

## MEETING NOTES

Water Resources HCP Steering Committee  
Morgan County School Administration Building  
Flat Fork Rd., Wartburg, TN  
May 19, 2010

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### ATTENDEES

Name		Affiliation
Erik	Andelman	Morgan County
Steve	Bakaletz	National Park Service – Big South Fork
Robert	Baker	TN Department of Environment and Conservation
Geoff	Call	USFWS
Joe	Dario	Tennessee Tech Univ.
Malissa	Davis	Tennessee Tech Univ.
Kevin	Dean	City of Crossville
Jennifer	Gihring	UT
Dennis	Gregg	Obed Watershed Community Association
Jerry	Hardin	Emory River Watershed Association
Hon. Rick	Keeton	Scott County
Doug	Little	Plateau Properties
Mike	Monroe	Plateau Utility District
Gay	Reeves-Stewart	Home Builders Association of Cumberland County
Jake	Tisinger	UT
Tom	Wolf	City of Crossville
Alex	Wyss	The Nature Conservancy

### MEETING GOALS

- Achieve common understanding of rare species terminology and effect on permit decisions.
- Consensus on covered species selection decision tree.

### WELCOME AND INTRODUCTIONS

*Handouts: Agenda packet*

- Jennifer Gihring (HCP Staff) welcomed all attendees.
- Attendees introduced themselves to the group.
- Jennifer reviewed the purpose of the meeting.

### RARE SPECIES TERMINOLOGY

*Handouts: Powerpoint*

Geoff Call (USFWS) reviewed fundamentals of species status designations. Highlights:

- “Rank” is a non-legal term (i.e. a status that does not have regulatory implications). It is used to inform future listing determinations
- “Status” is a legal term.
- All designations of federal status require a formal public decision-making process.
- State-listed species have G- and S-ranks. G-ranks, determined by the NatureServe non-profit, identify rarity at the global scale. S-ranks, determined by TDEC, identify rarity at the state scale.
- The definition of “take” is very broad, and includes direct and indirect impacts to individuals, their ability to breed, and their habitat.

Q&A

*Responses provided primarily by Geoff Call*

When the National Park Service looks at rankings, a policy is written requiring them to look at state rankings and treat them as federal rankings. Is it different in the Fish and Wildlife Service (FWS)?	For regulatory applications under the Endangered Species Act, the FWS only looks at federal listings. <i>Rank</i> and <i>status</i> are different.
What does “non-legal” mean?	It means there is no explicit legal instruction on how to deal with that species (such as those with a G and S rank).
Will a species always be placed on the threatened list before it is listed as endangered?	Not necessarily. A species may go straight to endangered status.
If a new species is found that is unidentified, does it automatically become endangered since it seems so rare?	No, a new species needs to go through the same process as any other species before it’s listed. Rarity alone does not mean it becomes endangered. A threat or other factors must also be present.
What does Tennessee Wildlife Resources Agency (TWRA) consider as wildlife?	There is a combination of vertebrates, invertebrates, terrestrial species, aquatic species and so on. Contact TWRA for information about the state’s definition of “wildlife” ( <a href="http://www.state.tn.us/twra/contact.html">http://www.state.tn.us/twra/contact.html</a> ).
Do all species have a specific group who searches for them like the birds/bird watchers?	No, it is rare for a species to have that level of attention.
What is the lag time between when a species is proposed as threatened or endangered to when it is officially listed?	A long lag time is common. After a species is petitioned for listing, the Service reviews available information on the species’ biology, distribution, status, and factors affecting the species before determining whether the species will be proposed for listing. This process can take years.
Is it correct that, under section 10, if an activity is going to occur	A federal permit can be acquired by a federal entity through section 7 consultation without preparing an

<p>where a listed endangered species is going to be affected, a government entity still needs to have a Habitat Conservation Plan (HCP) before they can request an Incidental Take Permit (ITP)?</p>	<p>HCP. The Federal entity still has to detail activities that will occur, and the anticipated effect they will have on a habitat, but they are not required to produce an HCP. Until the 1980s, non-federal entities had no way to seek exemptions from take prohibitions. Section 10(a)(1)(B) allows non-federal entities to apply for an Incidental Take Permit, which authorizes take that is incidental to an otherwise legal activity.</p>
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**RARE SPECIES AND TDEC’S PERMITTING DECISIONS**

*Handouts: Excerpts from Ch. 70-8-101 “Tennessee Nongame and Endangered or Threatened Wildlife Species Conservation Act of 1974.”*

Robert Baker (TDEC) reviewed the state rare species regulations and how these regulations are integrated with permitting decisions. Highlights:

- TDEC uses the NatureServe and their own rare species database when evaluating the potential impact of permit applications.
- The information presented is pertinent to wildlife species. Other regulations exist for plants.
- The HCP provides a more systematic and consistent evaluation of rare species impacts vs. the current day-to-day evaluation conducted by individual biologists.
- Example: A project in Mill Creek (Nashville) included physically removing crayfish whose habitat would be affected from utility activities and placing them upstream. Blasting was also prohibited.

