

LEWIS RIVER AQUATIC COORDINATION COMMITTEE

Facilitator: ERIK LESKO
503-412-8401
Location: SKYPE MEETING ONLY
Date: April 9, 2020
Time: 9:30 AM – 1:00PM

Agenda Items

- 9:30 a.m. Welcome
- Review Agenda, ACC 3/12/20 Meeting Notes
 - Comment & Accept Agenda, 3/12/20 Meeting Notes
- 9:40 a.m. Public Comment Opportunity
- 9:45 a.m. 2019/2020 Aquatic Fund
- LR 21 Phase III and Rush Creek; discussion & decision
- 10:30am Break**
- 10:45 a.m. In Lieu Update – Review of proposed ACC approval process
- 11:30 a.m. ACC Structure and Ground Rules; discussion and review edits
- 12:00 p.m. Lunch (Working Lunch)**
- 12:15 p.m. Study/Work Product Updates
- Flows/Reservoir Conditions Update
 - ATS Update
 - Saddle Dam Seismic Project Update
 - Fish Passage update
- 12:45 p.m. ➤ Next Meeting's Agenda
➤ Public Comment Opportunity
- Note: all meeting notes and the meeting schedule can be located at:
<https://www.pacificorp.com/energy/hydro/lewis-river/acc-tcc.html>
- 1:00 p.m. **Meeting adjourn**

PLEASE BRING YOUR LUNCH

(503) 813-6614 (US)

English (United States)

(503) 813-5252 [Portland, OR] (US)

English (United States)

(855) 499-5252 [Toll-Free] (US)

English (United States)

Conference ID: 5803472

**FINAL Meeting Notes
Lewis River License Implementation
Aquatic Coordination Committee (ACC) Meeting
April 9, 2020
Skype Meeting Only**

ACC Representatives Present (17)

Kim McCune, PacifiCorp
Chris Karchesky, PacifiCorp
Erik Lesko, PacifiCorp
Jeremiah Doyle, PacifiCorp
Todd Olson, PacifiCorp
Jim Byrne, Trout Unlimited
Bryce Glaser, WDFW
Peggy Miller, WDFW
Josua Holowatz, WDFW
Aaron Roberts, WDFW
JD Jones, USFS
Eli Asher, Cowlitz Indian Tribe
Amanda Froberg, Cowlitz PUD
Tim Romanski, USFWS
Joshua Ashline, NMFS
Steve Manlow, LCFRB
Steve West, LCFRB

Calendar:

May 14, 2020	ACC Meeting	TBD
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Assignments from April 9, 2020	Status
ACC - Discuss if the ACC will consider funding design for Aquatic Fund projects in the future.	Complete – 5/14/20
McCune – Review Lewis River Settlement Agreement; does it prohibit funding design work for aquatic fund project submittals?	Completed – 4/15/20 (email to Utilities only for review)
Ashline and Romanski– Consult within their respective agency and clarify Services expected role of ACC in the In-Lieu decision process	Complete – 5/14/20
McCune/Lesko: Email a revised version of the Ground Rules and decision making documents to the ACC and TCC based on comments received today.	Complete – 4/14/20

Assignments from February 13, 2020	Status
Lesko/Froberg - Incorporate ACC requested edits into the Terrestrial and Aquatic Coordination Committees Structure and Ground Rules document	Ongoing and under review
Lesko – Develop decision template using Cowlitz template as an example	Ongoing and under review

Parking Lot Items	Status
Waiting for input from the bull trout working group on whether they should be officially recognized as a subgroup of the ACC.	Ongoing

Opening, Review of Agenda and Meeting Notes

Erik Lesko (PacifiCorp) called the meeting to order at 9:36am and reviewed the agenda. He added that PacifiCorp wished to add a COVID-19 update and request ACC approval for planting a portion of the Swift Reservoir rainbow trout plants into the Swift No. 2 power canal.

Lesko also reviewed the March 12, 2020 meeting notes to include the WDFW edits. The ACC approved the March 12, 2020 meeting notes at 9:50am with all WDFW edits and clarifying edits in Attachment B.

Public Comment

None

2019/2020 Lewis River Aquatics Fund; Project Selection

➤ *Lewis River 21 Phase III*

The ACC had considerable conversation about the project design, risk to existing habitat, benefit/cost ratio and the opportunity for a multi-reach design and planning effort. The ACC further noted that additional and more specific design aspects of the project may need further review before implementation.

➤ *Rush Creek Side Channel Reactivation*

USFWS communicated that the Forest Service must first complete an ESA informal consultation to determine potential risks to bull trout to include a site visit which is a procedural constraint that would likely delay moving forward with funding in 2020.

While the ACC agreed that both USFS projects referenced above have biological merit, the ACC recommended that additional information or consultation was needed for these projects to move forward. Based on this recommendation, the USFS agreed to withdraw both projects for 2019/2020 funding cycle and will seek to resubmit for the Lewis River 2020/2021 Aquatic Fund cycle.

Consensus was reached on a final Resource Project list as follows:

Applicant	Project Title	Funding Requested	Decision
USDA Forest Service	Lewis River 21 Phase III	\$305,423	USFS withdrew this project and will resubmit for 2020/2021 funding cycle

USDA Forest Service	Rush Creek Side Channel Reactivation	\$125,500	USFS withdrew this project and will resubmit for 2020/2021 funding cycle

The ACC agreed that support for design-only projects in 2021 will be discussed.

<Break 10:40am>

<Reconvene 10:55am>

In Lieu Update – Review of proposed ACC approval process

Todd Olson (PacifiCorp) reviewed the document titled, Request No. 2020-01: Input requested from ACC members on Lewis River Strategic, Monitoring and Bull Trout Passage Plans, April 8, 2020 (**Attachment A**). This document was provided to the ACC via email on April 8, 2020. The document was prepared per discussion on this topic at the March 2020 ACC meeting. There was concern with PacifiCorp’s interpretation of the Services’ letters regarding the role of the ACC to approve the monitoring plan. The ACC indicated the form as presented by the Utilities was inappropriate for gaining approval from the ACC as it only solicited feedback, not a decision.

The ACC indicated that they had questions about the timing of the plan approval the Services intended for the review of the three documents. The ACC requested that the Services provide guidance to the ACC about the Services expectations for when ACC review and approval of the documents should occur. Utilities suggested that the Services should clarify or define the expectation for ‘approval’ by the ACC. The ACC also noted the need to revise the ACC Structure and Ground Rules document to include a decision making template (see discussion below).

Josh Ashline (NMFS) and Tim Romanski (USFWS) indicated they would each consult with their respective agencies to clarify the Services’ expectations for ACC review of the documents.

ACC Structure and Ground Rules; discussion and review edits

Lesko (PacifiCorp) provided and reviewed a revised version of the Structure and Ground Rules document and draft decision making documents (**Attachment B**) based on comments received during the March ACC meeting. As part of this revision, a draft decision making template and tracking matrix were attached to the document for review.

Some edits were made to the document during today’s meeting, per the ACCs request. Lesko further presented a draft decision making document for tracking decisions in Excel format and a Word version for use when a decision is requested by an ACC Representative. Lesko proposed distributing the revised documents to the ACC for review and comment prior to the May ACC meeting. The ACC agreed that McCune/Lesko will email a revised version of the Ground Rules and decision making documents to the ACC and TCC based on comments received today. Both ACC & TCC are to review and provide comments to Kim McCune 10 days prior to the next ACC meeting (May 4) on May 14, 2020. The intent of the May 14th ACC meeting will be to review and approve the Structure and Ground Rules document including the decision template and tracking matrix. McCune noted that the TCC does not meet in May but they may be willing to review and approve via email.

Some agencies/organizations need to update their representative and alternates listed in the Ground Rules document. Written notification is necessary to make a change, and it was confirmed that e-mail would suffice for this action.

Study/Work Product Updates

Saddle Dam Seismic Project Update

Drilling has not yet begun due to awaiting FERC approval and to complete the resource review. Currently the team is considering a design to strengthen the soils beneath the dam footprint. The company is preparing a media release which should come out by the end of April 2020.

Flows/Reservoir Update

Currently the company is refilling the reservoirs and has about 27 feet of storage across the three reservoirs. We will continue to hold Yale Reservoir at least 10 feet down indefinitely given seismic concerns at Saddle Dam. Otherwise on a trajectory to have near full reservoirs by Memorial Day. Peggy Miller (WDFW) asked if the temporary maximum elevation would impact PacifiCorp's conceptual bull trout passage design described in the Bull Trout Passage report. Olson indicated that it would not.

Media Release

Olson informed the ACC that all PacifiCorp recreation sites are closed in accordance with state stay-at-home orders and consistent with actions taken by Washington State Parks and Washington Department of Fish & Wildlife.

Winter Steelhead Spawning Surveys above Swift Dam

Lesko informed the ACC that due to "social distancing" requirements during the COVID 19 pandemic, PacifiCorp was unable to charter helicopter flights. Flights are used to track radio tagged steelhead to determine the location and distribution of spawning late winter steelhead released upstream of Swift Dam. The aerial surveys are used in combination with fixed radio receiver stations to estimate potential spawners upstream of Swift Reservoir. Without aerial surveys, it is not possible to infer an estimate of spawners and/or their distribution in the upper basin. Due to this restriction, the utilities recommended terminating the aerial radio tracking aspect of the program. Lesko indicated that reservoir tributary surveys would continue to add existing abundance and spawn timing data on the use of reservoir tributaries by transported winter steelhead. Josh Ashline asked whether it was possible to deploy additional fixed stations to provide directionality of winter steelhead migrating upstream of Swift Reservoir. Lesko indicated that this is something discussed in the past and that additional fixed telemetry sites would provide a means to infer spawning success or migration; however, the utilities do not have the hardware (receivers, antennas, batteries, etc.) available to deploy this type of method.

The ACC agreed that 2020 aerial radio tracking of winter steelhead upstream of Swift is not practical, but that foot spawner surveys of reservoir tributaries would continue and fixed telemetry site operation would not continue as planned.

H&S/ATS Update

Lesko informed the ACC attendees that the H&S 5-year rewrite draft plan is currently under review by DJ Warren and Associates and should be available for ATS review in May 2020. The ATS will incorporate recommendations of the comprehensive review and revise a review draft of the

H&S Plan. Once complete, the ATS will provide a draft H&S Plan to the ACC for a 60-day review period. The ATS anticipates the plan to be available to the ACC by approximately July 2020.

The ATS is currently working on finalizing the 2020 annual operating plan (AOP) and expects to finalize this plan by June 2020.

Catchable Rainbow Trout Stocking into Swift Reservoir

Karchesky (PacifiCorp) provided a brief update on a topic that the ATS was currently discussing, which was reviewing the current stocking practices of catchable rainbow trout into Swift Reservoir in the spring. The main issue with stocking these fish is the possible concern over direct and/or indirect effects of these fish on juvenile salmon/steelhead in both Swift Reservoir and downstream of Merwin Dam (areas both designated as anadromous waters). In 2019, an estimated amount of over 3,000 hatchery rainbow trout were transported and released below Merwin Dam along with out-migrating juvenile salmon/steelhead. The ATS is currently discussing options and strategies for future stocking events in order to minimize potential effects. As part of these ongoing discussions, it was determined that a small number of fish (about 5,000) of the approximate total of 40,000 trout allocated for Swift Reservoir had been previously stocked into the Cowlitz PUD Power Canal just below Swift Dam as part of this effort. Karchesky indicated that while this had been a past practice, it was not formally called out in Section 8.6 of the Settlement Agreement, which specifically stipulates that rainbow trout are to be stocked into Swift Reservoir. PacifiCorp does not currently oppose this past practice, however believed that it should be formally discussed at the ACC, and if approved, then providing written notice to FERC of this change to Section 8.6 of the Settlement Agreement. Karchesky asked if any members of the ACC were opposed to continuing this past practice until additional information is available and a final solution can be developed through the ATS. Jim Byrne (TU) indicated that in the past he had not seen a lot of fishing activity in the power canal. Amanda Froberg (Cowlitz PUD) said that in the past the PUD had seen a lot of activity particularly around the fishing pier in the spring and after the fish had been stocked. There was no further discussion regarding this topic and no formal objection.

The ACC agreed with continuing the past practice of stocking a small number of catchable rainbow trout allocated to the Swift Reservoir recreational fishery into the Swift No. 2 Power Canal. PacifiCorp will notify the FERC of the temporary change to Section 8.6 of the Settlement Agreement. The ACC agreed further steps were needed to formalize this as a permanent change and that should be added to future agenda topics after the ATS makes its recommendation (will be listed as an action item).

Merwin Fish Collection Facility and General Operations ([Attachment C](#))

A total of 200 fish were captured at the Merwin Dam Adult Fish Collection Facility (MFCF) during the month of March. As is typical in March, the overwhelming majority of these fish were winter steelhead. A substantial proportion of these fish (30.8%) were of natural origin (NOR).

The Merwin Dam Fish Collection Facility ran continuously throughout the month of March. In an effort to reduce the risk of COVID-19 transmission, PacifiCorp has implemented a modified fish transport schedule. Under this modified operations schedule, the fish lift and conveyance system

operate 7 days per week, with fish sorting and transport taking place weekdays only. This modified schedule prevents the need to have contracted fisheries staff enter the Merwin adult trap over the weekend, reducing the risk of COVID-19 transmission. This modified schedule was implemented on March 21st, and will remain in effect until at least April 26th. Flow below Merwin Dam fluctuated between 2,300 and 2,550 cfs from March 1st through March 30th, when flows increased to approximately 7,000 cfs (Figure 1).

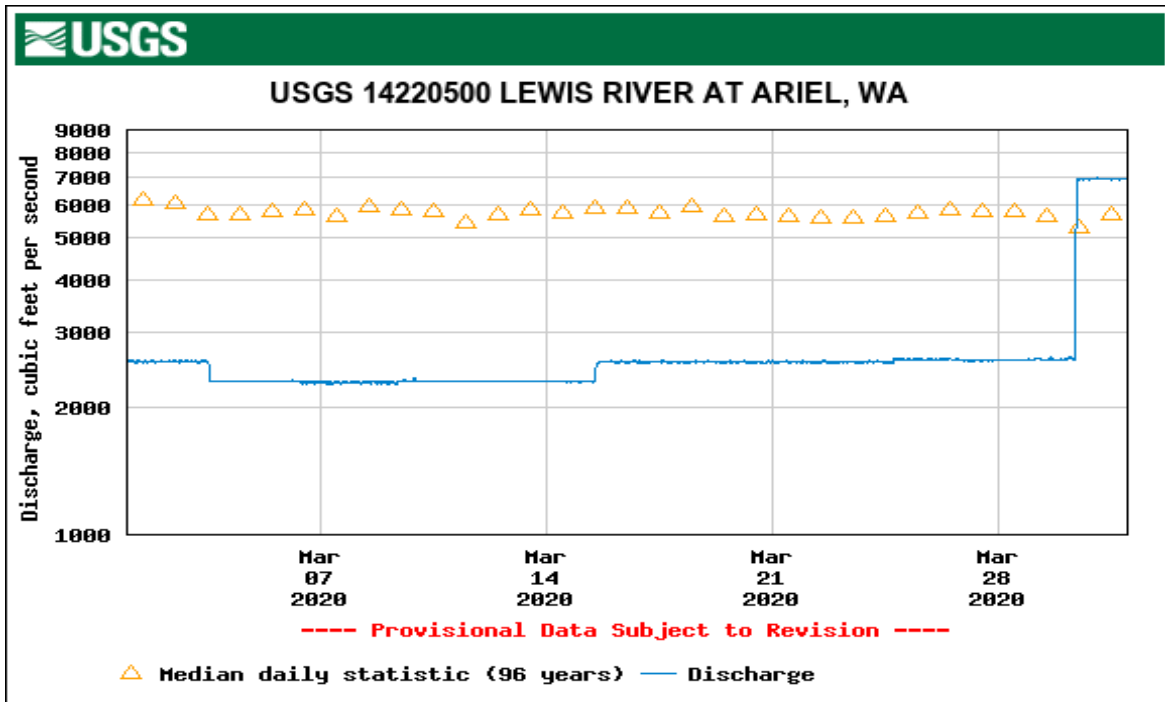


Figure 1. Discharge in cubic feet per second recorded at the USGS Ariel, WA gauge (14220500) located immediately downstream of Merwin Dam.

