What is an HCP?

IPAA Strategic Planning Conference

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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 not the purpose of, an otherwise lawful activity.”
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.
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
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
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