

## **Subbasin Planning Regional Coordination Group September 24, 2003**

The Subbasin Planning Regional Coordination Group (RCG) met September 24, 2003 from 8:30 a.m. to 3:00 p.m. at the Northwest Power and Conservation Council (NPCC) central office. Judi Danielson (NPCC chair) presided. About 35 people attended.

### **Agenda Item 1: Review of Minutes and Action Items from Last Meeting**

John Ogan (NPCC staff) went over action items from August 27. He noted that participants spent a lot of time at that meeting discussing the process for reviewing, revising and adopting subbasin plans. We're driving toward getting the details put together for that process before we take a proposal to the Council for its endorsement, Ogan explained. He noted that the issue of ESA assurances arose at the last meeting, i.e., if people are doing local subbasin plans, what assurance will come from NOAA Fisheries with regard to the Endangered Species Act (ESA).

These RCG meetings are very efficient at raising, discussing and resolving issues before they rise to the level of conflicts that have to be brought before the Council, Ogan continued. We're working things out as a group and having success, he stated.

Tom Dayley (NPCC Idaho subbasin planning coordinator) made a correction to notes of the last meeting. A sentence on page 2 of the notes should say the Clearwater "is the only subbasin with a plan *submitted* to the Council," not approved by the Council.

### **Agenda Item 2: Report on ESA Assurances Meeting**

Rob Walton (NOAA Fisheries) reported on the ESA assurances meeting September 23. There is a tension between getting an assurances package out soon and ensuring that what is done is legally defensible, he indicated. We have local leaders on board for subbasin planning, and if we can't deliver assurances during their term of office, we'll miss an opportunity and lose momentum, Walton said. But on the other hand, if we don't get this right, there will be lawsuits, and the courts will throw this right back at us, he said.

Walton recapped discussion at the meeting, which he said drew about 30 participants, and he went over a diagram NMFS regional director Bob Lohn presented that illustrates the sequence for getting from local subbasin plans to ESA assurances. At the end of the meeting yesterday, we brainstormed about having a pilot project in each state, he continued. Each state would choose a subbasin to "fast track" to get the assurances process going, Walton said.

As I understand it, people should not expect a separate NMFS review of their subbasin plan, Doug Marker (NPCC staff) commented. We will review and comment on the plans, but Lohn has repeatedly stated that we aren't setting ourselves up as "an approving

authority” that will do a pass/fail review, Walton responded. We may write comments during the public review process on the plans, Elizabeth Gaar (NOAA Fisheries) added.

Would Montana want to be included in the effort to do pilot projects? Mark Bagdovitz (USFWS) inquired. Kerry Berg (NPCC staff) said he thought Montana would be interested in participating.

We really need to consider doing something about the 4(d) rule, Jim Caswell (Idaho Office of Species Conservation) stated. He said there are issues with regard to applying 4(d) to listed Snake River ESUs that need to be addressed. We’re losing opportunities to take advantage of the flexibility in the revised rule, Caswell said. Staff in both USFWS and NOAA Fisheries should coordinate on the tools that subbasin planners are using, he continued. You need to work on alignment, so we don’t have to do one thing for USFWS and then something else for NMFS, Caswell stated.

We have offered to focus federal resources on doing a pilot process for assurances, Walton said, adding that it will take another meeting to get at remaining key questions. It’s apparent there are major hurdles ahead – how to complete the subbasin plans, keep up the continuity with local planning efforts and continue funding, he pointed out.

On your diagram, you have a box that says, “roll up to ESA,” Rod Sando (CBFWA) said. We don’t have a process for how to roll up the subbasin plans into an ESU plan, and we should talk about that, he said. The states and tribes will want to weigh in, Sando stated, adding there will also be multistate issues to resolve.

We have technical guidelines as the standard for subbasin plans, and we’ve focused the assurances on those guidelines, Doug Marker (NPCC staff) explained. The next question will be, what needs to happen to get these subbasin plans to a full ESU recovery plan – we don’t know how that will be done, he acknowledged.

The statute says that NMFS will develop recovery plans, Walton stated. But there are some “very high hurdles” in accomplishing that, he said.

Bob Nichols (Washington governor’s office) described the structure in place in Washington to get to ESU recovery plans. At the state and local level, we’re developing the pieces, he indicated. Nichols said NMFS’ Technical Recovery Teams (TRTs) must be integrated with state efforts. We have to have integration as we go along, he stated.

There will be positive steps in that direction soon, Gaar responded. There are meetings going on now on that issue, and progress is being made, she said.

