

*These minutes have not yet been approved by the FBHCP Steering Committee, but will be reviewed at the quarterly Steering Committee meeting September 8, 2010.

Florida Beaches Habitat Conservation Plan
Steering Committee
Quarterly Meeting
Thursday, June 3, 2010
9:00am-3:30pm
FWC Bryant Building 272

In attendance

Steering Committee members: Mike Barnett (DEP), Brett Moore (Humiston & Moore Engineers), Gary Appelson (CCC), Barbara Lenczewski (DCA), Diana Ferguson (FL Assoc. of Counties), Julie Wraithmell (Audubon, via teleconference)

Others in attendance: Kat Diersen (FWC), Jackie Larson (FDEP), Gene Chalecki (FDEP), Lorna Patrick (USFWS), Bob Ernest (EAI), Kim Colstad (CT), Jimmy Sellers (CT), Kipp Frohlich (FWC), Robbin Trindell (FWC), Kelly Samek (FWC), Tom Ostertag (FWC), Sally Davenport (CT, via WebEx), Laura DiGruttolo (FWC, via WebEx)

Recorder: Rebecca Frick (FWC)

Minutes

MB Welcome everyone. The oil spill is looming very large on our minds and it has all of us rather distracted. I hope it doesn't get in the way of this meeting. We have a fairly full agenda today and because of the Bureau of Beaches' involvement in the oil spill activities, I'd like to conclude early today due to emergency permitting we're dealing with right now. Today will be more or less informational, we do not have a quorum, so we're not voting. I appreciate everyone's attention to the information that will be forthcoming.

Introductions

MB Because we cannot take any formal action on the minutes, I don't think we can approve them, but we could at least go over those documents.

KD About the agenda for today, Tim asked me to organize the agenda a little differently. He was interested in having staff report style updates. The next item is an introduction to the critical issues template. Bob will present the format that we will present issues to you in the future. After a break we'll get into items we brought up during the last Steering Committee (SC) meeting. First is the appropriate Incidental Take Permit (ITP) term limit. We've got an hour and 15 minutes for that. The next is the inclusion of at-risk

species. In the past this has been talked about as the CCAA. Then finally is the consideration of .052 beaches in the plan area. We've blocked in a lot of time, but we certainly don't have to use all of it. One item you don't see listed is any time to discuss the oil spill. As far as the spill and implications on this HCP we simply don't know yet. Are there any questions or concerns about this agenda?

MB We cannot approve minutes without a quorum.

BM I do like the structure of the agenda and the template that you've come up with.

KD If there are things we can do to organize or tweak these things, we are happy to accommodate.

Staff Report Update—Kat Diersen

KD Revisions to Protected Species Management Units (PSMUs). We have taken a look at these and have decided that the current designations are sufficient and they are going to remain for the time being. The sea turtle populations concern was revisited and it was determined that they are adequately laid out with the existing scheme. From what we've done on shorebirds we've looked at the piping plover and red knot, and it doesn't justify changing the PSMUs. The Migratory Bird Treaty Act (MBTA) could end up impacting PSMUs, but we lack sufficient data at this point to do so. The PSMUs are not set in stone, and they could be subject to revision throughout the process.

BE To refresh everyone's memory. The PSMUs are the smallest management segments of coastline that will be the basis for issuing permits. There are 12 or 13 throughout the state.

KD Legislative changes summary—The working group (WG) got the message loud and clear that the SC believes we need to move quickly on this to let legislators know what we're doing, what changes we may be asking. We had a pretty tough time with this. We looked at the issue hard and found two tasks. The first is develop a general primer on the HCP for legislators and aides. We can get this done in this grant cycle. It'll be about 4-8 pages and will describe the overall goals and objectives of the HCP. It will be written broadly in case it gets disseminated past the legislature. We hope to get this done by September, but no later than December. The second task is a detailed report outlining the need for legislative changes and some of the proposed changes. We looked at what sorts of information we need to outline probable changes, and we would need to know real impacts, mitigation measures, cost of implementation, impacts to stakeholders, etc. The reality is we don't know enough to provide the level of detail to legislators that you guys are wanting to see. We don't think it's wise to do that until we have all that information. We're aware of the need for this throughout the whole process. We're going to stay on top of that and develop the information as soon as it becomes available. Are there any questions or concerns?

- BM Is there a list of what statutes need to be considered for changes? An example would be the Control Line program. Statutory change may be very minor. Maybe we could start identifying which statutes will be affected.
- KD It's hard for me to imagine it would go outside of 161.
- BM I'm wondering if changes to .053 will be all that lengthy.
- BE One thing to consider is we kind of have to be cautious—it's a fine balance—we'll need statutes changed to implement the HCP, but we need to be cautious in moving this forward. We're not even sure the Department is going to go forward with the ITP. What stage do we need to get them thinking about that?
- MB I dare say not too early, because questions will come up that we cannot answer.
- BE That was the consensus of the WG.
- MB What about 379?
- RT I wouldn't envision changes to that.
- KF If we at least know the statutes that will be affected...
- GC In terms of plan area, are we capturing only .053 or also .052? Are we only going to cover endangered and threatened species or are we going to cover others? These things need to be figured out first.
- RT Aspects of mitigation could impact other sections of statute as well.
- BM I guess my suggestion is to start getting a grasp on what sections may be affected or need to be changed. If a change in one may affect another...
- BE I think that's something we can start to do.
- KD That might even be something we can include in our initial legislative introduction.**
- BE So basically we need to identify statutes that may be affected that will be necessary to implement the HCP.
- GA Just bringing this up shows the value of continuing this dialogue and not waiting until the last minute. It's a necessary ongoing discussion.
- KD At the end of the last meeting, Julie mentioned that a CCCL tutorial would be helpful. So we are prepared to present on that, but we'll wait until the rest of the SC members can be here. Other updates: Scientific Committee (ScC)—I wish I had more to report on this. The folks that are participating in the ScC are busy people. We are going to have a 2

