

**DRAFT Meeting Notes
Missouri River Recovery Implementation Committee (MRRIC)**

Fourth Meeting

**Overland Park, Kansas
March 2 – 5, 2009**

Executive Summary

The Missouri River Recovery Implementation Committee (Committee) held its fourth meeting in Overland Park, Kansas, March 3 – 5, 2009. It was preceded by a half-day optional briefing and field trip to the Johnson County Weir on the Kansas River, a tributary of the Missouri River. The meeting was chaired by Randy Asbury and facilitated by Gail Bingham and Paul De Morgan of RESOLVE and Sarah Palmer and Pat Lewis of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute). The notes were taken by Dana Goodson of RESOLVE. Meeting participants included Committee members from each of the stakeholder interest categories, some alternate members, and appointed representatives of the Missouri River Basin states, tribes, and federal agencies. A quorum of stakeholder representatives (51%) was present March 3, 4, and 5.

The Committee interviewed four candidates for Committee chair and reached a consensus recommendation on John E. Thorson. The Committee also selected Randy Asbury as vice chair by consensus with two members abstaining. Both decisions were deemed “process” decisions and therefore did not call for the two-step process set forth in the Committee Charter for consensus recommendations on substantive issues.

The Committee received reports from the following work groups: the Missouri River Ecosystem Restoration Plan (MRERP) Work Group; Missouri River Recovery Program (MRRP) Work Group; Integrated Science Program (ISP) Work Group; and the Communications/Information Technology (IT) Work Group. A number of these Work Groups also met separately the morning of Wednesday, March 4, and all of them presented their proposed next steps to the full Committee the following day. A proposal was presented to form a Social, Economic, and Cultural Work Group but the Committee did not reach consensus on establishing this work group. The Committee agreed, however, that social, economic, and cultural issues should be brought before the Committee and asked the Agenda Work Group to consider options for bringing this information to the Committee. Those interested in social, economic, and cultural issues were also asked to follow up with the chair and facilitation team with suggestions.

Information-Sharing Sessions

The Committee learned about:

- The status of the stimulus package as it relates to recovery and mitigation efforts
- Current enforcement and perspectives on the potential similarity of appearance (SOA) listing for shovelnose sturgeon
- Scope and framing of Environmental Impact Statement (EIS) Purpose and Need Statements (P&N)
- U.S. Army Corps of Engineers (USACE) shallow water habitat program

- USACE Recovery Program's 2010 Project Work Requests
- The proposed scope of work for Independent Scientific Review (ISR) Panels and shared ideas for further work group discussion
- Adaptive Management
- The USACE levee repair program and status
- The status of USACE's plans for 2009 spring pulse

Consensus Agreements

The Committee agreed on the following process decisions:

- To follow the proposed meeting agenda, except for rearranging the order of some agenda items on the final day
- To approve the January 2009 meeting notes
- That information on social, economic, and cultural issues should be brought before the Committee
- To recommend John Thorson as Committee chair
- To select Randy Asbury as vice-chair
- To approve the Request for Information Form and the process for its use
- To allow the following people access to WebEx: Committee members' administrative assistants (under the member's login) and non-Committee members who are approved members of work groups
- To direct the Nominating Work Group to develop specific steps for vacancies, based on proposed process by the USACE
- To approve the ISP work group's tracking of the U.S. Fish and Wildlife Service's (USFWS) draft pallid sturgeon recovery plan
- To add Elizabeth Wakeman to the MRERP Work Group; Mike Olson, Henry Maddux, and John Seeronen to the ISP Work Group; and David Sieck and Carol Hale to the MRRP Work Group

Other Activities

Committee members also shared ideas that the MRERP Work Group (and interested Committee members) will use to prepare proposed recommendations on the P&N.

Work Group Action Items

The Committee reached consensus on the following action items proposed by each of the work groups.

ISP Work Group:

1. Continue working on development of a recommendation related to Similarity of Appearance (SOA) issue
 - Point of Contact (POC) and chair – send letters of thanks to 7 presenters
 - Develop and present proposed recommendation at May 2009 meeting
2. Develop materials to describe the ISR process options and the role of the Committee
 - Provide materials in preparation
 - Present materials at May meeting
 - Develop and present proposed Statement of Work at July meeting

3. Add draft Pallid Sturgeon Recovery Plan as an issue to track
 - Share “white paper” with full Committee (being developed by ~March 31, 2009)
 - Provide update at May meeting

MRERP Work Group:

1. Produce letter with “bullet point” recommendations about what the Committee would like the USACE to consider in drafting an EIS Purpose and Need Statement on the following target timeline:
 - March 2009 meeting
 - Get initial ideas from Committee (*done*)
 - Identify themes that have the potential for consensus with further discussion (*started*)
 - Invite interested Committee members to participate in work group calls about P&N recommendations and get approval for timeline (*Thursday, March 4*)
 - March – May, 2009 (goal: to increase likelihood of consensus at the May meeting by giving the Committee opportunities to contribute to the P&N content)
 - *Starting now*: MRERP work group members begin drafting bullet points that try to capture possible consensus from the themes that emerged from the March meeting
 - *Mid- March – mid-April, 2009*: MRERP conference calls to seek Work Group consensus on recommendation language (interested Committee members welcome)
 - *Mid-April 2009*: Post draft recommendations language on WebEx and send email to full Committee to announce that it is posted and request that members review and provide comments
 - *Late April 2009*: MRERP conference call to revise recommendations based on Committee comments.
 - *First week of May, 2009*: post revised draft on WebEx for Committee as a read-ahead for May meeting
 - May 2009 meeting: reach tentative consensus (approach to the agenda TBD)
 - July 2009 meeting: ratify consensus
2. Let interested Committee members know how to join the Work Group calls on the P&N

MRRP Work Group:

1. Recovery management updates (standing presentation by M. George on agenda)
2. GAP report
 - Posted on WebEx on April 1, 2009
 - Prepare presentation in May 2009
3. Issue papers
 - Shallow water habitat – develop information presentation
 - Other issue papers
4. 2010 Work Plan
 - Track project work requests (PWRs) to work plan process
 - Prepare presentation in May 2009

5. Process Diagram
 - Work with ISP Work Group to incorporate science
 - Prepare presentation in May 2009

Communications/IT Work Group:

1. Continue to work on recommendations for Committee letterhead
2. Continue to transfer information to the public website
3. Consider procedures for sending out press releases
4. Develop proposal for approach to annual report
5. Develop proposal for approach to self-evaluation

Nominating Work Group:

The Nominating Work Group will work with the USACE to develop a proposed process for handling vacancies on the Committee and steps for members who wish to continue on the Committee for another term.

Agenda Work Group:

The Agenda Work Group will use the suggestions generated by Committee members to inform the development of the May 2009 meeting agenda (including how to incorporate social, economic, and cultural issues into the agenda). The following members volunteered to serve on the Work Group for the May meeting: Bill Beacom, Terry Fleck, Vicki Marquis, Kate Vandemoer, and Bob Williamson. As four existing members were still eligible to participate from the last round, Randy Asbury agreed to work with them to determine how to meet the maximum seven-member allocation.

Federal Agency Action Items

U.S. Institute:

- The U.S. Institute will notify John Thorson that he was recommended as the MRRIC chair and begin negotiating the contract with him.
- The U.S. Institute will inform the other candidates of the Committee's choice and provide feedback to those candidates, if requested.

USACE

- Mike George will find out why a chute was not constructed at Jamison Island and relay that information to the Committee.
- The USACE will draft a proposal of its interpretation of the Committee's Charter language [(5) 2) (c): Stakeholder Members Appointments and Vacancies] and submit it to the Nominating Work Group.
- The USACE will coordinate with the Nominating Work Group on drafting the text of a formal letter to the Secretary of the Army regarding Committee vacancies and requests for renewals.
- When the definition of shallow water habitat has been revised, the USACE will share it with the Committee.
- The USACE will continue working on finding an answer to the question of timing for potential changes to the spring pulse and will let the Committee know when more information is available.

- The USACE will keep a log of submitted request for information forms and their status. The log will be posted on WebEx and updated monthly.
- The USFWS and the USACE will develop a set of specific questions and project tasks to bring before the Committee.

U.S. Fish and Wildlife Service

- The USFWS and the USACE will develop a set of specific questions and project tasks to bring before the Committee.

Facilitation Team (U.S. Institute/RESOLVE) Action Items

- The facilitation team will email the Committee the draft list of March meeting accomplishments that was displayed at the end of the meeting (*done*)
- In the meeting summary, Dana Goodson will indicate where USACE's list of reasonable and prudent alternatives (RPAs) distributed at the December 2008 meeting can be found (*done – see page 20*).
- The facilitation team will review the draft template developed for the March meeting to capture expected Work Group products, timeframes, accomplishments, and status of action items with the Work Groups. The facilitation team will post the updated documents on WebEx so all Committee members can track the work groups' progress.
- The facilitation team will coordinate with USACE about options for making it easier to download or print read ahead materials, identify which members are not signed on to WebEx, and plan how those members can get the read-ahead materials.
- The facilitation team, along with the chair and vice chair, will discuss methods for bringing issues to the Committee.
- The facilitation team will add Brian Manwaring's name to the MRERP Work Group list.

Committee Members' Action Items

- Committee members will send any additional suggestions on the EIS P&N to Gail Bingham (gbingham@resolv.org).
- Those members whose terms are ending September 30, 2009 will notify Pat Lewis (lewis@ecr.gov) if they wish to seek another term.

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The Missouri River Recovery Implementation Committee (Committee) held its fourth meeting in Overland Park, Kansas, March 3 – 5, 2009. The meeting was facilitated by Gail Bingham and Paul De Morgan of RESOLVE and Sarah Palmer and Pat Lewis of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute). The notes were taken by Dana Goodson of RESOLVE. PowerPoint presentations and handouts from the meeting are available on WebEx at <https://mrric.webexone.com/default.asp> under their respective days in the March 09 meeting folder. The presentations, along with this summary, will also be posted on the public website at www.mrric.org.

Day 1: Monday, March 2, 2009

In the afternoon of Monday, March 2, an optional briefing and field trip to the Johnson County Weir on the Kansas River, a tributary of the Missouri River, was held. The goals of the session were for participants to learn about geology of the Kansas River and its relationship to the Missouri River, as well as the Johnson County Weir's role in the Pallid Sturgeon Recovery Plan and the impacts of this project on fish and bird habitat and pallid sturgeon recovery.

Day 2: Tuesday, March 3, 2009

Welcome and Meeting Objectives

Randy Asbury, interim Committee chair, opened the meeting and reviewed the following meeting objectives:

- Continue to develop a shared understanding about the Missouri River Recovery Program (MRRP) that includes current recovery and mitigation actions underway in the Missouri River basin and the Missouri River Ecosystem Restoration Plan (MRERP) activities.
- Learn more about commercial harvest of Shovelnose sturgeon, the U.S. Army Corps of Engineers' (USACE) Adaptive Management Program, and an update on spring pulse and status of levee repairs.
- Take next steps on the organizational work of the Committee.
 - Approve January meeting summary
 - Interview chair candidates and recommend chair to U.S. Institute
 - Work group briefings and proposals for Committee consideration from MRRP, MRERP, Integrated Science Program and Communications/IT Work Groups and a possible Social, Economic, and Cultural Work Group

Witt Anderson, program director of the USACE's Northwestern Division, welcomed participants to the meeting. He made the following announcements:

- Jody Farhat has been selected to succeed Larry Cieslik as chief of the Missouri River Basin Water Management Division.
- Brigadier General William E. Rapp, commander of the Northwestern Division, has expressed interest in attending the May MRRIC meeting.
- John Seeronen has written a paper on judicial challenges to Missouri River mainstem regulation published in Environmental Law & Policy Review. Those who are interested can request copies from Mr. Seeronen.

