

\*These minutes have not yet been approved by the FBHCP Steering Committee, but will be reviewed at the quarterly Steering Committee meeting September 8, 2010.

**Florida Beaches Habitat Conservation Plan  
Steering Committee Meeting  
Tallahassee, FL  
February 15, 2010**

**Steering Committee Members:** Tim Breault (Chair, FWC), Mike Barnett (DEP), Julie Wraithmell (Audubon), Tamara Pigott (Lee Co.), Brett Moore (Humiston and Moore), Blair Witherington (FWC), Diana Ferguson (FL Counties), Barbara Lenczewski (DCA), Gary Appelton (CCC), Scott Dudley (FL Cities, not present)

**Others Attendees:** Kat Diersen (FWC), Jackie Larson (DEP), Bob Ernest (EAI), Gene Chalecki (DEP), Robbin Trindell (FWC), Tom Ostertag (FWC), Sally Davenport (CT), Gail Carmody (FWS), Kim Colstad (CT)

**Recorder:** Rebecca Frick (FWC)

**Review of agenda and minutes**

**TB:** Let's start with a review of the agenda and adoption of the last meeting's minutes.

**KD:** Does anyone have any comments about the minutes?

**BM:** During West's presentation, Tim asked about Sunshine requirements for parties making recommendations. He said he would get back to us about that.

**KD:** I spoke with him and he said that we must present all options, or as many as we can uncover, but that we are allowed to recommend one over others.

**TB:** Do we need to change the minutes to reflect that?

**BM:** I'd make a motion to amend the minutes to reflect West's clarification.

**All in favor. Approved**

**Biological Goal and Objectives**

**KD:** What the working group attempted to do with this, we had direction from you to reword the objectives, however see the note at the bottom of the document. These goals and objectives reflect almost to the letter the guidance we got from the Steering Committee. I'd like to read through the goal to make sure it rings true to everyone (Kat reads goal). That one statement will be more or less the driving force behind what we'll be doing. The thresholds for CCAAs and HCPs are slightly different. The threshold for HCPs is jeopardy, so the direction from the Feds is that you should go further than you have to. With a CCAA, because its voluntary, there's an assumption of proactivity.

**TB:** Is there any more discussion on goals and objectives? Was this going to be an action item, Kat?

**KD:** I'd like to make an action item of that.

**JW:** "Enhancement of survival" made it seem like the enhancement of that species and not just the maintenance of that species.

**TO:** When you have a CCAA, the species isn't in as dire shape, so you have more options.

**TB:** So this biological goal is for the HCP?

**KD:** Yes.

**TB:** And not the CCAA?

**TO:** They would be one in the same document—a blended conservation program.

**KD:** The efforts to develop them will run concurrently. The final document will be concurrently submitted to Fish and Wildlife Service. It will result in two different permits, but the goals for the CCAA would be different than the HCP.

**JW:** Maybe we should defer the vote on the goals and objectives until after discussion of a CCAA, since the CCAA will be folded into the HCP.

**KD:** I think the goal for the CCAA will be different from this goal. They are two different processes.

**BM:** I'll make a motion to approve the biological goals and objectives.

**All in favor. Approved.**

**KD:** Since what we drafted was a little different than what we talked about last time, do we want to go through the objectives?

**MB:** I think we should move ahead. I think I may need some extra time when we get to the CCAA.

**TB:** Okay so the Steering Committee says we're okay with goals and objectives.

### **Implementation of the FBHCP**

**BE:** We're going to cover some of the same ground as last time, but hopefully this time through it will make a little more sense. To review, the HCP is the applicant's document. There are certain requisite components; however there are also some discretionary components. The applicant has to provide some assurances. There is a lot of latitude as far as what can be included in the plan. There will be an introductory chapter, and we'll talk about Florida's unique coastal setting, development, tourism, description of a CCAA, ESA, take provisions, and these are briefing documents that have already been developed. We'll expand on that information and include it into an introductory chapter and talk about potential conflicts between the CCCL program and the Endangered Species Act. The purpose of the plan is to support an ITP for activities regulated under the CCCL program.

We get guidance on development of this through the Fish and Wildlife Service handbook and addendum. There are several of these types of HCPs in the state. There are also other large-scale, multi-species HCPs in other areas of the country, and we can use federal recovery plan guidelines. We'll also have to state the goals and objectives. There will be a section that will state the covered species—5 turtles, 2 shorebirds, 5 beach mice, all

federally listed. Then we have the CCAA for those other state listed species. As we'll see later today, there are certain disadvantages and benefits to a CCAA. A CCAA would support other conservation goals, and if those species are subsequently listed at the federal level, you'd automatically have them covered under the ITP. There will be a chapter that will describe those covered species, which will have 2 components—a general information section (federal listing status, global distribution, biology and ecology, threats); and site-specific information (particular traits specific to plan area). We'll also look at regional differences. With plan area, we want to describe the area in which we anticipate take activities to occur. There are 25 counties with a CCCL, but we also need to look at areas outside of that because there is potential for impacts and mitigation outside those boundaries. The plan area needs to be very dynamic. These aren't static boundaries. We need some very general descriptions that give us flexibility over time. The CCCL boundaries constantly change. Once we've set boundaries, we have to describe it, and it will probably be on a regional level. The working group has come up with 4 regions, based primarily on sea turtle nesting distributions, but they also define other differences. Another chapter would be what activities we want covered under the plan. Those include the types of activities that the CCCL program permits. There will also be other miscellaneous minor CCCL activities that we'll need to capture. Once we've done that we'll need to determine the impacts to covered species. Fish and Wildlife Service does not authorize direct take, but there can be direct impacts which are incidental to an otherwise lawful activity. We want to describe direct impacts to those covered species. Indirect impacts related to habitat degradation will also be included. There are also consumptive uses, such as beach cleaning, which takes away foraging area for shorebirds. We have to determine how long we want the permit to be for. It could be one year or one hundred years. There are certain advantages to short term and advantages to long term which are laid out in the year 2 implementation document. There is now some dialogue in the Service which encourages shorter term permits, but they have a more streamlined renewal process. You need to estimate direct, indirect and cumulative impacts over the term of the permit. We need to know how many structures are already out there and a summary of past actions to determine what may happen in future.

