

# Fish Passage Center Oversight Board Meeting

August 2, 2007

## DRAFT

### **1. Greetings and Introductions.**

Bruce Measure welcomed everyone to today's meeting. Measure introduced today's meeting and described the reasons for the Fish Passage Center Oversight Board (FPCOB)'s existence. The following is a summary (not a verbatim transcript) of the topics discussed and decisions made at today's meeting. Anyone with questions or concerns about these notes should contact Judy Hertz at 503-222-5161.

### **2. Overview of Fish Passage Center (FPC) and Current Projects.**

Michele DeHart led this presentation, touching on the following major topics:

- FPC history
- The FPC is: 5 biologists, 3 computer scientists, 1 natural resource analyst/ hydrologist, other support staff (11 people in all)
- The Measure specifies (the language in the Council Program that established the FPC and laid out what it does)
- The geographic scope of the smolt monitoring program – Snake River through the Upper and Lower Columbia
- Deliverables: the Smolt Monitoring Program, which includes the FPC annual report, ESA Section 10 permit for the Smolt Monitoring Program, maintaining the FPC website, and doing appropriate document and data distribution, providing weekly reports, the gas bubble trauma annual report. There is also the Comparative Survival Study, which includes an annual status report and other components.
- Other deliverables: an Adult and Juvenile Fish Facility Inspection Program, which includes an annual report, training of inspectors, supervision of monthly inspections, the receipt and consolidation of those reports, and the facilitation of the resolution of any problems.
- Other deliverables: distribution of data, which includes daily updates of all SMP data, daily acquisition of other data such as flow and spill. Another deliverable: response to requests. The FPC

reviews and comments on study designs, responds to requests for specific data summaries, the response to requests for historic data summaries.

- A sample response to a data request – fpc.org data requests and downloads by country, state, time of year and page visited.

In response to a question from John Ferguson, DeHart said Larry Bashor has retired; David Benner, a hydraulic engineer, has taken over the FPC's fish facility inspection program. Do you have a sense of what percentage of the formal requests you receive are from states, tribes and government agencies, and what percentage is from the public at large? one participant asked. It's probably two-thirds states, tribes and government agencies, one-third NGOs, utilities, fishermen, students, DeHart replied.

### ***3. History of FPCOB and Current Role of FPCOB.***

Measure said he has found eight sets of minutes from previous FPCOB meetings, dating back to 2002. It has been two years since this board has met, he said. There is a great deal of controversy surrounding the FPC; what I would like to do is diminish that controversy, and ensure that the Council can support whatever the FPC produces in the future, Measure said. In looking at the minutes, you will see that much of what was discussed at these meetings had little to do with the Council Program. Our purpose today is not to get into any of those side issues, he said, noting that the Council has recently revised the FPCOB's guidelines. I would like to have a general discussion of the governance of FPCOB, talk about how far we should delve into FPC operations and personnel matters, Measure said -- that's where I would like to start today, by talking about how to make this a defensible project the region can be proud of and support.

One thing I see lacking in the history of the Oversight Board is clear direction, he said, and that's another place I would like to focus today, starting with membership.

### ***4. Discussion of Membership of FPCOB.***

The present membership of the FPCOB consists of representatives from the Upper and Lower Columbia state agencies, Upper Columbia tribes, NOAA, the scientific community and the Upper Snake tribes, Measure said. The Upper Snake tribes requested membership after the original board was constituted, and I would suggest that we add them as formal members, said Measure. He added that the Lower Columbia tribes have also been invited to be members, and said it is his hope that they will designate a representative as well.

In response to a question from Ferguson, Measure said that the FPC is a Council program; this being the case, the Council could simply appoint the FPCOB

membership, but would prefer to seek regional guidance on who the FPCOB members should be. The FPCOB bylaws have been ratified, then modified, by the Council, but they provide only a bare-bones framework. There are two proposals floating around: to modify those bylaws further, here at FPCOB, then ask the Council to ratify them, or, as John Shurtz has suggested, develop a set of operating principals. I am open to either course, Measure said, but I suggest that the scope of the oversight board be limited to three things: to ensure that the FPC is accountable to the region, that the products they produce are made available to the region, and that the projects they undertake are peer-reviewed beforehand for necessity and afterward for validity. That's what I see as the scope of FPCOB's work, Measure said.

Ferguson suggested that the group needs to look at whether the FPC is producing the products its constituents want, and that it is funded appropriately. On the question of formal bylaws vs. looser operating procedures, I favor the latter, Ferguson said.

