

# **MEETING SUMMARY**

## **WESTERN OREGON STATE FORESTS**

### **HCP STEERING COMMITTEE**

Thursday, February 7, 2019, 1:00 pm – 4:00 pm

ICF Portland, 615 SW Alder St, Suite 200, Portland, OR

#### **ATTENDEES**

Participants: Liz Dent (ODF), Paul Henson (USFWS), Kim Kratz (NOAA/NMFS), Leah Feldon (DEQ), Doug Cottam (ODFW), Bill Ryan (DSL), Dan Edge (OSU)

Technical Consultant: Troy Rahmig (ICF)

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

#### **WELCOME AND INTRODUCTIONS**

Liz Dent, ODF, welcomed members and thanked them for their in-person participation and dedication to the longer meeting time. She noted that today's meeting is kicking off the work ahead and noted the strong support among agencies and the Governor's Office for this effort.

Members introduced themselves. Deb Nudelman, Kearns & West (KW), reviewed the agenda and meeting materials. She noted the two main topics for today are 1) review and discussion of the Western Oregon State Forests HCP Phase 2 Scope of Work and 2) review and discussion of operating principles and the workflow between the Western Oregon HCP Steering Committee (SC) and Scoping Team (ST). The meeting will end with a review of the approach going forward and next steps.

#### **AGENCY UPDATES**

Cindy Kolomechuk, ODF, reminded members that at the last SC meeting we were in Phase 1 and reviewed the Business Case Analysis. The Business Case Analysis was well-received by the Board of Forestry (Board), and the majority of stakeholders present expressed support for moving forward, or at least were not opposed to moving forward. Phase 2 has now begun; it will end with a full administrative draft of the HCP to take to the Board. Cindy noted that at today's meeting, the SC will focus on the foundational pieces needed to make the substance of Phase 2 more effective.

Members then provided updates relevant to the Western Oregon HCP process:

- **Updates from DSL:** DSL received direction from the Land Board to consider the Elliott State Forest as a research forest in conjunction with OSU.
- **Updates from ODFW:** ODFW is continuing litigation on Humboldt marten. Summary judgment is scheduled for late June. ODFW went through a temporary injunction on the species; however, a few months ago, there was a petition to ban the trapping of Humboldt marten and the Fish and Wildlife Commission accepted the petition as a way to review rules regarding trapping.

ODFW provided comments on the latest request to list Humboldt marten, and the latest request to review fisher.

- **Updates from NOAA/NMFS:** NOAA is working on another HCP at this time as well. NOAA expressed a commitment to find a successful path forward for both HCPs.
- **Updates from Oregon Consensus:** Oregon Consensus is working on a related process – decoupling of the Elliott State Forest alongside DSL. The decoupling process is moving into the next round per the Land Board’s previous direction.
- **Updates from ODF:** The Board of Forestry provided approval to move into Phase 2.

ODF is engaged in two pending litigations. First, Linn County and other counties brought a class action lawsuit, which strains ODF’s ability to have open conversations with the counties about the HCP. The second litigation is over take of coho salmon, with timber industries named in two districts. The plaintiffs in these two districts want to see certainty that an HCP will happen.

ODF has seen confusion over the multiple planning processes: Elliott HCP, Western Oregon HCP, the FMP, and Common School Fund lands management. ODF is committed to tightening up the messaging so people understand the differences between the processes.

- **Updates from USFWS:** USFWS is considering listing Humboldt marten, they litigated and lost.

The agency is considering promulgating a 4(d) rule that would exempt certain land management activities from permitting.

USFWS lost litigation regarding the fisher species. The judge looked at the rodenticide issue from Northern California as impacting fisher.

USFWS received notice of intent to sue because USFWS has not moved forward on a listing proposal for tree vole. The listing proposal is cued up for next year.

USFWS sent in a potential up-listing for the spotted owl from threatened to endangered and this was litigated. The up-listing decision is now in the hands of the Department of the Interior; it is not clear when a decision will be published.

### **Western Oregon HCP Stakeholder Engagement Process**

Cindy explained that ODF in conjunction with Oregon Consensus and Kearns & West has launched the stakeholder engagement process for the Western Oregon HCP, beginning with one-on-one and group interviews with key stakeholders. Cindy reviewed the list of interviewees

listed in the *Stakeholder Interview List* handout. The intent of the interviews is to discuss hopes and fears around an HCP, understand interests, and get input on how to design a stakeholder engagement process that helps participants feel they were involved and will be effective in gathering feedback. The facilitation team anticipates having the stakeholder interviews complete by the end of March.

