

## **Terrestrial and Aquatic Coordination Committees FINAL Structure and Ground Rules**

### **Introduction**

This document has been established to facilitate the purposes of the Lewis River Terrestrial Coordination Committee (TCC) and the Lewis River Aquatics Committee (ACC) collectively known as “Coordination Committees”. This document does not supersede language in the Lewis River Settlement Agreement or any future Federal Energy Regulatory Commission (Commission) licenses 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.

### **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 have designated Coordinators for the Coordination Committees and alternative representatives (see Appendix A for a complete list of TCC membership, Appendix B for a complete list of ACC membership).

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.

### **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 on implementation and monitoring of the terrestrial and aquatic PM&E Measures, including plans;
- c. Consults with the Licensees on their respective reports prepared under the Agreement and New 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 of, membership of, 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.

**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, decisions regarding implementation of the terrestrial and/or aquatic PM&E Measures;
- b. The Coordination Committees shall strive to operate by Consensus. 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 New 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, based on project specific 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 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, 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 ADR Procedures provided under Section 15.10 of the Agreement (see Appendix C). The Parties may submit their own comments to the Commission.

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 Coordination Committees increase or decrease the monetary, resource, or other commitments made by PacifiCorp and Cowlitz 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.

e. At any juncture where Consultation, discussion or other contact with the either the TCC or ACC is required by the Agreement or New Licenses, when requested by the Services 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.

## **Roles of 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. 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.** Designated representatives (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 will have the authority to participate in all respective committee discussions relating to, and to provide input and advice on, decisions regarding implementation of the terrestrial or aquatic PM&E Measures in the Agreement or new 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 notification to the Licensees' Coordinators this includes electronic mail notification. It is expected that TCC Representatives will want to meet in a confidential manner specific to discussion of 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 membership at this time.

**Licensees' Coordinators.** The Licensees' Coordinators (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.

**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.

## **Ground Rules**

The TCC and ACC 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.

## **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) can not participate in the

determination of consensus. The TCC may schedule meetings that are not open to non-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:

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

In general, Members of the TCC and ACC shall be given a minimum of 30 days' notice prior to any meeting, unless otherwise agreed to by the Representatives. This does not preclude the 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 the TCC or ACC meetings or for subgroups formed at the request of any two Representatives, which 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 7 days following the committee meeting. Representatives may provide editorial comments directly to the Coordinators by email, but 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 for inclusion will be appended to meeting notes.

**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 members for review prior to the following regularly scheduled meeting.

### **Responsibilities of Coordination Committee Representatives**

**Attendance.** Representatives will make a reasonable effort to attend meetings and inform the Coordinators in advance of any absence at a TCC or ACC 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 reasonable 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 whatever written material that may be useful to the Representatives and allow for a 7-day review period prior to the meeting in which the proposal will be discussed.

**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.

## **Meeting Guidelines**

**Response Time.** Representatives will have at least 30 days unless otherwise agreed to by the TCC or ACC members or the period as specified by the Settlement Agreement or New Licenses, to review reports, documents, and draft deliverables to be filed with the Commission, so that members can meaningfully participate in the collaborative process. In some instances, additional time will be provided to enable the Representatives' internal review. 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 live with a proposed solution.

**Decision Making.** The TCC and ACC will make decisions by Consensus, as defined in the Agreement. 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 all points of view. Invite everyone to speak.

2. The group may decide when there has been enough discussion about a topic and they are ready for a decision to be scheduled.
3. 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:
  - a. Adding to the body of information already presented.
  - b. Clarifying their position.
  - c. Point out flaws, errors, deficiencies. . . in the other's point of view.
4. Continue to ask those in the minority:
  - a. Do you think you have now been heard by the others in the group?
  - b. Is there more you want to say?
  - c. Are you ready to have the entire group vote again?
5. Vote again. Those voting in the **minority** again get the floor.
6. Invite them again to say whatever they want 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 new Licenses requires "Consultation" or to "Consult" the Agreement definition previously identified will be applied unless the new Licenses have a differing definition.

