

Planning Group Process to Develop a MRRIC Charter
(Missouri River Recovery Implementation Committee)

DRAFT MRRIC Charter Outline - v20
October 8, 2007

1) Purpose and Scope

- a) To provide recommendations and guidance to the Secretary of the Army, affected governmental entities, and tribes* regarding mitigation, recovery, and restoration activities pursuant to (Water Resources Development Act [WRDA] and) the Endangered Species Act (ESA) on the Missouri River and its tributaries and to prevent further declines of other native species.
- b) Recommendations and guidance will: (1) ensure local stakeholders' economic, social, and cultural issues are recognized; (2) identify impacts to stakeholders; (3) identify actions that will benefit multiple uses of the river; and (4) avoid, minimize, and/or mitigate adverse impacts.
- c) *The MRRIC does not substitute nor replace Executive Order 13175, *Tribal Consultation*, any federal agencies' trust responsibilities to a federally recognized tribe in the Missouri River Basin or a tribe that has historically been on the Missouri River and/or replace any treaty right thereof. Cooperation with the federally recognized tribes engaged in this process should be interpreted as "in good faith."

2) Convening Authority

- a) The Missouri River Recovery Implementation Committee is convened under the authority of the Water Resources Development Act of 2007 or as it may be amended.
- b) Should WRDA not pass, the MRRIC will review and revise this section as necessary.

3) Definitions - Glossary of Terms and Acronyms *(Proposed language drafted by the facilitation team at the direction of the Drafting Team with input from Drafting Team members and the Federal Working Group. Drafting Team agreement has not been obtained on this language yet.)*

- a) **Action Agency.** An agency that will be or is responsible for performing an action or actions for a recovery or restoration project on the Missouri River.
- b) **Adaptive Management.** A systematic process whereby projects are monitored on a regular basis and project goals and methods are modified based on new knowledge and the results of the monitoring program.
- c) **Lead Agency.** An agency designated by the MRRIC to be seated at the Committee table to participate in the discussion of an issue or issues.

- d) **Meeting.** A gathering of the MRRIC lasting one or more days to conduct business and/or consider, discuss, or decide an issue or issues brought before the Committee.
- e) **Meeting Day.** A single, day-long subdivision of a meeting. For example, a single meeting could be two days long, in which case, the individual two days would be the meeting days.
- f) **Participating Agency.** An agency other than a Lead Agency present in the room during a MRRIC meeting but not seated at the table.
- g) **Quorum.** *(No language defining a quorum has been agreed to by the Drafting Team yet.)*
- h) **Recommendations.** Official suggestions, comments, or advice representing the consensus of the MRRIC and provided to the appropriate governmental or non-governmental agencies, groups, or persons.
- i) **Recovery.** The process by which the decline of an endangered or threatened species is arrested or reversed, and threats to its survival are neutralized so that its long-term survival in nature can be ensured.
- j) **Restoration.** The process by which natural areas or ecosystems are returned to a close approximation of their conditions prior to disturbance or to less degraded, more natural conditions. *(Alternative WRDA related language provided by Randy Asbury. Does not have Drafting Team agreement: The process of restoring the ecosystem to prevent further declines among other native species.)*
- k) **Stakeholder Economic Issues.** This phrase shall encompass the following areas: social and economic, historical and cultural, flood control, irrigation, agriculture, internal drainage, water supply, water quality, navigation, hydropower, thermal power, and recreation.
- l) **Substantive Issue.** An issue for which the MRRIC is considering developing recommendations.

4) Charter Amendment

- a) This charter may be changed from time to time as deemed necessary by a consensus of the MRRIC and with the approval of the Secretary of the Army.

