

TWG: ESA

Meeting: #5 **Date:** Oct. 30, 2018 **Time:** 1-3 p.m.

Attendees (Conference call participants):

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|---|---|
| <input checked="" type="checkbox"/> Robert Anderson, Fennemore Craig | <input checked="" type="checkbox"/> Keith Knutson, Arizona Game and Fish Department |
| <input type="checkbox"/> Matthew Camba, Woodplc | <input checked="" type="checkbox"/> Carrie Marr, U.S. Fish and Wildlife Service |
| <input type="checkbox"/> Clay Crowder, Arizona Game and Fish Department | <input checked="" type="checkbox"/> Jennifer Martin, Sierra Club |
| <input checked="" type="checkbox"/> Rafael de Grenade, HILGARTWILSON, LLC | <input checked="" type="checkbox"/> Jenny Neeley, Pima County Office of Sustainability & Conservation |
| <input checked="" type="checkbox"/> Nichole Engelmann, U.S. Fish and Wildlife Service | <input checked="" type="checkbox"/> Kris Randall, U.S. Fish and Wildlife Service |
| <input checked="" type="checkbox"/> Terrence Enk, Freeport-McMoRan Inc. | <input checked="" type="checkbox"/> Laura Stewart, ACS (Archaeological Consulting Services, Ltd.) |
| <input type="checkbox"/> Heather Finden, City of Phoenix Water Services Division | <input checked="" type="checkbox"/> Jim Tress, WestLand Resources, Inc. |
| <input type="checkbox"/> Jill Himes, Himes Consulting, LLC | <input checked="" type="checkbox"/> Russell Waldron, SWCA Environmental Consultants |
| <input checked="" type="checkbox"/> Mark Horlings, Maricopa Audubon Society | |
| <input type="checkbox"/> Nancy Johannesmeyer, ASARCO | |

Staff Support:

- Heidi Welborn, ADEQ Kelly Cairo, GCI

Discussion Items:

General discussion

- Carrie discussed having EPA call in for a future meeting and asked members to prepare a list of questions.
 - Is an off-ramp considered partial assumption, have a perspective on this?
 - Addressing incidental take, does region 9 have an opinion?
 - What is EPA viewpoint on Florida's potential program.
- Carrie would like additional TWG review of Corps data.
- Three meetings remain prior to the Dec. 20 deadline for the white paper.
- Group agreed level of detail shown in Terry's flow chart is appropriate (can be found in References/Presentations).
- For those not updating in Google Docs, Carrie would TWG members to download the document, edit, save with date and initials, and upload to site.

Current State Document

- Carrie and Russell reviewed the document. Carrie noted agreed upon changes to the document, with highlights included below.
 - Include a section title which explains what is contained in each section of the paper to help guide the reader.
 - Discuss Corps determination of the scope of analysis
- Carrie reviewed Jill's lists of benefits and problems with the current state.
 - Jenny added suggested language to the live document.

Drawbacks

- Supposed to be about federal obligations – costs and problems end up getting transferred to the private sector; incentives in current process to regulate more.
- Think there will be a variety of perspectives on what we don't like about the current process.
 - Agreed to add caveats to the problems and benefits sections regarding varying perspectives – from the regulated community, industry, environmental organizations.
 - Also need to capture this distinction in the paper as a whole.
- Scope of analysis can be too small and leave applicants open to liability.
- Complicated, time-consuming nature of the project.
- Agreed that the point of the paper is to provide broad understanding of the issues and potential problems, regardless of whether there are solutions to these problems.
- The current state is not static as the endangered species list changes. Process remains the same, but there are different triggers.
- Next meeting: continue work on benefits/problems of the current state.
- Heidi asked the group to consider current resources, such as staff expertise, in the current state. Need to know the increased staffing that NJ and MI have experienced. What is the total cost for 1st year, 2nd year, and so on.