Upstream Transport (Attachment C)

Three (3) Blank Wire Tag (BWT) winter steelhead were captured by the end of December 2019 and were transported upstream as part of the 2020 run year. An additional 195 BWT's have been collected and transported upstream as of March 31st, bringing the 2020 run total to 198. A record number of natural origin (NOR) steelhead have been collected at the Merwin Adult trap in 2020 (Figure 2). Based on PIT tag recapture data, it is suspected that the majority of these fish were collected at the Swift FSC as juveniles in 2018. As of March 31st, a total of 45 NOR steelhead have been collected and transported upstream, bringing the total number of upstream steelhead to 243 (Table 1). In addition to the steelhead, eleven coho, four cutthroat, and two spring Chinook have been collected and transported upstream of Swift Dam in 2020.

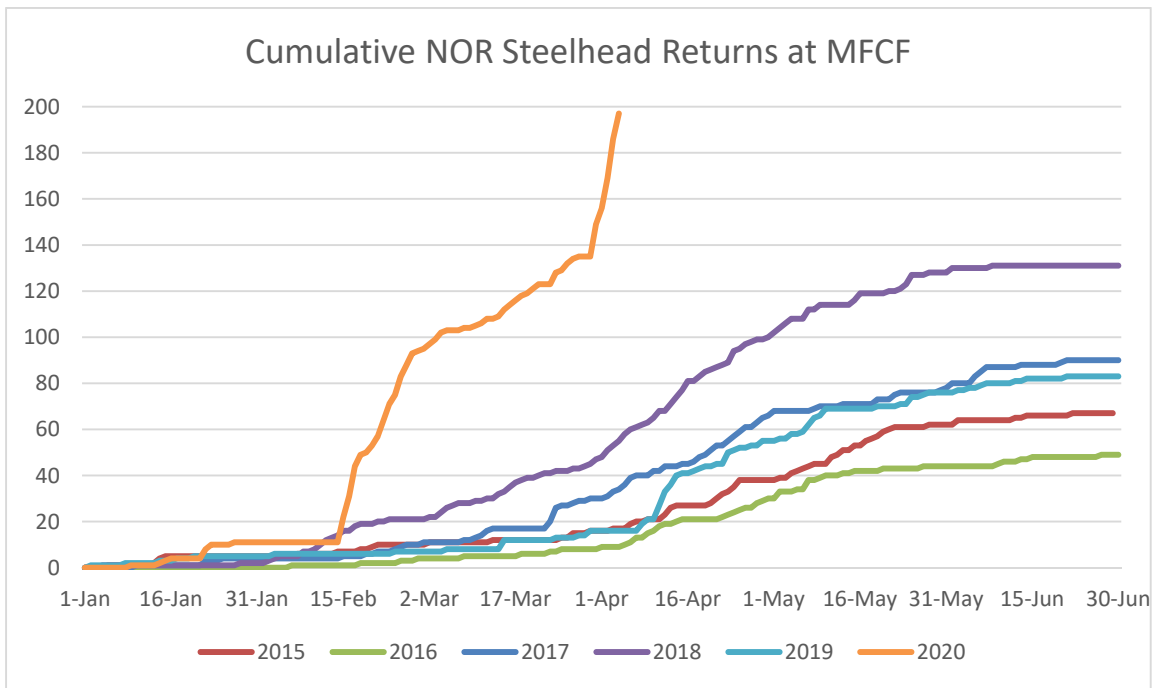


Figure 2. Cumulative number of Natural origin (NOR) steelhead collected at Merwin Adult Fish Collection Facility by year.

Table 1. Total number of adult winter steelhead transported upstream of Swift Dam by run-year.

Run Year	Male	Female	Total adult winter steelhead taken upstream of Swift Dam
2012	141	48	189
2013	440	301	741
2014	452	581	1,033
2015	746	477	1,223
2016	378	376	754
2017	331	261	592
2018	682	535	1,227
2019	527	486	1,013
2020	148	95	243

Swift Floating Surface Collector (**Attachment C**)

The Swift Reservoir Floating Surface Collector (FSC) was returned to service on March 3rd, following modifications to the starboard smolt flume. Heavy debris loading occurred during the first half of the month, requiring the vessel to be periodically turned off in order for debris to be removed. A total of 10,732 fish were collected at the FSC in the month of March, including a record 7,144 spring Chinook juveniles (Figure 3). Coho parr also made up a substantial proportion (25.4%) of the total catch in March.

Other

As of April 1, 2020 Ruth Tracy (U.S. Forest Service) retired and named J. D. Jones as the ACC representative on behalf of the Forest Service.

Agenda items for May 14, 2020

- Review April 9, 2020 Meeting Notes (**ACC COMMENTS DUE MAY 4, 2020**)
- ACC Structure and Ground Rules; Review edits and approve (ACC comments due by May 4, 2020)
- Rainbow Trout; formal decision from ATS
- Aquatic Fund Procedures Review
- In Lieu Update – Services Response
- Study/Work Product Update

Adjourn 1:09pm

Next Scheduled Meeting:

May 14, 2020
TBD
9:30 a.m. – 12:00 p.m.

Meeting Handouts & Attachments:

- Meeting Notes from 3/12/20
- Agenda from 4/9/20
- **Attachment A** – Request No. 2020-01: Input requested from ACC members on Lewis River Strategic, Monitoring and Bull Trout Passage Plans, April 8, 2020
- **Attachment B** – Draft Structure and Ground Rules document and decision making documents, April 8, 2020
- **Attachment C** – Lewis River Fish Passage Report (March 2020)

North Fork Lewis River Project

Request for Input Template

Request No. 2020-01: Input requested from ACC members on Lewis River Strategic, Monitoring and Bull Trout Passage Plans

Request Date: April 8, 2020

1. Representative and Affiliation

Todd Olson, Director Environmental Compliance, Renewable Resources, PacifiCorp

Amanda Froberg, Environmental Compliance Manager, Cowlitz PUD

2. Description and Justification of Request

- Introduction and background

Beginning in November 2011, PacifiCorp and Public Utilities District No. 1 of Cowlitz County (“Cowlitz PUD” together with PacifiCorp, the “Utilities”) began consultation with the members of the Lewis River Aquatic Coordination Committee (“ACC”) over the development of new information to submit to the Services for their determination if the additional fish passage facilities identified in the Agreement and in the Section 18 prescriptions were appropriate (the “New Information”). The Utilities submitted the New Information to the Services on June 24, 2016.

The Services responded on April 11 and 12, 2019, providing the Utilities with a preliminary determination under Section 4.1.9 of the Settlement Agreement. Specifically, NMFS proposed and USFWS concurred in the following actions:

- 1) To forego construction of the Merwin Downstream Facility (Section 4.6 of the Settlement Agreement) and the Yale Upstream Facility (Section 4.7);
- 2) To require PacifiCorp to establish the In Lieu Fund consistent with the requirements of Section 7.6 of the Settlement Agreement; and
- 3) To defer a decision whether to construct the Yale Downstream Facility (Section 4.5) and the Swift Upstream Facility (Section 4.8) until 2031 and 2035, respectively, so that performance of in lieu habitat restoration could be considered in that future decision.

In addition, the USFWS, in an April 12, 2019, letter, directed the Utilities to proceed immediately with the development of the following fish passage measures for bull trout (*Salvelinus confluentus*) pursuant to Section 4.10 of the Settlement Agreement:

- Yale Downstream Bull Trout Passage Facility
- Swift Upstream Bull Trout Passage Facility
- Yale Upstream Bull Trout Passage Facility

A determination by the USFWS regarding the Merwin Downstream Bull Trout Passage Facility is not due before 2025.

In response to the Services' preliminary determination, the Utilities have prepared drafts of the following documents regarding the project modifications and resource enhancement measures:

- Merwin In-Lieu Strategic Plan
- Lewis River Basin Implementation Monitoring Plan
- Bull Trout Passage Plan

Copies of these draft plans were provided to the ACC members on February 5, 2020 as part of the draft non-capacity amendment applications. The Utilities requested comments on the draft plans by May 13, 2020.

- **Requested Action: Input requested from the ACC**

In their preliminary determination letters, both Services requested ACC input on the implementation of habitat restoration and monitoring plans (NMFS), and bull trout passage facility designs (UFWS). In its April 11, 2019 letter (copy attached), NMFS provides that PacifiCorp work with the ACC to obtain the ACC's input on all restoration and monitoring plans. In its April 12, 2019 letter (copy attached), USFWS provides that PacifiCorp work with the ACC to design and implement the Yale Downstream Bull Trout Passage Facility, the Swift Upstream Bull Trout Facility, and the Yale Upstream Bull Trout Passage facilities.

3. ACC Input on Plans and Designs

The Utilities request the ACC provide input on restoration and monitoring plans, and bull trout passage facility designs as follows:

NMFS Requested Input for Strategic Plan and Monitoring Plan:

- (1) Merwin In-lieu Strategic Plan:
 - (a) Please provide your input on the Strategic Plan.
 - (b) Please explain the rationale for your input.
 - (c) What scientific information was used to inform your input?

- (2) Lewis River Basin Implementation Monitoring Plan
 - (a) Please provide your input on the Monitoring Plan.

- (b) Please explain the rationale for your input.
- (c) What scientific information was used to inform your input?

UFWS Requested Input for Bull Trout Passage Plan:

- (1) Yale Downstream Bull Trout Passage Facility
 - (a) Please provide your input on the bull trout fish passage facility design.
 - (b) What scientific information was used to inform your input?

- (2) Swift Upstream Bull Trout Facility
 - (a) Please provide your input on the bull trout fish passage facility design.
 - (b) What scientific information was used to inform your input?

- (3) Yale Upstream Passage Facility
 - (a) Please provide your input on the bull trout fish passage facility design.
 - (b) What scientific information was used to inform your input?

- (4) Passage protocols for the three bull trout passage facilities
 - (a) Please provide your input on the bull trout fish passage protocols.
 - (b) What scientific information was used to inform your input?

4. Related Additional Information or Notations

NMFS Letter to PacifiCorp
April 11, 2019

APR 1 2019



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

Mr. Mark A. Sturtevant
Managing Director, Renewable Resources
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, OR 97232

Re: Fish Passage Determination at the Lewis River Hydroelectric Projects

Dear Mr. Sturtevant:

A 2008 Federal Energy Regulatory Commission (FERC) License and Settlement Agreement (Agreement) for Lewis River Hydroelectric Projects, FERC project numbers 935, 2071, 2111, and 2213 in Cowlitz, Clark, and Skamania Counties, Washington, currently requires juvenile and adult fish passage at all three project dams.¹ Section 4.1.9 of the Agreement provides the opportunity for submission of new information to be considered by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (together the "Services") in determining whether fish passage requirements have become "inappropriate", and allows for an "in lieu" fund to execute support habitat restoration projects as an alternative. On June 24, 2016, PacifiCorp and Public Utility District No. 1 of Cowlitz County (Cowlitz PUD), hereafter the "Licensee", submitted new information to the Services related to the "appropriateness" of fish passage.

The following Agreement sections are pertinent to this decision:

- Section 4.5: Completion of a "Yale Downstream Facility" by 2021
- Section 4.6 : Completion of a "Merwin Downstream Facility" by 2025
- Section 4.7: Completion of a "Yale Upstream Facility" by 2025
- Section 4.8: Completions of a "Swift Upstream Facility" by 2025

Based on the new information, NMFS is hereby proposing:

- 1) To remove Sections 4.6 and 4.7 in-lieu of habitat restoration funding, and
- 2) To defer a decision on Section 4.5 and 4.8 until 2031 and 4.8 to 2035 (respectively). This would ensure that in-lieu habitat restoration funding used in lieu of fish passage facilities in Lake Merwin perform as proposed within the new information submitted by the licensee, and so that it could be considered in that decision.

¹To date, PacifiCorp has constructed the initial phases of fish passage by transporting adult salmon and steelhead from below Merwin Dam into 82 miles of habitat in uppermost reservoir above the third dam; Swift dam, and transporting juveniles from above Swift to below Merwin.



LAKE MERWIN

NMFS has made a preliminary determination that Section 4.6 and 4.7 (passage facilities in Lake Merwin) should be removed from the agreement in-lieu of approximately \$20 million² habitat restoration fund (Section 7.6.1.a of the Agreement). NMFS will make its final determination in consultation with the parties to the Settlement Agreement, as discussed below.

NMFS' justification relies on fish abundance estimates produced by a revised PacifiCorp and NMFS Ecosystem Diagnostic Treatment (EDT) analysis.³ Although the use of EDT for abundance estimates and management decisions is cautioned against (McElhany et al. (2010); Roni et al. (2018)), this modeling is currently the best available information for comparisons between the benefits of reintroduction/fish passage and in-lieu habitat restoration options for increasing salmon abundance. The revised EDT analysis offers adult fish abundance estimates under both scenarios, as well as the ability to adjust for estimated juvenile losses during outmigration due to collection efficiency of a fish collection/passage facility Table 1.

Table 1. Comparison of estimated EDT adult abundances, for reintroduction/fish passage to Lake Merwin, and full restoration of 22.5km of tributary habitat above Swift Reservoir using the \$20 million in-lieu monies. Percentages represent collection efficiency.

Species	Reintroduction			Restoration (22.5km)		
	30%	60%	95%	30%	60%	95%
Coho salmon	177	378	598	225	450	698
Winter steelhead	18	46	73	34	56	68
Chinook Salmon	0	0	0	113	203	293

Reintroduction and Passage

The EDT analysis estimates that reintroduction of coho salmon and winter steelhead to Lake Merwin and its limited tributary habitat (9.49 kilometers) could result in average abundances of 598 and 73 adult fish respectively (Table 1).⁴ The benefits of reintroduction would be immediately realized as the USGS found that Lake Merwin tributary habitats would support the spawning and juvenile rearing of coho salmon (Al-Chokhachy 2018). While no studies were completed on the potential success of steelhead reintroduction, NMFS assumes winter steelhead would respond similarly to coho salmon due to similar habitat preferences.

² Section 7.7.3 of the Agreement specifies Escalation of Costs and method/process for adjusting for inflation. The approximation is based on the inflation from the original commitment of \$15 million, NMFS understands that this calculation is subject to confirmation by PacifiCorp in accordance with the Agreement, if and when this proposed decision becomes final.

³ Upon review of EDT analyses submitted by PacifiCorp in the New Information report, NMFS found discrepancies with respect to stream miles, spawning locations and juvenile survival parameters inputted into the analysis. NMFS and PacifiCorp, fixed these errors, and reran the EDT analysis.

⁴ Assumes the Agreement stated juvenile collection efficiency of 95%, to date juvenile collection efficiency at the Swift floating surface collector, has not achieved a 30% collection efficiency for any species.