tiered approach, with the top tier having a higher degree of involvement and the second tier will be more or less a resource library that are willing to be tapped on an as-needed basis. So the top tier has been identified and invited. All have agreed to participate. There are six members in the top tier—Robbin Trindell (FWC, marine turtles), Melissa Tucker (FWC, beach mice), Nancy Douglass (FWC, shorebirds), Tom Miller (FSU, Ecology), Hal Wanless (UM, geomorphology and climate change), Todd Walton (FSU, coastal engineering). They're all interested and excited, and their first meeting will be August 19. I'm in the process of giving them all initial briefings. The first tasks we'll give them is peer review of species accounts, expose them to the web based GIS viewer, develop a meaningful model for estimating real take of listed spp. Any questions?

GA How did you select this top tier?

KD It was really a round robin within the WG. Selecting the species experts was pretty straight forward. We had them within the agency. For the others we talked about what type of person we wanted—engineer, ecologist, etc—then found the people who fit that. We had some other folks that we considered and some weren't able to participate. As for the impact assessment, the initiation date is next month. Federal guidance on this process is that we have to use the best available data. In some cases, there's little or no data. We've decided to cover some of those data gaps.

JS In the Year 2 Implementation document, the take section identifies some information needed to establish a baseline and move forward with estimating take. For the CCCL program, we need to identify the structures, armoring, dune walkovers, beach cleaning, development of upland property. We've developed a scope of work to largely do a GIS study to use aerial interpretation, DEP permits and local records to outline all of those structures and activities so we know baseline conditions.

KF From what you described, it sounds like it's a quantification of existence of location and extent in terms of activities and structures. So it's not really an impact on species but here's the state of the state. It doesn't really speak to what those impacts are on listed species.

BE We'll be saying, for example, this is how a seawall can cause take, and that married to how many seawalls are out there. There's a complimentary assessment of how each structure and activity will impact species.

KD This will not be a retroactive permit. We have to have a starting point.

KF Does the law require, for example, beach cleaning impacts on shorebirds—is there a requirement of how well documented in the literature you have to show that beach cleaning reduced foraging and thus reduced prevalence of a species?

BE Again, it's best available information.

KF So you don't need to collect new information if that's proven in the literature.

- BE Right.
- KF I'm just trying to understand.
- BE You could have stakeholders that might find that's not an appropriate approach. We could say that this is causing take and we don't have documentation of that.
- BM So the starting point is more or less everything that's permitted.
- GC The baseline is not only what's permitted, but everything that's out there.
- JS Right, but we are using permits to help gather that data—structures that are buried, for example.
- GA I think that's great. I think it's essential to determining take.
- KD As we begin to develop these studies, we start to understand what information we need to go after and what individuals we need to bring in to help.
- BE One of the purposes of the ScC is peer review, and CT will give them the study to review.
- BM While you're looking at the Control Line Program and armoring, one thing that affects future armoring is the JCP program. If beaches are being re-nourished, a lot of times there's justification for putting in armoring.
- RT Another thing that could affect that is the variance process. If you're using existing rules to predict armoring in the future, there's a process that allows you to get a variance from those rules.
- BE I think we'd have to just look at the big picture to come up with best data.
- KD We'll have to identify the potential sideboards to this. At some point we'll have to limit it.
- RT You'd have to include an error analysis.
- KD Right. Other questions or comments? HCP grant—we are grant funded, we have to apply every year. We've been awarded a fourth year of funding. Year 4 will start January 1, 2011. This quarter we'll begin developing the application for year 5. In year 4, we'll undertake data gathering and analysis, finalize methodology for estimating take, initialize a minimization and mitigation plan (which will be a multi-year process), we'll knock out the alternatives analysis (which is a required part of the HCP process where we have to outline a suite of alternatives to the plan and make an argument for the route we're taking). We're planning to retain CT throughout with EAI. I also want to mention that the grant is the primary limiting factor in what we can and can't do. Major steps in planning the HCP are fairly well defined and in a certain order. The difficulty in this is

there's varied levels of stakeholder interest. We have an eye and ear to all of that but we want you to know that we're limited in what we can do in some of these things—order of process and funding. If the WG gives pushback on something you want to do, it's because we have to stick to our scope of work in a given grant cycle. Also, if you have items you think are a priority, we invite you to participate in the process of developing the year 5 grant.

BE It's not just how much money is in grant, its allocation of money and the inability to move it around.

KD Right. And we've had to do that before to move money around. And drafting those amendments creates a huge work stoppage because of the time it takes to process the amendment. Any questions or comments?

