



From Proposal to Permit: Practical/Legal Considerations for HCPs

IPAA Strategic Planning Conference

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Starting off on the Right Foot

- Define expectations/needs
 - What species?
 - What area?
 - What duration?
 - What schedule?
 - What permit structure?
- Meet with FWS
 - Be open and direct
 - Explain positions and have legitimate rationale



Staying on Schedule

- Reimbursable Agreement with FWS
 - Dedicated staffing
- Fund NEPA contractor
 - Experience counts – circulate RFP
 - MOU
- Synchronize HCP and NEPA work
 - Plan for Solicitor's Office review
- Request & memorialize commitments
- Be proactive & responsive!
- Don't sweat the small stuff
- Drive the point home
- And yes, expect delays



Key Legal Issue – Covered Species

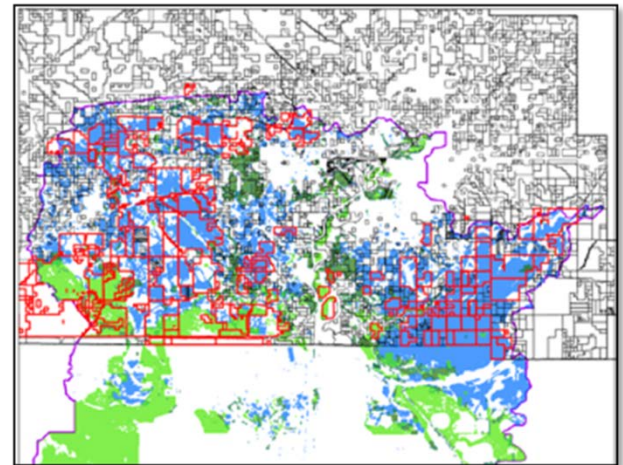
- Which Species Should You Cover?
 - FWS position: broader is better
 - Applicant position: maintain control over HCP
- What Does The Law Say?
 - ESA § 10: FWS may permit “any taking”
 - FWS regs: Identify “the species sought to be covered” 50 C.F.R. § 17.22(b)
 - HCP Handbook: Depends on who you ask



Key Legal Issue - Mitigation



- What does the ESA require?
 - Minimize & mitigate impacts of taking to max. extent practicable
- FWS will push for avoidance, conservation & recovery
- Reserve flexibility
 - Banking, in lieu fee, permittee responsible
 - Stacking for “like” species
 - Research??



Interacting with FWS

- Recognize FWS inexperience
- **KNOW** the law, the policy & the science
- Be tough but fair
- Information sharing protocol
- Memorialize decision points
- Document, document, document!
- Elevate only if necessary



Interacting with Consultants

- Value experience
- Define clear expectations
 - Detailed schedule
 - Detailed scope of work
 - Budget – reasonable assumptions
 - Minimize change orders
- Define roles – HCP vs. NEPA
 - Capitalize on expertise
 - Avoid overreach



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Thank You!



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