However, uncertainty exists with juvenile outmigration success within Lake Merwin due to the unknown collection efficiency of a juvenile downstream collection/passage structure and estimates of predation by two piscivorous fish species known to occupy the lake. Even assuming a 95% collection efficiency (per the Agreement), the loss of juvenile fish to existing predators could reduce the estimates of fish response to a level lower if not less than those predicted for restoration. Losses of juveniles in any form would directly impact future spawner abundance, as fewer fish would successfully migrate to the ocean. Smolt to adult recruitment is assumed to be 4% in the EDT analysis under all scenarios.

Restoration

NMFS understands that the estimated \$20 million in in-lieu fund could be applied to approximately 22.5 km of stream restoration⁵ and, when modeled with the assumption of a return to pristine conditions, average adult abundances estimates are slightly higher for coho salmon at 698 fish and lower for winter steelhead with 68 fish when compared to reintroduction (Table 1). However, there is a significant increase in the expected number of Chinook given that there is no potential spawning habitat for Chinook in Merwin reservoir.(Table 1). This analysis does not account for the potential juvenile rearing capacity for Chinook in Merwin reservoir if juveniles are placed into Lake Merwin from upstream areas.

Cost comparison

As detailed above, using the estimated \$20 million of in-lieu monies, the assumed increase in coho salmon and winter steelhead abundance from habitat restoration is very close to that of reintroduction within Lake Merwin with the added benefit of increasing Chinook salmon abundance in the restored habitats. The cost of installing downstream fish passage at Merwin Dam is speculative. It is anticipated that it could cost as much as \$50 million.⁶ The cost of upstream passage into Yale Reservoir from Lake Merwin is also speculative, but could also cost up to \$50 million. NMFS believes that proceeding with the \$20M in-lieu fund and habitat restoration projects is a prudent path, given the potential for comparable fish population benefits (between passage and habitat restoration) and the cost savings for the Licensee (as much as \$85M).

Monitoring and evaluation of in-lieu restoration

Monitoring and evaluation of habitat restoration projects to validate the efficacy of results of the EDT analysis will be required.

The empirical fish population benefits documented from the implementation of the Merwin in-lieu habitat restoration program and its associated monitoring program will be considered prior to NMFS determining whether fish passage is “inappropriate” for Sections 4.5 and 4.8 of the Agreement (fish passage facilities in Yale reservoir). As such, PacifiCorp or an approved agent

⁵ NMFS utilized best available published stream restoration costs to estimate a cost of \$875,521 dollars (2018 dollars) per kilometer of stream restoration. Restoration costs included floodplain restoration (\$180,954/km), instream restoration (\$91,454/km), large woody debris (LWD) placement (\$84,713/km), and riparian area restoration at (\$4.32/ m²). Riparian restoration was assumed at a 60m buffer on either side of the stream. Thus riparian restoration on 1km of stream would result in 120,000 m² of restored area at a cost of \$518,400.

⁶ The Swift downstream collection facility was built at a cost of \$45M, a similar juvenile collection facility built by Tacoma Power (FERC 460) cost \$52M.

would begin immediate restoration and monitoring⁷ activities, if and when this proposed decision becomes final. At a minimum, implementation and monitoring of would require:

- Aquatic Coordinating Committee (ACC) approval of all restoration and monitoring plans.
- Restoration and monitoring activities will take place in tributary habitats above Swift Reservoir. Monitoring activities will be statistically based with sufficient power to determine the independent fish population benefits accrued from implementation of the in-lieu habitat program.
 - Before/After Control/Impact (BACI) or similar statistical design for the before-after monitoring program must be used.
- Restoration activities shall address at a maximum 3 of the limiting factors identified by the EDT analysis, for a reach chosen to be restored, and monitored.
- Merwin in-lieu habitat restoration monies be should focused on stream reaches above Swift reservoir that benefit all three species, to maximize restoration benefit. There is a maximum of 92.5km of habitat that falls into this category. Further, restoration efforts should focus on stream reaches that are known to support all three species since reintroduction efforts began in 2012, and are unlikely to be affected by future natural and anthropogenic causes. These include:
 - Clearwater River (8.37km)
 - Clear Creek (22.96km)
 - North Fork of the Lewis River (22.69km)
 - Drift Creek (1.52km)

YALE RESERVOIR AND DAM

NMFS has opted to defer a decision on Section 4.5 until 2031 and 4.8 until 2035 (passage facilities in Yale Reservoir). This deferral would allow time for NMFS to assess the benefits of the in-lieu program at Lake Merwin and to reduce the amount of uncertainty there is between the realized benefits (adult abundances) of reintroduction/fish passage, and in-lieu habitat restoration.

Yale Reservoir and its tributary habitat are biologically more valuable for salmon recovery than habitat at Lake Merwin. There is also uncertainty as to whether there is enough total habitat available to restore to achieve benefits equivalent to passage, enough time to realize benefits, and the likelihood of achieving pristine conditions if in-lieu restoration was selected at Yale. The revised EDT analysis and comparison relative to Yale reservoir and its tributaries is presented in Table 2.

⁷ PacifiCorp and NMFS have verified that In-Lieu funds will not be used for monitoring purposes.

Table 2. Comparison of estimated EDT abundances, for reintroduction/fish passage to Yale Reservoir, and full restoration of 22.5km of tributary habitat above Swift Reservoir using the \$20 million in-lieu monies. Percentages represent collection efficiency.

Species	Reintroduction			Restoration (22.5km)		
	30%	60%	95%	30%	60%	95%
Coho salmon	506	976	1,494	225	450	698
Winter steelhead	86	170	240	34	56	68
Chinook Salmon	161	226	298	113	203	293

The new information provided by the Licensee revealed uncertainty on both the likelihood of success and potential benefits of reintroduction and fish passage into the Yale Reservoir, as well as the likelihood that an in-lieu fund and resulting habitat restoration would provide comparable population level benefits as reintroduction and passage.

Similar to the Merwin decision, the Licensee's estimated savings could reach \$85 million if the in-lieu habitat restoration program is undertaken instead of constructing fish passage. A delay in the decision on the appropriateness of passage at Yale will allow the Settlement parties to validate the achievement of the projected fish population benefits estimated to accrue from the Merwin in-lieu habitat fund over a 10-year implementation period. The fish population benefits documented from the implementation of the Merwin in-lieu habitat program can then be considered prior to NMFS determining whether the appropriate solution at Yale Dam is reintroduction and passage or the in lieu fund for habitat restoration.

NMFS is making these determinations regarding passage into Yale and Merwin reservoirs in accordance with section 4.1.9 of the Agreement; however, these determinations are preliminary in nature, and will require several further steps including revisions to the Agreement and NMFS' existing §18 fishway prescriptions before becoming final terms of the Agreement and project license. Once the Licensees have obtained necessary consent from the Agreement parties, NMFS will make the required revisions to its §18 prescriptions through a single reopener process. NMFS will begin the process of revising its §18 prescriptions at the earliest practicable point in the development of this plan.

Finally, NMFS's decision is consistent with the intent of the *Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West* by removing arguably unnecessary burdens from PacifiCorp and giving them the opportunity to demonstrate their preferred approach is viable by demonstrating that the estimated benefits to the fish populations can be realized before making a costly investment that would in turn be passed on to their rate-payers in the Columbia River Basin.

Please use this letter in your communication with FERC on this matter. We look forward to working with you and the Parties to the Agreement in furtherance of this plan.

Sincerely,



Chris Oliver
Assistant Administrator
for Fisheries

CC: Lewis River Project Settlement Agreement Aquatics Coordination Committee

References

Al-Chokhachy, R., Clark, C.L., Sorel, M.H., and Beauchamp, D.A., 2018, Development of new information to inform fish passage decisions at the Yale and Merwin hydro projects on the Lewis River, Washington—Final report, 2018: U.S. Geological Survey Open-File Report 2018-1190, 206 p., <https://doi.org/10.3133/ofr20181190>.

McElhany, P., Steel, E. A., Avery, K., Yoder, N., Busack, C., & Thompson, B. 2010. Dealing with uncertainty in ecosystem models: lessons from a complex salmon model. *Ecological Applications*, 20(2), 465-482.

Roni, P., Anders, P. J., Beechie, T. J., & Kaplowe, D. J. 2018. Review of Tools for Identifying, Planning, and Implementing Habitat Restoration for Pacific Salmon and Steelhead. *North American Journal of Fisheries Management*, 38(2), 355-376.

NMFS Letter to Cowlitz PUD
April 11, 2019

APR 11 2019



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

Mr. Steve Kern
General Manager
Public Utility District No. 1 of Cowlitz County
961 12th Avenue
Longview, WA 98632

Re: Fish Passage Determination at the Lewis River Hydroelectric Projects

Dear Mr. Kern:

A 2008 Federal Energy Regulatory Commission (FERC) License and Settlement Agreement (Agreement) for Lewis River Hydroelectric Projects, FERC project numbers 935, 2071, 2111, and 2213 in Cowlitz, Clark, and Skamania Counties, Washington, currently requires juvenile and adult fish passage at all three project dams.⁸ Section 4.1.9 of the Agreement provides the opportunity for submission of new information to be considered by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (together the "Services") in determining whether fish passage requirements have become "inappropriate", and allows for an "in lieu" fund to execute support habitat restoration projects as an alternative. On June 24, 2016, PacifiCorp and Public Utility District No. 1 of Cowlitz County (Cowlitz PUD), hereafter the "Licensee", submitted new information to the Services related to the "appropriateness" of fish passage.

The following Agreement sections are pertinent to this decision:

- Section 4.5: Completion of a "Yale Downstream Facility" by 2021
- Section 4.6 : Completion of a "Merwin Downstream Facility" by 2025
- Section 4.7: Completion of a "Yale Upstream Facility" by 2025
- Section 4.8: Completions of a "Swift Upstream Facility" by 2025

Based on the new information, NMFS is hereby proposing:

- 3) To remove Sections 4.6 and 4.7 in-lieu of habitat restoration funding, and
- 4) To defer a decision on Section 4.5 and 4.8 until 2031 and 4.8 to 2035 (respectively). This would ensure that in-lieu habitat restoration funding used in lieu of fish passage facilities in Lake Merwin perform as proposed within the new information submitted by the licensee, and so that it could be considered in that decision.

⁸To date, PacifiCorp has constructed the initial phases of fish passage by transporting adult salmon and steelhead from below Merwin Dam into 82 miles of habitat in uppermost reservoir above the third dam; Swift dam, and transporting juveniles from above Swift to below Merwin.



LAKE MERWIN

NMFS has made a preliminary determination that Section 4.6 and 4.7 (passage facilities in Lake Merwin) should be removed from the agreement in-lieu of approximately \$20 million⁹ habitat restoration fund (Section 7.6.1.a of the Agreement). NMFS will make its final determination in consultation with the parties to the Settlement Agreement, as discussed below.

NMFS' justification relies on fish abundance estimates produced by a revised PacifiCorp and NMFS Ecosystem Diagnostic Treatment (EDT) analysis.¹⁰ Although the use of EDT for abundance estimates and management decisions is cautioned against (McElhany et al. (2010); Roni et al. (2018)), this modeling is currently the best available information for comparisons between the benefits of reintroduction/fish passage and in-lieu habitat restoration options for increasing salmon abundance. The revised EDT analysis offers adult fish abundance estimates under both scenarios, as well as the ability to adjust for estimated juvenile losses during outmigration due to collection efficiency of a fish collection/passage facility Table 1.

Table 1. Comparison of estimated EDT adult abundances, for reintroduction/fish passage to Lake Merwin, and full restoration of 22.5km of tributary habitat above Swift Reservoir using the \$20 million in-lieu monies. Percentages represent collection efficiency.

Species	Reintroduction			Restoration (22.5km)		
	30%	60%	95%	30%	60%	95%
Coho salmon	177	378	598	225	450	698
Winter steelhead	18	46	73	34	56	68
Chinook Salmon	0	0	0	113	203	293

Reintroduction and Passage

The EDT analysis estimates that reintroduction of coho salmon and winter steelhead to Lake Merwin and its limited tributary habitat (9.49 kilometers) could result in average abundances of 598 and 73 adult fish respectively (Table 1).¹¹ The benefits of reintroduction would be immediately realized as the USGS found that Lake Merwin tributary habitats would support the spawning and juvenile rearing of coho salmon (Al-Chokhachy 2018). While no studies were completed on the potential success of steelhead reintroduction, NMFS assumes winter steelhead would respond similarly to coho salmon due to similar habitat preferences.

⁹ Section 7.7.3 of the Agreement specifies Escalation of Costs and method/process for adjusting for inflation. The approximation is based on the inflation from the original commitment of \$15 million, NMFS understands that this calculation is subject to confirmation by PacifiCorp in accordance with the Agreement, if and when this proposed decision becomes final.

¹⁰ Upon review of EDT analyses submitted by PacifiCorp in the New Information report, NMFS found discrepancies with respect to stream miles, spawning locations and juvenile survival parameters inputted into the analysis. NMFS and PacifiCorp, fixed these errors, and reran the EDT analysis.

¹¹ Assumes the Agreement stated juvenile collection efficiency of 95%, to date juvenile collection efficiency at the Swift floating surface collector, has not achieved a 30% collection efficiency for any species.

However, uncertainty exists with juvenile outmigration success within Lake Merwin due to the unknown collection efficiency of a juvenile downstream collection/passage structure and estimates of predation by two piscivorous fish species known to occupy the lake. Even assuming a 95% collection efficiency (per the Agreement), the loss of juvenile fish to existing predators could reduce the estimates of fish response to a level lower if not less than those predicted for restoration. Losses of juveniles in any form would directly impact future spawner abundance, as fewer fish would successfully migrate to the ocean. Smolt to adult recruitment is assumed to be 4% in the EDT analysis under all scenarios.

Restoration

NMFS understands that the estimated \$20 million in in-lieu fund could be applied to approximately 22.5 km of stream restoration¹² and, when modeled with the assumption of a return to pristine conditions, average adult abundances estimates are slightly higher for coho salmon at 698 fish and lower for winter steelhead with 68 fish when compared to reintroduction (Table 1). However, there is a significant increase in the expected number of Chinook given that there is no potential spawning habitat for Chinook in Merwin reservoir.(Table 1). This analysis does not account for the potential juvenile rearing capacity for Chinook in Merwin reservoir if juveniles are placed into Lake Merwin from upstream areas.

Cost comparison

As detailed above, using the estimated \$20 million of in-lieu monies, the assumed increase in coho salmon and winter steelhead abundance from habitat restoration is very close to that of reintroduction within Lake Merwin with the added benefit of increasing Chinook salmon abundance in the restored habitats. The cost of installing downstream fish passage at Merwin Dam is speculative. It is anticipated that it could cost as much as \$50 million.¹³ The cost of upstream passage into Yale Reservoir from Lake Merwin is also speculative, but could also cost up to \$50 million. NMFS believes that proceeding with the \$20M in-lieu fund and habitat restoration projects is a prudent path, given the potential for comparable fish population benefits (between passage and habitat restoration) and the cost savings for the Licensee (as much as \$85M).

Monitoring and evaluation of in-lieu restoration

Monitoring and evaluation of habitat restoration projects to validate the efficacy of results of the EDT analysis will be required.

The empirical fish population benefits documented from the implementation of the Merwin in-lieu habitat restoration program and its associated monitoring program will be considered prior to NMFS determining whether fish passage is “inappropriate” for Sections 4.5 and 4.8 of the Agreement (fish passage facilities in Yale reservoir). As such, PacifiCorp or an approved agent

¹² NMFS utilized best available published stream restoration costs to estimate a cost of \$875,521 dollars (2018 dollars) per kilometer of stream restoration. Restoration costs included floodplain restoration (\$180,954/km), instream restoration (\$91,454/km), large woody debris (LWD) placement (\$84,713/km), and riparian area restoration at (\$4.32/ m²). Riparian restoration was assumed at a 60m buffer on either side of the stream. Thus riparian restoration on 1km of stream would result in 120,000 m² of restored area at a cost of \$518,400.

