, and others." The Council chose a particular approach to membership when first setting up the Oversight Board, which the Oversight Board then captured in its Bylaws, as follows:

"Based on that provision, the Council established the initial membership of the Board as to come from the following categories:

- one Council member or Council representative
- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- one member representing the state fish and wildlife managers
- one member from the scientific community
- two members from the public at large"

But, the Bylaws also recognize that "[t]he Council may from time-to-time change the categories and the number of members of the Board, consistent with the provision in the Program."

The question for the Council, then, is whether it wants to change the number and categories of members at this time. Members have suggested three kinds of changes. One suggested change in membership is to allow for a member from *each* of the state fish and wildlife managers, not just one representing all, or perhaps one member from an "upstream" state agency and one from a "downstream." The other suggestion for change in membership has been to change the non-agency membership from what it is now (one representative of the scientific community and two at large public members) to an indeterminate number of non-agency members who are independent of the federal, state and tribal agencies *and* have a scientific or technical background of some sort. The third has been to designate the Council representative as the Chair of the Oversight Board.

Combining these suggestions, the alternative for consideration would set the Oversight Board membership as follows:

- one Council member or Council representative, who will be the Chair
- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- four state fish and wildlife agency members, one from each state agency *or, two state agency personnel, one "upstream" and one "downstream"*
- two members from the scientific community

## **Choosing the New Members**

The Oversight Board Bylaws also describe the method for selecting members:

“The Council chooses the members of the Board from nominations solicited by the Council for each category. Appointments will be for one year, but a member will continue to serve after the expiration of his or her term until replaced or the member resigns. Members of the Board serve at the pleasure of the Council, and shall receive no compensation for their services on the Board.”

Again, the Council is not bound to this method, but it continues to make sense to staff. Assuming the Council agrees, attached for Council review and approval is a draft notice soliciting nominees for members in each category. The draft notice is based on the membership alternative outlined above, but it can be adapted easily to whatever the Council decides.

Another suggestion has that the call for nominees should emphasize that all nominees have expertise directly relating to the functions of the Fish Passage Center over which the Board exercises oversight. The draft notice has included that emphasis.

## **Status of the Oversight Board Bylaws**

At the last meeting, Council members had questions about the status of the Oversight Board Bylaws, asking in particular whether the Council ever formally endorsed the Bylaws. The Council did not. The approach at that time was for the Oversight Board to develop the Bylaws, with review and an informal ok by the Council. A copy of the Bylaws is attached.

At least some Council Members recommend a more formal endorsement process. Also, if the Council makes changes in the membership, the Bylaws also need minor revision. So assuming a formal endorsement is indeed the desire of the Council, I suggest that staff prepare a revised version of the Bylaws for the Council to consider and approve at the April meeting.

## **CBFWA and the Fish Passage Center**

The Fish Passage Center provision in the 2003 Mainstem Amendments (pp. 27-28) spells out a role for CBFWA and its Executive Director with regard to the Fish Passage Center in four different ways. Three of those are:

- (1) the fish passage manager will be selected by, and be subordinate to, the Executive Director of CBFWA, in consultation with the oversight board
- (2) the Executive Director of CBFWA and the Chair of the Council (or the Chair's designee) will conduct an annual review of the manager's performance
- (3) the fish and wildlife managers will provide a liaison position at CBFWA between the public and the Fish Passage Center to ensure that all parties have timely and thorough access to the database

As far as we understand, none of these things have happened. CBFWA built these provisions into its project proposal in the 2007-09 project review provision. Even without the Council endorsing that project proposal, these things could be and probably should be built into CBFWA's contract, as tasks for CBFWA to accomplish. I recommend the Council provide guidance to the Oversight Board, the Council's representative on the Board, and the staff to work with CBFWA, Bonneville and the Fish Passage Center staff to make these actions happen.

### **The Technical Advisory Committee**

The program assigns a fourth Fish Passage Center-related task to CBFWA -- assist the Oversight Board in establishing a technical advisory committee. The program provision:

“To assist the oversight board, the Executive Director of the Columbia Basin Fish and Wildlife Authority, in consultation with the fish and wildlife managers, will propose to the oversight board candidates for a technical advisory committee, whose purpose will be to establish technical protocols and scientific requirements for the Fish Passage Center and to review the scientific and technical aspects of the performance of the Fish Passage Center. The oversight board will select the technical advisory committee from the names submitted by the Executive Director of the Authority. The technical advisory committee will report to the oversight board.”

