

# MEETING SUMMARY

## WESTERN OREGON STATE FORESTS HCP STEERING COMMITTEE MEETING

Thursday, January 23, 2020, 1:00 pm – 4:00 pm

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

### ATTENDEES

**Steering Committee:** Liz Dent (ODF), Kim Kratz (NOAA/NMFS), Leah Feldon (DEQ) – *by phone*, Bill Ryan (DSL), Doug Cottam (ODFW)

**Technical Consultant:** David Zippin, Troy Rahmig (ICF), Melissa Klungle (ICF) – *by phone*

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

### WELCOME AND INTRODUCTIONS

Deb Nudelman (Kearns & West) welcomed members and thanked them for their participation.

Members introduced themselves.

Liz welcomed the group and noted that the Board of Forestry continues to support forward progress in this HCP process, in anticipation of an update on the Western Oregon HCP in April 2020.

Deb reviewed the agenda and meeting materials. The key agenda topics for today include: 1) agency updates, 2) report out on Scoping Team progress and Review 2020 HCP Schedule, 3) Introduce and Discuss the NEPA Process, 4) Review and Reflect on Stakeholder Engagement, 5) Steering Committee direction to Scoping Team, and 6) approach going forward and next steps.

Cindy Kolomechuk (ODF) reminded members progress made at the December SC meeting. At that time, members heard an update on the NEPA lead, and heard an overview of the process and components of the conservation strategy. Today, members will hear about the approach being taken on the aquatic and terrestrial strategies. At the December meeting, SC members adopted the biological goals and objectives for species covered under the HCP. After the meeting, Doug Cottam provided some edits, which the ST has reviewed and are being incorporated into the final draft.

## AGENCY UPDATES

SC members provided updates relevant to the Western Oregon HCP process:

- **ODF:** 1) ODF did not prevail on the Linn County lawsuit. The lawsuit awarded damages for past revenue lost, as well as future damages, to the counties. ODF is in the process of appealing the decision. 2) ODF presented its work plan at the January Board of Forestry meeting. The BOF directed the ODF to manage forests for Greatest Permanent Value.
- **DSL:** 1) The recent State Land Board meeting included a presentation from OSU on the transition of the Elliott State Forest into a research forest, and the Land Board supported continuing the effort. A more detailed proposal will be presented to the Land Board meeting in fall 2020. There are still some unresolved issues that need to be considered in transitioning the forest for research uses, as well as development of a governance structure. 2) The Supreme Court made a recent decision regarding the Land Board's ability to manage lands in the Elliott State Forest, and the decision affects operation and management of other Common School Trust Lands.
- **ODFW:** The Fish & Wildlife Commission decided to reconsider the classification of marbled murrelet as a result of a recent litigation. At its May 2020 meeting, the Commission is expected to consider the classification of marbled murrelet as endangered in the State. One benefit of reconsideration is that it allows the agency to incorporate two additional years of data on the species. If the Commission decides to uplist the species, the agency will need to develop survival guidelines for marbled murrelet.
- **NOAA Fisheries:** Ken Phippen, Branch Chief, has now retired. The agency is in the process of filling his position. Jim Muck will continue to participate in the Scoping Team.

## REPORT OUT ON SCOPING TEAM PROGRESS AND REVIEW 2020 HCP

### SCHEDULE

Troy Rahmig (ICF) reported out that the ST has been meeting often and is working on technical nuances of the HCP. The ST is meeting frequently (twice per month) and is in the beginning stages of developing the terrestrial and aquatic strategies for the HCP.

Troy presented the key points for the conservation strategy development to date:

- **Aquatic Strategy:** The ST has been using the biological goals and objectives as key guidance for development of the strategy. Wood recruitment in streams, habitat structure within streams, water quality and quantity, and fish passage are key considerations. The main elements of the strategy include road network management, riparian habitat management, and stream enhancement projects.

The ST has been discussing riparian buffers and asking how buffers could be used to accomplish objectives for the species. They have also been talking through nuances of how buffers might be applied to the landscape, and how the buffering strategy may vary in different parts of the watershed. The Scoping Team has also just begun discussing

how stream buffering could be adapted in areas where water temperature effects are greatest and is also discussing climate change considerations. The ST is also considering whether to measure buffers based on slope distance or horizontal distance.