Cindy encouraged members to provide any feedback on additional stakeholders that should be engaged. Members suggested the following:

- **Tribal engagement** is important. ODF noted that the agency has spoken to the Natural Resources Committee to ask for feedback on the best way to engage tribes. ODF staff plans to call the Tribal Councils and expects two tribes to respond: Confederated Tribes of Grande Ronde and the Coquille tribe. ODF is a member of the Natural Resource Cluster, which includes all nine recognized tribes. At the last two meetings, ODF presented the FMP/HCP work, and followed up with an email offering to talk with the tribes at their pleasure. ODF has also considered going to the Legislative Council on Indian Affairs and doing a presentation to see if there is desire for engagement. ODF welcomes additional ideas for effective tribal engagement.

Members noted that government-to-government contact is sometimes needed before having further tribal engagement. A member suggested initial government-to-government outreach at the Director level, and then engaging again at a critical phase where engagement is important. Tribes have limited resources and may just choose to engage when they see there is a critical point of engagement, even if the tribe seemed uninterested or disengaged at the initial contact.

- Both the Elliott HCP and Western Oregon HCP processes must figure out what stakeholder engagement will look like. There will be overlap between the two. It should be clear when the agencies are seeking input from stakeholders, and what questions are being asked.

Cindy added that Kearns & West conducted interviews with the Scoping Team and Steering Committee and received valuable feedback, thoughts and advice. The facilitation team has debriefed on what was learned and will be using the input to help shape the process as we move forward.

## **WESTERN OREGON HCP PHASE 2 SCOPE OF WORK**

Troy Rahmig, ICF, presented the proposed Western Oregon HCP Phase 2 Scope of Work. The presentation included the following:

- **Workplan Approach:** ICF and ODF will draft the technical content of the HCP in conjunction with the Scoping Team. ICF and ODF will ask ST technical questions and ST will provide real time feedback. ODF and ICF will create working draft chapters that the ST will review. ODF/ICF will then revise the chapters based on ST feedback, and those will become the first administrative draft. As a result, the first full administrative draft of the HCP will have already been through a lot of review and shouldn't contain anything surprising or new that ST and SC members have not already discussed.

- **Phase 2 Work Plan:** ICF presented the Work Plan spreadsheet, which shows periods of ST and ODF review as well as stakeholder engagement. The staggering of the work is to even out the workflow for ODF, ICF, ST, and SC. The schedule is intended to help the agencies plan their staff time around the review periods.

Troy presented the Phase 2 tasks:

- **Task 2: Verify Key Elements of HCP.** Task 2 verifies key elements of the HCP including the plan area, permit area, covered species, and HCP outline. Task 2 will end with a draft of Chapter 1: Introduction. This chapter will include the mission, vision and guiding principles of the HCP.
- **Task 3: Existing Conditions.** Task 3 involves gathering existing conditions information that will be a basis for analysis in the HCP. The team assumes there is currently enough information to draft the HCP. This assumption will be checked with the Scoping Team. Some questions around the data may come to the SC if needed. Task 3 will also include light history accounts for each species. The key outcome of Task 3 is a representation of the species. Agencies will be expected to review this work in June/July 2019.
- **Task 4: Covered Activities and Impact Mechanisms.** Task 4 describes covered activities and impact mechanisms, including activities as they relate to the permit.
- **Task 5: Conservation Strategy Development.** Task 5 describes what the conservation strategy is trying to accomplish and outlines detailed biological goals and objectives. The objectives become important because monitoring strategies will need to be developed to see if we are meeting the objectives. The task will also define avoidance and minimization strategies and definitions. There will be two or three biological goals and objective workshops with Scoping Team participation.
- **Task 6: Effects Analysis.** Task 6 describes the effects analysis including defining impact mechanisms for covered species and estimated effects of covered activities. The work on effects analysis will likely mean some changes to the Conservation Strategies chapter (it is an iterative process). Each species will be treated in this chapter.
- **Task 7: Monitoring and Adaptive Management.** Task 7 includes developing a Monitoring and Adaptive Management Framework. This process will be heavily informed by the biological objectives. Monitoring will show whether the conservation strategy is meeting the biological objectives and intended results. Later during implementation, this chapter will serve as a “rules of the road.”
- **Task 8: Cost and Funding Strategy.** Task 8 describes Cost and Funding Strategies. The project team will conduct a final cost analysis, and develop a funding mechanism and strategy towards the end of the HCP development process. The SC will likely want to be engaged early on in developing this chapter, as members of the public often have questions about cost and funding.
- **Task 9: Implementation, Assurances and Alternatives.** Task 9 describes HCP implementation, assurances, and alternatives. This chapter will define roles and responsibilities, dispute resolution mechanisms, etc.

