



COLUMBIA BASIN FISH AND WILDLIFE AUTHORITY

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Coordinating and promoting effective protection and restoration of fish, wildlife, and their habitat in the Columbia River Basin.

The Authority is comprised of the following tribes and fish and wildlife agencies:

Burns Paiute Tribe

Coeur d'Alene Tribe

Confederated Salish and Kootenai Tribes of the Flathead Reservation

Confederated Tribes of the Colville Reservation

Confederated Tribes of the Umatilla Indian Reservation

Confederated Tribes of the Warm Springs Reservation

Confederated Tribes and Bands of the Yakama Nation

Idaho Department of Fish and Game

Kootenai Tribe of Idaho

Montana Department of Fish, Wildlife and Parks

National Marine Fisheries Service

Nez Perce Tribe

Oregon Department of Fish and Wildlife

Shoshone-Bannock Tribes of Fort Hall

Shoshone-Paiute Tribes of Duck Valley

U.S. Fish & Wildlife Service

Washington Department of Fish and Wildlife

Coordinating Agencies

Columbia River Inter-Tribal Fish Commission

Upper Columbia United Tribes

Compact of the Upper Snake River Tribes

DATE: October 2, 2007
TO: Members Advisory Group; Anadromous Fish Advisory Committee; Resident Fish Advisory Committee; Wildlife Advisory Committee
FROM: Brian Lipscomb, CBFWA
SUBJECT: Final Action Notes for September 17-18, 2007 MAG Meeting and Amendment Strategy Workshop

Members Advisory Group Meeting / Amendment Strategy Workshop Monday, September 17, 2007 and Tuesday, September 18, 2007 Polson, MT

The support material for the 9/17-18/07 MAG/Amendment Workshop is posted at <http://www.cbfwa.org/committees/Meetings.cfm?CommShort=MAG&meeting=all>

Final Action Notes

Attendees: **9/17/07** – Tony Nigro, ODFW; Lawrence Schwabe, BPT; Paul Kline, IDFG; Doug Taki, SBT; Dale W. Chess, Cd'AT; Ronald Peters, Cd'AT; Bill Daigle, MFWP; Gary James, CTUIR; Carl Scheeler, CTUIR; Joe Mentor, Mentor Law Group, PLLC; Tim Dykstra, SPT; Scott Soult, KTOI; Sheri Shears, CCT; Dave Statler, NPT; Nate Pamplin, WDFW; CBFWA staff: Brian Lipscomb, Trina Gerlack, Tom Iverson, Neil Ward, Ken MacDonald, & Dave Ward

9/18/07 – Mark Bagdovitz, USFWS; Tony Nigro, ODFW; Lawrence Schwabe, BPT; Paul Kline, IDFG; Doug Taki, SBT; Dale W. Chess, Cd'AT; Ronald Peters, Cd'AT; Lynn DuCharme, CSKT; Gary James, CTUIR; Carl Scheeler, CTUIR; Joe Mentor, Mentor Law Group, PLLC; Tim Dykstra, SPT; Scott Soult, KTOI; Sheri Shears, CCT; Dave Statler, NPT; Jim Uehara, WDFW; Nate Pamplin, WDFW; CBFWA staff: Brian Lipscomb, Trina Gerlack, Tom Iverson, Neil Ward, Ken MacDonald, & Dave Ward

By Phone: **9/17/07** - Phil Roger, CRITFC

9/18/07 - Phil Roger, CRITFC

Time Allocation:

Objective 1. Committee Participation	70%
Objective 2. Technical Review	0%
Objective 3. Presentation	30%

Day One - September 17, 2007

ITEM 1: Introductions and Approval of Agenda

Due to Horizon Air flight cancellations, Tony Nigro chaired the meeting on 9/17/07 and Mark Bagdovitz chaired the meeting on 9/18/07.

Action: The MAG approved the agenda. No objections.

ITEM 2: Approve the August 21, 2007 MAG Draft Action Notes as Final

Action: The MAG approved the August 21, 2007 MAG Meeting Action Notes as final. No objections.