Tony Nigro said he was involved with FPCOB in its first year, during which the group operated under a set of simple operating procedures. He observed that Measure's opening comments mirrored the comments of Larry Cassidy at the first meeting of this group, and Bob Lohn's comments years before that. I am curious about what we're going to do, in this iteration, to advance this discussion and quell regional controversy, Nigro said, because I suspect that a lot of the controversy surrounding the FPC has a great deal to do with the fact that people don't like the answers they receive to their questions. The FPC works in a controversial area, he said, and I would ask whether we are really in the position to educate the region about what the FPC does. Bear in mind that the FPC is in the position of responding to requests from specific entities; if there is disagreement and controversy in the region, it shouldn't be about the FPC and what they do – it should be centered on who is requesting the FPC's analyses. He noted that the FPC has been audited previously. We need to think hard about what value we will add to this regional debate, rather than simply rehashing issues that have already been discussed many times before. I would hope that we can help to ensure that the regional perception of the FPC is grounded in fact, rather than hearsay, Nigro added.

Those are good observations, said Measure. We do have a body of knowledge here, in the form of the minutes from previous meetings of this group, and a good review is important. The audit that was conducted in the past focused on how the money was spent; in my view, a more important review question is, are the FPC goals being met? At some point, we should put something in place to review the program, the criticism surrounding it and whether the FPC's current direction is in harmony with the Council's program. We can then discuss how the FPC operations might change in the future to synch more closely with the Council program, Measure said.

Nigro noted that audit to which he referred focused on the validity of the data the FPC was producing, in response to a request from Bob Lohn, as well as the QA/QC protocols that were in place at the time – it wasn't a financial audit. It had to do with how data was collected, handled and stored, to enhance regional confidence in the empirical database on which the FPC analyses were based. The Pacific States Marine Fisheries Commission (PSMFC) does financial audits of all of the projects they oversee, added DeHart, so that information is available as well. She added that the audit suggested that the remote site personnel needed to take more responsibility for their own hand-logs and computer data entry, rather than leaving that up to central FPC staff. DeHart agreed to provide Council staff with a copy of that audit.

### **5. Governance Discussion.**

We have discussed the possibility of a looser governance structure for this group, Measure said; John Shurtz has also prepared a revision to the bylaws. Copies of the current bylaws and Shurtz's proposed revisions are available at today's meeting, he said; I would ask everyone to review them and come to the next meeting of this group prepared to discuss them. The end result of this will probably be suggestions to the Council for revisions to the program that would resolve the issues we're trying to resolve, Measure said; I am leaning toward Shurtz's revised bylaws.

Is there a written statement of the issues we're trying to resolve? Nigro asked. I think we're going to brainstorm on that question later this morning, Measure replied. Ferguson said the bylaws call for a Technical Advisory Committee (TAC), but noted that the TAC was never actually constituted. The TAC was never approved by the Board, but there was a group that did the protocol design and analysis, said Larry Cassidy. To answer John's question, the TAC was never formally approved by the board. The issue in the language of the program is that the TAC is to advise this Board, added DeHart. There was some question of whether the subcommittee had the necessary scientific expertise to advise the FPCOB on the scientific details of the FPC's work, Ferguson said.

Steve Waste said that, traditionally, subcommittees have been convened on an as-needed basis. A standing subcommittee has recently been convened within the Independent Scientific Advisory Board (ISAB), he said, and there may be a potential for some cross-membership with this group. There are also over 100 people in our peer review group, so there are some rather formidable resources we can bring to bear in support of FPCOB, Waste said.

So that's one possibility, Measure said, adding that, in his opinion, peer review is the key to this effort. If the FPC's products are thoroughly peer-reviewed, both in advance and after the fact, that will take a great deal of heat off of the controversy surrounding the FPC, he said.

Relative to the Smolt Monitoring Program (SMP), said DeHart, we get advice and direction from the Fish Passage Advisory Committee (FPAC), which is a long-standing body, dating back to the early 1970s, with membership from the management agencies. The ISAB provides reviews, comments and responses to our work as well. Part of the conversation, the last time this body met, focused on the interaction between FPC and the ISAB, which advises us on what to do technically, DeHart said. That was never fully resolved.

There is some confusion about who should do the peer review and what the response should be, Measure agreed. The ISAB comments on many projects, and there is no cast-in-stone process, Ferguson added. We have to address every single comment, and respond to every comment, DeHart said – we don't have as much leeway as some projects, in other words. I agree that the spotlight on the FPC is pretty bright, Ferguson said.