One chapter will present alternatives to the proposed action. They will be a broad range of alternatives from no action, to developing an HCP and applying for an ITP. We'll describe advantages and disadvantages of each. There will be a chapter that will talk about measures that we'll need to implement, minimization measures. We're not required to propose a minimization measure that would interfere with the proposed action. There are many options for this, many of which are already in effect. They have to do with design, timing, method of construction, etc. DEP has already some of these in place, mostly for sea turtles, so we don't have to reinvent the wheel, but could probably improve on them.

We'll need mitigation measures. These need to result in net conservation benefit. There are other conservation commitments that are sometimes made in HCPs. One method is a CCAA. There's also other voluntary measures the state can commit to. An example is participation in the Migratory Bird Treaty Act. Adaptive management—as we extend the term of the permit, the potential for impacts from storms, sea level rise,

plan area boundaries, listed species will be uncertain. The ability to predict outcomes declines over the life of the permit. The Service says that adaptive management is essential for HCPs that pose a significant risk to the species at the time the permit is issued due to significant data or information gaps. In the year 2 implementation document, we describe active and passive types of adaptive management.

There are other ways to adjust the plan as well. There are changes in circumstances. The idea is that the applicant wants to be on the same page as the Service. There are unforeseen circumstances. You have to say what's going to happen if something like that occurs. There are administrative changes to an HCP that can be done simply through correspondence with the Service for minor adjustments.

A key component is biological monitoring. We have to describe what monitoring will be done. You need to monitor to determine the effectiveness of minimization and mitigation actions. It also serves as a basis for when you're going to implement an adaptive management strategy that's a part of plan.

The HCP also has to include a chapter about how the state will implement the plan.

There's usually a nominal HCP coordinator, someone who makes sure monitoring is done, record keeping, annual reports, etc.

**DG:** Is that usually someone that's on county staff?

**BE:** Usually it is, yes. Oftentimes, there is an inter or intra agency coordinating committee to make sure goals are being met, etc. You've got to commit to funding this plan and all the programs that are proscribed in this plan. You've got to show the Service a budget for the plan. We've come up with priority action items. First is goals and tasks, which we've done. Then, determine if a CCAA will be included, term of ITP, identify data gaps....adaptive management strategy, implementation strategy, identify statutory/regulatory changes necessary for implementation, funding, framework for public participation.

Now Kat's going to talk about the sequence in which we'll develop these.

**KD:** I'm hoping by now that what you just heard is starting to feel a little redundant. It is so important to our strategy moving ahead that the Steering Committee understands this HCP process on two levels—intricacy and scope. There are so many tiny moving parts to this thing, some mandatory, some subjective, some of which have easily conceivable order, some that don't. There are so many things you need to know and understand to make decisions that we want to expose them to you over and over again. Please call us, utilize us to help you understand everything you need to in order to make informed decisions on this. Introductory notes about the Gantt chart—this is essentially a visual representation of what Bob just talked about. There are several broad components that are broken down into smaller, more concrete tasks. This list is not conclusive. The further down the list we get, the fewer of those action items we're able to plug in because there's a lot of unknowns. I have this subdivided by grant years. It's important for you to know that there are limitations for what we can do year to year. We have a scope of work which we have to follow each year. We've done our best to look ahead 3 or 4 years, and if push comes to shove, we can go to the Feds and try to amend the scope, but there's really only so much we can do in any given year.

I've started out with what we're accomplishing right now. There's a key at the top. The working group will be working on these items throughout. I've highlighted points in time when we're hoping to be able to give our work to the Steering Committee or science committee for input, review, feedback to continually refine the direction we're taking these things. We won't always have time to let the SC or science committee have 3 or 4 looks at something. If you have priorities for us, we need to know as well in advance as possible.

The science committee doesn't exist yet. I've talked to all the proposed members and it's on my to-do list for this month. This is a group that will work with the working group a lot but this group will have peer review responsibilities, looking at chapters from a critical viewpoint and making sure we're not getting too far off track from a biological and ecological perspective.

**JW:** Who are those folks?

**KD:** We've envisioned a two tiered approach—a central core group with Melissa Tucker (FWC) for beach mice, Blair (Witherington, FWC) and Robbin (Trindell, FWC) for turtles, Nancy (Douglas, FWC) for shorebirds, Ann Johnson from FNAI for plants, Hal Wanless from University of Miami, who specializes in climate change and coasts and Tom Miller from FSU. And then a second tier would be resources. They will not be called in on a regular basis, but will be periodically asked to contribute knowledge, attend working group meetings, provide data, etc. I've spoken to those top tier folks and they're all interested.

**BW:** Is the science committee a biological committee or are there geologists, climatologists?

**KD:** We've talked about needing modelers/statisticians and Hal is a geomorphologist. We'd like to develop a GIS component to this as well, so we'll need to find someone to help with that.