***update Gantt chart and send out to SC

Critical Issues Template—Bob Ernest

BE What we wanted to do was come up with a format where we could present issues to the SC that would be consistent and provide clarity on issues. There are a number of requisite components to the HCP. We're not going to come to the SC with everything. Issues presented to the SC are things that are somewhat discretionary and we need SC approval to move forward on. Some of these issues are: non-CCCL activities, non federally listed species and term of the ITP. These are things that will take some time to move up the line and give us direction to move forward on. Basically, the template has a title, who it was prepared by, draft version number. The objective frames the issue—why we're bringing it to you. Then we tell you what the issue is and provide a brief description of the issue. Then we provide background information—factors bearing on a decision. Then we lay out a series of options for the issue and pros and cons for each. Then we have a line that indicates whether or not it's been reviewed by ScC. Then we'll include a set of supporting information—lengthy analysis, things you've asked us to do or things we think are important for you to know in your deliberation of the matter. The effects matrix is a series of core effects—timeline, scope and complexity of minimization and mitigation measures, scope of needed legislative change, need for future amendments and state conservation efforts. Then we score these things relative to the baseline conditions. There was a tendency to try to sum the ranks, and we recognize there's quite a bit of subjectivity to these scores. We temporarily abandoned the scoring and went to simply positive and negative. But then we realized that with multiple options it doesn't allow you to differentiate between the options. So after a lot of toying with this, we basically threw it in the trash can. We've tried to present this information to you in the analysis. We just didn't feel like this matrix would be very beneficial. We just wanted to let you know that we've looked at that and abandoned it.

KD The only reason we're bringing this to you is because in the last meeting, as we started diving into these issues, the pushback you gave us was that you didn't have enough information to make a decision. These are the types of things you guys wanted to know

- to influence your decision making. In looking at it, we realized it's subjective. Even an item like cost, we're not going to know the cost amounts until those parts are developed. So it's about how you perceive the impacts of these effects.
- BE And the bottom line is that even using the scoring system, there's still not enough information for what you wanted.
- GA I don't remember asking for quantifiable answers, so I'm not concerned about it, but how many of these discretionary issues do you foresee?
- BE Down the road it will be things like rule changes...things mostly on the back end.
- GA So as we look at each minimization or mitigation strategy, will they have analyses like this?
- BE I think we'll have a package to present, but not individual measures.
- KD Bear in mind that a lot of what will come to you for decision making will be heavily impacted by work done by the ScC.
- GA I guess I'm confused as to what a discretionary issue is. I understand these that you're presenting today.
- KD Basically the law requires us to minimize and mitigate to the maximum extent practicable. One decision is, well, what's practicable?
- BE We know what we have to do in term of presenting a document that will meet ITP issuance criteria, but maybe discretionary was bad term, but the applicant can propose anything they want in the HCP. We know we need to do a threats analysis, baseline, requisite information, but the extent to which those things are developed, scope for example, are discretionary.
- GA You're right, it's the semantics.
- KF This looks like a very good organized format.

ITP Term Limit—Jimmy Sellers

- JS The HCP objective to allow DEP to get federal authorization for incidental take and to develop a HCP. The biological goals are also relevant when thinking about the term. As we move forward with research and estimating take, we have to have the term determined. Background—typically with a broader scope HCP, there's a longer range term. County wide ITPs are generally for 25-30 years. The extreme of 100 years is for logging activities in the northwest where the activity is narrow and impacts well defined. FWS does not recommend ITPs greater than 50 years. By increasing the term of the ITP, the prediction of take becomes much more difficult to define.

Additional species—FWS lists candidate species and has certain species on their radar, so with a shorter term, we have a clearer idea of which species have the potential to become listed in the near future. As the term moves into longer periods, the probability of listing becomes harder to predict. Mitigation—longer term = more onerous mitigation.

Adaptive management is a section that will be required as part of the application and is designed to identify how to deal with data gaps at the time of application and what you'll do to address those down the road. Renewal—the shorter the term, the more often you'll have to renew and the more often you'll have to incur the costs of renewal. Volusia county model—they decided to apply for a short initial term of 5 years, so they could get a good handle of the costs of implementation, and then reapply for 25 year ITP at the end of that 5 year term. Are there any question or comments so far?

KF There won't be any decision made today?

KD Correct.

KF Is Jimmy going to have to do this twice? For the SC members that aren't here?

MB By the very design of the committee and lack of quorum, we're back to the impact part of the schedule. I don't know that the subset of the SC could carry a recommendation forward to the full committee in September.

KD That's not what we're after. One of the specific pieces of guidance we got last time was the SC be given exposure to these issues in advance of making decisions on these, because most of them have constituencies. For the members that aren't here, we realize that we're going to have to reinvent the wheel next time. As far as getting them up to speed, that's something that I and the WG can go out and do. We're still hoping to have a vote next meeting.

BE And there's nothing we've presented here that's not in the documents.

KF For those not here, they could also have the minutes that reflect the discussion. If this non-quorum reached some consensus, it may help the others.

BM A lot of these options and comments—the cost of renewal—is the renewal a very arduous process?

BE Yes. Again, what happens is it's not a renewal, it's an amendment to the permit. In Volusia County, they began the renewal process in October of 2001 and they got their permit in 2005 or 2006. A lot of the information that's included in there you can still use, but you have to update all the biological information, revisit mitigation, assess impacts, etc. It's as much on the review end for the Service as it is for the applicant.

BM But the Service is pretty involved in the process.

LP But there are timelines above us.

