

MEETING SUMMARY

WESTERN OREGON STATE FORESTS

HCP SCOPING TEAM

Tuesday, December 11, 2018, 1:00 pm – 3:00 pm

Oregon Department of Fish & Wildlife Headquarters, 4034 Fairview Industrial Dr SE, Salem, OR

ATTENDEES

Participants: Julie Firman (ODFW) – *on phone*, Jim Muck (NOAA/NMFS), Ken Phippen (NOAA/NMFS), Nick Palazzotto (ODF), Mark Meleason (ODF), Rich Szlemp (USFWS), Brian Pew (ODF), Rod Kraemer

Facilitation Team: Cindy Kolomechuk (ODF), Debra Nudelman and Sylvia Ciborowski (Kearns & West)

WELCOME AND INTRODUCTIONS

Deb Nudelman (Kearns & West) welcomed members.

Meeting participants introduced themselves.

Cindy Kolomechuk explained that Phase 1 of the Western Oregon State Forests HCP process is complete. We are now headed into Phase 2, which includes strategy negotiation and development of the HCP. Over the next few meetings, the Scoping Team and Steering Committee, along with the consultant team, will be developing the process to set the Western Oregon HCP up for success at the Scoping Team and Steering Committee level.

Brian Pew, Division Chief of ODF, stated that the HCP is a priority for the agency. His workload includes support for the Scoping Team to ensure the technical experts have what they need to move the HCP process forward. Brian is here to listen to the conversations and help remove any identified barriers. He thanked them for their work.

Cindy provided a recap of past Scoping Team meetings. She noted that at the past meeting, members reviewed and discussed the Business Case Analysis (BCA) results and reviewed the draft workplan. She reviewed the meeting packet materials, which include the agenda, Western Oregon HCP draft workplan, October Scoping Team meeting summary, and October Steering Committee meeting summary.

Cindy explained that the focus of today's meeting is to brainstorm how the Scoping Team and Steering Committee should work together, and what support the Scoping Team needs from the Steering Committee to be effective and efficient. The agenda also includes some time to discuss what members would like to get out of an HCP in order to help inform the HCP mission and goals.

Deb Nudelman, Kearns & West, acknowledged that designing the process can feel tedious and slow, but is necessary to set up for a successful outcome. Phase 2 will include more of the

substantive work, so it is important to spend time understanding how the group wants to reach its goals and what those goals are. During the next few meetings, time will be spent developing the rules of engagement, and working to maintain productivity when the process is difficult, acknowledging that each agency has separate mandates, goals and laws they have to implement.

AGENCY UPDATES

Members provided updates relevant to the Western Oregon HCP process:

- **ODF Updates:** The Steering Committee meeting that was scheduled for November 30 was cancelled because several members were not available to attend in person. It is difficult to hold these meetings over the phone, especially while discussing the process components. They are considering expanding the time of the Steering Committee and Scoping Team meetings to three hours.

ODF is working with ICF to develop the scope of work for Phase 2. The facilitation scope of work will be integrated into the ICF scope of work. They will present the scope to the Scoping Team at a future meeting.

ODF is working on the Forest Plan Vision and is looking at how to integrate that with the work of the Western Oregon HCP. ODF is also working on a murrelet protocol revision and is having conversations about fisher.

ODF is working with Gordy Reeves to explore the possibility of expanding the climate change analysis to cover streams in the HCP planning area. ODF is also in contact with ODFW -to summarize existing stream data for use in the HCP.

- **NOAA/NMFS Updates:** NOAA/NMFS is committed to attending Scoping Team meetings in person as often as possible and agrees that it would be most productive for all Scoping Team members to commit to attending meetings in person.

NOAA is working on the conservation strategies for the Coho Recovery Plan, which designates the Western Oregon HCP as a high priority.

- **ODFW Updates:** ODFW is committed to in-person participation and is glad that the HCP process is moving into Phase 2.

The ODFW Commission received two petitions on the Humbolt marten and accepted the trapping regulation review. The agency is in litigation regarding murrelets. ODFW is continuing research on fisher in the southwest.

- **USFWS Updates:** USFWS is committed to the process and will attend in person as much as possible. USFWS has been given until September to make a decision regarding the fisher species. There will be an announcement in the Federal Register in the next few weeks to open a public comment period around whether to list the fisher or not.

Members had a discussion regarding the fisher species and its inclusion in the Western Oregon HCP. They noted that the October 5 Western Oregon HCP Steering Committee meeting summary incorrectly states that the Steering Committee will make a decision regarding whether to include fisher in their proposed list of covered species.

