

January 28, 2008 Executive Committee Notes

Mr. A.C. Carpenter, Executive Director of the Potomac River Fisheries Commission (PRFC) and host for the meeting, provided welcome remarks followed by opening remarks from Col. Dan Anninos, District Commander for the Norfolk District Corps of Engineers, the Honorable John Griffin, Maryland Secretary of Natural Resources, and the Honorable Preston Bryant, Virginia Secretary of Natural Resources.

Mr. Mark Mansfield (Management Team) provided a summary of the July 13, 2007 Executive Committee meeting, as follows:

- * The project delivery team, consisting of the joint lead and cooperating agencies, the Potomac River Fisheries Commission, and the Atlantic States Marine Fisheries Service, have continued to meet on a monthly basis to review project status. In preparation for today's meeting, team members met on January 23-24, 2008 with the EIS assessment and writing teams to review project status and schedule.
- * Researchers participated in a workshop at the Estuarine Research Federation's annual meeting in Providence, Rhode Island in November 2007 to discuss their research findings. Researchers agreed to provide summaries of their research for incorporation into the draft EIS.
- * Coordination between the modeling, assessment, and EIS writing team continues to increase as they work closely to integrate their findings and incorporate them into the draft EIS.
- * Project partners continue to collaborate with coastal states recognizing the potential coast wide implications of an introduction of *C. ariakensis*. A copy of the June 2007 progress report and August 2007 press release was sent to the Atlantic and Gulf States Marine Fisheries Commissions (ASMFC). In addition, the ASMFC Interstate Shellfish Transport Committee (ISTC) (consisting of shellfish technical experts from Maine to Florida, including NOAA and FWS) met for two days in September 2007 to obtain an update on *C. ariakensis* research, native oyster demographic modeling, and the ecological risk assessment. In November 2007, the ASMFC ISTC received an update and overview of the cultural and economic assessment projects.

Mr. Tom O'Connell (Management Team) provided a summary of the NOAA funded research projects.

Subsequent delays to the DEIS schedule has resulted in an improved alignment over time of both the NOAA funded research and the DEIS. At the last Executive Committee meeting in July 2007, it was noted that research results would have to be obtained by February 2008 in order for them to be incorporated into the assessments and be included in the DEIS. According to the NOAA funded research schedule at that time, all but 3 projects were scheduled to be completed by February 2008. The remaining three projects were all scheduled to be completed by June 2008, with 2 completed in March 2008. Based upon information presented to the PDT last week, the number of pending research projects after February 2008 has increased from 3 to 11 as result of no-cost extensions granted by NOAA. The remaining eleven projects are now scheduled to be completed by February 2009 with 2 available in March, 2 available in June, 1 available in July, 4 available in September, and 1 available in December. NOAA has informed the PDT that because these research projects are funded through cooperative agreements and not contracts, they are obligated to grant up to a one-year no-cost extension if requested.

The Project Delivery Team and Assessment and Writing Teams do not "believe" there is any ongoing research that is critical enough to postpone the preparation and release of the Draft EIS. It should be recognized that determining the sufficiency of research is not the responsibility of the PDT but rather the formal role of the Oyster Advisory Panel that is chaired by Dr. Brian Rothschild. The OAP is scheduled to review the Pre-Draft EIS in April 2008 to evaluate its scientific and technical sufficiency, and identify any critical research that they believe is essential to determining a reasoned choice among the alternatives. The OAP will report their findings to the Executive Committee prior to a decision by the Executive Committee to release the DEIS for public review.

The Management Team would also like to bring to the Executive Committee's attention two additional items related to the NOAA funded research based information presented and discussed to the PDT last week. First, while the majority of researchers have been cooperative in responding to peer review comments provided through the EIS process, a select few continue to be reluctant or outright refuse to do so. Researchers' response to peer review comments is required consistent with the EIS peer review plan that was developed by project partners and approved by the Federal government to be in compliance with new OMB peer review requirement established by the Federal government in 2004. Secondly, one researcher in particular has decided not to provide their research findings to the EIS team until it is published in a Journal.

