

Florida Beaches Habitat Conservation Plan

Steering Committee

Quarterly Meeting

September 8, 2010

FWC Bryant Building 272

Tallahassee

In attendance:

Steering Committee members: Tim Breault, Mike Barnett, Barbara Lenczewski, Gary Appelson, Blair Witherington, Julie Wraithmell, Brett Moore, Tamara Pigott (via phone), Diana Ferguson (via phone)

Others in attendance: Kat Diersen, Bob Ernest, Gene Chalecki, Lorna Patrick, Tom Ostertag, Nancy Douglass, Kipp Frohlich, Brett Moore, Robbin Trindell, Jimmy Sellers, Sally Davenport, Kim Colstad, Kelly Samek, Trish Adams, Jackie Larson

Recorder: Rebecca Frick

Minutes

TB Welcome

KD We weren't able to approve the February meeting minutes in June because we didn't have a quorum. Are there any questions regarding those minutes? Motion to approve?

February minutes approved.

KD Are there any questions or comments on the June meeting minutes?

June minutes approved.

KD Overview of today's agenda. Any questions?

TB Motion to approve the agenda. Any comments?

MB The term "vote" doesn't really apply; these are just recommendations. I just wanted to make that clear.

Agenda approved.

Staff Reports

KD We have finally gotten the Science Committee up and running. Nancy Douglass, who is on that committee is here with us today. The other 5 Science Committee members are Robbin Trindell, Melissa Tucker, Tom Miller, Hal Wanless and Todd Walton. They were all present at the inaugural meeting in August. We spent the majority of the day bringing them up to speed on the HCP.

(Overview of Gantt chart)

JW With the threat assessments, are you only looking at threats to coastal permitting?

BE Not really. In the general accounts, we'll talk about general threats and threats within the plan area that may be totally unrelated to the CCCL program.

BW Are we currently considering federal and state listed plants and unlisted species?

BE There will be general discussion of plants within the plan area, but as far as the ITP, they don't offer an ITP for plant species. We'll probably include measures for avoidance.

KD When we're developing impact assessments, we have to use the best available data, but data doesn't exist for everything, so we've come up with some complimentary studies, which Coastal Tech is working on.

JS (presentation) We're currently doing studies on armoring, dune walkovers, beach cleaning/raking and upland development. We're going county by county and interpreting the most recent aerials and documenting where these structures are. We've got aerials, parcel files and CCCL permit records in GIS format. So we're going through mile by mile. We are also identifying vacant parcels and future land use so we can get an idea of what they may look like in the future. What's not on here yet is the information from the surveys we've sent out to all DEP beach cleaning permittees (about 60 in the state) about how much they clean, how they clean, how much wrack they remove from beach, etc. The idea is that we'll be able to put this information into GIS. In this study, a bulkhead is different than a seawall in that a bulkhead has vegetation in front of it, and a seawall does not. So far, we've completed 9 counties of aerial interpretations and received about 1/3 of surveys.

GA This study is long overdue, so this is great. I don't know how you work with beach dynamics, but I guess you'll explain that at some point. Also, maybe through this process, you can work with the Bureau of Beaches and find some way to continually update this data, rather than just have a baseline, and put it into some sort of database.

KD This is why I wish we had time to talk about the web viewer. Once this is complete, this will be online and available to everyone. One stipulation in the ITP will be monitoring, so this should continue to be monitored in a meaningful way.

BE That would probably be in the terms and conditions of the ITP.

- BW There's a study related to this in the next issue of Journal of Coastal Research. We conducted that study from the perspective of sea turtles. For example, buried seawalls won't be as harmful to a nesting turtle.
- KD One of the basic purposes for these studies is to get a baseline.
- BM I'd echo what Gary said. With regard to armoring data, it's easier to find out more recently permitted walls. The tricky part is knowing what was out there prior to the Control Line Program. Are you also looking at older aerials?
- JS Yes, as far back as we can find. Aerials from the '90s are poorer quality and harder to view, but we are looking at those. And there's no getting around that you're going to miss some, but we're working with DEP staff who have a better historical knowledge of the state.
- BM When they first set the control lines, they did aerials; back in the '70s. With regard to raking, I would suggest you get input from DEP field engineers, because they know what's going on out there as far as things that are and are not permitted.
- GA Bob, you said theoretically moving forward, Coastal Tech wouldn't have to do aerials anymore.
- BE If the DEP decides to move forward with an ITP application, I would assume that it would be their responsibility to continue to monitor that. One thing to remember though is that these studies take time, and at some point you have to have a cut-off point for your baseline.
- JW With raking, you may want to look at historical permits. Also, sometimes it seems like people rake beyond the boundaries of their permit. I don't know how you could figure that in. Could we get a copy of the questionnaire going to the rakers?
- KD Sure. One more thing for staff report. The Steering Committee asked us to start coming up with documents to engage legislative staff. We have begun to develop an HCP primer, which has a basic introduction, outline of the components of the HCP, and introduces them to the potential for legislative change. It will be 6-8 pages. We're hoping to have a close-to-final draft in advance of the December meeting, so we can discuss and get comments on it then. And once we get the 3 votes we're going for today, that will determine much of what we'll be doing for the next several months. I don't actually foresee a need for there to be any votes for the next couple of meetings. So, the nature of the next few meetings will probably be more informal. I'm still planning on quarterly meetings, but we may be able to scale them back to half day meetings for the next few. We'll be sending out a survey in the next week to schedule 2011 meetings. Any questions?
- JW Have the Commission dates been set for 2011?