¹³ The Swift downstream collection facility was built at a cost of \$45M, a similar juvenile collection facility built by Tacoma Power (FERC 460) cost \$52M.

would begin immediate restoration and monitoring¹⁴ activities, if and when this proposed decision becomes final. At a minimum, implementation and monitoring of would require:

- Aquatic Coordinating Committee (ACC) approval of all restoration and monitoring plans.
- Restoration and monitoring activities will take place in tributary habitats above Swift Reservoir. Monitoring activities will be statistically based with sufficient power to determine the independent fish population benefits accrued from implementation of the in-lieu habitat program.
 - Before/After Control/Impact (BACI) or similar statistical design for the before-after monitoring program must be used.
- Restoration activities shall address at a maximum 3 of the limiting factors identified by the EDT analysis, for a reach chosen to be restored, and monitored.
- Merwin in-lieu habitat restoration monies be should focused on stream reaches above Swift reservoir that benefit all three species, to maximize restoration benefit. There is a maximum of 92.5km of habitat that falls into this category. Further, restoration efforts should focus on stream reaches that are known to support all three species since reintroduction efforts began in 2012, and are unlikely to be affected by future natural and anthropogenic causes. These include:
 - Clearwater River (8.37km)
 - Clear Creek (22.96km)
 - North Fork of the Lewis River (22.69km)
 - Drift Creek (1.52km)

YALE RESERVOIR AND DAM

NMFS has opted to defer a decision on Section 4.5 until 2031 and 4.8 until 2035 (passage facilities in Yale Reservoir). This deferral would allow time for NMFS to assess the benefits of the in-lieu program at Lake Merwin and to reduce the amount of uncertainty there is between the realized benefits (adult abundances) of reintroduction/fish passage, and in-lieu habitat restoration.

Yale Reservoir and its tributary habitat are biologically more valuable for salmon recovery than habitat at Lake Merwin. There is also uncertainty as to whether there is enough total habitat available to restore to achieve benefits equivalent to passage, enough time to realize benefits, and the likelihood of achieving pristine conditions if in-lieu restoration was selected at Yale. The revised EDT analysis and comparison relative to Yale reservoir and its tributaries is presented in Table 2.

¹⁴ PacifiCorp and NMFS have verified that In-Lieu funds will not be used for monitoring purposes.

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The new information provided by the Licensee revealed uncertainty on both the likelihood of success and potential benefits of reintroduction and fish passage into the Yale Reservoir, as well as the likelihood that an in-lieu fund and resulting habitat restoration would provide comparable population level benefits as reintroduction and passage.

Similar to the Merwin decision, the Licensee's estimated savings could reach \$85 million if the in-lieu habitat restoration program is undertaken instead of constructing fish passage. A delay in the decision on the appropriateness of passage at Yale will allow the Settlement parties to validate the achievement of the projected fish population benefits estimated to accrue from the Merwin in-lieu habitat fund over a 10-year implementation period. The fish population benefits documented from the implementation of the Merwin in-lieu habitat program can then be considered prior to NMFS determining whether the appropriate solution at Yale Dam is reintroduction and passage or the in lieu fund for habitat restoration.

NMFS is making these determinations regarding passage into Yale and Merwin reservoirs in accordance with section 4.1.9 of the Agreement; however, these determinations are preliminary in nature, and will require several further steps including revisions to the Agreement and NMFS' existing §18 fishway prescriptions before becoming final terms of the Agreement and project license. Once the Licensees have obtained necessary consent from the Agreement parties, NMFS will make the required revisions to its §18 prescriptions through a single reopener process. NMFS will begin the process of revising its §18 prescriptions at the earliest practicable point in the development of this plan.

Finally, NMFS's decision is consistent with the intent of the *Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West* by removing arguably unnecessary burdens from PacifiCorp and giving them the opportunity to demonstrate their preferred approach is viable by demonstrating that the estimated benefits to the fish populations can be realized before making a costly investment that would in turn be passed on to their rate-payers in the Columbia River Basin.

Please use this letter in your communication with FERC on this matter. We look forward to working with you and the Parties to the Agreement in furtherance of this plan.

Sincerely,



Chris Oliver
Assistant Administrator
for Fisheries

CC: Lewis River Project Settlement Agreement Aquatics Coordination Committee

References

Al-Chokhachy, R., Clark, C.L., Sorel, M.H., and Beauchamp, D.A., 2018, Development of new information to inform fish passage decisions at the Yale and Merwin hydro projects on the Lewis River, Washington—Final report, 2018: U.S. Geological Survey Open-File Report 2018-1190, 206 p., <https://doi.org/10.3133/ofr20181190>.

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USFWS Letter to PacifiCorp
and Cowlitz PUD
April 12, 2019



United States Department of the Interior



FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181

In Reply Refer To:
FWS/R1/AES

APR 12 2019

Mark A. Sturtevant
Managing Director, Renewable Resources
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, Oregon 97232

Steve Kern
General Manager
Public Utility District No. 1 of Cowlitz County
961 12th Avenue
Longview, Washington 98632

Dear Messrs. Sturtevant and Kern:

This letter provides the U.S. Fish and Wildlife Service's (USFWS) response to New Information provided by PacifiCorp to the Aquatics Coordination Committee (ACC) on June 24, 2016, pursuant to Section 4.1.9 of the Settlement Agreement (Agreement).¹ The ACC subsequently convened a series of 17 facilitated meetings to review and discuss this information. Participants in those meetings included the following signatories to the Agreement: National Marine Fisheries Service (NMFS), United States Forest Service (USFS), Washington Department of Fish and Wildlife (WDFW), PacifiCorp, Cowlitz PUD, Yakama Nation, Cowlitz Indian Tribe, the Lower Columbia River Fish Recovery Board (LCRFB), and USFWS.

At the conclusion of the ACC review process in 2017, technical representatives for all parties, except PacifiCorp and Cowlitz PUD, continued to express support for completion of required fish passage within the Yale system, and uncertainty regarding Merwin fish passage. The Cowlitz Indian Tribe continued to support restoration of anadromous fish in both systems. The Services also met independently with USFS, WDFW, LCRFB, the Yakama Nation, and the Cowlitz Tribes in 2018. A Government-to-Government meeting was held between the USFWS' Pacific Regional Director and Cowlitz Tribe leaders at their request in 2018. Subsequently, USFWS has received letters from most of these parties restating the positions they held in 2017.

After reviewing the New Information and coordinating with NMFS, we defer and adopt NMFS's preliminary determinations regarding salmon and steelhead passage through the Projects.

¹ The various provisions of the Settlement Agreement are reflected in the Project licenses, the USFWS's and Nation Marine Fisheries Service's (NMFS) prescriptions under Section 18 of the Federal Power Act, and conditions in the Biological Opinions issued by USFWS and NMFS relating to the FERC licensing decisions. For simplicity, this letter will refer only to the Settlement Agreement terms.

Specifically, we propose:

1. that the Merwin Reservoir anadromous fish passage facilities (downstream passage at Merwin Dam and upstream passage at Yale Dam) anticipated in Section 4.6 and 4.7 of the Agreement should be removed in-lieu of the habitat restoration funding called for under Section 7.6.1(a); and
2. to defer a decision on the Yale Reservoir anadromous fish passage facilities anticipated under Sections 4.5 (downstream passage at Yale Dam) and 4.8 (upstream passage at the Swift Projects) until 2031 and 2035, respectively.

We adopt and incorporate by reference the rationale for those preliminary determinations set forth by NMFS in its letter dated April 11, 2019. The USFWS originally issued fishway prescriptions under section 18 of the Federal Power Act (FPA) for salmon/steelhead and bull trout at the Lewis River Project. In addition, the USFWS holds responsibility for bull trout conservation under the Endangered Species Act (ESA). The NMFS conclusions in its April 11 letter address salmon and steelhead only. Regarding bull trout, USFWS concludes that the New Information does not change the basic data and conclusions reached in our analysis of bull trout passage requirements.

Bull Trout Passage

Section 4.10 of the Agreement describes alternate fish passage facilities to be built if anadromous fish passage facilities are not constructed. In light of the proposal described above, we recommend bull trout fish passage prescriptions proceed immediately in a manner consistent with Section 4.10 of the Agreement. This recommendation is based on the urgent conservation needs and current status of the species. It is our assessment that immediate implementation of 4.10.1 provisions for Yale Downstream Bull Trout Facility will not preclude future options pertaining to Yale River upstream/downstream passage or in-lieu decisions. While the Agreement does not anticipate the specific outcome proposed by NMFS for Yale facilities (delayed final decision), the need for bull trout passage improvements for Cougar Creek and upper Swift River populations warrants implementing Section 4.10 prescriptions on a timeline unaltered by salmon/steelhead passage decisions. Our specific recommendations for each of the alternative bull trout passage facilities outlined in Section 4.10 are described below in chronological order.

1. Implement Yale Downstream Bull Trout Passage Facility

This facility would be constructed in the forebay of the Yale Reservoir Dam. It would be designed to collect adult and juvenile bull trout, and pass them below Merwin Dam. Per Section 4.10.1, this facility would be similar in magnitude and scale of a modular floating Merwin-type collector and is not intended to be passage facilities of the same magnitude and expense as the Yale Downstream Facility described in Sections 4.5.

PacifiCorp will work with USFWS and the ACC to design the facility, as described in Sections 4.10, to construct and operate a downstream bull trout collection and transport facility. The ACC would be similarly involved in development of protocols for managing the disposition of bull trout captured at this facility. The USFWS recommends that project planning commence as soon

as possible in order to construct the facility in 2021, the original date anticipated for bull trout passage in the Agreement.

2. Implement Swift Upstream Bull Trout Facility

This facility would be constructed in the upper end of Yale reservoir near the base of Swift Dams. An upstream trap and haul facility will facilitate bull trout release into either Yale or Swift reservoir based on genetic testing. Section 4.10.2 stipulates that this facility is not intended to be of the same magnitude and expense of upstream passage facility described in Section 4.7. This recommendation is based on our determination that current collect (tangle nets) and haul methods are not meeting bull trout performance standards in Section 4.1.4 of the Agreement. Capturing, handling, and holding fish at the hatchery for genetic testing has led to mortalities exceeding those described in Section 4.1.4.

The USFWS will work with the ACC and the Licensees to select an alternative passage facility design for the Swift Upstream Bull Trout Facilities, as described in Section 4.10.2. The Licensees must follow the provisions of Sections 4.1 through 4.1.3 as applicable when developing designs for the facility. Following consultation with the ACC and design approval by USFWS, the Licensees shall construct and operate the facility for the remaining term of the license. The ACC would be involved in development of protocols for managing the disposition of bull trout captured at this facility. The Swift Upstream Bull Trout Facility should be completed and operational on or before 2025, and planning for this facility should commence as soon as possible.

3. Implement Yale Upstream Passage Facility

This facility would be constructed at the upper end of Merwin reservoir near the base of Yale Dam. An upstream trap and haul facility will facilitate the capture and release of bull trout entrained into Merwin Reservoir. Bull trout would be transported to either Yale or Swift reservoir based on genetic testing. Section 4.10.2 stipulates that this facility is not intended to be of the same magnitude and expense of upstream passage facility described in Section 4.8.

This recommendation is based on our determination that current collect (tangle nets) and haul methods are not meeting bull trout performance standards in Section 4.1.4 of the Agreement. Capturing, handling, and holding fish at the hatchery for genetic testing has led to mortalities exceeding those described in Section 4.1.4.

The USFWS will work with the ACC and PacifiCorp to select an alternative passage facility design for the Yale Upstream Bull Trout Facilities, as described in Section 4.10.2. The Licensees must follow the provisions of Sections 4.1 through 4.1.3 as applicable when developing designs for the facility. Following consultation with the ACC and design approval by the USFWS, the Licensees shall construct and operate the facility for the remaining term of the license. The ACC would be involved in development of protocols for managing the disposition of bull trout captured at this facility. The Yale Upstream Bull Trout Facility should be completed and operational on or before 2025, and planning for this facility should commence as soon as possible.

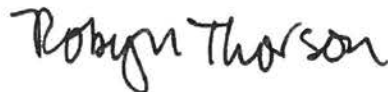
4. Determine Need for Merwin Downstream Bull Trout Passage Facility

A decision from USFWS regarding this facility is not due before 2025. This decision would be based on a determination that bull trout have increased sufficiently in number in Lake Merwin to warrant construction of this facility in the Merwin forebay. Similar to other provisions for alternate bull trout passage described in Section 4.10, this facility is not intended to be of the same magnitude and expense of upstream passage facility described in Section 4.6.

With regard to the proposal by NMFS to delay a decision under Section 4.1.9 for the passage facilities at the Yale Reservoir, we recognize that the Agreement, the FERC licenses, and our prescriptions under Section 18 of the FPA do not provide for that kind of change to the schedule. We therefore recognize that in order to implement the NMFS's proposal to delay a decision on passage at Yale Reservoir, it will require (1) discussion among the parties to the Settlement Agreement, including potential dispute resolution; (2) a request to amend the FERC licenses; and (3) amendment of the USFWS's Section 18 prescriptions.

In order to implement this proposal, along with NMFS, we intend to work with the ACC and PacifiCorp, consistent with the terms of the Agreement, on these issues, consistent with Sections 15.9 and 15.10. We stand ready to work with the parties to the Agreement and other interested parties as this proposal moves forward.