ITEM 3: BPA In Lieu Response – Joe Mentor, Mentor Law Group

- Memo on BPA In Lieu Policy

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/BPAIn-LieuPolicyMemo9-13-07DRAFT.doc

Discussion: Joe Mentor provided the background for the CBFWA in lieu response, which is a response to BPA during an informal comment period. A document distributed at the April NPCC Meeting comments on the 2007-2009 funding decision. He explained the research of in lieu letter giving history to the Act.

Joe focused on the expenditures not the activity, translating the memo into the letter, interpretation of the Act. Review the BPA and NPCC questions and the F&W managers' answers. This is a response to protect project FY09 funding.

Joe raised concerns regarding, a blanket appropriation, gray areas overlapping the expenditures for cost sharing, and no funding until Congress appropriates funding.

The F&W Managers have the best position because they are mentioned in the Act. Should the response be built on BPA questions, contain a statement of intent to clarify the interpretation of the Act using language straight from the Act, and provide the interpretation of the Act for FY09 funding decisions to set projects.

Action: The MAG agreed to five specific points for the draft letter.

- The MAG agreed to provide a CBFWA response to BPA's informal draft
- Translate In lieu memo into the in lieu letter for Members review
- State FY08-09 funding needs
- Provide interpretation of In lieu referencing the Act
- MAG requested review of revised draft response before distributed

ITEM 4: Coordination Framework and Funding Recommendations

http://www.cbfga.org/Committees/MAG/meetings/2007_0917/DRAFTCoordinationDefinitions_9-14-07release.doc

Brian asked the MAG to approve the coordination and framework proposal to participate with other coordination groups and apply the definitions to the FY08-09 CBFWA projects.

The MAG reviewed the "Regional Coordination for the Fish and Wildlife Program Today and Tomorrow: Current Status and proposed future definitions" draft and requested that the context of the draft be associated with Joe Mentor's products too. Truth this document with the Authorities White Paper. Layout the context to support coordination through the Program. Add more description to the deliverables. They requested changes on page 2a under Coordination in sentence one and page 3b under Consultation: revise sentence two, Coordination in not consultation. Delete page 9, Proposed funding levels for regional coordination (FY08 and beyond). Improve the document and anticipate criticism from leadership.

Action: The MAG decided to continue reviewing the document and provide comments the next morning.

Presentation: Defining CBFWA's FY08-09 Work Plan Presentation

Presentation:

http://www.cbfga.org/Committees/MAG/meetings/2007_0917/CBFWacoordinationWorkPlanPresentation091807MAG.pdf

Tom Iverson presented the CBFWA FY08-09 work plan presentation to the MAG. He requested that the MAG review the costs for Members Participation slide for accuracy. The MAG had a discussion regarding adaptive management activities, program schedule, deliverables, funding, staff FTE positions focusing on the tribal and public relations and data management coordinator positions. Staff requested direction and that the CBFWA work plan to be reviewed at the October Members meeting. The MAG supports the concept and agreed that more work is needed on tasks, costs, and deliverables before the Members finalize the draft work plan.

Action: The MAG agreed to advance the documents context for Members review tomorrow. The MAG will continue working on the FY08-09 CBFWA work plan.

Day Two - September 18, 2007 8:00 a.m.

ITEM 4 Coordination Framework and Funding Recommendations

continue:

Revised Regional Coordination draft

[http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/DRAFTCoordinationDefinitions_9-14-07release\(cbfwa%20edits\).doc](http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/DRAFTCoordinationDefinitions_9-14-07release(cbfwa%20edits).doc)

CBFWA Activities and FY08-09Cost Table:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/CBFWA_2008-09Costs_091807MAG.xls

Discussion: Tom Iverson received comments from the MAG and incorporated them into the revised draft (see above). The revised draft was prepared and reviewed by MAG and Members later that day.