KD The December Commission meeting was changed, but I'm not sure if the 2011 dates have been set.

CCCL Program

GC (presentation) I'll give a brief review of the CCCL program and a walkthrough of the CCCL individual permit process. The primary purpose of the CCCL regulatory program is to protect, preserve the beach dune system from imprudent construction, proposed or existing structures, adjacent properties and preservation of public beach access. The Control Line demarks the area of beach and dune system impacted by waves of a 100 year storm. Since they are only established on sandy beaches, there is no Control Line in the Big Bend or Monroe county. The Control Line position may vary from region to region. In northeast Florida, the Control Line is located in the east right of way of A1A, less than 200 feet from the shoreline. This shoreline saw heavy erosion impacts in the last few years and is now all armored. In southwest Florida, the Control Line is located 800-1000 feet from mean high water. In the panhandle, the Control Line varies from 200-500 feet from mean high water.

Laws and rules—Chapter 161.053. Almost all authority is here. Next is 161.085, which tells us what the State's policy is for costal armoring. 161.379 gives the agency the ability to deny an application for take of marine turtles. Rule 62B-26. Rule 62B-33—application requirements. 62B-34—streamlines process for single property developments. 62B-56 is a rule that was adopted about a year ago to address geotextile tubes. Unlike CCCL permits, the 62B-56 is also an operational permit. Types of authorization—field permits, individual, notice general, emergency, development agreements, exemptions. Notice general is a streamlining permitting process for single family developments. Emergency permits are only for after the government issues an emergency final order, and it authorizes temporary protection to upland development, repairs or replacement of structures destroyed. It cannot authorize a permanent structure that wasn't there prior to the emergency. Exemptions are found in both statute and rule. Activities for which people are interested in obtaining permits include bulkheads, single family developments, multi-family developments, new construction, ancillary structures, excavation, dune restoration, public infrastructure (improvements to parks, lifeguard stations, vehicular beach access ramps).

Permit processing steps—pre-application, CCCL application received, 30 day completeness review, request for additional information (if necessary), application deemed complete—90 day clock, information provided to field inspectors, site inspection performed. If application is addressing activities that encroach on the beach, that application will be forwarded to the Commission for review and comment, then all that is collected and a staff assessment is performed and a permit is drafted/ issued. The permit application form is pretty simple, 2 pages, and includes proof of property ownership, letter from local government stating that the project doesn't contravene local set backs or codes, survey of property, permit drawings, names and addresses of adjacent property owners, application fees. Individual permits—30 day completeness review, 90 day processing limit. Notice general—only a 30 day processing time, so it's important that the application is submitted in completed form. Development agreement—no processing

time limit, nor does the property owner have the right to challenge the agency for not entering into an agreement.

What are the kinds of things the permit reviewers look at? Appropriate siting of structures, major structures sited landward of 30 year erosion projection, limit excavation, activities shouldn't interfere with public beach access, not interfere with turtle nesting. For minor impacts, we minimize, and for adverse impacts we minimize and mitigate. Examples of minimization include reducing project footprint, reducing excavation, avoiding disturbance to native vegetation, downsizing or removing ancillary structures. Examples of mitigation include removing exotic plant species, removal of existing structures, removal of exterior lighting and replacing with turtle friendly lighting. Typical permit conditions for single family include a pre-construction meeting on site with a field inspector and contractor, periodic progress reports (monthly, once construction begins), foundation location certification, final certification. Questions?

BM I thought you might want to explain duration of permits.