The staff suggests a different way to implement this provision. The Council has asked the ISRP to establish a Mainstem Peer Review Group to provide a systematic and timely review function across the mainstem realm, including the work of the Fish Passage Center. This group can accommodate all of the tasks proposed for the technical advisory committee -- it could be used to help “establish technical protocols” and “scientific requirements” for the FPC as well as to “review the scientific and technical aspects of the performance of the FPC.”

It is the staff's perspective that there are a number of reasons why using a consistent, independent scientific body overseen by the ISAB for this and other mainstem purposes is a better way to implement this provision. So it is the staff's recommendation that the Council rely upon (and ask the Oversight Board and CBFWA to rely upon) the Mainstem Peer Review Group to fill the function of the suggested technical advisory committee. If CBFWA and the fish and wildlife managers desire to create a technical committee to provide input to the Mainstem PRG on these technical issues, that would be fine, but the Council's focus would be the Mainstem PRG.

### **Mainstem Peer Review Group**

In June of 2006, the Council decided to ask the ISAB to create and oversee a standing Mainstem Peer Review Group. As stated in the Council's memorandum to the ISAB (attached):

“This peer review group would be available “on call” and used on a regular basis to review various mainstem related science questions and/or key issues associated with: a) long-term operations and fish passage planning, such as some of the analyses and/or science

assumptions in development of a new FCRPS Biological Opinion; b) annual operations planning; c) specific in-season questions and analyses; d) reports evaluating mainstem actions and river conditions after the fact, such as post-season fish survival analyses; e) major research questions and results, including key issues arising out of the mainstem monitoring and research activities under the Council's program and the Corps' Anadromous Fish Evaluation Program, and f) other mainstem related issues or questions."

As we understand it, the ISAB has such a group functioning on an ad hoc basis. There is nothing specific needed at this time from the Council other than perhaps an expression of renewed vigor to the staff and the ISAB oversight partners to make sure this initiative begins to take effect in a systematic way, and guidance to the Oversight Board to help facilitate peer review of Fish Passage Center products and protocols by the mainstem peer review group.

### **The Program's "Water Management Measures" and the Fish Passage Center**

The Mainstem Amendments are sloppy in the use of terms when explaining what parts of the Council's program the Fish Passage Center should be attempting to implement, mixing the terms "water management measures," "water management and passage measures," "operating criteria for storage reservoirs," provisions related to "juvenile and adult salmon and steelhead passage," provisions for "storage reservoir and river operations," and etc. The relevant Program provision:

"The primary purpose of the Center is to provide technical assistance and information to fish and wildlife agencies and tribes in particular, and the public in general, on matters related to juvenile and adult salmon and steelhead passage through the mainstem hydrosystem. This information relates to the implementation of the water management measures in the Council's fish and wildlife program. In performing this function, the Center shall:

- 1) Plan and implement the annual smolt monitoring program;
- 2) Gather, organize, analyze, house, and make widely available monitoring and research information related to juvenile and adult passage, and to the implementation of the water management and passage measures that are part of the Council's program;
- 3) Provide technical information necessary to assist the agencies and tribes in formulating in-season flow and spill requests that implement the water management measures in the Council's program, while also assisting the agencies and tribes in making sure that operating criteria for storage reservoirs are satisfied; and
- 4) In general, provide the technical assistance necessary to coordinate recommendations for storage reservoir and river operations that, to the extent possible, avoid potential conflicts between anadromous and resident fish."

I am not sure the sloppiness in the use of terms really causes a problem in understanding (in a practical sense) what it is the Council intended of the Fish Passage Center. Still, this is an opportune time to clarify this point. My understanding is that what the Council intended is that when the Fish Passage Center helps to formulate annual plans and either formulate or respond to in-season requests related to flow augmentation, storage reservoir operations, and spill, that it do so consistent with a good faith attempt to implement the spill, passage and water management strategies on pages 17-27 of the 2003 Mainstem Amendments.