- BE With Volusia, after we've lived this for a few years, its daunting, you know, after you go through the whole process to develop the HCP, then you have to go back in 5 years and open it all up again.
- LP The paperwork and public review process is horrible. It's one of the worst processes we have.
- BM Has that been for projects that go back and amend, or for new projects?
- LP Amendments, everything. I have one I've been working on for 5 years and I can't get through the system.
- GA What happens when you do an amendment and it takes 5 years?
- BE Your protections remain in place during that process.
- JS Option 1 is short term, for example 10 years. The actual number can be recommended by you. It can be based on some factor that maybe we haven't identified yet. So looking at the rationale for selecting a short term—it reduces the complexity of calculating take, reduces amendments for additionally listed species, reduces mitigation requirements, reduces complexity of adaptive management and it provides an earlier opportunity to assess minimization and take estimates. Rational against is, again what Mr. Moore brought up, we have the idea that renewal is a costly and laborious task, and it may not provide enough time to assess mitigation that's been done. Questions?
Option 2 is a moderate term, for example 25 years. You'll see the term 'moderate' a lot in here because at this point, while we can identify factors, it's hard to quantify terms at this point. We will be moderating uncertainty with calculating take. Mitigation will be moderate. Adaptive management will be moderately complex. FWS staff has indicated through internal discussions that 25-30 years is what they would recommend—its consistent with their large scale HCPs. Also, sea level rise models are acceptably accurate within that range. Rational against this is predictions for future activities/impacts are not as accurate. Cost for renewing will be realized in 25 years.
- BL Can you modify these things in unforeseen circumstances?
- BE What you would do is the adaptive management would be the mechanism for doing that.
- BL So there's some flexibility in adaptive management?
- KD Yes. Also, to me a key point to all of this is when you're looking at these options, the big factor is uncertainty. And what you're going to see is there's 2 ways to look at uncertainty—1) have a shorter term and renew frequently, or 2) incorporate uncertainty into the adaptive management portion, and that allows you to address uncertainty without having to go through the renewal process. It really just boils down to which one of those approaches you want to take.

- BM It seems obvious to me that adaptive management is the way to go. My concern with shorter terms is that if you had a 10 year plan and you're going to implement mitigation and monitoring, it doesn't mean from day one these things are incurring. That's a pretty short time period to see how effective those monitoring programs are.
- BE The Volusia example is a good case in point. It took the county 4 years to get to the top of the learning curve. It takes all the players responsible to implement, those receiving permits and local governments to get tuned in. It's a several year process before this thing is even close to being on auto pilot.
- MB What was the term of the Indian River armoring project?
- BE 30 years. But it was for shoreline armoring, not for beach driving, and there haven't been any permits issued, so they haven't really tested it yet.
- JS Option 3—long term, for example 50 years. Rationale for is avoiding renewal costs. Rationale against, again FWS staff have encouraged against 50 years—too long. Also, calculating take will be very difficult, adaptive management will be extremely complex and the likelihood for listing of additional species is greater.
- JS We talked about putting in here the fact that the whole agency structure has the potential to change.
- BM That was a thought I had too—what's the life expectancy of the Control Line Program?
- GC What's the life expectancy of the agency?
- BE Anything that changes the extent of take or scope, you have to amend.
- RT But plan area is the link to where their implementing .053.
- BE The plan area may be defined as a dynamic area. Not fixed boundaries.
- JS Option 4 is the Volusia County model, which is 5-10 years and then renew for a longer period after that. The pros are that you get to see what works, costs, and afterwards, renewal is more customized. Cons are that renewal costs will come up sooner, you'd have to do substantial revisions to mitigation and adaptive management sections. Again, when talking about renewal, you have to think about public commenting periods and Service reviews.
- BM Is there some type of financial commitment you have to put into the plan?
- KD Oh yes. You have to have all financial backing spelled out.
- BE Once you settle on mitigation, you do cost estimates. Then on an annual basis, you have to provide assurances, because legislature appropriates money on an annual basis. You have to identify where the money is coming from.

- BM Based on previous discussions, there was talk about bringing in other groups, like Counties. Would they be making contributions?
- BE I don't think we've gotten that far.
- KD I've spoken to folks at the County level, and they're willing to help us investigate potential funding, but we come back to the fact that this is DEPs permit, and ultimately the responsibility lies with them.
- BM Does this process also protect the County in their issuance of permits?
- BE It protects the person that receives the CCCL permit as well as the State.
- BM So if the activity is regulated at the County level, do they receive protection?
- KD This ITP is for DEPs Bureau of Beaches and Coastal Systems' CCCL program. They pass down the protection in their permit conditions.
- BE What is the stake that the counties have?
- BM I bring it up because it could be incentive for involvement at the local level for them to financially participate.
- BL They develop orders, but they don't really issue permits. They tell the applicant to go get the permits. They approve the development order.
- BE If DEP is issuing a permit and any incidental take occurs, that take is covered, so there's no vulnerability there. They're not authorizing take in excess of what's been authorized in the ITP. Monitoring and enforcement may be where the State could delegate to local governments.
- LP Some counties want that control. You need to hear from them.
- GA Brett's asking why would counties be involved at all. What's the interest? I think it's a valid concern that there are some counties that would like to have a handle on this, and we should be aware of that.
- GC One area where that may come in to play is emergency armoring. That's where the county government may want to provide that assurance to its citizens.
- LP It could streamline their permitting process.
- KD But that opportunity to develop conditions for emergency situations, almost every county I've talked to has expressed interest in that.

- MB Lorna, is it a safe assumption that renewal revision is eligible for grant funding?
- LP Bob, did you explore that?
- BE Volusia County did not seek federal funding for that.
- LP I think we would consider that strongly.
- MB Is the Volusia County example valuable in making our decisions? What were the renewal costs? 30%? 40%?
- BE I couldn't put numbers out there.
- LP And our grants are for HCP planning, so I don't know if ITP renewal falls under that. I need to look into that.
- BM Bob, Volusia County, when you had the HCP for a limited time then went through the renewal process, would you be able to achieve the same thing up front through adaptive management?
- BE I think so. At that point, that was the first county-wide HCP dealing with sea turtles, so it was new territory. It would have been difficult to predict. I think now if we did it again, we could probably project and come up with something for 25 years.
- JS Ideally, we'd like to bring you a recommendation if possible, but it was not possible on this one. We've recently brought this to the table and were able to put the document together, but there were differing opinions among the WG at this point.
- KD I can tell you that no one was in favor of long term, 50 years.
- MB I would encourage the WG to take into consideration this discussion, but for those not here, until they've seen the minutes...I'm not overtly concerned with fairness here but I certainly would be amenable to having the WG develop a recommendation for consideration. Then the September meeting might result in debate and not a decision.
- DF Would there be time for the WG to come to a recommendation before the next meeting?
- KD Definitely.
- DF I would be more comfortable knowing your recommendation.
- BE I don't understand your hesitation, Mike.
- MB I'd want to do a bounce off of Secretary Sole.