Mr. Anderson updated the group on the USACE's budget and the stimulus package as it relates to USACE funding. The House of Representatives has passed an omnibus bill for FY09 appropriations that includes \$5.4 billion, \$57.4 million of which is allocated for Missouri River recovery. Senate action on the bill is pending. The stimulus package includes another \$4.6 billion for the USACE. Agencies are working with the Office of Management and Budget to determine which projects will receive stimulus money. Therefore, Mr. Anderson does not yet know what amount will be allocated to the recovery program, but he offered a capability amount – the sum the USACE could execute in the recovery program – of \$105 million. For the FY10 budget, the USACE total is \$5.1 billion, although the specific numbers for the recovery program will not be available until April 2009.

Mr. Anderson informed the group that he and other USACE staff attended the Missouri River Levee and Drainage District Association meeting on Saturday, February 28. He was invited to talk about MRRIC and delivered a summary of the history of MRRIC, its accomplishments to date, and some of the topics the Committee might address. He made an effort to convey the USACE's commitment to making the process a successful one, through the dedication of resources, staff, and collaborative engagement, as well as the agency's intent to be as transparent as possible. When MRRIC offers recommendations, he said, the federal agencies will respond with a rationale for their decisions, whether or not they ultimately agree with the recommendations.

Finally, Mr. Anderson thanked the Committee work groups and their points of contact for their hard work and Randy Asbury for his service as interim chair.

Member Introductions

Paul De Morgan led the group in a round of introductions. The following individuals served as alternates for Committee members at this meeting:

- Steve Adams, alternate for David Barfield on 3/4/09, representing the state of Kansas
- Larry Cieslik, alternate for Witt Anderson on 3/5/09, representing the USACE
- John Drew, alternate for Mike Wells, representing the state of Missouri
- Daniel Kuenzel, alternate for Lanny Meng, representing flood control
- Mike Mac, alternate for Max Ethridge, representing U.S. Geological Services
- Henry Maddux, alternate for Steve Guertin, representing the U.S. Fish and Wildlife Service (USFWS)
- Kirk Nelson, alternate for Brian Dunnigan, representing the state of Nebraska
- Jodee Pring, alternate for Sue Lowry, representing the state of Wyoming
- Hector Santiago, alternate for Mike Madell, representing the National Park Service
- Nick Stas, alternate for Robert Harris, representing the Western Area Power Administration

Mr. De Morgan announced that a quorum of stakeholder members was present.

Agenda Review and Approach to This Meeting

Mr. De Morgan reviewed the proposed agenda, which was approved by the Committee. He also reminded the group of the meeting ground rules set forth in the operating procedures.

Business Session: Approve Notes from the January 2009 Meeting

Mr. De Morgan noted that the U.S. Institute had received one small change to the January meeting notes by the deadline of February 25. The Committee then approved the revised January 26 – 29, 2009, Meeting Notes.

A member raised the issue of assisting tribal members in attending the meetings. Randy Asbury clarified that the discussion of travel assistance must take place as side conversations. He observed that several members, including both state and tribal representatives, have been unable to attend recent meetings due to funding issues, but added that the Committee, as an entity, is not empowered to address the issue.

Information Sharing Panel: Commercial Harvest of Shovelnose Sturgeon

Paul De Morgan introduced the panelists invited by the Committee to make presentations on behalf of their interests on the shovelnose sturgeon issue. He also mentioned that the Integrated Science Program (ISP) Work Group, which organized the panel, had given some clarification to the list of questions distributed to the presenters ([see Attachment B](#)).

George Jordan, Pallid Sturgeon Recovery Coordinator, Yellowstone River Coordinator, USFWS

Mr. Jordan reviewed the history of commercial fishing regulations with regard to the pallid sturgeon. In its 5-year review in 2007, the USFWS concluded that commercial fishing of the shovelnose sturgeon still poses a threat to the pallid sturgeon. The USFWS identified the similarity of appearance (SOA) provisions under section 4 of the Endangered Species Act (ESA) as a potential vehicle for preserving the pallid and drafted a proposed rule accordingly. An SOA rule would allow the USFWS to extend additional protections to the shovelnose sturgeon, which is a non-listed entity, because of its similarity to the pallid sturgeon. SOA provisions can apply when two species are so similar that protection for the listed species is difficult to enforce.

Mr. Jordan suggested that take of pallids occurs both because of the rising price of caviar and because it is so difficult to distinguish between pallid and shovelnose sturgeon. According to a 2008 study of commercial fishing in the Tennessee waters of the Mississippi River, pallids account for at least 1.8% of the shovelnose sturgeon harvest. Mr. Jordan also noted that mortality rates for pallids is higher in areas where fishing of shovelnose sturgeon is allowed than in areas where it is not permitted. He pointed out that differentiating between the two species calls for more than visual inspection, but requires careful measurement and analysis of multiple characteristics and possibly multivariate and genetic analysis. The task is further complicated by the existence of hybrids.

Under the proposed SOA rule, exemptions could be made for certain activities, such as scientific research, recreational fishing (if targeting non-sturgeon species), and commercial fishing of non-*Scaphirhynchus* fish. The proposed rule was submitted for review in January 2009, but the new

administration has imposed a temporary moratorium on rulemakings. If the rule is adopted, it will be listed in the Federal Register for public comment. After the comment period, the USFWS will make revisions and develop a final proposed rule within a year.

Dan Burleson, USFWS Law Enforcement

Mr. Burleson gave an overview of law enforcement actions involving the pallid sturgeon beginning in 1997. For example, in one 2006 case, a fisherman who was fishing in the closed waters of Arkansas's Table Rock Lake was caught with three pallid sturgeons. According to Mr. Burleson, the greatest challenges for law enforcement are the variations in regulations from state to state (e.g., the legality of hybrids) and the difficulty in distinguishing pallid from shovelnose sturgeon. Although he has heard of anecdotal cases where pallids have been egg-checked, he has not observed it firsthand.

Committee members asked Mr. Burleson questions, to which he responded as follows:

- Mr. Burleson, a trainee, and two officers stationed in Springfield, Illinois, are responsible for policing the waters of the Missouri River that pass through the state of Missouri. Furthermore, each county has two officers dedicated to law enforcement.
- Mr. Burleson agreed with a member's comment that it is likely that many more violations are occurring than are detected by law enforcement.
- While sturgeon eggs can be distinguished from bowfin, it is harder to tell the difference between sturgeon and paddlefish eggs.
- Missouri requires commercial fishermen to be licensed. The state of Illinois requires that license applicants pass a course in pallid sturgeon identification, but other states do not.

Tim Ripperger, Missouri Department of Conservation

Mr. Ripperger described the Missouri Department of Conservation (MDC) as a significant presence on the waterways, with an undercover unit and a field force to augment its work. MDC has documented no pallid sturgeon violations on the Missouri River and very few on the Mississippi River. Although illegal harvesting is a concern, MDC has yet to determine if it is having a significant impact. Mr. Ripperger noted that MDC is having trouble finding enough pallids to constitute bridge stock since the number of pallid sturgeon is so limited. While there is anecdotal evidence of pallid sturgeon egg checks¹ taking place, there are no data on their frequency. Mr. Ripperger emphasized that MDC has worked hard to train both its field staff and commercial fisherman on pallid identification.

Mr. Ripperger responded to questions from the Committee as follows:

- MDC agents set their work schedules based on the needs of the district, so they could be in the field at any hour necessary.
- There are nine roe harvester permits for residents in Missouri and six for non-residents.
- Mr. Ripperger assured the group that MDC agents are comfortable with their training in pallid identification. He acknowledged, however, the difficulty posed by hybrids, noting that in some cases laboratory identification is required.
- In the Table Rock Lake case, Missouri conservation agents apprehended the fishermen who were harvesting illegally out of closed lakes. The fishermen also had paddlefish eggs, which can be harvested on the Mississippi, but not on the Missouri.

¹ Egg checking is the slicing of the sturgeon's abdomen to determine whether it contains marketable roe.

- In response to a participant question, Vince Travnichek, also of MDC, estimated that 200-250 commercial fishing licenses are issued for all fish species on the Missouri each year.
- MDC will not have an official stance on the SOA listing until the USFWS issues a proposed rule.

Rob Maher, Illinois Department of Natural Resources

Rob Maher outlined the revised regulations on shovelnose sturgeon that Illinois has undertaken in consultation with neighboring states, with the goals of maintaining a sustainable commercial shovelnose sturgeon industry and protecting endangered pallid and lake sturgeon. Illinois has put in place special regulations for the Chain of Rocks area, where there is a known concentration of sturgeon. The broader regulatory framework for sturgeon includes the following measures:

- **Harvest season:** Illinois has instituted a harvest season of October 1-May 31 for the state's portions of the Wabash, Mississippi, and Ohio Rivers.
- **Harvest slot length limit:** Illinois has established slot length limits, or the minimum and maximum lengths required for a fish to be legally harvested, and 24-32 inches is the acceptable length range for shovelnose harvested on the Illinois portion of the Mississippi and Ohio Rivers.
- **Refuge areas:** Illinois has restricted shovelnose harvest to the Mississippi, Ohio, and Wabash Rivers.
- **Zones:** Illinois has established two zones on the Mississippi to protect pallids where their range overlaps with shovelnose.
- **Certification class:** Commercial sturgeon fishermen are required to pass a test verifying their ability to identify shovelnose sturgeon.
- **Permit system:** Illinois tracks the harvest of shovelnose through its permit and reporting system.
- **Harvest cap:** Illinois will establish a biologically based shovelnose harvest cap in each of four zones along the Mississippi, Ohio, and Wabash Rivers.
- **Clarification of hybrid issue:** Three characteristics have been established that identify sturgeon that are illegal to harvest.

Mr. Maher pointed out that the certification program improves their ability to prosecute illegal take of pallids because fishermen have already demonstrated they can distinguish between the types of sturgeon, thus eliminating accidental take. In response to Committee questions provided to the panelists, Mr. Maher said that Illinois did not consider it necessary to close commercial shovelnose sturgeon harvest when the pallid sturgeon was listed because there was little overlap between their ranges and the harvest of shovelnose did not appear to pose a threat to pallids. He stated that no estimates are available on the number of pallid sturgeon that has been egg-checked. Finally, he believes the regulatory and educational measures implemented by Illinois could serve as a viable alternative to an SOA listing for shovelnose sturgeon.

Mr. Maher then responded to additional questions from meeting participants:

- The state of Illinois determined the harvest season by examining when, throughout the year, the majority of spawning activity takes place and protecting those months.
- If genetic testing results show that pallids are being harvested in Illinois waters despite the management program that has been implemented, Mr. Maher expects the state will move to close sturgeon fishing.

- Commercial fishing licenses do not restrict the fish harvested by weight.
- The majority of shovelnose sturgeon fishing takes place south of Alton, Illinois, on the Mississippi River. There are 580 miles of river open to shovelnose fishing, of which 200 miles are within the range of the pallid.