The ST is also considering management actions in the permit area.

The expectation is that there will be a more developed aquatic strategy in March 2020. Steering Committee members are encouraged to continue conversations with their ST counterparts to ensure alignment on the aquatic strategy.

- **Terrestrial Strategy:** The ST has had discussions on data to use in development of the terrestrial strategy, and how to sequence conversations on the various terrestrial species. The intent is to use Northern Spotted Owl and Marbled Murrelet to drive the strategy, and then consider what else is needed to support goals and objectives for the other terrestrial species.

The ST is also considering how to identify habitat conservation areas for the species, to ensure larger tracts of areas to favor conservation.

- **Overall HCP Schedule:** The technical team is beginning to consider effects analysis. The ST will likely weigh in on a draft of the conservation strategy later this spring, and then move into considerations around cost and funding.

## PRIMER ON NEPA PROCESS

David Zippin (ICF) provided a primer on the NEPA process. Key points of the presentation included:

- **NEPA and its Relationship to HCP:** An HCP permit issuance is a Federal Action subject to NEPA. The NEPA document belongs to the federal agency, and it is the federal agency's obligation to satisfy NEPA. The NEPA document analyzes alternatives' effects to the human environment, not just covered species. This is distinct from the HCP: The HCP analyzes effects on covered species.

David reviewed some of the differences and similarities between the NEPA and HCP processes, including the content of the documents, type of process required, types of effects evaluated, etc. A major difference is that the HCP evaluates effects against an environmental baseline, whereas NEPA evaluates effects against a No Action alternative. Mitigation is not required under NEPA but is required under the HCP.

Kim Kratz added that Section 7 Consultation is also required.

- **Lead and Cooperating Agency Roles:** The lead NEPA agency is the agency with responsibility for complying with NEPA. There is guidance and a set of factors to help determine the lead agency.

A cooperating agency can include federal agencies with certain characteristics, as well as state and local agencies and tribal governments. Counties may also be cooperating agencies. The role of a cooperating agency is to participate early, make staff available to support the lead NEPA agency, and review and comment on draft documents. There is

no requirement to provide an early working draft to cooperating agencies, but this is sometimes done. The lead NEPA agency plays a role in requesting that agencies be cooperating agencies, but the lead NEPA agency cannot exclude agencies that wish to be cooperating agencies.

- **NEPA Timing Relative to HCP Schedule:** The NEPA process can begin soon after the HCP process begins, but it is most efficient for NEPA to begin after the HCP is fairly well defined (i.e., when the Administrative Draft of the HCP is relatively complete). NEPA occurs parallel to the HCP, but slightly behind in schedule; NEPA steps are just behind HCP milestones, and the timelines converge at the public draft stage: the public draft of the HCP and the public draft of the EA or EIS are released together. This then triggers the public review period. At the close of the public draft comment period, the NEPA decision document needs to be released before making an HCP permit decision.
- **NEPA Early Planning Tasks:** There are tasks that the NEPA lead agency can begin before official Notice of the NEPA Scoping process. These tasks include: determine the preliminary purpose and need, determine preliminary Proposed Action, evaluate environmental topics, define methods, assemble data to support affected environment, develop screening criteria for alternatives, and list potential alternatives to evaluate.
- **NEPA Procedures for HCPs:** A Notice of Intent (NOI) triggers Scoping. The Scoping period is 30 days. The minimum review periods for draft documents are 60 or 90 days.
- **NEPA Notice Requirements:** Three federal notices are required:
  - **Notice of Intent (NOI):** A NOI is only required for an EIS. It includes the agency's intention to prepare an EIS. There are various requirements for the contents of the NOI, including name and address of lead agency, general description of the proposed action and alternatives, description of the agency's scoping process (which include an opportunity to gather input on alternatives to consider and significant issues to analyze), and location and time of public meetings (if used). NEPA does not require public meetings as part of Scoping; it simply requires that there be a way to accept public comment during Scoping. The NOI announces a 30-day comment period to determine the proper scope of the NEPA analysis.
  - **Notice of Availability of Draft Documents:** This is a notice of receipt of the permit application, Draft HCP, Draft EIS, and Draft Implementing Agreement (if used). This announces public meetings (which are optional) and defines the comment period (which will be 60 to 90 days for an EIS).
  - **Notice of Availability of Final Documents:** This includes notice of receipt of the Final HCP, Final EIS with response to comments, and Final Implementing Agreement (if used). There is a requirement that there be written responses to all comments made on the EIS and the HCP. The federal agency is responsible for responding to comments on the EIS. The Notice of Availability of Final Documents kicks off a 30-day comment period (called a cooling off period under NEPA, because it is a way to get all final comments on the EIS).

