



# What is an HCP?

## IPAA Strategic Planning Conference

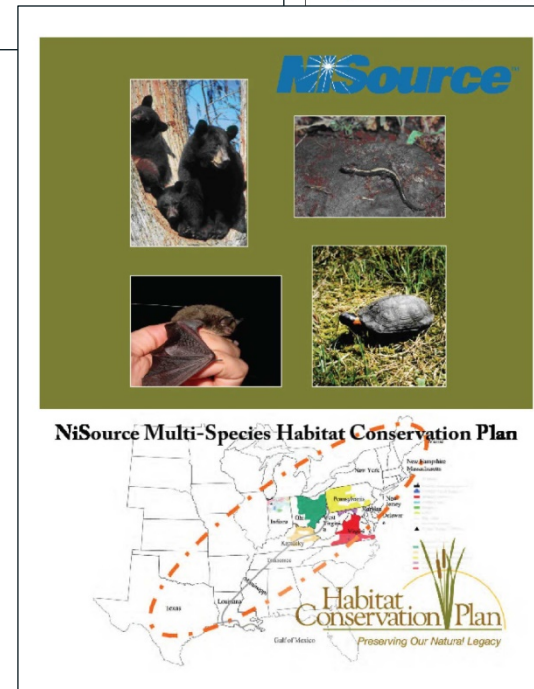
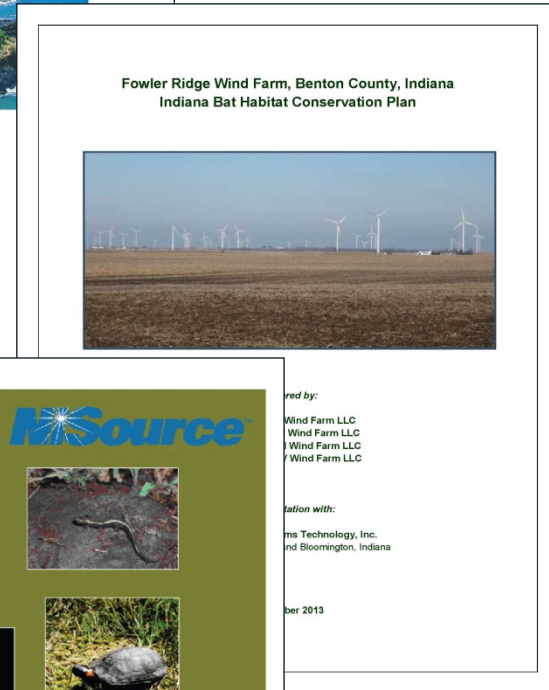
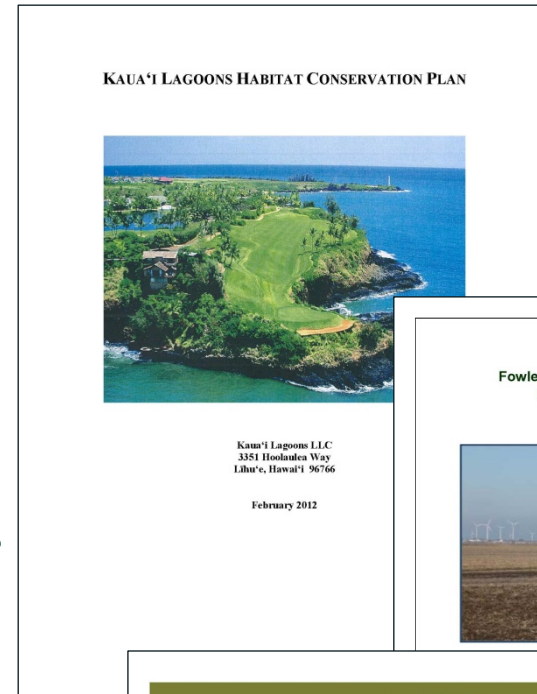
**David Young**  
**COO & Senior Wildlife Biologist**  
**WEST, Inc.**

February 14, 2017

# What is an HCP?

## □ HCP 101

- ESA Section 10
- What does the process look like?
- HCP structures and types
- Elements of an HCP
- Emerging issues
- Tips for generating success



# Endangered Species Act

## □ Section 10 – Exceptions

- Subsection (a): Permits
  - 10(a)(1)(A) – *Scientific Research Permits*; “...to enhance the propagation or survival of the affected species...”;
  - 10(a)(1)(B) – *Incidental Take Permits*; “...any taking...if such taking is incidental to, and the not the purpose of, ...an otherwise lawful activity.”

