

Subbasin Planning Regional Coordination Group August 27, 2003

The Subbasin Planning Regional Coordination Group (RCG) met August 27, 2003 from 8:30 a.m. to 3:30 p.m. at the Northwest Power and Conservation Council (NPCC) central office. Judi Danielson (NPCC) presided over the meeting. About 40 people attended.

Agenda Item 3: Report on Level 3 Technical Coordination

Peter Paquet (NPCC staff) briefed the RCG on efforts to develop work products from assessment tools, such as Ecosystem Diagnosis and Treatment (EDT), Qualitative Habitat Assessment (QHA) and Interactive Biodiversity Information System (IBIS). The products will be made available to assist subbasin planners, he said. There have been several technical meetings since the last RCG meeting, and the process is working well – “we have come a long way,” Paquet stated.

We’ve agreed to start with four pilot projects and will quickly try to produce GIS-based maps that contain as much data as possible, he continued. The four pilot projects will be in the Yakima, Grande Ronde, Flathead and Deschutes subbasins, Paquet said, explaining there is already EDT data available from the Yakima and Grande Ronde subbasins that can be put onto the GIS maps. The Flathead subbasin is above the blocked area and is important for resident fish, he said. There are QHA results available from that subbasin, as well as from the Deschutes, Paquet indicated.

These four subbasins will provide a representative sample for planners so they will know what these assessment tools look like, he stated. It’s important to test the tools to assure they are useful to planners and to correct any flaws, Paquet said, adding that the output will also be of interest to the Independent Scientific Review Panel (ISRP). We can’t do pilot projects at the expense of developing subbasin plans, but we think the pilots will help planners to use these tools, he said.

We are working with BPA and contractors in the subbasins to produce a short work plan to get the pilots under way, Paquet said. Our aim is to put these products on the BPA server in GIS format so everyone can access them, he added. We will have a first cut by mid-October and a final product by November 1, Paquet reported.

What exactly is the nature of these products? Jim Owens (Oregon subbasin planning manager) asked. The first product is the data layers, such as population information, put onto a single GIS display, Paquet explained. The products will be maps on which information is integrated, he said, adding that the maps will give planners the ability to see patterns and intersections among species, and to identify “hot spots.” They will also be a good test of whether we can use information developed in the subbasins to “roll up” to the ESU (evolutionarily significant unit) level, Paquet said.

Why do we have two sets of pilots going on – NOAA’s and the RCG? Owens asked. He questioned whether overlap between the two efforts could burden local planners. NOAA has things specific to recovery planning that the RCG may not be interested in, Paquet responded. To the extent we can coordinate, all the better, he added.

NOAA Fisheries has geared up a new effort in light of the BiOp remand, Rob Walton (NOAA Fisheries) acknowledged. The NMFS Science Center will be exploring questions related to habitat and the limiting factors related to offsite mitigation, he explained. We recognize the potential for overlap and are trying to avoid it – our intent is to coordinate with the RCG, which would be to everyone’s benefit, Walton said.

Tony Grover (NPCC Washington) asked whether problems could be created if pilot projects generate information that is different from what teams already at work in the subbasins are coming up with. If they get these products “late in the game,” what do they do if that happens? he asked. We are using the data generated in the subbasins and putting it into the GIS format, so that shouldn’t be a problem, Paquet responded.

When these products become available, the planners in the subbasins will be past the assessment phase and onto working on the management phase, Grover pointed out. I haven’t heard from anyone in the Wenatchee or Yakima subbasins that they even know about this effort, he said. Grover also indicated that the Yakima and Wenatchee subbasins have “huge GIS capability,” and asked again if the subbasin planners have been made aware of the pilot projects.

Your concerns are valid, Walton responded. We need to minimize “bumping into each other” and disruption in the subbasin planning work, he said.