Everything that's past September 2010 is pretty much guesswork. We've submitted the grant, but don't know if it's approved yet. So this is really a conceptual Gantt chart and will change over time. For this year, we've got identify covered species. Subtasks involve simply compiling data. Identifying plan area is also this year. The plan area discussion has proven to be difficult, that's why I've given it the whole year. We want the science committee's input on the term—how long will we need to get adequate protection for these species? Also, identifying activities. The simple answer is those covered by the CCCL program, but there's other tasks under that including threat assessments, and that's where we'll need the statisticians and modelers. There are a few items we hope to get started on in the summer months which involve estimating impacts. We can't even start doing this until we have the science committee running. You see as we move further down, there's a lot more blue than green because the science committee will play a major role. There will be a lot more people involved in this further down the line. We're being as aggressive as we can in our timeline, but we have no real way of knowing for sure. I don't want to leave you with the impression that these are hard and fast timelines. This will also definitely be expanded upon. My feeling is that this is important for you to have so you could see how fluid it is and how many jigsaw puzzle pieces there are, and we need to give you the opportunity to ask the questions, know the process. The whole reason we gave this an hour and a half is because this is your

opportunity to deepen your understanding of the process for the next few years. Any questions or comments about Gantt chart?

- JW:** Looking at the county aspect, will there be opportunities for local governments to present their unique situations in the development process?
- KD:** I have already been to the counties. I have spoken with these counties and they have been aware of this project. There will be a huge role for them to play in the implementation strategy.
- JW:** I'm trying to think about what are some of the crazy scenarios that might result in impact. For instance, wind facilities. Are there others who will be able to predict them better than me?
- GCh:** The things that come to my mind are things that have been around for a while, such as oil spills or grounding of container ships.
- BM:** I think statutory authority for the CCCL program to be carrying this out is necessary. I don't think projects have ever been reviewed based on their impacts to habitat and species.
- KD:** I think it would be a mistake to wait years before we start thinking about what statutory changes will need to happen for this to be implemented. This could also be in the unforeseen circumstances—what do we do if we can't change those regulations?
- BE:** You could recognize needed changes and say we'll have them in place within x number of years, so these don't have to be in place before the HCP is approved. And in unforeseen circumstances, there would be an explanation of what we do if that can't happen.
- BM:** I just think we need to start working on that now, because it may take several sessions for that to happen. The contingency plan is how well you can get local governments to control it if the State doesn't.
- BL:** I agree with you. You're starting at a planning level with comp plans, etc, and then you're getting down into permitting, which is different than planning. So I think you need to start at the top with planning to see how it all fits. I don't see how it would even be implemented at the local level and fit with comp plans already in place.
- TO:** We've had meetings with natural resources staff in the senate, and they are on board.
- JW:** Who are you working with?
- KD:** I can't think of their names right now, I'll have to look them up for you. I would call that a preliminary step at best. Sounds like your feeling is that we need to not wait.
- GA:** There are some things we can probably identify as needing legislative changes early on and others not until later. Maybe we could have a group look at legislative changes and think about it from long term and short term. Legislative changes looking at other species than sea turtles is a high priority.
- KD:** That's a great idea. You probably have a much better handle on the types of folks that would need to be on such a team. So you'll hear from me about it.
- BM:** A lot of times, a lot of the implementation can be handled through rule changes, so it is more of a two step, but first you'll have to get basic authority approved up front.
- GCa:** How far are you from a conceptual plan? Just something that's, say, 10 pages long.
- KD:** That's not the approach we've taken.
- BE:** Well, the year 2 implementation document has some models for implementation.
- KD:** And this Gantt chart shows what we think it will look like.

**GCa:** Well that's what I was thinking. Maybe that's enough for a group to start looking at legislative changes.

**DF:** I really like the idea of having it done in a narrative way. Realistically, that's how legislation happens. We have to recognize that anything that impacts private prop rights, we're going to have a tough time getting this legislatively changed. We have to be doing that education now, though.

**KD:** At what level does this sort of outreach need to be for legislative folks?

**DF:** I think it depends on who you're dealing with, but they have to understand it enough and feel comfortable enough with it before going forward.

**BE:** Where do you see property rights issues arising?

**DF:** I don't know. I don't know if they will, but those groups are very aggressive. You don't want to see it get bogged down.

**BM:** It's not that you're expanding geographically the jurisdiction, but you're subjecting the people to things that weren't included in...

**JW:** This could be a benefit to them, though, by supplying them with an ITP.

**BM:** Most of the property owners don't know that, though. That's why local governments don't do these unless it's done at the state level.

**TB:** In addition to identifying what we need to change, we probably need to start working with groups that may be against this and run through why are we discussing this, and public policy benefits. I think that would be very important to do up front.

**GA:** Let's not lose sight of what an HCP accomplishes. It allows people to do with their property what they want. Also, if we do get into any kind of restrictions, let's table that. This is an adaptive process. Things that are liable to raise a lot of concern, let's table that. We can come back and address that down the road.

**KD:** I've been more engaged in reaching out to pro-HCP people, rather than anti-HCP people, so you'll need to tell me who I need to reach out to.

**JW:** With the economy now, education is good, but I don't know if pushing legislation right now is great idea.

**TB:** We need to get the word out about the benefits for the people of Florida and start talking through that. Even though we don't have all the details right now, we can start the conversation.

**KD:** And I have so many outreach materials, too. I feel quite comfortable being able to discuss the pros and cons of the project.

**DF:** From a county perspective, I communicate with county lobbyists. If I send an email, it usually goes to high level people, then trickles down, so I'm not sure that it always gets down to the people you're talking about. Maybe we should think about bringing you in during the policy process to start generating education at the top. I can see some of my own folks resisting this just from not understanding it.

