



U.S. Department of Justice

Environment and Natural Resources Division

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January 30, 2004

David E. Leith
Assistant Attorney General
Special Litigation Unit
Trial Division
Oregon Department of Justice
1162 Court Street NW
Salem OR 97301-4096

Re: National Wildlife Federation v. National Marine Fisheries Service, CV 01-00640-RE (D.Or.)

Dear Mr. Leith:

On behalf of NOAA and the federal agencies involved in the remand proceedings for this case, I want to express our appreciation for the solid proposal for collaboration you recently provided by a letter on behalf of the Columbia Basin salmon co-managers of January 23, 2004.^{1/} In response, we would like to establish a date for the scoping meeting you propose. At that meeting, NOAA would present and discuss its plan for the technical and analytical work for the remand proceedings. In addition, we propose that the parties also discuss at this meeting the particulars for stages two and three. While we think that the processes these stages represent are important for the success of this effort, we believe we could all profit from a discussion of the details of those processes before we can fully appreciate their time and staffing requirements.

We propose that we hold the first meeting starting at 1:00 pm, February 12th after the next Attorney Steering Committee meeting scheduled with Judge Redden. We think your suggestion of utilizing the services of Donna Silverberg Consulting for the collaboration stage is a good one, and would suggest that NOAA request a representative of the firm attend the February 12th meeting to assist the parties in designing the latter stages and in estimating the additional time required.

Finally, I would note that we think that a 60-day extension of the remand proceedings is not likely to be sufficient for the contemplated collaboration, and it may well require significantly more time. We should discuss the time requirements and the necessary implications for the remand activities. At the least, we expect that the due date for the draft and final revised biological opinion would be rescheduled to follow these collaboration efforts.

^{1/}Your letter did not appear to speak on behalf of the State of Washington as it did for Oregon and Idaho. We direct this letter to all elements of Washington State, as well as the Washington Department of Fish And Wildlife, with the expectation that this collaboration process is intended to fully engage all relevant interests of each state.

I want to specifically acknowledge the co-managers' commitment to a "good faith umbrella" and indicate on behalf of the federal agencies our similar commitment for the meetings and any intervening exchanges. We also share your expectation that the contents of these discussions would not be admissible in any judicial proceeding, though we recognize each party's prerogative to pursue its position on issues discussed, independent of these discussions.

I would be pleased to discuss this process with you further at your request.

Sincerely,

Fred R. Disheroon
Special Litigation Counsel

cc: Attorneys' Steering Committee
Remand Website (<http://www.salmonrecovery.gov/remand.shtml>)