### **Agenda Item 3: Report on Level III Technical Coordination**

Peter Paquet (NPCC staff) said the Level III technical effort is focused on providing sample products to subbasin planners. To the extent we can provide information in a usable form, that’s what we’re doing, he said, adding, “we are not doing analysis.” We

are working with data from the Yakima, Grand Ronde, Deschutes and Flathead subbasins, Paquet continued. He pointed out the draft work plan that has been drawn up for developing sample products.

We will also attempt to see how useful these tools and techniques will be in rolling up to the ESU level, Paquet said. BPA is assisting us with technical tools that will help us move to the roll ups, he stated.

#### **Agenda Item 4: Status of Subbasin Plans**

Lynn Palensky (NPCC staff) reported that all 58 subbasins have a work plan submitted and approved by the Council. She said most subbasins are moving ahead, but a few have organizational issues that are being resolved. There will be four or five requests for contract extensions, Palensky continued. We plan to grant them, but we will still encourage those subbasins to get their plans submitted early, she said. Palensky also noted that the Lower Columbia Fish Recovery Board and Intermountain Province have inventory documents out for review.

On the money side of things, \$2.16 million has been billed so far in 2003 and \$1.94 million in accruals have been submitted, Palensky said. The total subbasin planning budget is \$15.2 million, and it appears about \$4.1 million will be spent in 2003, she said.

The subbasin plans have two components, Lorri Bodi (BPA) pointed out: an assessment and a management plan. Are we getting close to getting the assessments done? she asked. The assessments are at various stages, depending on the subbasin, Palensky responded. We expect most of the assessments will be done by the end of winter, in December or January, she added. Tony Grover (NPCC Washington) agreed with Palensky's assessment.

Are people focusing on limiting factors and high-priority locations? Bodi asked. We will have failed with subbasin planning if we don't accomplish that, Grover responded.

Walton pointed out that if the assessments are out by December, there might be an opportunity to incorporate new information from the NMFS Science Center that is related to the TRT's work. We should try to have interaction between these processes if we can, he said. Subbasin plans will include scientific results, but it isn't clear whether it will be what the TRT is producing, Grover responded. People will use the best information available, but it won't necessarily be from the TRT since the timing of these processes is not well synchronized, he indicated.

We have been looking at the technical work products coming out of the Lower Columbia, Gaar said. Our overall concern is with the need for the assessments to clearly document what information is available and what is not, and the need for a clear connection between that information and the conclusions, she stated.

Berg said planners in Montana are close to having the assessments and inventories done. We've been encouraging planners to get going on the management plan and not get stuck on the assessments, he added. Likewise, planners in Idaho have been advised not to spend all their time and money on assessments, Dayley said. Karl Weist (NPCC staff) said planners in Oregon are at various stages in their work and are on schedule to complete assessments by the end of the year.

We have pressed NOAA Fisheries on the point that it shouldn't matter what tool subbasins use, as long as the outcome is legally defensible, Melinda Eden (NPCC member) stated. We're on the same page, Bodi responded. The flexibility is there, as long as the outcome is documented, she indicated. There is a fundamental practical issue with the assessments, Walton said. They have to be done in a way that makes it possible to add to them and keep them up to date, he said.

Danielson asked why there are four subbasins that will not be developing plans. We struggled hard on the three subbasins in Montana, but there isn't the organization present to do a broad plan, Berg explained. In terms of BPA's obligation for funding projects in those areas, no money has been spent there so far, and we had to ask if it was worth people's time and effort to produce a paper "that goes nowhere," he added.

With regard to the Sandy River, organizations there are involved in preparing a Habitat Conservation Plan (HCP), and there isn't staff to do a subbasin plan at the same time, Palensky said. The Sandy has a full Ecosystem Diagnosis and Treatment (EDT) completed, but the City of Portland is requiring the HCP for the Bull Run Watershed, so that's where people are focused, Weist explained.

#### **Agenda Item 5: Discussion of Process for Review, Revision and Adoption of Plans**

Marker outlined several topics for the review, revision and adoption discussion, noting that progress was made at the last meeting on the issue of Independent Scientific Review Panel (ISRP) review of subbasin plans. We put forward a schedule for doing ISRP reviews in the June to August time frame, Marker said.

As things stand, the ISRP will deliberate and write a recommendation to the Council, Marker said. We don't have "a fix-it loop" scheduled or funded, he said. We want to know if there is agreement on the June-August review schedule, Marker said. The ISRP is proposing to have peer reviewers, and we need to schedule their time if we are going to stay with this time frame, he added.

The Council is inclined to go with the recommendation of this group on the process, Danielson stated.

The Washington members have "unambiguous, unqualified support" for the May 28 deadline for subbasin plans, Grover said. Idaho is in the same spot, Danielson said.