**GA:** That's a great idea.

**KD:** Is this Gantt chart helpful? Is this sort of thing, with updates, a useful tool for you guys?

**TP:** Yes, and it helps establish expectations of us from you as well, which is good.

**KD:** Other questions? Discussion?

**TB:** Let's take a 15 minute break.

### **Candidate Conservation Agreement with Assurances**

**TO:** What is a CCAA? It's a program for non-federal property owners. It's voluntary and proactive. It authorizes take via the survival permit. Why should it be implemented? Many species on the list are not doing well. If you start doing conservation earlier, you maximize the types of management options and minimize the cost of recovery. It provides regulatory certainty if species becomes listed. There are two types, CCA and CCAA. CCA is for both federal and non-federal landowners, but only non-federal is privy to assurances. A CCAA is like a memorandum of understanding where they will manage to benefit species. There are no regulatory assurances with a CCA, no take authorization. Both of these can eliminate the need for listing in future. We partnered with other states for a CCA for gopher tortoises and DOD said they'd manage for recovery. Others include the Columbia sharp-tailed grouse in Oklahoma. Landowners manage land to benefit the grouse and they sign a certificate of inclusion saying they'll do these activities and maintain grouse habitat for 5 years. There's also a Panama City crayfish CCAA between the Service and the St. Joe Company.

There are four stages in the development of a CCAA: agreement development, permit process, post-permit issuance and renewal, expiration and termination. A structure set out by the Service on how a CCAA is set up, which is appendix B in the CCAA briefing document. The background outlines the biology of the species, threats, relevant biological information. There is a description of existing conditions—how many structures, what events are currently causing take. There's identification of measures that will be put in place to the benefit species. Unforeseen circumstances are addressed. I think of a CCAA as an HCP for non listed species. There's several concepts we'll need to consider for implementation. As I said it's a voluntary program. These two documents, they will be meshed together, but the voluntary nature of the CCAA will still be in place. The species that will be included are spread all over the state. A lot of the species that would be covered don't only occur between mean high water and the CCCL. We would also need to consider plants. Threatened plants are given protection, and if we include those, it would expand the scope of what DEP would need to permit. Those are the same plants that are vital in coastal dunes. The advantages are benefit to all coastal species, more cost effective to protect species while they're still in good shape, and if they become listed, you don't have to do another HCP. It's a possible solution to the permitting issue for state listed species.

Disadvantages include adding more to the HCP in cost and people time, could lead to having CCAA rolled into the HCP (implementation complications and conflicts), and it may meet resistance because of the voluntary nature.

Possible approaches: The easiest would be to not include it. The full action approach would be to include all other species. Then there's the intermediate approach.

There are 15 potential species, one of which is red knot. The red knot is very likely to be listed in the near future, that's why we actually have it included in the HCP species.

A CCAA would give regulatory certainty if species became listed. It would use adaptive management.

**TB:** Most of what I read, there's a presumption to do this concurrent. Would it be possible to do a CCAA in the future?

- KD:** There's the potential for developing conflicting recommendations if you don't do them concurrently.
- MB:** I'm concerned about if this is even in the scope. The year 4 funding application has already been submitted. Is a CCAA in the scope?
- KD:** We wrote it into the grant.
- MB:** Don't we need to know the term of the HCP before we can think about including this? I don't think there's any such thing as regulatory certainty.
- BE:** The regulatory certainty in this context is the Service says if you have a CCAA, and one of those species becomes listed, then those measures you're doing for the CCAA, that's all you have to do. You don't have to start doing anything else on top of that. If you don't do a CCAA and a species becomes listed, you could do an amendment to the HCP, but it would take a while,.
- JW:** I think we all recognize that there are impacts to state listed species through CCCL activities, so the implication to me is this would be a route to work with FWC to protect those species.
- MB:** Of the 15 listed, 14 are shorebirds, are these all nesting? Foraging?
- KD:** Some of each. I went to all of our taxa experts and by and large shorebirds are at the greatest risk. They're on either our state list or Species of Greatest Conservation Need list. They have a level of imperilment that is recognized somewhere.
- BW:** But plants didn't make it on this list.
- KD:** Only because it's not somewhere we've gone yet.
- TO:** There are only a handful of those.
- TP:** That's my concern, if you start looking at the whole state. How much are you delaying this process by trying to add 15 plants, which is so few, relatively?
- KD:** It will prolong the process. But it's a question of cost benefit analysis. Is it worth the amount of time for the investment? Many of those species can be lumped together.
- BW:** I don't see this compounding our workload by a factor of 15 because they can be lumped. But it helps us understand what the effects of the plan will be.
- GA:** I don't think whether or not work load increase is significant, I think if it's going to increase it by a factor of 2, that's significant. What is the exact impact of doing this, and what will be the impact in terms of work, time, cost, on the process? Can we parallel it to the HCP but do it later in time?
- BM:** There's been talk about what species are on state v. federal list and I wonder why they're different for Florida. I suspect if you're looking at a CCAA, you should look at species that have high potential for becoming listed. Are plants likely to be fed listed?
- TB:** There have only been 19 of these done in 10 years, most for single taxa. This HCP is the biggest in the US and this other layer of work on top of that, if I had to vote today, I'd say you're going to risk good in pursuit of excellence. There's not many templates out there for us to model this after. Maybe we can narrow the species list and then proceed and say, what will this look like? Today, I don't know how I'd vote on it.
- BE:** As I showed, there are other ways of dealing with these species other than a CCAA. Then it just becomes a risk assessment. If you're confident that the species are not likely to become listed, then just table the CCAA issue right now.