### ENDANGERED SPECIES ACT OF 1973

As Amended through the  
100th Congress



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reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 3, 1960 (16 U.S.C. 666cc-1(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

#### EXCEPTIONS

SEC. 10. (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met; and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

Wildlife Service  
Department of the Interior  
D.C. 20240

# Endangered Species Act

## □ Incidental Take Permits

- ESA compliance for non-federal entities.
- Applicant driven voluntary process; however, FWS maintains regulatory authority if projects take listed species and do not have incidental take coverage.
- Act of issuing an ITP is a federal action.
  - FWS must comply with National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and other federal laws.



# Endangered Species Act

## □ Incidental Take Permits

- Primary responsibility of an ITP Applicant under Section 10(a)(1)(B) is developing a **Habitat Conservation Plan**.
- Mandatory Elements of an HCP:

Endangered Species Act [Section 10(a)(2)(A)], "...the applicant... submits to the Secretary a conservation plan that specifies - "

- (i) the impact which will likely result from such taking;
- (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
- (iii) .... others



# Endangered Species Act

## □ Incidental Take Permits

- Applicant must meet issuance criteria before an ITP will be issued.
- Issuance Criteria:

Endangered Species Act [Section 10(a)(2)(B)], "...the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that - "

- (i) the taking will be incidental;
- (ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- (iii) .... others



# Endangered Species Act

## □ Incidental Take Permits

- “No Surprises” policy - provides the applicant with long term regulatory certainty and efficiencies.
- In the face of unforeseen circumstances, the FWS will not require additional mitigation from any permittee who is implementing an approved HCP.
- Once issuance criteria have been met: “...the Secretary shall issue the permit.”



# HCP Process

- ❑ Developing an HCP is a process.
- ❑ Applicant decisions
  - consider risk
  - other permitting processes
  - public scrutiny
  - corporate goals
- ❑ Applicant driven process but takes a team
  - Project proponent
  - Technical expertise
  - Legal counsel
  - USFWS Technical assistance





# HCP Process

## Types of HCPs and Structures

- No two HCPs are created equal
- Tailored to specifics of any given project
- Single project single species to multiple projects multiple species multiple states
- Structures vary
  - Master Permittee
  - Co-permittee
  - Template HCPs

Town of Orleans Over-Sand Vehicle Access  
Habitat Conservation Plan

Applicant:  
Town of Orleans  
Board of Selectman  
19 School Road  
Orleans, MA 02553  
Telephone (508) 240-3755 - Fax (508) 240-3388  
[www.town.orleans.ma.us](http://www.town.orleans.ma.us)

February 2015

PHOENIX VI & VII  
CONSERVATION PLAN FOR THE  
ALABAMA BEACH MOUSE

NOVEMBER 1995

Prepared for Brett Real Estate, Robinson Development Company, Inc.  
Orange Beach, Alabama 36561