Vince Travnichek, Missouri Department of Conservation

Mr. Travnichek discussed the regulation of the shovelnose sturgeon fishery in Missouri, beginning with a historical overview since 1945. Commercial shovelnose harvest is now permitted only on portions of the Missouri and Mississippi Rivers. In addition to closing certain sensitive areas to commercial harvest, Missouri implemented the following regulations on commercial fishing of shovelnose:

- **Harvestable slot length limit:** 24 to 30 inches on the Missouri River and 24 to 32 inches on the Mississippi River. Mr. Travnichek pointed out that a lower slot length limit allows the sturgeon to spawn at least once before they are subject to harvest.
- **Harvest season:** November 1 to May 15 on the Missouri and October 15 to May 15 on the Mississippi. After looking at the monthly harvest to determine the best months to protect the fishery, MDC consulted with fishermen to arrive at a consensus on the dates of the harvest season.
- **Commercial fishing permit:** A \$500 permit is required for commercial harvest of shovelnose sturgeon on the Missouri and Mississippi Rivers; on the Missouri, permits are available to state residents only.

Mr. Travnichek reported that the long-term average (1945-2007) for shovelnose sturgeon harvest is approximately 7,000 pounds/year on the Mississippi River and approximately 4,000 pounds/year on the Missouri. He noted that little harvest has been reported on the Mississippi in recent years, as most fishermen are opting to report in Illinois. Missouri issued 15 sturgeon harvest permits for this year, nine of which were to state residents. While Missouri provides pallid sturgeon identification information to those whom it issues permits, it does not require a class; however, Mr. Travnichek surmises that most fishermen are dual-licensed in Illinois and attend the class there.

A participant asked about the Missouri Department of Health advisory regarding the contamination of sturgeon eggs, and Mr. Travnichek responded that MDC works with the Department of Health to answer any questions it might have. He underscored, however, that it is an advisory only and not a prohibition.

Cliff Rost, Commercial Fishing

As an angler who fishes in both Missouri and Illinois waters, Cliff Rost offered his perspective on commercial fishing of sturgeon on the river. He expressed concern about the impact of the economic downturn on fishing, which is making it difficult to sell caviar and contributing to unemployment in the region. If an SOA listing is implemented, he fears it will destroy commercial fishing on the Missouri. He estimates that the listing would cut production by 34% on the Missouri River and would reduce his income by 51%.

Mr. Rost emphasized that those who are still in commercial fishing on the Missouri are professionals who are adept at distinguishing pallids from shovelnose sturgeon. They are also well aware of the consequences of making an error and being caught with a pallid, so they are not inclined to take chances. He asserted that the state agencies are doing a good job of implementing the new

regulations. Rather than considering an SOA listing, Mr. Rost would encourage the agencies to give the regulations an opportunity to demonstrate their effectiveness. In his opinion, the regulations are laying the groundwork for a sustainable shovelnose sturgeon fishery and will allow fishermen to continue producing an American product. Mr. Rost observed, however, that hybrids remain a problem and suggested that clarification of the issue would be helpful.

Mr. Rost responded to questions from Committee members as follows:

- Hybrids constitute about 15% of the fish he catches in a day.
- The Missouri Department of Health's mercury advisory applies to the fish, but not to the eggs. Most of the caviar goes to Japan, where it is tested.
- At last year's market price, a 28-inch shovelnose (within the slot length limit) would yield about 5/8 of a pound of caviar, which would be worth about \$70/pound to the fisherman. This year, fishermen are earning approximately \$20 - \$25/pound.
- Once the caviar is harvested, the shovelnose is generally used in turtle food because the fish is too tough for the seafood market.

Leroy Matlick, Commercial Fishing

Leroy Matlick concurred with the comments made by Mr. Rost and supported the idea of allowing a few years for the rules to show they are working. The shovelnose sturgeon he is catching are already showing signs of a more healthy and sustainable fishery. He commended the states of Missouri and Illinois for working with fishermen to shape the regulations. In his view, throwing undersized fish back does not pose a problem for fishermen because the fish are worth more in their mature stages. Few fish surpass 32 inches, so throwing those back to protect the pallid is worthwhile. He cautioned, however, that closing the shovelnose harvest would eliminate the livelihoods of fisherman and could cause an explosion in the shovelnose population, which could reduce the amount of food available to pallids through increased competition.

Panel Discussion

After the presentations, Committee members posed several questions to the panel members:

❖ **What suggestions do the commercial fishermen have on pallid sturgeon recovery?**

Mr. Rost and Mr. Matlick agreed that the best thing to do is give the regulations that are in place time to work. In their opinion, closing down commercial shovelnose sturgeon fishing is the worst option.

❖ **What are the states doing to address contamination of roe and make consumers aware of the issue?**

Mr. Maher explained that the state collects samples and tests for contaminants. The testing does not produce straightforward answers, however, especially given that the FDA has never established a portion serving size of caviar, reasoning that it is consumed in too small of quantities to pose a health risk. Without guidelines on serving size, it is difficult to do toxicity testing.

❖ **What do biologists think should be done about hybrids – should they be culled or kept?**

Mr. Jordan pointed out that the issue of hybrids is poorly understood and researchers are just beginning to gain some insights. Genetic testing reveals that some of the fish that would

be classified as hybrids when judging by their physical characteristics should actually be considered pallids. As a result, the best thing to do in the field is throw hybrids back, as Illinois has decreed. MDC representatives added that it is also illegal to harvest hybrids in Missouri.

Furthermore, two different scenarios can result from the appearance of hybrids. In one case, a hybrid swarm will produce all hybrids over the generations. When you have a common and uncommon species, as in this case, some hybridization can occur, but the hybrids might be unable to reproduce. It is unclear if this scenario is taking place.

❖ **If it becomes illegal to harvest shovelnose, will there be a black market?**

Panelists speculated that a black market already exists, as evidenced by incidents such as Table Rock Lake. Some thought closing the commercial shovelnose harvest would result in increased black market activity. Mr. Ripperger observed that MDC prefers to deal with legal fishermen.

❖ **Are the three characteristics Illinois uses to distinguish shovelnose from hybrids sufficient and easy to use?**

Mr. Maher clarified that this approach has just been implemented and part of the evaluation process is to determine how well it is working. The state of Missouri is also involved in this micro-study.

Panelists discussed whether color is useful as a distinguishing characteristic, and Mr. Jordan said it is not recommended as an indicator. The color question in part drove development of the more complex measurements.

❖ **What is the process for reporting on the harvest?**

When the state of Illinois did an investigation into reporting on caviar in 2000, researchers uncovered threefold underreporting. Since then, Mr. Maher stated, new measures have been implemented and verification checks have shown reporting to be relatively accurate.

Other panelists mentioned that for the caviar shipped abroad, harvest records must be submitted to the USFWS; the Service then contacts the states to ensure the reports match. The accuracy of reports to the USFWS has also increased in recent years.

Both commercial fishermen and roe buyers must submit reports, so agents can cross-check them for accuracy. Commercial fishermen report their catch by submitting monthly reports of the legally harvestable species they have caught each day.

❖ **To what extent is the illegal take of pallid sturgeon prosecuted?**

Panelists explained that take of pallid sturgeon is a class A misdemeanor, while misrepresenting reports is a felony. A misdemeanor could entail a \$1,000 fine and jail time and a felony could entail a \$250,000 fine for the business, jail time, and forfeiture of the equipment used. Furthermore, anyone caught with a pallid or lake sturgeon is ineligible for a roe permit for a period of three years. A violation can be prosecuted under both federal and state laws.

❖ **Would the SOA listing apply to commercial fishing only, or would other activities be considered a take?**

Mr. Jordan listed the four exemptions under the proposed SOA rule - geographic restrictions; scientific and educational activities; recreational fishing; and commercial fishing targeting non-*Scaphirhynchus* fish. A participant asked whether a sturgeon caught in an irrigation pump would be considered take. Henry Maddux of the USFWS responded that the SOA is intended to address only commercial fishing. He promised to look into the question and bring the answer back to the group. (NOTE: see [Day 4 Integrated Science Program Work Group session](#) on page 26 for subsequent discussion of this issue.)

❖ **If the USFWS involved stakeholders who might be impacted by the potential SOA listing in the design of a program to protect the endangered species (using 4d rule), could the Service avoid a listing?**

Mr. Maddux said if the USFWS determined, for example, that Illinois has effective regulations and has properly managed its waters, then the state could be exempt from the rule.

❖ **Is it the case that there are too many shovelnose competing with pallids and making it difficult for them to breed?**

Mr. Jordan replied that there are no data to suggest there is direct competition between the species. Pallids do not seem to be underweight or starving. While shovelnose and pallids eat similar things in early life, pallids switch to a different diet as they mature. As for hybridization, Mr. Jordan stated that it is too early to tell whether it is causing reproductive problems for the pallid.

❖ **Have any of the fishermen on the panel seen anyone performing an egg check?**

The fishermen answered that they had not seen egg checks take place in several years; it was more common years ago when there were more fishermen on the river who might not have been professionals. The fishermen feel their assessments of gravid females are accurate and do not require egg checks. Furthermore, they pointed out, eggs can no longer be sold without the source fish, and fishermen must be able to document the source of the eggs they are marketing.

During the Committee's conversation with the panelists, a few additional points were made:

- "Hackleback" is a common name for a shovelnose sturgeon.
- A Committee member who had been out in boats with commercial fishermen expressed confidence in their ability to accurately distinguish pallid from shovelnose sturgeon.
- At the conclusion of the discussion, an additional commercial fisherman, Charles Callaway, added some thoughts on his experience, including his perspective on egg-checking.

Business Session: MRERP Work Group Report and Discussion

MRERP Work Group Report

Paul Lepisto, one of the points of contact for the MRERP Work Group, gave a brief summary of the Work Group's February 17, 2009, conference call. On the call, Randy Sellers of the USACE told the group that the USACE would solicit input on the MRERP Draft EIS Purpose and Need Statement (P&N) from several sources, including MRRIC. The Work Group decided to recommend

to the Committee that the Work Group develop, through consultation with Committee members, a list of proposed recommendations for the USACE to consider for the P&N. The Work Group's proposal would then be presented to the Committee for recommendation to the USACE. Mr. Lepisto pointed out that this would be MRRIC's first opportunity to make recommendations proactively.

The Work Group suggested that the Committee begin brainstorming initial recommendations, which the Work Group could refine between the March and May MRRIC meetings. The proposed goal is to develop consensus recommendations at the May and July meetings for the USACE's consideration in its development of the draft P&N. The Work Group anticipates that the USACE will then bring the draft P&N, which will reflect input from the Committee, the Cooperating Agency Team (CAT) and the public at large, to the fall MRRIC meetings, providing the Committee with an opportunity for another round of input before the draft is final.

Presentation: Framing Purpose and Need Statements

Jennifer Switzer, USACE, gave an overview of P&N Statements and their appropriate scope. A Need Statement is the proper framing of the question, "Why take action?" while a Purpose Statement expresses the agency's intent in taking action. A Purpose Statement that is too broad might lose its connection with the need for taking action, while a Purpose Statement that is too focused could limit the range of alternatives for a response. The courts have indicated to the federal agencies that if the purpose is so narrow that it defines competing reasonable alternatives out of consideration, the agencies might be ordered to begin the process again. Ms. Switzer added that the scope of a Purpose Statement should be commensurate with the scale of the study; in the case of MRERP, it encompasses the entire Missouri River basin.

Ms. Switzer presented the Committee with the USACE's working draft of the P&N. The draft Need Statement reads:

The MRERP-EIS is needed to:

- Fully implement the direction received in Subsection (a) of Section 5018 of the Water Resources Development Act of 2007; and
- Address current trends indicating:
 - diminished natural habitat
 - reduced populations of native species and communities
 - reduced variability of physical processes such as flows, flooding, and sediment erosion/deposition.

The working draft of the Purpose Statement is:

To determine the actions required to mitigate losses of aquatic and terrestrial habitat; to recover federally listed species under the Endangered Species Act, and to restore the ecosystem to prevent further declines among other native species ... while seeking to balance with social, economic, and cultural values for future generations.