- MB:** We don't have regulatory authority right now. With our current staffing, I don't see how in the world we could implement this, not without legislative authority to hire a bunch of people. I would suggest that we not vote on this today.
- GCa:** Help us understand the workload part of this.
- MB:** We have 5 field inspectors to cover the entire state. We have strict travel restrictions. I don't know who we would rely on do these enforcement and compliance checks.
- GCa:** Well, you'd be doing checks for the HCP anyway.
- KD:** Well, they're doing checks for the CCCL program right now.
- GCa:** I understand the time part of it. So is your question about adding more to the list?
- MB:** There would need to be training. When would we do that? I'm struggling with trying to absorb...I'm not getting it. I don't understand how we integrate it into this huge effort we're undertaking.
- KD:** In my vision of an HCP/CCCA, I don't expect that the entire burden of monitoring would fall to DEP. I'm expecting creative partnerships with existing groups who are already on the ground doing this sort of thing. With the sea turtle network, so much of what we know comes from those people. There's a burgeoning shorebird network out there right now that could be worked with. I would consider that a small component to a large implementation strategy. I still see it as, we already have to do threat assessments and a mitigation program. Plugging a few other species into the equation doesn't strike me as a huge burden.
- MB:** I don't know that I'd be comfortable voting on this. Would any of us benefit from hearing more discussion on this? Could Nancy Douglass explain how we could implement this? I'm really struggling here.
- GA:** The document lists 3 approaches for implementation. Bob came up with an alternative approach a few minutes ago. Are there other alternative approaches that would address concerns for capturing other species and somewhere down the road perhaps merging the two or not merging the two and not slow down the HCP process? I'm hesitant to bog this down with things that we're not sure of. I'd be hesitant to vote now on this and ask for a list of other alternatives.
- BW:** I'd say that this is something that needs to go to a science committee so there's more information about these species and whether or not they're likely to be listed.
- TB:** These are great big projects. We need to refine our understanding before making a decision on it.
- GCa:** I'm not finding in our policy what's on pages 3-4. We've never issued a CCAA for migratory birds. On pages 3-4 it implies that the CCAA program, this exact language is found under HCPs. I'd have to go back to see if we could even do this. The way they've handled migratory birds before is through a CCA.  
If the state management plan is functioning well, the potential for federal listing is small, so maybe you don't need the assurances.
- BE:** If you're not going to do a CCAA, only a CCA, I don't understand what the benefit would be there.
- JW:** If there were going to be a nexus with what the state was going to develop, like Blair was saying, there could be a fairly straightforward way of organizing where and what minimization and mitigation measures for these species would be. I would support getting more information on the species from Nancy Douglass and others. But I don't see

a huge amount of extra work. Also, I see this as something that will have to be addressed at some point anyway, so if we could go ahead and do this and have an HCP attached, that would be beneficial to the species.

**RT:** This will affect your plan area. It would give you more mitigation opportunities.

**BE:** The gopher tortoise wasn't on the list.

**KD:** Because we have already a very robust permitting and protection system for gopher tortoises.

**TB:** They're undergoing a review right now of whether to list the gopher tortoise.

**BM:** I thought the CCAA was to cover species very likely to become federally listed in the future so that when you're going through the HCP process, you're not constantly changing the list. I didn't know you could only list listed species in an HCP

**KD:** The conservation measures you do for non listed species in an HCP are purely voluntary, but they can still be in there.

**BM:** Of these 15 species, how many are likely to be endangered in the next 5 years?

**JW:** Federal listing is often a political issue, so it's hard to say. It's not always just a biological issue.

**BM:** If you're talking about costs, you could just put these in the HCP.

**KD:** The reason for going to a larger list is a lot of these are listed in the state and there's a real threat of imperilment and you can lump several of them.

**BM:** You still have to talk about associated costs. The purpose of this was to get the State off the hook for instances where they could be sued. And that can only happen for federally-listed species.

**TO:** I think we need to underline 'potential' for this list. This list is not set. I wouldn't get caught up on the number. As the science committee discusses these issues, they could pare it down and group species. The logical step would be to convene the science committee and have them look at it first.

**BW:** The direction we could give the science committee would be to come back to us with levels of organization. There are some that have high likelihood of listing, and then the others. There's at least two levels, maybe more.

**JW:** The purpose of the HCP is to protect the State from exposure from Fish and Wildlife Service, but I would argue that there could be exposure from state listed species.

**TP:** I think not only do we need science aspects, but also the reality aspects. From the beginning, most of these are one species, and no matter if it's one or 15, its going to be a tough row to hoe. It's hard for me to say whether I support it or not without a lot more information.

**TB:** We'd like the science committee and working group to work more on this. Timeline, mitigation options, implementation options, etc. As things get clearer, are we going to add voluntary measures to the HCP? It appears we have several options out there. The sense I'm getting is that we'd like to get more information.

**MB:** I agree. I don't want to make an uninformed decision.

**GA:** I would support that and add that the second component of what you said to look at a parallel course be flushed out to give us options on a parallel course rather than incorporating it into the HCP at an early stage.

**BE:** Gary, what I was offering was an alternative to a CCAA/CCA, period.

**GA:** Well, okay. I had a hard time with that URS document.

**KD:** Everyone is pretty rightfully in the dark at the moment. It's hard for working group to gauge timelines, and you guys will certainly have a better idea of political speed bumps.

**GA:** Bob, can you also explore from your perspective what you think would inhibit the HCP process by incorporating this early on?