GC Field permits are a max of 12 months. It's really a function of what kind of activity that's being authorized; it could be 1 or 2 weeks, up to 12 months. For an individual permit, the duration is 3 years with the ability to request a time extension. Emergency permits are max of 90 days, although they can be issued for shorter time or can be extended.

BM One thing to note is that when these permits expire, they're non operational.

JW What types of proposals are denied?

GC The most common type is armoring. That's a direct result of what happened in Walton county following the 2005 hurricane season and extensive armoring that was authorized as temporary under county permits. The majority of the structures were not consistent with Florida law and have been a very big headache for all parties involved, even now. Others, maybe more common, are issues with the 30 year erosion projection. But with those types of activities aside, the permit staff will work with the property owner to minimize whatever those issues are so that ultimately a permit can be issued.

JW Has there ever been any follow up survey to see if the project is fulfilling the intent of the CCCL program?

GC Again, this goes to the issue of beach dune preservation vs. structure survivability. When this program first started, building codes had been equally important. From a dune perspective, no. I can't think of a study that's been performed. Given that, the program set back is based on the 30 year erosion projection. I would anticipate that with each year, impacts would increase. In other words, I guess one of the difficulties is there's not a good set back element in the regulatory program, and the 30 year projection is not a good set back and is almost meaningless in panhandle.

GA If you have a static line of construction, and not a strong set back, how does all that figure in with an HCP? Will we be looking at it long term with that ticking philosophy?

- GC I don't have an answer.
- KD A partial answer is to some extent going to come later today because we only have the ability to look out to the end of the term. Not saying we don't plan to renew the permit, but effectively we can only look as far as the term limit.
- GC Under chapter 161, there are other tools out there. You can't expect to address these difficult issues through the CCCL program. The erosion control program has been successful throughout the state.
- KD Certainly we can look further out, and do that modeling, but to the extent to which we can incorporate it, we don't know.
- BM That's why I brought that up about operational vs. non-operational. The mitigation shouldn't stop once the permit expires.
- BE On mitigation, it doesn't necessarily have to be something the permittee is responsible for. It could be something the Department engages in.

Term of ITP

- KD We are going to discuss the 3 issues analyses. We're not going to go into great depth for any of them. The plan is simply to give a very brief intro to the issue to open up the table to discussion. Hopefully, we'll be able to get Steering Committee votes on all 3 of these today. Also, the reason we invited Nancy here today is to provide expertise in the discussion of at-risk species.
- JS To describe the issue, the term is requested by the applicant. The Service does play a role in evaluating if it's appropriate, and it might be fair to say that largely that has to do with the scale of the HCP. We essentially have 4 options—short; moderate; long; and combinatorial period, with renewal. We pulled out a few of the highlights. The number of years in parentheses is meant as an example. The specific year we end up going with could be completely arbitrary. So for short term, the main pros, keeping in mind that we have to identify take and mitigation, are that it reduces mitigation requirements and reduces the risk of having to amend for additional species. The main con is that renewal will come sooner and FWS does not offer grants for renewals. We haven't been able to figure out what renewal costs might be.
- The second option is a moderate term, and the main pros are that it moderates the risks and meets FWS guidance of 20-35 years. The main con is it has more uncertainty than a short term, as far as additional species to include in permit, and renewal costs will come sooner than with a longer term.
- The third option is a long term, and the main pro is that renewal costs are delayed. The main cons are uncertainty and maximized mitigation. Also, the Service doesn't really recommend going out this far.

The last option is a combination—what Volusia County did—and the main pro is having a trial period. The main con is that renewal costs will come sooner, with no assistance from FWS.

The working group recommends a moderate, 25 year term. That seems to be a common term for HCPs this size. There was some discussion about 30 years, because the DEP uses the 30 year erosion projection in this program, but we're sticking with 25.

TB You said the term of the ITP might be influenced by which species we include?

JS We know which 12 federally listed species have to be included. While we're doing this, it might be good to try to predict what species will become listed over the term, so it would behoove DEP to go ahead and include those that are likely to become listed, but Bob will go into this in greater detail later on.

MB What are renewal costs likely to be?

BE It depends on the term. Using Volusia as an example—they had a 5 year trial run. After 5 years, they had real data. It was much less costly to do a second renewal, but yet they had to go through the whole process of public review. It wasn't as expensive as the initial process, but it was costly. If everything is working well and you've documented take and it's in line with your projections, then it's not bad, but you do have to go through all those analyses. If I had to throw out a percent, I'd say 50-75% of initial costs. And right now, we've spent well over 3 million dollars.

TB Is there something you could work out with partners to pay for that renewal?

BE I suppose. It'd be up to the Department.