STEERING COMMITTEE AND SCOPING TEAM WORKFLOW AND OPERATING PRINCIPLES

Deb kicked off a discussion of workflow within the Scoping Team, between the Scoping Team and other groups, and how to integrate decision-making while accounting for individual agency mandates and responsibilities.

She noted that the Steering Committee will be working through operating principles at their next meeting. The operating principles will establish agreement around ground rules and workflow.

Deb presented the following questions to members for their discussion:

- How do our agencies make decisions?
- What support does the Scoping Team need and want from the Steering Committee?
- Where do you want or need your decision-makers' support?
- How do you envision the Steering Committee and Scoping Team working together?
- What are the appropriate places or times for combined Steering Committee/Scoping Team meetings?
- What are the deliverables or work product that should be presented to the Steering Committee? When, why, and how should they be developed?

Discussion on Agency Decision-Making

Each agency representative explained how its agency makes decisions, and what the culture is regarding decision-making:

- **ODFW:** Decisions are made by wildlife division administrators and in some cases at the director level. For the Western Oregon HCP process, ODFW is in a unique role as it is not a decision-maker. The agency does not have a lot of regulatory authority, except in fish passage, so ODFW will provide support and technical advice to help the process. For example, ODFW can provide technical advice on topics such as what data to use, which would be of interest to their supervisors. However, they do not anticipate ODFW supervisors weighing in heavily on that topic. ODFW technical staff on the Scoping Team engages and updates their Steering Committee counterpart regularly. During ODFW meetings the Scoping Team member will provide updates as needed, but the HCP is not a decision point. However, if the murrelet becomes part of the endangered species list, then the landscape around how the Commission would want to be informed

regarding the HCP might change. Overall, the ODFW Commission will likely not be directly involved in the HCP at this point.

Since ODFW is not a decision-maker, ODFW Scoping Team members have more freedom to represent the agency and report to supervisors as needed.

From ODFW's perspective, the State ESA does not come into play when negotiating the Western Oregon HCP. If murrelet were to be included on the endangered species list, it would trigger the many ESA requirements and there would be more of a direct nexus between State ESA and Western Oregon HCP.

- **USFWS:** The State Supervisor, Paul Henson, has the greatest weight in decision-making, but the deputy Regional Director signs the incidental take permit. Before he signs, there is a lengthy review process at USFWS headquarters. There are many hands that will touch the permit, but that will not occur until towards the end of the HCP process.

In terms of day to day work, Paul Henson will defer to the Scoping Team representative member on many things. Scoping Team representatives will work with others at USFWS on topics that may need further input, as needed, and then bring those ideas and direction back to the Scoping Team.

The NEPA process has to go through many levels (ten separate decision-makers or so). It is more about approval to move forward, rather than approval on specific details.

USFWS is required to engage the United States public, broader than Oregon. When USFWS sends out public notices, anyone in the country can comment. USFWS takes all comments into consideration as part of our decision-making process, regardless of origin.

- **ODF:** The Board of Forestry is the ultimate decision-maker. It will be difficult to not have the Elliott HCP conversation at the same time and the Land Board is the ultimate decision-maker for the Elliott process. ODF staff have a lot of influence with the Board of Forestry, which typically follows the staff recommendation (in this case, Division Chief Liz Dent's recommendation). The Board includes three new members, and staff is learning about the best way to engage those members. The Board is appointed by the Governor; a change at the Governor level can affect the makeup and outlook of the Board.

Developing baseline data may require additional funding. These funding decisions are usually made by ODF staff supervisors. ODF Scoping Team representatives would need to provide a value-based proposal to the ODF supervisor to get funding. ODF staff supervisors including Liz Dent, like to be kept in the loop leading up to decisions and engaged in the details.

The ODF State Forester Peter Daugherty is a strong ally and works directly with the Board of Forestry. Peter serves as an intermediary between ODF staff and Board. In

combined SC-ST meetings, it may be valuable to include Peter; because it gives him the information he needs to support our work when we go to the Board with a recommendation.

- **NOAA/NMFS:** Many different individuals at NOAA/NMFS will be engaged in the Western Oregon HCP as it moves through the NEPA process. Assistant Regional Administrator, Kim Kratz, will be the signer of the Biological Opinion and other pieces. The Regional Administrator, Barry Thom, is the ultimate decision-maker (although he has delegated that authority to Kim for this process). Decisions regarding proposed actions will not need to be approved by headquarters. Therefore, decisions on strategies will lie with Scoping Team NOAA/NMFS members. Scoping Team members will brief Kim Kratz and Barry Thom as needed, but authority to negotiate strategies will like with Scoping Team NOAA/NMFS members. Essentially, NOAA/NMFS culture is to conduct a lot of collaboration within the agency, and higher level decision makers put a lot of trust and negotiation power at the lowest level possible.