- **Task 10: Complete 1<sup>st</sup> Administrative Draft HCP.** The complete first administrative draft will include all HCP chapters. There may or may not be a 2<sup>nd</sup> administrative draft depending on the review outcomes. The schedule aims to have a complete first administrative draft by May 2020.
- **Task 11: Early NEPA Planning Tasks.** Task 11 describes early NEPA planning tasks. Phase 2 will include some pre-NEPA work before formally notifying the public about the NEPA process. The goal is to do some groundwork so that when the team goes out to the public, we know what we are asking the public to look at.

## Discussion

Discussion from the SC members followed the presentation. Key comments, questions and discussion topics included:

- **Task 4:** A member asked whether this Task should consider Section 7 consultations that the services have completed.
- **SC and ST Engagement in Work Plan:** Members asked questions around and discussed how the ST and SC will be engaged in reviewing draft chapters. Discussion included:
  - Troy and Cindy clarified that the process for developing draft chapter is as follows: ICF will bring topics to ST for review and discussion. ICF will then develop a draft chapter that includes ST input. ODF will review the chapter first, and then the ST will review the chapter to verify that the chapter accurately reflects their ideas. ICF will then revise the chapter as needed. The SC will be kept apprised of issues or difficulties that are coming up at the ST meetings. If the ST has difficulty in coming to a consensus recommendation, then those issues will also be elevated to the SC. The SC is welcome to review any chapters if they have time and interest. The intent is that the ST and SC are well-engaged throughout development of the draft chapters, so there are no surprises when the first administrative draft comes out.
  - A member suggested that when having discussions with the ST on the more sensitive topics, it may be useful to provide a range of options for discussion rather than one single option.
  - A member noted the Work Plan is focused on the review process rather than the collaboration/coordination among teams. It should be clarified that none of the work is completed in isolation; but the Work Plan helps us formalize the review process.
- **Differences over data use and interpretation:**
  - Members noted that stakeholders and interested parties often dispute which data are being used, how the data is being portrayed, and which inputs are going into the modeling. This could result in a potential slowdown in the process and may require deeper stakeholder engagement at key points. Troy agreed that dispute over the data often does arise. It is important to have clear criteria for data selection and integrity, to clearly indicate why data is or is not being used.

- A member suggested including time in the schedule to deal with data conflicts. Even with clear data criteria, conflicts are sure to arise, and people often dispute interpretation or characterization of data. Time is needed to get through data questions in a genuine way.
- A member noted tribes collect a lot of their own data. The team might want to reach out to see if tribes have data they want or expect to be considered, and the project team may want to consider that data as it puts together criteria for what data to use.
- **Linking the HCP Phase 2 process to NEPA and broader topics.** Members generally noted that, although the HCP Phase 2 process has a limited scope and will occur before the formal NEPA process, it is likely that it will lead to broader discussions. Members had the following comments:
  - A member noted that as we engage stakeholders in the Western Oregon HCP, many will want to talk about issues that go beyond the scope of the HCP and the impact of the conservation strategy on listed species (for example, aesthetic and visual impacts to forest users). Members asked how broader issues like water quality can be incorporated into the HCP. There is a risk that not incorporating these issues early on could lead to issues during the NEPA process later on. The project team suggested that as we think about stakeholder strategy, we should anticipate NEPA issues early in the process.
  - If there are sideboards in the NEPA process that limit discussion, those should be captured early.
  - A member stated there will be a companion FMP that deal with lots of topics beyond conservation strategies. How the FMP is coupled with the HCP is important.
  - A member expressed concern about the overlap between the development of the draft HCP and the NEPA process, because at the start of NEPA the agencies will be near consensus agreement on what the proposed HCP should look like, before having an opportunity to hear from stakeholders through the NEPA process. The magnitude of the change from the NEPA process might put the HCP process behind schedule.
  - Members agreed that it is important to incorporate NEPA early on. If there is a separate robust planning process that shows generally where the public is on recreation, cultural resources, aesthetics, viewsheds and other topics—then that input could be folded into the HCP. But if that kind of planning process hasn't happened, then people will treat the HCP public process as the dominant place to weigh in on all land management issues.
  - A member noted that through the HCP stakeholder process, stakeholders are likely to bring up a lot of the interests and values that are likely to come up during NEPA. As the facilitation team brings input back to the SC around what they are hearing from stakeholders, the SC can discuss what to do with that input. Some

noted that ODF has already heard many of the issues likely to be raised during the HCP and NEPA processes, and it would be useful to outline those.

