

# About the Study

**U**NDER the Clinton Administration, the number of landowners preparing Habitat Conservation Plans (HCPs) to protect themselves from liability under the Endangered Species Act (ESA) has skyrocketed. The number of approved plans has grown from 20 in 1994 to 225 today.<sup>1</sup> The U.S. Department of Interior expects that by the year 2002 more than 27 million acres of land and more than 300 species will be covered by HCPs.<sup>2</sup> The growing scope of HCPs has made them one of the more celebrated yet controversial aspects of the ESA.

HCP applicants, the U.S. Fish and Wildlife Service (FWS), and, sometimes, outside stakeholders negotiate the provisions of an HCP. Once the parties have reached an agreement and the FWS has formally approved the plan, applicants receive an incidental take permit that protects them from liability if they unintentionally harm endangered species or their habitat in the course of completing proposed projects. Without a permit such activities would violate the ESA. In exchange for the permit, applicants agree to pursue specific mitigation strategies. These strategies may include avoiding endangered species habitat during development, creating habitat reserves, instituting an active management program such as prescribed burns, paying a development fee, or translocating affected species to public lands.

HCPs raise a number of important biological, social, and political issues that have yet to be answered. Of these issues, the role of public participation in habitat conservation planning is particularly controversial. As the number and scope of HCPs has grown, so has the public's desire and need to be involved. While the character of the HCP decision-making process has a considerable effect on the shape of final HCPs and the adequacy of wildlife protections, there has not been extensive research on this process and the public's role in it. How does the public participate in these processes? Are applicants, the FWS, and outside stakeholders satisfied with current approaches? How can policies and procedures be changed to improve habitat conservation planning?

To answer these questions, we conducted an 18-month study of public participation in HCPs. The study included:

- A written survey of FWS contacts for the 55 large HCPs approved after 1991 or likely to be approved by the end of 1997 (data is included from 45 responding HCPs);
- Fourteen in-depth case studies selected from these large HCPs that included more than 75 interviews with a wide variety of HCP stakeholders; and
- Thirteen case studies of public participation in other environmental contexts in the United States, Canada, and Europe.

We focused on large HCPs (greater than 500 acres) because they tend to have greater environmental, economic, and political implications and more extensive public participation than smaller HCPs. The survey was conducted between June and September 1997 and all case-study interviews took place between November 1997 and January 1998.

This publication summarizes a longer report prepared by the University of Michigan on the role of public participation in the HCP process. The summary captures the major themes of the full report and provides policy makers with recommendations for improving the HCP program. The full report provides a more extensive analysis of stakeholders' roles in the planning process and presents detailed survey and case study results.

The full and summary reports were commissioned by the National Wildlife Federation, which continues to have a strong interest in endangered species policy and HCP management. We would like to thank John Kostyack and Sara Barth for their support of the study. However, these reports solely represent the work of the University of Michigan research team and do not necessarily reflect the views of the National Wildlife Federation. 

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Copies of the full report, including case studies and recommendations, can be obtained by sending a check for \$35 payable to University of Michigan to: HCP Project, Attn.: Dr. Steven Yaffee, School of Natural Resources and Environment, University of Michigan, Ann Arbor, MI 48109-1115.



**Balancing Public Trust and Private Interest:**  
**Public Participation in**  
**Habitat Conservation Planning**  
*A Summary Report*

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**November 1, 1998**

*Study Commissioned by the National Wildlife Federation*



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# P r e f a c e

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**T**HE National Wildlife Federation (NWF) commissioned this study of public participation in the Habitat Conservation Planning (HCP) process for two reasons.

First, as the study explains, HCPs have rapidly become a popular tool for many state and local governments and private landowners seeking to ensure that their economic activities are consistent with the Endangered Species Act (ESA). Considering the potentially enormous impacts (either positive or negative) that these plans have on the long-term survival of endangered species, we wanted to learn how NWF, its affiliates, and other activists could play a meaningful role in shaping these plans.

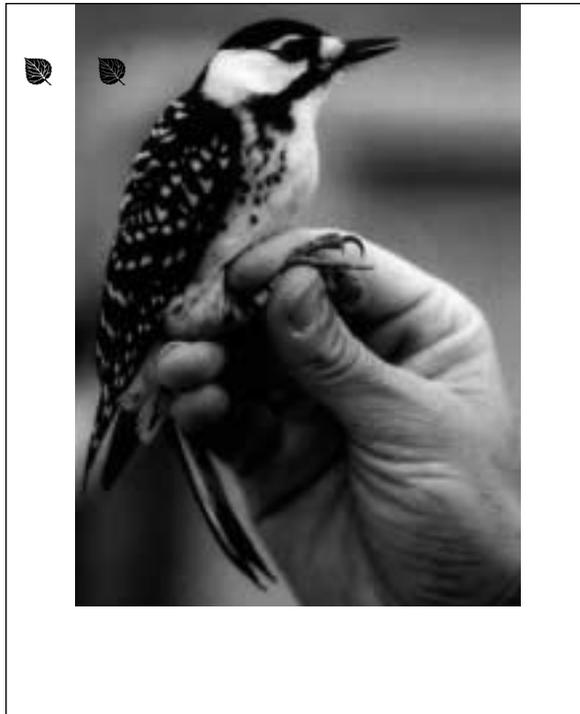
Second, policy makers in Congress and the federal wildlife agencies ultimately decide when and how the public is allowed to participate in HCP development.

We wanted to learn if current policies are adequate to ensure meaningful involvement and, if not, what policy changes are needed to achieve this important objective.

This policy objective is a top priority for NWF because broad public participation helps ensure that HCPs truly protect endangered species and helps build the political support that ESA programs need for successful implementation.

The resulting report, summarized here, reflects an outstanding effort by the University of Michigan team to investigate NWF's questions. We intend to make full use of the report's findings and recommendations, and we encourage you to do the same. 

— JOHN KOSTYACK  
*Counsel, Office of Federal and International Affairs,  
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## Major Findings

**A** well-managed public participation process has the potential to provide significant benefits to Habitat Conservation Plan (HCP) applicants, U.S. Fish and Wildlife Service (FWS) staff, outside stakeholders, and affected species. These benefits include:

- Enhancing HCP quality,
- Improving communication and building new relationships,
- Increasing public understanding of and political support for an HCP, and
- Reducing the likelihood of approval and implementation delays.

With a few exceptions, applicants and the FWS are neither capturing the full benefits of public participation nor providing meaningful opportunities for public involvement in the HCP process. In particular, we found that:

- Interest groups and independent scientists are not involved in a large number of HCPs.
- In the HCPs in which outside stakeholders do participate, the FWS and applicants rarely make significant changes to HCPs based on their input. In general, outside stakeholder input typically comes too late in the process to maximize its usefulness.
- FWS staff have low expectations for making changes to HCPs based on public concerns.
- Many outside stakeholders remain dissatisfied with HCPs, which suggests that significant problems exist in the HCP program.

There are four key obstacles to meaningful public participation:

- *FWS priorities and policies.*

The FWS has higher priorities than public participation, including streamlining the HCP planning process, maintaining congressional support for the Endangered Species Act (ESA), providing flexibility to landowners, and enticing landowners to pursue HCP agreements.

- *NEPA as a public participation process.*

The National Environmental Policy Act does not do enough to facilitate an effective public participation process. For example, landowners and the FWS typically negotiate HCP provisions well before comment periods on NEPA and ESA documents. There are also few incentives for the Service or applicant to renegotiate these provisions and incorporate changes based on public participation, even if the public provides significant new information.

