

Final Notes June 9, 1997

IMPLEMENTATION TEAM/ARMY CORPS of ENGINEERS PRESENTATION
MEETING NOTES

May 8, 1997, 9:00 a.m.-4 p.m.
NATIONAL MARINE FISHERIES SERVICE OFFICES
PORTLAND, OREGON

I. Greeting and Introductions.

The May 8 special meeting of the Implementation Team, held at the National Marine Fisheries Service's offices in Portland, Oregon, was chaired by Brian Brown of NMFS. The agenda for the May 8 meeting and a list of attendees are attached as Enclosures A and B. The following is a distillation (not a verbatim transcript) of items discussed at the meeting, together with actions taken on those items.

The purpose of today's meeting is to brief the Implementation Team on the findings of the Corps- sponsored Independent Review project, explained COE's Doug Arndt. By way of background, he said, the FY'96 and FY'97 Congressional Conference Committee language ordered the region to conduct an independent review of the Corps' process for making the structural fish improvements identified in the Biological Opinion, as well as the regional process through which the Corps receives direction to make those improvements.

In February 1997, the Corps hired a pair of independent contractors, Science Applications International Corporation (SAIC) and HDR Engineering, to conduct that independent review, Arndt said. During March and April, they conducted interviews throughout the region, contacting many of those present in the room today. The SAIC/HDR draft report is now available, and the purpose of today's meeting is to brief the Implementation Team on the preliminary findings of the Independent Review.

Arndt introduced Doug Pearman of SAIC, who explained that the assignment given to the independent review team was to look at both the Corps' internal planning, engineering, design, procurement and construction processes, and at how the NMFS Regional Forum functions in terms of providing direction to the Corps. Bear in mind, said Pearman, that we were asked to focus on the structural improvement projects identified in the BiOp, not on river operations.

Our process was to conduct in-depth interviews with all of the fish and wildlife players in the region, Pearman continued -- more than 80 individual interviews in all. The list of those interviewed is contained in the draft report. That draft report is now available for comment; the comment period closes May 22, two weeks from today, with comments to be submitted to Pearman. The final draft of the Independent Review report is due to the Corps on June 13.

Are you completely finished with all of your interviews? asked Jim Ruff of the NPPC staff. No - there are some key people we have not yet talked to, Pearman replied. The reason I ask, said

Ruff, is that I've been waiting to hear from you, but have not been contacted to date. I have some ideas I would like to share. You're certainly on our list, and we will be contacting you, Pearman replied.

What's the next step, once the final report is delivered to the Corps on June 13? asked BPA's Phil Thor. We will forward it as written to the Congressional Committees, Arndt replied. I should add that, although we are carrying this contract, in no way do we want to characterize this as a Corps of Engineers report. We are simply one of the entities being interviewed for, and providing comments on, the report.

With that, Pearman moved on to the Conclusions and Recommendations section of the independent review team's draft report, beginning with its findings on the Corps' internal processes (Pearman put up a series of overheads, which are reproduced in Enclosure C). These findings include:

? Single Program Office for Salmon. The Corps needs to straighten out its internal lines of communication and authority to create a single program office, a single voice for salmon, with Division-level authority, Pearman said. That Division-level authority should include the authority to plan, budget, design, contract, construct and operate. Essentially, what we're advocating is a Division-level salmon program office, with all of the functions that traditionally happen at the District level, Pearman said -- in other words, all of the activities associated with the Columbia River Fish Mitigation Program. While the Corps has a Pacific Salmon Coordination Office, what our review found was that the handoff between that coordination office and the operating districts is fuzzy and confusing at times. We identified a need for better internal Corps communication, as well as better direction to the Corps from the Regional Forum. The report also identifies a second reorganizational option, if a Division-level program office for salmon is not feasible: consolidate the salmon office into one of the existing districts, rather than spreading it out between the Portland and Walla Walla Districts, with coordination from the North Pacific Division office, as is currently the case. The idea is to create a single line of responsibility and authority, Pearman said.

? The Need For a Corps of Engineers Strategic Plan. The NMFS Regional Forum needs to create a clear vision for themselves, and establish a single strategic plan guiding the region's salmon recovery efforts, Pearman said. We advocate the creation of such a plan; from this regional plan, the Corps would extract its work direction, and develop a five-year strategic plan, with details at the first and second-year levels.

Actually, the System Configuration Team has developed a five-year workplan, said Ruff. As each fiscal year approaches, we talk about budget needs and priorities. That's really as close as we've come, so far, to a five-year plan the Corps could follow, he said. Perhaps what Doug is suggesting is that we need to build an internal plan based on the Multi-Year Implementation Plan, said Arndt.

