

Agenda Item Summary

BACKGROUND

In 2008, the parties of the *US v Oregon* court case (hereinafter referred to as “the parties”) signed a management agreement (MA) to coordinate management of fisheries in tribal and non-tribal Columbia River fisheries from 2008 through 2017. During the development of this agreement, the parties realized a need to review regulations across the several state and tribal jurisdictions in an effort to achieve consistency in regulations.

Management of Columbia River fisheries are regulated by the States of Oregon, Washington, and Idaho, and by the four Columbia River Treaty Tribes – the Yakama Indian Nation (YIN), the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Warm Springs Reservation (CTWSR), and the Nez Perce Tribe (NPT).

Oregon and Washington enforce regulations via the Oregon State Police (OSP) and the Washington State Police (WSP). The tribes cooperatively enforce regulations via the Columbia River Intertribal Fisheries Enforcement agency (CRITFE). Similarly, these states review enforcement cases in state courts, and tribal jurisdictions hear court cases in individual tribal courts.

ISSUE 1

CONSENSUS RECOMMENDATIONS OF THE *US v OREGON* PARTIES “REGULATORY CONSISTENCY COMMITTEE”

ANALYSIS

An important objective in developing the *US v Oregon* MA was to ensure that all jurisdictions were creating and enforcing consistent rules for the same fishing activities. Additionally, a high priority was placed upon improving the ability of state enforcement officials to refer enforcement cases to tribal courts for prosecution and trial. Inconsistency between state and tribal regulations as well as between regulations of individual tribes make such referrals complicated, at least in part due to fundamental questions over whether specific regulations were violated given the differences in rules.

To address the issue of regulatory inconsistencies, the parties agreed to form a *US v Oregon* sub-committee, called the Regulatory Consistency Committee (RCC). The RCC is comprised of policy, legal counsel, enforcement, and fishery management representatives. The RCC has met regularly over the course of the current MA (2008-2017), and has identified several categories of regulation that warrant discussion and potential modification as well as specific recommendations to reach consistency. These recommendations are considered by the *US v Oregon* policy representatives, who then work to achieve consensus on proposed changes to move forward to their respective rulemaking bodies.

While state regulations are either administrative rules adopted by the

respective state Fish and Wildlife Commissions or required by state legislative action, in contrast tribal regulations are enacted by each tribe via their own Tribal Councils. Accordingly, once consensus is reached by the parties around the *US v Oregon* table, state representatives must return to their respective Commissions for consideration and implementation, while tribal representatives must return to their Tribal Councils.

During 2016, the parties were able to reach consensus recommendations on two key regulatory issues – the first RCC recommendations to reach a consensus conclusion.

The first recommendation is intended to ensure consistency of identification requirements for tribal fishers. The states and all four Columbia River Treaty Tribes have regulations requiring tribal identification, and varying degrees of requirements for placing such identification on deployed fishing gears. However, the regulations have varied in language and content across jurisdictions.

OAR 635-041-0005 specifies regulations requiring personal tribal identification documenting that the individual is a duly enrolled member of one of the four Columbia River Treaty Tribes. The recommended changes leave this requirement in place, but use language that is consistent with that being implemented by the other jurisdictions. The revised language also includes a requirement for tribal identification to be presented to federal, state, or tribal officers on request, which is not specified in the current OAR.

OAR 635-041-0025 specifies regulations for tribal subsistence fishing gears. The current rule contains no requirement for marking subsistence gear with the identification of the owner. The proposed changes would require this identification, and specify how the gear will be marked to ensure consistency in application of identification to the gears.

OARs 635-041-0050 and -0063 specify regulations for tribal commercial fishing gears. The current rules specify requirements for marking the gear with the identification of the owner, including how the marking is to be applied. The recommended changes retain these requirements, but use language that is consistent with that being implemented by the other jurisdictions.

The second recommendation relates to specific requirements for releasing sturgeon that are captured in tribal fisheries, but not intended for harvest - either due to not meeting the required size slot or being captured during a non-retention fishing period. Oregon regulations for non-tribal fisheries require that sturgeon be released “immediately,” but tribal regulations have not specified this requirement. The proposed rule changes were enacted by temporary rule in September 2016, and were ratified by the Commission in

October 2016. The staff proposal today would implement these changes permanently.

The staff proposal inserts the following language in OARs 635-041-0030 and -0061 regulating Treaty subsistence and commercial fisheries:

“All sturgeon not of legal size shall be released to the water unharmed. Sturgeon not captured for legal harvest shall not be possessed on land. For purposes of this regulation, docks and boat ramps are not considered land.”

Representatives of the four Treaty tribes have reported that all of the respective Tribal Councils have adopted regulations consistent with the proposed changes for sturgeon. Rules for identification and gear marking are currently being moved through the various Tribal Councils, with the Yakama Tribal Council also set to take the issue up in February 2017. Washington has not yet adopted these rules.

OPTIONS

1. Adopt the amended OARs as proposed in Attachment 3.

**STAFF
RECOMMENDATION**

Option 1

DRAFT MOTION	I move to adopt the amendments to rules for Columbia River System Treaty Indian Fisheries as reflected in draft OARs shown in Attachment 3.
EFFECTIVE DATE	Feb 21, 2017