5) Membership and Representation of Interests

a) Members and Alternates

i) Federal agencies

- (1) Federal agencies will participate in the MRRIC as either Lead Federal Agencies or Participating Federal Agencies. Lead Federal Agencies will consist of the Army Corps of Engineers and the Fish and Wildlife Service. Participating Federal Agencies will consist of the Bureau of Reclamation, Natural Resource Conservation Service, Environmental Protection Agency, Western Area Power Administration, National Parks Service, and any other federal agency designated by the Secretary of the Army.
- (2) Lead Federal Agencies will be represented by officials at the Senior Executive Service (SES) level who will be appointed by their respective agency. Lead Federal Agency representatives (1) will not be counted for purposes of MRRIC quorum requirements; and (2) will participate fully and completely in all MRRIC meetings and any sub-committees or panels formed by MRRIC. While Lead Federal Agency representatives may participate in the discussion of all matters pending before MRRIC and provide their opinions and recommendations, they will not participate in the determination of consensus on any substantive issue.
- (3) Participating Federal Agencies will be represented by officials appointed by their respective agency. These representatives (1) may attend all MRRIC meetings including any sub-committees or panels formed by MRRIC; (2) will be provided opportunities to speak at MRRIC meetings; (3) will be available to answer questions, provide information, and state their opinions and recommendations at MRRIC meetings (including any sub-committees and panels); and (4) may be invited by the committee to participate temporarily as a Lead Agency, for a designated period, in MRRIC discussions of specific agenda items.

ii) States:

- (1) The following states are eligible for membership in the MRRIC. For those states that choose to participate, the governor shall appoint one (1) representative and one (1) alternate.
 - (a) Iowa
 - (b) Kansas
 - (c) Missouri
 - (d) Montana
 - (e) Nebraska

(f) North Dakota

(g) South Dakota

(h) Wyoming

iii) Tribes:

(1) The following tribes are eligible for membership in the MRRIC. Those tribes that choose to participate will appoint one (1) representative and one (1) alternate in accordance with tribal procedures.

(a) Assiniboine

(b) Blackfeet

(c) Cheyenne River Sioux

(d) Chippewa Cree

(e) Crow Creek

(f) Crow

(g) Eastern Shoshone

(h) Flandreau

(i) Ft. Belknap

(j) Iowa

(k) Kickapoo

(l) Lower Brule

(m) Northern Arapaho

(n) Northern Cheyenne

(o) Oglala Sioux

(p) Omaha

(q) Ponca

(r) Potawatomi

(s) Rosebud Sioux

- (t) Sac and Fox
- (u) Santee Sioux
- (v) Sisseton - Wahpeton
- (w) Spirit Lake
- (x) Standing Rock Sioux
- (y) Three Affiliated
- (z) Turtle Mountain
- (aa) Winnebago
- (bb) Yankton Sioux

iv) Stakeholders:

- (1) There will be a maximum of twenty-eight (28) stakeholder members, broken down into the interests below. Each interest shall have a maximum of two (2) representatives.

- (a) Navigation
- (b) Irrigation
- (c) Flood Control
- (d) Fish and Wildlife
- (e) Recreation
- (f) Water Quality
- (g) Water Supply
- (h) Agriculture
- (i) Conservation Districts
- (j) Waterway Industries
- (k) Major Tributaries
- (l) Thermal power
- (m) Hydro power

- (n) At large/other interests
 - (o) Local Government
- (2) Membership Selection Process (Initial selection, adding members, replacing members, terminating members)
- (a) Interested parties will submit applications to the Secretary/MRRIC.
 - (b) Initially, the Drafting Team would act as the screening entity. MRRIC would screen future applications. MRRIC (and the Drafting Team before it) would make its membership recommendations based on consensus.
 - (c) MRRIC submits a slate to the Secretary of the Army for formal appointment. If the Secretary declines to appoint a person recommended by MRRIC, s/he would come back to the MRRIC to request and receive an alternate recommendation for that seat. Interested parties will submit applications to the Secretary/MRRIC.
 - (d) Initially, the Drafting Team would act as the screening entity. MRRIC would screen future applications. MRRIC (and the Drafting Team before it) would make its membership recommendations based on consensus.
 - (e) MRRIC submits a slate to the Secretary of the Army for formal appointment. If the Secretary declines to appoint a person recommended by MRRIC, s/he would come back to the MRRIC to request and receive an alternate recommendation for that seat.
- (3) Terms of Office, Replacement, and Attendance (Applies to stakeholders only)
- (a) Terms: The terms will be two years. At the organization meeting, through a random drawing, it will be determined which 50% of the stakeholders will be appointed to *two*-year terms. The other 50% will serve *three*-year terms. *This provision applies to the terms of the MRRIC initial members and to their initial terms only.*
 - (b) Term Limits: There will be no term limits.
 - (c) Replacement: Each year MRRIC will forward a list of vacancies and incumbents who wish to remain on the Committee to the Secretary of the Army. MRRIC will also forward a list of suggested replacements to the Secretary of the Army. The Secretary of the Army will appoint the needed replacements. The current member will continue to serve on MRRIC until the Secretary of the Army appoints an appropriate replacement.