She then posed the following questions to the Committee:

- With regard to need, what can be inferred about why Congress felt a study was needed? What are MRRIC's thoughts?

- Is the working draft Purpose Statement too focused or too expansive? In what way?

Committee Discussion

Gail Bingham set the stage for the brainstorming session by explaining that the goal was to gather the Committee's thoughts on the P&N that the MRERP Work Group could use in shaping proposed recommendations. During the brainstorming, Committee members offered the following suggestions and comments²:

- There is a problem of sedimentation of the dams and the purpose should include ensuring the functionality of the reservoirs.
- We could recommend framing the P&N so the existing dams are retained.
- The readability of the document is important, and MRRIC might want to make a recommendation on its length.
- Invasive species are posing a problem; the purpose could include investigating how invasives are affecting threatened and endangered (T&E) species and the overall health of the ecosystem.
- Maintaining the function of the navigation channel and providing flood protection are items to include.
- It is important to recognize that the watershed function has been disrupted and not everything can be restored. In addition, the entire length of the Missouri River is already in use in some manner.
- How can we use existing structures and the resources to help ecosystem restoration? What role does the existing infrastructure play in the environment functioning as an ecological unit? In addition to what has been lost, we should consider what has been gained.
- The USACE's mission is to develop a river system that includes all of the authorized purposes, including water supply, quality, and navigation. The P&N should explicitly state all the authorized purposes and that the goal is to seek a balance among them.
- It would be helpful to consider activities or programs that engender local community support for the plan. For example, the USACE could operate a "wetlands bank" that moves wetlands-designated areas onto USACE property in order to offset development that encroaches on wetlands.
- Social, economic, and cultural needs should be taken into account.
- It is important to prioritize areas where recovery is possible; where it is not, we need to consider alternatives.
- Restoring means putting back what was lost. The study should include what was lost to the tribes as a result of displacement of the river, which includes land, cotton trees, medicinal plants, fruit trees, and livelihoods along the river.
- More stable lake levels are important to creating and maintaining sustainable economic development and are critical to the livelihoods of stakeholders.
- What is the baseline for the study? Will it be considered pre-dam or post-dam?
- The working draft of the P&N already includes the necessary considerations. The USACE team has done a good job of laying out what the law says and what it has the ability to do.
- Is there a need for a different or better governance structure for the river?

² An earlier version of the rough notes from this session was handed out to the MRERP Work Group for purposes of discussion at the meeting and on a subsequent conference call.

- There are unresolved tribal water rights on the river. Could tribal water rights be quantified, and would it help the system?
- If tribes are not involved in restoration, it will be impossible to gain their support.
- It is not clear that the language in the 2007 Water Resources Development Act (WRDA) was looking toward the MRRP study, so we should be cautious about relying too heavily upon it.
- We need a clearer definition of restoration.
- An assessment of water quality, including water temperature and impacts from pharmaceuticals, should be included in the study.
- If the P&N is too broad, it could include every issue in the watershed. It is important to focus the study on issues related to the river.
- We should concentrate what can reasonably be accomplished. For example, we could recommend starting by working on a smaller area or a phased approach.
- To reach consensus on recommendations for the P&N, Committee members will need to put aside our individual issues and work together.
- To develop a better understanding of the system, is it possible to create a system-wide hydrological model that shows how the system has changed and identifies the most affected areas?
- If we recommend keeping the Needs Statement simple and broad, limiting it to the first paragraph of the USACE working draft, then it could give us more time to educate ourselves and better understand the issues.
- While keeping the language simple is a good idea, we should take a proactive approach to understanding the consequences and making appropriate recommendations in order to avoid unintended consequences.
- In the second paragraph of the draft Purpose Statement, “while seeking to balance” could be changed to “while creating a balance” in order to be consistent in the use of action words.

Work Group points of contact Paul Lepisto and Dave Johnson encouraged Committee members to send any additional ideas on the P&N to Gail Bingham in the next few weeks. The Work Group will use these ideas to begin drafting proposed recommendations.

Business Session: MRRP Work Group Report and Action Items

MRRP Work Group Report

John Drew, point of contact for the MRRP Work Group, explained that shallow water habitat was one of the items the Work Group had identified in the USACE’s 2009 work plan as a topic of interest for the Committee. The Work Group invited individual member to write papers on the selected issues, and two shallow water habitat issue papers were provided as handouts for the meeting. Although the Work Group signed off on presenting the papers to the Committee, the papers do not represent a consensus or the views of the Work Group. Another topic raised in the Work Group that might be on the agenda for a future meeting is land acquisition. Mr. Drew added that some members have expressed interest in the shallow water habitat issue and welcomed additional members to join the Work Group.

Mr. Drew then outlined the importance of the shallow water habitat issue. Shallow water habitat is one of the largest items in the USACE 2009 work plan, with a current budget of \$27.5 million and a

budget request for \$56 million in FY10. The 2010 goal set forth in the 2003 amended biological opinion (BiOp) was to create 5,870 acres of shallow water habitat, and the USACE has attained approximately 2/3 of that goal thus far. Recent research has prompted the USACE and the USFWS to consider changing the definition of shallow water habitat. Craig Fleming of the USACE has launched two pilot projects in adaptive management, one of which is on shallow water habitat. In order to learn more about the issue, the Committee will hear about shallow water habitat from Mike George and the adaptive management program from Craig Fleming. Once they have heard the presentations, Mr. Drew suggested the following questions for Committee members to consider:

- How does the changing definition of shallow water habitat affect the BiOp goal?
- What is the role MRRIC wants to play in the adaptive management program?
- What are the assumptions linked to the development of shallow water habitat?
- What assumptions are we testing?
- How do the Endangered Species Act (ESA) and the BiOp fit with the adaptive management program?
- In the future, should we recommend more funding to achieve the shallow water habitat goals?

Presentation: Shallow Water Habitat Overview

Mike George, USACE, provided the group with an overview of the goals and implementation of the shallow water habitat program. The original BiOp, he pointed out, was not about creating shallow water habitat, but about creating habitat for pallid sturgeon. The 2003 amended BiOp gives a broad definition of shallow water habitat using the following measures:

- Less than 5 feet deep
- Flow less than 2.5 feet per second
- Measured mid-July to mid-August

The USACE is currently working with the USFWS to refine the definition through the adaptive management program. Of the 5,870-acre goal set forth in the BiOp, the USACE has created 4,000 acres to date. Subsequent goals build on that amount, with the creation of nearly 20,000 acres planned by 2020.

Mr. George reviewed the methods of construction the USACE employs in widening the river to create habitat diversity for pallids and other fish. The USACE uses strategies of construction both inside and outside the channel, including the following methods: several types of river structure notching; dredging; creation of pilot channels; chute construction; and dike modification. Mr. George noted that notching tends to cause erosion on the shoreline, so USACE only uses this method on publicly owned land. When the bank begins to erode, the sediment is deposited on public land and not on private property. The notches are also self-sustaining, with incoming sediment balancing that which is lost. Mr. George told the group that the USACE believes it is possible to accommodate both the interests of shallow water habitat and navigation, and that the USACE works to protect the navigation channel accordingly. One of the design constraints for construction of chutes is the water budget; if the chute would take too much water from the navigation channel, it is not constructed. In order to measure the acres it has created, the USACE does flyovers in January when the river is low and the shallow water areas are exposed.

Mr. George answered Committee members' questions as follows:

- ❖ **Navigation channel:** The USACE aims to avoid implementing aspects of mitigation projects that would adversely affect the navigation channel. So far, this stance has not proven limiting because of the number of available mitigation opportunities.
- ❖ **Pallid sturgeon abundance:** The USACE has found larval pallid sturgeon or pallid sturgeon nurseries in Lisbon Bottom and at the Platte River. While such finds have been rare and there are not large numbers of pallid sturgeon at these sites, the species is rare in general, making it difficult to gather data. For such species, Mr. George explained, it is useful to think in terms of surrogates - native fish are seven times more prolific in these areas than in the channel. Casey Kruse added that monitoring has shown an increase in species richness, abundance, and key recreational species. Fishermen have observed that the quality of the fish has not declined, so the USACE believes their activities are resulting in improvement. While Asian carp can also thrive in these environments, Mr. Kruse pointed out that the carp are a problem the USACE will have to deal with in any case. Mr. De Morgan noted that when more information from the monitoring becomes available, the USACE could share it with the MRRP Work Group.
- ❖ **Impacting USACE work:** Mr. George advised the Committee that the best way to prioritize the USACE activities it wishes to influence is to use project funding as a guide; the shallow water habitat program, for instance, receives significant funds.
- ❖ **Water budget:** The water budget accounts for the water a chute would need in August, plus the water needed for the navigation channel. So far, the USACE has not needed to release extra water to maintain the features it has created. Mr. George noted the USACE has not yet exhausted the “low-hanging fruit.”
- ❖ **Counting SWH acreage:** When counting the acres of habitat created, the USACE includes habitat from all sources, including projects using recovery or stimulus money, 1135 projects, and incidental habitat created by floods. If additional erosion occurs outside the USACE construction area, that area is still counted as shallow water habitat. Mr. George believes the 2010 goals will be reached, thanks to funding from the stimulus package, but he is less confident about the 2015 goals due to the uncertainty surrounding Missouri’s involvement.
- ❖ **Formula for SWH creation:** When the USFWS generated the habitat creation goals, they looked at existing habitat and identified the deficit. Their formula was to create 1/5 of additional habitat over what existed at the time.
- ❖ **Sediment at crossings:** Mr. George acknowledged that there are problems of sedimentation at crossings, although it is not clear that the sedimentation can be attributed to Corps projects. Maintenance crews have had to deal with the sedimentation issue over the last 50 years, he said, so it is not necessarily caused by the projects.
- ❖ **Project evaluation:** The integrated science program carries out the evaluation of the projects’ impact on fish populations.
- ❖ **Jameson Island:** Mr. George did not know why no chutes have been opened on the island, but indicated he could find out.
- ❖ **Maintenance budget:** If a chute is constructed with recovery money, then recovery money is used to maintain it. In the case of flood, operations & maintenance money will be used to make repairs. For modifications in favor of the pallid sturgeon, however, recovery money is used.
- ❖ **Revised SWH definition:** Staff biologists and engineers have drafted a revised shallow water habitat definition which is now being shared internally. When ready, it will become part of the adaptive management process. USACE intends to share it with MRRIC, although

the definition will not be subject to a public comment process. Mr. George anticipates that the revised definition could cause a change in the constructed acreage.

- ❖ **Maintenance of features:** USACE maintenance crews maintain the notches the USACE has constructed and prevent them from advancing. If members know of such an occurrence, they should alert the USACE.
- ❖ **Flood control:** The USACE is studying short-term enhancements for flood control.
- ❖ **Damage to private property:** When damage occurs on private property due to a USACE project, Mr. George stated that it is the USACE's policy to take care of it.

Presentation: Update on Recovery Program 2010 Project Work Requests (PWRs)

John Drew introduced the session, explaining that the objective was to better understand the USACE's annual work plan and the Committee's potential role. Teresa Reinig, USACE, described the development of PWRs, their incorporation into the USACE work plan, and their implementation. The PWRs are the building blocks of the work plan and their development is an ongoing process. Product Delivery Teams (PDTs), composed of representatives of tribes, states, and agencies, are constantly working on the PWRs. The PWRs are reviewed by the senior PDT prior to incorporation into the work plan. Until USACE receives an appropriations budget, however, the work plan remains a draft of how to implement activities for the fiscal year. When the budget is received, final adjustments are made. The implementation phase begins annually on October 1. Ms. Reinig explained how to read the PWRs and noted that if a submission is rejected, feedback must be provided to those who made the request. She noted the PWR handout, explaining that it is an unprioritized listing of all the PWRs for submission.