**BE:** We'll take it up as a working group.

**KD:** We'll investigate this further.

**BE:** So we provided broad benefits, and you want the details now.

**JW:** I would argue that, how many statewide HCPs are out there now? None. Why would we back away from a CCAA on the grounds that there haven't been many done? I agree that more information is needed, but I would hesitate to back away on those grounds.

**TP:** I agree with what Tim is saying. I'm concerned about that too.

**GCa:** I think it's a workload issue.

**JW:** So would we be able to do the CCAA under the HCP grant? And would there be future funding after the fact?

**GCa:** It actually gives you another pot to tap into.

**BL:** The HCP, to me, is the ITP that you're giving out. How is that interacting with if permits are issued before the agreement that development should even be in that location? It undermines some of the regulatory framework that's in comp plans of local governments. I don't know how this would impact that because it's in the CCCL line. How would this HCP affect land use decisions?

**GCa:** The permit is issued only for an otherwise lawful activity.

**KD:** Are you saying that the development of the HCP might encourage land uses that would be contrary to the HCP intent itself?

**BL:** Yeah, because if you say that minimization and mitigation actions are in place, you're not in the higher level of deciding if this should even happen in the first place.

**BE:** That would fall more along the mitigation lines. We would envision land use regulations at the local level, it's just that now, once development is in place and someone applies for a CCCL permit, there would be more onerous conditions applied to that permit. It neither encourages nor discourages land use, but it offers areas for mitigation.

**GCa:** The HCP itself will become the political leverage to short circuit that decision.

**KD:** Right, the developer could use the existence of mitigation measures as an argument for development.

**BE:** We touched on the potential for changes to local comp plans. And maybe we could get the local governments to integrate those things into the comp plans.

**BW:** Couldn't they be dealt with in the details of the plan?

**KD:** At the very least, it speaks to the need for a very high level coordination between state and local government.

**DF:** I strongly agree with everything Barbara is saying. It happens all the time with every environmental issue. Any of these things that we put in place could and will be used as leverage to do other things.

**JW:** I think your concern is one of the big reasons I'm here. We have HCPs functioning in Florida and so I look to those locations to see how they're working. My experience with those has been mixed because many of the species I'm concerned about weren't given the consideration I think they needed in those plans. I recognize that that is the risk to me and it's also an incentive to the regulated community that once this is set they have some

consistency. I think we just need to anticipate those things and craft a good plan that will address them. I agree with you, but what I'm hearing is that fundamental discomfort with the HCP process as a whole, but that's why I'm glad DCA has a representative here.

**BL:** And I bring it up because I think I have more to learn about those things.

**KD:** If the mitigation and enforcement are robust enough, if a developer were to try to use the HCP as a tool, the idea should be that it would still be to the benefit of the species.

**BM:** One of the requirements of the CCCL program is they refuse to deem an application complete until locally its deemed acceptable. Also, with a CCAA, it's not that I don't agree with all the positives with a CCAA, I just don't want us to get too far away from what we set out to try to do. Let's not try to piggy back too much on it.

**TB:** Let's break 30 minutes for lunch.

### **Plan Area**

**KD:** I'm going to talk about in general, how one defines a plan are for a project of this scope, the pocket beach consideration, and the management unit consideration. There's two primary components to plan area—that which is regulated by the CCCL, and then pretty much everything else. This includes areas adjacent to the CCCL. The area regulated by the CCCL, there's a briefing document that goes into this detail. It's limited by the CCCL on landward side. It's periodically redrawn, and the seaward line is mean high water. There's an area of jurisdictional overlap. The CCCL program, by and large, exerts jurisdiction up to the MHW line, but can exert it beyond that. There is no CCCL in the Big Bend or in Monroe County. There's areas that do have sandy beaches.

**DF:** Does this mean the HCP wouldn't count in the Big Bend or Monroe County?

**KD:** We'll get into that in a minute. There are areas that could be impacted by activities and there are areas that may provide mitigation sites. We cannot confine our vision of this to only areas within CCCL boundaries because there's potential for impact and mitigation outside of that. Because it's hard to identify the seaward limit of sea turtle habitat, you go to low low water. What you see here is habitat of the Choctawhatchee beach mouse. The take home message is three components: activities, impacts and potential minimization and mitigation for those impacts. All those things have to be in the plan area. We're not yet at a point where we can determine where the impacts are going to be. So how do we do this? You need a dynamic plan area definition; one that allows you to define plan area not geographically but based on certain criteria.

The pocket beach consideration came up at the last meeting. Chapter 161.052 established a 50ft setback line for all sandy beaches in Florida. Any construction has to be 50 feet landward of mean high water. This was superceded by 161.053, which established the CCCL. There were a few places that were leftover once the CCCL was established, and these are pocket beaches. There are 23 throughout the state for a total length of 15 miles. Most of them are in Monroe County. There were only 11 permits issued for these beaches in last 12 months. While pocket beaches are regulated by Bureau of Beaches, they're not regulated by the CCCL program. There are some listed species that occur there and there is a possibility that some activities allowed under the CCCL could impact these areas. So we have the option of whether or not to include these in the plan area.

**BE:** The activities that are managed on those beaches are very similar to activities managed on CCCL beaches.

**GCh:** Many of these beaches are in public parks, so you often see counties issuing themselves permits to do repairs in these parks.

**JW:** What sort of species do you see in these areas?

**BW:** Shorebirds mostly, not so much sea turtles.

**RT:** Hawksbills.

**KD:** This doesn't have to come up for discussion today, but it's a question of whether we...

**DF:** I'd like to have more information. Is there something in the middle? Does it have to be either we do it or we don't? Is it possible to narrow it down?