? The Need for Better COE External Communication. Essentially, what we're saying here is that the Corps needs to be a little better about describing how they do their job, said Pearman. There is some confusion about why the funding and implementation processes take so long, and why the Corps is already focusing on projects in 1998 and

1999. The Corps needs to adequately explain its processes for implementing projects, because they are the implementing agency. A better understanding of the constraints the Corps operates under would help alleviate some of the regional frustration with the recovery effort.

? Budget Process Inflexibility. One of those constraints is the fact that Congress operates on an 18-month budget cycle; that is unlikely to change, Pearman said. One observation we heard during our interviews was the fact that there currently seems to be little or no flexibility in how Corps funding is allocated and re-allocated. If flexibility does exist, the Corps needs to do a better job of explaining the scope of that flexibility to others in the region. Other interviewees referenced a need for a larger "contingency account" to increase the Corps' budgetary flexibility, and its ability to fund projects to take advantage of promising new scientific developments.

? The Need to Re-Establish Authority. Another impression we received during the interview process was the idea that the Corps has moved away from a leadership role in the implementation of recovery measures to a more passive position, in which it waits for the region to tell it what to do, Pearman said. While the autocratic approach would be equally inappropriate, we think there may be some middle ground, in which the Corps works cooperatively with other entities in the region to make progress toward the recovery goal. In other words, we're recommending that, while the Corps should certainly solicit input from those entities, work shouldn't stop just because one or two players have not weighed in. The Corps should seek that middle ground between inaction and marching forward without proper consultation.

There are several projects currently before SCT on which we are at loggerheads, said Ruff -- basic differences of opinion that I don't believe can be resolved anytime soon. Are you suggesting that the Corps should simply move ahead with what the majority of SCT participants are supporting, and risk alienating the parties that oppose those projects? We'll be talking about suggested dispute resolution processes later in this briefing, said Nancy Winters of SAIC.

Those, in a nutshell, are the conclusions we've drawn so far about the Corps' internal processes, said Pearman. The second element of the draft report is an analysis of the Regional Forum procedures, which makes the following observations:

? The Need for a Single Regional Recovery Plan. We need a common regional vision, and we need a single plan to achieve that vision, said Pearman. We need to reach consensus on how we're going to save salmon.

How? asked Arndt. I don't know, Pearman replied. I don't know how you would go about writing such a plan if there isn't a common vision of how recovery can be achieved. The ultimate goal, obviously, is to save salmon -- I hope that everyone participating in this effort can agree on that.

Within the Regional Forum, that may be true, said one meeting participant. However, in the region as a whole, I think it may be arguable to state that all stakeholders believe that saving salmon is going to be worth the eventual cost. We had a similar review of the Council's Fish and Wildlife Program by an independent team of scientists, said Ruff. One of the things they said

was that the region needs a strategic framework for saving the salmon; at this time, that framework does not exist. There are mechanisms in place to develop that overall recovery framework, both within CBFWA and the Council -- I don't know whether they will be successful, but at least we're headed in that direction.

The problem is, the Council, NMFS and the tribes all have their own plans, said Pearman. I think it's fairly obvious that if everyone who sits down at the Regional Forum table has a different vision about how salmon recovery is to be achieved, you'll never reach consensus. The region needs a common strategic plan.

? The Need for More Clarity in the Decision-Making Process. Another observation we heard during the interview process was that a clearer decisionmaking mechanism is needed at the Regional Forum level, Pearman said. I sat through both IT and SCT meetings in the course of this review, and if all of the Regional Forum meetings are like those two, then this is a key point. You need to establish rules about when a vote is a vote; you need to decide when an agenda item is done, then move forward, and not raise the same issue again and again at future meetings. If you believe the BiOp, and the fact that the dates it contains are actually time-critical in terms of saving salmon, then decisions have to be made so that these items can be cleared from the agenda, and we can move on to the next item. Our suggestion was that the Regional Forum establish clear decisionmaking rules, in the context of what we call the decision support system, which includes criteria for which decisions need to be made at the Fish Facilities Design Review Work Group level, which should be made at the System Configuration Team level, which should be made at the Implementation Team and Executive Committee levels.