- KD First of all, Sunshine—as long as the WG presents the broad suite of options to the SC, we are allowed to make a recommendation. So technically what we think is the best option, it's something for you to chew on , but it's up to you guys.
- JL We can make a recommendation and send to the SC members with the minutes so you can be ready to vote next time. It's up to those not here to do their homework.
- GA I think that's a good idea.
- BE And we do need this decision in order to proceed with many things.
- KD When can we have this?
- JL Do you guys want the ScC to think about this?
- KF Isn't this a policy issue?
- BE I think you're right that it's a policy issue.
- MB I think we need a WG recommendation to consider at the next meeting.
- KD The WG can send you a recommendation by the 25th of this month.
- GA I don't think there's a need to go to ScC.
- RT As member of ScC—I think the ScC would want to weigh in on it. In the example for short term, you said you can't judge if mitigation measures are effective, that's true for some species but not others.
- BL Would the ScC have to come to consensus to give a recommendation? That could take a while.
- KD Even if they don't come to consensus, there are no implications if they do or don't since they're not under the Sunshine.
- BE They haven't even been exposed to all these. In the near term, I don't think they're going to have to input on this.
- KD A lot of these things will be continual feedback loops. If we pick a term, we can take it to the ScC, and if they have serious concerns we can bring that back to you. Nothing is set in stone. It gives us the okay to move forward.
- GA You said you've been working on this for a few weeks and you couldn't make a decision?
- KD We couldn't come to a consensus. The WG members are split between options 2 and 4.

- DF Well that's what I thought.
- GA There's always uncertainty in this, even if you do adaptive management, the issue is what's the best for an HCP and ITP for the State. I think the moderate option is the best, whether 20, 25 or 30. But it seems counterproductive to go with anything other than moderate if our goal is to develop an appropriate HCP for the State. Volusia had different issues with budget, activities, stakeholders, I don't think you can compare that. If the reason for Volusia to go with option 4 was financial, then I'm not sure that's relevant for the State.
- BM Didn't you clarify that the reason they went that route was the uncertainty?
- BE Well part of it was the finances.
- RT The way Volusia had set up mitigation, they set up conservation zones where no activity could occur. Well no activity could occur outside of nesting season either, so you couldn't do restoration...
- BE That one was addressed in their amendment. They also added a new species in the amendment.
- BL I'd like to know how dynamic the adaptive management strategies are. If you miss something, it could be serious and you'd need to do an amendment.
- KD Well there's an unforeseen circumstances section.
- BE There are assurances through adaptive management so that if something occurs, the permittee knows exactly what to do. Unforeseen circumstances enters into a different process with the Service.
- RT Does that trigger an amendment?
- BE Yes.
- BM Volusia County dealt with a known activity, and we're tying it to ours, which deals with unpredicted storms and such, which leads me away from the shorter term.
- MB I think option 3 is not tenable at all. I think I could easily sell that to the Secretary as not doable at all.
- KF All these decisions ultimately are a Secretary decision. How you interface with him is purely your deal, but I sort of see a potential do loop here because if you interact with him and get a read on him, you can then come back and say Secretary Sole really likes option x. I think there's a problem there. I think he would be better served if he understood the recommendation from the SC whose trying to steer this process, then he

can step in. He's not a constituent in a sense of going back to a number of Counties. It would be a better process for him to understand the SC recommendation.

MB I'm not saying I'm going outside of process.

KD So those of you who are here, are you comfortable with voting on this in September?

MB It depends on the deliberations of the SC as a whole, but I think that needs to be on the agenda that we intend on getting a vote then.

BE We would hope that all 3 of these things that we're bringing to you today are things that could be voted on at next meeting.

KD How is this format to you?

BL This was extremely helpful, especially with explaining this to others in my agency.

CCAA/At-risk Species—Bob Ernest

BE We've still got the CCAA analysis as the title, and we've already explained that that's no longer the issue. There's a couple issues that help frame this. The first is what's the likelihood a species will become listed over the term of the ITP? The second is implementation of conservation measures to preclude future listing. To get back to the CCAA, when we first approached this we talked about this is a voluntary proactive program that develops conservation measures that will do good things for species that will preclude their listing in the future. However, should those species be listed in the future, there are assurances in this agreement that the federal government will not come back and ask for additional actions. Since we've put that document together, the Service is now telling us that a CCAA should only be used in lieu of an HCP, not in addition to. There are measures in an HCP that provide the same assurances as a CCAA. So now the questions is whether or not to include non federally listed species in the HCP. One part of ITP issuance criteria is that the applicant has to comply with all local, state and federal laws. The MBTA, which was summarized by Kim Colstad. We will have to implement BMPs in the HCP to minimize impacts to migratory birds. We're probably going to do this by addressing general groups of species based on resource utilization. We can address groups of birds and not require a lot of additional work. Furthermore, those BMPs will provide benefits to some of these non listed species. The group of species that we're going to include already are 5 turtles, 5 beach mice and 2 shorebirds. Other non federal species we're talking about are either state listed or are on the federal radar for potential future listing. There 6 species in the first tier—4 shorebirds, gopher tortoise and the Santa Rosa beach mouse. The second tier (6 species) are not state listed, not on the federal radar, but are considered Species of Greatest Conservation Need (SGCN) under the Legacy Initiative. Option1 is only include species currently listed or candidates. Rationale for this is that there's no certainty that the other species will become listed. Also, information we need to do threat assessments may be lacking. The inclusion of extra species would require