**KD:** Beach mice don't occur in these areas. I think it's mostly shorebirds, but that's something I can gather more information on.

**BW:** Is there a working definition of pocket beach?

**GCh:** I don't characterize them as pocket beaches. What we designate is critically eroded beaches.

**BW:** Has it ever been challenged?

**GCh:** In just about all instances, the lands that we regulate under 052 are public lands, so you're typically dealing with county or state lands.

**JW:** Even if there's not sandy shore in some of these, there are still habitats utilized by piping plovers and red knots, so we may be able to explore these. That would involve non type-for-type. I don't know I'd we want to go there, but just think about.

**KD:** I think if it's a nearby area that's being utilized by the species, then it could conceptually go into the plan area.

**TB:** Most of these are in public ownership? 95%?

**GCh:** Yes.

**TB:** So it seems these would provide areas for mitigation.

**JW:** But are these recreational sites?

**GCh:** All the ones in Monroe county are critically eroded.

**MB:** If these are not included in the plan area, would they be excluded from areas for mitigation?

**KD:** I think that possibility exists.

**MB:** In the Big Bend area we don't have regular field monitoring of those areas.

**BE:** There is latitude here. You have to decide what you want to be covered for and where.

**MB:** Are the pocket or 052 beaches within the HCP scope?

**KD:** This didn't come up until the last Steering Committee meeting

**MB:** That's a concern because you've already submitted the year 4 grant.

**KD:** Well, expanding the range of data gathering to include pocket beaches would not be outside the scope.

Management units—how we are going to manage the plan area? Earlier someone asked West's opinion on if the working group can propose an action, and West's answer was that as long as we propose all the options, then we can. So, we have 25 counties and need to figure out how to divide them. There are a few options. We decided to look at habitat based management units. These are based on sea turtles, then further divided by habitat utilization by beach mice. Secondary considerations included geomorphology, climate and land use. We divided the state into four areas. Each of the graphs on the chart

represent nesting abundance of turtles. Panhandle, Gulf, SE and NE. Within that, we divided them into Planned Species Management Units based on beach mice distribution. So they're broken down basically based on impact to species.

**BW:** Bob, you were talking about composite sea turtle nesting, so are leatherbacks the deciding factor of when nesting season starts?

**BE:** Yeah.

**JW:** Well, the concentrations of them are fairly predictable.

**BE:** That was one of the considerations. We didn't want to impose restrictions on people that didn't need them. We could work through all that sort of thing, set up a third tier.

**JW:** And you may look at it and say it complicates things too much, but you may see that it fits.

**BE:** We did utilize geographic boundaries because the CCCL is administered on a county-by-county basis.

**BW:** PSMU—I see the gap that's left by not including Monroe county. There's an entire sea turtle recovery unit in Monroe, and that would be falling through the cracks if that weren't included. Biologically, they are genetically distinct.

**BM:** In setting up these areas, obviously there are areas that wrap inside inlets that may go in further than control line that may have nesting that are not regulated by DEP, but, by counties, are you looking at setting up areas regardless of who'd be implementing standards in those areas?

**KD:** I think your question comes down to permitted impacts. This comes down to activities permitted through the CCCL. They could still be within the plan area if they were going to be utilized as mitigation areas.

**BM:** So mitigation areas have to be defined in the plan area definition.

**KD:** They do not have to be geographically defined, but they must be included based on criteria for inclusion.

**BM:** That's obviously an area that's adjacent to and consistent with habitat within the CCCL.

**MB:** I'm a little confused. We're identifying land areas landward of DEPs jurisdiction.

**KD:** But not for permitted impacts. Your permit is for permitted activities.

**BE:** You've got defined jurisdictional limits. Those activities could impact areas outside of that, for which you will be covered.

**BW:** I see the inside circle is regulatory, then impact, then mitigation. The impact is bigger than regulatory, and you want to include a larger mitigation circle.

**BE:** We don't have to specifically say where mitigation will be. More than likely it will be a commitment to a number of acres.

**GCa:** It will probably be based in the 12 units.

**KD:** That's one thing we need to discuss. Is it okay to have impact in one area and mitigate for it in another?

**GCa:** That's where you need to know about biological opinions for this HCP and what the amount of take will be by species. We have to keep a ledger of all the take all over state. So if we've given a bunch of take for beach renourishment, its first in time, first in right.

**KD:** That's the problem. We can't look at the take of any of these species in scale. We can't average take in Florida. Invariably, where take occurs, that's where the fewest options for mitigation exist. I don't know how far you can push that. If you have opportunities for mitigation elsewhere, can we utilize that? For instance loggerheads.

**GCa:** That's where you have to drop back to the recovery units.

**BW:** When you start to get too far away from impact area, you may be mitigating for completely different populations.

**KD:** So you can see the scope of the challenge here.

**BW:** But the PSMUs don't match up with all the recovery units.

**BE:** Where are you talking about, Blair?

**BW:** The PSMUs match up with loggerheads pretty well.

**BE:** The HCP is the applicants document. Once that's submitted, it undergoes NEPA review, and they'll prepare the biological assessment and look at those things.

**BM:** Gene, when you issue permits for raking on nourished projects, is that under the control line? Just want to make sure that's included in this project.

**RT:** There have recently been beach cleaning requirements put into section 7.

**KD:** Aside from a bit of tweaking, do the PSMUs seem logical?

**JW:** I think it is. I worry that when you layer all the other species, some of those units may become artificial. I wonder if you could have turtle units, bird units, mice units.