One of the comments we heard was that, at times, decisions are made at a level within the Regional Forum that doesn't have the necessary understanding of the policy implications of their decision, said Pearman. One of the suggestions we made about how to make decisions was something called the consensus approach, which the Mid-Columbia PUDs, among others, have adopted. What this doctrine says, in essence, is, let's agree not to agree, he explained. Under this approach, you can vote yes, you can vote no, or you can abstain. By abstaining, you agree not to actively attempt to defeat the purpose of the proposal in question. The bottom line is, if there are more yes votes than no votes, the proposed action moves forward, without a unanimous vote of all participants.

I'm trying to understand how that's different from our current process, said Brown. We sensed a lot of frustration among our interviewees about whether or not the direction they received at a given level in the Regional Forum process was in fact a mandate to go ahead and do the project in question, said Pearman. Also, if it takes only a single no vote to cause indecision at one level, such that an issue has to be elevated to the next level, that's not the way to resolve it. If the decision to be made truly is a policy-level question, then it may be appropriate to elevate it to the IT. But if, ultimately, the decision will come down to the technical merits of the project, then the SCT, for example, should be able to make the decision and move forward. If the Regional Forum is to function efficiently, there needs to be a clear understanding of when a decision is a decision, and the process by which any subsequent disputes will be settled in a timely fashion, Pearman said.

That's going to be difficult, in light of the fact that we don't even have buy-in on the timely

submittal of background material to be used in the decisionmaking process, said Ruff. Our suggestion is that the Regional Forum allow its participants two months in which to present its views, said Pearman -- in essence, you would be saying that a given agenda item will have two opportunities to be presented, discussed and elevated to the appropriate dispute resolution process. After those two months are past, the decision will be made, and no further input on this item will be solicited. That may seem a little cruel, but the reality is, if the BiOp schedule is to be met, the region has to move forward. What we're suggesting is that you allow a window of time in which to make your case for a given measure; once that window closes, there is no opportunity for further debate.

I agree with you, said Brown -- how do you do it? I don't know, Pearman said -- I don't have those answers yet. It's the distinction between a consensus and a democracy, said Thor -- Congress may not be the greatest example, but the fact is, they operate under the rules of a democracy, and majority rules. Democracy may be only one step up from a dictatorship, but given the ideological divisions between the various participants in the Regional Forum process, it may be a more practical alternative than a consensus system, particularly for decisions in which time is of the essence, observed one meeting participant.

Bill, you've been working with the Mid-Columbia Coordinating Committee, which employs the yes, no, or abstain -- agree not to disagree -- approach, said Ruff. Do you think that process is working better than the current Regional Forum process? Definitely, replied Hevlin. The Mid-Columbia process has a clear line of authority, and a very clear decisionmaking mechanism. You have to do things in specific ways, within specific time periods, or your proposal is not accepted. However, the big difference between that process and the Regional Forum is, if people don't agree, it goes into court, and an administrative law judge decides the issue, said Ruff -- we don't have that hanging over our head with the regional Forum.

The other difference is that the Settlement Agreements guide the Mid-Columbia Coordinating Committee process, Hevlin said -- the strategic plan you referenced earlier could provide a similar foundation. The tribes, the states and FERC were all involved in crafting those Settlement Agreements. The difference between the two processes is the fact that the Biological Opinion, rather than the settlement agreements, is the foundation for the Regional Forum process, and there were some fairly basic disagreements about what the BiOp does and should contain. The Biological Opinion is not analogous to a negotiated FERC settlement. The net result is, we're marching forward, trying to implement the Biological Opinion, but the tribes have a different position. That's a pretty fertile source of disagreement, Hevlin said.

I guess what I'm hearing, in terms of SAIC's recommendations, is, first, that we should develop a plan that flows downhill rather than uphill, said Thor -- from the policy level to the technical level. Second, you're saying that we should define our processes very thoroughly; third, you're saying that we should hold everyone to that process -- that's the best you can do. The question is, does that result in a decision that is quicker, faster and better? I don't know.

There is an alternative, said Pearman -- NMFS and the Corps could march off and implement the BiOp, despite the fact that that would be a violation of the MOA. According to the Record of Decision signed by the Corps, the Corps is an implementing entity, and the Corps has the responsibility and authority to build, study and research the structures specified in the BiOp within the time-frames specified in the BiOp. The MOA, which was also signed by the Secretary

of the Army, agreed that the Corps would do this work, and spelled out how BPA would fund it. It also agreed that the Corps would consult with the tribes and other parties in the region.

What I'm trying to say, said Pearman, is that the MOA and the BiOp are clearly at odds. Hopefully there is some middle ground under which the Corps can implement the BiOp, and can also consult with the relevant entities in the region. However, if trying to accomplish the middle ground results in those relevant agencies not attending important meetings, or returning important phone calls, and the Corps feels that that constitutes inadequate consultation, then the result is inaction, and you'll find yourself back in court for not implementing the BiOp.

