State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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Chair Wecker and Fish and Wildlife Commissioners
600 Capitol Way N.
Olympia, Washington 98501

Dear Chair Wecker and Fish and Wildlife Commissioners:

I am providing this update on the implementation of the Columbia River Basin Salmon Management Policy (Policy) to elaborate on the presentation to the Fish and Wildlife Commission (Commission) on June 7, 2013.

As I stated in my presentation, I want to improve my communication with the Commission regarding the Washington Department of Fish and Wildlife's (Department) progress in implementing the first-steps of the Policy, including the rationale for unforeseen delays such as occurred in 2013. I will be including an update on Policy implementation as a regular part of my Director's report given at each Commission meeting. In addition, I will provide e-mail updates as needed.

The unforeseen delays, however, will in no way affect our ability to work towards the visionary Purpose, Intent, and Guiding Principles of the Policy. Department staff has been working hard, including collaboration with Oregon, National Marine Fisheries Service and the Columbia River Tribes, to implement the Policy. We are committed to advance the conservation and recovery of wild salmon and steelhead, while maintaining or enhancing the economic well-being and stability of the fishing industry in the state.

A number of key actions have been completed since the adoption of the Policy five months ago (see the enclosed report for additional information):

1) The recreational allocation of the summer Chinook fishery below Priest Rapids Dam was increased from 50 percent in 2012 to 55 percent in 2013. We were unable to implement the 60 percent share identified in the Policy due to the litigation in Oregon and stay in implementation of Oregon rules.

2) In the North of Falcon (NOF) pre-season planning process, the recreational fishery was provided 69 percent (up from 56 percent planned in 2012) of the allowable impacts on Tule Chinook in the lower Columbia River.

3) Barbless hook rules have been adopted for the mainstem Columbia River and many Washington tributaries.

4) We have secured funding and will conduct the final year of a 3-year study to estimate the survival rates of fish released from beach seines and purse seines.

5) A pilot commercial tangle net fishery directed at coho salmon was developed and supported in the NOF fishery management planning process

6) We conducted a test fishery to evaluate a potential off-channel rearing and fishing location near Cathlamet, Washington and are working with the city of Cathlamet and Wahkiakum County to secure a site to rear spring Chinook.

7) We are participating in Northwest Power and Conservation Council (NWPCC) forums and working with our state NWPCC representatives in an effort to maintain the federal funding provided by the Bonneville Power Administration to monitor Columbia River recreational and commercial fisheries, including selective fisheries.

I recognize that concerns have been raised regarding the development and implementation of alternative selective gear. I understand those concerns and the importance of implementing alternative selective gear. The second General Provision of the Policy directs the Department to "investigate and promote the development and implementation of alternative selective gear during the transition period." Several footnotes in the appendix tables describing the Presumptive Management Framework referred to pilot fisheries. Appendix E, for example, includes the following footnote for the presumptive management framework for coho salmon for the fishing years 2013-2016: "Tangle net, beach seine, and purse seine fisheries will be pilots in 2013, 2014, and 2015."

I reluctantly concluded, after careful consideration, that developing and defining a 2013 commercial seine fishery through NOF was not feasible. The factors that were considered included the following:

1) Oregon Litigation. Litigation in Oregon placed a stay upon the implementation of the rules approved by the Oregon Fish and Wildlife Commission in December 2012. Although this did not preclude action by Washington, it certainly presented a challenging environment to conduct multi-state discussions for the implementation of a commercial seine fishery.

2) Oregon Statutes. Oregon State statutes prohibit the use of seines in the Columbia River. Any use of seines in 2013, therefore, would be limited to Washington State waters. Again, this did not precluded action by Washington, but we recognized that it would raise challenging allocation and enforcement issues.

3) Washington Emerging Fishery Statute. The Department anticipates that the pilot commercial seine fisheries will be implemented under the emerging commercial fishery statute. If the number of participants in the fishery will be limited, the statute (RCW 77.70.160) requires the Department to appoint a five-person advisory board as representative of the affected industry to review and make recommendations to the Director on rules relating to the number and qualifications of the participants. I concluded that an advisory board could not be convened and complete its work prior to the 2013 season.

4) Survival Rate Estimates. Scientifically defensible estimates of the survival of fish released from seines will be essential to secure support for commercial seine fisheries. Only two of the planned three years of the scientific study have been completed at this time, and no study results have yet been reviewed by the U.S. v. Oregon Technical Advisory Committee (TAC). Completion of the TAC review will facilitate consultation with the National Marine Fisheries Service concerning gear-specific release mortality rates for ESA-listed fish.

5) Distribution of ESA impacts. The 2013 Columbia River recreational and commercial fall season opportunity was developed in the NOF public process and was limited by U.S. v. Oregon state/tribal harvest sharing agreements and impact limits to ESA listed salmon and steelhead. The ESA limits for Chinook, coho, and steelhead were distributed in recreational and commercial seasons that were agreed to in the 2013 NOF process. Planning for a non-research seine gear commercial fishery will involve a stakeholder process that includes distribution of some of the available ESA impacts to this new gear type. The advisory board process will help inform commercial distribution of impacts in 2014.

