

North Fork Lewis River Project

Request for ACC Consensus

Merwin In-Lieu Strategic Plan, Implementation Monitoring Plan

Part A: Decision Summary

A majority of the voting members did not consent to the Merwin In-lieu Strategic or Implementation Monitoring plans.

Date of Decision: September 10, 2020

Part B: Decision Request – Request for ACC Consensus

1. Representatives and Affiliations

a) List all Representatives and Affiliations requesting Committee decision

Josh Ashline, National Marine Fisheries Service

2. Description and Justification of Request

a) Requested Action: What specifically is requested of the ACC?

NMFS is requesting that the ACC engage in the consensus process as defined within the Lewis River Settlement Agreement regarding the proposed plans to fulfil the NMFS preliminary decision letter request for ACC approval of these plans. If a party does not approve of a plan, NMFS requests the party provide specific reasons why it does not approve of the plan.

b) Introduction and background

On April 11 and 12, 2019, the NMFS and USFWS provided PacifiCorp and Public Utility District No. 1 of Cowlitz County (“Cowlitz PUD” together with PacifiCorp, the “Utilities”) 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 response to NMFS’ preliminary determination, the Utilities prepared 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

Draft plans were provided to the ACC members on February 5, 2020 as part of the Utilities draft non-capacity amendment applications to the Federal Energy Regulatory Commission. Interested parties provided comments to the Utilities in mid-May 2020. The Utilities considered comments and made some revisions to the plans. On July 2, 2020 the Utilities submitted applications for license amendments to the Commission for the Merwin, Yale, Swift No. 1 and Swift No. 2 projects.

3. FERC or Settlement Agreement Requirement(s)

a) What relevant FERC or SA articles justify this action?

1) Lewis River Settlement Agreement sections:

- 4.1.9 Review of New Information Regarding Fish Transport into Lake Merwin and Yale Lake
- 4.10 Bull Trout Passage in the Absence of Anadromous Fish Facilities
- 7.1 In Lieu Fund
- 14.2.4 TCC and ACC Decision-Making Process and Limitations

2) FERC License Article 401. Scheduling and Reporting Requirements and Amendment Applications

b) Are there any other regulatory requirements to support the requested action?

NMFS preliminary decision – request for ACC consensus

Part C – Committee Decision *(to be completed by Committee)*

1. Committee Decision

a) Was the decision made by consensus (as defined in the Committee ground rules)? The ACC followed the consensus process, but consensus was not achieved.

b) Document voting record and tally (if applicable) Of the 10 voting Representatives present at the meeting, the vote tally is NO votes = 7; YES votes = 1, Abstain = 2

Voting Record, ACC meeting, September 10, 2020.

Signatory organization	Voting Representative	Present	Consent to approve plans?
American Rivers	Bridget Moran	x	NO
City of Woodland	Director, Public Works		
Clark County	Not Available		
Cowlitz County	Not Available		
Cowlitz Indian Tribe	Eli Asher	x	NO
Cowlitz-Skamania Fire District No. 7	Not Available		
Fish First	Jim Malinowski		
Lewis River Citizens at-large	Not Available		
Lewis River Community Council	Mariah Stoll-Smith Reese		
Lower Columbia River Fish Recovery Board	Steve Manlow	x	NO
National Marine Fisheries Service	Josh Ashline	x	ABSTAIN
National Park Service	Not Available		
Native Fish Society	Bill Bakke		
North County Emergency Medical	Not Available		
PacifiCorp and Cowlitz County PUD No.1	Todd Olson	x	YES
Rocky Mountain Elk Foundation	Not Available		
Skamania County	Not Available		
Trout Unlimited	Jim Byrne	x	NO
US Bureau of Land Management	Not Available		
US Fish and Wildlife Service	Tim Romanski	x	ABSTAIN
USDA Forest Service	Kate Day	x	NO
Washington Department of Fish and Wildlife	Bryce Glaser	x	NO
WA State Recreation and Conservation Office	Katie Pruit		
Woodland Chamber of Commerce	Not Available		
Yakama Nation	Bill Sharp	x	NO

2. Justification for Committee Decision

a) What information (i.e. empirical data) and how was this information used to inform decision?

Voting representatives pointed to the existing written record for the basis of their vote. The voting majority expressed concerns that the strategic and monitoring plans did not adequately address member comments. Additional comments were provided by the LCFRB and WDFW as provided in the September 10, 2020 meeting notes (attached).

3. Contingencies or Conditions of the Decision

- a) Is decision contingent on other actions or information? No
- b) Is implementation of decision contingent on specific actions or information? No, only if an ADR process is pursued by the minority party.
- c) Are there any conditions attached to this decision? No

4. Additional Information or Notations

- 1) Meeting notes are attached as part of this template to reflect additional comments provided by the LCFRB and the WDFW.
- 2) As provided in the ground rules, the minority may pursue an ADR process that may change the decision.