Subbasin Planning
Regional Coordination Group
November 6, 2003

The Subbasin Planning Regional Coordination Group (RCG) met November 6, 2003 from 9 a.m. to 2:30 p.m. at the Northwest Power and Conservation Council (NPCC) central office. Judi Danielson (NPCC chair) presided. About 35 people attended.

Agenda Item 1: Progress Report on ESA Assurances

Elizabeth Gaar (NOAA Fisheries) reported on the ESA assurances meeting held September 23, 2003. She described two items that followed from the meeting: making sure "we are articulating good and useful questions" to be answered in coming up with the regulatory assurances for state and local entities, and working with each state on pilots to see if we can streamline the process. Mark Bagdovitz (USFWS) said his agency would work with NOAA Fisheries to develop the questions that need to be answered. Gaar asked the states to report on their progress in coming up with pilots, noting that the states are working with local constituent groups on proposals.

Chris Drivdahl (Washington Governor's Salmon Recovery Office) said Washington has identified three pilots: one in Clark County, where local officials have already specified the assurances they will seek; a second in the Walla Walla subbasin; and a third in the Yakima. Tom Byler (Oregon Governor's Office) said in addition to working with Washington on the Walla Walla, Oregon is looking at a pilot on the Oregon Coast, where the state is putting its "Oregon Plan" for salmon recovery into effect. We will know by next spring what we need in the way of assurances from NOAA Fisheries, he added.

Jim Caswell (Idaho Office of Species Conservation) said Idaho already has three assurance projects in progress and plans to continue with those. In the Lemhi, we have a short-term agreement with NOAA and the USFWS, and are working on a long-term agreement, he said. We have also signed a short-term agreement in the Upper Salmon and are working to develop a long-term agreement there, Caswell continued. In addition, we are working on an agreement in the Clearwater, with a focus on forest practices, he said. Caswell said Idaho remains interested in resolving "the 4(d) issue." We want Idaho to have 4(d) opportunities, he stated.

The main concern in Montana is that the USFWS works with our subbasin planners, which they have been doing, Kerry Berg (NPCC staff) reported.

What is it you expect from the pilots? Larry Cassidy (NPCC member) asked. In choosing the Walla Walla, "you have picked a tough river," a choice that may make it difficult to readily come up with things that can serve as a pilot for other areas, he commented.

I don't think we should get hung up on the word "pilot," Rob Walton (NOAA Fisheries) responded. We have said if the locals want to go faster, we'll do what we can to support

them, he said. We know the Walla Walla is complicated, so if things go slower there, that's okay, Walton said.

We got into this issue because we were looking for assurances that would be available to the subbasins collectively, Doug Marker (NPCC staff) pointed out. The focus has moved now to the states and NOAA Fisheries and USFWS having direct discussions, and if the states are comfortable with that, it's fine, he said. We still want to be able to communicate progress to the subbasin planners, so we'll be checking in, Marker added.

Agenda Item 2: Status of Remand of the FCRPS Biological Opinion

When Judge Redden remanded the Federal Columbia River Power System biological opinion (FCRPS BiOp), he said he wanted a new version by June 2, 2004, and NOAA Fisheries is giving this high priority, Walton explained. Whenever we do a BiOp, we use "the best available science," and we have set out "to fix the flaws in the BiOp" and "to refresh the science," he indicated. Although the subbasin plans "are doing what we need to do" in terms of updating the environmental baseline, they will not be reviewed by the Independent Scientific Review Panel (ISRP) until after we owe the court a new BiOp, Walton pointed out. So we have to figure out how to refresh the science to meet our deadline without hurting the subbasin planning process, he stated.

The NMFS Science Center is out looking at the habitat elements for the environmental baseline, and there is concern among subbasin planners that this is doing violence to the NPCC process, Walton continued. We want to have a candid discussion and "try to make lemonade out of what is turning out to be a lemon," he stated. Walton ticked off three goals that he aims to meet: preserve the integrity of subbasin planning; use the best available science in the new FCRPS BiOp; and meet the court-ordered deadline for submitting the BiOp.