KD There are several coastal counties that already want to participate.

GA I think the estimates of renewal costs are like throwing darts. This is a much more complicated HCP up front than Volusia county, so it's hard to compare.

KC With a trial period, how would that benefit an adaptive management program?

BE I don't think it would benefit at all.

JW When do you start working on the renewal?

BE 30 days before the expiration of the permit you have to submit the application to extend.

JW So if we went with 25 years, it wouldn't be a matter of submitting request at year 21.

BE Right.

TB Would there be anything that would preclude sending in a renewal at year 20?

- TA No.
- BE It's just an analysis of how things are going, what you want to change, etc. If things are going well, the renewal is pretty straightforward.
- TB So if we see that there's something that's not going well, we could address it well in advance.
- BE Right. And adaptive management would deal with issues, too, without having to renew the permit early.
- TB I think there's some wisdom in picking a moderate term. When I think about the science that's needed, that's a good fit. With costs, there has to be a certain amount of time before you can know if the benefits are paying off, and I've just received comfort with the adaptive management discussion. I also think there are some biological monitoring reasons for choosing a moderate term. Also, we've gotten some signals from our federal partners to go this way.
- MB If we agreed to a 25 year term and things aren't going well, could the term be shortened?
- BE You can withdraw your permit.
- TP I am comfortable with 25 years as well.
- BW I was trying to imagine how the term of the permit might affect the implementation of the plan. If we're concerned with take that may occur after a 30 year storm event, is that something that could be considered? Or if the mitigation project that we want to extend for 50 years, can we embark on long term mitigation strategy even though term is less?
- TA Mitigation will need to be provided in perpetuity. So if there's land acquired, it will need to be in easement forever. The other things we need to work out, they should be ongoing as well.
- JW For the 30 year storm issue, the 30 years is from the day the line was established, right?
- GC The 30 year erosion projection is not based on a 30 year storm event. And the lines are defined on some kind of interval. It is the historical erosion rates that are the basis for the 30 year erosion projection.
- JW If the Erosion Control Line was established 10 years ago, then it's really like a 20 year buffer.
- BW If a storm projection tells us there's a low probability of take, does that mean we're free of worrying about that take?

- BE On your question of mitigation, you're going to project the amount of take that will occur within the term of the ITP. And you're going to mitigate for that within the term of the permit. So for long term mitigation strategies, the Service will want to see the applicant commit to that within the term of the permit.
- KD The mitigation doesn't just go away when the permit expires.
- BW Even with management?
- LP We would assume that beach management plans remain in place.
- BE There would have to be a commitment in the plan in perpetuity.
- JW What recourse is there if compliance isn't met?
- KD In our particular case, the implementation of this plan is going to be through the issuance of CCCL permits. So a county comes to the CCCL program and wants to put in armoring, receives the permit. In the permit conditions, it states that you'll develop a management plan, and implement it in perpetuity. Even if the term of HCP itself expires, the fact that those conditions were enshrined in the permit.
- JW But when that permit expires...
- GC When you look at the mother statute, it's talking about imprudent construction.
- BM Is there implementation of mitigation on individual Control Line permits, or is there a different schedule of mitigation?
- BE And/or.
- MB I don't see how the first one could possibly work.
- BE The permittee for a CCCL permit would have difficulty in providing mitigation that's needed. A more likely scenario is that they pay a fee into a conservation fund that's used for this mitigation.
- BM So there's a mitigation program established, and the permittee shall contribute to the fund. So when you think about this and you look at the short term, the number of permits issued in these different areas will make it worthwhile? That's why I always thought 25 years made sense, otherwise all you're doing is going through the administrative process without any real data.
- BW I wouldn't argue against 25 years, but I do see some "social security" type problems. If you're going to rely on the current regulatory process to fund mitigation for take that occurred a long time ago.