- *Ineffective management of HCP negotiations.*

HCP applicants and FWS staff often poorly define the roles of outside stakeholders and the FWS in the HCP process, leave outside stakeholders with false expectations, and exclude key stakeholders from the process. They also fail to ensure that participants central to the process, including federal agencies, have adequate resources to participate.

- *Fear of public participation.*

HCP applicants, the FWS, and outside stakeholders fear that public participation places too great a burden on them. In fact, public participation likely increases the cost and length of HCP planning processes and requires participants to expend significant resources. Still, the FWS, HCP applicants, and outside stakeholders stand to gain significant benefits if they learn to manage public participation effectively.

To strengthen the HCP program, we recommend a number of policy changes aimed at improving the timing and effectiveness of public participation. These recommendations include that:

- The FWS require all HCPs with major effects to have some form of public advisory committee.
- The FWS build new disclosure and comment periods into the planning process to help applicants and the outside stakeholders communicate about HCP provisions before a plan is set in stone.
- The FWS concentrate its efforts on programmatic HCPs developed by local governments rather than on a large number of small private landowner HCPs.
- The FWS involve independent scientists in HCPs with major effects.
- Congress and the FWS encourage public participation by requiring that HCP agreements allow for citizen enforcement and developing a grant program that rewards innovative approaches to public participation.



To make public participation in individual HCPs more effective, we recommend that:

- Congress and the FWS enable the FWS staff to involve the public more effectively in HCPs by hiring more field-level staff and providing all HCP staff with public participation and negotiation training.
- FWS staff make NEPA documents and other HCP information more readily accessible.
- Applicants and FWS staff involve outside stakeholders, including independent scientists, early and consistently throughout HCP planning processes. They should use a variety of different outreach methods, including field trips, workshops, and steering committees.
- Applicants and FWS staff communicate clearly with outside stakeholders about their input and expectations of the planning process in order to avoid creating unmet expectations and consequent dissatisfaction. 

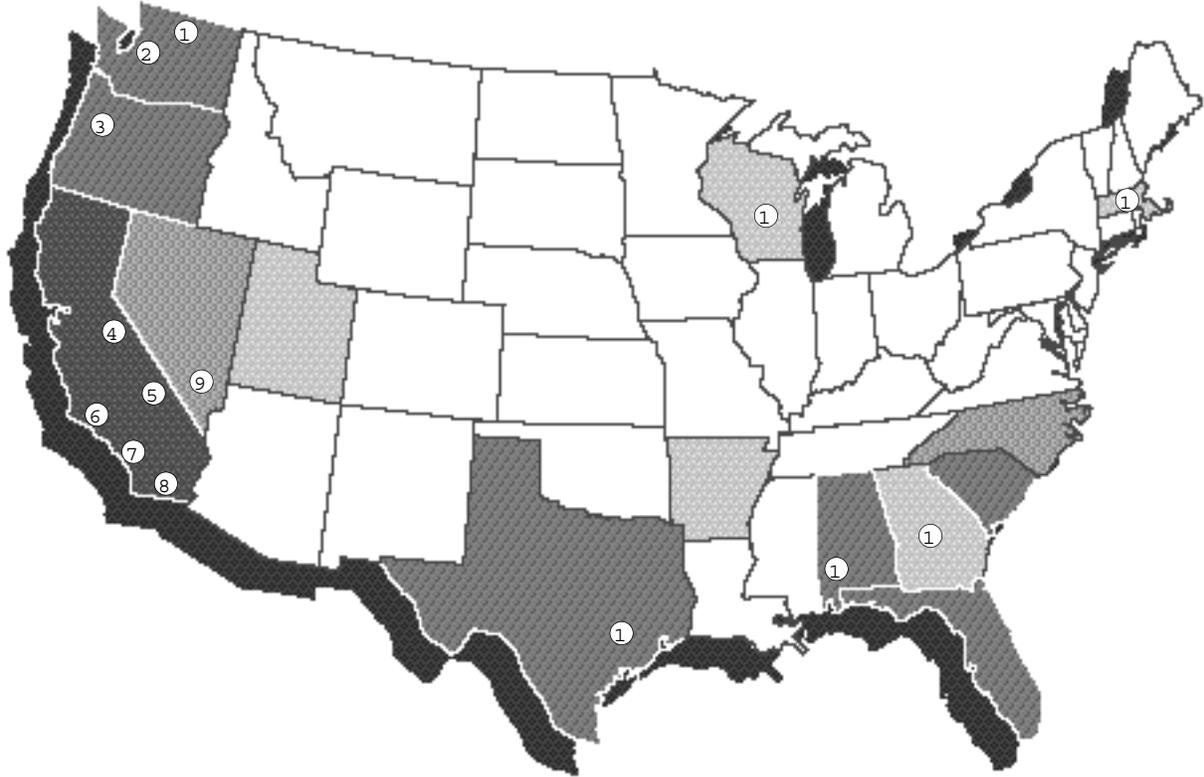
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Findings from: *Balancing Public Trust and Private Interest: Public Participation in Habitat Conservation Planning: A Summary Report*, University of Michigan, School of Natural Resources & Environment, November 1, 1998.

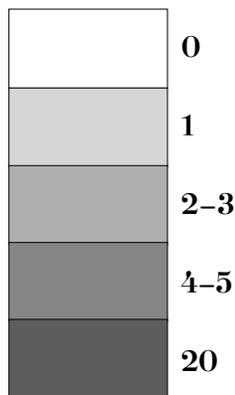
Copies of the summary report can be obtained by sending a check for \$3.00, payable to University of Michigan, to: HCP Project, Attn.: Dr. Steven Yaffee, School of Natural Resources and Environment, University of Michigan, Ann Arbor, MI 48109-1115. Copies of the full report, including case studies and recommendations, can be obtained by sending a check for \$35.00.



# Location of HCPs and Case Studies



## Number of Surveyed HCPs Per State



## Location of HCP Case Studies

- 1 Plum Creek I-90 HCP
- 2 Washington Department of Natural Resources HCP
- 3 Weyerhaeuser Willamette HCP
- 4 California Department of Water Resources HCP
- 5 Kern Water Bank HCP
- 6 Western Riverside County HCPs
- 7 Orange County Central-Coastal NCCP/HCP
- 8 San Diego Multiple Species Conservation Plan
- 9 Clark County HCP
- 10 Balcones Canyonlands HCP
- 11 International Paper Co. Red Hills Salamander HCP
- 12 Georgia Safe Harbors HCP
- 13 Massachusetts Piping Plover HCP
- 14 Wisconsin Karner Blue Butterfly HCP

## Public Participation In Habitat Conservation Planning

**I**N THEORY, Habitat Conservation Plans (HCPs) are designed to balance the needs of endangered species with the needs of private and other nonfederal landowners. But do HCP agreements live up to this promise and promote the public interest?

The effectiveness of public participation in the HCP decision-making process provides critical insights for answering this question. As a negotiation process that seeks to balance private and public interests, habitat conservation planning must find ways to deal effectively with the concerns of HCP applicants; public agencies; and outside stakeholders, such as independent scientists, interest groups, Native American tribes, local governments, state and other federal agencies, nonapplicant landowners, and the public.

HCPs that incorporate the ideas and concerns of affected parties while meeting the biological requirements of the Endangered Species Act (ESA) may successfully balance the needs of species and ecosystems with the need for economic development. However, HCPs that lack the involvement of key outside stakeholders risk undermining their scientific credibility and public support.

Indeed, we found that meaningful public participation in the HCP process has the potential to provide significant benefits to the U.S. Fish and Wildlife Service (FWS), the lead federal agency in most HCPs, as well as to HCP applicants, affected species, and the public. Specifically, public participation can enhance the information on which HCP decisions are based, improve understanding and relationships among HCP stakeholders, increase public and political support for HCPs, and provide applicants with greater certainty about the long-term viability of HCPs.