An attorney will advise NOAA/NMFS in terms of adequacy and will be kept informed regularly. NOAA/NMFS won litigation regarding the BLM RMP consultation because the attorney was engaged in the process from day one. NOAA will need to write a Biological Opinion as part of the HCP process; as the Scoping Team negotiations, NOAA/NMFS representatives may provide feedback on what is likely defensible in court, based on the experience with the BLM litigation.

Members discussed the importance of preventing litigation on the Western Oregon HCP. Some noted that building out the administrative record will be an important way to show the adequacy of the Western Oregon HCP public process and that the science is credible. Asking for public comment has the added benefit of understanding public concerns with the HCP, so that they can be addressed early and not become a point for litigation later on. They noted that it is important to have outcomes are legally defensible, technically feasible, and scientifically credible. Due diligence can help to reduce risk; the best outcome is one in which those parties who are most likely to litigate are allies and support the product at the Board level.

Deb Nudelman pointed out how the Scoping Team process can help produce a positive outcome. It is important to message that the Scoping Team meetings are taking place, and to provide good explanation around the reasoning for scientific choices. It is also important to document small agreements as the process moves forward, to have clarity in terms of what has been agreed to.

Discussion on Scoping Team-Steering Committee Workflow

Members discussed how they envision the Steering Committee and Scoping Team working together. They made the following comments:

- Some members pointed out that it will be important to slow down at certain points and not rush decisions. In some cases, it will be more important to get to an agreement on one point rather than trying to get through all of the pieces of a given meeting agenda.
- Members wanted to be sure that the Steering Committee (SC) is not meeting so often that they are waiting on data from the Scoping Team (ST). The Scoping Team may need to meet more often to work through technical details, and then provide the Steering Committee with their updates, recommendations and questions for discussion. The facilitation team added that ICF is working to develop a technical scope; this will help the group see where the milestones are, and then build the timing for SC and ST meetings around that.
- Members asked about the Steering Committee's role. The facilitation team responded that the Scoping Team provides work product and recommendations to the SC while the SC provides policy direction to the ST. In between meetings, ST members should be updating the SC and others as needed. The SC may also have role when the ST cannot come to agreement on certain issues. Additionally, the SC provides policy sideboards. It is not envisioned that the SC is not come up with solutions; instead, their role is to make sure the ST has what it needs to be successful.

Discussion on Steering Committee Role

The facilitation team added that today's conversation and conversations over the coming months are meant to refine both the SC and ST roles.

Members provided their view of the role of the SC:

- The SC is comprised of mostly state agencies who understand the needs and interests of broader decision-makers and public. A key role for the SC is to understand and voice public and state agency policy perspectives so that the Board of Forestry can help make the right decisions. The SC can help ensure that the Scoping Team outcome is in the best interest of the State.
- The SC should act as a buffer between the ST and the Board of Forestry and vocal stakeholders.
- It is important that the SC and ST avoid parallel conversations on the same topics, with different outcomes. Instead, the ST should bring ideas to the SC, and the SC should be the public liaison to provide legitimacy to the process.
- The SC should help check the ST group think.
- The ST should develop proposed actions for the HCP, and then SC should give their feedback and approval. Additionally, it would be helpful for the SC to weigh in on whether they support or don't support the science; and how the Board of Forestry might respond to certain proposals. It would be valuable to the SC view on whether the ST proposals are feasible before the Board.

- The SC can help the ST get the funding needed to do HCP related work and tasks and do so more quickly and effectively than ST could on its own.
- The SC should provide broad goals and guidelines, purpose and need. The ST will then come up with the ways to meet those goals
- A member expressed some confusion around whether the intent is for the SC to provide direction to the ST, or whether the SC is waiting to hear input from the ST. The name “Steering Committee” implies that the SC will steer the process.

The facilitation team added that the intent is for the SC to help this group keep things on track and make sure the decisions of the ST are supported by policy. There may be times when SC members recommend a different policy direction than what the science team is recommending. The SC can help to define where they want the ST to work in terms of coming to a greater compromise on areas. The SC is going to be responding to what the ST brings to them; and will be providing policy direction. Additionally, while some foundational elements regarding workflow between the groups will be developed, the workflow process will continue to be iterative between the SC and ST.

NEXT STEPS AND SUMMARY

Cindy thanked members for their time and participation.

The facilitation team asked members if they would be comfortable moving to three-hour long meetings. They said they would be comfortable with three-hour meetings. The 9am-12pm timeframe is best, and they prefer meetings not be held on Fridays. NOAA is not available to meet on Mondays.

Cindy noted that the facilitation team will send out a Doodle Poll to help schedule the next Scoping Team meeting.