Sincerely,



Regional Director

cc: Lewis River Project Settlement Agreement Aquatics Coordination Committee (see attached)

**AUTHORIZED REPRESENTATIVES OF SETTLEMENT AGREEMENT PARTIES
and
CONSULTATION PARTIES UNDER 18 C.F. R. § 4.38(a)(7)**

Settlement Agreement Party	Authorized Representatives	Contact Information
American Rivers	Wendy McDermott Pacific Northwest Director	PO Box 1234 Bellingham, WA 98227 Telephone: 970-275-2057 Fax: E-Mail: wmcdermott@americanrivers.org
City of Woodland	Mayor Will Finn	100 Davidson Avenue, PO Box 9 Woodland, WA 98674 Telephone: 360-225-7999 Fax: 360-225-7336 E-Mail: finnw@ci.woodland.wa.us
Clark County	Patrick Lee	PO Box 5000 Vancouver, WA 98666 Telephone: (360) 397-2022 E-Mail: patrick.lee@clark.wa.gov
*Confederated Tribes and Bands of the Yakama Nation	Bob Rose	P.O. Box 151 Toppenish, WA 98948 Telephone: 509-865-5121 Fax: 509-865-4664 E-Mail: rosb@yakamafish-nsn.gov
Cowlitz County	Mike Moss Director Department of Public Works	1600 13 th Avenue S. Kelso, WA 98626 Telephone: 360-577-3030 Fax: 360-636-0845 E-Mail: mossm@co.cowlitz.wa.us
*Cowlitz Indian Tribe	William (Bill) Iyall, Tribal Chairman	PO Box 2547 1055 9th Avenue; Suite B Longview, WA 98632 Telephone: 360-577-8140 Cellular: 360-508-6370 E-Mail: wiyall@cowlitz.org
Cowlitz-Skamania Fire District No. 7	Don Stuart Commissioner Chair	11313 Lewis River Road Ariel, WA 98603 Telephone: 360-231-4231 Fax: E-Mail: donstuart@tds.net
Fish First	James Malinowski	P.O. Box 127 Amboy, WA 98601 Telephone: 360-247-6404 (home) Telephone: 360-992-2974 (work) Fax: 360-247-6405 E-Mail: jim.malinowski@icloud.com

Settlement Agreement Party	Authorized Representatives	Contact Information
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Lewis River Citizens at-Large	Noel Johnson	6412 NW Amidon Road Woodland, WA 98674 Telephone: (360) 225-9807 Fax: E-Mail: noel@lewisriver.com
Lewis River Community Council	Mariah Stoll-Smith Reese President	14900 Lewis River Rd. Ariel, WA 98603 Telephone: 360-225-7416 Fax: 360-231-4437 E-Mail: mariah@lelooska.org
*National Marine Fisheries Service	Joshua Ashline	1201 NE Lloyd Blvd, Suite 1100 Portland, OR 97232 Telephone: 503-736-4734 Fax: 503-231-2318 E-Mail: joshua.ashline@noaa.gov
National Park Service	Susan Rosebrough	909 First Avenue Seattle, WA 98104-1060 Telephone: 206-220-4121 Fax: 206-220-4161 E-Mail: Susan_Rosebrough@nps.gov
North Country Emergency Medical Service	Shawn Ford	404 S. Parcel Avenue Yacolt, WA 98675 Telephone: 360-686-3271 Fax: 360-686-8127 E-Mail:
PacifiCorp	Todd Olson	825 NE Multnomah, Ste. 1500 Portland, OR 97217 Telephone: 503-813-6657 Fax: 503-813-6633 E-Mail: todd.olson@pacificorp.com
Public Utility District No. 1 of Cowlitz County, Washington	Amanda Froberg Manager Environmental and Regulatory Services	P.O. Box 3007 Longview, WA 98632-0307 Telephone: 360-577-7585 Fax: 360-577-7559 E-Mail: afroberg@cowlitzpud.org

Settlement Agreement Party	Authorized Representatives	Contact Information
Rocky Mountain Elk Foundation, Inc.	Bob Nelson Hydropower Coordinator	45 Overmeyer Road Raymond, WA 98577 Telephone: 360-942-0234 Cellular: 360-686-9771 E-Mail: nelson338@aol.com
Skamania County	Pam Johnson	PO Box 790 Stevenson, WA 98648 Telephone: 509-427-3700 Fax: 509-427-3708 E-Mail: johnson@co.skamania.wa.us
The Lower Columbia Fish Recovery Board	Steve West	11018 NE 51 st Circle Vancouver, WA 98682 Telephone: 360 425-1553 Fax: 360 425-3276 E-Mail: swest@lcfrb.gen.wa.us
The Native Fish Society	Mark Sherwood Executive Director	813 7 th St. Suite 200A Oregon city, OR 97045 Telephone: 503-344-4218 Fax: E-Mail: mark@nativefishsociety.org
Trout Unlimited	Jim Byrne	28501 NW 7th Ave. Ridgefield, WA 98642 Telephone: (360) 857-8081 Fax: E-Mail: byrnejim7@gmail.com
*USDA Forest Service	Gina Owens Forest Supervisor Gifford Pinchot National Forest	501 E. 5 th Street, #404 Vancouver, WA 98661 Telephone: 360-891-5100 Fax: 360-891-5145 E-Mail: ginaowens@fs.fed.us
United States Bureau of Land Management	Jamie Connell State Director	1220 SW 3 rd Avenue Portland, OR 97204 Telephone: 503-808-6026 Fax: 503-808-6422 E-Mail:

Settlement Agreement Party	Authorized Representatives	Contact Information
*United States Fish and Wildlife Service	Tim Romanski	510 Desmond Drive SE, Ste. 102 Lacey, WA 98503-1263 Telephone: 360-753-6039 Fax: 360-753-9405 E-Mail: tim_romanski@fws.gov
*Washington Department of Fish and Wildlife	Kelly Susewind Director	PO Box 43200 Olympia, WA 98504-3200 Telephone: 360-902-2200 Fax: 360-902-2947 E-Mail: director@dfw.wa.gov
Washington State Recreation and Conservation Office, formerly known as <i>Washington Interagency Committee for Outdoor Recreation</i>	Kaleen Cottingham Director	P.O. Box 40917 Olympia, WA 98504-0917 Telephone: 360-902-3000 Fax: 360-902-3026 E-Mail: kaleen.cottingham@rco.wa.gov
Woodland Chamber of Commerce	John "JJ" Burke Executive Director	P.O. Box 1012 Woodland, WA 98674 Telephone: 360-225-9552 Fax: 360-225-3490 E-Mail: jj@woodlandwachamber.com

* Denotes consultation party for purposes of 18 C.F. R. § 4.38(a)(7).

REVIEW DRAFT
**Terrestrial and Aquatic Coordination Committees
Structure and Ground Rules
Revised May 2020**

I. Introduction

This document has been established to facilitate the purposes of the Lewis River Terrestrial Coordination Committee (TCC), the Lewis River Aquatics Committee (ACC) and corresponding subcommittees, collectively known as “Coordination Committees.” This document does not supersede language in the Lewis River Settlement Agreement or Federal Energy Regulatory Commission (Commission) Licenses issued June 26, 2008, which govern this process. Both Coordination Committees reserve the right to amend or modify this document as necessary and upon approval of the other committee.

II. Purpose

The purpose of the Coordination Committees is to coordinate:

- 1) For the TCC, the implementation of terrestrial protection, mitigation, and enhancement (PM&E) Measures described in Section 10 of the Settlement Agreement (Agreement) (including any exhibits, schedules, and appendices related to that Section).
- 2) For the ACC, the implementation of aquatics protection, mitigation, and enhancement (PM&E) Measures described in Sections 3 through 9 of the Agreement (including any exhibits, schedules, and appendices related to that Section). In accordance with Section 14.2.1, of the Settlement Agreement (see **Appendix C**), PacifiCorp and Cowlitz Public Utility District (PUD) have designated Coordinators for the Coordination Committees and alternative representatives for membership (see **Appendix A** for a complete list of TCC membership, **Appendix B** for a complete list of ACC membership).
- 3) The Committee Coordinator(s) shall, as their primary responsibilities, oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of their respective organizations as provided in the Agreement.
- 4) For purposes of this document, days shall be defined as calendar days.

III. Roles and Responsibilities (Section 14.2.3 of the Agreement, see Appendix C)

Each Coordination Committee has the following responsibilities:

- a. Coordinates and Consults on development of plans by the Licensees as provided in the Agreement;
- b. Reviews information and oversees, guides, and makes comments and recommendations by the date agreed to by the Coordination Committees on implementation and monitoring

- of the terrestrial and aquatic PM&E Measures, including plans and reports;
- c. Consults with the Licensees on their respective reports prepared under the Agreement and Licenses regarding implementation of the terrestrial and aquatic PM&E Measures as referred to in Section 14.2.6 of the Agreement, (see Appendix C);
 - d. Makes decisions, grants approvals, and undertakes any additional duties and responsibilities expressly given to the TCC or ACC with respect to the terrestrial or aquatic PM&E Measures;
 - e. Establishes, among other things, (i) procedures and protocols for conducting committee meetings and deliberations to ensure efficient participation and decision making; (ii) rules for quorum and decision making in the absence of any member; (iii) alternative meeting formats as desired, including phone or teleconference; and (iv) the methods and procedures for updating committee members on interim progress of development and implementation of the terrestrial and aquatic PM&E Measures;
 - f. As deemed necessary and appropriate by either Coordination Committee, establishes subcommittees to carry out specified committee functions and responsibilities described in this Section 14.2.3 of the Agreement (see **Appendix C**), and establishes the size -, membership -, and procedures for any such subcommittees; and
 - g. Discusses the protocols and the content of public information releases; provided that each Party, speaking only for itself and not the Coordination Committees, retains the right to release information to the public at any time without such discussion.

IV. Comments, Decisions and Recommendations (Section 14.2.4 of the Agreement, see Appendix C)

Each of the Coordination Committees shall make comments, recommendations, and decisions in a timely manner as provided below:

- a. Each Party represented on a Coordination Committee will have the authority to participate in all committee discussions relating to, and to provide input and advice on the date agreed to by the Coordination Committees; on decisions regarding implementation of the terrestrial and/or aquatic PM&E Measures. If a Representative requests an extension before the agreed upon due date, Licensees will consider accommodating an extension.
- b. The Coordination Committees shall strive to operate by Consensus.

“Consensus” means that all Parties participating in a committee or other decision-making group consent to a decision. Consent does not necessarily imply that a Party agrees completely with a particular decision, just that the Party is willing to go along with the decision rather than block the action.

- c. Whether or not the TCC or ACC has final authority over decisions on PM&E Measures, the Licensees and other Parties may proceed with actions necessary to implement the Licenses or the Agreement, even though Consensus is not achieved; provided that in such

cases where “Consultation” is required, the responsible Licensee or Licensees shall provide copies of the TCC or ACC comments to the Commission and highlight the areas of disagreement. If this circumstance occurs, and the Licensees do not adopt the recommendations of a TCC or ACC member, then the material filed with the Commission will also include the member’s comments along with Licensee’s reasons for not adopting the recommendations of a TCC or ACC member, based on Project specific (see Recital A of Settlement Agreement) information, as identified in the definition of consult or consultation in the Agreement and as follows:

*“Consultation” or “Consult” means that the Licensees shall obtain the views of and attempt to reach Consensus among the specified Parties whenever this Agreement requires the Licensees to Consult with one or more of the Parties. When Consultation is required under this Agreement, the Licensees shall allow a minimum of thirty (30) days for the specified Parties to provide comments prior to filing written plans, reports, or other items with the Commission. If Consensus is not reached, the Licensees shall take action according to the schedule provided in this Agreement or the New Licenses and shall describe to the Commission how the Licensees’ submission accommodates the comments and recommendations of the Parties. If the Licensees do not adopt a recommendation, the filing shall include the Licensees’ reasons for not adopting the Parties’ recommendations, based on Project-specific information. The Licensees shall provide the Commission with a copy of the Parties’ comments. Any Party may seek to resolve such disagreements in accordance with the Alternative Dispute Resolution (ADR) Procedures provided under Section 15.10 of the Agreement (see **Appendix C**). The Parties may submit their own comments to the Commission.*

- d. Where one or more Parties have approval authority under this Agreement, Licensees shall notify the Commission of any approvals that were not obtained, include the relevant comments of the Parties with approval authority, describe the impact of the lack of approval on the schedule for implementation of PM&E Measures, and describe proposed steps to be taken to gain the approval, including dispute resolution.
- e. In no event shall the Coordination Committees increase or decrease the monetary, resource, or other commitments made by PacifiCorp and the PUD in the Agreement; override any other limitations set forth in the Agreement; or otherwise require PacifiCorp to modify its three Projects’ facilities without PacifiCorp’s prior written consent or require Cowlitz PUD to modify its Project’s facilities without Cowlitz PUD’s prior written consent, which consent may be withheld at the applicable Licensee’s discretion.
- f. At any juncture where Consultation, discussion or other contact with the either the TCC or ACC is required by the Agreement or Licenses, when requested by the “Services” (National Oceanic and Atmospheric Administration National Marine Fisheries Service and US Fish and Wildlife Service) or as required by the Agreement, the respective Coordination Committee Coordinator shall schedule an opportunity to discuss the relevant issue with the respective Coordination Committee. This event shall consist of either a conference call, in-person meeting, or other appropriate forum to enable full consideration of the issue.

V. Roles of the Parties

Interested Parties

Interested parties are those people or entities that are interested in TCC and/or ACC activities, but were not Parties to the Agreement (e.g., general public) or are Agreement Parties that have not designated Coordination Committee representatives for membership. To the extent desired by an individual or party, they may receive respective Coordination Committee information and attend meetings; however they will not be included in the Consensus process or during confidential sessions, unless so designated by the respective party. Time will be provided at each meeting for public comment as needed and determined by respective Coordination Committees (e.g., 15 minutes before lunch break and 15 minutes at conclusion of meeting).

Designated Representatives for Membership

Designated primary and alternate representatives for membership (Representatives), see **Appendices A and B**, are Parties to the Settlement Agreement that have identified (in writing) Representatives to participate in the TCC and/or ACC. Representatives, or their designated alternates in the absence of primary Representatives, will have the authority to participate in all respective Coordination Committee discussions and to provide input, advice and voting authority on decisions regarding implementation of the terrestrial or aquatic PM&E Measures in the Agreement or Licenses. Representatives are included in the Consensus process. At any time a Representative may provide proxy representation to either the TCC or ACC via written or electronic mail notification to the Licensees' Coordinators. It is expected that TCC Representatives will request to meet in a confidential manner specific to discussions regarding land acquisition interests. Those Representatives wishing to participate in such meetings will be required to sign a Confidentiality Agreement. Since it is unlikely that the ACC will need to conduct confidential discussions, no Confidentiality Agreement has been prepared for ACC Representatives at this time.

Licensees' Coordinators

The Licensees' Coordinator(s) oversee the coordination and implementation of the respective terrestrial and aquatic PM&E Measures that are the responsibility of their respective organizations (PacifiCorp or PUD of Cowlitz County) as provided in the Agreement. The Coordinators may be the Licensees' Representatives if so designated. The Coordinators shall act as full participants in the Coordination Committee process and, as appropriate, will take the lead in developing necessary information and preparing formal documents.

Chairperson(s)

Generally, the role of the Chairperson is to lead the meetings effectively and ensure the written structure and ground rules are followed. Responsibilities include opening and closing the meetings on time, review and modification of the meeting agenda, introducing the purpose and topics on the agenda, introduce guests, ensure participants are provided equal time when discussing issues, ensure that discussion remains relevant, and call for consensus votes when necessary.

Consultants

A Consultant will serve as a source of technical expertise to the appropriate task or assignment. A Consultant will not have the authority to participate as a Coordination Committee Representative on behalf of or bind any Party unless the Party specifically delegates that authority (in writing) on specific issues, and informs the other Representatives about such delegation.

Facilitator

If deemed necessary by the Licensees or the TCC or the ACC, a facilitator may be utilized during a part or all of the committee proceedings. The facilitator is an independent third party. The facilitator's role is to help reach Consensus. The facilitator will help the Representatives to identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, reach resolution of issues (facilitate and mediate as necessary). The facilitator will also help the Parties to stay organized and keep track of issues, committee progress, and assignments. The facilitator may assist the development of agendas (for review and input by Representatives) and focus discussions and efforts. If either the TCC or ACC deems that an outside facilitator is unnecessary at any time, the Licensee(s) Coordinator(s) or any other Representative may assume that role, as determined by the respective committee.

VI. Ground Rules

The Coordination Committee meetings are a process that is subject to the following ground rules. These ground rules are not intended to modify or limit any party's legal rights, authorities, or remedies.

VII. Meetings

The meetings will be open to the public, who may observe and provide comment at the appropriate time. Non-member participants (i.e. interested parties) cannot participate in the determination of Consensus. The Coordination Committees may schedule meetings that are not open to non-ACC or TCC participants; confidential or otherwise. Consultants and legal representatives of the Parties shall not act as advocates during Coordination Committee meetings unless they have been designated as a Representative for a Party.

The Coordination Committees will have the respective meeting times:

- 1) The TCC will meet regularly from 9:00am until 3:00pm on the second Wednesday of each month unless determined otherwise by the TCC.
- 2) The ACC will meet regularly from 9:30am until 3:00pm on the second Thursday of each month unless determined otherwise by the ACC.