Discussion: Draft Conceptual Outline for Coordinating the Three Major Processes within the F&W Program for FY08-09

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/ConceptualProcessTimelineToMAG_091807.pdf

Tom Iverson presented for discussion a draft conceptual timeline and table to coordinate the CBFWA, NPCC, and local planning groups for the Amendment Process, 2010 Project Selection Process for 2007-2009, and the BPA rate case informal discussions. This is a concept on how these processes interact. He stated that this is an opportunity for the F&W managers to respond to the process, assist in developing decision criteria, work with other groups, and promote CBFWA products. Tom Iverson contacted the NPCC staff to collect information and provided them with the idea for discussion at their retreat.

The MAG had a long discussion and could not agree on the details in the timeline. Brian Lipscomb suggested that MAG work out the details later. Brief the Members on the concept tomorrow and get their approval or final endorsement at the November 7 Members teleconference.

ITEM 5: Data Management Strategy and Recommendations

Data Management memo and proposed actions:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/DataManagementMemo091307.doc

Northwest Habitat Institute SOW:

[http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/NHI_SOW_FY%202008-09-Updated%208-27-07\(final\).doc](http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/NHI_SOW_FY%202008-09-Updated%208-27-07(final).doc)

StreamNet FY08-09 Work Plan:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/StreamNet2008WorkSummary_091307Draft.doc

CSMEP summary of proposed work elements and products by objective for FY08, including collaborating entities:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/Proposed_CSMEP_Tasks_For_FY08.doc

Tom Iverson and Brian Lipscomb presented the data management project funding recommendation strategy, proposed actions and drafts. Tom requested feedback for the MAG on the data management work plan. The data management issues will be harder to deal with later.

The MAG asked for costs, timeframe, and which, specific contracts would be addressed. The MAG assumes zero fund allocation. They are not comfortable with new positions or prepared to make funding decisions until they have more information

and time to review. The MAG supports the strategy to define outstanding data management needs.

Tom Iverson gave an overview the data management SOW's. He stated that NED is presenting a list of pilot projects at the October NPCC meeting agenda.

The MAG does not support moving the funding recommendation forward today. The MAG agreed that data management needs should be restructured in the region, but do not agree on the cost. The MAG agreed that these needs should be assessed to other outstanding needs. The MAG is not ready to make funding recommendations.

The MAG developed a recommendation for the Members to endorse and continue involvement with DMFS to refine and finalize the data management strategy. The MAG continued discussing priorities for implementation of strategies and funding recommendations.

The MAG revised the data management strategy working draft through section 5 and deleted all references to costs for FY08-09 funding but included parts of section 6. They will continue discussions on defining the gaps.

Revised draft:

http://www.cbfgwa.org/Committees/MAG/meetings/2007_0917/StrategyForManagingFishWildlifeandHabitatDatafortheColumbiaRiverFishandWildlifeProgram:AreporttotheCounciltoadvance.thediscussiononregionaldatamanagement

Action: The MAG recommended advancing the revised working draft "Strategy for Managing Fish, Wildlife, and Habitat Data for the Columbia River Fish and Wildlife Program: A report to the Council to advance the discussion on regional data management" to the Members for review to endorse the working draft and continue direction.

Action: The MAG recommended to the Members to review the CSMEP summary of proposed work elements and products and develop a strategy with NPCC for full funding in FY08.

ITEM 6: Legal Authority White Paper & Amendment Checklist – Joe Mentor

Authority White Paper:

http://www.cbfgwa.org/Committees/MAG/meetings/2007_0917/AuthoritiesWhitePaper09-15-07DRAFT.pdf

Amendment Checklist – Organization Outline

http://www.cbfgwa.org/Committees/MAG/meetings/2007_0917/ProgramRecommendationsChecklist09-15-07DRAFT.doc

Joe Mentor presented the final draft Authorities White Paper as it relates to the Power Act and the amendment checklist and organization outline for the CBFWA Program recommendations. Joe included more updated information, a section on selected issues, referenced cases that reaffirm, strengthen, and identify that deference principals are owed to fish and wildlife managers through the Program recommendations, referenced rate setting process, interpretation of the Power Act, TANG decision, and added website links to support references. Under Selected Issues III, Joe identified a) Projects vs. Program Measures b) Reconciling the NW Power Act with ESA c) In Lieu Funding Prohibition d) Wildlife Crediting e) Fish Passage Center f) Relationship of the F&W Program and BPA Rate Case. Joe suggested that Members read the Golden Northwest Aluminum, Inc., v. BPA case referenced on page 27 of the white paper. On May 3, 2007, the Ninth Circuit issued its ruling in Golden Northwest Aluminum, Inc. v. Bonneville Power Administration