There are no Idaho subbasins among the pilot projects and only one subbasin in a blocked area, Tom Dayley (NPCC Idaho subbasin planning coordinator) pointed out, noting that Idaho’s Clearwater is the only subbasin with a plan approved by the Council. All of Idaho is blocked, so how will this be useful? he asked. Technical people, including the Idaho Department of Fish & Game, have said it will be useful, Paquet responded. We are limited in doing the pilots by the number of people to do the work and by geographic areas where there is data, he added. We are focusing on subbasins that provide important examples, Paquet said. People have asked what these assessment products look like and how they fit together, and we are trying to provide that information to help subbasin planners produce their plans, he stated.

We’ll make the most of these products, Keith Wolf (KWA/Colville Tribe) said. Get your work plan out quickly – the earlier we have the products, the better use we can make of them, he added.

We shouldn’t expect the pilot projects to be very helpful any time soon, Rod Sando (CBFWA) said. The task of data conversion “is monumental,” he said. I advocate getting it done, but I’m not hopeful that it will be very helpful before May, Sando added.

What is the role of StreamNet in this? he asked. We are using data sets from StreamNet, Paquet responded.

I think the pilots will help in developing subbasin plans, and we should encourage them, with two caveats, Owens said: coordinate the efforts and leave the interpretation of data to the planners.

Agenda Item 2: Update on BiOp Remand

Walton provided an update on the status of the BiOp remand, reporting that the deadline for a new BiOp is June 2004. There are 90-day check-ins with the court, and the first one is October 1, he added. Judge Redden appointed a committee of lawyers to assist in the process, and that committee will meet September 5, Walton stated. He went over a timeline for the remand and related products that spans the period from August 2003 to June 2004. Walton said several activities, including a November workshop on the approach to limiting factors and offsite mitigation, were scheduled in response to the remand. The last thing we want to do is disrupt subbasin planning, but we have a judge waiting to see what we will do, he explained.

How will the needs of states be integrated into this process? Bob Nichols (Washington governor's office) asked. Section 9 of the Endangered Species Act (ESA) prohibits the taking of endangered species, and to the extent you have listed species in your state, you need to be concerned, Walton replied. NMFS has a number of "legal vehicles" available to provide entities with protection from the take prohibitions in the law, he explained. [NMFS regional administrator] Bob Lohn has offered states discretion in how they want to approach this, and there is quite a bit of flexibility, Walton added.

There are two areas on which we need to coordinate with the states, according to Elizabeth Garr (NOAA Fisheries): 1) the BiOp remand and measures on non-federal land that are "reasonably certain to occur"; and 2) subbasin planning and the incentives and assurances for people working on plans. A handout entitled "Identifying the Environmental Baseline for Habitat" addresses the first issue, she said. With regard to the ESA assurances, we want to set up a meeting in mid-September to review draft principles, Garr explained. Our goal is to get a statement of principles out in the form of a letter, she added.

Walton explained that the court's ruling said some measures NMFS came up with to address jeopardy do not meet Section 7 standards. The question we face is, "what to count" in terms of closing the gap between jeopardy and no jeopardy, he said. If we need to find new Reasonable and Prudent Actions (RPAs) to fill the gap, the question is, how we do that in a way that meets the court's requirement for reasonably certain to occur, Walton continued. There are thousands of projects out there, and this is no small task, he said. We want to clarify what kinds of projects we should solicit, and the Science Center is looking at how to translate projects into survival/recovery, Walton explained.

“This is raising red flags,” Nichols stated. What the lawyers determine will meet the court’s requirement is one thing, but translating this to “on the ground” activities becomes a political issue, he said. It is an issue for the states and those working on the ground, Nichols said.

You’re right, Walton agreed. We have local people geared up for recovery, and if we can’t translate this to their level, it will fail, he said. They are on the front lines, and it is a serious challenge to stay connected to them, Walton stated. The remand does not need to get to “the nitty-gritty” level, he continued. We are trying to get to a legal no-jeopardy determination, and it is not our intent to trample on local efforts, Walton indicated. The Science Center is trying to find projects that will make the jeopardy/no-jeopardy difference and to get the biggest “biological bang,” he added.