I'd suggest a strong emphasis on preparing plans that meet the ISRP criteria, Sando stated. These plans should be good to begin with, so the ISRP correction would be minimal – we should focus on quality control and prevention, he added.

Rick Williams of the ISRP has gone out into the region and talked directly to planners, giving an overview of what the ISRP will be looking for – the information has been distributed widely, Palensky said. He has emphasized that the logic path is what is important, she said.

Gaar raised the question of having the ISRP review the assessment portion of a plan early on. The ISRP is looking for a logic path from the assessment and inventory to the management plan, so that wouldn't work, Grover indicated. Eric Merrill (NPCC staff) said the ISRP discussed that possibility, but did not think it would work. The panel did suggest the possibility of doing "a pilot review," he said. They want to see the entire package and the logic path, Merrill stated.

As to whether any of the plans would come in early, Palensky said the Lower Columbia Fish Recovery Board would submit up to 11 plans in February that will go through the public/ISRP review in the winter. It's possible a few others will also come in, she added.

The subbasin plans have to be built on a strong foundation, Walton said. Wouldn't we want the ISRP to tell planners if their assessment is flawed? Why would we wait until May? he asked. The problem is with the ISRP having time available, Merrill responded. Marker suggested the assessments might not be "that reviewable." He also said the ISRP is concerned about maintaining its independence and wants to avoid being cast in the role of "a collaborator" on the plans.

The ISRP is not the only science body available, Grover pointed out. There are others available to review and give science input to planners, he indicated. If there is other science review available, that solves the problem, Walton replied. Merrill indicated the ISRP is working to get familiar with the tools planner will be using and is interested in seeing how the tools are used in a basin that could serve as a pilot case.

Sando pointed out that the management plan and implementation will need to integrate social and economic factors. I hope we don't raise an expectation that implementation will follow "in concrete" from what the ISRP says in its review, he said. The management plan has to involve policy, Marker agreed. How will the ISRP react to a logic path that is in some respects political? Sando asked. Rick Williams "has been preaching transparency," Marker responded. If there is a reason other than science for a conclusion, planners should say so, he explained.

I've understood that the science review is just that, and I hope the science reviewers will respect other factors that have to be part of implementation, Nichols said. The ISRP is advisory, and while we take what they say very seriously, there are other dynamics to consider, Danielson said.

Eden raised the issue of having a fix-it loop built into the review. It is unrealistic to assume that on May 28 “we’ll get 58 perfect plans,” she said. This is supposed to be a “bottom-up” local process, and if we fix the plans at the policy level, we are changing that, Eden said. Marker said the Council has a range of options for following up on the ISRP review. Rather than having an automatic fix-it loop, the policy process could start with fully involving the local planners to resolve issues, he suggested.

Caswell pointed out that a number of interests are likely to comment on the plans. There will be different points of view, and it seems appropriate for the Council to consider the situation plan by plan, he indicated. My concern is we might have plans that are so deficient the Council can’t fix them, Eden responded.

Ogan explained the timeline staff developed for the review and adoption process, noting that it is based on steps required under the Northwest Power Act. This is a statutory process, from the call for recommendations to the Council’s final adoption of plans into its fish and wildlife (F&W) program, he said, adding, we can’t create a process “out of whole cloth.”

Under this timeline, the ISRP review will take place simultaneously with the public comment, Ogan said. In order to allow participants to respond to the ISRP reviews, the public comment period will continue through September, well beyond the August 12 deadline for the ISRP to complete its work, he explained.

Nichols said the ISRP reviews should not stray into policy and management areas. The panel needs direction from the Council so we don’t have that problem, he said. Another issue is to be clear about whether this plan and these projects “get us to recovery” or do they “set us on the path to recovery,” Nichols said. How we frame the debate is very important, he added.

Ogan said the Council will use electronic media to get word out to everyone who wants to comment. We will saturate the entities involved in subbasin planning with information, but we will also have an intensive effort to reach those at the local level, such as county commissioners, he said. The Act requires a public hearing in each state, but I expect there will be more intimate meetings as well – we need to work on a detailed plan, Ogan stated. There will be high reliance on the Level II structure, Marker added.

Dayley asked how hatchery and harvest components of subbasin plans would be developed. The F&W managers and co-managers are getting together to work on those issues, so the results can be plugged into the plans, Nichols said.

The *U.S. v. Oregon* fisheries management plan may not be done in time, so will some parts be added later? Dave Johnson (Nez Perce Tribe) asked. We’d expect to see strategies, such as artificial propagation, in the management plan and to see how those strategies will be used to achieve the goals, Marker said. The level of detail coming out of these other processes is much greater than what we will likely see in the subbasin plans, Ogan said. The plans will state things more generally, he explained.