additional mitigation. The MBTA will extend to at-risk species, so we may not need to include them. Also, there's sufficient protective measures for the gopher tortoise already in place. Rationale against: for the gopher tortoise, even though state measures are in place, take is not afforded unless it's included in the plan. Also, the exclusion of these species is similar to the term of permit, every time a species becomes listed, we'd have to amend the ITP, which would likely require additional minimization and mitigation measures. In the interim, the State would be at the same risk for take authorization.

BM Couldn't that be handled through the adaptive management plan, adding additional species?

BE That's in option 2.

KF So your 3rd bullet, does that suggest that there's a requirement that if a species becomes federally listed, it has to be included?

LP If you want to be covered.

BE It's the applicant's decision. If, for example, the gopher tortoise gets listed, the applicant could say they're not going to deal with it, and then they're at risk for unauthorized take.

KF So it doesn't require an amendment. It requires a decision of whether or not to amend the ITP. I think you're making it too black and white.

KD If a species we're not covering becomes listed and take occurs...

GC I think Kipp's comments are valid. That's another option

BE Option 2 is to include a mechanism in adaptive management that will deal with newly listed species. Rationales are same as in option 1.
Option 3 is to, in addition to the core group of 12, include those most likely to become listed over the term of the permit. If we include them now, we'll have assurances that would have been afforded under a CCAA. MBTA measures are likely going to extend to those, so we won't have to develop a lot of additional minimization measures. We can use existing conservation measures for the gopher tortoise. With the Santa Rosa beach mouse—it would give us uniform minimization measures across the panhandle and may provide opportunities for mitigation.
Rationale against is we may not have enough information for threat assessments, additional mitigation is likely and addition of these may extend the HCP review process, so the ITP issuance period may take a little longer. We don't know how long, though.
Option 4 is to not only include species likely to become listed, but also other SGCN.
Rationale for is the same as for option 3 and also parallels state conservation measures.
Rationales against are the same as for option 3 and may be exacerbated with additional species.
To sum, option 1: only include listed or candidate species; option 2: deal with non listed species in adaptive management; option 3: acquire general and site specific information

for 6 species likely to be listed and present to SC in future; and option 4: gather that information for all 12 additional species and present to SC at future time. So options 3 and 4 don't mean that additional species will be added, it just gives us the go ahead to undertake the threats analyses and impacts and bring back to the SC.

KD I'd like to reiterate that options 3 and 4 simply give us the permission to proceed with the investigation.

BE The reason is because the feedback we got from the SC was that we simply don't have the information to vote on it.

JW I thought that we had agreed that we wanted you guys to proceed with gathering that background information. It sounded like a subject matter expert was going to attend to let us know what some possible minimization and mitigation measures may be. I feel like we've already endorsed that.

KD Julie, that's not the message the WG took away. We have consulted extensively with Nancy Douglass and, we feel it would be more beneficial to have her here at the September meeting. But we didn't take away a clear notion of what species or what imperilment of species you guys wanted us to look at. We did this exercise with Nancy to get these 2 groups and their level of imperilment.

JW I guess I just thought I'd understood that we'd look into what some of those minimization and mitigation measures would be.

BE We did pick up on the general questions and supporting information for this analysis. We prepared several documents, including a summary of the MBTA. Then we developed conceptual MBTA compliance measures to give everyone a feel of what those might look like. Then we made a list of species and their status levels. I think if you have an opportunity to look at the supporting documents, you'll find answers to some of the questions you might have.

JW I did go through the materials, and I guess I was just responding to what you guys were asking. I guess I'm just endorsing that you go ahead.

KD There's exploring in as much as looking at broad pros and cons, and then there's exploring like treating the species like we may include them. That's really the line of distinction we drew. We looked at general pros and cons, but we didn't actually start doing background data, threats, quantifying take, because in doing that we'd be saying that for now we're treating these species like we're going to include them. We're giving them the same level of analysis as the core 12. We just need to hear from you guys that you want us to put that level of effort into these other species.

JW Well maybe I just misunderstood. Part of that is I'm not a beach mouse expert, so I'm going to need that information to vote on those species.

- BE Obviously the ScC hasn't had a chance to look at the issue. The WG brings forth a recommendation of either option 3 or 4. One of the things that I was uncertain about is if you vote on this at next meeting, to just go forward with investigation, does that require buy in from the Secretary? Because you are authorizing us to research species other than those that are federally listed. Any feel on that?
- MB I don't know.
- BM Is there any limitation in your grant for looking at that?
- KD The Service encourages us to look at those species and concur with State.
- BE So my feeling is that this does not require the Secretary's approval, but then the recommendation to include them or not would require Secretary's approval.
- KD If we're going to have the hard data on these species as far as impacts on them and so on, we're going to have to look at them as hard as we look at the core 12.
- BE But we need to know whether to look at the additional 6 that are likely to be listed, or to look at the additional 12.
- DF I'm having a tough time figuring out the difference between options 3 and 4.
- BE The difference is 6 species versus 12 species. The 6 species in option 3 have a higher probability of becoming listed over the term of the permit. Option 4 includes those same 6 species that are in option 3, as well as 6 other species that aren't as likely to become listed, but are still SGCN.
- DF So by adding those in, to what extent would that add to cost or processing?
- KD For most of them, next to nothing. For others, we need to fill major data gaps. The other thing is that when it comes time to decide which species to include, it's not 0, 6 or 12. You get to look at the analyses and decide which ones you want to include. I don't think it will rise to the level of filling data gaps like in the other studies we've talked about.
- BE It seems the Service's interpretation of the MBTA is becoming more encompassing. Even though harm and harass are a part of that, it seems to be a constantly evolving issue.
- LP It's not real clear cut, and for us to issue a permit we have to look at the other laws.
- MB If we, in some fashion, suggest you move forward with option 3, is that an item the timeline suggests you're bringing to the SC in September?
- BE We're not going to do any of these analyses and present them to you at the September meeting. We're just asking you to come back in September and tell us to go forward with