However, many of these potential benefits are not being fully realized. Our research indicates, with several important exceptions, that outside stakeholders have a limited ability to change the substantive provisions of HCPs and are unsatisfied with HCP processes and outcomes.

“While I believe wholeheartedly that there are bad HCPs out there, the main reason for this is little or no public participation.”

— CHRISTINE ROBINSON  
*Clark County Desert Conservation Plan Administrator*

The benefits of public participation are not being achieved for several reasons. The FWS’s policies and attitudes suggest that public participation is not a high priority within the Service. In addition, public comment periods on documents created under the National Environmental Policy Act (NEPA) and ESA—the most typical form of HCP public participation—come too late in the HCP development process to provide meaningful opportunities for public involvement in HCP decisions. In many HCPs, FWS staff and HCP applicants also ineffectively manage the negotiation process leading to HCP agreements.

This report outlines the potential benefits of public participation and then analyzes why the benefits of public participation are not being fully realized. It concludes with a series of recommendations for better involving the public in the HCP planning process. Our recommendations do not deal with all of the problems facing those engaged in habitat conservation planning. For example, other recent reports provide important lessons for improving the scientific basis of HCPs.<sup>3</sup> Nevertheless, our findings suggest that improving the design and management of public participation will lead to better and more enduring HCPs.

We draw extensively on case studies and survey results to understand the perspectives of FWS employees, HCP applicants, and outside stakeholders who are actively involved in the HCP process. As much as possible, we tell the story in their words in order to share the variety

of HCP experiences we encountered. In many respects, this story is discouraging and frustrating. Still, in a small number of our case studies, FWS staff and applicants

effectively involved the public and balanced private and public interests. These success stories provide useful lessons for improving habitat conservation planning. 🍃

### Public participation is defined in this study as...

The involvement of all nonapplicant and non-U.S. Fish and Wildlife Service participants in HCP development and implementation. Outside stakeholders include independent scientists, interest groups, Native American tribes, local governments, state and other federal agencies, nonapplicant landowners, and the public.



### Meaningful public participation is...

A dynamic process in which applicants, the FWS, and outside stakeholders share information with each other about their interests, concerns, and ideas. While this may take many forms, depending on the context of individual HCPs:

- It requires applicants to solicit public participation when it can be incorporated into the planning process, to listen and respond to public input, and to implement proposed changes when appropriate.
- It also requires that all parties clearly communicate their expectations of how public input will be used in the planning process.
- In the most effective processes, parties work together to find creative and acceptable solutions to problems and develop trust through face-to-face interaction.

## A Wide Variety of Approaches

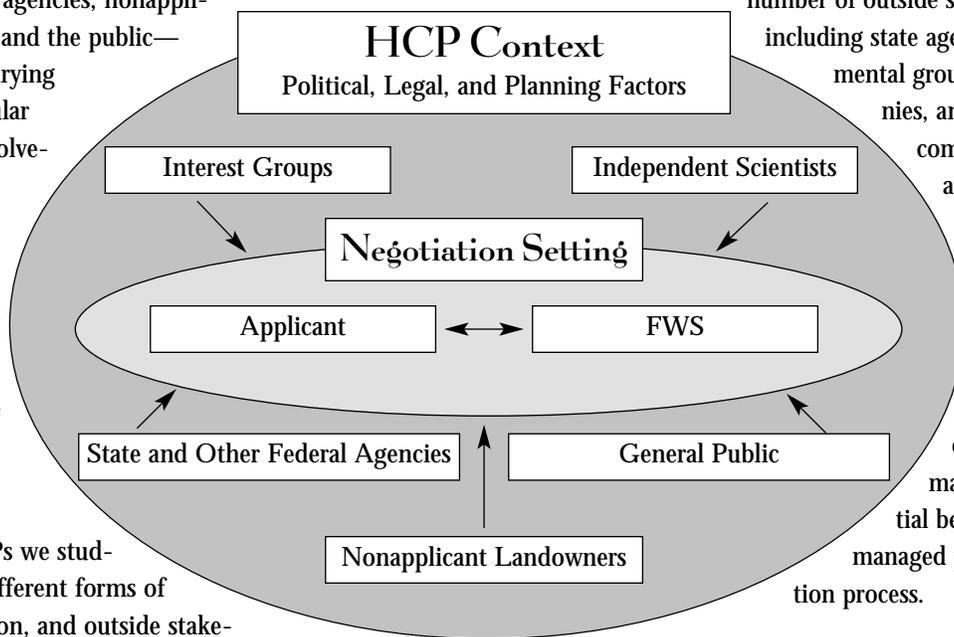
HCPs are essentially products of negotiations between limited parties—primarily the applicant and FWS. Outside stakeholders—-independent scientists, interest groups, Native American tribes, local governments, state and other federal agencies, nonapplicant landowners, and the public—are involved to varying degrees in particular HCPs. Their involvement depends a great deal on the political, legal, and biological context of the HCP and the willingness of the applicant to include them.

Indeed, the HCPs we studied used many different forms of public participation, and outside stakeholders tended to play a variety of roles during the negotiation of individual HCPs. Approximately half of the 45 large, recent HCPs included in our survey results held public forums, 40 percent convened steering committees, and 30 percent gave site tours. According to our survey, state agencies were involved in a high percentage of HCPs, while local governments, interest groups, independent scientists, and tribes were involved in fewer HCPs.

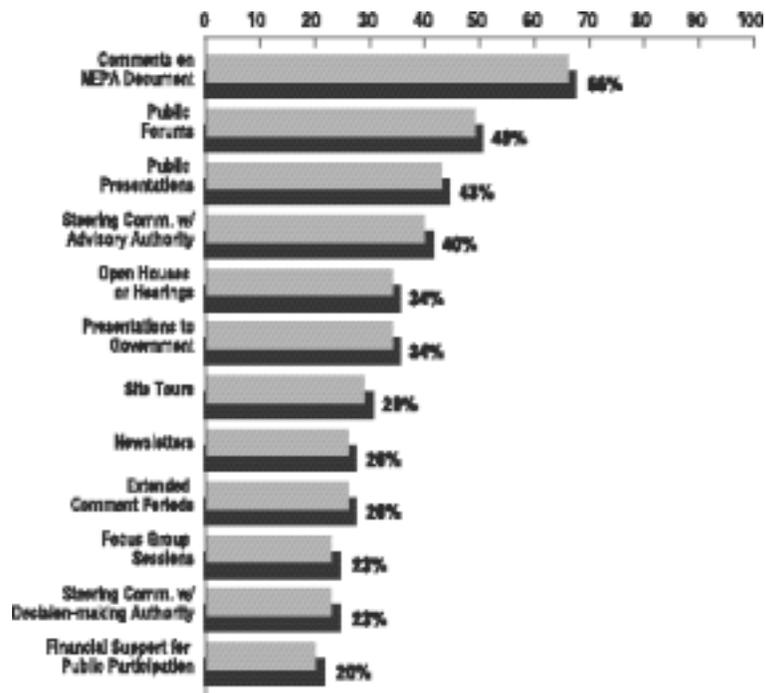
In a number of our case studies, outside stakeholders had significant opportunities to participate in the development of the HCP, and the applicant and FWS responded meaningfully to their input. In many of these cases, HCPs stakeholders were allowed to participate directly in HCP negotiations. In others, applicants made a concerted effort to communicate with stakeholders about their input and changes made to the HCP as a result of that input.