The group discussed at what point in the process MRRIC could offer recommendations. Ms. Reinig stated that the USACE is now seeking input on the FY10 PWRs and is looking forward to input from the Committee. She expects the USACE will have a better idea of final budget numbers in April, in time for the May MRRIC meeting. Another opportunity for input occurs at the Mitigation Agency Coordination Team Meeting on April 15, when the USACE hosts different agencies and solicits their input on the work plan. The USACE will continue to refine the work plan throughout the summer until it is entered into the electronic system on August 1. Mr. De Morgan observed that the MRRIC will need to arrive at initial consensus on recommendations on the 2010 PWRs at the May meeting and final consensus at the July meeting in order to meet the August 1 timeline. With regard to the 2011 work plan, Ms. Reinig indicated that the Committee could get involved in the development phase, working with states, tribes and agencies on the PWRs. The MRRP Work Group was charged with considering these opportunities and bringing a recommendation back to the Committee later in the meeting.

Business Session: Integrated Science Program Work Group Report & Action Items

Integrated Science Program Work Group

Jason Skold, Integrated Science Program (ISP Work Group) point of contact, gave an overview of the Work Group's recent activities, which included organizing the SOA panel and considering a process for setting up an independent science review (ISR) panel. The process the Work Group is proposing includes identifying an independent third party to constitute the review panel. Casey Kruse's presentation will cover the draft statement of work (SOW) for the third party management team.

Mr. Skold highlighted two key questions for the Committee:

- How can the ISP Work Group facilitate the laying of a foundation that will create trust in the scientific review process?
- What are the next steps for the Work Group?

Presentation and Committee Discussion on Independent Scientific Review Panels

Casey Kruse, USACE, outlined the purpose and goals of an ISR panel and gave an overview of the proposed SOW. An independent science review is defined as:

Review of science or technical work product(s) or process(es) to ensure quality of scientific information, application of appropriate methodology and/or supported conclusions by technically appropriate, neutral, or uncommitted specialists free from external control and constraint who are not controlled by a party or interest group.

Mr. Kruse suggested that an ISR panel allows for the separation of science and decision-making. Acquiring third-party neutral services for management of the panel helps to ensure the panel's independence. The ISP Work Group is currently working on recommendations for the SOW for the selection of third-party neutral panel oversight. The Committee was provided with a handout of the draft SOW and its proposed management tasks.

During the discussion of the proposed SOW, a member wondered whether the panelists would need to satisfy additional Congressional requirements. Witt Anderson of the USACE and Henry Maddux of the USFWS assured the group that the proposed process represented a level of rigor beyond what is usually required, making it unlikely that it would be questioned. Agencies generally satisfy Congressional requirements by asking peer reviewers to evaluate the agencies' work; in MRRIC's proposed process, however, the Committee would be selecting the third-party neutrals who select the ISR panel, which adds a step of separation beyond the usual peer review process. Mr. Kruse also indicated that the Committee's ISR panel would not supersede the USACE's robust peer review process.

Some Committee members raised the question of the potential for bias among the panel members. Others felt that because panelists would not be defending their own work, but rather evaluating the work of others, their opinions would be less subject to bias. Mr. Kruse also clarified that the ISR panelists would not be conducting field research. Another participant mentioned that including a broad range of scientists on the panel would help to avoid weighting the panel toward a particular bias.

Some members expressed concern about the Committee having little control over which panelists are selected. In response, it was suggested that the Committee could retain veto authority; for example, the third-party neutral could select 12 panelists and the Committee could eliminate two of them.

Finally, a member asked whether the ISR panel was necessary, given the existing levels of review. The Work Group was tasked with considering how the ISR panel would interact with MRRIC and other evaluative bodies and bringing that information back to the Committee.

Committee Discussion: Information Learned from Shovelnose Sturgeon Panel

The Committee reflected on the information learned from the SOA panel and considered possible next steps on the issue. Several members expressed the opinion that sufficient information had been gathered and the Committee was ready to move forward with a recommendation. Group members suggested the following issues for the Work Group's consideration in crafting a draft recommendation: the example of Illinois's education and certification program; an approach to the problem of hybrids; the question of range; provisions for recreational fishing; and possible mitigation measures for commercial fishermen.

Henry Maddux of the USFWS advised the Committee that the opportunity to influence the content of the rule will be during the public comment period. While the rule is still being considered internally, the Committee could recommend that the proposed rule be opened to public comment.

The ISP Work Group took on the task of discussing an approach to drafting a recommendation and bringing a proposed plan to the Committee later in the meeting.

Business Session: Proposed Social, Economic, and Cultural Work Group

Jim Redmond gave an overview of the proposal to form a Social, Economic, and Cultural Work Group. The goals of the Work Group would include introducing the Committee to the background of basin constituencies; complementing information on the physical and biological sciences with data from economic and social sciences; and acquainting the Committee with the principles and guidelines used by the USACE to evaluate the impacts of their plans on economies, communities, and businesses throughout the basin.

Several Committee members expressed support for the proposed Work Group and the goal of bringing social, economic, and cultural issues before the Committee. A participant asked whether the intent of the Work Group would be to influence economic activities or businesses in the basin, and Mr. Redmond clarified that it was not; rather, the Work Group would aim to be a catalyst for providing information on such activities to the Committee.

Some members raised concerns about the idea of forming caucuses in order to bring issues before the Committee, saying such a mechanism was unnecessary and could introduce a bias in favor of a particular group. Mr. Redmond acknowledged that the word "caucus" might not convey the intended meaning. He explained that the Work Group would be responding to the need for Committee members to introduce information and perspectives that have not yet been heard, and that the Work Group could facilitate such presentations. Any member of the Committee could bring an issue to the Work Group or, if they preferred, could put together a presentation without going through the Work Group. A participant suggested the Work Group could focus on the agenda and tailor presentations accordingly, following the example of the presentation on the SOA issue (i.e., the Work Group could identify emerging economic, social, and cultural issues and organize presentations around specific topics).

Although the Committee did not reach consensus on forming a Social, Economic, and Cultural Work Group, members agreed that social, economic, and cultural information should be brought before the Committee. Those interested in the topic will follow up with the chair and facilitation team to consider options for bringing this information to the Committee.

Call to Public and Input from Agency Staff

No requests for comment were made.

Wrap-Up and Closing

Gail Bingham reviewed the Committee's decisions and the information it had learned during the day. Randy Asbury then adjourned the meeting for the day.

Day 3: Wednesday, March 4, 2009**Opening**

Randy Asbury opened the day's meeting.

Committee Staffing: Overview of Approach to Interviewing Candidate Chairs

Sarah Palmer, U.S. Institute for Environmental Conflict Resolution, facilitated the chair interview session. Prior to the interviews, she gave a presentation on the distinction between the roles of the chair and the facilitation team. In some ways their roles are similar (e.g., both are responsible for working to build consensus, setting the tone, and enforcing the ground rules). Some responsibilities are unique to the chair, such as representing the Committee to the outside world and taking a leadership role. While the chair might have a background in the substantive issues, the role of the facilitator is to be impartial and process-oriented. The facilitator's goal is to help the Committee fulfill its purpose and objectives and to ensure the process runs smoothly.

Ms. Palmer reviewed the approach to the interviews and reminded the group that their goal was to provide consensus input to the U.S. Institute regarding a preferred chair. The U.S. Institute will use the Committee input when selecting and contracting with the chair.

The Committee determined that its recommendation on the chair would be a process decision. It then conducted interviews with four chair candidates. Committee members deliberated on their decision overnight before returning to the discussion of a recommendation on Thursday.

Decision: *The Committee determined that its recommendation on the chair would be a process decision.*

Information Sharing: Adaptive Management Program

Craig Fleming, USACE, gave an overview of the concept of adaptive management (AM) and its application to the Recovery Program. He introduced the members of the AM team who were present at the meeting:

- Carol Hale, USFWS
- Drew Tyre, University of Nebraska (Lincoln)
- Ronald Thom, Pacific Northwest National Lab
- Mike Anderson, Pacific Northwest National Lab

Another team member, Heida Diefenderfer, was unable to attend the meeting.

Mr. Fleming defined AM as a decision-making process that promotes flexible decision-making in the face of uncertainty, or, put simply, "learning by doing." Given that the outcome of restoration

measures is highly uncertain, AM helps to build understanding vis-à-vis those uncertainties. As actions are implemented, the team develops the ability to predict what might happen. Researchers can then collect data, compare the results with their expectations, and adapt plans accordingly for the next iterative phase.

USACE is applying AM principles and tools to the Recovery Program in two phases. In Phase I, the USACE has developed two pilot projects – on shallow water habitat and emergent sandbar habitat – using structured decision-making, which is an AM implementation tool designed to improve decision-making ability for complex decisions. The USACE is also applying AM principles to the BiOp-mandated activities it undertakes to eliminate risk from its actions, known as reasonable and prudent alternatives (RPAs). Phase II will be a large-scale planning process.

Mr. Fleming emphasized that AM promotes shared learning and that the USACE would like to involve MRRIC in the process, along with the PDTs and the Cooperating for Recovery (CORE) team. The Committee could potentially interact with the CORE to receive information and provide input on the AM processes, although Mr. Fleming said a framework for interaction had not yet been created and that the Committee could help to develop one.

Finally, he pointed out that there is an endgame to the AM process. Once the team knows that its actions are creating valuable habitat and not having a negative impact, AM activities can transition into regular management actions. The AM team is planning to continue its pilot projects and further develop its understanding of AM's potential on the Missouri, as well as continue to engage with MRRIC.

MRRIC members posed a number of questions, to which Mr. Fleming, AM team members, and other USACE staff responded as follows:

- ❖ **Tradeoffs among actions:** A Committee member pointed out that restoration action might have a positive impact on one species and a negative one on another, meaning that actions are rarely neutral. It is important, he noted, to recognize the negative effects as well as the positive. Mr. Fleming indicated that AM could accommodate these different effects through the addition of layers to the conceptual model.
- ❖ **Social and economic impacts:** With AM, it is possible to monitor and measure social and economic impacts as well as biological ones. To account for such impacts, Mr. Fleming said, the team could develop a monitoring program to conduct an evaluation and assessment. As an example, Mr. Thom pointed to a program to restore a river delta on the Puget Sound where the dikes are being evaluated for their impact on productive agriculture.
- ❖ **Payment in lieu of taxes:** A participant expressed concern that property purchased by the USACE would no longer contribute to the local tax base. Mike George explained that there is a federal Bureau of Land Management (BLM) program for payment in lieu of taxes, under which states receive payments from the BLM for federal lands. Under another program, 75% of lease revenue goes to the state, which is then distributed to the counties. Mr. George stated that he has not encountered any problems with states allocating the money to the counties. More details on this program will be given when the USACE makes a presentation on land acquisition.
- ❖ **Updates to models:** Mr. Fleming clarified that as the team gathers information and gains greater confidence relative to uncertainties, they can adjust and refine the AM models and parameters accordingly.

