



**TWG:** ESA

**Meeting:** #6      **Date:** Nov. 13, 2018      **Time:** 1-3 p.m.

**Attendees (Conference call participants):**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Robert Anderson, Fennemore Craig                               | <input type="checkbox"/> Keith Knutson, Arizona Game and Fish Department   |
| <input checked="" type="checkbox"/> <i>Matthew Camba, Wood plc</i>                                 | <input checked="" type="checkbox"/> Carrie Marr, U.S. Fish and Wildlife Service                                  |
| <input checked="" type="checkbox"/> <i>Clay Crowder, Arizona Game and Fish Department</i>          | <input checked="" type="checkbox"/> <i>Jennifer Martin, Sierra Club</i>  |
| <input checked="" type="checkbox"/> <i>Rafael de Grenade, HILGARTWILSON, LLC</i>                   | <input checked="" type="checkbox"/> <i>Jenny Neeley, Pima County Office of Sustainability &amp; Conservation</i> |
| <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 type="checkbox"/> Laura Stewart, ACS (Archaeological Consulting Services, Ltd.)                           |
| <input checked="" type="checkbox"/> <i>Heather Finden, City of Phoenix Water Services Division</i> | <input checked="" type="checkbox"/> Jim Tress, WestLand Resources, Inc.  |
| <input checked="" type="checkbox"/> Jill Himes, Himes Consulting, LLC                              | <input 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:**

Action Items from Last Meeting

- Heidi reported on her conversion regarding Florida DEQ and EPA. She said that they are trying to work through the off-ramp process with EPA and F&WS, but haven't fully fleshed out the ESA information. Species/critical habitat may need to be present to be applicable, but again, the details aren't fully fleshed out.
- Action item: Kelly to post Florida documents to all TWGs. (done)
- Florida was ready to propose state assumption, but was delayed due to the hurricane. They may propose assumption on December 5. This is when EPA will meet to reopen the assumption regulations. The meeting will be a pre-rulemaking meeting to gather information. Florida has proposed rules and is roughly one year further along than Arizona in this process.
- Carrie reported on questions sent to EPA. Liz Goldman, EPA, said they would have to check with their legal staff before responding. Heidi believes it is unlikely that EPA will have a response to these questions prior to the TWG due dates.
- Carrie sent her recommendation to the Fees TWG to include funding a full-time FTE to handle Section 10s. A dedicated staff person can help avoid slow-downs associated with Section 10. This person could also function as a subject matter expert, and may have other duties.
  - Action item: Carrie to write up this suggestion as a recommendation.
- Carrie reported that the Michigan DEQ biologists needed additional training and close coordination with FWS for 2-3 years to work at a level consistent with that of the FWS.
- The total number of permits with ESA issues is 2 percent.



# MEETING SUMMARY

## Document Process

- Heather agreed to edit the final document.
- Authors will have one week to draft sections of the document (due COB 11/20). TWG members will have one week to review the document (until meeting on 11/27). TWG members should add “suggestions.”
- At the meeting, we will go through each section and review the comments and suggestions. The goal is for the group to agree on the text by the end of the meeting\*. The document then goes back to the author to make the changes. Authors will send text to Heather for the final report.
- \*If we do not reach consensus, the minority can write up their position to be included in the final report.
- The minority opinions are noted in Section VIII.
  - Kelly recommended including a note in appropriate sections regarding seeing minority opinions elsewhere in the document to make sure they don’t get lost. Jennifer recommended including minority opinion information along with text. A hybrid approach may be used so that information is presented to the reader in a way that makes sense.
- Benefits and problems of the current state will have differing opinions.
- The group agreed to provide the three options for future options.
  - There was discussion regarding explaining that a majority agreed to “x,” a substantial minority agreed to “y,” and others preferred “z.”
- Carrie included notes on the live document. Highlights included:
  - Agreed to refer to “Section 7 light” as a Screening Impact Assessment (SIA).
  - Future program needs an option for SIA without an off-ramp, and SIA with an off-ramp.
  - There was concern about incidental take occurring even after a permit is approved at the state level, because there is not a federal-level review. ADEQ would make the jeopardy call, but EPA can object to that call and pull the permit back. While there is no obligation for ADEQ to follow an FWS opinion, the group agreed it would be foolish not to do so.

## Assignments

### White paper outline (assignment)

- Introduction – ESA Overview and Summary of Research
  - Research from other states (Mark)
    - Include note about Oregon research, which options were dismissed and why
    - Considerations: what must occur related to ESA
  - Vision and goals (Kris and Matt)
  - Species protection/incidental take (Jim and Russell)
- Current State – Benefits/Challenges (Russell)
- Future Options/Recommended Future Program
  - Intro: (Ideal Process – Section 7)

- i. This will be replaced with an explanation of why there is not an ideal state, rather a recommended future state.
  - ii. Screening Impact Analysis (SIA) (FWS)
    - 1. – Benefits/Challenges
  - iii. Early off-ramp (Terry)
  - iv. Statewide HCP– Benefits/Challenges (Jim, Jenny Neely)
  - v. Project-specific HCP– Benefits/Challenges (Jim, Jenny Neely)
- Gaps between Current State and Future (1)
  - Who administers the screening?
- Gap Closure Options (1)
- Other Considerations
  - Scope of Analysis
  - EPA vs Corps Oversight
- Minority Opinions
- Implementation (2)
  - vi. Agreements/MOAs, NJ and MI examples
  - vii. State Authority
  - viii. Permitting Programs
  - ix. Tools (IPaC and HDMS, staffing) (Nichole, Clay)
- Minority opinions (may be included throughout document)
- Other Committee Recommendations
- References
- Appendices

**Next meeting: Nov. 27, noon-3 p.m.**

- The TWG agreed to extend the meeting with a noon start time, and may bring lunch
- An additional meeting will be held from noon-3 p.m. on December 4 at BLM.
- Review/consensus on future options Document
- Action item: Kelly to add meeting times/dates to calendars. (done)

**Action Items:**

- (10/30) Kris to contact NJ FWS, perhaps participate in phone conference regarding HCPs. (Postponed to 11/27 meeting.)
- (11/14) Carrie to write up recommendation on funding a full-time FTE to handle Section 10s.

**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.

### **Assignments and Due Dates**

- 11/13-20: Topic Authors complete first draft
- 11/21-26: All TWG members review documents using suggestions in Google docs
- 11/27, noon-3 p.m.: Meeting, consensus on topics
- 11/27- 12/4: Topic back to author(s) to finalize; write minority opinion(s)
- 12/4, noon-3 p.m.: Final topic sections to Heather, reserved for extra meeting date, as needed
- 12/11, 1-3 p.m.: Final meeting