For example, the applicant in the Karner blue butterfly HCP in Wisconsin used a collaborative steering committee process in which the committee developed the entire HCP for FWS approval. The committee consisted of a number of outside stakeholders, including state agencies, environmental groups, utility companies, and forest products companies. In this and similar cases, outside stakeholders tended to be very satisfied with the HCP process. Indeed, this type of HCP illustrates many of the potential benefits of a well-managed public participation process.

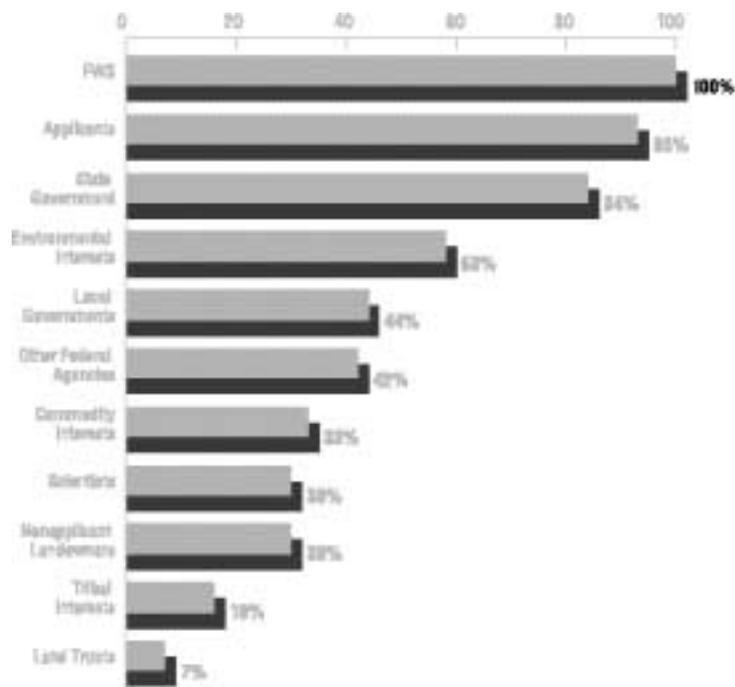
However, we found two other types of HCPs that were much more common. In the first, the applicant and FWS provided significant opportunities for public participation but failed to respond meaningfully to the public's input. In the Plum Creek HCP, for example, the applicant provided outside stakeholders with numerous opportunities to comment on its plans and created expectations that it would seriously consider those comments. However, many outside stakeholders felt frustrated that the company and FWS ignored their comments. In the second and most common type of HCP, the applicant and FWS did not provide significant opportunities for public participation during the development of the HCP. For example, in its Willamette HCP, Weyerhaeuser negotiated directly with the FWS, and the public was only formally involved late in the process through a comment period on an environmental assessment (EA) prepared under NEPA.



## Methods of Public Participation



## Who Is Involved in HCPs?<sup>5</sup>



These two types of HCPs have several common characteristics. First, outside stakeholders sit on the periphery of the negotiations between the applicant and FWS. As a result, they are forced to use other legal and political means to influence the HCP. Stakeholders also tend to be dissatisfied with these HCPs because they do not provide meaningful opportunities for public participation. Indeed, we found that stakeholders are less satisfied with HCPs that provide less meaningful opportunities for public participation. Finally, these HCPs provide numerous examples of pitfalls to avoid when designing and managing a public participation process. These pitfalls are discussed throughout the report.

The actual level of outside stakeholder involvement in an HCP depends on their perceived power and the context of the HCP. Because FWS policy gives applicants almost complete discretion to shape public participation beyond the comment period requirements of the ESA and NEPA, outside stakeholders are typically involved only to the extent that the applicant perceives their involvement to be in its interest. If the FWS and applicant perceive outside stakeholders as powerful, they are more likely to address outside stakeholders' concerns, at least cosmetically, during HCP negotiations. Stakeholders have power if they can affect or delay an HCP decision through litigation or have political influence over the primary negotiating parties.

For example, in the Orange County Central-Coastal HCP, which was one of California's first planning efforts under the Natural Community Conservation Planning (NCCP) program,<sup>4</sup> environmentalists who participated on an advisory committee initially had little clout. Many of their early suggestions were ignored. However, as Dan Silver of the Endangered Species Habitats League explained: "As time wore on, we had more [influence] as the resource agencies realized that the overall NCCP program wasn't going to have much support in Congress or the Legislature if the first one [NCCP] had no conservation group support. In the end, they [FWS and the applicant] made the easy changes because they needed our support politically." Peter DeSimone of the National Audubon Society similarly explained: "It's all politics and personality. The politics are so extreme here that you are better off schmoozing with some politician than sitting down and doing some real planning."

The level of stakeholder involvement in HCPs also depends on landownership patterns, the type of applicant, and the extent to which HCPs affect local economies. In particular, outside stakeholders tend to be more involved in HCPs with state or local government applicants than they are in HCPs with private landowner applicants. While many private applicants do not perceive themselves as having incentive to pursue meaningful public participation strategies, government applicants typically have extensive public participation requirements and experience. Government applicants also tend to have a greater political interest in public participation, because their HCPs affect a wider variety of interests and public resources.



## Why Is Public Participation Beneficial?

### Public Participation...

- *Can improve the quality of an HCP.*

Outside stakeholders can bring technical information and other resources to HCP decision-making. They are more likely than either the applicant or the FWS to be able to articulate their real concerns with an HCP, which allows these concerns to be addressed in an effective and efficient manner. Outside stakeholders also can help craft creative solutions that balance the range of interests involved in HCP decisions.

- *Can build public support for an HCP.*

Involvement in the decision-making process can improve stakeholders' understanding of the choices made in an HCP and the constraints facing both the applicant and FWS. Applicants can also be more responsive to stakeholder concerns. Meaningful public participation can build relationships and trust that can enable the HCP to move forward. For an HCP involving a single, private applicant, public support is needed to provide the enhanced certainty that landowners seek. For an HCP involving government applicants or public lands, public support is necessary for the plan to achieve political acceptability. Ultimately, a plan that is supported by outside stakeholders is more efficient than one that faces potential litigation and political action.



- *Provides an important measure of the likely success of an HCP.*

For many HCPs, evaluation of success in biological terms will not be possible in the near term. One indicator of the likely success of an HCP is the satisfaction level of outside stakeholders, including independent scientists. If people with different interests, knowledge, and perspectives all look favorably on the direction set in an HCP, it is more likely that it will achieve its biological targets. In addition, a plan that is supported by outside stakeholders is more likely to be implemented successfully.

- *Is a vital component of the FWS's responsibilities under federal law and landowner obligations as neighbors in communities.*

Congress has established public participation as an important element of endangered species decision-making. Through the citizen suit, review-and-comment, and full disclosure elements of the ESA, NEPA, and other laws guiding federal administrative procedures, the FWS is directed to organize an effective process for involving the public. Such involvement is an important element of a democratic society, and its significance is magnified in decisions affecting public trust resources such as wildlife, publicly used landscapes, and public funds, as are often involved in HCP decision-making. Involving the public in HCP decision-making is also part of being a good citizen and neighbor. Well-established norms associated with communities establish responsibilities associated with citizenship and landownership.

## The Potential Benefits of Public Participation

A MEANINGFUL public participation process has the potential to provide significant benefits to HCP applicants, the FWS, the public, and affected species. While the majority of HCPs do not currently capture these benefits, these potential gains suggest reasons why applicants and the FWS should consider improving their public participation policies and practices.

Participation clearly improves the quality of information available to decision-makers. Ninety-four percent of FWS respondents to our survey said that public participation increased the quality of information available to develop HCPs. According to Rich Winingger of Weyerhaeuser, public participation can bring up legitimate issues that can “help defuse misperceptions.”