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**DRAFT      DRAFT      DRAFT**

March xx, 2007

**[DRAFT Letter: Request for nominations for members of the Fish Passage Center Oversight Board]**

Dear X:

The Northwest Power and Conservation Council is seeking nominations of individuals to serve as members of the Fish Passage Center Oversight Board. The Council's *Columbia River Fish and Wildlife Program* describes the nature and duties of the Oversight Board as follows:

The Council has established an oversight board for the [Fish Passage] Center, with representation from NOAA Fisheries, state fish and wildlife agencies, tribes, the Council, and others to provide policy guidance for the Center and to ensure that the Center carries out its functions in a way that assures regional accountability and compatibility with the regional data management system. The oversight board's responsibilities will include conducting an annual review of the performance of the Center and developing a goal-oriented plan for next year's operation. The Center shall prepare an annual report to the oversight board and the Council, summarizing its activities and accomplishments. There will be no other oversight board or board of directors for the Center.

The Council has decided to reconstitute the Oversight Board. The Council has already designated a Council member -- to be the Council's representative on the Oversight Board as the Board's Chair, Bruce Measure of Montana. The Council is seeking nominations for the other members of the Board in the following categories:

- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- four members, one each representing each state fish and wildlife agency in the Columbia basin
- two members from the scientific community

All nominees should have expertise directly relating to the functions of the Fish Passage Center over which the Board exercises oversight. The Council's Program describes those functions of the Fish Passage Center as follows:

The primary purpose of the Center is to provide technical assistance and information to fish and wildlife agencies and tribes in particular, and the public in general, on matters related to juvenile and adult salmon and steelhead passage through the mainstem hydrosystem. This information relates to the implementation of the water management measures in the Council's fish and wildlife program. In performing this function, the Center shall:

- 1) Plan and implement the annual smolt monitoring program;
- 2) Gather, organize, analyze, house, and make widely available monitoring and research information related to juvenile and adult passage, and to the implementation of the water management and passage measures that are part of the Council's program;
- 3) Provide technical information necessary to assist the agencies and tribes in formulating in-season flow and spill requests that implement the water management measures in the Council's program, while also assisting the agencies and tribes in making sure that operating criteria for storage reservoirs are satisfied; and
- 4) In general, provide the technical assistance necessary to coordinate recommendations for storage reservoir and river operations that, to the extent possible, avoid potential conflicts between anadromous and resident fish.

The Council will choose the members of the Oversight Board from the nominations. Appointments will be for one year. Members of the Oversight Board do not receive compensation for their services on the Board.

The Oversight Board has an annual meeting and such other regular and special meetings as the Board determines to be necessary. Meetings of the Board are called by the Chair or by a majority of members. Meetings of the Board are held at the offices of the Columbia Basin Fish and Wildlife Authority, Portland, Oregon, unless otherwise determined by the Board. Members

Please submit your nominations to Jim Ruff of the Council's Fish and Wildlife Division by Friday, April 6, by email at [jruff@nwcouncil.org](mailto:jruff@nwcouncil.org), by phone at 503-222-5161 or 800-452-5161 or by mail at 851 SW Sixth Avenue, Suite 1100, Portland, Oregon, 97202. The Council plans to select these other members of the Oversight Board at the Council's April meeting in Libby, Montana, April 17-18.

# Bylaws of the Fish Passage Center Oversight Board

## CHAPTER 1 -- AUTHORITY

The Northwest Power and Conservation Council (Council) established the Fish Passage Center Oversight Board (Board) as part of the Council's *2000 Columbia River Basin Fish and Wildlife Program* (Program), as supplemented by the Council's 2003 Mainstem Amendments to that program. The Board derives all of its authority from the Program. There will be no other oversight board or board of directors for the Fish Passage Center (Center).

## CHAPTER 2 -- PURPOSE AND FUNCTIONS

1. Purpose and Functions of the Board: The Program establishes the purpose and functions of the Board and of the Center that the Board oversees. The general purpose of the Board is to provide policy guidance for the Center and to ensure that the Center carries out its functions in a way that assures regional accountability and compatibility with the regional data management system. The functions of the Center that the Board will oversee in this way are described in the next section of this chapter. As part of serving its overall purpose and function, the Board will:
  - conduct an annual review of the performance of the Center and develop a goal-oriented plan for the next year's operation;
  - ensure, with the assistance of the fish and wildlife managers, that the empirical database of fish passage information developed and provided by the Center conforms to appropriate standards for data management, including review of the database by an appropriate scientific or data review group;
  - consult with the Executive Director of the Columbia Basin Fish and Wildlife Authority in the latter's selection of the manager of the Center; and
  - select and oversee the technical advisory committee described below.
  