- The facilitation team reflected that it will be important to do good stakeholder engagement, early and often, knowing that we will hear issues that may not be relevant to HCP—but we will still have to figure out how to house them and how to integrate them with other HCP-related processes.
- **Decision-making process:** ODF noted that the SC and ST are going to be making some decisions early on (for example, the geographic scope of the HCP, covered species list, etc.). We will be creating the ST and SC decision making process while we're trying to make decisions. It may be useful to have a decision log to capture decisions. There may be a need for a record of decision from DSL regarding the Common School Fund lands.

### **Seeking Alignment on the Phase 2 Scope of Work and Work Plan**

Deb asked all members of the SC if they can support the Phase 2 Scope of Work and Work Plan. All members noted that they can support the Scope of Work and Work Plan.

They had the following additional comments:

- The Work Plan should show “blue” stakeholder engagement during the NEPA timeframe.
- The Work Plan should indicate what activities are “pre-NEPA” to clarify that they are not part of the formal NEPA process.

The project team added that if the schedule is going to change, the team will let SC members know as soon as possible so the agencies can work with staff to accommodate the changes.

## **OPERATING PRINCIPLES**

Deb presented the draft Western Oregon HCP operating principles as one piece of the process structure that includes: 1) operating principles, 2) Western Oregon HCP vision, mission and goals, and 3) workflow between SC and ST. The intent of today's discussion is to discuss the operating principles and begin discussion of the other process pieces.

Members discussed and made the following comments and questions:

- **Schedule:** Members asked whether the proposed schedule would be extended if needed, and what the driver is for the schedule. ODF staff noted that the agency is committed to an efficient process. ODF has made a commitment to the Board of Forestry to put serious time and focus into the HCP development and to work toward a completed agreement. The agency is trying to avoid a protracted process. Additionally, ODF is engaged in the FMP process simultaneously with the HCP and does not want the FMP process to get too far ahead of the HCP process. As needed, adjustments will be made to keep both processes at the same pace and timeframe. Members added that, while there is not a statutorily required timeframe for the HCP process, the agencies are committed to working diligently to keep the process on schedule. Members suggested

adding language into the operating principles indicating that members will work diligently to keep things on schedule.

- **Section II:** Members noted that the operating principles list some SC and ST members as “Advisors.” The ODF team clarified that all participants are considered members, but the operating principles attempt to make it clear that ODF is the convening body seeking advice from the SC. The Department of Justice suggests that anyone who is not a state agency be called an advisor. Members suggested that the operating principles list all participants as members but note advisors in parenthesis.
- **Section III:** Members suggested clarifying what “the HCP process” means throughout the document.
- **Section IV: Decision Making:** Deb noted that the SC will discuss decision-making protocols at the next SC meeting. The facilitation team suggests that the ST and SC both strive to make decisions by consensus, which is an outcome that all members can live with. If the group cannot reach consensus, then members would evaluate the reasons for and consequences of the disagreement and work together on how to address the lack of agreement.
  - Members noted that the HCP is ultimately the state’s decision, and some participants (particularly federal agencies) do not want to be perceived as decision-makers. They noted that the appropriate role for the SC is to advise ODF and provide input on drawbacks and benefits of certain choices or alternatives in the HCP. They suggested including a footnote in the document that says the advisory SC members (i.e., federal agencies) are not required for consensus. They also suggested labeling ODF as the convener, noting that the ODF will report to the Board, and that the Board is the ultimate decision-maker.
  - ODF clarified that it is not necessary to have a formal consensus of the state actors before ODF moves forward, but it is very important to ODF that all state-level SC members be in general alignment. If there is serious disagreement among the state participants, it will be important to discuss and find a common ground. Rather than “voting,” SC members will likely be asked to provide their level of comfort in moving forward in a certain direction.

**Next Step:** The facilitation team will revise the Operating Principles based on today’s discussion and provide an updated version to the SC for their review.

## **MISSION, VISION AND GOALS:**

The project team noted that prior to the next SC meeting, ODF will develop a draft of the mission, values, and goals for the HCP.

Members made suggestions to ODF as it moves forward with developing the mission, values, and goals.

- Members suggested that the language of the mission and vision statement align with the Purpose and Need of NEPA. If the mission and vision and NEPA Purpose and Need are

identical, they can guide the HCP and NEPA in a parallel process and provide the sideboards needed. Retrofitting a Purpose and Need statement later would be more difficult.