? **The Need to Avoid Redundant Decisions.** Because of the way the Corps' budget process works, said Pearman, we're recommending that, in the case of multi-year projects, if the Regional Forum participants agree to fund the first year of those efforts, they are, for all intents and purposes, agreeing to fund the subsequent years as well.

Unless the science changes, said Ruff -- a lot of this is prototype testing. That's correct, said Pearman -- certainly there's no reason to continue doing something if it's the wrong idea. What if, as is often the case, the outyear funding identified at the beginning of a project turns out to be inadequate to finish the job? asked Brown. I guess that's part of the decision support network we referenced earlier, said Pearman -- when do cost overruns become a policy decision? It's also part of the Corps' regional communication responsibility, said another meeting participant -- we've been told by a number of people in the interview process that the Corps needs to do a better job of informing the region, in a timely fashion, when additional funds are going to be needed for multi-year projects.

? **The Need for Better Internal Communications.** Our conclusion here is that communication between the various Regional Forum committees needs to be improved, said Pearman. The other facet of this recommendation is the idea that, when an agenda is set, and decisions need to be made, that those involved with that agenda item come to the meeting prepared to discuss and resolve it -- that they have whatever background material and authorities they need to ensure that a decision is actually made at the meeting. The decision is then documented in the minutes, and that agenda item goes away.

? **Ensure a Common Understanding of Issues.** Our conclusion here is that the Regional Forum needs to do a better job of communicating with all of its participants, at all levels, when influential decisions are made, Pearman explained. That includes legal actions, Congressional actions, committee decisions and changes in the power market. Everyone who is participating in this process needs to get this type of information on a real-time basis, so that whatever decisions they make are informed decisions.

? **Consolidate Parallel and Redundant Processes.** This item focuses mainly on research programs, said Pearman -- we saw a real need for better coordination between the Corps, NMFS and BPA research activities. We're already moving in that direction, said Ruff.

Overall, said Pearman, if the recovery schedule outlined in the Biological Opinion is real, we're suggesting that it may be time to move away from the consensus approach to decisionmaking, toward a system that is more conducive to brisk progress toward the BiOp objectives.

Pearman put up one final overhead:

? Observations.

- Given USACE reorganization, the process is already streamlined.
- Need for clear direction from the region.
- Important to implement recommendations immediately.

The Corps can't function without clear direction from the region, Pearman said. While that may be an impossible goal, the closer we can get to a clear direction from the region -- even if it's only on two items out of 10 -- would be beneficial. Any time the region can tell the Corps, here is a decision, there will be no further questions about the validity of that decision, and here's what we want you to do, that will be conducive to BiOp implementation.

One thing the Corps needs to ask itself is, is the process by which they live the best process for every size project, Pearman said. One of our conclusions is, there probably should be a faster, quicker, cheaper process for small projects; we will be looking at those internal Corps processes to identify areas where changes might occur. Those processes are there for a reason -- they are extremely meticulous, with the goal of ensuring that whatever project the Corps undertakes ultimately works the way it's supposed to work. However, within the Columbia River Fish Mitigation Project, there are a multitude of tasks, some big, some huge, and some small. Our point is that those smaller tasks might be accomplished more efficiently through an alternative process. We'll elaborate on that further in the final report, Pearman added.

One area that seems to be a continuing concern for the region is the Corps procurement process, said Arndt -- are we disproportionately slow in getting contracts up and running? In talking with Doug, my impression is that the Corps is no slower than anyone else, including BPA. In other words, procurement may not be the issue we thought it was heading into this process, Arndt said.

Do you address the procurement process in this report? asked Ruff. Yes, Pearman replied -- our conclusion is that the Corps procurement process is not an impediment to accomplishing activities in a timely manner. However, we also suggest that "routine" construction activities don't necessarily need to be bid on an individual basis. Anywhere the Corps can get prequalified or indefinite delivery contracts in place, we recommend that they do so; otherwise, the procurement process alone takes three or four months.

That's really all I have today, said Pearman. Copies of the draft report are available in both hard copy and electronic form; comments are due back to me by May 22, and can be provided in any of several ways. Any comments received after May 22 will not be incorporated, because of the tight timelines involved in the delivery of the final draft of the report.

With that, the meeting was adjourned. Meeting notes prepared by Jeff Kuechle, BPA contractor.