2. Purpose and Functions of the Center: The primary purpose of the Center is to provide technical assistance and information to fish and wildlife agencies and tribes in particular, and the public in general, on matters related to juvenile and adult salmon and steelhead passage through the mainstem hydrosystem. This information relates to the implementation of the water management measures in the Council's Program. In performing this function, the Center shall:
  - plan and implement the annual smolt monitoring program;
  - gather, organize, analyze, house, and make widely available monitoring and research information related to juvenile and adult passage, and to the implementation of the water management and passage measures that are part of the Council's Program;
  - provide technical information necessary to assist the agencies and tribes in formulating in-season flow and spill requests that implement the water management measures in the

Council's Program, while also assisting the agencies and tribes in making sure that operating criteria for storage reservoirs are satisfied; and

- in general, provide the technical assistance necessary to coordinate recommendations for storage reservoir and river operations that, to the extent possible, avoid potential conflicts between anadromous and resident fish.

The Center shall provide an empirical database of fish passage information for use by the region, not just by fish and wildlife managers. No information collected by the Center, and no analyses by the Center, shall be considered proprietary. The fish and wildlife managers will provide a liaison position at the Columbia Basin Fish and Wildlife Authority between the public and the Center to ensure that all parties have timely and thorough access to the database.

Operation of the Center shall include funds for a manager and for technical and clerical support in order to perform its stated functions. The fish passage manager will be selected based on his or her knowledge of the multiple purposes of the regional hydropower system, and of the water needs of fish and wildlife, as well as the ability to communicate and work with fish and wildlife agencies, tribes, the Council, project operators, regulators, and other interested parties, including members of the public. The fish passage manager will be selected by, and be subordinate to, the Executive Director of the Columbia Basin Fish and Wildlife Authority, in consultation with the Board. The Executive Director of the Columbia Basin Fish and Wildlife Authority and the Chair of the Council (or the Chair's designee) will conduct an annual review of the manager's performance.

The Center shall prepare an annual report to the Board and the Council summarizing its activities and accomplishments.

3. Technical Advisory Committee: To assist the Board in performing its duties, the Executive Director of the Columbia Basin Fish and Wildlife Authority, in consultation with the fish and wildlife managers, will propose to the Board candidates for a technical advisory committee that will establish technical protocols and scientific requirements for the Center and review the scientific and technical aspects of the Center's performance. The Board will select the technical advisory committee from the names submitted by the Executive Director. The technical advisory committee will report to the Board.

### CHAPTER 3 -- MEMBERSHIP

The Program provides that Board will have representation from NOAA Fisheries, state fish and wildlife agencies, tribes, the Council, and others. Based on that provision, the Council established the initial membership of the Board as to come from the following categories:

- one Council member or Council representative
- one member representing NOAA Fisheries
- one member representing the upper Columbia River Basin tribes
- one member representing the lower Columbia River Basin tribes
- one member representing the state fish and wildlife managers

- one member from the scientific community
- two members from the public at large

The Council may from time-to-time change the categories and the number of members of the Board, consistent with the provision in the Program. The Council chooses the members of the Board from nominations solicited by the Council for each category. Appointments will be for one year, but a member will continue to serve after the expiration of his or her term until replaced or the member resigns. Members of the Board serve at the pleasure of the Council, and shall receive no compensation for their services on the Board.

#### CHAPTER 4 -- OFFICERS AND ORGANIZATION

1. Officers: The officers of the Board shall be a chair and a vice chair. Subject to the control of the Board, the chair shall have general supervision, direction, and control of the business of the Board. The chair shall preside at all meetings of the Board, and shall have such other powers and duties as may be prescribed from time to time by the Board. In the absence or disability of the chair, the vice chair shall perform all the duties of the chair. The vice chair shall have such other powers and perform such other duties as may be prescribed from time to time by the Board.
2. Elections and Terms: At the Board's Annual Meeting, the Board members shall elect the officers for terms of one year. All officers shall serve until their successors are elected. A vacancy in either office because death, resignation, removal disqualification, or otherwise shall be filled for the remainder of the term by a special election of the Board.
3. Secretary and Records of the Board: The Board shall appoint a secretary. The secretary does not have to be a Board member. The secretary shall keep complete records of the proceedings of the Board, shall give notice of Board meetings and Board actions, as appropriate, and shall discharge such other duties of the office as are prescribed by the Board. The secretary shall transmit the records of the Board to the Council. The Council will hold the records of the Board as public records in a manner similar to other public records held by the Council.
4. Committees: The Board may create and dissolve standing or ad hoc committees to assist the Board in performing its duties.

