

Appendix H

Adaptive Management Framework

ADMIRALTY INLET PILOT TIDAL PROJECT
FERC PROJECT NO. 12690

ADAPTIVE MANAGEMENT FRAMEWORK

(submitted with the Final Application for a New Pilot Project License)

Submitted by:

Public Utility District No. 1 of Snohomish County



February 29, 2012

TABLE OF CONTENTS

1.0 MARINE AQUATIC RESOURCE COMMITTEE 1

2.0 COMMITTEE MEMBERSHIP AND MEETING PARTICIPATION..... 1

3.0 MEETING PROVISIONS 2

4.0 COMMITTEE DELIBERATIONS 3

5.0 DISPUTE RESOLUTION PROCEDURES 3

 5.1 Dispute Resolution Procedures 4

 5.2 Remedies 5

6.0 NOTICE..... 5

ADAPTIVE MANAGEMENT FRAMEWORK

for the Admiralty Inlet Pilot Tidal Project

1.0 MARINE AQUATIC RESOURCE COMMITTEE

The purpose of the Marine Aquatic Resource Committee (“MARC” or Committee) is to advise the District on aquatic resource issues related to construction, monitoring, and operation of the Admiralty Inlet Pilot Tidal Project (Federal Energy Regulatory Commission Project No. 12690). As a component of this purpose, the Committee will advise the District on implementation of the following monitoring plans: (1) the Marine Mammal Monitoring Plan; (2) the Near-Field Monitoring Plan; (3) the Derelict Gear Monitoring and Removal Plan; (4) the Benthic Habitat Plan; and (5) the Acoustic Monitoring Plan.

Key functions of the Committee are to:

- 1.1 Review the results of studies, including pre-installation and monitoring, (e.g., interim, quarterly, annual, or final reports), and determine whether results are properly characterized;
- 1.2 Use study results or other sources of new information to determine whether a change to project monitoring (e.g., study design, methods, or duration) is warranted or if existing monitoring approaches continue to be appropriate;
- 1.3 Evaluate, propose an alternative, and/or approve, any changes in plans made by the District in response to studies; and
- 1.4 In the event that effects are identified that require modification to project operation or monitoring, provide the District with recommended measures to avoid, minimize, or mitigate for the effects.
- 1.5 In the event that adverse effects are identified that require immediate response, provide the District with actions to address these effects.

2.0 COMMITTEE MEMBERSHIP AND MEETING PARTICIPATION

- 2.1 The Committee shall be comprised of the following entities: the District, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, Washington Department of Natural Resources, the Tulalip Tribes, Suquamish Tribe, Swinomish Indian Tribal Community, and Sauk-Suiattle Tribe (hereafter referred to as “Members”). The Committee, by unanimous agreement, may grant any other entity membership status on the Committee.
- 2.2 Each Member should designate a primary representative to the Committee within 30 days after issuance of the Project License, and may change their representative at any time thereafter. Designation shall be by notice to the Members in accordance with section 6. Each Member may name alternate representatives to the Committee to act on the representatives’ behalf. Failure to designate a representative shall not prevent the Committee from convening or conducting its

functions in accordance with the time schedules set forth in specific License Articles in the Project License.

- 2.3 Each Member should select a representative who has relevant training or experience with natural resource management. Parties may also send staff with particular expertise or experience in addition to a designated Member to attend and participate in meetings to advise the Member.
- 2.4 Committee participation by state or federal agencies does not affect their statutory responsibilities and authorities. Issues involving the exercise of agencies' specific authorities can be discussed, but decisions are not delegated to the Committee. Consensus advice from the Committee is not binding on any state or federal agency.
- 2.5 An entity may withdraw as a Member from the Committee at any time, for any reason, by providing prior written notice to the other Members. An entity that has withdrawn as a Member of the Committee may continue to be involved in Committee matters in an informal advisory capacity but will not have voting rights for purposes of Section 4.1 of the plan. Such withdrawal may be temporary, and the entity that has withdrawn may rejoin the Committee as a Member at any time by providing prior written notice to the other Members.

3.0 MEETING PROVISIONS

- 3.1 The District shall arrange, administer, and chair all meetings, unless otherwise agreed. The Committee shall establish protocols for Committee meetings such as agenda development, subcommittee involvement, and timely distribution of materials, location and scheduling.
- 3.2 Scheduling of meetings should be informed by milestone events contained within specific License Articles (e.g., following development of study reports summarizing monitoring results), and as the need arises based on new information and monitoring results. The Committee will meet quarterly for the term of the Project License or as needed to meet the consultation requirements of the License Articles.
- 3.3 The District shall make the Committee meeting schedule and meeting agenda available on its web site.
- 3.4 The District shall bear all costs associated with conducting meetings. Each Member shall bear its own cost of attendance. A Member's ongoing participation on the Committee is subject to that Member's budget and resource constraints.
- 3.5 Committee Members shall first use the dispute resolution process described in section 5 herein to resolve disputes arising from Committee deliberations (e.g., disputes over characterization of study or monitoring results or the need to alter Project monitoring or operation), prior to seeking remedies in any other forums.