- A member suggested looking at the BLM example in the project's EIS; in the BLM process, consensus was reached on the Purpose and Need which drove a commitment to adhere to it.
- A member suggested that the Purpose and Need should be defined in terms of Greatest Permanent Value (GPV). ODF should indicate that the mission of the HCP is to meet greatest permanent value, in terms of how ODF defines GPV. This commitment can help set boundaries around what is and is not open to public input.
- Members suggested that the Purpose and Need should be defined in a way that all stakeholders would agree with (conservationists and timber industry alike). It must include a wide range of interests and values. Purpose and Need is aspirational but shows the balancing of needs.

## **SCOPING TEAM AND STEERING COMMITTEE WORKFLOW**

Deb explained that Scoping Team and Steering Committee interactions and collaboration should include, at a minimum, the following:

- 1) Each SC meeting will include an update on what is happening at the ST level. Each ST meeting will include an update on what is happening at the SC level and any messages that the SC needs to transmit.
- 2) The facilitation team will provide ST and SC meeting summaries to all members.
- 3) Joint ST-SC meetings can be scheduled as needed, especially for difficult or contentious topics.
- 4) SC members are encouraged to talk to their ST counterparts regularly in-between meetings.

Members discussed SC and ST workflow and made the following points:

- Members discussed ideas for how to address disagreement at the ST level. Members noted that when the ST is in disagreement on a topic, that should be elevated to the SC for discussion. It would be helpful to also get updates on any topics or issues that the SC wrestled with or had concerns with, even if the topic is not formally elevated to the SC. The SC would like to know what issues are causing them pause, because it might flag things that other stakeholders may have an issue with.
- Members noted that they should discuss issues with their ST counterparts regularly, because if we wait to resolve all issues until the regularly scheduled SC meetings, we are not going to meet the timeline.
- ODF staff noted that ODF and the SC should offer operational or policy sideboards to the ST as they delve into the work of identifying covered species, covered activities,

conservation strategy, etc. Members agreed. They noted that the sideboards should be based on conservation need and aspirations, and what is logistically possible.

- Members discussed level of risk involved with the HCP. They noted that the Western Oregon HCP is likely to undergo a legal challenge at some point, so it is important that the HCP be legally defensible. They suggested that legal counsel for the agencies be integrated into the process early on and throughout each step. Members made various suggestions for how to engage legal teams: The general counsel/attorney from each agency could be invited to an SC meeting, with an hour of the agenda toward Solicitor Engagement, and a discussion on how best to move forward with attorney engagement subsequently.

## **NEXT STEPS AND SUMMARY**

Cindy reminded members that a Western Oregon HCP Public Kick-Off Meeting is scheduled for March 21. A Board of Forestry meeting is scheduled for April 24 and will include a presentation on the Phase 2 Scope of Work and report on stakeholder engagement process.

### **Next Western Oregon SC Meeting**

The next SC meeting is scheduled for March 8, 2019 from 10:00 am – 1:00pm at ICF Portland. The meeting will include discussion of the HCP process, as well as any topics from the ST to consider. Troy noted that an Elliott HCP will follow the March 8 Western Oregon SC meeting, beginning at 1:00 pm. ICF will provide lunch for that meeting date.

Kearns & West will be in touch with SC members to schedule future SC meetings.

## **ACTION ITEMS**

The following action items were identified throughout the meeting:

- ICF/ODF will consider how to incorporate or consider data from tribes into the HCP process.
- The project team will develop a decision-log to capture decisions as we move forward.
- ICF will update the Work Plan with minor changes suggested by SC members.
- Kearns & West will update the Operating Principles based on today's conversation and send to SC for review.
- ODF will develop a draft Mission, Values, and Goals statement, using input from today's discussion.
- The project team will take next steps regarding attorney engagement.
- ICF will be in touch with SC members regarding lunch orders for the March 8<sup>th</sup> Western Oregon HCP SC and Elliott HCP meetings
- Kearns & West will work with members to schedule future SC meeting

## **RECORD OF AGREEMENTS AND GUIDANCE**

*Updated 2/21/2019*

| <b>Date</b>      | <b>Group/Body</b>                     | <b>Action</b>  |
|------------------|---------------------------------------|--|
| November 8, 2018 | Board of Forestry                     | Unanimously voted to move forward with Western Oregon HCP Phase 2: Strategy Development and Stakeholder Engagement |
| February 7, 2019 | Western Oregon HCP Steering Committee | Expressed support for the Western Oregon HCP Phase 2 Scope of Work and Work Plan                                   |