To account for the absence of a Representative during a decision making process, decisions will be considered "informal" for a period of 7-continuous 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 7 day period. If a Representative fails to respond in the 7-day period, their silence will be considered as no objection to the decision.

**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.

**Tracking Issue and Resolutions.** 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 reasonable effort to move forward once decisions have been made and to only request that the group revisit decisions in limited situations.

**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 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.

## **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 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 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  
Terrestrial Coordination Committee Membership

<b>Party</b>	<b>Designated Representative</b>	<b>Alternate Representative</b>
American Rivers	No representative at this time	
City of Woodland	No representative at this time	
Clark County	No representative at this time	
Cowlitz County	No representative at this time	
City of Woodland	No representative at this time	
Cowlitz Indian Tribe	Taylor Aalvik	Mike Iyall
Cowlitz-Skamania Fire District No. 7	No representative at this time	
Fish First	Jim Malinowski	
Lewis River Citizens at-large	John Clapp	
Lewis River Community Council	Mariah Stoll-Smith Reese	
Lower Columbia River Fish Recovery	No representative at this time	
National Marine Fisheries Service	Michelle Day	
National Park Service	No representative at this time	
North County Emergency Medical	No representative at this time	
PacifiCorp	Monte Garrett	Kirk Naylor
PUD of Cowlitz County	Diana M. Gritten-MacDonald	
Rocky Mountain Elk Foundation	Bob Nelson	
Skamania County	No representative at this time	
The Native Fish Society	No representative at this time	
Trout Unlimited	No representative at this time	
US Bureau of Land Mgmt	No representative at this time	
US Fish & Wildlife	Gene Stagner	
USDA Forest Service	Ruth Tracy	Mitch Wainwright
Washington Dept of Fish & Wildlife	Curt Leigh	John Weinheimer Brock Applegate
Washington Interagency Committee	No representative at this time	
Woodland Chamber of Commerce	No representative at this time	
Yakama Nation	Clifford Casseseka	

Diana M. Gritten-MacDonald (PUD of Cowlitz County) and Monte Garrett (PacifiCorp) are the Licensees' Coordinators for the TCC.

Appendix B  
Aquatic Coordination Committee Membership

<b>Party</b>	<b>Designated Representative</b>	<b>Alternate Representative</b>
American Rivers	Brett Swift	
City of Woodland	No representative at this time	
Clark County	No representative at this time	
Cowlitz County	No representative at this time	
City of Woodland	No representative at this time	
Cowlitz Indian Tribe	Janne Kaje	Mike Iyall & Taylor Aalvik
Cowlitz-Skamania Fire District No. 7	No representative at this time	
Fish First	Jim Malinowski	
Lewis River Citizens at-large	John Clapp	
Lewis River Community Council	Mariah Stoll-Smith Reese	
Lower Columbia River Fish Recovery	Jeff Breckel	
National Marine Fisheries Service	Michelle Day	
National Park Service	No representative at this time	
North County Emergency Medical	No representative at this time	
PacifiCorp	Frank Shrier	
PUD of Cowlitz County	Diana M. Gritten-MacDonald	
Rocky Mountain Elk Foundation	No representative at this time	
Skamania County	No representative at this time	
The Native Fish Society	Brett Swift	
Trout Unlimited	Brett Swift	
US Bureau of Land Mgmt	No representative at this time	
US Fish & Wildlife	Gene Stagner	
USDA Forest Service	Ruth Tracy	
Washington Dept of Fish & Wildlife	Curt Leigh	Craig Burley John Weinheimer
Washington Interagency Committee	No representative at this time	
Woodland Chamber of Commerce	No representative at this time	
Yakama Nation	George Lee	

Diana M. Gritten-MacDonald (PUD of Cowlitz County) and Frank Shrier (PacifiCorp) are the Licensees' Coordinators for the ACC.

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 and the 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, the 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.