4.0 COMMITTEE DELIBERATIONS

- 4.1 The Committee shall seek to reach consensus. Consensus is achieved when all Committee Members cast a supportive or neutral vote, or have abstained from the decision. When any vote is taken at a meeting, the District will provide the results to and seek the vote of non-present members within three (3) working days. Members not present must inform the District of their vote within ten (10) working days after the meeting or they will be deemed to have abstained from the decision. Alternatively, a vote may be cast by proxy.
- 4.2 Agencies do not waive or relinquish in any respect any approval authority under the Federal Power Act or other applicable law through their participation in the Committee consensus process and any subsequent dispute resolution process.
- 4.3 The District shall implement any action where consensus by the Committee has been reached, subject to the requirements of the Project License (such as filing for Commission approval) and any necessary regulatory approval. In the absence of consensus, the District may proceed to file plans or make any required filings necessary to meet a License deadline. Unless otherwise noted, the District shall file with the Commission any plans or other required actions within seven (7) days of Committee approval or of an agency decision in case of dispute resolution. Where appropriate, prior to implementing a plan or other required action, the District shall obtain Commission and agency approval.
- 4.4 Unless otherwise noted in a specific License Article in the Project License, the District shall allow a minimum of thirty (30) days for Committee Member comments and recommendations, and subsequent document revision, before submitting the document to the Commission or the state or federal agencies for approval. When filing the document with the Commission, the District shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from Committee Members are accommodated by the District's plan. If the District does not adopt a recommendation, the filing shall include the District's reasons based on Project-specific information.
- 4.5 The District may seek review from the Committee participants individually on matters in which they have expertise prior to seeking consensus of the Committee.

5.0 DISPUTE RESOLUTION PROCEDURES

Committee Members shall first use the dispute resolution process described herein to resolve disputes arising from Committee deliberations or otherwise related to the Committee, prior to seeking other remedies, unless otherwise precluded by statute or regulation.

The Member initiating dispute resolution under this section 5 shall notify the Commission when ADR proceedings are initiated.

The Members agree to devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible; and each Member will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Member will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

5.1 Dispute Resolution Procedures

5.1.1 Dispute Initiation Notice

A Member initiating a dispute resolution procedure shall provide timely notice to the other Members, describing the matter(s) in dispute and any proposed relief or resolution. Each Member that wishes to participate in dispute resolution shall provide written Notice to the other Members within twenty (20) days of receiving the dispute initiation Notice.

5.1.2 Informal Meetings

The Members involved in attempting to resolve the dispute (the “Disputing Members”) shall hold at least two (2) informal meetings to resolve the dispute, unless agreed otherwise, commencing within thirty (30) days after the dispute initiation Notice and concluding within sixty (60) days. If the Members are unable to resolve the dispute, at least one (1) meeting will be held at the management level to seek resolution. The 60-day period may be extended upon mutual agreement of the Disputing Members. If these meetings fail to resolve the dispute, the Disputing Members may, by unanimous consent, agree to mediation. The Member initiating the dispute shall be responsible for coordinating all meetings under this section and shall make good faith efforts to coordinate a meeting time and location satisfactory to all Disputing Members.

5.1.3 Mediation

The Disputing Members shall choose a mediator within thirty (30) days of the conclusion of the informal meetings. Mediation shall not occur if the Disputing Members cannot unanimously agree on the allocation of costs or choice of mediator. The mediation process shall be concluded not later than sixty (60) days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Members.

5.1.4 Dispute Resolution Notice

The Member initiating the dispute shall provide Notice to all Members of the result of the ADR process.

5.1.5 Commission Filings After Dispute Resolution

If the District is required to make a Commission filing relating to an issue that was not successfully resolved through ADR, such filing will include the District’s reasons, based on Project-specific information, for not adopting a Member’s recommendation or for seeking the Commission’s approval without obtaining agency approval. Any other Member may oppose or seek modification of the District’s filing.

5.1.6 Effect of ADR on Other Proceedings

The ADR process in this section 5 does not preclude any Member from timely filing and pursuing an action for administrative or judicial relief of any Commission order, compliance matter, or other regulatory action related to the Project License; provided that any such Member shall initiate ADR pursuant to this section 5 as soon as practicable thereafter or concurrently therewith.

5.2 Remedies

Following conclusion of dispute resolution, the Members may exercise any appropriate remedy, including filing comments with the Commission, and seeking a License amendment or other appropriate relief from the Commission.

6.0 NOTICE

Any Notice required to be given to other Committee Members shall be written. If practicable, Notice shall be provided by e-mail or facsimile to all Members. Notice shall also be sent to all Members by first-class mail or comparable method of distribution, and as applicable shall be filed with the Commission. Unless otherwise specified, a Notice, including Notice via e-mail or facsimile, shall be effective upon receipt, but if provided only by U.S. Mail, seven (7) days after the date on which it is mailed. When Notice is required in fewer than seven (7) days, Notice shall be provided by facsimile or e-mail and shall be effective when provided.

For the purpose of Notice, the list of authorized representatives of the Members as of the Effective Date is attached as Appendix 1. The Members shall provide Notice of any change in the authorized representatives designated in Appendix 1, and the District shall maintain the current distribution list of such representatives. The Members acknowledge their responsibility to keep the other Members informed of their current address, telephone, facsimile and e-mail information. Notice obligations under this section are in addition to any notice provisions required by applicable law.