- BE I think those are things that would be addressed at the time of renewal.
- BW We can't predict the future. We can only measure what's currently happening and mitigate for that.
- BL You can predict the future to some extent.
- TA Through the monitoring section in the HCP, it will help demonstrate that you're meeting that biological goal. If in year 15 we're showing that you're not meeting the biological goal, we can make adjustments through adaptive management. So there's ways you can set up the fund where it's a non-wasting fund. It's just a matter of requiring the proper amount of mitigation. Also we adjust it annually. So if land values change, we adjust the costs. So I think there are ways to build into the plan where you're not going to lose your mitigation equity.
- BM So mitigation requirements can be adjusted as well?
- TA If it's in adaptive management and is agreed upon between the Service and DEP.
- BE But the applicant can't come in unilaterally and say they want to reduce their mitigation.
- BM Without concurrence from the Service, is that what you mean?
- BE You agree to an amount of mitigation up front, and if you've got something in adaptive management that says you can change the mitigation, then its fine.
- GA Is there any reason why the working group recommended 25 over 30 years?
- KD There was a lot of discussion on that. Robbin wanted 30 years because of the correlation with the 30 year erosion projection. We went with 25 basically because the Service recommended a time frame, and if you guys wanted to recommend something else, you can, but we went with this because it's the generic midterm permit for many other HCPs. We also sort of started using 25 years for our studies.
- BM I would recommend not using 30 years because it could be misunderstood, because the 30 year erosion projection has a whole different intent.
- TA We went with that range also because the climate change data is pretty confident in that 25-30 year range.
- BE Other than the fact that there have been county HCPs for 25 years, 20 to 30 doesn't really make a difference.
- RT I was initially in favor of a short term, because I was concerned with things about agencies changing, but between 25 and 30 I don't really see a difference.

JW For the species I'm most concerned about, I don't feel the Volusia HCP is very effective. I like 25 because the further out we go, the more protective the mitigation will have to be. So it gives us a little more latitude to get some substantial mitigation and real conservation benefits.

TB I guess we need to have the Steering Committee make a motion and second.

JW I'll move we recommend a 25 year period.

TB Further discussion?

BM One thing that was helpful was the adaptive management discussion.

TB Motion to make sure we include an adaptive management component

Approved: 25 year term with robust adaptive management component.

KD Every meeting we've discussed this adaptive management. As we've discussed, HCPs are riddled with ways to deal with unforeseen circumstances, and we are a ways out from that in terms of plan development, but I have it stored now that this is something we need to continue discussing.

TB If I were the DEP Secretary I'd like to see a dichotomous key of opt-in, opt-out change points that would show why a certain path or trajectory was being recommended, and what would happen if you didn't choose that path.

KD I think that's a great idea. I definitely want to have more detailed discussions about how HCPs incorporate these different components.

TB Would we want to send these recommendations to the Secretary as we recommend or should we bundle them?

MB I would suggest bundling. I think these 3 recommendations are enough of a bundle to take forward in one briefing.

JW That dichotomous key would also be helpful in terms of interim Secretaries and bringing them up to speed.

MB I would say that Mimi is not very familiar with this.

161.052 Beaches

JS When this HCP was initiated, it was initiated for the CCCL program. As we got further into the project it became clear that CCCL activities are not the only activities that don't have a nexus with Federal law. This came up that there are some permits that perhaps should be included in the plan area. So we found that the majority of these permits are in

Monroe county (45 of 50) for beach cleaning (45%). At this point, the question is should we amend the original plan to include only CCCL beaches or should we include these .052 beaches? So our 2 options here are to either continue investigation of .052 beaches, or not. The working group wants to continue investigating .052 beaches because it retains a path for DEP to get protection for an ITP. The con is that it adds to the scope. The second option is to discontinue investigating. The con for this is DEP won't be protected from potential take on these beaches. It was brought up that another option could be to only include Monroe County.

- TB So if we were to recommend to continue to investigate...
- JS We'd just keep working on investigating these beaches.
- KD Essentially you'd be authorizing the working group to spend a little more time and money on analyzing this and the occurrence of the roseate tern on these beaches.
- JW It looks to me like we have concerns with turtle impacts on these beaches, and there's piping plovers there as well. Roseate tern, I'm not sure. Given that they really loaf, but have no demonstrated nesting, the advisory group may even find that the roseate tern doesn't warrant inclusion.
- BW From a turtle perspective, Monroe county has all the State's hawksbill nesting.
- TB Is there a nexus for Monroe county to do their own HCP?
- TA Yes, but it's highly unlikely they would.
- TB So if this working group does more work, it would inform the decision either way.
- BE Take is not only on the person doing the activity but the person permitting. If Monroe went in on their own HCP, would that get DEP off the hook for any take that occurs that they're permitting through .052?
- TA It depends. Typically in areas where we have an HCP, but there are other entities involved, generally as long as that entity is consistent with the terms and conditions of the plan, then they are in compliance with that plan. If they go outside of that, and take occurs, then I think they could be held liable, or DEP would tell them they have to get their own ITP.
- TB Is there a regulatory nexus there for the county in terms of an .052 permit....
- LP Is the parcel in Levy county critically eroded?
- JS Yes, all beaches on the list in the analysis are critically eroded.