**Q&A**

<p>Are businesses and individuals legally required to look at the habitat of creatures in need of management and endangered species before developing in that area?</p>	<p>Robert Baker: Yes. There are state civil and criminal penalties for knowingly and unknowingly disturbing endangered species habitat.</p>
<p>The cerulean warbler is a species in need of mgmt. On TWRA lands, clearcutting is occurring in cerulean warbler habitat. Why is this?</p>	<p>Alex Wyss: Based upon the SAC’s findings, timber harvest may be a management strategy for cerulean warblers. The HCP intends to monitor activities to make sure harmful clearcutting is not occurring.</p>
<p>Without the HCP, it seems a developer is subject to what an individual government enforcement staff will allow, and the burden for identifying the</p>	<p>Alex Wyss: Yes, the HCP is trying to finish consulting upfront, for free, and by species habitat types. This way, developers will know upfront of measures that need to be taken to proceed with development in methods consistent with the HCP. As of now, there is overlap of</p>

requirements is on the landowner. Will the HCP change this?	work between TDEC and TWRA that makes the regulatory process take quite awhile. The HCP intends to streamline this process.
What if an individual needs to be included on municipal water supply. How does this affect the HCP?	Alex Wyss: The HCP looks at the effect water lines have on habitat, the species found in the area, and what measures need to be taken to protect the species. Ideally, the HCP would minimize the amount of take involved by explaining measures that need to be taken to reduce take. If take of species is involved, the mitigation activities would be outlined.

### COVERED SPECIES DECISION TREE

*Handouts: Powerpoint and draft decision tree*

Malissa Davis (TTU; HCP Staff) reviewed the draft covered species decision tree. Highlights:

- Selection of covered species occurs through a two-step process: 1) compile all known information about rare species occurrences; and 2) apply filters to narrow the list of species to those which are pertinent to cover in the HCP.
- The Core Team developed a draft covered species decision tree with the following considerations in mind:
  - Balance applicant certainty, implementation cost, and scientific defensibility
  - Protect unique natural resources, including endemic species
  - Maximize “no surprises” benefits of the HCP
  - Support streamlined permitting
  - Use all available species occurrence information (best available science)
  - Ensure that the decision process is clear, defensible, and flexible enough to incorporate new information
- When considering how many species to cover, the HCP needs to achieve a balance between increased certainty provided by including more species vs. the possibility of more conservation measures and greater cost.
- If we miss a species, an amendment to the HCP may be necessary.
- The Core Team would like the Steering Committee’s feedback on the covered species selection chart before proceeding. The Team’s recommendation is to include the filters shown on the handout, to include terrestrial species, but not to include subterranean species.

### Q&A

Cumberland rosemary dropped out of the covered species decision tree in the example because it wasn’t seen within the last 20 years, but I have personally seen occurrences.	The decision tree shown is just an example to outline the process. It does not show how specific species would be affected.
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Why is this?	
How long would an amendment to the HCP take?	The goal is to avoid amendments. All of the work being done upfront should expedite and avoid the amendment process as much as possible. The Plan does cover 30 years, so an amendment could come up in that time. The length of time depends on the particulars. Adding one fish with same conservation measures as others would not take much time, beyond the required public notification and USFWS review process. If an amendment requires additional conservation measures, the process will take longer.
Who monitors the HCP?	Whether conducted by the applicant directly, or with the aid of a university or agency, the permit holder is responsible for ensuring that monitoring is conducted in accordance with the HCP monitoring strategy. Individuals affected by the HCP are responsible for following the Best Management Practices (BMPs). Monitoring tracks implementation and effectiveness of BMPs.
Would my permit have a time limit because of the monitoring requirements?	Once permit is issued, you would be covered.
How do you verify the accuracy of the species occurrence data?	The database is held with to a rigorous standard as to how data is collected. It's not a matter of a recreational bird watcher seeing birds periodically and putting them on the list. Results are published and reviewed by qualified groups and individuals. The authenticity is high. It ends up being a conservative list.
If an animal is found at two points on a river, is it assumed to occur everywhere between the two points?	Take is measured based on the points where a specific animal is found. The habitat at the location of the occurrence is analyzed and compared to surrounding habitat. It is then predicted whether or not a species would occur in adjacent areas. If species is listed within an area where applicant is developing, there will be conservation measures based on the species' habitat throughout the watershed. You can't assume an animal is not in a space just because no one has seen it. Results are based more on take of habitat than specific species. Continuous habitat mapping of the Obed has been conducted, so it's not entirely prediction-based.
What's the reason for recommending the exclusion of certain subterranean species?	The Core Team feels that there is insufficient scientific information to link development to habitat impacts and to quantify take.

## OPEN DISCUSSION OF DRAFT DECISION TREE

- The HCP should be as protective as possible, but there have been criticism of HCPs related to the inclusion of species without documentation of occurrence. We are trying to avoid the need for a developer to be forced to hire a biologist every time development will occur in a new area. So, it would be better for the HCP to include a large number of species.
- In the end, there has to be a really good reason to remove a species from the covered species list. It will go through the FWS for official review.
- It comes down to cost/benefit analysis. It is more expensive to include more species at this point. Some species may require additional conservation measures which would not be worth including. We must find a good balance between time, money, and the number of included species.
- Filters may need revision –specifically #1. It may be better to say “There is *not* scientific evidence to prove suitable habitat does *not* exist.”
- It may help to add the following as a filter: “Will the additional conservation measures/implementation costs required be worth including the species?”
- The Science Advisory Committee should probably make note of species whose habitats are significantly unique.
- The Committee agreed that further revisions to the decision tree are needed.

## ADJOURN

## ACTION ITEMS

Responsible Party	Item	Deadline
HCP Team	Revise Species Selection Decision Tree per feedback.	For next S.C. meeting (6/30)
HCP Team	Meet with applicants who were not present at the end of the meeting to review the decision tree and the Steering Committee’s recommendation.	Prior to next S.C. meeting

*The next SC meeting is tentatively scheduled for Wednesday June 30<sup>th</sup> from 1-4PM Eastern at the same facility (Morgan County School Administration building on Flat Fork Rd., Wartburg).*