Public participation can also help stakeholders learn about the legal, political, and biological complexities of HCPs. If participants are involved early and consistently in the process, this learning can help establish communication and trust among participants, which is important for plan approval, implementation, and future conservation efforts. In the Karner blue butterfly HCP, forest products and utility industry representatives reported that the inclusive HCP process improved their communication with others in their field. Nonprofit and government representatives also improved their relationships with the private sector. As Nancy Braker of The Nature Conservancy said, “If it had been an easy process, and we only had to meet a couple of times, we would have never developed stronger ties with the timber companies that have resulted in further opportunities to do effective conservation work in Wisconsin.”

Involvement of outside stakeholders can build public support for an HCP and increase the likelihood of plan approval and implementation. With opportunities for learning and building trust, public participation can help garner the support of potential critics and prevent future conflicts and delays. Our case study results show that this is especially true when HCPs provide for early and consistent public participation. HCPs with a greater

level of public participation tend to have higher and broader levels of outside stakeholder satisfaction, which decreases the chance of future delays through administrative appeals or litigation.

On the other hand, HCPs that do not effectively involve the public can become vulnerable to lawsuits and other delays. In the Riverside County Stephens kangaroo rat HCP in California, the public had significant opportunities to participate, but many participants felt that their comments were ignored. One result was a high number of lawsuits from environmentalists and property owners, which slowed the planning process and drained the coffers of the joint county-municipal

authority created to develop the HCP. By 1996 (before the HCP was approved and even more lawsuits were filed), the joint county-municipal authority reported spending \$1.3 million on litigation and legal services. The county seems to have learned from its mistakes. Local officials developing a multi-species HCP in Western Riverside are trying to avoid the high degree of controversy associated with the earlier single-species HCP. Although the multiple species HCP is not yet complete, all participants—applicant, FWS, and outside stakeholders—characterized it as a more collaborative and satisfactory process than the first plan.

“In the past, there [have] been no forums for this kind of dialogue and shared learning. These forums bring some really disparate groups together, build up trust, and forge relationships that otherwise would never occur. [These relationships] can form the basis for continued conservation planning.”

— JIM MOORE

*The Nature Conservancy,  
Clark County HCP*

## Clark County: Capturing the Benefits of Public Participation

**T**HE CLARK COUNTY HCP for the desert tortoise effectively managed several aspects of public participation. As a result, the HCP enjoys wide support in this growing area of Nevada.

As with other HCPs that enjoy public support, Clark County, the primary applicant, created a steering committee at the outset of the planning process that involved a wide array of interests, including the county; local, state, and federal agencies; academics; developers; off-road vehicle interests; miners; and national and local environmental groups. This diverse membership legitimized the committee process and helped build trust and ownership of the plan.

Dolores Savignano, a FWS biologist involved in the HCP, said: “There was good buy-in because of all the participation. Our approach definitely lowered the controversy level and actually promoted learning, which has resulted in more actions getting implemented.”

The steering committee kept the planning process running smoothly by hiring a facilitator and establishing two subcommittees. The technical subcommittee kept the steering committee from bogging down in technical uncertainty, while the education subcommittee worked to enlist the public’s support in protecting the tortoise. They educated the public by using a telephone hotline, speaking engagements, school materials, videos, billboards, and newspaper, radio, and TV ads.

Participant continuity also facilitated the success of the HCP by building trust and understanding. The steering

committee met more than 100 times over eight years. Many of the core committee members stayed involved throughout the planning process and even formed an implementation and monitoring (I&M) committee.

The committee operated on a principle that compromise was necessary and that everyone needed to buy into the overall document. According to Paul Selzer, the process facilitator: “No matter how long we took we were never going to get total unanimity. The key was consensus not on every little item but on the whole thing.”

Broad committee support translated into broad public support. When the committee submitted its plan to the county commissioners, the commissioners unanimously voted for it and submitted it to the FWS as their official HCP application. As Selzer noted: “ESA matters are explosive and most government entities love it when the enviros walk hand-in-hand with the biggest developers in the region and request in unison for them to do something.”

While some biological and policy questions linger, the plan continues to be supported by key stakeholders. According to Selzer: “No one from any side has really complained about the plan or its implementation. There are issues and everyone is not totally happy. But if you asked them, would you rather have this plan or not, they would all want it.” In fact, the process worked so well that the county is using the I&M committee to prepare a new, five-million-acre multi-species HCP that will be the largest HCP in the country if it is approved.<sup>6</sup> 

If structured and managed correctly, steering and advisory committees enable outside stakeholders to get involved earlier and more consistently in the development of HCPs, thereby helping to capture many of the benefits of public participation. For example, an environmentalist involved in a number of HCPs said that being part of a working group: “allowed us to understand how the plan developed and evolved. [The plan] is easier to accept if you understand the series of step-wise decisions that occurred. We had the opportunity to satisfy ourselves that we couldn’t do certain things like connect two reserves...[The plan] worked for me, but if I had not been a part of the working group, I would likely not have been able to accept the plan. Having that ability to see it as it was developed was critical.”

The involvement of outside stakeholders, particularly independent scientists, can also strengthen the negotiating position of FWS staff. In negotiations information is power, and outside stakeholders often provide useful and credible information to FWS staff. Having groups other than the FWS make the case for permit conditions can also strengthen the Service’s bargaining position.

According to interviewees, outside stakeholders can also aid field-level FWS staff in making their case with upper-level decision-makers.

HCPs that include the involvement of outside stakeholders after HCP approval are more likely to be implemented

successfully. For example, in the Georgia Safe Harbors HCP, the steering and scientific advisory committees—both made up of outside parties—will oversee the implementation process. In the Orange County Central/

Coastal NCCP/HCP, three public members sit on the 15-member board of the nonprofit corporation created to implement the HCP. They can act as watchdogs, informing the agencies and outside stakeholders if problems occur. According to Dave Harlowe, an assistant FWS field supervisor: “I think more people will come around to appreciate this element of the final plan. It is a very positive, partnership-building mechanism, and it essentially gives continued life to the plan so that it doesn’t become like many processes, where frankly the final product is largely forgotten by the public.”

The involvement of outside stakeholders can also help the FWS and applicants leverage other valuable resources and expertise, which is particularly important given the

FWS’s chronic budget and staffing problems. For example, The Nature Conservancy has been critical to the implementation of the Coachella Valley fringe-toed lizard HCP in southern California, which was one of the first HCPs ever completed. The Conservancy provided funding, secured options on reserve lands, and is the repository and distributor of mitigation fee funds. It also manages the reserve, oversees management activities, and conducts public outreach. All parties to the HCP agree that the plan would not work without the Conservancy’s continued involvement.<sup>7</sup>

“[The working group was] the key to our success. ...Even though we didn’t have all four [environmental members] supporting the plan in the end and might not have enjoyed every minute of working with them, the plan was better because of the working group...Its net effect was that the primary organizations in our community were neutral or supportive.”

— SAT TAMARABUCHI  
*Vice President Environmental Affairs  
Irvine Company, Orange County Central-  
Coastal NCCP/HCP*

The involvement of independent scientists can have a particularly beneficial effect on HCP processes and products. In several of our case studies, independent scientists helped design conservation strategies and improved the scientific basis of the plans. For example, in the Clark County HCP, independent scientists were involved in a technical subcommittee early in the planning process. They helped formulate the plan and provided scientific review of the steering committee's proposals. As the plan developed, members of the technical subcommittee continued to sit on the overall steering committee and played a critical role in shaping the plan.

Continued involvement by independent scientists in the planning process can also increase the public credibility of an HCP. For example, in the Washington Department of Natural Resources (DNR) HCP, a science team recommended overall conservation strategies. The team's work was widely supported by industry groups and environmentalists alike. Unfortunately, those groups lost confidence in the plan when, according to Tim Cullinan of the National Audubon Society, among others, the "policy people took over" and the scientific basis for the plan was perceived to have been altered.