- MB Time and money—is this drawing from the existing scope and budget or for the next grant cycle? What are we giving up by continuing to investigate?
- KD The last time that question was raised, my feeling was that this wouldn't create the need for us to apply for an additional year of funding.
- TB Is it going to be time intensive?
- KD I think we can knock out the Big Bend and Monroe county in practically no time at all, no more than a couple of months.
- GA It seems like we already have all we need to know. Big Bend, why do we include that? What more do we need to know in Monroe county? Why can't we direct you to just look at Monroe county?
- KD The reason we'd want to take a harder look is it would let us spend more time on looking at that species that we haven't really looked at.
- BE There is a certain economy of scale with these. To be as inclusive as possible is not a bad thing. The additional minimization and mitigation will be almost nil, and yet if take occurs in those areas, the Department will be covered.
- GA I was thinking of the public consternation side of this. I wonder if it's even worth going there.
- KD Diana isn't here, but that was the precise concern she raised at last meeting.
- BW Are .052 beaches only in the Big Bend and Monroe?
- JS Those are the only sandy beaches in counties that don't have a CCCL, and that are designated as critically eroded.
- JL Not flat shoals.
- JW You've got counties listed, but we'd like to know exactly where the little tiny pocket beaches that are largely recreational hot spots are located. What activities are conducted on beaches other than Monroe?
- JS There were a few for dune fill.
- JW What's turtle nesting like on those beaches?
- RT We don't have good data for those areas.
- BW We're often surprised at that, so I'd say if you build a big beach in the big bend, the turtles may start coming.

- BM Is the Department comfortable with projections of Big Bend being critically eroded?
- TB So we've had some debate.
- JW It sounds like the lion's share of the work would be just for Monroe county.
- GA I would like to not even address the Big Bend. I would move to just continue investigating in Monroe.
- JW I would respectfully disagree with that. As long as they're doing the work, why wouldn't we have them look at all of it?
- MB I still don't think the question of cost has been answered. Is the cost supported by the Service?
- TA Yes. We think it would be well worth the investment of time, effort and money.
- KD The year 4 grant is slated to begin in January, so we could draft a scope of work that includes this that doesn't affect the cost. I think the grant as currently written allows us the latitude to include this.
- TA Right, because the scope isn't that focused.
- BM Move to continue investigation and review previous versions of the 'critically eroded' report to see if these Big Bend beaches have always been listed.
- MB Amend it that this does not entail inclusion.
- TB The motion on the table is to let the working group look at all .052 beaches, historical data in the Big Bend and ensure that this doesn't bind us to including these beaches in the HCP. I think if there's some question, we need to answer it now. If we decide not to include 4 or 5 miles in the Big Bend, I'd want to be able to tell the Secretary why.
- BL I don't think public consternation should be the fact we're hanging on. I'd like to have scientific reasons to back that.
- MB I think the recommendation by the chair gives us that ability to make a more informed decision.
- TP I think what you've suggested sounds reasonable—more details on why or why not to include these.

Approved: Move forward with investigation of all 161.052 beaches.

At-risk species

BE We basically partitioned 13 species into 2 tiers. First tier (6 species) are listed at state level and four of them are on the federal radar. Second tier are defined as Species of Greatest Conservation Need under FWC's Legacy Initiative, and population data for a lot of these is very limited, so we really don't know a lot about their situation out there in the wild. None of these are state listed and do not appear to be on the federal radar.

ND Wilson's plover is actually one that is about to be proposed for federal listing, so it will shortly be on the federal radar screen.

BE What we want to do is look at decision factors that might allow you to make a decision as to whether or not we want to consider inclusion of these species. The main thing is you want to make sure you're covered for take should they become listed. On the other side of the spectrum, we want to try to prevent some of these species from going extinct, so by having them in the plan and having conservation measures for them, might preclude that. We need to consider, what's the likelihood that any of these will become listed over term of permit? What are the cost and time associated with collecting info that's needed to include these species in plan? Cost and time associated with having to make permit amendments should they become listed. Cost associated with additional minimization and mitigation measures. And likelihood of legislative authority.

With those things considered, we have 4 options:

- 1) Only deal with those currently listed at the federal level.
- 2) Develop an adaptive management strategy to entrain new candidate species at the time they're petitioned for listing at the federal level. It takes time to pull that information together, so at the time of petitioning, all that data is presented to the Service. So then we could amend the State's permit to include that species and hopefully during that process, the permit amendment comes in before the species becomes listed.
- 3) Allow the working group to explore the inclusion of tier 1 species. Go out and get specific information we need, do threats analysis and bring that back to the Steering Committee.
- 4) Allow the working group to explore inclusion of tier 1 and tier 2 species. One of the things we will necessarily include in the plan is the MBTA. We've come up with some likely minimization measures that will be in the plan that will likely trickle down to these species.