- (d) Notification of Stakeholder Openings: Stakeholder openings will be placed in the Federal Register and the U.S. Army Corps of Engineers will send notification to their Missouri River stakeholder list.
- (e) Alternate: Individuals may recommend an alternate. The alternate will apply through the Secretary of the Army. Upon confirmation, the alternate will serve during the temporary absence of the member. Or, in the instance of the permanent absence of the member, the alternate will fill the remainder of the term.
- (f) Attendance: Membership in the committee will be revoked if the member or alternate is not in attendance for two consecutive meetings or three times per year unless there are valid excuses for the absences as determined by the MRRIC. MRRIC members will notify the Chair if they are no longer able to serve.

b) Roles and Responsibilities - Governance and Leadership *(Draft, proposed language from the Logistics Committee. This language was discussed at the September meeting but complete agreement was not reached)*

i) Committee and sub-committee leadership

(1) Chair and Vice-Chair

- (a) The MRRIC shall select a Chair and Vice Chair who must be a member of the MRRIC. The Chair will be responsible for protecting the interests of all MRRIC members and alternates. S/he will act in a fair and balanced manner with respect to the MRRIC's operation and the conduct of MRRIC meetings. The Chair, with the assistance of the facilitator, will strive to determine the views of all MRRIC members regarding MRRIC advice and work to achieve consensus.
- (b) The Chair shall have the authority to represent and convey the views of the MRRIC to agencies, elected officials, and in public settings. With the support of the Coordinating Committee and the Executive Secretary, and/or the facilitator, the Chair will be responsible for collaboratively developing meeting agendas and reviewing draft meeting minutes and summaries for accuracy and completeness.
- (c) The term of office of the Chair will be one (1) year, with the opportunity for reappointment for no more than three (3) additional terms of one (1) year each. Should a MRRIC member believe the Chair is not performing in a fair and balanced manner, it is the responsibility of the member to raise his/her concerns to the Chair or to the full MRRIC for consideration.
- (d) The Vice-Chair will assume the duties of the Chair in her/his absence.

- (e) The term of office of the Vice-Chair will be one (1) year, with the opportunity for reappointment for no more than three (3) additional terms of one (1) year each.
- (f) The Chair and Vice-Chair shall be selected at the last meeting of the calendar year and assume office at the first meeting of each calendar year.
- (g) If the position of the Chair or Vice Chair becomes open, that position will be selected at the next meeting.

ii) Coordinating Sub-Committee

- (g) The MRRIC may establish a Coordinating Sub-Committee. Unless otherwise determined by the MRRIC, the role and function of the Coordinating Sub-Committee is to help the Chair make decisions on logistical/procedural matters between MRRIC meetings (such as the agenda for upcoming MRRIC meetings, meeting dates and locations, etc.); and consult with the Chair regarding procedural efforts to resolve substantive policy issues between and during MRRIC meetings
- (h) If formed, the Coordinating Sub-Committee shall consist of the Chair, Vice Chair (if applicable), and a number of other MRRIC members to be determined who represent a cross-section of the MRRIC's membership. These members will be selected in accordance with a nomination procedure to be determined by the MRRIC.

iii) Working Groups, Subcommittees, and Independent Panels

- (a) The MRRIC may create special work groups, sub-committees, or panels as necessary to accomplish its purposes and may include individuals not on MRRIC. Independent members or entities may be compensated for their services.
- (b) Prior to commencing work, MRRIC will provide each of these committees or entities a short, written directive that outlines its purpose and tasks, as well as specifies its members, their roles and responsibilities, the expected work products, and the specific time frames for reports and completion of the committee's work.