The early involvement of independent scientists also has the potential to help applicants and the FWS negotiate HCPs more efficiently by providing information that enables the FWS to clarify requirements for applicants. Applicants tend to negotiate plans that come as close as possible to the minimum acceptable conservation standard. However, this minimum standard is often

difficult to define in practical terms, and the FWS often keeps standards ambiguous in individual HCPs to strengthen its negotiating position. For example, Kristi Lovelady, senior administrative analyst of the Riverside

County Habitat Conservation Agency, described her frustration with the lack of FWS clarity: "They were supposed to be the authorities on how much is enough....The whole process of the plan was like trying to construct something in a pitch black room and somebody saying 'you're kind of close.'" Early scientific involvement can reduce problems like this by shedding light on biological questions that bog down negotiations and providing objective criteria to which negotiating parties can appeal.

In the best of situations, public participation can also "expand the pie" and help participants discover creative solutions that at least partially meet their interests. As Paul Selzer, the facilitator for the Clark County HCP, said, "You

might not get your way on every item, but in the end the document ought to be better for all than the status quo and any alternative you could get through regulation or litigation." In this inclusive HCP, everyone received something they wanted. Developers received greater assurances that they could continue to develop in fast-growing Las Vegas. In addition, development fees paid for state and FWS research, fencing along highways to protect desert tortoises, public outreach on tortoise conservation, the purchase of grazing leases from willing sellers, and other activities that met the interests of participating stakeholders.

“Public participation makes all the difference in the world in terms of product, because it puts added pressure on the applicant to do the right thing and it puts the Service in a position of strength in the negotiations.... Management would have been less likely to listen to their staff that some of these issues were problems if public comment had not reinforced them.”

— JOE ZISA  
*FWS Biologist,  
Weyerhaeuser Willamette HCP*

## The Full Benefits of Public Participation Are Unrealized

UNFORTUNATELY, while there are a number of HCPs that illustrate the benefits of engaging in a meaningful public participation process, most of the HCPs we studied do not capture these benefits. In fact, according to our survey and case study results, interest groups and independent scientists are not involved in a large number of HCPs, and few HCP agreements are significantly changed because of public participation. Significant substantive changes to HCPs tend to occur early in the planning process, before interest groups or other stakeholders are involved in a significant way. As a result, outside stakeholders generally are less satisfied with HCP processes and agreements than applicants or the FWS.

Outside stakeholders are not significantly involved in a large number of HCPs. According to our survey results, groups representing environmental, Native American, and commodity interests were not involved in more than 40 percent of large HCPs. We also found that when these groups were involved, the timing of their involvement diminished their influence. They tended to be more involved during comment periods on ESA and NEPA documents than during earlier phases of the planning process when most key HCP decisions are made.

Nonagency and nonapplicant scientists generally are not involved in most HCP processes. Independent scientists were actively or moderately involved in only 28 percent of surveyed HCPs. Less than a third of surveyed FWS staff reported that they or the applicant submitted documents for peer review by independent scientists.

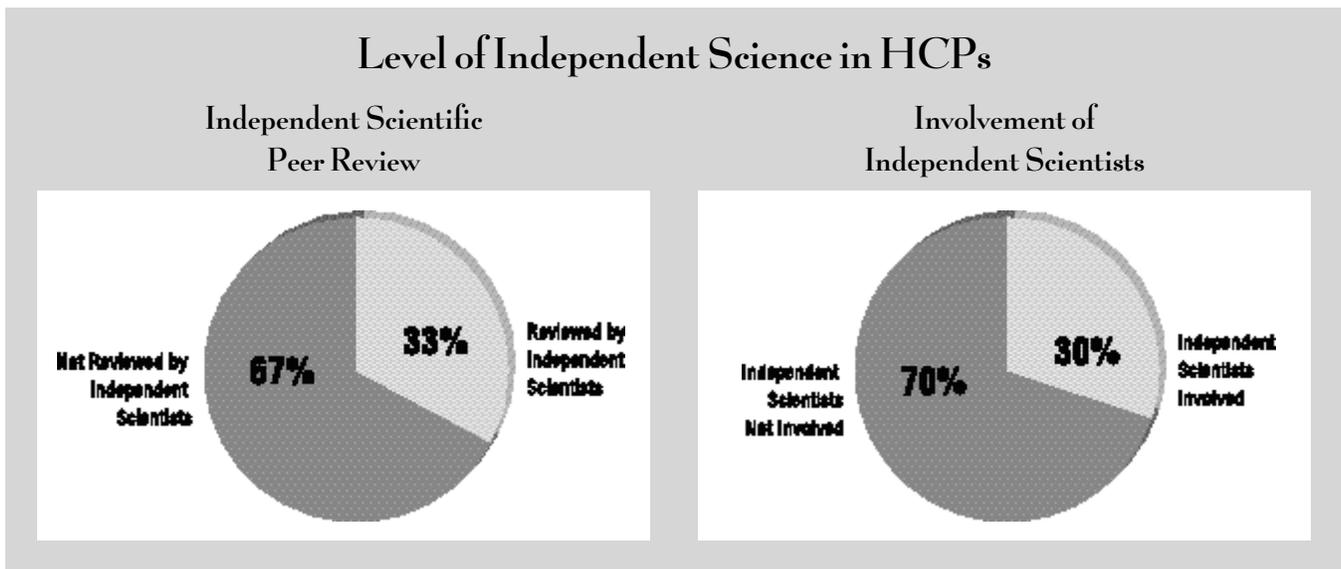
However, even if outside stakeholders have an opportunity to participate in an HCP, this does not necessarily mean that they will be meaningfully involved or have their comments seriously considered or implemented. Indeed, even when the public is involved, most substantive changes to HCPs are driven by the interests of applicants and the FWS, not the public. Only 14 percent of FWS staff responding to the survey said that public participation resulted in significant substantive changes to the HCPs in which they were involved. In more than a third of HCPs, public participation led to no substantive changes. In the Plum Creek I-90 Corridor HCP, the FWS and Plum Creek tightly

controlled the development of the HCP. According to Jim Matthew of the Yakima Indian Nation, “It was basically a Plum Creek and FWS show, and whatever they were came up with is what we got.”

While there are important exceptions, outside stakeholders tend to be dissatisfied with HCP processes and final HCPs, and their expectations of influencing HCPs typically go unmet. In a number of our case studies, applicants provided significant opportunities to participate, but outside stakeholders did not feel that applicants or the FWS incorporated their input. As a participant in the Washington DNR HCP stressed: “The Washington DNR came out and said, ‘OK, we’re going to do all these things to retrieve input from the public and we are really interested in what you have to say.’ And the public commented at length and intelligently, and that input was not only ignored, but in some cases it was almost ridiculed by the Department.” Dennis Hollingsworth of

“At the time we were encouraged [by the process]... They appeared to be listening. But as it went farther along, you could tell they were smiling and being very pleasant, but they weren’t changing the substance. It was sugar krispies: sugar-coated on the outside but no nutritional value.”