It is recommended that, if Public Meetings are held, the agency be very clear on whether the EIS document will respond to oral comments made at meetings. The agency can elect to use a court reporter to document all oral comments. It can be simpler to ask members to submit all comments in writing.

- **Scoping Process:** The purpose of the scoping process is to engage the public early, identify concerns and alternatives, explain the NEPA process, and lay the groundwork. The method of scoping is left up to the Lead Agency (i.e., it can be any communication method appropriate to scoping, including in-person meetings, phone calls, webinars.)
- **Unique Aspects of NEPA for HCPs**
  - **Purpose and Need:** The NEPA Purpose & Need (P&N) articulates the Services' goals and objectives. All alternatives must be evaluated against the P&N, and meet the P&N. This is different from the applicant's P&N. It is helpful to include both the Services NEPA P&N and the applicant's P&N in documents.
  - **Defining the Proposed Federal Action:** The action is limited to what is included in the applicant's draft HCP. If the applicant has not proposed a certain activity in its HCP, the Lead Agency cannot require the applicant to evaluate or include that activity.
  - **Defining and Choosing Alternatives:** Alternatives should provide different ways to meet P&N and reduce environmental impacts, where possible. It is not required that an alternative reduce *all* environmental impacts, but it should reduce some. Alternatives should be substantially different from one another, if possible. The EIS must evaluate a reasonable range of alternatives. That range of alternatives is often developed through a range of screening criteria to justify selection.

There is always a No Action alternative. The No Action alternative is not as simple as continuing current practices; instead, the No Action alternative should be comprised of what ODF would likely do if it the HCP were not approved. For example, the No Action alternative might be defined as doing incidental take authorizations for small actions that are species-specific or geographically focused. A No Action alternative can technically be defined as the current take avoidance approach, but only if that is a realistic and feasible approach.

Action Alternatives are different permutations of the HCP. They consider alternatives used in development of the HCP and may consider alternatives recommended by stakeholders.

The Services cannot choose an EIS alternative different from what is proposed in the HCP. Their only choice is to issue or deny the incidental take permit that the state agency has applied for.

SC members added that the final Proposed Alternative must be taken from the alternatives that were analyzed; the final alternative cannot be different from what was analyzed under NEPA.

- **New NEPA Regulations:** The Council on Environmental Quality (CEQ) is the keeper of NEPA. CEQ recently released new NEPA regulations that apply to all federal agencies. The new regulations are undergoing a 60-day comment period that closes March 10, 2020. Once CEQ issues final regulations, the agency will withdraw all CEQ NEPA guidance and issue new guidance. All federal agencies will have a one-year window to align their own internal NEPA procedures with CEQ NEPA guidance.

Highlights of the new NEPA regulations include:

- Introduction of a NEPA threshold applicability analysis.
  - Cumulative effects analysis is no longer required.
  - The range of alternatives may be limited to just No Action and the proposed action.
  - Expands applicant's role in NEPA documents.
  - Page and time limits for EAs and EISs, although the senior agency official may extend these limits.
- **NEPA Responsibilities of the EPA:** The EPA is the reviewing agency for EISs and submits comments on EISs. The EPA conducts filing and noticing in the Federal Register. It is a Cooperating Agency for certain EPA issues, and is the Lead Agency for some non-exempt actions.