We continue to explore ways to implement a pilot beach seine fishery for coho salmon in 2013, including coordinating with Oregon and National Marine Fisheries Service regarding the NOF planned fisheries and potential for ESA Coho impacts to be available in October. We are vigorously pursuing all actions necessary to implement pilot seine fisheries in 2014.

The Policy unanimously adopted by the Commission in January 2013, established a new management framework for salmon fisheries on the lower Columbia River. The Commission anticipated that implementation of this Policy would be a challenging task and stressed the importance of adaptive management:

> "There is uncertainty in this presumptive path forward, including the development and implementation of alternative selective fishing gear, securing funding for enhanced hatchery production, and the expansion or development of off-channel fishing areas. Consequently, the Commission recognizes that management decisions in the transitional period, and subsequent years, must be informed by fishery monitoring (biological and economic) and may be modified as necessary to meet the state purpose of this policy."

The Department will ensure that we effectively communicate our implementation of the Policy, adaptive management actions, and the rationale for any unforeseen delays.

Sincerely,

Phil Anderson
Director

Enclosure

cc: Jim Scott
Guy Norman

Columbia River Basin Salmon Management Policy Implementation Update

Report to Washington Fish and Wildlife Commission

Draft June 14, 2013

Oregon Rules and Litigation

Rules adopted by the Oregon Fish and Wildlife Commission (Oregon FWC) in December 2012 have been challenged on procedural and substantive grounds. The court granted Oregon's request to reopen the rulemaking process to address the perceived procedural errors raised by the plaintiffs. The Court issued the order to give the Oregon Department of Fish and Wildlife (ODFW) the time and opportunity to issue a new notice of proposed rulemaking and a new fiscal impact statement, provide interested persons additional opportunity to comment, and reconsider whether to repeal, readopt or amend the rules that are subject to the judicial review. The Oregon court also placed the implementation of the rules on hold.

Oregon has completed the additional comment and review process and the Oregon FWC adopted new rules at its June 6-7 meeting. The ODFW hopes that when the Oregon court lifts its order placing the litigation on hold it will also lift the stay on implementation of the rule. Oregon's counsel estimates it will take a year for the court to issue a ruling.

Oregon Legislation

The Oregon legislature is considering a legislative bill (SB 830) that has three primary elements aimed at supporting the Columbia River management and reform strategies requested by Governor Kitzhaber.

1) Repeals prohibition of fixed gears and seines for commercial fisheries (does not constrain use of gillnets).
2) Establishes a transition fund through 2019 to aid commercial fishers during that period to avoid economic harm.
3) Establishes a Columbia River Fisheries Enhancement Fund for Columbia Basin recreational anglers to help implement the Columbia River fish management and reform framework.

SB 830 has passed out of the Senate Environment and Natural Resources Committee and is now in the Ways and Means Committee. The Oregon legislative session is scheduled to end June 30 and cannot be extended past July 13.

Washington Litigation

A lawsuit has been filed in Thurston County Superior Court (initially filed in Wahkiakum County Superior Court) on behalf of five named Washington residents. The complaint alleges that the Commission's January 12, 2013 adoption of policy (C-3620) constitutes the issuance of a "regulation." They assert that the regulation is invalid and seek to have it invalidated. They make a general allegation regarding the effect of the regulation and then four claims in support of that claim for relief.

They generally allege that the "regulation" reallocates ESA impacts and the harvestable surplus of salmon, thereby reducing the quantity of salmon that can be caught by commercial harvesters and that the overall effect of the regulation is to ban gill nets on the Columbia mainstem for all species of fish, including sturgeon, smelt, shad and salmon.

The four specific claims for why the "regulation" should be invalidated flow from this general allegation and make the following assertions:

1) They claim the regulation violates the mandate in RCW 77.04.012 to "maintain the economic well-being and stability of the fishing industry." They assert that by depriving commercial harvesters of a critical and well established fishing method (gill nets) the regulation "destabilizes the fishing industry."

2) They claim the regulation violates the mandate in RCW 77.04.012 to "enhance and improve recreational and commercial fishing in the state." They assert that the reductions in mainstem allocations of harvestable fish fails to enhance commercial fishing.

3) They claim that the Commission is improperly constituted and thus incapable of making this decision. Their assertion is that RCW 77.04.040 requires the Governor to maintain a balance of interests and the absence of any commercial fishing interests on the Commission is fatal to its decision-making authority.

4) Finally, they claim that the regulation requires DFW to work with Oregon on consistent and concurrent regulations, but they note this may not be possible given the Oregon litigation and the stay issued for Oregon's regulations. They ask the court to stay enforcement of the DFW "regulation" pending the outcome of the Oregon litigation.

Discussions are occurring between the Attorney General's Office and the counsel for the plaintiffs. However, the litigation is moving slowly.

Implementation of Pilot Alternative Commercial Fishing Gear

The development and implementation of alternative selective gear is one important component of the Policy. The second General Provision of the Policy directs the Washington Department of Fish and Wildlife (Department) to "investigate and promote the development and implementation of alternative selective gear during the transition period." Several footnotes in the appendix tables describing the Presumptive Management Framework referred to pilot fisheries. Appendix E, for example, includes the following footnote for the presumptive management framework for coho salmon for the fishing years 2013-2016: "Tangle net, beach seine, and purse seine fisheries will be pilots in 2013, 2014, and 2015."