The other thing is to look at the ecology of these shorebird species that only winter here. Some others are year round, others nest here. So just protecting the piping plover and red knot, which only winter here, won't protect other species.

The working group recommends option 3 to continue to explore inclusion of tier 1 species. We feel that in monitoring those species, there will be trickle down effects for tier 2 species.

JW Remember that SGCN will be changing with the rewrite of the State Wildlife Action Plans. Just be aware of that. The other thing is, can anyone go over the new imperiled

species rule and what likelihood there is for incidental take permitting? I feel there will be new regulation of these species that applicants have not had to do before.

TB I don't want to tell you we're going to discount that, nor do I want to tell you we're going to do it.

JW I just know in the stakeholder process, there were discussion of ITPs.

ND I see on a daily basis the conflict between CCCL activities and some of these species. I think you're correct that when we get serious about laying out conservation needs for these species, those are going to have to be addressed. There is a great momentum right now from the public, so I think, as you stated, we've been able to not address an issue that I don't think we'll be able to continue not addressing.

KD I think it could go both ways—one of the issues the Steering Committee will be considering is how much time and effort gets expended on the HCP process. Now that the new listing process has been approved, there are a couple of realities. Our current state list is going to get re-evaluated. All of the species will have their status reviewed, and then after that, people will be able to petition to have species put on our state list. So our state listed species list is probably not going to stay like that for long. If we're looking at a whole suite of shorebirds that will get management plans made for them anyways, it might well be that it doesn't greatly increase our time and cost to piggyback on those reviews. If we can develop minimization and mitigation suggestions that can be incorporated into state management plans...to my mind, that's further justification to be broader and inclusive in our approach right now.

BE Something that's come up before, is that even if you have a list of 12 bird species, that doesn't mean you're going to have 12 sets of minimization and mitigation measures. The key element is that it'll take time to do species accounts and threats analyses.

JW But that's something that will be done anyway as a part of state listing review.

TB I'm not sure a threat assessment is a part of that biological review. I think in the context of what we're doing with this HCP, the threats relative to CCCL activities are what's really important, so I'm not sure it's a one to one comparison.

KC It took a considerable amount of time to pull together data for the piping plover. There's a lot involved in looking for good quality information.

BE We'd be taking each species and looking at their distribution within the plan area. I don't know if that information would be in the biological reviews.

ND There will be occurrence data, and I think the data will be readily available and minable. Also, I'm concerned about backlash with regard to sandy beaches. I think there's a risk in not including them.

- JW So you're just asking for permission to proceed with investigation?
- KD Correct, and we're recommending just the tier 1 species. Two caveats I want to make though—time and money. Since the working group vote has passed, I hope you all will weigh the possibility for the state list to change. And keep in mind that you don't have to go with these exact 6 species. You can pick and choose.
- BE As with .052, there's economy in scale.
- JW Can someone tell us what the CCCL impacts are to gopher tortoises (GTs) that aren't accommodated under the GT management plan?
- KD Anybody who impacts GTs in state has to go through the GT process. That doesn't change the fact that those who get CCCL permits in GT habitat may impact GTs. So what would happen with the GT is that in order to cover it, we would reference the state plan.
- TB The other thing is it's petitioned for listing.
- TA The one advantage for having the GT in there is should it become listed, there will be a mechanism in the HCP that would mean its automatic, you wouldn't have to go back and amend the HCP.
- GA If Wilson's plover about to be petitioned, why isn't it in tier 1?
- KD We only found out 2 weeks ago.
- ND We really lack information about population numbers. We didn't include it in tier one because it's not state listed, and it was only recently that we found out that data are becoming available that may put it on the federal radar.
- TB I have a question for the Scientific Committee, are you comfortable with tier 1?
- ND With Wilson's plover floating out there, we're comfortable with tier 1.
- GA There is a cascading effect that will allow you to capture other species through protecting some. But I think it's something to think about broadening the HCP v. capturing things through adaptive management. I just want to express that caution, that if the first tier allows us to capture the second tier, I think that's a very valuable thing to listen to.
- JW I think a sellable point to the public is that this is a one stop shop. The regulatory streamlining will be very appealing to legislators. Also, I agree there will be umbrella benefits for those tier 2 species. You may not get all species under the umbrella, but most. In the event that we do get all other species under the umbrella, I think you should list it by name, so that you have that protection.

