

Habitat Conservation Planning

By Marj Nelson



Least Bell's vireo

USFWS photo by B. Moose Peterson/WRP

The HCP program has prompted local citizens to think about the future of their communities, the issues affecting their quality of life, and how conservation plays a role in these issues. By working together, State and local governments and private developers have found that they can accomplish their plans *and* conserve the environment.

A logger fells a tree housing a nest of endangered red-cockaded woodpeckers (*Picoides borealis*). A farmer runs his tractor through a field that harbors the endangered Karner blue butterfly (*Lycaeides melissa samuelis*). A community builds a school on already limited habitat for the endangered Key deer (*Odocoileus virginianus clavium*).

These situations could be devastating, not only to the rare species but also to the landowners who want to use their land for legitimate purposes. After passage of the Endangered Species Act (ESA) of 1973, both the Federal government and non-Federal landowners became concerned that a property owner's otherwise lawful activity that might result in the unintentional take of a listed species would be prohibited, even if the landowner was willing to plan activities to conserve the species. To resolve this problem, Congress amended section 10 of the ESA in 1982 to authorize "incidental take" through the development and implementation of Habitat Conservation Plans or HCPs.

This approach was patterned after the San Bruno Mountain HCP, an innovative land-use plan in California's San Francisco Bay area that began with a classic conflict between development activities and endangered species protection. This planning effort culminated in the issuance of the first incidental take permit in 1983. What made the San Bruno Mountain case unusual at the time was that it attempted to resolve conflicts through negotiation and compromise rather than continued litigation.

An incidental take permit allows a property owner to conduct otherwise

lawful activities in the presence of listed species. A non-Federal entity (e.g., a landowner or local government) develops an HCP in order to apply for an incidental take permit under section 10(a)(1)(B) of the ESA. The HCP integrates the applicant's proposed project or activity with the needs of the species. It describes, among other things, the anticipated effect of a proposed taking on the affected species and how that take will be minimized and mitigated. Such information must be submitted with any incidental take permit application.

For example, the International Paper Company developed an HCP covering the red-cockaded woodpecker on company lands in the southeast. This HCP describes the impact of timber operations on the red-cockaded woodpecker and measures to mitigate that impact. Such measures include actively managing approximately 5,300 acres (2,145 hectares) of habitat in order to increase the population on that habitat to 25-30 family clusters.

To encourage the private sector to develop long-term conservation plans, we must assure the financial and development communities that an incidental take permit will remain in effect for the life of the project. For this reason, the HCP process now contains "No Surprises" assurances to non-Federal landowners. These assurances specify that the Services (FWS and National Marine Fisheries Service) will not require additional commitments (land, water, or financial compensation) or restrictions (on the use of land, water, or other natural resources) beyond those specified in the HCP unless the permittee consents. The Services will



Key deer

Photo by Dick Dickenson

honor these assurances as long as a permittee upholds the terms and conditions of the HCP, the permit, and other associated documents. In other words, we will honor our commitments as long as HCP permittees honor theirs.

But what happens with species that aren't listed yet? Congress authorized HCPs to include conservation measures for candidate species, proposed species, and others of concern at the time an HCP is developed or a permit application is submitted. This can benefit the permittee by ensuring that the terms of an HCP will not change over time with subsequent species listings. It can also provide early protection for many species, ideally preventing declines and, in some cases, the need to list a species.

The "No Surprises" rule applies only to species covered by an HCP. Thus, landowners have an incentive to conserve both listed and unlisted species, an incentive that generally does not exist outside of the HCP process. By covering unlisted species, developers and landowners can also help prevent their declines.

In California, the Multiple Species Conservation Plan for southwestern San Diego County covers 85 species of vulnerable plants and animals, including numerous resident and migratory birds such as the coastal California gnatcatcher (*Poliioptila californica californica*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). The centerpiece of the plan is the creation of a 171,900-acre (69,500-ha) preserve that will secure key parcels of native habitat. The plan also provides certainty and predictability for land use planners and landowners by providing a blueprint that defines areas appropriate for conservation and development.

The conservation actions of an HCP can also work at an ecosystem or landscape level. This approach is being used increasingly with the development and completion of regional and multi-species HCPs. Regional planning benefits the species in an ecosystem while streamlining ESA compliance for the smaller landowners. This type of HCP encourages local governments to

look beyond ESA requirements and take a landscape view at planning for their community. For example, Pima County, Arizona, is undertaking a visionary, collaborative, county-wide planning effort to provide landscape-level protection for natural and cultural resources in this part of the Sonoran Desert. One of the unique aspects of the Sonoran Desert Conservation Plan is that it moves beyond ESA planning by consolidating previously fragmented planning elements within the county.

The demand for HCPs has increased tremendously in recent years. By 1992, only 14 HCPs had been approved. By the end of 1999, however, the FWS had issued more than 290 incidental take permits covering approximately 20 million acres (8 million ha) of land, 200 listed species, and many unlisted species. For more information, visit our HCP website at:

<http://endangered.fws.gov/hcp/>.

As we look to the future, we anticipate many more success stories. As the demand for HCPs increases and more are approved, providing careful attention to each one will become more challenging. In facing this challenge, we will continue to enlist the support of others, including environmental and scientific communities; State, local and tribal governments; landowners; and other stakeholders. Working together, we can create innovative strategies that enrich species conservation while accommodating economic development.

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