Prepared by Wendell Neal, Consulting Biologist  
Jackson, Mississippi

**Midwest Wind Energy**  
MULTI-SPECIES HABITAT CONSERVATION PLAN

**Public Review Draft**

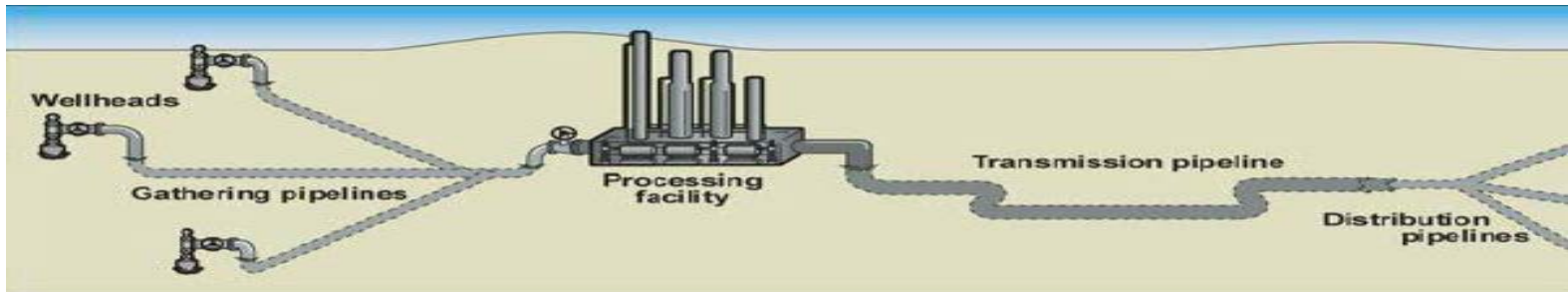
U.S. Fish and Wildlife Service  
Midwest Region  
in collaboration with the States of  
Iowa, Illinois, Indiana, Michigan,  
Minnesota, Missouri, and Wisconsin  
and the American Wind Energy  
Association

April 2016

# HCP Process

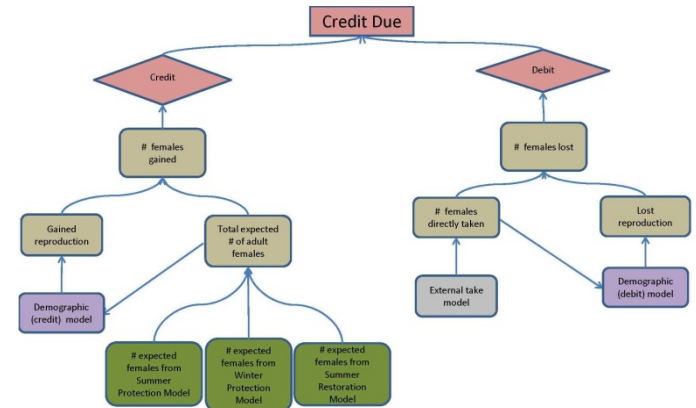
## □ Programmatic HCPs

- Process by which an entity or group apply for an ITP for a “program” or multiple similar projects/actions.
- Objective is streamlining the compliance and permitting process for repeated similar actions.
- Structure of the HCP may vary to fit the needs of the group – e.g., Comprehensive HCP versus Template HCP.



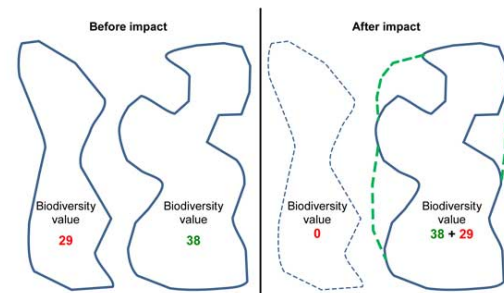
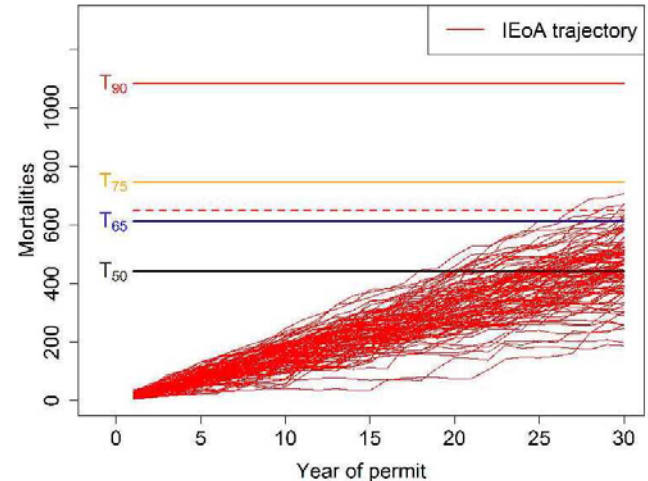
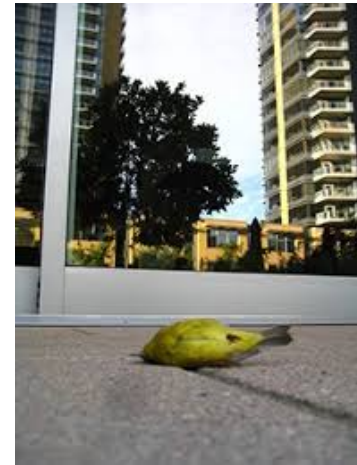
# Elements of an HCP