Another red flag is the possibility of having a new fish and wildlife (F&W) project list for the ESA, Tom Karier (NPCC) said. There is an existing pool of projects in the region, so how will this be handled? he asked.

We are looking at offsite measures to get to no-jeopardy, Walton responded. We want to screen those and apply a new analysis of how much these projects contribute to survival, he said. We want to report to the court that when we use offsite measures to get to the no-jeopardy determination, it’s reasonable, Walton explained.

Linda Ulmer (Forest Service) said federal biologists conducted pilot projects and identified the top four limiting factors. We were also asked to come up with the 12 best projects to address the limitations, she said. The Science Center is figuring out how to link changes in habitat to changes in survival, Ulmer explained. For example, she said, if you obliterate a road or replace culverts, the Science Center is looking at what percentage such an action would increase survival.

The federal attorneys will soon give us a definition of what to count, Walton said. We will then ask the states, through the court, for a point of contact so we get information to the right people and can get the best biological information from the states, he said.

I want to emphasize the need for communication between the states and the lawyers’ committee, Bob Lane (Montana Department of Fish, Wildlife and Parks) stated. The lawyers’ committee is the communication link between those working on the remand and the judge, he said. Those on the legal committee need to know accurately what is being done by the states, he said.

Michael Bogert (Idaho governor’s office) pointed out that the judge did not rule on the merits of the BiOp science. The judge didn’t rule on what you are talking about doing with this project screening, he said. Are we going to reconfigure the basinwide approach or are we going “to stay calm, take a deep breath and find a technical fix?” Bogert asked.

The judge said we counted some actions that weren’t reasonably certain to occur; he did not rule on the science, Walton agreed. We’re starting with the issue of counting only

that which is reasonable to count, he explained, but we are also looking at whether we are still using the best available science. We have to apply what is appropriate to count toward an environmental baseline that is based on the best available science, Walton said.

If the states see an opportunity to shore up the offsite pieces that would add value, would you want to hear from us? Bogert asked. Yes, Walton responded.

How much incidental take coverage will you give parties without the subbasin plans being done? Jim Yost (Idaho governor's office) asked. "We haven't changed the goal post on you," Walton responded. The question is, if a subbasin plan meets the standards set in the technical guidelines and you get ISRP approval, how does that translate to legal coverage, he said. "We haven't got that bridge finished," Walton acknowledged. Garr said the meeting planned for mid-September would be a good forum for such questions.

I'm concerned that you not change the rules or criteria for subbasin plans and that there be an opportunity for participants to get incidental take coverage, Yost said. We don't want you to come back to the subbasin planners and tell them they don't have enough data or that they need more RM&E to get incidental take coverage, he stated.

Lohn wants the scientists to come up with an answer for local agencies about what is enough, Walton acknowledged. If a Technical Recovery Team (TRT) says a river reach needs 3,000 spawners, the local agencies will need to assure us they have enough habitat for that, he said. But the bridge between the legal and the science is not built yet, Walton reiterated.

Are you expecting all of the subbasin plan work to be done before we get incidental take coverage? Yost asked. Do we have to wait? he asked. No, you don't have to wait, but it depends on what you're asking for, Walton responded. You don't have to finish it all, but it depends on what scope of protection you want, he added.

Are we on track for getting legal assurances on subbasin plans by the end of the year? Nichols asked. We need to know who is taking on the contractual obligation for implementing the subbasin plans, Garr responded. We probably need to start with definitions and get to common ground on terms like "assurances," she pointed out. We need to know who will assure that the actions in the plan are undertaken, Garr said.

Agenda Item 4: Status of Subbasin Plans

Lynn Palensky (NPCC staff) said nearly every subbasin has a planning team up and running. We have 57 subbasin contracts approved, and only Crab Creek is outstanding, she reported. NPCC is administering 83 contracts, Palensky said, noting that multiple contracts exist in many subbasins. We have asked the subbasin contractors to submit as many bills as possible by September 1 and to provide an estimate of outstanding expenses if they cannot get the bills in, she said. We need to give BPA a good estimate of what was spent in fiscal year 2003, Palensky added.