In general, Representatives of the Coordination Committees shall be given a minimum of thirty (30) days' notice prior to any meeting, unless otherwise agreed to by the Representatives. This does not preclude the Coordination Committees from conducting meetings with less notice as needed.

Agendas

Agenda items for the following TCC or ACC meeting will be determined by Representatives at the close of each meeting. Agendas will identify when decisions are expected to be made. Representatives may contact the Coordinator(s) at any time to suggest additional agenda items. The agenda for each meeting shall be distributed at least one (1) week in advance of the meeting date. At the beginning of each meeting, the agenda will be reviewed, edited, and amended as necessary by the Representatives. A public comment period will be included in each meeting agenda as needed. The Coordinators shall arrange and provide a draft agenda for any additional TCC, ACC or Subcommittee meetings formed by the Coordinator or at the request of any two Representatives on that committee. The request shall be sent simultaneously to all Representatives of the respective committee. (See section 14.2.5 of the Agreement, or **Appendix C**).

Meeting Notes

The Coordinators will provide for the preparation, review and distribution of draft meeting notes within seven (7) days following the committee meeting. Representatives may provide editorial comments directly to the Coordinators by email within ten (10) days prior to the next meeting. Edited meeting notes will be distributed to the ACC with the meeting agenda seven (7) days prior to the next meeting. ~~but substantive~~ Substantive comments should be raised during the review of the notes at the next meeting for discussion and resolution, as necessary. Following that meeting, the Coordinators will finalize the meeting notes and distribute to the Representatives. Any changes to meeting notes that were suggested by a Representative, but not accepted by the TCC or ACC for inclusion, will be appended to meeting notes.

For large attachments (e.g., presentations), a link will be provided in the meeting notes directing reviewers to the attachment on the PacifiCorp website. All attachments are considered part of the meeting notes and subject to review.

Coordination Committee Written Record

When the TCC or ACC has reached Consensus on an action item(s) (See Decision Making below), the decision will be recorded in the notes of the meeting. Meeting notes will be provided to respective committee Representatives for review prior to the following regularly scheduled meeting.

VIII. Responsibilities of Coordination Committee Representatives

Attendance

Representatives will make a concerted effort to attend meetings and inform the Coordinators in advance of any absence at a TCC, ACC, or Subcommittee meeting or any change in representation. If possible, each Representative will have designated one or more alternates who can represent their organization when needed. A teleconference line will be available at each meeting for Representatives who cannot attend in person. Representatives attending by teleconference, or who have designated a proxy (in writing), are considered present at the

meeting, and will be included in the Consensus process.

Preparation

Representatives will make a concerted effort to complete action items, come prepared for meetings, and review previously distributed material relating to agenda items. If a Representative is new to the TCC or ACC, the committee should provide a short introduction briefing during the committee meeting. If a Representative would like the TCC or ACC to consider a specific proposal, that Representative will notify the Coordinator(s) to include the item on the agenda, and prepare and provide a “Request for Decision” template (Appendix D) for distribution to the ACC along with meeting notes and agenda ~~whatever written material that may be useful to the Representatives and allow for a at least seven (7) seven (7) days review period~~ prior to the meeting in which the proposal will be discussed.

Emergent issues (e.g., trap outages, stream flow variations, FERC submittals, etc.) are not subject to the 10-day preparation protocol and may be presented at the meeting without prior notification.

Participation

Each Representative is expected to be a willing contributor at meetings, to communicate actively, to share all necessary factual information, and to strive for Consensus on a timely basis. Each Representative is expected to be open minded, to listen to others, to respect others’ points of view, to be direct and considerate, to show respect for the other Representatives, to suggest solutions, and to be willing to explain their concerns to others. If a Representative has a personal communication device, they will strive to limit its use in a manner that is least disruptive to meeting participants (i.e. turn it off or to meeting mode during meetings).

Authority

If a Representative does not have authority to bind its organization, the Representative will keep its organization briefed on an on-going basis about the activities of the respective Coordination Committee, the issues being addressed, and possible solutions to those issues. The Representative will incorporate the input they have received from their internal discussions into their participation at the TCC and/or ACC. As previously stated, at any time a Representative may provide proxy representation to either the TCC or ACC via written notification to the Licensees’ Coordinators.

IX. Meeting Guidelines

Response Time

Representatives will have at least thirty (30) days unless otherwise agreed to by the TCC or ACC Representatives or the period as specified by the Settlement Agreement or Licenses, to review reports, documents, and draft deliverables to be filed with the Commission, so that Representatives can meaningfully participate in the collaborative process. In some instances, additional time will be provided to enable the Representatives’ internal review as agreed to by the Coordination Committee Representatives. Specifically, Representatives will have sufficient

time for internal review of major policy matters before making decisions on such matters. Future decision points will be noticed in meeting notes.

Brainstorming

To allow open discussion and collaboration, Representatives will be encouraged to “brainstorm” a variety of solutions to specific issues. When a Representative identifies possible solutions as part of this process it is on behalf of the Coordination Committee, not their individual organizations, and a Representative will not be held to any brainstorming ideas until such time as they have indicated a willingness to agree with a proposed solution.

Decision Making

The TCC and ACC will make decisions by Consensus, as defined in the Agreement and Page 2 of this document. With respect to assuring that all Representatives have a voice in the Consensus process, the following method will be applied:

- 1) Discuss the issue to ~~surface-identify~~ all points of view. Invite everyone to speak.
- 2) The group ~~may will~~ decide when there has been enough discussion about a topic and ~~they~~ are ready for a decision ~~vote. to be scheduled.~~
- 2)3) ~~_____ Votes in favor and against shall be tallied from each Representative present, or from Representatives identified through written proxy by absentee Representatives prior to the meeting.~~
- 3)4) _____ Those voting in the **minority** get the floor. They’re invited to say whatever they want and convince others of the rights of their view by:
 - Adding to the body of information already presented.
 - Clarifying their position.
 - Point out flaws, errors, or deficiencies in the other’s point of view.
- 4)5) _____ Continue to ask those in the minority:
 - Do you think you have now been heard by the others in the group?
 - Is there more you want to say?
 - Are you ready to have the entire group vote again?
- 5)6) _____ Vote again. Those voting in the **minority** again get the floor.
- 6)7) _____ Invite them again to voice their argument to try and convince others to agree with their point of view.

This process will continue until those in the minority are able to say: “We are clear about what the majority would like to do. While we personally would not make that choice, we do think the others understand what our alternative is. We’ve had sufficient opportunity to sway others to our point of view, and we do think we have been heard.”

If agreement is not possible, minority parties may pursue Dispute Resolution (see below), or other agreed upon approach.

~~If the Settlement Agreement or the Licenses requires “Consultation” or to “Consult” the Agreement definition previously identified will be applied.~~

To account for the absence of a Representative during a decision making process and for which no proxy is authorized, decisions will be considered “informal” for a period of seven (7) days, post-decision, unless extended by the Committee. If all committee Representatives are present or have provided a proxy, the informal period is not needed. The Coordinators will notify absent parties of the “informal” decision via email promptly after the TCC or ACC meeting and request a decision response by the end of the seven (7) day period. If a Representative fails to respond ~~in~~ during the seven (7) day period, their silence will be considered as no objection to the decision.

Documentation of coordination committee decisions

Representatives requesting review or decision by the ACC, shall complete the ‘Request for Decision’ template (Appendix D) for distribution to the ACC prior to the meeting as described under ‘Preparation’. A completed ‘Request for Decision’ template shall be attached to the meeting notes for the meeting in which the request was considered. Decisions by the ACC shall follow procedures outlined under “Decision Making”.

Not all decisions require a completed template, however, any decisions that may deviate from the Settlement Agreement intent or goals, or affect existing fishery management goals and actions should require presentation of a completed template to the ACC. The ACC through consensus decision making may decide not to act, or defer action on any requested action or decision.

Commented [LE1]: Draft language related to “triggers” requiring a decision template and formal approval process.

Tracking of coordination committee decisions

The Coordinators will track the progress of the Coordination Committees by maintaining an annotated list of issues that identifies specific issues, status of the issues, and resolutions. While a Representative will not be precluded from reopening a resolved issue, the Representatives will make a concerted effort to move forward once decisions have been made and to only request that the group revisits decisions if Representatives wish to discuss information or perspectives not previously shared with the committee. A record of decisions matrix (Appendix E) shall be maintained to provide a list of decisions made each year by the ACC or TCC. This record shall be included in the Licensees ACC/TCC annual report filed with the FERC in April of each year and maintained on the PacifiCorp website.

Dispute Resolution

The Coordinators or facilitator will use a variety of dispute resolution techniques, including mediation, to work through difficult issues and reach Consensus. If necessary, the Representatives may follow the Alternative Dispute Resolution Procedures as defined in Section 15.10.2 of the Agreement (see **Appendix C**).

Caucuses

Time will be allowed at each meeting for caucuses, as necessary.

Information

Representatives will have access to all documents developed during Coordination Committee activities. The Coordinators and all Representatives will distribute or make available via a website (<http://www.pacificorp.com/es/hydro/hl/lr.html#>) or email necessary information on a timely basis to all the Representatives. Some information (most likely from the TCC) will need to be subject to a Confidentiality Agreement. It is the responsibility of a Representative providing confidential information to ask the group to treat it confidentially. All Representatives will honor the Confidentiality Agreement to the limits defined by the law. To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, if Representatives use such data/information outside of the context of meetings or activities, they will appropriately qualify the data/information.

X. Annual Reports

The Coordinators for the committees shall prepare and file with the Commission detailed annual reports on the TCC and ACC activities, monitoring and evaluations, and implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year, as well as plans for the coming year as required in the Agreement. The annual reports may also include, but not be limited to, plans and reports required pursuant to Sections 4.9.1, 7.7.1 8.2.3, 8.2.4, 10.5, 10.8.3 of the Agreement (see **Appendix C**), and any other applicable sections. Copies of such reports will be made available to each Party. The annual reports shall be prepared in Consultation with the Coordination Committee Representatives and shall be submitted to the appropriate committee for review each year, commencing after the Effective Date. Committee Representatives shall have a minimum of thirty (30) days to review and provide comment on a draft report before a final report is prepared and filed with the Commission. The Licensees shall submit the final report to the Commission not later than thirty (30) days after the close of the comment period. To the extent that comments are not incorporated into the final report, an explanation will be provided in writing, and such explanation shall be included in the report.

Appendix A - Representatives and Alternates for Membership on the TCC

TCC Representative	Organization	Alternate
<u>None designated</u>	American Rivers	None Designated
Public Works Director	City of Woodland	<u>None designated</u>
None Designated	Clark County	None Designated
None Designated	Cowlitz County	None Designated
Nathan Reynolds	Cowlitz Indian Tribe	Erik White
None Designated	Cowlitz-Skamania Fire District No. 7	None Designated
None Designated	Fish First	None Designated
None Designated	Lewis River Citizens at-large	None Designated
Mariah Stoll-Smith Reese	Lewis River Community Council	None Designated
Steve Manlow	Lower Columbia River Fish Recovery Board	Steve West
<u>Joshua Ashline</u>	National Marine Fisheries Service	None Designated
None Designated	National Park Service	None Designated
None Designated	North County Emergency Medical	None Designated
Kendel Emmerson	PacifiCorp (PacifiCorp Co-Chair)	Summer Peterman
Amanda Froberg	PUD of Cowlitz County (PUD Co-Chair)	None Designated
Bill Richardson	Rocky Mountain Elk Foundation	Ray Crosswell
None Designated	Skamania County	None Designated
None Designated	The Native Fish Society	None Designated
None Designated	Trout Unlimited	None Designated
None Designated	US Bureau of Land Management	None Designated
Tim Romanski	US Fish & Wildlife Service	None Designated
None Designated	USDA Forest Service	<u>JD Jones</u>
Peggy Miller	Washington Dept. of Fish & Wildlife	Eric Holman
None Designated	Washington Interagency Committee	None Designated
None Designated	Woodland Chamber of Commerce	None Designated
<u>Bill Sharp</u>	Yakama Nation	Joanna Meninick

Appendix B - Representatives and Alternates for Membership on the ACC

ACC Representative	Organization	Alternate
None Designated	American Rivers	None Designated
Public Works Director	City of Woodland	None Designated
None Designated	Clark County	None Designated
None Designated	Cowlitz County	None Designated
Eli Asher	Cowlitz Indian Tribe	Pete Barber
None Designated	Cowlitz-Skamania Fire District No. 7	None Designated
Jim Malinowski	Fish First	None Designated
None Designated	Lewis River Citizens at-large	None Designated
Mariah Stoll-Smith Reese	Lewis River Community Council	None Designated
Steve Manlow	Lower Columbia River Fish Recovery Board	Steve West
<u>Joshua Ashline</u>	National Marine Fisheries Service	None Designated
None Designated	National Park Service	None Designated
None Designated	North County Emergency Medical	None Designated
Erik Lesko	PacifiCorp (PacifiCorp Co-Chair)	Chris Karchesky
Amanda Froberg	PUD of Cowlitz County (PUD Co-Chair)	None Designated
None Designated	Rocky Mountain Elk Foundation	None Designated
None Designated	Skamania County	None Designated
Bill Bakke	The Native Fish Society	None Designated
Jim Byrne	Trout Unlimited	Brice Crayne
None Designated	US Bureau of Land Management	None Designated
Tim Romanski	US Fish & Wildlife Service	None Designated
<u>To be named</u>	USDA Forest Service	<u>JD Jones</u>
<u>Bryce Glaser</u>	Washington Dept. of Fish & Wildlife	<u>Josua Holowatz</u>
None Designated	Washington Interagency Committee	None Designated
None Designated	Woodland Chamber of Commerce	None Designated
<u>Bill Sharp</u>	<u>Yakama Nation</u>	None Designated

XI. Appendix C

Lewis River Hydroelectric Projects Settlement Agreement

4.9.1 Collect-and-Haul Programs. Until the earlier of (a) operation of the Yale Upstream Facility Swift Upstream Facility or (b) alternative measures are implemented as provided under Section 4.9.2 below, and unless otherwise directed by USFWS, PacifiCorp shall implement the collect-and-haul programs at Yale tailrace and Cowlitz PUD and PacifiCorp shall implement the collect-and-haul program below Swift No. 2. A description of the collect-and-haul programs to be implemented below Swift No. 2 and at Yale tailrace is provided on attached Schedule 4.9.1. The operational practices at Yale included on Schedule 4.9.1 are not precluded by Section 4.1.6. PacifiCorp shall provide for the transport of bull trout collected at the Yale tailrace to Yale Lake. The Licensees shall provide for the transport of bull trout collected at Swift No. 2 to above Swift No. 1. Upon the request of and subject to approval by USFWS Licensees, in Consultation with the ACC, shall develop criteria, based on the latest research, to determine if, when, and where alternative release locations are needed. Any such alternative locations shall be accessible by transport truck or other mutually acceptable transportation system. At the direction of USFWS, the Licensees (PacifiCorp for the Yale tailrace, and PacifiCorp and Cowlitz PUD for below Swift No. 2) shall provide for the transport of bull trout to such alternative locations. Within 12 months from the Effective Date, and annually thereafter, the Licensees, in Consultation with the ACC and with the approval of USFWS, shall prepare a Bull Trout Collection and Transport Program outlining the manner of and schedule for bull trout collection and passage at Project facilities, incorporating as appropriate either (1) the collection method identified in this Section 4.9.1 and testing of alternative interim collection methods as provided in Section 4.9.2 below; or (2) an alternative collection method developed pursuant to Section 4.9.2. The Licensees may propose minor modifications to the program identified in Schedule 4.9.1 as part of the Bull Trout Collection and Transport Program. The Licensees shall not implement any modifications to the Bull Trout Collection and Transport Program until USFWS has approved those changes.