Florida Documents

- Florida documents don't really address ESA issues.
- Approximately 15% of their permits include ESA. Merits further attention as Florida continues to determine how to address these issues.
- Florida/FWS MOA is expected to address many ESA issues, but is not yet available for review.
- Action item: Heidi to check with FL on anticipated timing.
- Action item: Kelly to distribute FL docs from Carrie to TWG and post on Google Docs. (Done)

Texas HCPs

- Kris discussed Texas HCPs with Tanya Sommer of the Austin USFWS Ecological Services
- Kris reviewed and distributed Habitat Conservation Plan discussion notes and an HCP diagram (found at the end of the memo posted 10-30).
- Always a NEPA process, usually conducted by the applicant to save time.
- Most likely two years for amassing documents.
- Action item: Russell got the perspective of the Austin SWCA Office.
 - At least two years from start to finish.
 - 3-5 years if state holds permits.
 - If there is a low level of potential for effect, there is a streamlined HCP process; however, FWS region 2 does not allow for this option.
- May need coordination with fees group regarding staffing needs, use of non-Corps staff persons in current process in relation to EA and ESA work.

HCPs in the Future State

- Timeframe considerations should be acknowledged from the applicant's point of view, such as pre-work or lead time work that occurs prior to starting the timeframe clock. Should explain what is and is not included when we talk about timeframes. Acknowledge the difference between statutory timeframes and applicants' timeframes.
 - Could a timeframe be worked into an ADEQ/FWS MOA?
 - How will this apply to section 10?
 - Jeopardy standard applies to every permit issued and is embedded in 404(B)(1) guidelines. This is why in a future state, the permittee needs to receive the determination from ADEQ.
 - Off-ramps to a federal permit should include an early assessment. A future discussion should include: Is an off-ramp acceptable if the state assumes the program? Would like to know if Florida is considering this issue. This also is an EPA question.
 - Wetlands adjacent to federal coastal waters may explain why some of these issues are more complicated in Florida.
 - Believe New Jersey MOA forces a move to Section 10.
- Action item: Kris to contact NJ FWS, perhaps participate in phone conference regarding HCPs.

Ideal Process, Gaps & Closure Options

- Carrie reviewed this document (available under Google Docs/Draft Documents).
- Jim, noted that this process should be considered from multiple perspectives such as NGOs, agencies, legal, regulated community.
- Assignment/next meeting: Continue to edit ideal process, gaps & closure options prior to and at the next meeting. Carrie will merge the white paper template and Russell's current state paper to begin the draft deliverable.
- Action item: Kelly to email current version of these documents to TWG. (Done)

Next Meeting Agenda (Tues., Nov. 13, 1-3 p.m. at BLM)

- Continue work on benefits/problems of the current state
- Continue work on ideal state
- Continue to edit ideal process, gaps & closure options
- White paper template outline; reassess use of subgroups/white paper progress
- Other considerations: Limited HCP is there a way to see which species would be addressed?
- Review updates to Corps information provided by Carrie

Action Items:

- (10/30) All to comment on pros and cons for 1) current state, 2) future state (i.e., Ideal Process, Gaps, and Closure Options) the third bullet was the same as this one, so I deleted it
- (10/30) Heidi to check with FL on anticipated timing.

- (10/30) Carrie will merge the white paper template and Russell's current state paper to begin the draft deliverable.
- (10/30) Kris to contact NJ FWS, perhaps participate in phone conference regarding HCPs. (Postponed to 11/27 meeting.)

Potential Future Discussion:

- (9/18) NJ program looking at the state regulations to define habitat areas that trigger additional review – may be an important consideration, also in triggering incidental take on section 10. Is there a parallel with the Corps that could be used in Arizona?
- (9/18) New Jersey's wetland protection program classifies wetlands and sets buffers around certain wetlands – intermediate 50 ft and exceptional has a 150 ft buffer.
- (9/18) Necessity of T&E statutes is a question: May be incumbent upon ESA TWG to make this recommendation, which would be consistent with the process. The statutes helped convince EPA that (other) states could assume the program in light of the 404(B)(1) requirements.
- (10/16) Section 10 options. Considerations include: Could streamline these options. Individual applicants get their own HCP. Could provide an option that if a take is a possibility, the permit undergoes a section 10 process. How does section 7 analysis relate to these issues?
- (10/30) Is an off-ramp acceptable if the state assumes the program? Would like to know if Florida is considering this issue. This also is an EPA question.