One thing we can expect to see is the ISRP coming back with a review that says there is something scientifically wrong with a subbasin plan, Ogan said. We must resolve the scientific and technical issues in the public review process, he said. During the public comment period, a subbasin planning group could respond to the ISRP on specific issues, but it will then be up to the Council to determine how to resolve things, Ogan explained.

Is there guidance to the subbasin planners to engage the public in reviewing their plans? Sando asked. Many landowners will be affected, but are they aware of it? he asked. It is required, and it is happening, Grover stated. But some people won't be paying attention, he acknowledged. In some places, the public review is very formal, but in others, it is not, Caswell said. There is an outreach effort going on in all states, Danielson stated.

Ogan described four options for what action the Council could take with regard to adopting the subbasin plans into its F&W program. Much will depend on the subbasin and the plan, he said, laying out the following options for what the Council might do:

1. Council proposes to adopt plan as submitted;
2. Council proposes to adopt plan, subject to some further action;
3. Council proposes to adopt plan, referring outstanding issues to the implementation process; and
4. Council proposes not to adopt plan and to develop an alternative track.

It looks as though option 3 could set up the priorities for funding projects, Bagdovitz commented. Others made similar observations about the relationship of the Council's adoption options to the project selection process.

If the Council's response is something other than option 1, we could destroy the local support, Grover commented. We may need to deal with options 2 and 3 in some way other than to make "a global announcement," he suggested. We could reduce the possibility of plans falling into 2, 3 or 4 by finding money for a fix-it loop, Eden stated.

Option 3 is troublesome, Bob Austin (BPA) said. I would hate to see deficiencies delayed to implementation – we have so many issues already with implementation, I would not want to see those compounded, he explained. We need to think now about the implementation phase and set things up for the long haul, Nichols commented.

How do we accommodate fixing plans that are not adequate, either from the state or ISRP reviews? Jim Owens (Oregon subbasin planning manager) asked. In Oregon, the majority of the subbasin planning entities will go away when the contract ends, he explained. The first time many of the management plans will see the light of day is May 28, Owens said. We have committed to a thorough Level II review in Oregon before submittal to the Council, he said. Who is going to fix the subbasin plans? How will that be funded? And once a plan is fixed, how does it get back into the process? Owens asked.

We recommend some time be built into the process between September and November for a fix-it period, Marker said. This is likely to involve some case-by-case determinations; there is not a “one-size-fits-all” solution, he indicated. In some cases, we might turn the issues back to the planners, but we are not proposing a built-in fix-it loop that stalls the program amendment process, Marker stated.

In Oregon, we aren’t comfortable with the Council or the staff deciding which comments to accept for the draft, in lieu of having the subbasin planners “take another crack at it,” Eden stated. After the public comment period, are you suggesting a process that would run the plan back through the ISRP? Ogan asked. I’m suggesting that the planners get to take all the comments and decide which they want to use, Eden responded. We’d like to fix this at the local level, Owens agreed.

We would expect to have small-group discussions with subbasin planners, and we could use the F&W program amendment process to turn this back over to the local planners, Ogan explained. Eden said she thought the process would be “unwieldy” for the Council. Let the subbasin planners do this revising, so the Council would get “a fixed plan,” she urged.

As an entity likely to do the commenting, we’d like to make our comments after the ISRP review, and we’d like to be sure there is a meaningful response to the public comment, Gaar said. We’ve assumed the local planners would have the opportunity to respond to the full suite of comments, she added.

The Washington members have said, don’t push off the May 28 deadline, Grover stated. Do we have dates set out for discussions between planners and the Council? he asked, adding that subbasin planners will need a little money to accommodate such meetings.

We would be using the comment period through September 30 to work with and talk to people, Ogan said. There will be time for discussion, he added. We would not foreclose the possibility that on a case-by-case basis there could be more work for subbasin planners and a new ISRP review, Marker said.

Why did we have the master contract with BPA expire December 31, 2004? Eden asked. We talked a lot about schedule early on, Ogan responded. By 2005, the Council will have gone five years without having any measures adopted into its F&W program, he indicated. If we go beyond the end of 2004 to adopt the amendments, we will completely miss the development of BPA’s rate case, and we want to be in “that ballgame” with our F&W program, Ogan continued. The Council also wanted to get this done so as not to become irrelevant to the ESA listings and recovery planning, he stated.

There might be a bit of room in the schedule to ensure that what we adopt is the best possible program, Eden responded. The process needs to recognize the possible inadequacy of some of the plans, and we need to have time for the state review and for the locals to fix the plan if needed, Owens said.