She provided the RCG with a table of the subbasin planning contractors and coordinating groups and with a status report on the work in each province. There is a lot of variation among the subbasins on the extent of their progress, Palensky acknowledged.

There are two new products on the way from IBIS, she reported: a tutorial on how to use IBIS is up and running; soon to come is a product that explains how to prioritize restoration activities.

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

Doug Marker (NPCC staff) said questions arose at the last RCG meeting related to what would happen after May 28, 2004, when subbasin plans are due to be submitted to the Council. We have thought about a structure for the ISRP review of subbasin plans, a process for responding to the ISRP, and whether there would be additional funding to maintain planning capabilities and involvement after May 28, he said.

Everyone is driving toward a draft subbasin plan, but the real objective is to get a plan adopted into the Council's F&W program, according to John Ogan (NPCC staff). Once a plan is adopted, it enjoys legal standing with regard to BPA's funding priorities, he added. The review of subbasin plans has to be done according to the process set out in Section 4(h) of the Northwest Power Act for the F&W program, Ogan explained.

He went on to outline the process for amending the F&W program, including a call for recommendations, public comment on recommendations, a Council draft amendment, public comment on the draft, Council adoption and program implementation. We called for recommendations when we asked for the subbasin plans, Ogan stated. We asked for the recommendations in the form of subbasin plans, and we set the deadline for submitting the plans as May 28, 2004, he said. Ogan pointed out that the Council has one year to adopt recommendations from the time they are submitted. May 28, 2004 will be the start of that clock for all of the subbasin plans, he clarified. The question for the subbasin plans is, where does the ISRP review and state reviews fit into the process, Ogan said.

One of the issues with the ISRP is logistical – it's difficult to get the members together, and it is critical to lock down their time in advance, Marker pointed out. The ISRP has said its preferred time to review the plans is June 1 to August 12, Ogan said.

Sando asked about "the fix-it loop." We're thinking that the comment period between subbasin plan submittals and the Council draft would be the time for subbasin planners to respond to the ISRP, Ogan said. The schedule contemplates the comment period closing at the end of September, followed by the Council adopting a draft, he explained. The final recommendations would be adopted by January 1, 2005, Ogan said.

When do the F&W managers have their review? Sando asked. The Act requires that "due weight" be given to the recommendations of the F&W managers, and we hope they are working with the subbasin planning groups to meet their objectives, Ogan responded.

Once the ISRP makes its report, the F&W managers could respond during the public comment period, he said, adding that another opportunity could exist in the implementation period.

I don't think you can assume the F&W agency point of view will be represented in the local planning efforts, Sando stated. There will also be overlapping agency and tribal interests from one state to another, he pointed out.

Karier raised two issues: 1) the single track for an ISRP review, and 2) funding. With a single track, some subbasin plans may not pass the first time or the second time, and that could slow down the progress of other plans, he said. I think we should consider multiple tracks, Karier suggested. With regard to funding, either there is going to be new money added to the \$139 million BPA F&W budget, or the money will come from the provincial budgets, he said. If money comes from the provincial budgets, it increases the incentive for planners "to get it right the first time," Karier commented.

The call for recommendations said the ISRP would review the plans to assure they meet a scientific standard, but it didn't say the ISRP would have to approve them, Jim Caswell (Idaho Office of Species Conservation) pointed out. That's correct, Marker responded. The policymakers decide whether to adopt the plans, taking the ISRP review into account, he said. I like the idea of flexibility, rather than having a set fix-it loop, Caswell said. He noted that there would not be much time between the draft and final plans for dialogue with the Council. We said that we would deliver adopted subbasin plans to BPA by January 2005, Ogan pointed out, noting that BPA would need to be consulted if the final adoption date is pushed further out.