We never intended "to trump" or duplicate local efforts with federal science, he continued. People are concerned that if the NMFS scientists disagree with the local planners, there will be a conflict, and we will have to choose our own science over theirs, Walton explained. The Science Center is not intending to do a new subbasin plan and have new science, but to make input to a defensible BiOp, he said.

NMFS' scientists have begun working in the state of Washington, and we want them to coordinate, collaborate, and integrate with the ongoing subbasin planning efforts, Walton stated. It's not my intention to have separate competing habitat work "that divides our efforts," he said. We don't intend to conflict, but I know it's a concern, Walton added.

There are a lot of people working hard to meet your May subbasin planning deadline, and we don't want to interfere with that, he went on. We could just get "a data dump," but that would bury us, Walton acknowledged. We could also set some criteria about what we want, he added. We're still struggling with how to do this, Walton said. If we can get information from your subbasin assessments in December, we'll use it to meet the three goals I outlined earlier, Walton summed up.

What flexibility do you have to call off the NMFS Science Center? Marker asked. I don't see how we can do that; we can't tell the court that we will be late, Walton replied. If we can't find a compromise, "we may need to kick this upstairs," he said. Our attorney said we can't let outdated science stand and guide us to a new BiOp, Walton added.

The Science Center won't come up with a new habitat assessment, but a tool to use, Lisa Croft (Federal Caucus) stated. We are struggling with how to collect the information without getting in the way of subbasin planning, she said.

Danielson said she was greatly concerned about connecting subbasin planning and the BiOp litigation. I would be concerned if our subbasin work gets into the court and becomes something for the plaintiffs to review, she indicated.

The lawyers' steering committee for the remand has discussed the role of various parties, and Judge Redden told the members to work it out, John Ogan (NPCC staff) said. The plaintiffs have said they should be intimately involved with the issues and schedules for the remand BiOp and its implementation, but there was no resolution, he said.

If you contact the subbasin planners for work, who pays for their time? I'd also like some clarification about the rules or tools you are looking for, as opposed to the habitat assessments, Melinda Eden (NPCC member) said. The rules we are looking for would give us a way to update the environmental baseline for the BiOp, Croft responded. She said she did not know who would pay for the subbasin planners' time under the circumstances.

Jim Owens (Oregon Subbasin Planning) asked whether NOAA Fisheries wanted information from the subbasin assessments or the inventories. We are talking about two separate tasks, Croft indicated: the Science Center is looking for a rule set to update the environmental baseline and could potentially use the subbasin assessments; we would use the subbasin inventories to meet the remand issue about "what counts" in terms of projects that add up to a no-jeopardy determination.

In its approach to rewriting the environmental baseline, the Science Center will review production and limiting factors, Walton said. They will ask whether and how the limiting factors are being addressed, he continued. We'll write our draft BiOp with that information – we won't be putting out a competing assessment, Walton stated.

Your record is not good in working with local efforts, Cassidy stated. We realize you are "the court of last resort," but be careful in how you go about this, and "don't kick the locals in the teeth," he cautioned. Cassidy counseled that the message must be clear that the federal effort does not override local subbasin planning.

The Science Center has been accused of being in "an ivory tower" and making its pronouncements, Walton responded. They are trying "to break that mold" and come out of the tower to work with local efforts, he said.

The Science Center never communicated with the subbasin planning effort that it was getting in touch with people in the Yakima, Peter Paquet (NPCC staff) pointed out. This is a regionwide coordinated effort, but no one at the Science Center has contacted us about this, and we have lots of data sets that could be useful, Paquet added. They may be breaking the mold, but they aren't coordinating, he said.

Caswell asked for an explanation of how NOAA Fisheries would conduct its limiting factors analysis, and Walton went over the steps. Caswell suggested NOAA Fisheries should be looking at what's available in the Clearwater as it considers how to make use of subbasin planning work for the BiOp remand. The Clearwater is the only subbasin in the region with a completed plan, he pointed out. You could end up with two competing outcomes, Caswell acknowledged.