an analysis of these species or not. We don't expect you to do anything today. We are presenting options we'd like you to vote on in September.

MB So if the SC directs you to go with option 4, it's not saying that we're including all of those species in the HCP.

BE Correct.

GA So the 2nd phase is to decide which ones actually go into the HCP. Will your analyses come with a recommendation?

BE My thought is that we would come with a recommendation.

KD Bob talked about the two big issues here: one is what's the likelihood of listing and the other is implementation of conservation measures to preclude future listing.

GA There's two issues: level of threat and does that level of threat rise to the level of becoming listed. There may be threats that are unrelated to the CCCL program.

BE But it doesn't matter if the threats are related to the CCCL program, because if they become listed then it behooves us to be protected. The distinction here is if there's a good probability of them being listed, let's just deal with them now. The other is just being proactive and embrace these other species that the State considers at risk.

KF Why did the WG not just decide to recommend option 4?

KD Time and money.

BE We haven't done the analysis, but my feeling is that a lot of the measures that we come with for the option 3 species will benefit the option 4 species without them being in the plan. But again, the piping plover and red knot, those only winter in Florida, so to include those in the plan and none of the others, we haven't addressed any of the nesting birds in Florida. So if we capture one species in each of foraging, nesting and wintering, then we've got most other birds covered.

BM Do the 6 option 3 species cover the 3 behaviors you just described?

BE Yeah, I think so.

BM You may want to add that language in here about the trickle down positive effect.

JW Remember, though, that trickle down only benefits if other species are in that same geographic extent.

GA That's not necessarily the case. If you have minimization and mitigation measures for birds on the gulf coast, those measures may be just as effective on east coast.

- KD It gets back to the PSMUs.
- JL I think we just need to get all the information and not try to cover all species through the trickle down.
- KC I think one of the concerns was on the review end. The more species we include, the longer it takes the Service to review all the information.
- RT But if you're proposing minimization measures for more species, does that get you more credit?
- LP I would think the Service would want you to add more species.
- BE The feedback we got from the Vero Beach office was to limit the number of species, but I don't think 24 species is unwieldy.
- KD And I don't think there's anyone in the WG who would be opposed to option 4, in terms of time and effort.
- MB Do you have any idea of the amount of extra time it would take to do option 4 as opposed to option 3?
- KD I don't anticipate needing an additional year of grant funding or grant amendments in order to do this. We will cram this in to the timeline we have.
- MB Would this be under the year 5 scope?
- KD It would be part of it, and what we have in year 4 wouldn't preclude us from starting in year 4.
- BL Did you say when you'd be able to tell us?
- KD I think we have to get into it, get a baseline, then we may be able to gague how long it will take.
- BE I don't want to underplay the additional effort. It's a lot of effort for those species where a lot of information is unavailable. I don't know to what extent how much additional work.
- BL There must be some work already done to get them to being identified.
- BE It may be that we come back and we say that there's just not enough information for us to tell you whether or not to include them.
- BL And the ScC could shed some light on this as well.

- KD Again, best available data. At some point we look at the best available data and see if we can say anything concrete.
- GA I just wonder about the benefits to the goals of the HCP in option 4. They're clear to me in option 3, but not in option 4.
- JW I'm hoping that in doing option 4, it gives us comfort in choosing option 3. That we will then know that by including option 3 species, the additional option 4 species will benefit.
- BL What are the political repercussions for including non listed species?
- KD I can imagine there being pushback in the form of individuals not wanting additional mitigation requirements. If these at-risk species are included, the mitigation requirements will be every bit as binding as those for the federal species.
- BL I just can't imagine bringing this up in comp plans—doing things that aren't legally required.
- DF I just don't know if the additional costs are worth it for species that aren't even state listed.
- JW But I would caution anyone who thinks that if a species doesn't have an E or T next to it, that it's doing fine.
- MB My suggestion to the WG is we need to be careful in the next meeting's agenda. I don't want to see an overtly aggressive schedule because look at how much time we've taken with these issues. I can almost guarantee that this topic will take a lot of time.
- KD I will say that if you decide anything in September, it must be the term of the ITP, because so much of what the WG needs to do will depend on it.