This comes down to who is writing the draft program amendments, Weist commented. What we are doing with a fix-it loop is giving someone else the chance to develop the draft program – or you have the staff do it and put the local planners out of the picture, he said. Are we willing to let the local planners be the drafters? Weist asked. Without another ISRP loop, the Council becomes the arbiter of any new work, he pointed out.

The draft should be managed at Level II, Sando said. This is an artificial time frame for review, so why not add 30 to 60 days? he suggested. It is worth the time to get this right, Sando stated.

If this group can't agree, the Council will decide this, Danielson stated. The Council is not inflexible within the parameters of the Act, she said. Can't we look at this timeline as a goal? Danielson asked. How about keeping this conservative timeline and giving the Council some flexibility to deal with things that are bound to arise, she suggested.

If we want to make these the best possible plans, we should have the ISRP review, a subbasin response, and then put them out for public comment, Eden said. That way, you'd get the public comment on a streamlined, better plan, she stated.

If the plans are that flawed, I don't think you're going to be able to take a little more money and get them fixed in two weeks, Caswell commented. He said he expected the plans being submitted would not be seriously flawed. We've spent two years and \$15 million on this, Caswell pointed out. Sando said he thought an earlier ISRP technical review could solve some of the problems and avert any big issues with the assessments.

I'd like to discuss this with the Council's F&W committee, Marker said. This has implications for adoption of the Council's F&W program, he added.

People have learned a lot from the Clearwater experience, Grover stated. If the ISRP does "early bird" reviews, we'll see even more of what they are looking for, he indicated. Our biggest issue will be with people who were left out of the process, Grover predicted.

We have one consultant doing a number of plans, and if one plan slips, everything slips, Johnson said. Finding time for fix-it will be difficult, he added. We need to keep our eye on the technical guideline standards and the ISRP criteria on limiting factors, Johnson said. If you meet those criteria, you'll pass the review, he said.

### **Agenda Item 6: Items from Level II Groups**

With regard to the period beyond May 28, "not everything goes dark," Marker said. We have resources and infrastructure that will continue, he said. Marker asked whether the group wants to seek funding to keep subbasin planning going through the amendment process. The only source for that money is from BPA project funds, Danielson cautioned. This would not be over and above those monies, she said.

There might be NOAA Fisheries or USFWS money, Marker suggested. Gaar pointed out that NOAA Fisheries gives grants to the states in the form of Pacific Coast salmon recovery funds that they can spend as they want. You do have the option to use these funds, but it's not likely there will be more, she added. The Intermountain Province doesn't qualify for the Pacific Coast salmon funds, Grover said. We'd like an opportunity to partner with USFWS for funding in that province, he said. We could look into the authority and available dollars, Bagdovitz responded.

The co-managers will still be there after May 28, Caswell pointed out. Some of the contacts may wither, but "we'll still be able to move the ball," he said. There might be some savings from subbasin planning funds that could be rescheduled, Austin offered. I'd be careful about moving money around with the BPA-funded projects, since for implementation, there could be different entities involved, he said. But let's get the plans in place – they're the building blocks for the ESU recovery plans, Austin stated.

The BiOp depends on subbasin plans being completed and implemented, Gaar agreed. We expect to see subbasin plans as a part of the remand BiOp, she reported.

With regard to data management, CBFWA has an extensive database and an active data management committee, Sando said. It makes sense to link data management efforts, he suggested. The region has a unique opportunity with subbasin planning, Sando said, and he expressed support for continuing the subbasin planning groups.

In Oregon, we want this to go forward, Owens stated. We've created new entities for the effort, and we want to see them exist through the amendment process, he said. We want the local groups to fix their plans, not turn them over to other agencies, Owens said. At this point, I can't say there are resources to continue beyond May 28, Marker concluded.

#### Closure on Out-of-Basin Numbers

Paquet reported that the effort is complete to compile the out-of-basin numbers for subbasin planners to use. We have data by month for about 10 years for each dam, he said. Paquet said he would be distributing information to coordinators and on the web site about how to access and use the numbers. More explanation about how to use these would be helpful, especially for those who are not steeped in EDT, Grover commented.

Caswell reported that Idaho's Level II coordinators met September 8 and agreed on a process for reviewing subbasin plans prior to May 28. Our Level II group will bring planners together twice in upcoming months to check on progress, Owens said.

Katherine Cheney (BPA) announced that a web site on the BiOp remand will be up and running by next week. She said anyone who wants to receive electronic updates should let her know so they can be added to an e-mail list for the site.

The RCG decided to hold its next meeting November 6.

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