I would suggest, again, that we clarify the underlying issues this Board is intended to address, said Nigro – what are the problems we're trying to solve? In response to a question, Nigro said FPAC predates even the Council. It was initially a set of scientists from the states, tribes and federal agencies who dealt mainly with anadromous fish issues, and worked together to submit recommendations to the Corps of Engineers on the operation of the FCRPS. Eventually FPAC was incorporated as a technical committee under CBFWA; its purpose is to serve as a technical forum for conversations on the issues surrounding the operation and configuration of the FCRPS and to develop technical documents on an as-needed basis. FPC provides technical analysis and support to FPAC, which is a technical committee of CBFWA, and has its own charter. The FPC responds to technical requests from FPAC. And what is the authority for that relationship? Measure asked. It's interpreted from the language of the Fish and Wildlife Program, Nigro replied. And it is FPC supporting FPAC, and not FPAC advising the FPC? Measure asked. That's correct, Nigro replied – FPC provides analysis in support of FPAC's System Operational Requests, for example.

But the Council program requires that FPC serve other regional entities as well, Measure observed. That's correct, Nigro replied. And the charter, from FPAC to the Columbia Basin Fish & Wildlife Authority (CBFWA) is merely a device to facilitate that advisory capacity, Measure asked, and CBFWA has delegated that authority to FPAC through its charter? Correct, said Nigro.

Are there any agencies that are inadequately or over-represented, in the opinion of anyone here today? Measure asked. I would say that the Fish and Wildlife Service is sort of the odd agency out, at this point, Nigro replied. There are people here who represent FPAC, but the FWS has considerable expertise on some of the important issues we will be discussing. In response to a question, Ferguson said he is here today representing the scientific side of NOAA Fisheries. Measure said that, in the Council's opinion, the scientific side is

adequately represented by NOAA Fisheries and by the presence of Dan Goodman, an independent scientist. The question is, how large a committee do we want? he said. Do we include the public? We knew we wanted a wide geographic range represented, he said, but how wide should the range of representation be from the scientific community? My feeling is that the smaller a group we have, the better off we'll be in accomplishing our goals, given the divisiveness of this issue within the region.

Nigro noted that the federal perspective may be somewhat under-represented at the FPCOB table, currently. We are in the inception of this process, said Measure; the way I see this going initially is that FPCOB will make large-scale recommendations, and the Council will then ratify them. That's something we can discuss in more detail at our next meeting, at which time we will hopefully be able to agree on a set of operating principals. That would be my suggestion at this point, he said – that we talk about the issues we need to discuss and resolve at our next meeting. My only concern is that there are some major sovereigns missing from this table, currently, Nigro said.

Cassidy, the former chair of FPCOB, provided a bit of historical perspective. There was some stiffness encountered when the first FPCOB was formed, he said; we were not scientists, and that's why the Council decided to populate the board primarily with scientific minds this time around, rather than trying to include utility company representatives and the public. The TAC was constituted but never actually met. The bottom line is that you're starting, this time around, with a lot of history that should help you, Cassidy said. My gut feeling is that the FPC's science is good stuff, despite the nay-sayers in the region. Anytime you have a fish passage reporting website that gets 7 million hits per year, you have to pay attention to that. I feel it is more the role of this board to get comfortable with the FPC's data, and to say, if you're uncomfortable with that data, you need to show us why. The Board needs to be in a position that, when you get comfortable with what the FPC does, that you carry that message to the region. Cassidy said that, during his tenure as FPCOB chairman, he asked many of those nay-sayers to put their concerns about the FPC in writing; not a single one agreed to do so. I wish you good luck, he said.

The discussion then turned to the specific issues surrounding the operations of the FPC. One element of that controversy is obviously related to the science and the data it produces, said Steve Yunot; the other is the scope of FPCOB's oversight role. The issue that is on my mind is that, if you read the Council program, how you define "public at large," within the FPC's service role, is a key question. Should it include the utilities, for example? Do the utilities need to actively seek out the FPC, and if they are not doing so, why not? Does the FPC really just support the fish agencies and tribes? I don't have an answer to that, said Measure, but I agree that it seems like a nebulous relationship – you have FPAC, which refers work to the FPC, and then we have groups that do not refer work to the FPC. That "why not" is a key issue, Ferguson said – do they not like

the answers they get from the FPC, or is there another reason they don't use the FPC as a resource? My only thought, initially, is that we need to define the scope of our oversight before we get into that issue, Measure said – we'll discuss the scope at our next meeting.