The first subbasin plan came from the Clearwater, and it was given a preliminary review by the ISRP, Walton said. The Council gave the Clearwater \$70,000 for "fix it," he pointed out. Does that set a precedent for "fix-it funding"? he asked. That funding came from the Level 2 state money, Caswell responded. We decided to test the process on the Clearwater – we took money from the Level 2 pot to see how this would work, he said.

There was some discussion of how much additional funding might be available from Level 2 monies, and Sarah McNary (BPA) pointed out that the contracts with BPA under which funds are provided begin to expire May 28, 2004. In our case, there are no funds for a fix-it loop, and more funds will be needed, Owens stated.

Marker posed a couple of options for the "fix-it" review, including one in which the Council would adopt a plan, with guidance to correct deficiencies in the implementation phase. If we fix the plans in implementation, that means subbasin planning "is iterative," Owens said. The plans have to be fixed on the local level, so there would have to be an extended process, he said. We also need to wrestle with the state roles, Owens said. We've taken on the role of helping the subbasin planners through the ISRP review – "we'll be there by their side," he explained. How do we fit this state role into the process that you outlined, and who then owns the plan? Owens asked. Is it the state or the subbasin that is submitting the plan? he inquired.

We have contractors who are obligated to provide a product, Ogan responded. The submittal is not a complicated or legally constrained process, he continued. We won't prescribe who is to submit the plan, but we know who has the contract with an obligation to provide a product, Ogan added. Owens said he planned to do a Level 2 screening before plans are submitted and suggested the schedule might not allow enough time. Your timeline is arbitrary – it should accommodate us, not the other way around, he indicated.

Gustavo Bisbal (USFWS) asked about the status of province-level plans. The notion of doing basin, province and subbasin plans was flatly rejected by the region, Ogan responded. People wanted to work first at the subbasin level and then see if it was feasible to get to the province level, he said.

You may be devising an inflexible way of dealing with the subbasin plans, Sando commented. If the plans are going to be useful, they have to evolve, he said. Yet in this process, the Council would have to amend the F&W program in order to change a plan, Sando pointed out.

The Act lays out the steps we have to follow, but the Council hasn't conceded that it would have to have a major 4(h) process for every small change in a subbasin plan, Ogan responded. There is more flexibility here than it seems, he indicated. Once a plan is adopted, there will be work plans for implementation, Ogan said. The subbasin plans set up the criteria and guidelines, but the work plans are the key to implementation, he said. That needs to be made clear, Sando replied.

Be careful about building an expectation that if a plan doesn't pass the ISRP review, the Council will adopt it anyway, Karier stated. The Council can do what it wants, but I would not want to create that expectation, he said. Second, to pass the science review, planners have to have the tools to do the assessment, like EDT and QHA, Karier continued. There is a concern that these are not being produced in a timely and methodical way, he said. Melinda Eden (NPCC) agreed there should not be an expectation that plans will be approved if they are legally insufficient under the Act.

Some subbasins are backing away from EDT and QHA and substituting "best professional judgment," Grover reported. The ISRP has said as long as there is scientific logic in a plan, it will be okay, he added.

To what extent is there continuity and funding for the local efforts? Walton asked. Do they go away after May? he asked. Many of the organizations coordinating the subbasin plans are ongoing organizations, such as watershed councils, that have continued funding, Marker replied. If we start losing the local efforts, it could affect recovery planning, Walton commented.

We are talking about deliverables in the subbasin contracts, Danielson said. BPA is not funding an ongoing process, she stated. A considerable amount of existing structure for watershed work is already in place in the region, Marker added.

You could argue that NOAA is the greatest beneficiary of the ongoing efforts after May 28, Grover commented. I'd suggest that what we have purchased is local participation, and that is of ongoing value, he added.

We have to be "hard nosed" about May 28, Nichols stated. But "the good work falls flat on its face" without funding for implementation oversight – "someone has to ride herd on implementation," he said. If BPA needs a product, let's define one, Nichols suggested.