c) **Staffing** *(Draft, proposed language from the Logistics Committee. This language was discussed at the September meeting but complete agreement was not reached.)*

i) Executive Secretary

(1) The MRRIC may select an Executive Secretary to provide office support and a point of contact between meetings. The Executive Secretary will coordinate travel and meeting facilities scheduling and perform such other duties as the MRRIC may decide.

ii) Facilitator(s) and Other Support Staff

(1) The role of a neutral, third-party facilitator and support staff, if used, is to assist the Chair and the MRRIC to accomplish the MRRIC's mission. In all instances the facilitator, who will serve at the pleasure of the MRRIC, shall operate in a completely neutral, balanced, and fair manner. Specific tasks that a facilitator might be asked to accomplish are developing draft meeting agendas; assisting the Chair in conducting and otherwise managing MRRIC meetings and deliberations; consulting with the Chair and MRRIC members between meetings about how to manage the process and resolve substantive and procedural issues of concern; and preparing draft and final meeting summaries and other MRRIC documents. Support staff shall include a professional note taker to record MRRIC actions and to prepare meeting minutes and summaries.

6) Dispute Resolution Process - Resolving Compliance with Charter, Operating Procedures, and Ground Rules *(no language proposed for this section)*

7) General MRRIC Operations

a) **Meetings** *(Draft, proposed language from the Logistics Committee. This language was discussed at the September meeting but complete agreement was not reached.)*

i) Meeting frequency and location

(1) The first meeting of the MRRIC shall be convened by the Secretary of the Army or his/her designee on or before July 1, 2008.

(2) The MRRIC shall meet a minimum of four (4) times per year unless otherwise decided by the Committee. The MRRIC shall determine meeting dates and locations.

ii) Quorum *(no language proposed for this section)*

iii) Use of time *(no language proposed for this section)*

b) **Communications, Record Keeping, Documents, and Reports** *(Draft, proposed language from the Logistics Committee. This language was discussed at the September meeting but complete agreement was not reached.)*

i) Open meetings

- (1) Except as provided herein, each MRRIC meeting shall be open to the public. Interested persons shall be permitted to attend, appear before, or file statements with the MRRIC.

ii) Executive Sessions

- (1) The Committee or a sub-committee, panel, or workgroup may call an executive session that is closed to the public upon the consensus of the members present. An executive session may only be called for legal, personnel, or property transfer issues directly pertaining to the MRRIC. No decision-making will be conducted during the executive session. Minutes or summaries of the executive session shall not be taken.

iii) Notice of meetings

- (1) Public notice of each such meeting of the MRRIC shall be given to insure that interested persons receive prior notification of such meetings. The process for notifying the public shall follow U.S. Army Corps of Engineers procedures.

iv) Communications between members, including internal communications

- (1) All members of the MRRIC will be accurate and respectful with regard to their communications with others.

v) Minutes and approval of minutes

- (1) Detailed minutes of each MRRIC meeting shall be kept by a qualified note taker. These minutes and summaries shall be approved by the MRRIC in accordance with its decision making processes.

vi) Availability of records

- (1) The records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the MRRIC shall be available for public inspection and copying.

vii) Assessment and Self-Evaluation

- (1) The MRRIC shall conduct a self-evaluation of its operations every three (3) years.

viii) Reports, including periodic reports to congress and the public

- (1) The MRRIC shall submit an annual report to congress, the administration, and the general public.

c) Consensus and Decision Making

i) Process

- (1) The Committee's goal is to reach consensus on all substantive issues brought before the MRRIC. The Committee shall only make recommendations where there is a consensus. Lead Federal Agency representatives will participate in the discussion of all matters pending before MRRIC and provide their opinions and recommendations. Federal Agencies will not participate in the determination of consensus on any substantive issue.
- (2) Consensus recommendations will be made using a two-step process with information, discussion, proposal development, and tentative consensus at the first meeting and actions no sooner than the next meeting to assure adequate notification of and deliberations by Committee members and the interests they represent. Upon consensus of the Committee, the two-step process may be waived except for recommendations to federal and/or other agencies and charter amendments.
- (3) In no instance shall the Committee convey consensus recommendations without a quorum.
- (4) If consensus cannot be reached, the co-chairs will designate a period of time to be set aside to address the issue during at least two different meetings. If consensus still cannot be reached, the meeting minutes will not characterize or quantify the level of support for the differing views.
- (5) Once consensus is reached on any substantive issue, the Chair will ask the Lead Federal Agency representatives whether they will endorse the substantive issue. The Lead Federal Agencies will respond immediately or by a specific date, not to exceed 30 days. Lead Federal Agency endorsement is not necessary for a consensus measure to be submitted to the appropriate government entity or otherwise implemented.
- (6) Once recommendations and guidance are delivered to the appropriate governmental entity, it is requested that, (and federal and state agencies involved with the MRRIC agree to):