**BE:** We tried that and thought administratively it would be difficult. We thought at the minimum we'd want it on a county basis, but then you may have mice in one part of the county but not the other.

**TB:** I think the a la carte option would be difficult.

**BW:** I assume there are holes in some of these units where there are federal lands where there are no control lines.

**KD:** Right.

**BE:** I don't know necessarily though. We thought we could have a definition that would capture those federal lands when needed. You wouldn't want to exclude them because if there's an adjacent CCCL area, impacts may occur on the federal lands.

**BW:** I agree.

**MB:** In the panhandle there may be great mitigation opportunities on Eglin land.

**DF:** Has this issue of contrary areas come up before?

**BE:** Maybe in St. Johns where St. Augustine is not included in the plan area.

**JW:** So is the plan to overlay this with current coastal HCPs?

**KD:** The specific mechanism to do that hasn't been developed, but I know who runs the HCPs throughout the state and coordination will occur. Some of the other HCPs are really robust and so they don't want our HCP to come in and undercut it, but the coordination is there so I don't foresee any hurdles with regard to that.

**BE:** There are counties that don't have HCPs but have stringent coastal ordinances that are a little wary.

**DF:** How does the liability play out for the locals?

**BE:** People that would get a CCCL permit, the liability rests with the person permitting the activity and the person performing the activity.

**KD:** One of the things we haven't talked about is this question of the delegation of authority in a post storm emergency situation.

**GCh:** Delegation of authority is an incorrect statement. There is never a delegation of authority. That is an authority granted to local governments.

**KD:** My understanding was that if we developed terms and conditions that the counties could adopt for these times, then if they do come back for an after the fact permit, they've done right by the HCP, so they can get that permit.

**BE:** The complication there is you're saying that they would have to be parties to the HCP.

**KD:** The working group needs to talk about this more then.

**BE:** Are you talking about emergency permitting of temporary armoring?

**KD:** Emergency response after storms

**GCh:** Okay, that's different.

**KD:** Phew. Okay. And that's something the counties have been wanting.

**GA:** Could Gene or Bob explain the difference in emergency responses?

**GCh:** After an emergency event, the governor will declare emergency and following storm impacts, the agency may issue a final order that will provide relief from regulatory requirements to allow local governments to do certain restoration work. That kind of activity would be captured in this HCP. There's another kind of activity that occurs under 085, the coastal armoring. That would not be covered under this HCP.

**GA:** Why is the latter not covered?

**GCh:** The nuance for me is the fact that the first description is the agency is delegating authority and in the 2<sup>nd</sup> the agency is not delegating any authority. The local government is simply exercising authority granted to them under Florida law.

**GA:** Could that be one of the things that requires legislative change in the future?

**KD:** At the moment the only confluence is that they take that authority and come in for an after the fact permit.

**BM:** When local governments issue a permit, in theory, is it the applicant's responsibility to implement something that he thinks is compliant? Are there any criteria?

**GC:** The way the law is written, it is assumed that the structure will be temporary.

**BE:** It's a matter of getting local governments to sign on to following guidance for issuing permits.

## **Wrap Up**

**KD:** This is only our second meeting, but I'm interested in your feedback—is this an appropriate format? Tim and I have had some discussion about formalizing things and being clearer in agendas. Is this working? Do we need to continue doing all day?

**BL:** It's important to me that we have some advance notice if there will be a vote.

**TP:** I agree with that.

**KD:** One thing we'll try to do is well in advance of the meetings, email the documents that we'll be dealing with in upcoming meeting and you can add them to your folder.

**BW:** I think our spreadsheet here is a pretty nice agenda forecast.

**KD:** Let me emphasize, though, that this Gantt chart is conceptual.

**BW:** But updating it on a regular basis and sending it out would be very useful.

**JW:** I heard a need today for expert input. I also feel a need for, I've never gone through the permitting process, so I need some background on that to have an appreciation for what the applicants are going through. Maybe a flow chart, summary.

**KD:** That's something I want to re-emphasize. If there's something you're not understanding or want additional material on, please let me know. And also we're going to get the science committee up and running hopefully very soon and I think you'll see the ball really rolling.

**BE:** I've noticed that the Steering Committee is starting to get where we're going and what the objectives and issues are.

**TB:** I've suggested that we could break our agenda up into staff reports. That way, if people from the public do come, they could at least comment. So we may come up with an agenda that looks more like a Commission agenda. Anyone who wants to help build the agenda, feel free.

**GCa:** Where do we stand on the website?

**KD:** URS hosts a server that contains our website. While they are not under contract, we cannot ask them to update the site. Once they are back under contract, there will be many updates and the working group will need to discuss if we should continue housing it at URS. But all the documents you have are on the site and accessible.

**BW:** It would be nice to have a demographic modeler on the science committee. Each life stage is not the same, so it would be nice to have the science committee evaluate take based on reproductive value.

**KD:** Send me an email with possible names for that. Any other questions or comments?

**GA:** I support what Blair suggested, and I wonder if down the road we should have a presentation on the emergency permitting system, in terms of what are the impacts we could be confronting.

**MB:** Will all future meetings be in Tallahassee?

**KD:** One of the things that Perran and I discussed was that this group could stand to meet face to face a few times, but in the future, video conference and things like that will need to be an option.

**TB:** We also have polycom at our other facilities throughout the state. So that's another option.

**KD:** If you know in advance that you'll have travel issues, you can let us know and we can make arrangements for you. For those of you who are in Tallahassee, is the working lunch thing working out? Would you rather have a longer lunch to go out somewhere? (everyone okay with that)

**Adjourned at 2:45pm**