Kim Kratz noted that NOAA Fisheries has assigned a staff NEPA Coordinator and is considering selection of a NEPA contractor. A next step is for Kim Kratz, NOAA Fisheries NEPA Coordinator, and Liz to schedule a meeting to talk about NEPA contractor selection.

Deb encouraged SC members to consider whether they would find it useful to have ICF present additional content around NEPA, including a case study on the Deschutes HCP NEPA process. It may also be helpful to have the attorneys provide their legal perspective on NEPA.

## **STAKEHOLDER ENGAGEMENT UPDATE**

This topic was postponed until the next SC meeting, due to lack of time.

Deb noted that there is a meeting with industry representatives planned for January 27 in Salem. A meeting open to the public will likely occur in late Spring.

## **STEERING COMMITTEE DIRECTION TO SCOPING TEAM**

SC members had no specific direction to the ST.

## **NEXT STEPS AND SUMMARY**

Liz thanked participants for their time and efforts and closed the meeting.

The next Steering Committee meeting will be held on March 31, 2020 from 1:00 pm to 4:00 pm at ICF Portland.

## **ACTION ITEMS**

The following action items were identified throughout the meeting:

- KW – Distribute NEPA Primer Slides to SC
- Liz and Kim – Schedule a meeting to talk about NEPA contractor selection (to include Kim Kratz, NOAA Fisheries NEPA Coordinator, and Liz Dent)

## RECORD OF AGREEMENTS AND GUIDANCE

Updated 12/6/2019

This record tracks agreements, guidance, advice, and levels of support of key milestones and elements of the Western Oregon HCP. It includes major outcomes and guidance provided by the HCP Steering Committee, HCP Scoping Team, and Board of Forestry.

<b>Date</b>	<b>Group/ Body</b>	<b>Action</b>	<b>Relevant Milestone/ HCP Chapter</b>
November 8, 2018	Board of Forestry	Unanimously voted to move forward with Western Oregon HCP Phase 2: Strategy Development and Stakeholder Engagement	Phase 1 Completion
February 7, 2019	Steering Committee	Expressed support for the Western Oregon HCP Phase 2 Scope of Work and Work Plan	Phase 2 Beginning
February 13, 2019	Scoping Team	Provided support for the proposed covered species list	Covered Species List (Chapter 1)
February 13, 2019	Scoping Team	Agreed that the current data on the covered species is sufficient to move forward with developing an HCP, and there is not a need to collect additional data at this time. Expressed support for ICF's approach to identifying best available data for each species.	Approach to Gathering Best Available Data
April 2, 2019	Scoping Team	Provided support for the covered species list presented by ICF, including an agreement to drop Lower Columbia steelhead. They also recommend not including Southern DPS red tree vole but revisiting that species when more information is available in fall 2019.	Covered Species List (Chapter 1)
April 22, 2019	ODF and DSL	Decided to include Common School Forest (CSF) lands in the Western Oregon HCP Permit Area.	Plan Area and Permit Area (Chapter 1)
May 2, 2019	Steering Committee	Adopted Western Oregon HCP Operating Principles by consensus.	Process
May 2, 2019	Steering Committee	Adopted the Western Oregon HCP Mission, Vision, and Goals by consensus	Mission, Vision and Goals (Chapter 1)
May 2, 2019	Steering Committee	Expressed alignment with Plan Area and Permit Area (with direction to ST to review inclusion of Santiam Forest area)	Plan Area and Permit Area (Chapter 1)
May 2, 2019	Steering Committee	Provided consensus support for the proposed covered species list	Covered Species List (Chapter 1)
August 29, 2019	Steering Committee	Concurred with the Western Oregon HCP Mission, Vision, and Goals by consensus	Mission, Vision and Goals (Chapter 1)
December 3, 2019	Scoping Team	Concurred with the draft of the BGOs for submission to the Steering Committee as a Scoping Team consensus work product	Biological Goals and Objectives
December 6, 2019	Steering Committee	Approved the final draft of the BGOs for inclusion in the draft HCP	Biological Goals and Objectives