- ❖ **RPAs:** With the goal of increasing effectiveness, the USACE's reasonable and prudent alternatives (RPAs) have AM as a key element. The RPAs are included in the USACE work plan and were given as a handout to MRRIC at the December meeting.³
- ❖ **Time required for changes:** While only three years of monitoring were sufficient to recommend changes to the definition of shallow water habitat, Mr. Fleming said that more time might be needed to affect changes to the spring pulse. Some questions require more data and are more difficult to answer than others; in the case of the spring pulse, it is challenging to tie the data to a biological response. Henry Maddux, USFWS, added that it is important not to make arbitrary changes, but to ensure that any adjustments have a scientific explanation and are defensible. Witt Anderson, USACE, acknowledged that the question of the timing for potential changes to the spring pulse is a good one and that the USACE owes the basin a plan for answering that question. He assured the group that the USACE is working on this important question.
- ❖ **Stakeholder input:** Stakeholder input on the AM program is currently gathered from the states, federal agencies, and academics on the PDTs, and Mr. Fleming emphasized that the USACE envisions MRRIC playing a role in the future. Asked whether the USACE would consider Committee members' recommendations for the involvement of specific stakeholders, he said the USACE would likely do so.
- ❖ **Hydrological model:** Mr. Fleming concurred with a participant's comment that a basin-wide hydrological model is critical; furthermore, he hopes that the Committee will make such a recommendation to the USACE to prompt the model's development.

Business Session: Communications/IT Work Group Report and Action Items

Mike Armstrong, point of contact for the Communications/IT Work Group, and Mary Roth, USACE liaison, presented several items for decisions or action by the Committee.

Access to WebEx

Those who are already permitted to access WebEx include Committee members, their alternates, and federal agency staff members. In two process decisions, the Committee extended access to two additional categories of participants:

- Administrative assistants of members (using the member's login and password)
- Work group participants who are not members of MRRIC

All others will have access to Committee information through the www.mrric.org website. Mr. Armstrong clarified that although the website contains less information than WebEx, it does include information on the meetings.

Decision: *The Committee extended WebEx access to two additional categories of participants: administrative assistants of members (using the member's login and password); and work group participants who are not members of MRRIC.*

Request for Information Form

Ms. Roth presented a draft request for information form to the Committee. Due to the number of requests for information the federal agencies have been receiving from both members and the Committee as a whole, the form was designed in an effort to provide clarity as to the source of the

³ Available in a file titled "MRRIC Requirements" on WebEx at <https://mrric.webexone.com/default.asp>. It is found in the MRRP/Work Plans and Budget Processes folder.

requests, as well as to help the agencies prioritize them. The forms would help to ensure that tasks are properly assigned and tracked within the agencies. If the request is for a simple presentation or document from one person, it will not be necessary to complete a form; rather, the forms would be used when the task entails data collection and synthesis. The agencies, in turn, could use the forms to request something of the Committee. Ms. Roth emphasized that the forms are not intended as a method for denying requests; their purpose is instead to better organize requests to the agencies.

As a process for submitting the forms, the Work Group proposed that once Ms. Roth receives the forms and completes a resource estimate, she would forward them to the appropriate Work Group points of contact and then to the Committee chair for approval. The USACE would keep a log of the requests and their status, to be posted on WebEx and updated monthly. Some members asked whether it is necessary to include the points of contact in approvals and how such a procedure would work in the context of a consensus-based process. Work Group members said they had discussed the issue and decided that the points of contact could help to ensure that the task was a priority of the Work Group. If a difficult issue arises or a petitioner is not satisfied, the request could be brought before the Committee.

In a process decision, the Committee approved the request for information form and the submission process recommended by the Work Group.

Decision: *The Committee approved the request for information form and the submission process recommended by the Work Group.*

Letterhead Designs

The Work Group presented two options for letterhead to the Committee. A Committee member commented that the design of the first option too heavily depicted recovery activities and was not representative of all the interests on MRRIC. With regard to the second option, another member observed that it was already in use by another program and was not descriptive enough. Randy Asbury mentioned that when sending letters on behalf of the Committee, he had simply used the MRRIC name without a logo.

The Committee did not reach consensus on either option and requested the Work Group continue to work on letterhead options. Two members of the Committee agreed to provide input into the design of a logo and letterhead.

Committee Vacancies

Work Group members drew the Committee's attention to the provision on vacancies in the Committee's charter. Given that the appointment for those members who had drawn a one-year chip is due to end on September 30th, the Work Group pointed out that communications on any vacancies would need to be drafted in the next few months. The Work Group suggested that the Nominating Work Group take on the task of clarifying the provision in the charter and bringing its recommendations to the May meeting. David Sieck, point of contact for the Nominating Work Group, indicated the Work Group was willing to assume the task.

In the discussion, group members expressed two different views on the intent of the language in the charter – some thought that Committee members' reappointment would be more or less automatic if they wished to stay on, while others thought that there would be some kind of reapplication process. It emerged that these two different views were also shared among members who had been on the charter drafting committee (the MRRIC Planning Group).

To help clarify the issue, Witt Anderson suggested that the USACE draft a proposal of its interpretation of the charter language and submit it to the Nominating Work Group. In his view, the charter indicates that if a member whose term has expired wants to continue and has the backing of his or her constituency (USACE could verify this), then he or she would not have to reapply. In that case, there would be no vacancy, and the USACE would ask the Secretary to reappoint the member. If, however, the member is not interested in remaining, then the seat would be considered vacant and a formal application process would be launched. The USACE would also coordinate with the Work Group on drafting on the text of a formal letter to the Secretary regarding Committee vacancies and requests for renewals. The Committee accepted this offer and referred the issue to the Nominating Work Group and the USACE.

Media Outlets

The Work Group solicited members' suggestions of media outlets to receive the Committee's press releases and meeting notifications. Members were asked to write their ideas on a flip chart (see [Attachment C](#)).

Webcast

The Work Group reminded the Committee that the first informational webcast on restoration activities in the basin would take place on Monday, April 20, 2:00 – 3:00 pm Central Time. The webcast will cover the following topics selected by the Committee at the December meeting:

- Missouri River Restoration, North Dakota & South Dakota (Titles VII & IX from WRDA)
- Lewis & Clark Lake Sediment Management Study
- Streambed Degradation Study

Call information will be circulated by email and posted on WebEx.

MRRIC Annual Report

A discussion of the annual report was deferred until the next meeting.

Call to Public and Input from Agency Staff

No public comments were offered.

Carol Hale of the USFWS reminded the group of an opportunity to volunteer with the pallid sturgeon program of the Nebraska Game and Parks Commission. An effort to collect pallid sturgeon broodstock will take place April 6 – 18. Those interested can refer to the announcement posted on WebEx for contact numbers and further information.

Wrap-Up and Closing

A member made a request to keep track of those who have not been attending MRRIC meetings. In the case of stakeholders, such a list would serve to identify those to whom the Committee should conduct more outreach. With regard to the federal agencies, the member expressed the view that their attendance was more of a responsibility.

Randy Asbury announced that Larry Cieslik would be filling in for Witt Anderson at the reception. He also said that the facilitation team is planning to debrief on Monday and then distribute a bulleted summary of achievements and outcomes, which members could share with their constituencies shortly after the meeting. Finally, he reminded the group that if a chair was selected

the next day, then a discussion of vice chair would ensue. If members wished to nominate someone for the post of vice chair, Mr. Asbury asked that they confirm the potential candidate's willingness to serve prior to nominating them. He then adjourned the meeting for the day.

Day 4: Thursday, March 5, 2009

Opening

Interim Chair Randy Asbury opened the meeting and announced that a quorum of stakeholder members was present. Paul De Morgan reviewed the day's agenda and suggested, given the tight schedule for the day, that the "Sharing Our Interests" session be deferred until the next meeting. No objections were raised. At a participant's suggestion, the group agreed to hold the Committee staffing discussions on the chair and vice chair before the Work Groups' business session in order to ensure that a quorum was maintained during the decision-making pieces of the agenda.

Information Sharing: Levee Repair Status and Spring Pulse Plans for 2009

Robin Wankum of the USACE provided an update on the status of levee repairs after the flood events of 2007-08. In 2007, the USACE had six federal requests for assistance in repairing basin levees, of which four were accepted and all four are completed. In terms of non-federal requests, 37 requests were submitted, 29 were accepted and 23 are completed to date. In 2008, the USACE received ten federal requests for assistance and accepted seven of them. Of those, one is complete, one has its level of protection restored, four contracts have been awarded, and one remains under negotiation. Nineteen non-federal requests were received, of which 12 were accepted. Three of those projects are complete, six have their level of protection restored, nine contracts have been awarded, and three contracts are under negotiation. With non-federal requests, 80% of repairs are completed by the federal agency, while the sponsors cover 20%. More details on the repairs are available on the website at www.nwk.usace.army.mil under "Current Flood and Forecast Information."

After reviewing the status of individual sites, Ms. Wankum answered participants' questions:

- ❖ **Criteria:** For non-federal requests to be accepted, the levees must be maintained by local sponsors, the damage must be caused by flooding, and repairs must be estimated at a threshold of at least \$15,000. There is no requirement that there be a minimum area of damage or an emergency declaration in order to obtain assistance.
- ❖ **Cost/benefit analysis:** When pursuing projects, the USACE uses a cost/benefit analysis of the entire cost of the project, not only of the USACE's contribution. If the ratio is greater than 1 to 1, the project is undertaken.
- ❖ **System functioning:** The USACE makes an effort to consider the entire system when making repairs and works with the levee rehabilitation program in order to better understand the system.
- ❖ **Repair vs. maintenance:** The USACE covers repairs but not maintenance of the levees. USACE inspectors examine the levees to ensure they meet the criteria. For example, replacement of old corrugated metal pipes is a maintenance issue and up to the sponsors to maintain. If there are structural issues due to a flood, then it is considered a repair.
- ❖ **Grasses:** The USACE attempts to use natural grasses on the levees, often using switchgrass, brome grass, and fescue. The grass must be maintained so it can be mown once a year and woody plants and brush must be eliminated. The Corps prefers not to face with riprap, although it is sometimes used for drainage structures.

- ❖ **Howard County #4:** A participant observed that work had not yet begun at the Howard County #4 site. Ms. Wankum responded that work could not be initiated until all the landowners had signed the certification and agreement. Negotiations with the landowners were just completed in the past week.

Larry Cieslik, USACE, then gave an update on plans for the spring pulse. The pulse is scheduled to occur March 21-31 in concert with releases designed to support navigation. If the storage check is below 40 million acre feet, the pulse will not take place, although Mr. Cieslik expects that it will be above that mark for March. The USACE is monitoring river flows and using predictive models; if the forecasts predict levels above the downstream flow limits, then the agency will reduce or eliminate the pulse. The USCAE will also monitor releases on the tributaries and work in coordination with Kansas City water control, which will make any adjustments needed at the time of the spring pulse.

In response to a question, Mr. Cieslik confirmed that the USACE is using National Weather Service precipitation forecasts in their models. He noted that the longer the time periods of the Quantitative Precipitation Forecasts (QPF), the less certain they are. Mr. Cieslik said that the USACE will use as much QPF as possible, perhaps as much as five days' QPF.

Committee Staffing: Committee Chair

The U.S. Institute distributed interview feedback sheets and a summary scoring sheet to Committee members. Committee members were asked to use the feedback sheets to note how each candidate team responded to the six primary questions and to note the secondary questions asked by Committee members to the chair candidates.

After all the interviews were completed, the U.S. Institute collected the scoring forms and tallied the Committees' scores to determine the top two chair candidates, which was the process agreed to by the Committee at the January 2009 meeting. The Committee member input revealed a significant preference for one top candidate. After discussion, the Committee agreed that it was not necessary to go through another round of Committee member deliberations.