The fishery package developed through the North of Falcon planning process (NOF) includes a tangle net fishery for coho salmon but no commercial seine fisheries (the third and final year of test fisheries will occur). We reluctantly concluded, after careful consideration, that discussing and defining a commercial seine fishery through NOF was not feasible. The factors we considered included the following:

6) Oregon Litigation. Litigation in Oregon placed a stay upon the implementation of the rules approved by the Oregon Fish and Wildlife Commission in December 2012. Although this did not preclude action by Washington, it certainly presented a challenging environment to conduct multi-state discussions for the implementation of a commercial seine fishery.

7) Oregon Statutes. Oregon State statutes prohibit the use of seines in the Columbia River. Any use of seines in 2013, therefore, would be limited to Washington State waters. Again, this did not precluded action by Washington, but we recognized that it would raise challenging allocation and enforcement issues.

8) Washington Emerging Fishery Statute. The Department anticipates that the pilot commercial seine fisheries will be implemented under the emerging commercial fishery statute. If the number of participants in the fishery will be limited, the statute (RCW 77.70.160) requires the Department to appoint a 5-person advisory board as representative of the affected industry to review and make recommendations to the Director on rules relating to the number and qualifications of the participants. We concluded that an advisory board could not be convened and complete its work prior to the 2013 season.

9) Survival Rate Estimates. Scientifically defensible estimates of the survival of fish released from seines will be essential to secure support for commercial seine fisheries. Only two of the planned three years of the scientific study have been completed at this time, and no study results have yet been reviewed by the U.S. v. Oregon Technical Advisory Committee (TAC). Completion of the TAC review will facilitate consultation with the National Marine Fisheries Service concerning gear-specific release mortality rates for ESA-listed fish.

We continue to explore ways in which we could implement a pilot beach seine fishery for coho salmon in 2013.

Testing of Alternative Selective Fishing Gear

Two types of alternative gear tests will be conducted this fall: 1) survival rates of fish released from purse seines and beach seines; and 2) testing the effectiveness of other alternative gear in catching salmon.

The Department will conduct the final year of a 3-year study to estimate the survival rates of fish released from beach seines and purse seines. The study design will be similar to the previous two years except that some Chinook and coho will be radio tagged. This will provide the ability to estimate the percentage of tagged fall Chinook and coho that are destined for areas below Bonneville Dam. This addition to the study is important to differentiate between fish that die versus those that enter tributaries before being counted at Bonneville Dam.

The Department is also planning to test the effectiveness of a pound net in catching salmon.

Spring Chinook Fishery - Adaptive Management Implementation

The Policy provides for 65% of the allowable impacts on upriver spring Chinook stocks to be allocated to the recreational fishery in 2013-2016. However, in Oregon, the recreational allocation remained at 60%

as a result of the stay placed on implementation of new rules in Oregon. Through the Columbia River Compact process, the difference in Washington and Oregon policies was resolved as in past years by placing 5% of the allowable impacts in a set aside buffer.

The Department exercised an adaptive management provision of the Commission policy, regarding the commercial spring Chinook fishery, by adopting large-mesh (8 inch) gillnet regulations for the last two fishing periods in May to avoid handling increasing numbers of shad and steelhead. The presumptive path identified the use of tangle nets for the commercial fishery in 2013.

The commercial fishery was limited to just one short period in April due to limited catch opportunity associated with a modest run-size forecast and a 40% buffer on the commercial fishery prior to the run-size update. Following the May run-size update, it was determined that over 50% of the commercial allocation remained, enabling additional commercial fishing opportunity. The Columbia River Compact (Compact) set the first fishery, May 15, with tangle net gear. The next two periods, May 22 and May 29, were set with large-mesh gear.

Shad runs in the river range from 1-3 million annually and peak abundance in the lower river is late May-early June. Tangle net gear (4.25" mesh) is very effective at catching shad. The Compact was concerned that too many shad in a drift could compromise the ability to fish for the target Chinook while meeting the selective fishery requirements, in particular, the rule to limit total drift time to 45 minutes. The attached fact sheet and summary data in Table 1 compare the monitoring information collected in the May 15 tangle-net fishery with the May 22 large-mesh fishery. This information displays the significant reduction in handle of shad and steelhead with the 8-inch gear, even with increased abundance of those two species in the latter period. Shad encounters were reduced from 40 per drift to 0.1 and steelhead encounters were reduced from 0.2/drift to zero. Chinook was about one per drift for both gears.

Table 1. Monitoring data collected by observers during the commercial fishery in zones 1-5 on May 15 and May 22, 2013 (preliminary data).

Date	Mesh	Drifts	Chinook Handled	Steelhead Handled	Shad Handled	Chinook per Drift	Steelhead per Drift
May 15	4.25"	47	44	8	1900	0.9	0.2
May 22	8"	51	56	0	6	1.1	0.0