- (a) The governmental entity acknowledge and outline steps to implement recommendations within 90 days or provide the reason(s) for not implementing (we request that the governmental entity report back to the MRRIC before implementing a recommended action).
- (b) The governmental entity report at least annually the outcome of the recommendations, at which time the MRRIC will provide further guidance to continue or cease action.

ii) Decision Making Roles and Responsibilities

- (1) Members of the Committee are expected to honor their commitment to seek consensus.
- (2) If a member objects to a recommendation, it is also his/her responsibility to articulate the reasons behind the objection; and, if possible, to provide an alternate proposal.
- (3) Committee members are free to abstain from a determination of consensus. Abstentions will be recorded in the meeting minutes when requested by the individual who wishes to abstain.

d) Reports, Work Plans, and Proposals.

- i) The U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and other agencies selected by the MRRIC will provide at least annual, summary reports on the status of recovery activities for the pallid sturgeon, interior least tern, and piping plover. In addition to construction, monitoring, and propagation activities, the annual summary reports will include:
 - (1) Number of pallid sturgeons, interior least terns, and piping plovers present in the various reaches of the basin
 - (2) Target/goal numbers for the pallid sturgeon, interior least tern, and piping plover necessary in each reach that would result in their delisting
 - (3) Comparison of numbers for the pallid sturgeon, interior least tern, and piping plover with previous years' reports
 - (4) Progress and effectiveness of adaptive management toward the pallid sturgeon, interior least tern, and piping plover recovery.
- ii) Reporting agencies, on sixty (60) days notice, will be prepared to respond to questions from the MRRIC on recovery status and recovery activities.
- iii) Federal agencies involved in recovery and restoration efforts in the basin will submit annual work plans and proposed budgets to the MRRIC.
- iv) Other agencies and non-governmental organizations may also submit proposals for review by the MRRIC.

e) **Budget and Finance** (*Draft, proposed language from the Logistics Committee. This language was discussed at the September meeting but complete agreement was not reached.*)

i) MRRIC funding and budget authority/responsibility

(1) Funding for the MRRIC activities and operations will be provided by the federal funding agency. For purposes of assuring independence and guaranteeing access to such funds on a timely basis, the funds will be administered by an independent fiscal agent. This agent will be determined by the MRRIC, in consultation with the federal funding agency.

(2) The federal funding agency commits to providing funding levels adequate to cover or provide:

(a) Technical assistance sufficiently adequate for independent review of all major policy issues that the MRRIC believes warrant independent technical advice or review prior to the MRRIC rendering advice. The MRRIC shall determine adequacy of funding.

(b) Facilitation assistance

(c) Administrative assistance

(d) Meeting costs and costs associated with MRRIC member travel and a reasonable reimbursement of incidental, incurred expenses through a per-diem or honorarium

(e) Preparation of information on key technical policy questions and technological issues. These resources shall be used by the MRRIC to prepare materials that will be easily understood by the public, with provision for adequate dissemination of such information to the public and to constituencies represented by the MRRIC.

(3) Annual funding levels will be determined through annual consultation between the MRRIC and the federal funding agency and will be based upon a proposed budget presented by the MRRIC. The MRRIC will determine how to approve expenditures within its total annual budget.

8) **Interactions Outside MRRIC** (*Language proposed by Randy Asbury. Has not been discussed by the Drafting Team.*)

a) **Web Site**

i) The sponsoring agency shall maintain a Web site as a clearinghouse for information

b) Annual Conference

- i) The MRRIC will host an annual conference to provide information to the public on the Missouri River Recovery and Mitigation Plan.