The Committee discussed the pros and cons of the top candidate and agreed to recommend John E. Thorson to the U.S. Institute. Two members abstained from the consensus decision. Federal agency members caucused after the Committee made its recommendation and relayed to the Committee that Mr. Thorson would be acceptable.

Decision: *The Committee agreed to recommend John E. Thorson to the U.S. Institute as Committee chair.*

Hiring the Selected Chair

The U.S. Institute will notify Mr. Thorson that he will be awarded the MRRIC chair contract and will begin negotiating the contract with him. The U.S. Institute will inform the other candidates of the Committee's choice and provide feedback to those candidates, if requested. The U.S. Institute will manage the contract with Mr. Thorson and asked that the Committee raise any questions about the work of the chair to Sarah Palmer, who is managing the contract.

Committee Staffing: Committee Vice-Chair

The Committee agreed that selection of a vice-chair was a process decision and members expressed their desire to go ahead with the vice-chair selection process after the chair was selected. Committee members had agreed to discuss with potential nominees their willingness to serve as vice-chair. The Committee decided to poll members to see if anyone was willing to service as vice-chair of the Committee. When no one responded, Randy Asbury volunteered to be nominated for the role. The Committee agreed by consensus to select Randy Asbury as its vice-chair.

Business Session: New Work Groups, Purpose, Tasks, Members, Timeline; Other Items

At a Committee member's request, the group agreed to advance this session on the agenda.

Expenses of the Vice Chair

A participant raised the question of whether money should be allocated to defray the expenses that the vice chair might incur in the conduct of his duties. Randy Asbury expressed appreciation for the concern, but asserted that he was not incurring expenses beyond those of other members.

Decision: *The Committee agreed to select Randy Asbury as its vice-chair.*

Travel Funding Letter

Acknowledging that the Committee could not address the problem of travel funding as a whole, a Committee member announced that the Great Plains Tribal Leaders Association (GPTLA) has prepared a resolution petitioning for the removal of the language restricting travel funding from the Water Resources Development Act (WRDA). The GPTLA plans to send the resolution to Congressional representatives. The resolution asks that the restriction be lifted not only in favor of tribes, but all those who need the funding. A copy of the resolution was circulated to Committee members.

Randy Asbury observed that the lack of travel funding was affecting not only tribal members, but also state representatives and other Committee members. He informed the group that he had drafted a letter to be sent to Congressional delegates asking for the removal of the language prohibiting the use of federal funds to reimburse Committee member travel. He offered to send the letter to those who were interested so they could decide as individuals whether to sign on to a group letter or to send a separate letter. He stressed that this would be a voluntary, individual activity, and not a MRRIC effort. Those who are interested should contact Mr. Asbury to obtain a copy of the letter. He is tentatively aiming for a deadline of March 20 for signatures on the letter.

Tribal Presentation at May 2009 Meeting

A tribal representative noted that Committee members had expressed interest in hearing from the tribes, and proposed that a tribal presentation be made at the May meeting. To help with the organization of such a presentation, the member suggested that one of the tribal representatives serve on the Agenda Work Group. (This item was taken up in the subsequent business session, "Planning for the May Meeting.")

Business Session: Discuss and Decide on Action Items from Work Groups

The Work Group points of contact reported on the Work Group meetings that had taken place the previous morning and presented the proposed next steps for their Work Groups. The ISP, MRRP, and MRERP Work Groups shared draft action items lists with the Committee that are reproduced in full in the executive summary, pages ii - iv. Paul De Morgan informed the Committee that the

facilitation team has prepared a draft template that could be used to capture expected Work Group products, timeframes, accomplishments, and status of action items. The template will be shared with the Work Groups, and, once approved and completed by the Work Groups, the documents will be posted on WebEx so all Committee members can track the groups' progress.

Integrated Science Program Work Group

Jason Skold listed the following proposed tasks:

- Continue working on development of a recommendation related to the SOA issue
- Develop materials to describe the ISR process options and the role of the MRRIC
- Add draft Pallid Sturgeon Recovery Plan as an issue to track

Decision: *The Committee approved the ISP Work Group's tracking of the draft USFWS Pallid Sturgeon Recovery Plan.*

Tracking the Pallid Sturgeon Recovery Plan was the only addition to the Work Group's existing charge. John Drew clarified that this task is distinct from the MRRP Work Group's activities because MRRP is working on the USACE's work plan, while the ISP Work Group would be giving an update on the USFWS recovery plan for pallid sturgeon. In a process decision, the Committee approved the Work Group's assumption of this task.

A participant commended the Work Group on its organization of the SOA panel and suggested that the group consider sending thank you letters to the panelists. As a process decision, the Committee agreed that Jason Skold and Randy Asbury should collaborate on sending thank you letters to the panelists. The Committee indicated that MRRIC would not need to review the letters. Once the letters are complete, they will be posted on WebEx.

Following up on an issue that was raised during the SOA panel discussion (see page 9), Henry Maddux, USFWS, told the group that he had asked the agency whether the proposed SOA rule could apply to activities other than commercial fishing, such as accidental take through an irrigation pump. Upon review, it was determined that the draft rule could be interpreted to include other activities, and it was accordingly withdrawn to the regional office. Mr. Maddux assured the group that the regional office will rewrite the draft to apply only to commercial fishing and re-circulate it to the USFWS regions before sending it back to the Washington, DC office. He anticipates this revision will take an additional month or two.

Decision: *The Committee agreed that Jason Skold and Randy Asbury should collaborate on sending thank you letters to the ISP panelists*

Finally, a participant suggested to the Work Group that they consider including a buyout of commercial fishermen in their draft recommendations on the SOA rule. Another possibility is that the federal agencies could impose a bounty on invasive species, which could allow fishermen to maintain their livelihoods.

Communications/IT Work Group

Mike Armstrong reported that the Work Group plans to undertake the following tasks:

- Continue to work on recommendations for Committee letterhead
- Continue to transfer information to the public website
- Consider procedures for sending out press releases
- Develop proposal for approach to annual report

- Develop proposal for approach to self-evaluation

None of these items were additions to the group's existing work plan. Mr. Armstrong clarified that draft or working documents, or documents that the Committee designates as internal, will not be transferred to the public website.

Group members noted that USACE has an existing list of media contacts, managed by Paul Johnston, which can be made available to the Committee. The Work Group can supplement the list with additional media outlets collected from members.

The group discussed ways for members to access the meeting handouts, even if they do not have a good internet connection. Suggestions included sending hard copy materials to those who request it and creating a zipfile for all the materials to be downloaded at once. The facilitation team will work on a plan to ensure that everyone has access to the advance materials.

MRERP Work Group

Paul Lepisto outlined the Work Group's proposed timeline for producing a letter with bullet point recommendations on the P&N:

- Between March and May: gather input, draft, and revise recommendations
- May meeting: reach tentative consensus on recommendations
- July meeting: ratify consensus

Mr. Lepisto explained that this timeline would coincide with the USACE's timeline for developing a draft P&N, which is planned for the fall.

Members who are not on the Work Group but are interested in contributing to the P&N discussion are welcome to join the Work Group's conference calls. The Work Group will let interested members know how to get involved.

MRRP Work Group

John Drew reviewed the following next steps for the Work Group:

- Plan the regular Recovery Management Update for next meeting
- Issue the GAP report
- Continue to produce issue papers
- Track USACE 2010 work plan process
- Coordinate with ISP Work Group to incorporate science into the process diagram

The Committee considered these tasks to fall within the Work Group's existing purview.

Mr. Drew noted that several other topics have been identified for potential issue papers: public land acquisition (Dan Kuenzel); cultural resources and tribal consultation (Russ Kaldenberg); water quality monitoring (Marian Mass); holistic evaluation of the restoration effort (Marian Mass); and integrated science (Lynn Muench). If members are interested in becoming involved on these topics, he encouraged them to get in touch with the designated points of contact.

A member wondered about the process for bringing issues before the Committee, expressing concern that the Committee could become inundated if issue papers were brought forward by individuals rather than by the Work Group as a whole. Mr. Drew concurred that the process had not

yet been fully developed. The Committee decided to ask the facilitation team, along with the chair and vice chair, to discuss methods for bringing issues to the Committee.

During the discussion, participants also made the following points:

- It is advisable for each Committee member to review the PWRs, as the items can affect their interests.
- It is important to remember to spell out acronyms for clarity's sake.

Nominating Work Group

The Nominating Work Group will work with the USACE to develop a proposed process for handling vacancies on the Committee and steps for members who wish to continue on the Committee for another term.

Work Group Membership

In a series of process decisions, the Committee approved new work group appointments:

- MRERP Work Group: Elizabeth Wakeman
- ISP Work Group: Mike Olson, Henry Maddux, and John Seeronen
- MRRP Work Group: David Sieck and Carol Hale

It was noted that Brian Manwaring's name was accidentally omitted from the MRERP Work Group list and should be added.

Business Session: Planning for the Next Meeting

The facilitation team displayed a draft list of potential agenda items for the May meeting, based on prior Committee deliberations, and invited members' comments and additions. (For the list and topics added to it during the meeting, see [Attachment D.](#))

The following points emerged during the agenda discussion:

- More time should be allocated for Work Group meetings, such as a full or half day, perhaps preceding the main meeting. Committee members also asked the facilitation team to consider scheduling work group meetings to accommodate those who are members of multiple groups.
- It was recommended that the points of contact be added as resources to at least some of the Agenda Work Group calls.
- Those who are not members of a particular Work Group can still access information on the group's activities through WebEx. It is the Committee's practice to welcome non-members on to work group calls if they wish to join.
- Henry Maddux, USFWS, mentioned the agenda for the next CORE group conference call includes a discussion of specific requests for the agencies to address to MRRIC.
- Given that the Social, Economic, and Cultural Work Group was not established, a participant suggested that time be allocated on the agenda for such topics. Ms. Bingham recalled that the Agenda Work Group had been asked to consider how to include these topics and noted that a tribal presentation was under consideration for the next meeting.
- Planners for the May meeting mentioned they are hoping to schedule a field trip to a power plant for the Monday before the meeting. There is also a hatchery for pallids in close proximity to the power plant.

Agenda Work Group Volunteers

Mr. Asbury reminded the group that according to the Committee's operating procedures, members may not serve on the Agenda Work Group for more than two consecutive meetings. There are seven seats on the Agenda Work Group. The following members volunteered to serve on the Work Group for the May meeting:

- Bill Beacom
- Terry Fleck
- Vicki Marquis
- Kate Vandemoer
- Bob Williamson

As four members were still eligible to participate from the last round, Mr. Asbury agreed to work with them to determine how to meet the maximum seven-member allocation. One of those four, Bill Lay, offered to give up his current seat on the Work Group to accommodate others who wanted to join.

Call to Public and Input from Agency Staff

There were no comments from the public.

Larry Cieslik announced that he would be retiring from the USACE on May 1, so this was his last MRRIC meeting. He said he felt gratified that MRRIC had formed, reflecting that constituting the Committee had at first seemed an impossible task. He told the group he was impressed with all the hard work members are putting in and thanked them for their dedication. Several members voiced their appreciation to Mr. Cieslik for his service and his instrumental role in moving the group forward.

Henry Maddux reminded the group of the annual Missouri River Natural Resources Committee (MRNRC) Conference and BiOp Forum, to be held March 25-27 in Billings, Montana. More information is available on WebEx. He also noted a conference on sediment and reservoirs will take place in Kansas City September 14-16.

Wrap-Up and Closing

Gail Bingham and Paul De Morgan shared a draft list of the Committee's accomplishments over the course of the meeting⁴. Ms. Bingham reviewed the group's decisions and the informational topics they had covered. Committee members indicated they would like to receive the list of accomplishments by email.