I propose that if the NMFS Science Center comes up with a different outcome than the local planners, we work together to compare the data and determine the reasons for the difference, Walton said. He acknowledged the possibility that some people could try to use any differences "to drive a wedge" between the two processes. It's a big issue, and we need to address it squarely, Walton stated.

Why don't you run the Clearwater through your process and "see if the bogeyman I keep seeing is real," Caswell recommended. I take that as a friendly suggestion – we ought to do it, Walton replied.

There are two things we can run into trouble with, Paquet said: models using different rules or methodologies that result in differing outcomes; and using different data sets. If early in the process, we put our heads together on data sets, we could eliminate the potential for "a train wreck," he said. We may be able to see early on where there could be problems, Paquet said.

I agree, we want to use the best data sets, Walton said. And if we can't use yours, we could get the Science Center to tell us why, Croft agreed. "I'd go out on a limb" and say we could do that, she added.

The issue of "federal supremacy" isn't going away, Rod Sando (CBFWA) commented. The legal reality is that NMFS is going to have to use its own data, and that's what will prevail, he said. We need a big dose of reality on that – state and local work does not prevail in these situations, Sando stated. We need to accept the federal supremacy and see how subbasin plans can fit in, he added.

This whole issue shows a failure in integrating NOAA Fisheries into subbasin planning, Tom Karier (NPCC member) stated. We were hoping the science review at the end of the planning would cover NOAA Fisheries' needs, he said. We've included everyone else in the process except NOAA Fisheries, Karier continued. You are asking when and where you can get the assessments and inventories, which are a big part of the subbasin

plans, he said. And you'll be doing the third part of the subbasin plan, the management plan, when you write the BiOp, Karier pointed out.

It troubles me to have NOAA Fisheries prescribing the actions at the local level, Lynn Palensky (NPCC staff) said. People will focus on what is in the BiOp, she said. The environmental baseline describes the status of habitat and species before we prescribe any action, Walton said. Then we consider what's happened toward recovery and what's certain to occur, and if there is a jeopardy finding, we get to the Reasonable and Prudent Actions (RPAs), he explained. In terms of prescribing what should be done, that won't take place in the environmental baseline, Walton said. That's why we want the most complete list of projects possible, Croft added. So we can close the gap between where we are and where we need to go, she said.

We need coordination from the Science Center, Marker said. We need a systematic process and deliverables, he said.

Owens said he wanted answers to five questions in order to respond to the subbasin planners who are going to call him about these issues: what does NOAA want, when, and from whom? who will deal with the effects of interrupting the schedule for the subbasin planning process? will there be local feedback on the NOAA Fisheries products? how will these products be used? and who will fund the work involved in meeting the NOAA Fisheries requests? "These are unfunded mandates," he added.

We are struggling with all of those questions, Walton responded. One option is to have you do nothing; we wouldn't interrupt you at all, he said. But if we did that, I don't know how we would handle the inconsistencies between what we are doing and what you are doing, Walton said. Doug has asked why we don't delay our process, but I'd ask whether you could delay yours, he continued. If you did and there were more funds, you would have the Science Center and Independent Scientific Advisory Board information to work with, Walton pointed out. I don't have money to pay for the unfunded mandates, he added. If subbasins need more money, the Council, BPA, and others may need to consider that, Walton stated.

We were driving subbasin planning to a conclusion on May 28 in order to be a relevant part of the ESA process, Karl Weist (NPCC staff) said. We are still going in that direction in the belief that we are trying to meet this for the ESA and federal agencies' benefit, he indicated. With regard to limiting factors, money becomes one if we extend our deadline; any money we use for this now comes from the direct fish and wildlife (F&W) budget, Weist pointed out. These two factors – time and money – were driving us toward May 28, he stated.

That is a good point, Walton said: have we been working toward a deadline that is a product of the 2000 BiOp without a recognition that the circumstances have changed? This is "a pretty fluid environment," and maybe we should think about a change in the schedule, he suggested. I count the subbasin plans as a fundamental building block to recovery, so if we can get better plans, wouldn't it make sense to do that? Walton asked.

Paquet pointed out that consistency is needed between data being used by subbasin planners and by NOAA Fisheries. The level of detail being sought by subbasin planners is a result of what NOAA Fisheries said it needed, but now you're saying you don't need that detail, he said.