The group devoted a few minutes of discussion to the 2007 Fish Passage Center budget and scope of work; Ferguson noted that only two of the FPC's main work products are referenced on the Council website. The additional FPC tasks are being funded by Bonneville outside of the Council program. What BPA did, because of the chaos that occurred, was to extend to 2006 budget for the FPC, DeHart said. DeHart said she will email the FPC's current work statement and budget to Measure.

What the Center does, and how it does it, is not viewed by some in this region as being credible, said Nigro. That's a recurring theme that has been heard in the region for years, and it will be a challenge for this board, Nigro said – we've been trying for a decade to get our arms around this issue and make it defensible. The first bullet in the list that was put together for this meeting is something we should address in our efforts to restore the credibility the FPC needs to be an effective resource in the region. Nigro added that the question of who should be included in the membership of the Board will be critical to its ability to operate effectively.

The relationship between the TAC and the ISAB is another critical issue, said Yunot – which comes first, the chicken or the egg? I agree that's another very important point, said Measure – we'll address it at our next issue.

Moving on to point four of the bulleted list distributed at today's meeting, focused on the role of the TAC, Nigro said the question is, how would the FPCOB use the TAC's services, and how much weight should be given to its recommendations as opposed to the recommendations of the ISAB, NOAA Science Center and other peer review bodies?

Brian Lipscomb observed that the language in the Council's Program is clear with respect to the role of the Technical Oversight Committee, just as it is clear with respect to the role of the ISAB. He said that CBFWA has begun to consider potential names for the TAC membership list and said that, if Measure so desires, CBFWA will recommend some names to the FPCOB.

One other thought, he said – the question was raised earlier about whether, or to what extent, the utility community makes use of the FPC's services. I would note that all of the FPC's data and analysis are made readily available to the region; the FPC also provides a management coordination role. The states and tribes are the entities responsible for managing the fish, so it is only logical that they would be the primary customers for the service the FPC provides.

Ferguson said that, with respect to the mainstem subgroup Waste mentioned earlier in the meeting, it would be very useful if the FPCOB participants could see some examples of the types of documents they're reviewing. Waste said he will make those available, adding that, while the subcommittee was not formed with this specific purpose in mind, it is available to provide support, such as early validation, confirmation and peer review, to the FPCOB's efforts.

Ferguson noted the most traditional form of peer review, scientific peer review of published papers, is not readily applicable to most of the FPC's work products because they aren't published in peer-reviewed journals. That means most of the peer review applied to FPC work products will need to happen locally, he said – my point is simply that the FPC's products are different, so some of the traditional peer review processes don't apply.

Nigro thanked Waste for his clarification. That's what I thought I heard you say, Nigro said – that there is an ISAB subcommittee tasked to address strictly mainstem issues, and that it may be possible to draft a subset of their membership as a resource for FPCOB's peer review needs. Our mission is to provide support, but it will be up to you to decide how – or if – you use those services, Waste replied. I do understand that you don't want to find yourselves in a situation where two different groups are reviewing the same material, they arrive at different conclusions and recommendations, and then you have to decide who plays referee, he added.

Measure went through some of the other items to be addressed within the next FPCOB meeting agenda, including the annual FPC performance review and the chair's review of the performance of the director. Other agenda items will include the effort to ensure that the FPC database conforms to the appropriate standards; I will rely on you and your constituents for advice on that matter, Measure said.

Ferguson observed that the Smolt Monitoring Program has been around for a long time and is ripe, in his opinion, for a programmatic review. Do the data it collects still need to be collected every year? Ferguson asked – those are the kinds of questions a programmatic review could answer. All long-standing programs need that type of review every so often, to see where, or if, they can be streamlined.

Lastly, said Measure, if any of you have recommendations for the Council's Amendment process, we need to begin that process now.

The discussion then turned to the schedule for upcoming FPCOB meetings. Measure said he envisioned quarterly meetings, about half of which would be in Portland. The remaining meetings would be held throughout the region, likely piggybacked to the Council meetings that month. There was general agreement that this approach makes sense.

Sue Ireland moved that the FPCOB recommend to the Council that the Upper Snake Tribes be designated as full FPCOB members, that Doug Taki of the Shoshone-Bannock Tribes be designated as their representative, and that “ex officio” be removed from the Upper Snake Tribes’ membership status. This motion was seconded by Nigro and unanimously approved.

**6. *Next FPCOB Meeting Date.***

The next meeting of the Fish Passage Center Oversight Board was set for Monday, October 15 in Missoula, Montana. The agenda will include a report on performance review, more work on the bulleted items discussed during today’s meeting, and the general topic of how some of the scientific and policy controversies surrounding the FPC and its work should be addressed. Meeting summary prepared by Jeff Kuechle, NWPPCC contractor.