Randy Asbury drew the meeting to a close with an observation of the progress the Committee had made, expressing his confidence that its momentum would continue. Characterizing the group's work as precedent-setting, he voiced the belief that future generations will look on the Committee's efforts with gratitude. He cautioned that while the work is ground-breaking, the meetings will nonetheless not always run smoothly. Thanking the Committee for having given him the opportunity to serve as interim chair, Mr. Asbury said it was a great honor to serve alongside the members of the Committee. Mr. Asbury then declared the meeting adjourned.

⁴ A refined version of this list was circulated to the Committee in an email from Dana Goodson on 3/10/09. Its contents are also included in the executive summary on pages i – v.

Attachment A: Attendee Lists

March 2009 MRRIC Meeting

MRRIC Members	Interest Category, Tribe, State or Federal Agency	03/03/09	03/04/09	03/05/09
Steve Adams (Alternate for David Barfield 03/04/09)	State of Kansas		X	
Witt Anderson	U.S. Army Corps of Engineers	X	X	
Michael Armstrong	Water Supply	X	X	X
Randy Asbury	At Large	X	X	X
Brian Barels	Thermal Power	X	X	X
David Barfield	State of Kansas	X		X
William Beacom	Waterway Industries	X	X	X
Jim Becic	Fish & Wildlife	X	X	X
Don Borgman	Agriculture	X	X	X
Patrick Cassidy	Thermal Power	X	X	X
Larry Cieslik (Alternate for Witt Anderson 3/5/09)	U.S. Army Corps of Engineers	X	X	X
Joe Cothorn	Environmental Protection Agency	X	X	
Gary Davis (Alternate for Dan Fritz – observer)	Bureau of Reclamation	X	X	
John Drew (Alternate for Mike Wells)	State of Missouri	X	X	X
Terry Fleck	Recreation	X	X	X
Dan Fritz	Bureau of Reclamation	X	X	X
Joseph Gibbs	Flood Control	X	X	X

MRRIC Members	Interest Category, Tribe, State or Federal Agency	03/03/09	03/04/09	03/05/09
David Johnson	State of North Dakota	X	X	X
Alan Kelley	Iowa Tribe of Kansas & Nebraska	X	X	X
Daniel Kuenzel (Alternate for Lanny Meng)	Flood Control	X	X	X
William Lay	Local Government	X	X	X
Paul Lepisto	Environmental/Conservation	X	X	X
Marian Maas	Water Quality	X	X	
Mike Mac (Alternate for Max Ethridge)	U.S. Geological Services	X	X	X
Henry Maddux (Alternate for Steve Guertin)	U.S. Fish & Wildlife Service	X	X	X
Deb Madison	Fort Peck Assiniboine and Sioux Tribes	X	X	X
Vicki Marquis	Conservation Districts	X	X	X
Buzz Mattelin	Irrigation	X	X	X
Kirk Nelson (Alternate for Brian Dunnigan)	State of Nebraska	X	X	X
John Pozzo	Water Quality	X	X	X
Steve Predmore	National Weather Service/NOAA	X	X	X
Jodee Pring (Alternate for Sue Lowry)	State of Wyoming	X	X	X
Jim Redmond	Environmental/Conservation	X	X	X
Kenneth Reeder	Recreation	X	X	X
Hector Santiago (Alternate for Mike Madell)	National Park Service	X		
David Shorr	Waterway Industries	X	X	X

MRRIC Members	Interest Category, Tribe, State or Federal Agency	03/03/09	03/04/09	03/05/09
David Sieck	Agriculture	X	X	X
Jason Skold	Fish & Wildlife	X	X	X
Darwin Snyder	Winnebago Tribe of Nebraska	X	X	
Nick Stas (Alternate for Robert Harris)	Western Area Power Administration	X	X	X
Al Sturgeon	State of Iowa	X	X	
Kate Vandemoer	Northern Arapaho Tribe	X	X	X
Elizabeth Wakeman	Flandreau Santee Sioux Tribe	X	X	X
Robert Walters	Cheyenne River Sioux Tribe	X	X	X
Bob Williamson	Local Government	X	X	X

Non-Member Attendees

Name	Affiliation	03/03/09	03/04/09	03/05/09
Mike Anderson	Pacific NW National Lab		X	
Teresa Armagan	U.S. Army Corps of Engineers		X	
Ryan Bertels	State of Missouri	X	X	X
Erik Blechinger	U.S. Army Corps of Engineers		X	X
Dan Burelson	U.S. Fish & Wildlife Service	X		
Charles Callaway	Commercial Fisherman	X		
Cheryl Chapman	Matrix Consulting	X	X	X
David Crane	U.S. Army Corps of Engineers	X	X	X

Name	Affiliation	03/03/09	03/04/09	03/05/09
Jody Farhat	U.S. Army Corps of Engineers	X	X	X
Steve Fisher	U.S. Army Corps of Engineers	X		
Lt. Michael Fitzgerald	U.S. Army Corps of Engineers			X
Craig Fleming	U.S. Army Corps of Engineers		X	X
Michael George	U.S. Army Corps of Engineers	X	X	X
Carol Hale	U.S. Fish & Wildlife Service	X	X	X
Ron Hall	Commercial Fisherman – Illinois	X		
Rosemary Hargrave	U.S. Army Corps of Engineers	X	X	X
Chris Horihan	U.S. Army Corps of Engineers	X	X	X
Matt Jepson	U.S. Army Corps of Engineers	X	X	X
George Jordan	U.S. Fish & Wildlife Service	X		
Casey Kruse	U.S. Army Corps of Engineers	X	X	
Dan Ludwig	Weston Solutions	X	X	X
Rob Maher	State of Illinois	X		
Mike Mayer	Louis Berger	X	X	X
Leroy Matlick	Commercial Fisherman – Illinois	X		
Lisa McDonald	Louis Berger	X	X	X
Mike Olson	U.S. Fish & Wildlife Service	X	X	X
David L. Pope	MoRAST	X	X	X
Todd Rauch	MFA Inc.			X

Name	Affiliation	03/03/09	03/04/09	03/05/09
Teresa Reinig	U.S. Army Corps of Engineers	X	X	
Tim Ripperger	Missouri Department of Conservation	X		
Paul Rohde	Waterways Council, Inc.	X		
Cliff Rost	Commercial Fisherman - Missouri			
Mary Roth	U.S. Army Corps of Engineers	X	X	X
Karen Rouse	Missouri Department of Natural Resources	X	X	X
John Seeronen	U.S. Army Corps of Engineers		X	X
Randy Sellers	U.S. Army Corps of Engineers	X	X	X
Mike Snyder	HDR Inc.	X		
Jennifer Switzer	U.S. Army Corps of Engineers	X	X	X
Ronald Thom	Pacific NW National Lab		X	
Drew Tyre	University of Nebraska (Lincoln)		X	
Robin Wankum	U.S. Army Corps of Engineers	X	X	X
Nathan Westrup	Kansas Water Authority	X	X	X

Attachment B: Questions for Information Sharing Panel

Information Sharing Panel: Commercial Harvest of Shovelnose Sturgeon

Below are the questions for the Information Sharing Panel: Commercial Harvest of Shovelnose Sturgeon at the March 3-5, 2009 MRRIC meeting. These were included in the invitation letters sent to the speakers.

State Questions:

- Rob Maher, Illinois Department of Natural Resources
 - Vince Travnichek, Missouri Department of Conservation
1. Several states closed commercial fishing for shovelnose sturgeon after the pallid sturgeon was listed as endangered, was this action taken in your state? If not, why?
 2. Do you have an estimate of how many pallid sturgeon may be accidentally caught and harvested by commercial shovelnose sturgeon anglers annually or estimates on the number of pallid sturgeon being egg checked?
 3. What do you see as alternatives to a SOA listing for shovelnose sturgeon?

Law Enforcement Questions:

- Dan Burleson, USFWS Law Enforcement
 - Tim Ripperger, Missouri Department of Conservation
1. What violations have you encountered related to pallid sturgeon being caught in the commercial shovelnose fishery?
 2. What are your enforcement problems surrounding the commercial shovelnose fishery and the pallid sturgeon being endangered?
 3. Do you have any data concerning illegal harvest of pallid sturgeon or data on pallids being egg checked?

Commercial Fishing Questions

- Brent Pregracke and Cliff Rost
1. What would be the economic impact to your industry/business of an SOA listing? Do you have other fisheries?
 2. What do you see as alternatives to an SOA listing for shovelnose sturgeon?
 3. How do you distinguish shovelnose sturgeon from pallid sturgeon?

USFWS Questions

- George Jordan, Pallid Sturgeon Recovery Coordinator, Yellowstone River Coordinator
1. What is the annual pallid sturgeon “take” related to the commercial shovelnose fishery?
 2. How will pallid sturgeon benefit if a SOA is adopted?
 3. What would be the effect on the shovelnose sturgeon?
 4. What would you implement if an SOA is adopted? When and how would it be implemented?
 5. What do you see as alternatives to a SOA listing for shovelnose sturgeon?

Attachment C: Committee Suggestions on Media Flip Chart Notes

Location: Nation-wide
Outlet: National Public Radio (also "Science Friday")

Location: National/West
Outlet: High Country News

Location: Kansas City
Outlet: Kansas City Star

Location: Saint Joseph, Missouri
Outlet: News Press and KFEQ Radio

Location: Sioux City, IA
Outlet: Sioux City Journal (Ag); KTIV; KMEG

Location: Internet
Outlet: indianz.com

Attachment D: May 2009 Potential Agenda Items

Standing Items

- Approve minutes
- Logistics for next meeting
- Approve/decommission work groups
- Call to public

Operations

- Revisit discussion of goals for 2009 (agreed in Jan 09 mtg)
- Coordination across Work Groups

Communications

- Reporting pursuant to Charter

MRERP

- Project update from Corps?
- Proposed recommendation about Purpose and Need

MRRP

- Project Update from Corps
- Gap Analysis Report – interactive presentation from the Corps
- 2010 PWR's and 2010 Work Plan formation – update presentation
- Overview of updated conceptual diagram
- Shallow water habitat – information sharing presentation (e.g., biological aspects, AM)
- Additional issue papers (e.g. land acquisition)?

Integrated Science Program

- Work group report
 - Update on draft pallid sturgeon recovery plan?
- SOA Rule – present proposed recommendation/update
- Independent Science Review – present process options and possible role of the MRRIC

Other

- Presentation on tribal restoration objectives, cultural resource issues, and tribal consultation
- In-meeting field trip?
 - Monday – power plant tour
- Work Group sessions
 - longer to get more business completed
 - address potential overlap issues
 - idea: meet day one (Work Group day)
- BOR/Corps – presentation on Yellowstone River intake diversion (EIS process started) ... why it is needed; issues; alternatives; schedule

- [Not nec. May] – National Academy Missouri River Recovery and Associated Sediment Management Issues presentation of draft report and recommendations (assemble panel to share)
- Input from Federal agencies [Corps (e.g., Mike) and USFWS (e.g., Henry) and others (e.g., BOR)] on what you want out of this effort; their concerns; specific requests for information from the Committee; potential conflicts coming up
 - CORE Group – that is a topic for them and they hope to have time on the May agenda to share
- [Not nec. May] Power/hydropower – presentation – (e.g., wind integration study; stimulus package)
- Combined Sewer Overflow – presentation

Agenda Work Group

- Add POCs as a resource in at least one call
- Membership Volunteers:
 - Kate Vandemoer
 - Bill Beacom
 - Vicki Marquis
 - Terry Fleck
 - Bob Williamson