NOAA can legally request that research grantees submit project deliverable in accordance with the terms of their cooperative agreements, negotiated as part of NOAA's grants management process. Academic partners are able to request one year no-cost extensions for these awards. That does not obviate their obligation to produce deliverables, but does delay the delivery of those deliverables (Peyton Robertson).

The Executive Committee asked Mr. Peyton Robertson (NOAA) to follow up with researchers and PDT representatives to request their full cooperation in meeting agreed upon timelines and following established peer review guidelines. NOAA will send a letter to principal investigators with outstanding and/or pending deliverables and ask that they provide whatever information that they can that will be significant input for the draft EIS with all due haste (Payton Robertson).

The Executive Committee requested that the Oyster Advisory Panel be tasked with reviewing the pending NOAA funding research projects and the ecological risk assessment, and report back to the Executive Committee by March 1st on the level of risk and uncertainty that would be reduced if these research projects were completed and incorporated into the EIS. Mr. Jeff Corbin noted the delay in the development of the ecological risk assessment as a result of prior review comments. He questioned what the effect would be if the ecological risk assessment were not accepted by the reviewers and what effect might that have on the schedule. It was noted that the ERA peer review was still underway and that the ERA authors would evaluate and respond to the management team if that occurs.

Mr. Jack Travelstead (Management Team) introduced Dr. Michael Paolisso from the University of Maryland who provided a status of cultural assessment projects, Dr. Bill Richkus from Versar, Inc. (on behalf of Dr. Doug Lipton from the University of Maryland) who provided a status of economic assessment projects, and Dr. Charlie Menzie from Exponent who provided a status update on the ecological risk assessment.

Mr. O'Connell provided a review of the EIS schedule, indicating that the project delivery team is on schedule to deliver the draft EIS in late May 2008. Mr O'Connell informed the Executive Committee that schedule modifications (i.e. agency review time shortened) were necessary to proceed with a May/June 2008 target date, and "pressure points" within the schedule are increasing.

The Executive Committee discussed and modified the previously agreed upon process for obtaining input on the pre-draft EIS from the Chesapeake Bay Program (CBP) and ASMFC due to legal concerns with providing the pre-draft EIS to selected organizations. Project partners agreed to the following:

- CBP STAC and ASMFC ISTC will be provided a technical briefing on the demographic model and economic, cultural and ecological assessments prior to providing the OAP with a pre-draft EIS for peer review. (Tom, Jack, and AC, you should review this to ensure that the wording is right)

Mr. Mansfield provided a review of the risk management and decision making process for identifying a preferred alternative(s) based principally upon evaluation criteria developed by the PDT in 2006, to include the following which will be applied to the proposed action as well as to each of the alternatives (please note that associated decision factors will be quantitative and/or qualitative):

- * Oyster population projections (and associated decision factors)
- * Implementation costs (and associated decision factors)
- * Key Bay Restoration Goals (and associated decision factors)
- * Unsanctioned Introduction (and associated decision factors)
- * Disease/Human Health (and associated decision factors)
- * Ecological (and associated decision factors)
- * Economic (and associated decision factors)
- * Cultural (and associated decision factors)

All are within the context of the Notice of Intent published in the Federal Register on January 5, 2004.

The Executive Committee and project partners agreed to remain committed to utilizing the previously established decision criteria matrix to facilitate the identification of a preferred alternative(s).

Project partners discussed whether or not a preferred alternative should be included in the Draft EIS. EPA agreed to follow up on this in more detail. While a formal decision was not made, there appeared to be building consensus for not including it in the Draft EIS but narrowing the focus of alternatives that are still being considered by the agencies. None of the project partners disagreed with this approach.

Mr. Mansfield led a discussion on communicating the status and schedule of the EIS to the public. The Executive Committee agreed that a press release was not necessary at this time, but requested that an update of the project status and schedule be added to the EIS webpage.

The meeting concluded with a summary of the items listed above and the agreement for the Executive Committee to begin meeting more frequently as the delivery date for the draft EIS approaches.