We have two options here, Marker summed up: one is to have no explicit fix-it loop in between the ISRP review and the Council consideration; and two is to have additional time beyond May 28 and additional funding for the fix-it loop. The only time sensitivity with this decision is scheduling the ISRP's time, he added. If we go with option two, the Council would have to ask BPA for a time extension for delivering approved subbasin plans, Ogan commented.

We have an interest in keeping the local efforts alive to assist with recovery planning, Walton indicated. I'd appreciate a clearer picture of what it will take to keep them operating – it may be possible to leverage some other funds, he added.

Owens asked the staff to send out for further Level 2 consideration a written statement of the options for ISRP review and the fix-it loop.

Reports/Questions from States

Dayley raised the issue of what constitutes a sufficient plan. The ISRP said the Clearwater plan was insufficient because it lacked such data as the calcium/magnesium levels in a stream, he said. If that's the standard, it's not what subbasin planners are expecting, Dayley said. "What level of minutiae are they expected to address?" he asked. The standards in the call for recommendations should be what have to be met, Dayley stated.

Caswell said his office is doing the staff work for Level 2 in Idaho. The tribes are not going to sign off on the adequacy of any subbasin plan, but they will say whether a plan covers all the bases that need to be covered, he reported. Only a couple of subbasins can run the EDT, Caswell said. I think the true quality of a subbasin plan will show up in the project review process, he stated.

Kerry Berg (NPCC Montana) reported no problems in Montana. The only issue is a request from the Flathead planners for a no-cost time extension on their contract, he said.

There was a question of if and how much EDT out-of-subbasin effects data is available. Moberg Biometrics has told us that it's available and ready to run, Paquet said.

Phil Roger (CRITFC) reported that planners in Oregon are struggling with a larger work load than was anticipated. The estimate on what it would take to assess steelhead areas was based on the work done for chinook, but that was not an accurate measure, he said. We need to assess 50 to 100 percent more reaches for steelhead, Roger said. It's impossible to do an EDT assessment of that magnitude given the available time and resources, he indicated. Another way to approach the steelhead subbasins is with a qualitative tool, such as QHA, rather than EDT, Roger continued. But using QHA could create problems in integrating with NOAA Fisheries since QHA doesn't provide population-based assessment, he pointed out. We're going to discuss making QHA more amenable to the recovery work, Roger said, adding "it's a hugely difficult problem." Regarding the Council's investment in EDT, it has been money well spent, Roger said. But whether it is useful for steelhead is a big question; it's a tool that is very cumbersome, he stated.

The issue here is that with nine months and one day to go, we don't have any subbasins using EDT, Owens commented. The planners are asking whether they can use a scaled-back EDT or some other qualitative method, he said.

I've been told in Washington that most subbasins will not be using EDT, and "I was stunned," Karier said. We funded that project and it was supposed to be complete, but it isn't, he said. Paquet said a "broad-screen run" has been done with EDT, and it is on the web site. There was some discussion about whether planners are aware of what is available, and Danielson suggested sorting it out on the state coordinators' conference call.

Owens asked if it is acceptable to use an assessment tool other than EDT. Paquet said that from the outset, the Council has said it would not dictate the tool subbasin planners have to use. The Council has made it clear there are options, Danielson agreed.

Garr said NOAA Fisheries would be very concerned about the methods used to assess populations of focal species. We agreed with what was in the technical guide, but the guide is silent about the quality of assessments, she said. Garr added that questions about population synthesis with QHA and the quality of information are being addressed.

Marker summarized issues/questions raised in the meeting and staff work that will be needed to follow-up on them.

The group agreed on September 23 as the date for the NOAA Fisheries meeting on ESA assurances. The next RCG meeting will be the following day, September 24.

Dave Statler of the Nez Perce Tribe reiterated that the more subbasin planners know up front about the expectations in the ISRP review, the closer they will be able to come with an acceptable subbasin plan.

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