7.7.1 Review. The Licensees shall provide an annual report regarding Aquatics Fund activities and expenditures under Section 7.5, and PacifiCorp shall provide such annual reports regarding In Lieu Fund activities and expenditures under Section 7.6, both including any monitoring information collected regarding Resource Projects or mitigation measures implemented through the Aquatics and In Lieu Funds. Such annual report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6. Each Licensee shall make or cause to be made available its underlying records relating to the Aquatics Fund, and PacifiCorp shall make available its underlying records relating to the In Lieu Fund, for review by the Parties.

8.2.3 Annual Operating Plan. The Licensees shall provide for the implementation of the Hatchery and Supplementation Plan through an annual plan (“Annual Operating Plan”). The Annual Operating Plan shall be consistent with the Hatchery and Supplementation Plan. The Licensees, in Consultation with the hatchery managers and with the approval of the Services, shall develop the initial Annual Operating Plan as part of the Hatchery and Supplementation Plan. The Licensees shall develop subsequent Annual Operating Plans in Consultation with the hatchery managers and subject to the approval of the Services. The Annual Operating Plan may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

The Annual Operating Plan shall, at a minimum, contain: (1) a production plan, which shall specify the species and broodstock sources; (2) the current Hatchery Target and Juvenile Production Target for each species to be produced at the Hatchery Facilities; (3) a release plan which shall identify by species the rearing schedule and planned distribution of fish and the schedules and locations for releases; (4) a list of facility upgrades to be undertaken that year; and (5) a description of relevant monitoring and evaluation to be undertaken that year.

8.2.4 Reporting Requirements. On an annual basis, the Licensees shall provide to the ACC for review and comment a report compiling all information gathered pursuant to implementation of the Hatchery and Supplementation Plan. The report also will include recommendations for ongoing management of the Hatchery and Supplementation Program. The ACC shall have 60 days to comment on the annual report. Within 60 days of the close of the comment period, the Licensees shall finalize the report after consideration of all comments. The Licensees shall also provide the comprehensive periodic review undertaken pursuant to Section 8.2.6 below to the ACC. The Licensees shall provide final annual reports and the comprehensive periodic review to the Services during the development of any required ESA permit or authorization for hatchery operations, including NOAA Fisheries' HGMP process. The report may be included as part of the detailed annual reports of the ACC activities required by Section 14.2.6.

10.5 Management of Funds. Funds provided by PacifiCorp, as described in Sections 10.1, 10.2, and 10.3 above, shall be held by PacifiCorp in a Tracking Account until acquisitions of Interests in Land are executed or habitat enhancement measures under Section 10.3 are implemented. PacifiCorp shall accrue interest on Fund monies held by PacifiCorp from the date the monies are due to be placed into the Fund at the prime interest rate printed in the *Wall Street Journal* for the weekday nearest to April 1 of each year. If such rate ceases to be published in the *Wall Street Journal*, the Parties shall meet and agree upon an alternate source for the prime interest rate. Interest shall be computed, compounded, and added to the Fund once annually as of that date. PacifiCorp shall use monies in the Funds to pay the purchase price for Interests in Land and for covered transaction and implementation costs as they are incurred. Funds not expended in any given year shall be carried over to a subsequent year. PacifiCorp shall provide annual reports to the TCC regarding Fund expenditures under Sections 10.1, 10.2 and 10.3 above. Such annual reports may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6.

10.8.3 Management of Plan. Subject to the oversight of the TCC, PacifiCorp and Cowlitz PUD shall implement their respective WHMPs. The Licensees shall submit to the TCC annually a written plan (the "Annual Plan") to use the funds available to implement the WHMPs on their respective lands. The Annual Plan may be included as part of the detailed annual reports of the TCC activities required by Section 14.2.6. Once the TCC has approved such Annual Plans, they shall be implemented by the Licensees using the funds made available for that purpose under Section 10.8.2. The funds shall be used to reimburse Licensees for use of their employees and contractors to manage, implement, and monitor actions taken under the WHMPs as provided in the Annual Plan. Further, the WHMPs shall not prevent either of the Licensees from carrying out any other legal requirement with respect to or upon its respective lands in any lawful manner, including, without limitation, in compliance with the conditions of the New Licenses, subject to Section 10.8.5.5 below. If the TCC believes that another party can implement the WHMPs more cost effectively, the respective Licensee shall, at the request of the TCC, seek bids from third party contractors to implement their respective WHMP for some period during the term of the applicable New License(s). If the bidding process identifies third party contractors who can do the work more cost effectively, the respective Licensee shall engage such contractors, provided that they are acceptable to the Licensee, in its reasonable discretion, considering policies, contracting requirements, and procedures and qualifications normally applied by the Licensees when engaging other contractors to work on their respective properties, and subject to dismissal if any contractor's performance violates such policies and requirements. If contractors are retained at the recommendation of the TCC, such contractors shall have full responsibility, during the period of their engagement, for implementation of the respective WHMPs as provided under this Section 10.8, including preparation of Annual Plans and any required reporting to the TCC. During the period such third party is retained, the Licensees' obligations for implementation of their respective WHMPs shall be fulfilled in their entirety by providing the funds as required under Section 10.8.2. In no event shall Licensees be required to fund implementation of their respective WHMPs in excess of the amounts provided for in Section 10.8.2.

14.2.1 Committee Coordinators. Within 30 days after the Effective Date, PacifiCorp and Cowlitz PUD each shall designate one Committee Coordinator for the TCC and one Committee Coordinator for the ACC. PacifiCorp and Cowlitz PUD shall make their designations by notice to the Parties in accordance with the notice provisions in Section 16.6. The PacifiCorp Committee Coordinator(s) shall be employed or retained by PacifiCorp and may represent PacifiCorp on the TCC and the ACC. The Cowlitz Committee Coordinator(s) shall be employed or retained by Cowlitz PUD and may represent Cowlitz PUD on the TCC and the ACC. The PacifiCorp Committee Coordinator(s) shall, as their primary responsibilities, oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of PacifiCorp as provided in this Agreement. The Cowlitz PUD Committee Coordinator(s) shall oversee the coordination and implementation of the terrestrial and aquatic PM&E Measures that are the responsibility of Cowlitz PUD as provided in this Agreement. PacifiCorp and Cowlitz PUD Committee Coordinators together shall oversee the coordination and implementation of terrestrial and aquatic PM&E Measures for which PacifiCorp and Cowlitz PUD have joint responsibility as provided in this Agreement.

14.2.3 TCC and ACC Functions. The TCC and the ACC will:

- a. Coordinate and Consult on development of plans by the Licensees as provided in this Agreement;
- b. Review information and oversee, guide, and make comments and recommendations on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans;
- c. Consult with the Licensees on their respective reports prepared under this Agreement regarding implementation of the terrestrial and aquatic PM&E Measures as referred to in Section 14.2.6 below;
- d. Make decisions, grant approvals, and undertake any additional duties and responsibilities expressly given to the TCC or the ACC with respect to the terrestrial and aquatic PM&E Measures;
- e. Establish, among other things, (i) procedures and protocols for conducting committee meetings and deliberations to ensure efficient participation and decision making; (ii) rules for quorum and decision making in the absence of any member; (iii) alternative meeting formats as desired, including phone or teleconference; and (iv) the methods and procedures for updating committee members on interim progress of development and implementation of the terrestrial and aquatic PM&E Measures;
- f. As deemed necessary and appropriate by the TCC or the ACC, establish subcommittees to carry out specified committee functions and responsibilities described in this Section 14.2.3, and establish the size of, membership of, and procedures for any such subcommittees; and
- g. Discuss the protocols and the content of public information releases; provided that each Party retains the right to release information to the public at any time without such discussion.

14.2.4 TCC and ACC Decision-Making Process and Limitations. The TCC and the ACC shall make comments, recommendations, and decisions in a timely manner as provided below:

- a. Each Party represented on the TCC and the ACC will have the authority to participate in all committee discussions relating to, and to provide input and advice on, decisions regarding implementation of the terrestrial or aquatic PM&E Measures;

b. The TCC and the ACC shall strive to operate by Consensus. Whether or not the TCC or the ACC has final authority over decisions on terrestrial and aquatic PM&E Measures, the Licensees and other Parties may proceed with actions necessary to implement the New Licenses or this Agreement, even though Consensus is not achieved; provided that in such cases the responsible Licensee or Licensees shall notify the Commission of the comments of the ACC or TCC members and the areas of disagreement. If the TCC or ACC does not reach Consensus, then any member of the TCC or ACC, respectively, may initiate the ADR Procedures as provided in Section 15 below.

c. Where one or more Parties have approval authority under this Agreement, Licensees shall notify the Commission of any approvals that were not obtained, include the relevant comments of the Parties with approval authority, describe the impact of the lack of approval on the schedule for implementation of PM&E Measures, and describe proposed steps to be taken to gain the approval, including dispute resolution.

d. In no event shall the TCC or the ACC increase or decrease the monetary, resource, or other commitments made by PacifiCorp and Cowlitz PUD in this Agreement; override any other limitations set forth in this Agreement; or otherwise require PacifiCorp to modify its three Projects' facilities without PacifiCorp's prior written consent or require Cowlitz PUD to modify its Project's facilities without Cowlitz PUD's prior written consent, which consent may be withheld in the applicable Licensee's discretion.

e. At any juncture where discussion or other contact with the ACC or TCC is required by this Agreement, when requested by the Services or as required by the Agreement, the ACC or TCC Committee Coordinator, respectively, shall schedule an opportunity to discuss the relevant issue with the ACC or TCC. This event shall consist of either a conference call, in-person meeting, or other appropriate forum to enable full consideration of the issue.

14.2.5 TCC and ACC Meetings. Commencing in the first year after the Effective Date and each year thereafter for the terms of the New Licenses, the TCC and ACC Committee Coordinators shall arrange and provide an agenda for an annual meeting of their respective committees. The TCC and ACC Committee Coordinators also shall arrange and provide an agenda for any additional meetings deemed necessary by either coordinator for a committee or at the request of any two Parties on that committee, which request shall be sent simultaneously to all members of that committee. Members of the TCC and the ACC shall be given a minimum of 30 days' notice prior to any meeting, unless otherwise agreed to by the members of the applicable committee.

14.2.6 TCC and ACC Reports. The Committee Coordinators for the TCC and the Committee Coordinators for the ACC shall prepare and file with the Commission detailed annual reports on the TCC and ACC activities, monitoring and evaluations under the M&E Plan, and implementation of the terrestrial and aquatic PM&E Measures occurring during the prior year, as well as plans for the coming year as required in this Agreement. The annual reports may also include plans and reports required pursuant to Sections 4.9.1, 7.7.1, 8.2.3, 8.2.4, 10.5, and 10.8.3. Copies of such reports will be made available to each Party. The annual reports shall be prepared in Consultation with the TCC and ACC committee members and shall be submitted to the committees for review each year, commencing after the Effective Date. Committee members shall have a minimum of 30 days to review and provide comment on a draft report before a final report is prepared and filed with the Commission. The Licensees shall submit the final report to the Commission not later than 30 days after the close of the ACC and TCC comment periods. To the extent that comments are not incorporated into the final report, an explanation will be provided in writing, and such explanation shall be included in the report.

15.10 Alternative Dispute Resolution

15.10.1 General. The Parties intend that disputes under this Agreement be resolved as expeditiously and informally as possible, and that issues within the scope of the TCC and the ACC be discussed in those committees before being referred to the ADR Procedures. All remaining disputes among the Parties regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be the subject of nonbinding ADR Procedures among the disputing Parties. Each Party shall cooperate in good faith promptly to schedule, attend, and participate in the ADR Procedures. The Parties agree to devote such time, resources, and attention to the ADR Procedures as are needed to attempt to resolve the dispute at the earliest time possible. Each Party shall implement promptly all final agreements reached through the ADR Procedures, consistent with the Party's applicable statutory and regulatory responsibilities. Nothing in Sections 15.10.1 through 15.10.2 is intended or shall be construed to affect or limit the authority of the Commission, the Agencies, or any other agency with jurisdiction over the Projects to resolve a dispute brought before it in accordance with its own authorities and procedures, or to alter the statute of limitations or other requirements for Appeal of any action.

15.10.2 ADR Procedures. A Party claiming a dispute shall give notice of the dispute within 60 days of the Party's actual knowledge of a dispute, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. If a Party communicates with another Party informally and believes that the dispute is being resolved, the time for notice will not commence until it has been determined that such informal efforts have failed to resolve the dispute. Notification under Section 16.6 shall constitute actual knowledge. At a minimum, in any dispute subject to the ADR Procedures, the Parties shall hold two informal meetings within 30 days after notice, to attempt to resolve the disputed issue or issues. If, within 15 days after the second meeting or any meeting thereafter, a Party notifies the other Parties that such informal meetings failed to resolve the dispute, the Parties may agree to attempt to resolve the dispute using a neutral mediator. The agreement to use a neutral mediator will address allocation of costs and the scope of the dispute. The neutral mediator will be selected by the Parties participating in the mediation. Upon selection, the mediator will mediate the dispute for 60 days. Any of these time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the ADR Procedures. Pending resolution of any dispute under the ADR procedures, and subject to the authority of the Commission or other agency with jurisdiction to order otherwise, PacifiCorp and Cowlitz PUD may continue operating their respective Projects in the manner of their operation prior to the point at which the dispute arose.

15.10.3 Enforcement of Agreement After ADR Procedures. Any Party may seek specific performance of this Agreement by any other Party at the Commission or in a court of competent jurisdiction after compliance with the ADR Procedures, where required, and, to the extent allowed by applicable law, may seek to recover its costs and fees associated with bringing such action. No Party shall be liable in damages for any breach of this Agreement, except that a Party may seek monetary penalties under applicable law. Nothing in Sections 15.10.1 through 15.10.3 is intended or shall be construed to affect or limit the jurisdiction of any agency or court as established under applicable law.

RECITAL A

“Project” and “Projects” - The Lewis River Hydroelectric Projects consist of the Merwin Project (Project No. 935), Yale Project (Project No. 2071), Swift No. 2 Project (Project No. 2213), and Swift No. 1 Project (Project No. 2111) (each individually referred to as a “Project” and collectively as the “Projects”) and associated powerhouses, transmission facilities, recreational facilities, hatcheries, reservoirs, canals, and lands within the Projects’ Boundaries and wildlife lands managed outside the Project Boundaries. PacifiCorp owns the Merwin Yale and Swift No. 1 Project, while Cowlitz PUD owns the Swift No. 2 Project (the combined Projects of Swift No. 1 and Swift No. 2 are referred to collectively as the “Swift Projects”). Construction of the Projects began with the Merwin Dam in 1929 and was completed with the construction of Swift No. 1 and Swift No. 2 ending in 1958. The Federal Power Commission issued the first license for Merwin on November 29, 1929, which expired on November 29, 1979. That license was renewed on October 6, 1983 and was originally due to expire on April 30, 2009 but was accelerated by a Commission Order and now expires on April 30, 2006. The original license for Yale was issued on April 24, 1951 and expired on April 30, 2001. The original license for Swift No. 1 was issued on May 1, 1956 and expires on April 30, 2006. The original license for Swift No. 2 was issued on November 29, 1956, effective May 1, 1956, and expires on April 30, 2006.