— CHARLIE RAINES  
*Sierra Club, Plum Creek HCP*

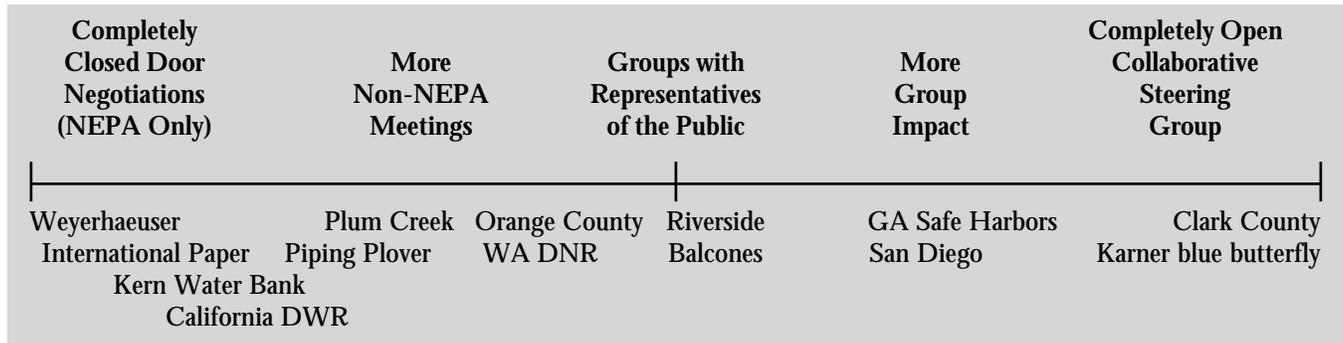


the Riverside County Farm Bureau, a participant in the Stephens kangaroo rat HCP echoed this sentiment. “We can say that we had a lot of accessibility to the process by the public....But if we look at how it all came out in the wash, it didn’t matter. There’s a healthy number of folks that feel like their public input was wasted—that it was nothing but window dressing.”

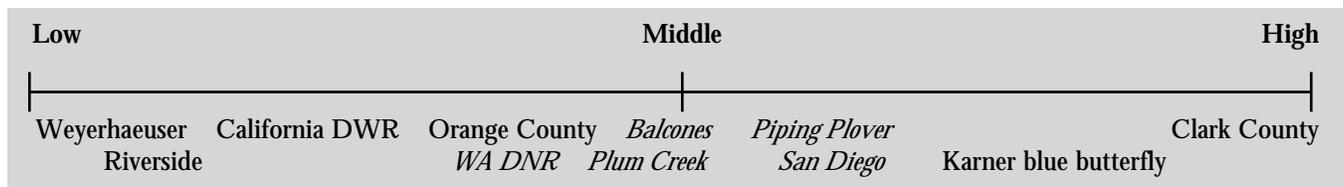
Clearly, pleasing everyone, especially single-issue interest groups, can be difficult given the complex nature of HCP agreements and the biological requirements of the ESA. As Chuck Turley of the Washington DNR suggested, “There’s a difference between providing someone an opportunity to comment and making some sort of up-front guarantee that you’re going to do everything they recommend.” Neither the law nor FWS policy requires the applicant or the Service to change HCPs based on public comments. And except in unusual cases where the applicant and Service prepare an environmental impact statement (EIS), the FWS’s public participation policy does not require the applicant or Service to respond to public comments.

However, unmet stakeholder expectations can lead to disappointment and dissatisfaction. For example, failure to acknowledge and respond to public comments can fuel outside stakeholders’ impressions that applicants and the FWS ignore their comments. Furthermore, the FWS and applicants can create expectations that public input will be incorporated into an HCP, which leads to frustration when comments are not addressed. As Mike Collins of Plum Creek observed: “If you are going to make [your HCP] available to the public and they are going to comment on it, then you really have an obligation to respond to what they say. There is a tradeoff of making information more available but creating a monster in terms of being able to manage the results that you get.” Applicants trying to improve their image or curry public favor should be wary of promising meaningful public participation if they do not intend to respond to public concerns.

## Spectrum of Outside Stakeholder Participation



## Spectrum of Outside Stakeholder Satisfaction<sup>9</sup>



Our analysis indicates that outside stakeholders are more satisfied with the HCP planning process when HCPs have early and consistent public participation, involve advisory committees, and use independent scientists. Furthermore, outside stakeholders' satisfaction with HCPs increases when they are able to participate more intensively—to work with others to develop a plan rather than provide feedback on a plan. Similarly, the less involved a group is in the negotiation process, the more opposed to the HCP they tend to be. This suggests that outside stakeholders may be more satisfied with future HCPs if they are able to participate earlier and more consistently in the process. Unfortunately, this is not the norm.

While outside stakeholders are generally dissatisfied with the HCP process, FWS staff believe that they are very responsive to public concerns. An amazing 94 percent of FWS survey respondents reported that their final HCP agreement responded very effectively or moderately effectively to the concerns and interests of outside stakeholders, including those not actively involved in the planning process. This wide difference in groups' satisfaction is also evident in our case studies. For example, when asked to rate their satisfaction with the

Washington DNR HCP, both the FWS and the DNR (the applicant) gave the final HCP a 4 on a scale of 1 to 5, with 5 being very satisfied. Environmentalists, however, ranked the final plan as a 2 and Bob Dick of the Northwest Forestry Association asked, "is there anything less than a 1?"

The fact that FWS staff perceive that they respond effectively to public concerns while the public is dissatisfied with many HCPs suggests that there are real problems with the HCP program. Either FWS staff do not expect to make significant changes to HCPs based on public input, or staff are not effectively communicating with the public about the changes made to HCPs based on their input. In either case, the FWS is not managing the process to maximize the benefits of public participation. Moreover, while stakeholder satisfaction is certainly not the only measure of HCP success, it is an important one. The more satisfied stakeholders are with an HCP, the more likely that HCP is to protect affected species and balance public and private interests. Unfortunately, the HCP experience to date suggests that many stakeholders are dissatisfied with the process and that the balance between private interests and public trust is missing. 

## Tribal, State, and Federal Agency Involvement

**A**S ARTICULATED in the FWS's *Habitat Conservation Planning Handbook*, the FWS has special responsibilities to Native American tribes, states, and other federal agencies.<sup>8</sup> Our research, however, indicates that these outside stakeholders face many of the same obstacles to participating effectively in the HCP process as other stakeholders. For example, according to Patty Garvey-Darda, a Forest Service biologist: "Plum Creek circulated things, but only some, and more importantly they would not incorporate our feedback. The sense was 'here it is, but don't ask questions.' They didn't really want us involved."



Native American tribes share similar experiences. The environmental impact statement for the Washington DNR HCP describes significant efforts to incorporate the interests of tribes, and one FWS contact felt that "tribes were catered to a bit on this project." Yet, according to Terry Williams of the Tualip Tribe, "the tribes were left out of the planning process." Indeed, a number of tribes recently filed a notice of intent to sue the DNR over the HCP. Mike Collins of Plum Creek explained a similar difference of perceptions in the Plum Creek HCP by saying: "No one translated the HCP into the issue that concerns the tribes the most, and that is treaty rights. We thought more in terms of considering their interests biologically, but to expand to the bigger issue of treaty rights—we missed it."



## Problematic FWS Policies and Attitudes

THE FWS's policies and attitudes limit HCP participants' ability to capture the full benefits of public participation. The Service sends its staff conflicting messages about the importance of public participation relative to other agency priorities, such as streamlining the planning process, securing HCP agreements, and being flexible advisors to applicants. Indeed, we found significant evidence that the FWS prioritizes other goals above public participation.

For example, Service policy statements promoting public participation are vague and unenforceable, while policies that limit participation are specific and effective. The FWS's *Habitat Conservation Planning Handbook (Handbook)* directs staff to "encourage" applicants to involve outside stakeholders like federal and state agencies and to use steering committees or other means to involve interested parties in HCPs.<sup>10</sup> We found little evidence to suggest that this vague policy is leading to meaningful public participation.