- BM Is there protection to first tier species under the umbrella of the 12 listed species?
- JW No, because the two birds are wintering species, and other birds are nesters or year round.
- BE The Santa Rosa beach mouse is on there because it's on the federal radar for potential for listing.
- JW Seasonality of birds—if we don't consider these, then minimization for those 2 listed birds would shift activities outside of wintering months, so we'd be putting applicants in the path for potential take of the other species.
- ND In three months the homework for the biological species reviews will be done and you'll have that data and have a better idea of which species will be on the state list.
- GA Bob, As you move forward with the HCP you have to develop estimates of take and methods to minimize and mitigate that take. As we add more species, do you have a cascading effect with minimization and mitigation as well?
- BE Certainly minimization measures. Mitigation is a little more problematic. We need to look into the impact analysis. Again, there's an economy of scale there too. If you're inclusive for all shorebird species there's going to be less pain than if you had to do an ITP for each one. Estimation of take is species by species, but mitigation could be collective.
- KD When it comes to take estimation, once we figure it out, it will be more or less formulaic.
- GA For marine turtles, it's pretty straightforward. For birds, there's a whole suite of activities they're doing on the beach.
- KD I'd imagine there'd be take of nesting habitat, take of foraging—so it's by activity, not species.
- ND And they, like their habitat, are very dynamic. This year's occurrence data may not be the same for next year.
- GA Are there any other HCPs for birds on the beach?
- BE Piping plover.
- KD Keep in mind that there the MBTA measures.
- BE There's nobody in this room or in the Service that's completely got their arms around this thing. These good questions you're asking don't really have a definitive answer at this point.

- GA I guess I was wondering how much more will it cost and how much more time per bird? I know you probably can't answer that one either.
- BE I'm very encouraged by what's transpired here today because the state is pulling together a lot of this information for us, so that'll cut down a lot for us. I don't think it's as onerous a task as I originally thought it could be.
- TA If you don't include those species and you amend the permit, you have to apply additional mitigation. Whereas if you include those species and you're already doing mitigation, you can count that.
- BE As we learned recently, you can develop mitigation, but it doesn't have to be implemented until that species is listed at the federal level.
- GA But realistically, it'll say you have to do that, but you don't. Only if you want to be covered. I'm trying to underscore we need to pay attention to cascading effects as much as possible.
- BW It sounds like Gary is saying that we consider this list strategically. So that we select guilds in this list so that we're sure there will be cascading effects.
- KD That's pretty much what we tried to do. I remain confident in this list from both of those angles.
- ND I need to point out that there's this list of terns, they all nest together in places that aren't necessarily captured in the tier 1 list, but those birds really gravitate to offshore islands, dredge spoils, etc. It's more like Julie's scenario where we'll capture some of them under the umbrella, but not all. There could be times when they could come into the plan area, but it's not often.
- TB That's just part of the risk assessment.
- JW I just wanted to add that while we can compare species with similar life histories, we also have to look at geographic distribution. I would hope that those would be the kinds of things that if we're asking staff to continue investigating, they would look into.
- BW When we were discussing .052 beaches, we talked about roseate terns, but that species isn't on the list.
- KD Because as of right now, they're not in the plan area. I think that now that we're going to investigate .052 beaches, we'll do a preliminary investigation into them.
- BE If the Steering Committee directs us to include .052 beaches and we determine that the roseate tern will be impacted, it'll automatically be included because its federally listed.

- TP I was looking at option 3 as the best option from the beginning. My overall opinion is what it really comes down to is putting DEP in the best position they can be in.
- BE One thing that's vague in my mind is that the discussion of the Wilson's plover and does that warrant inclusion in tier 1?
- JW I think we should add it.
- TA And remember that just because it's being petitioned, doesn't mean it'll make it to candidate status.
- JW I'll move that we accept option 3, plus Wilson's plover.
- BM Nancy, did you say this first tier could change in November?
- ND It won't change in November, but we'll have more information that will let us know if they'll be staying or leaving the list.
- TB The list will not change until the management plans are done—in about 2 years.
- JW My opinion is to go ahead and get the information.
- BM My only issue is to maintain the flexibility to stay in sync with what's going on with the state list.

Approved: Continue investigation of 6 tier 1 species and Wilson's plover.

- KD Thank you very much for your input and thoughtful consideration of these items. Now that some of these major decisions have been made, we obviously need to take them to the Secretary. I don't foresee, at least in the next several months, any issues that will require Steering Committee debate or decision making, but I think it's important for you to stay on top of this. We will be sending out a survey to get your schedules for coming year.

Meeting adjourned 2:00pm