We are trying to do a coarse-scale assessment, Walton replied. There is not a change in whether the finer scale is needed, Gaar said. This is not inconsistent with what we've said we needed, she added.

You said your goals are preserving the integrity of the subbasin planning process and getting to the best available science in the time allotted, Tom Dayley (Idaho Subbasin Planning) said. It seems inconceivable that the Science Center with less time and less money can do a better job of getting to the science than the subbasin planners, he stated. We are planning to apply a basinwide methodology at a coarser scale, Walton responded. How about if we have an RCG subgroup review a draft letter that will go to the subbasin planners about what we want and when, Walton suggested.

The subbasin planners are trying to do their assessments at a reach scale, and you said you are doing something at a coarser scale, Eden said. Why do that if you have something at a finer scale to work with? she asked. How do you reconcile this, and what are the implications for the ESA assurances? Eden asked.

It's fair to have our scientists meet with you and talk about inconsistencies, Walton responded. Looking at the Clearwater may be a good case in point, he added. Your question about assurances is a good one, and we need an answer, Walton said.

I'm surprised at your response to the BiOp remand, Karier said, adding that he didn't think what NOAA Fisheries is doing follows from what the judge ordered. You could have accelerated work on the Memorandum of Agreement on fish funding; beefed up research, monitoring, and evaluation; and increased testing at hydro facilities, he said.

In my view, from a legal technical viewpoint, what we are discussing here goes beyond what the judge adjudicated, Ogan agreed. But the related claims in the lawsuit didn't go away, and beyond the question of "what to count," NOAA is seeking to deal with the issues in the remand and issues it knows are coming later, he stated.

Ogan outlined a way to move forward and deal with the possibility that the two efforts – subbasin planning and NMFS Science Center – could reach different conclusions. He suggested a team of key technical people sit down and think through an approach to reconciling the differences. Ogan offered a decision tree that illustrated two paths: one for dealing with similar results and one for dealing with differing results. It would make sense for key people to get together and work on filling out the details on this decision tree, he suggested. These people would need to be cleared from their current deadlines and given the time to work on this and come up with a proposal for resolution, Ogan said.

The people you are talking about are integral to meeting our May 28 subbasin deadline, Owens pointed out. If we pull them out, we stop that process, he stated. I think we've come down to "a choice of evils," Ogan responded.

Drivdahl said local officials could "freak out" over the issues and ramifications posed by the dilemma. If the local politicians who signed subbasin contracts hear about this, "we'll lose them," she said. If we don't have a way to assure them that we can avoid two different outcomes, I don't know if we can offer much comfort, Ogan responded.

This may be simpler than we think, Walton said. "Before we freak people out," let's take this a little further, he said: expedite the pilots, convene a team to look at the results, then make a decision about how to proceed.

We need to get together before, not after, the pilots, Paquet stated. It's a positive thing to have the results of more than one model so you can compare the outcomes, but if the models are run using different data sets, you can't compare the results, he pointed out. There are technical problems we need to talk about up front, Paquet added.

Anything that takes us away from our goal of May 28 is taking us outside the contract terms, Owens stated. There is a lot that NOAA Fisheries can capture without going to the subbasin planners, Ogan said. I'm concerned about making this process of reconciling the differences too private, Eden said. We need to have someone there who can explain how the technical group got from point A to point B, she stated.

We've worked this about as much as we can, Marker summed up. We need to set up a meeting with the Science Center and report back to this group, he concluded.

There hasn't been a reason established to slide the May 28 subbasin plan deadline, Karier observed.

Agenda Item 3: Review Schedule and Adoption Process for Subbasin Plans

Ogan went over the process for reviewing and adopting subbasin plans that the NPCC's F&W committee endorsed at its last meeting. He reviewed the steps required under the Northwest Power Act for amending the F&W program, starting with the call for recommendations, through the public comment period, and concluding with adoption of a final amendment.