161.052 Beaches—Jimmy Sellers

- JS During the last SC meeting, this topic was discussed a little bit. To date, I'll emphasize that we've been talking about CCCL activities. Background information—why there are .052 beaches—before the CCCL program was implemented, there was jurisdiction offered to DEP under 161.052 that said anywhere on the shoreline within 50 ft of mean high water (MHW), DEP has the authority to regulate activities, but when the CCCL program came along, it was designed to cover statewide. The threshold is that the CCCL “shall be established by the department only after it has been determined...that the establishment of such control line is necessary for the protection of upland properties and the control of beach erosion.” That doesn't cover the Big Bend and Keys. So there are counties that don't have a CCCL but still have sandy beaches. The Bureau of Beaches only regulates those beaches that are designated as critically eroded. So the most recent report we looked at was done in June 2009. The extent of .052 beaches—23 locations, totaling 13.4 miles. By and large the majority are in the Keys (76%). In Monroe County

there are over 10 miles of beach that the Bureau of Beaches permits activities for. There were 54 permits issued. Of those, 64 different activities. Beach cleaning and dune construction account for the majority of activities. In the Keys there's critical habitat for the piping plover. The roseate tern probably wouldn't be affected too much by activities under .052. They nest on top of buildings down there and forage near shore. Lastly we looked at sea turtle nesting—there are hawksbill nests down there and have intersected with .052 beaches. So, luckily the issue is rather straightforward—whether to include these beaches in the plan area. We'd be including additional plan area as well as additional species—roseate tern.

Option 1—continue investigating inclusion of these beaches.

Option 2—discontinuing investigation.

Questions at this point?

BM .052 was set up and handled until control lines were established. So it's like the control line and .052 are part of the same program. I look at this as being part of the same program and I don't see how the Department wouldn't be liable if there was take during activity authorized on an .052 beach.

GA It's a very small amount of land. Why was that left out in the initial permit? Did DEP not think about that?

BE We'd always addressed it as the CCCL program. I didn't understand the nuances of the .052 and .053 programs until Gene brought it up at the last SC meeting.

GA So it was just an oversight?

BE Yeah.

TO We had 8 days to write the grant and I was a newbie. I didn't know.

GA What's the extra effort that would be involved?

BE I don't see much additional effort. The roseate tern doesn't nest on the beach, so the impacts to that may be relatively small, and it may not need to be included in the plan. You could still include .052 beaches for sea turtles and other shorebirds.

KD I would say that at the very least we would at least need to gather the baseline data for the roseate tern.

RT While it's a small percentage, the .052 beaches are critically important because there's so few of them for the animals down there.

GC Most of the beaches under .052 are in state parks or lands.

BE If the Department were to stop regulating issues under .052, then they're not liable for those activities because they're not regulating them.

- RT As Brett said, I considered it all one program.
- GA Would the department want that covered?
- GC I have mixed feelings about it, but it's not my decision.
- BM The legislators have had plenty of opportunity to get rid of .052.
- GC In the 80s it was advised that Department stop regulating under .052, but someone else came in and it never happened.
- MB My recollection is those authorizations have the form and function of an .053 permit, but its .052. I'm kind of with Gene. I have mixed feelings, but I can't make that determination myself. If it was my decision, I'd lean toward not including them because there are so few of those beaches, and I don't think the risk is that great.
- BE My feeling is that it's better to deal with things up front if you feel there's a risk for impact. But if you feel there's only a minimal risk...
- JL My concern is how is the monitoring or mitigation going to work in those counties with these tiny areas? I mean how often do we visit Levy county?
- BE When you talk about monitoring, the biological monitoring will come more into play here. In other words, all nests are marked. Those could be delegated activities.
- MB I was just echoing Jackie's statement. We know a heck of a lot more about Monroe county than Levy.
- BE There's no reason the SC can't decide to split this and only cover certain .052 beaches.
- JL Could the SC recommend just one activity in Monroe County—beach raking?
- GA it seems like what we're really talking about is beach raking in Monroe County.
- BE You can include that.
- GC The only concern I have is it's the type of regulation that you may be regulating in a location one year, but not the next. In Monroe County, it could be designated critically eroded this year, and then it's not next year.
- MB That's why if the SC has that flexibility, I think the Big Bend may be way more trouble than it's worth.

- KD Bear in mind our fluid plan area already. There's no reason we can't have the same degree of flexibility. We can say we cover .052 critically eroded beaches, then if they change, our plan area changes with them.
- BE Thinking about minimization and mitigation, we could probably structure within the plan that creates that as a separate PSMU and have less rigid minimization measures.
- KD So all we're asking for is permission to proceed in September. Do you have the information you need to make this decision?
- MB I think so.
- JS I'd like to briefly look at the matrix. This is one of the first documents we drafted with this template. And since there are only two options, we left this matrix in here. We picked out 7 core factors for decision making to evaluate for each option. Again, though, we realized that it's just too subjective to be really useful. There was a unanimous consensus by the WG to go with option 1—move forward with investigation of including these beaches. Bear in mind that we were considering the whole of .052 beaches at the time.
- BM You could add another option. Just include Monroe County. So the WG could consider eliminating the Big Bend.
- JL I'd want to look at what we're currently permitting in the Big Bend.
- LP I think there are salt marsh voles in Levy County.
- MB Any other questions on this? I believe that brings us 20 minutes early to the last item. Did we have any public interest in commenting in at 3:00?
- GA Kat, are you going to contact the other SC members?
- KD Individually, yes. I'll take their questions, answer what I can and just play catch up with these guys over the next few months.
- GA They just need to be up to speed so we can decide on these in September.
- BL Can we get feedback on any new issues they may bring up?
- KD Because of the Sunshine, no.
- MB These presentations that have been put up, they may be beneficial to the other members.
- JL If there are a lot of concerns we could also have a teleconference. We could notice it and teleconference.

BL I just want to know if something comes up that we didn't think about here, and I need to discuss it with my agency before I vote.

GA I'm willing to do an interim teleconference.

KD Well it will probably take me at least a few weeks, especially with the oil spill, to get with everyone.

BE How much in advance of the September meeting would you need to get that information?

BL A couple weeks.

KD Are there any other items we need to discuss?

MB With that we are adjourned. (2:45pm)