Appendix D

Request for ACC Decision Template

Request No. [yyyy – #]
Request Date: [mm-dd-yyyy]

North Fork Lewis River Project Request for Decision Template *[Project Title]*

1. Representative(s) and Affiliation

2. Description and Justification of Request

- **Requested Action:** What specifically is the ACC to decide?
- Introduction and background
- Justification for Requested Action
- What species are affected?

3. FERC or Settlement Agreement Requirement(s)

- What relevant FERC or SA articles justify this action? *[Articles xx]*
- Are there any other regulatory requirements to support the requested action?

4. ACC Recommended Decision

- Describe the ACC decision
- Was the decision made by consensus (as defined in the ACC ground rules)?
- Document voting record and tally (if applicable)

5. Justification for Recommended ACC Decision

- What information was used to inform decision?
- Is the information used based on empirical data?

6. Contingencies or Conditions of the Decision

- Is decision contingent on other actions or information?
- Is implementation of decision contingent on specific actions or information?
- Are there any conditions attached to this decision?

7. Decision and Implementation Dates

Date of Decision: [mm-dd-yyyy]

Expected Implementation Date of Action: [mm-dd-yyyy]

8. Additional Information or Notations

- References and timelines?

Appendix E

Record of Decision Matrix

Request No	Request Date	Representative(s) and Affiliation(s)	Title of Request	Requested Action (from decision template)	FERC License or Settlement Agreement Reference	Vote Tally	Description and Justification of Decision	Contingencies for Decision	Date of Decision
2020-XX	mm-dd-yyyy								mm-dd-yyyy

Lewis River Fish Passage Report

March 2020

Merwin Fish Collection Facility and General Operations

A total of 200 fish were captured at the Merwin Dam Adult Fish Collection Facility (MFCF) during the month of March. As is typical in March, the overwhelming majority of these fish were winter steelhead. A substantial proportion of these fish (30.8%) were of natural origin (NOR).

The Merwin Dam Fish Collection Facility ran continuously throughout the month of March. In an effort to reduce the risk of COVID-19 transmission, PacifiCorp has implemented a modified fish transport schedule. Under this modified operations schedule, the fish lift and conveyance system operate 7 days per week, with fish sorting and transport taking place weekdays only. This modified schedule prevents the need to have contracted fisheries staff enter the Merwin adult trap over the weekend, reducing the risk of COVID-19 transmission. This modified schedule was implemented on March 21st, and will remain in effect until at least April 26th. Flow below Merwin Dam fluctuated between 2,300 and 2,550 cfs from March 1st through March 30th, when flows increased to approximately 7,000 cfs (Figure 1).

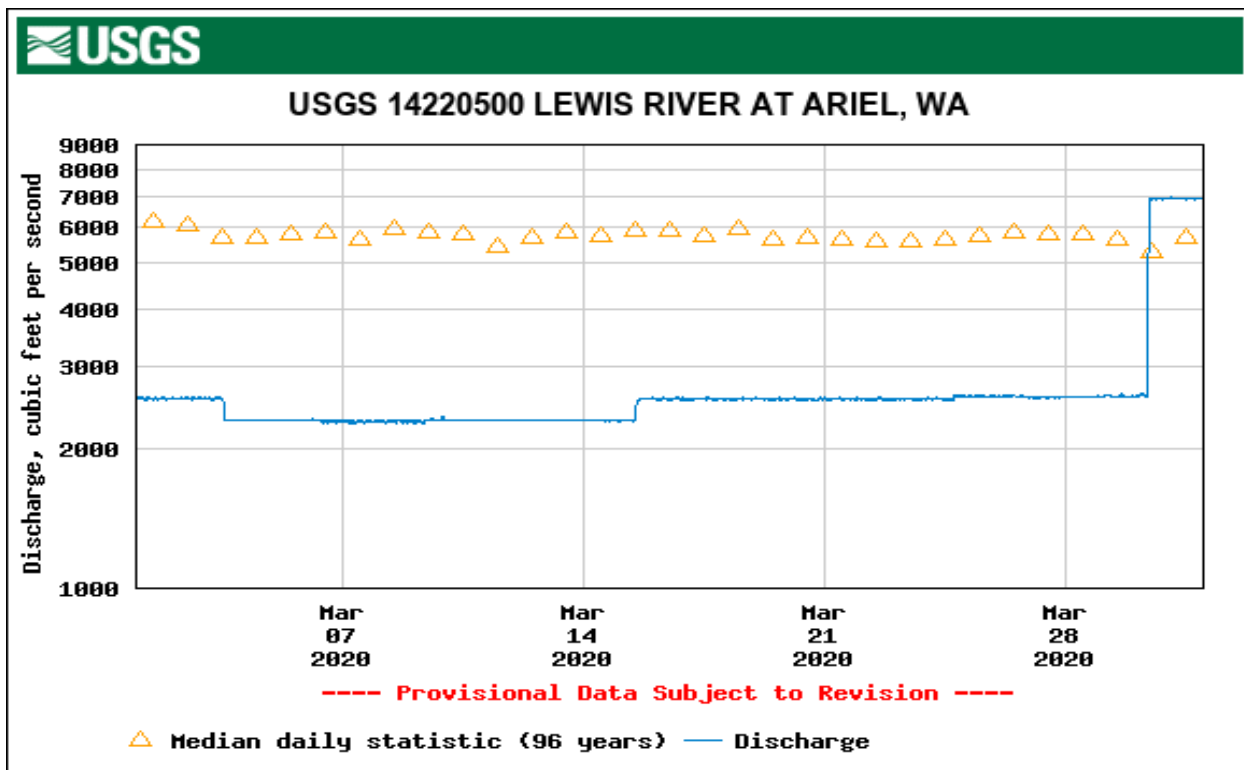


Figure 1. Discharge in cubic feet per second recorded at the USGS Ariel, WA gauge (14220500) located immediately downstream of Merwin Dam.

Upstream Transport

Three (3) Blank Wire Tag (BWT) winter steelhead were captured by the end of December 2019 and were transported upstream as part of the 2020 run year. An additional 195 BWT's have been collected and transported upstream as of March 31st, bringing the 2020 run total to 198. A record number of natural origin (NOR) steelhead have been collected at the Merwin Adult trap in 2020 (Figure 2). Based on PIT tag recapture data, it is suspected that the majority of these fish were collected at the Swift FSC as juveniles in 2018. As of March 31st, a total of 45 NOR steelhead have been collected and transported upstream, bringing the total number of upstream steelhead to 243 (Table 1). In addition to the steelhead, eleven coho, four cutthroat, and two spring Chinook have been collected and transported upstream of Swift Dam in 2020.

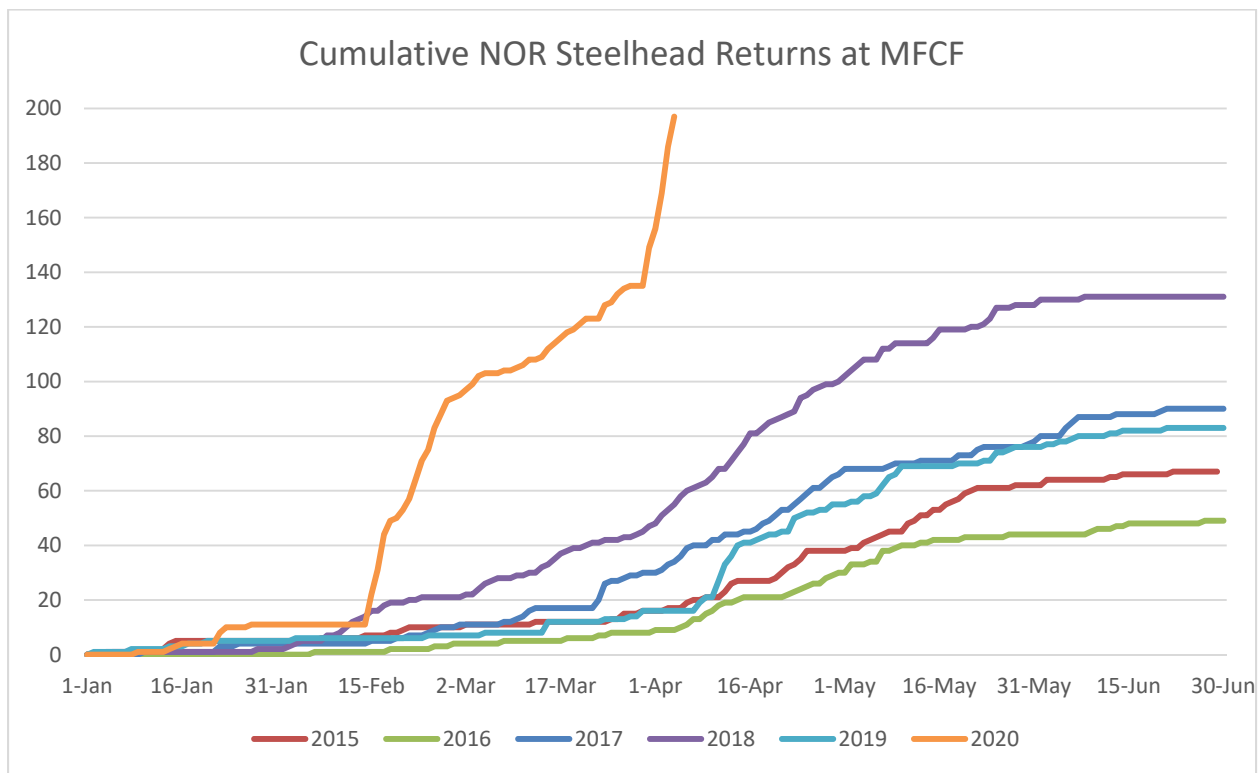


Figure 2. Cumulative number of Natural origin (NOR) steelhead collected at Merwin Adult Fish Collection Facility by year.

Table 1. Total number of adult winter steelhead transported upstream of Swift Dam by run-year.

Run Year	Male	Female	Total adult winter steelhead taken upstream of Swift Dam
2012	141	48	189
2013	440	301	741
2014	452	581	1,033
2015	746	477	1,223
2016	378	376	754
2017	331	261	592
2018	682	535	1,227
2019	527	486	1,013
2020	148	95	243

Floating Surface Collector (FSC)

The Swift Reservoir Floating Surface Collector (FSC) was returned to service on March 3rd, following modifications to the starboard smolt flume. Heavy debris loading occurred during the first half of the month, requiring the vessel to be periodically turned off in order for debris to be removed. A total of 10,732 fish were collected at the FSC in the month of March, including a record 7,144 spring Chinook juveniles (Figure 3). Coho parr also made up a substantial proportion (25.4%) of the total catch in March.

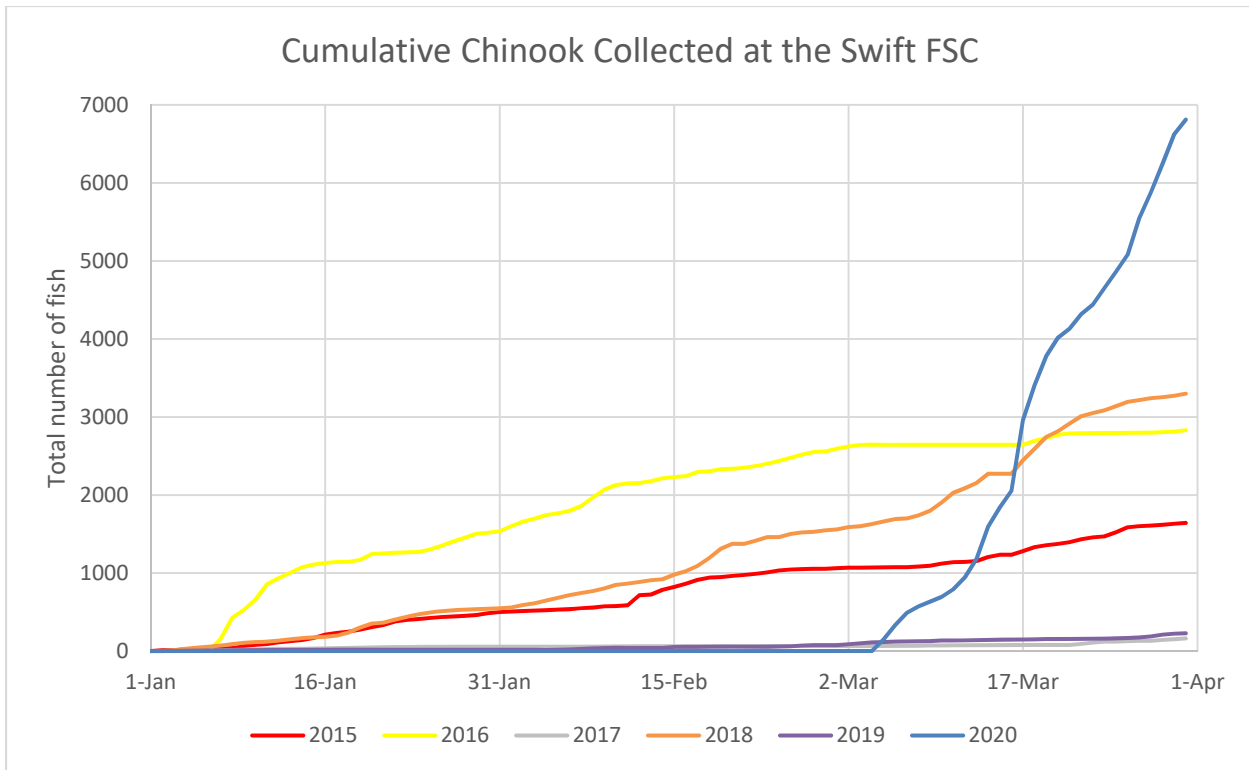


Figure 3. Cumulative number of spring Chinook collected at the Swift FSC by year.

Fish Facility Report
Swift Floating Surface Collector
March 2020

Day	Coho			Chinook			Steelhead				Cutthroat		Bull Trout	Planted Rainbow	Total	
	fry	parr	smolt	fry	parr	smolt	fry	parr	smolt	kelt	fry	<13 in				> 13 in
1																
2		65								1				0	0	66
3																
4		504	45		30	118				3		1		0	24	725
5	2	556	28		108	77				6		2		0	21	800
6		88	17		78	79						1		0	3	266
7		40	14		49	34						1		1	4	143
8		30	12		43	17								0	4	106
9		110	10		31	31		1				1		0	8	192
10		74	8		63	33				3		2		0	6	189
11		69	19		71	84						1		1	4	249
12		123	18		114	124				3				1	4	387
13	3	90	12		148	261				2		1		0	12	529
14		88	21		112	134		1	1			1		0	8	366
15		137	6		78	138				5		2		0	0	366
16		215	20		352	555				1		1		0	5	1149
17		145	12		306	142								0	5	610
18		54	4		151	223							1	0	0	433
19		43	1		54	177		1	1					0	2	279
20	2	10	1		21	95						1		0	0	130
21		39	5		35	152				1		1		0	14	247
22		9	13		25	98		1				1		0	5	152
23		14	19		62	150				2				0	10	257
24		21	30		28	182				4		5		3	19	292
25		58	29		60	161				1				0	10	319
26		29	18		129	336				4				0	19	535
27	1	31	15		38	293				2				0	6	386
28		47	43		113	255				14			4	0	22	498
29		24	25		43	332				6		8	1	1	21	461
30		13	20		26	162				4		6		0	6	237
31		3	13		26	307				6		2		0	6	363
Monthly	8	2729	478	0	2394	4750	0	4	70	0	0	38	6	7	248	10732
Total	8	2729	478	0	2394	4750	0	4	70	0	0	38	6	7	248	10732