#### CHAPTER 5 -- MEETINGS

1. Annual Meeting: The Board shall hold an annual meeting during the month of December each year at a time and place to be determined by the Board. Written notice of the time and place of the annual meeting shall be delivered to each member of the Board and the Council and announced publicly at least one week in advance of the meeting.

2. Regular and Special Meetings: The Board may hold other meetings, whether on a regular schedule or as specially called. Meetings of the Board may be called at any time by the chair or by a majority of members. Written notice of the time and place of other meetings shall be given in the same manner as for the annual meeting.
3. Place of Meetings: Meetings of the Board shall be held at the offices of the Columbia Basin Fish and Wildlife Authority, Portland, Oregon, unless otherwise determined by the Board.
4. Participation by Telephone: Members may participate in a meeting by conference telephone or similar equipment, so long as all members participating in such meeting can hear one another.
5. Meetings Shall be Open: All meetings of the Board shall be open to the public.

## CHAPTER 6 -- CONDUCT OF BUSINESS

1. Conduct of Business: The business of the Board shall be conducted by the members at Board meetings.
2. Quorum and Adjournments: At all meetings of the Board, the presence of five members in person or on the telephone shall constitute a quorum
3. Voting: Whenever possible, issues shall be resolved by consensus of the Board. When necessary or appropriate, the Board shall vote on matters before it and each member shall have one vote, to be cast by that member. Passage of any motion shall require approval of a majority of the members voting.

## CHAPTER 7 -- LIMITATION OF LIABILITY

No Board member shall be personally liable for any indebtedness, liability or obligation of the Center. Any and all creditors of the Center shall look only to the assets or security of the Center for payment. No Board member shall be personally liable for any actions, duties or obligations of the Center or Board or liable for any acts or conduct of the member performed for or on behalf of the Board.

## CHAPTER 8 -- AMENDMENT OF THE BYLAWS

These Bylaws may be amended or repealed and new Bylaws may be adopted at any meeting of the Board, provided written notice of any such proposed action is given to all members at least thirty days prior to such meeting in a manner provided above for notice of meetings. Adoption of Bylaw changes shall be by affirmative vote of five members serving on the Board at the time of the meeting.

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June 19, 2006

## DRAFT MEMORANDUM

**TO:** ISAB Executive Committee and Administrative Oversight Panel

**FROM:** Tom Karier, Chair

**SUBJECT:** Request for ISAB to Establish a Mainstem Peer Review Group

At its June 14, 2006 meeting, the Council agreed to ask the Independent Scientific Advisory Board (ISAB) to create and oversee a standing Mainstem Peer Review Group as outlined by the Council staff (see attached memo). This peer review group would be available "on call" and used on a regular basis to review various mainstem related science questions and/or key issues associated with: a) long-term operations and fish passage planning, such as some of the analyses and/or science assumptions in development of a new FCRPS Biological Opinion; b) annual operations planning; c) specific in-season questions and analyses; d) reports evaluating mainstem actions and river conditions after the fact, such as post-season fish survival analyses; e) major research questions and results, including key issues arising out of the mainstem monitoring and research activities under the Council's program and the Corps' Anadromous Fish Evaluation Program, and f) other mainstem related issues or questions. That is, this group would be available as needed to review systematically whatever specific scientific/technical questions and issues that may arise from fish passage issues related to mainstem reservoir and dam passage operations.

Over the years, the ISAB has addressed many of the questions and issues under the topics listed above. For example, the ISAB has reviewed the statistical design of the Comparative Survival Studies; the various mainstem fish passage models from PATH, CRI, and CRiSP to COMPASS; the effectiveness of 2005 spill operations; and the efficacy of transportation, flow augmentation, removable spillway weirs, and other technologies intended to improve fish passage. This proposal would streamline the process with which mainstem questions come before the ISAB.

Accordingly, the Council asks the ISAB to consider our request to establish a Mainstem Peer Review Group, consult with the Council's ISAB oversight partners and work with the ISAB ex officios and the ISAB coordinator to implement it in a timely manner.

Attachment