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/921DE70202D8450E882572CF007E4EB3/\\$file/0373426.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/921DE70202D8450E882572CF007E4EB3/$file/0373426.pdf?openelement)

Joe requested that the MAG review the draft amendment checklist and white paper, specifically the selected issues section, and provide comments. The white paper will move forward as an appendix with the CBFWA recommendations. Joe plans to have Authorities White Paper published.

Joe stated that if NPCC had a choice they would not change the 2000 Program. He recommended that the Members use the existing the 2000 Program and offer specifics to the recommendations.

Discussion: The MAG stated the first six questions of the amendment checklist are a good and statutory, but numbers seven and eight are already in the Program and suggested guidance from the NPCC. Confirm that the checklist is consistent with the proposed recommendations.

ITEM 7: Reports from Technical Committees/Expectations

Development of Fish and Wildlife Program Amendments Presentation:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/Fish_WildlifeAmendmentsPresentation0917-18_2007MAG.pdf

WAC

- Biological Objectives for Wildlife Mitigation
 - 1) Ecological Function
 - 2) Operational Losses
- RM&E
- Crediting
 - 1) O&M
 - 2) Define construction/inundation mitigation (1:1, 2:1)
 - 3) Oversight

Update: Carl Scheeler reported on project impacts, mitigation and the crediting issue. Ken MacDonald gave a status report on the Wildlife Advisory Committee. Tomorrow the Members will be asked to approve a strategy for the wildlife program amendments.

Reports from Technical Committees/Expectations - cont'd:

AFAC

- Progress on amendment templates
- Feedback/Technical recommendations
 - Use of AHA
 - 1) Evaluate strategies
 - 2) Linkage to BPA's obligations

Update: Dave Ward presented the MAG with update of the Anadromous Fish Committee's progress in the amendment process. The AFAC will continue working on templates. They need help from the managers to populate the templates.

Draft Amendments Template:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/DraftAmendmentTemplateAll_091307.doc

AFAC is looking at AHA tool to identify limiting factors for priorities to help fill gaps for biological objectives. Paul Kline stated that AFAC would need experienced help to use the AHA program/tool and that the AHA folks could be contracted. The MAG referenced Mobrand as a possible resource.

Use of AHA in Development of Program Amendments:

http://www.cbfwa.org/Committees/MAG/meetings/2007_0917/AHA_AmendmentProposalToMAG_083107.doc

RFAC

- Progress on amendment templates
- Feedback/Technical Recommendations
 - 1) Components of a resident fish loss amendment
 - 2) Implementation of resident fish loss assessments: potential procedures and limitations
 - 3) Equating resident fish substitution efforts to anadromous fish losses

Update:

Jim Uehara presented the update on the Resident Fish Committee progress. RFAC is working on three assignments from MAG to develop strategy for resident fish losses, develop formula to convert resident fish for losses of anadromous fish, develop measures and strategies for focal species and populations. The RFAC cannot develop a conversion formula and is requesting MAG's direction on restoring anadromous fish opportunities and restoring anadromous fish to the block areas. Ron Peters, CdAT stated, they cannot be fully mitigated for the loss species but will use other species for fishing opportunities. The RFAC will continue working on populating the templates and developing a loss assessment procedure but need due dates established by the MAG.

Mark Bagdovitz suggested that the RFAC propose due dates for MAG's review.

The items below were discussed during the meeting.

ITEM 8:**OVERALL**

- Outline
- Timeline
- Deadlines Template
- Deadlines BPA Obligation
- Coordination Definitions
- Data Management
- RM&E

ITEM 9:**Next Steps**

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