- ESA Section 10(a)(2)(A): a conservation plan submitted in support of an ITP application must detail:
  - i. the impacts which will likely result from such taking;
  - ii. what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;
  - iii. what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and,
  - iv. other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.



# Elements of an HCP

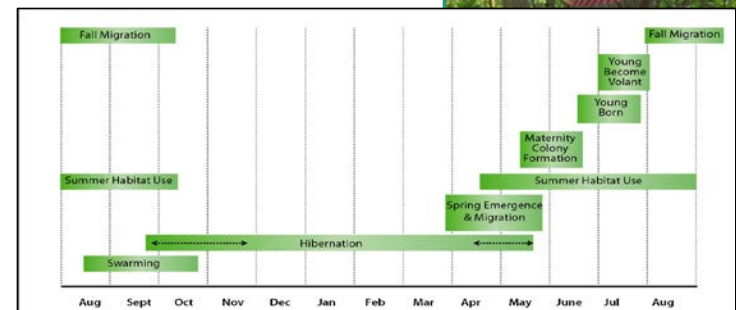
- Section 10(a)(2)(B): If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that -
    - i. the taking will be incidental;
    - ii. the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
    - iii. the applicant will ensure that adequate funding for the plan will be provided;
    - iv. the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and
    - v. the measures, if any, that the Secretary may require as being necessary or appropriate for purposes of the plan, will be met.
- the Secretary shall issue the permit.



# Elements of an HCP

## □ At the heart of it all: Avoidance, Minimization, and Mitigation

- Avoidance measures:
  - Macro-siting considerations
    - e.g., site facility greater than XX distance from habitat
  - Micro-siting considerations
    - e.g., avoid occupied habitat, avoid forest patches
  - Timing consideration
    - e.g., habitat clearing when species is absent



# Elements of an HCP

## □ At the heart of it all: Avoidance, Minimization, and Mitigation

- Minimization measures:
  - Habitat Manipulation
    - e.g., location and number of storm water control ponds
  - Project operations
    - e.g., timing of maintenance activities
  - Project size
    - e.g., reducing right-of-way width