We're operating on the assumption we'll try to adopt the plans before January 2005 to track with the BiOp, Weist said. Are there other constraints that are keeping us on this schedule? he asked. There are other considerations, Ogan responded. We wanted to have plans in place before the 2005 check-in on the BiOp implementation, but the Council also thinks it's time to get on with the business of getting a F&W program amendment completed, Ogan said. In addition, we wanted to meet BPA's needs in coming up with rate case funding levels for F&W measures, and in our contract with

BPA, we committed to having the subbasin plans in place by December 2004, he stated. As to whether the BiOp consideration is still in play, I don't know, Ogan acknowledged.

Who is going to revise the plans after they are submitted? Sando asked. We have not presumed that based on the ISRP comments anyone would be doing a new subbasin plan, Ogan responded, adding that the staff's thinking is to keep open the option of addressing issues raised in whatever way is appropriate.

You are inferring it will be the Council staff's responsibility, Sando said. Yes, Ogan replied. Will "the regional roll up" be part of your program? Sando asked. The need for the roll up is related to ESA recovery planning, Ogan responded. We may get to the provincial level in our program, but that's not part of subbasin planning, he said. I don't see that as "a hole or a gap" in the subbasin planning process, Ogan added.

But it has to be paid attention to since it will be a vital part of implementation, Sando commented. We've had a hard time figuring out how the roll up will happen, Marker replied.

"The wind is out of our sails" until we settle the issue of reconciling the NMFS Science Center and subbasin planning processes, Owens said. He pointed out that the six weeks from the deadline for the ISRP review of subbasin plans on August 12 and the end of the "fix-it" period is very short. That may not be enough time, and where there are multi-state subbasins, we need to have a forum to address issues, Owens pointed out. Will we be able to have the state coordinator contracts extended to December 31? he asked. We're working on that, Palensky replied.

The State of Idaho supports this NPCC proposal, Caswell stated. It puts the decision-making authority in the hands of those who should make the decisions, he said. I don't think this question with NOAA Fisheries should put the subbasin planning process at risk, Caswell said. There are other ways to address it, he added.

If a subbasin group decides to amend its plan later on, does it have to come back to the Council and go through an amendment process? Walton asked. Will that mean that the Council, not the subbasin, "owns the plan," he inquired. If the plan is to have legal status with regard to access to BPA funding for mitigation, it has to be part of the NPCC's F&W program, Ogan responded. Walton suggested the Council might be faced with a huge workload if every change in a subbasin plan has to go through the amendment process. The legal staff is thinking about how to handle this, Ogan replied.

Agenda Item 4: Briefing on Release of APRE Reports

Bruce Suzumoto (NPCC staff) reported on release of a draft basinwide artificial production review and evaluation (APRE) report. We're asking for comment by November 28, and in the meantime, we'll be talking to stakeholders and getting feedback, he said. The report is comprehensive and covers over 500 fish stocks and 230 hatchery programs (of the 260 in the Columbia River Basin), Suzumoto explained.

APRE applied principles developed by the Hatchery Scientific Review Group to the information received from fishery and hatchery managers, he continued. Those principles include: goals for stocks affected by hatcheries must be clearly articulated; programs must be scientifically defensible; and decision-making about hatchery programming and operations must be well informed. We are hoping to put together an issue paper incorporating the comments we receive on the draft report and put out recommendations about where we go from here, Suzumoto stated.

In general, there was a lack of clarity on the goals and objectives for hatchery programs, he said. Many of the programs are 25 to 50 years old, but conditions have changed, and there is need for some re-evaluation, Suzumoto indicated. In the next step, we want to engage the region in discussions about the appropriate goals/objectives for these hatchery programs today, he stated.

One of the major accomplishments of the APRE was accumulating the data on hatcheries and putting it into one place – we now have an expansive database, and this information is available to subbasin planners, Suzumoto said. We didn't try to push any conclusions, but to ask questions that need to be asked, he summed up.

We have gone through this report, and we have concerns about it, Fred Olney (USFWS) stated. He said the report has been used to draw conclusions, yet the review and evaluation missed the step of validating findings with fishery managers to see if the conclusions hold up. Olney also said that the conclusions must reflect the complexities of specific hatchery issues and that "yes or no" questions asked of hatchery managers didn't lend themselves to getting at those complexities. We've supported this effort and "it's laudable," but we want the validation phase, he stated.

We did give hatchery operators time to comment on the report, Suzumoto responded, adding, "we want this to be good." He also pointed out that in the hatchery review, staff collected information for the Hatchery Genetic Management Plans (HGMPs). You can look at the original documents in a link on the web site, Suzumoto assured Olney. We're open to taking on any new information so the database is as useful as possible, he added.

I support the need for validation – it's an important step, Walton said. He noted that NOAA Fisheries is working on a hatchery/listing policy and will be coming up with a hatchery guidance document. Faced with 370 hatchery programs in the region (includes hatcheries outside the Columbia River Basin, i.e., Puget Sound, Oregon coast), we need to step back and see what the big picture is, Walton explained. This isn't simple, and there is "a lot of turf to protect," he said. It won't be easily resolved, Walton added.

Agenda Item 5: Status Report on Subbasin Contracts and Expenditures

Palensky said all subbasin contracts have been completed and the next phase is managing contracts and processing amendments. The first three subbasins to complete contracts – Deschutes, Kootenai, and Flathead – have asked for extensions through May 2004, she

said. They could still get their plans in earlier, but with the amendments, they aren't required to, Palensky noted.

As for the budget, $13.2 million has been allocated, which leaves about $2 million unallocated, she reported. That money "isn't up for grabs," Palensky pointed out, since some will be spent on work at the regional level, and BPA may charge its GIS work toward the account. There will probably be some cost savings in the budgets, and once we have all the needs filled, we'll develop a plan for spending any additional monies "to fill holes," she stated. We've paid bills totaling about $3 million, and we've told the contractors that they have to submit bills before the end of November for work done by September 30, Palensky continued.

She offered a progress report on the regional coordination tasks and said staff met with BPA October 20 to go over "where we stand" with regard to the master contract. Palensky pointed out that there is a large amount of information available on the subbasin planning web site and noted that the web site accommodates public file exchange for planners.

BPA does plan to have its GIS work covered under the $15.2 million subbasin planning contract, Bob Austin (BPA) said. If that's the case, then our budget is zeroed out, Palensky concluded.

Agenda Item 6: Reports from State Coordinators

Berg reported that things are going well for Kootenai and Flathead subbasin planners and work is progressing on the assessments, inventories, and management plans. We've gotten no-cost time extensions on our contracts, but we'll still push for early submittals, he said.

Owens offered a written status report on the Oregon subbasins, and reported that he is having an all-subbasin check-in on November 12 to find out where everyone is in the process, what's working and what's not, and where to commit resources. As for early submittals, the Imnaha is pretty close to completion and may seek early review, he said. In Oregon, we've committed to a state Level 2 review process in advance of the submissions, Owens noted.

In Idaho, we're working on the Level 2 review process and will send it out soon, Dayley reported. We are working with Montana on the QHA modeling in the Kootenai, he added. The Owyhee, in which three states are involved, is proceeding quite well, Dayley said. The Clearwater plan is complete and will come to the Council next month, and the Upper Snake is a little behind, but "they'll get back up to speed," he concluded.

Washington has a status report slide show, which we will distribute by e-mail, Raven McShane (NPCC staff) reported.

Agenda Item 7: Regional Technical Update

We're moving along on our sample data projects, and products will be available at the end of the month, Paquet said. There is progress in the Yakima subbasin, and the planners there want to meet with the NOAA Fisheries folks to combine data sets, he said. They are excited about producing common products, Paquet added. He pointed to materials in the meeting packet (a matrix and report) that provide an update on the status of the technical activities.

Wrap Up

The group set its next meeting for December 4, 2003.

When is NOAA Fisheries going to have a draft BiOp? Eden asked. Walton said he was aiming for March, and that he would have a draft letter about how NOAA Fisheries would approach its science update to the RCG subgroup for review before the next meeting. I want to reiterate my concern about taking people away from subbasin planning for the NOAA Fisheries work – it slows down our progress, Owens stated.

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