# Elements of an HCP

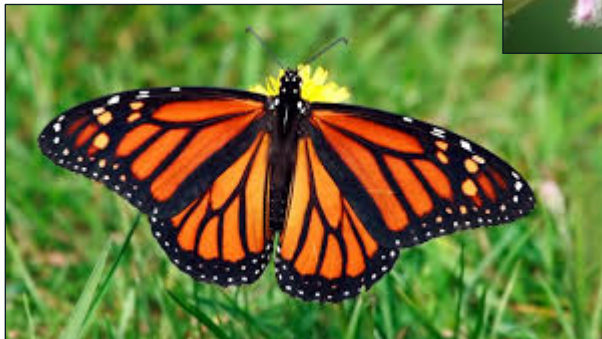
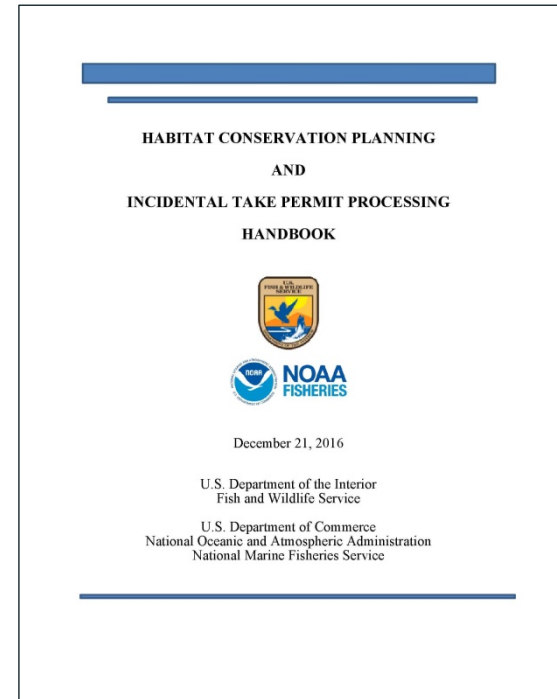
## □ At the heart of it all: Avoidance, Minimization, and Mitigation

- Mitigation measures:
  - Habitat Protection
    - e.g., conservation easements; habitat acquisitions; habitat banking
  - Habitat Management / Improvement / Restoration
    - e.g., grazing control, installing artificial roosts, fence removal
  - In lieu of contributions
    - e.g., funding third-party conservation measures



# HCP Process

- Emerging (or not so emerging) issues
  - New HCP Handbook
  - FWS driving the train
  - Potential new listings

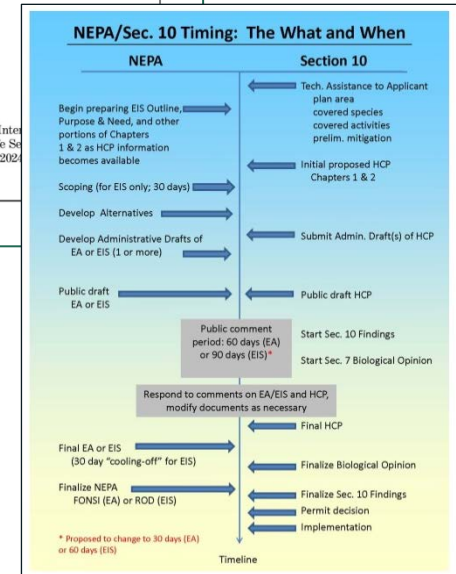
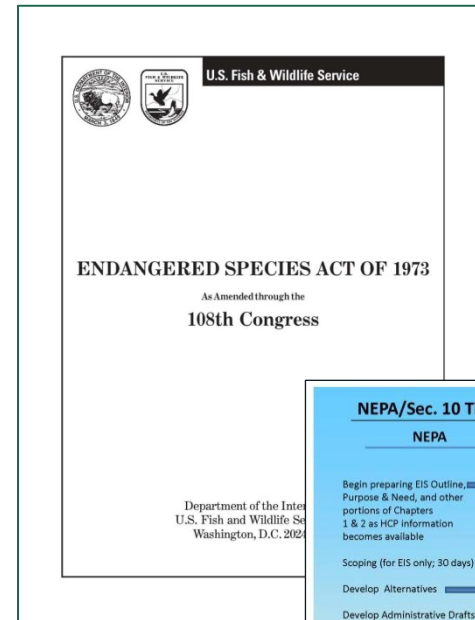




# HCP Process

## □ How to succeed?

- Know the playing field – law and guidance
- It is a negotiation – stand your ground but know your comfort zone
- Strongly encourage concurrent NEPA and HCP development
- Best available science
- Demonstrate meeting issuance criteria
  - Maximum extent practicable
  - fully offsetting impacts



# Thank You!



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Endangered Species Act Compliance

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