In fact, the FWS has several specific policies that undermine effective participation. FWS staff are under pressure to meet Service-imposed approval deadlines, such as the target permit processing times outlined in the *Handbook*.<sup>11</sup> These deadlines limit stakeholders' ability to review HCPs thoroughly and the FWS's ability to respond effectively to public input.

For example, despite receiving more than 34 letters asking for a comment period extension in the Orange County Central-Coastal NCCP/HCP, the FWS and the applicant denied the request because of a previously negotiated deadline. In the Plum Creek HCP, the Environmental Protection Agency (EPA), Forest Service, and Washington Department of Fish and Wildlife (DFW) felt constrained by the limited time to

review documents. Dave Whipple of the DFW stressed that Plum Creek had defined a specific timeline and "in some instances we ended up without enough time to review things thoroughly."

### Four Key Obstacles

- Problematic FWS policies and attitudes.
- NEPA as a public participation process.
- Ineffective management of HCP negotiations.
- Fear of public participation.

Other HCP policies also limit public participation. For example, the FWS's policies of categorically excluding "low effect" HCPs from NEPA review and recommending that applicants prepare environmental assessments (EA) instead of environmental impact statements (EIS), which require more public disclosure and involvement, sends the message that public participation is not a high

agency priority.<sup>12</sup>

The FWS also follows a *satisfied customer* approach to working with applicants, which places a high priority on meeting the needs of applicants and securing HCP agreements. The Service has been encouraged to take this approach from several sources. Government "reinvention" efforts have encouraged agencies to focus on customer service. The Clinton Administration has also defended the ESA by using HCPs to show that the Act can be used to balance species protection and development. Indeed, in response to national and local pressures, the Service has deferred more to applicants in order to develop a constituency of satisfied applicants and increase the number of HCPs.

Numerous respondents told us that these dynamics reduce the power of outside stakeholders and FWS staff and give applicants excessive control over the process. As a FWS biologist working on numerous HCPs said: "We have been bombarded from above with this sort of can-do attitude—to get out there and work with the applicant and get some product on the market. Anything that delays that or makes it more difficult is not viewed

## The U.S. Fish and Wildlife Service's Public Participation Policy

**T**OGETHER, ESA, NEPA, and state environmental laws such as the California Environmental Quality Act require applicants and the FWS to disclose proposed activities and their potential impacts, consider a range of alternative actions, and accept public comment on those actions.

The Service typically notices receipt of an HCP application in the Federal Register and then conducts at least a 30 to 45 day comment period on NEPA and ESA documents depending on whether an environmental assessment (EA) or more extensive environmental impact statement (EIS) is being prepared. If an EIS is being prepared, the Service and applicant also conduct a scoping period early in the planning process to identify issues to be addressed in the EIS.

The law does not require the FWS to incorporate public comments into an HCP or make decisions based on public comments. Instead, the Service reads public comments, makes a final decision to approve or reject the HCP, prints its decision in the Federal Register, and in the case of an EIS, publishes a record of decision and final EIS.

The law provides the FWS with significant discretion to shape its own public participation policy. However, rather than using the law's flexibility to craft effective public participation processes, the FWS interprets the law narrowly and focuses on explicit disclosure and comment period requirements.

The Service encourages applicants to pursue the bare minimum in NEPA documentation and comment periods. For example, it encourages applicants to pursue EAs or "mitigated EAs" instead of more extensive

EISs.<sup>13</sup> Only EISs include an analysis of alternative actions and a response to public comments.

Some HCPs receive no public review. HCPs deemed "low effect" by the FWS can be categorically excluded from NEPA review. These HCPs are not necessarily small. For example, the FWS recently determined that the 400,000 acre Gulf States Paper Corporation HCP was a "low effect" HCP that could be excluded from NEPA review.<sup>14</sup>

The FWS also grants much of its discretion under the law to applicants. According to the Service, the development of an HCP "is considered a private action and is, therefore, not subject to public participation or review until the Service receives an official application."<sup>15</sup> As outlined in the FWS's *Habitat Conservation Planning Handbook (Handbook)*, FWS staff are directed to "encourage" but not require applicants to provide for public participation beyond that explicitly required by the ESA and NEPA.

The *Handbook* makes special mention of encouraging the development of stakeholder advisory committees and the involvement of other federal and state agencies and Native American tribes. It also outlines a number of suggestions for making committee processes function more effectively. While this is sound advice, we found that FWS staff do not make public participation a high priority with applicants. In most HCPs, the vague encourage-but-not-require policy fails to lead to meaningful public participation. In fact, in most HCPs, the NEPA and ESA comment periods are the sole public participation mechanism. 

favorably. The whole concept of customer service has been really stressed with the applicant being considered the only customer.”

While streamlining the process is a valid goal, the public must remain an important customer too, and its interests must be represented in permitting decisions.

Unfortunately, many in the FWS view public participation as a procedural burden rather than an opportunity to improve its negotiating position or develop better HCPs. Indeed, many see public participation simply as a legally required step in an approval process that must be completed as quickly and effortlessly as possible.

FWS staff are also left to decide for themselves how to balance guidance that they be advisors to applicants without being “rigid dictators.”<sup>16</sup> We found little evidence to suggest that FWS staff make encouraging public participation a high priority with applicants. We also found that staff have low expectations for making changes to HCPs based on public input. Peter Cross, a FWS field director, summarized his interpretation of FWS policy by saying, “The FWS doesn’t think it’s proper to dictate who an applicant should or shouldn’t invite to attend.”

The Service’s narrow view of public participation partly reflects its history and capabilities. The FWS faces staffing and other resource shortages, and deadlines limit the staff’s ability to effectively involve the public. The FWS has years of experience as a regulatory agency, but effectively managing HCPs and other cooperative conservation programs requires staff to use new techniques, work with new constituencies, and balance more complex issues than it has in the past. Unfortunately, many HCP staff do not have effective collaborative decision-making or negotiation skills. Indeed, 59 percent of FWS survey respondents reported that they did not have public participation training. FWS staff also work in a complex legal environment defined by statutes like the Federal Advisory Committee Act, which makes them even more wary of dealing with outside stakeholders.

Ultimately, the Service’s approach undermines the effectiveness of the HCP process. To improve the HCP program, the FWS should carefully review its internal priorities and improve its policies. 



## NEPA Is Not Enough

NEPA provides important access for outside stakeholders into the HCP decision-making process. But the dynamics of the negotiation process used to design HCPs are ill-matched to the opportunities that NEPA provides for public participation. Thus, NEPA provides a necessary but insufficient approach to public participation in habitat conservation planning.

The NEPA process was designed to provide the public with information about project objectives, alternative actions, and environmental effects. In doing so, it can provide a consistent vehicle for public disclosure and comment on nearly finalized HCPs, which is especially important when an HCP has been negotiated by landowners and the FWS behind closed-doors. NEPA also gives the public an important opportunity to file formal comments on proposed HCPs. Finally, because it is required and institutionalized, NEPA creates benchmarks that help stakeholders gauge the progress of the planning process.

However, NEPA was not designed to facilitate public participation in the negotiations that take place in the development of most large-scale HCPs. The timing of comment periods on NEPA documents is particularly mismatched with the dynamic decision-making that occurs in HCP negotiations. NEPA provides for scoping periods early in the planning process when an EIS is prepared and comment periods on ESA and NEPA documents at the end of the planning process when either an EIS or less extensive environmental assessment EA is prepared.<sup>17</sup> However, in HCP negotiations, key decisions tend to be made iteratively throughout the process. Indeed, most key HCP decisions are negotiated after the NEPA scoping process (if an HCP has one, and most do not) and well before the comment period on ESA and NEPA documents. As a result, unless they are involved in a committee process, outside stakeholders do not typically have an opportunity to participate in the planning process when key decisions are being made.

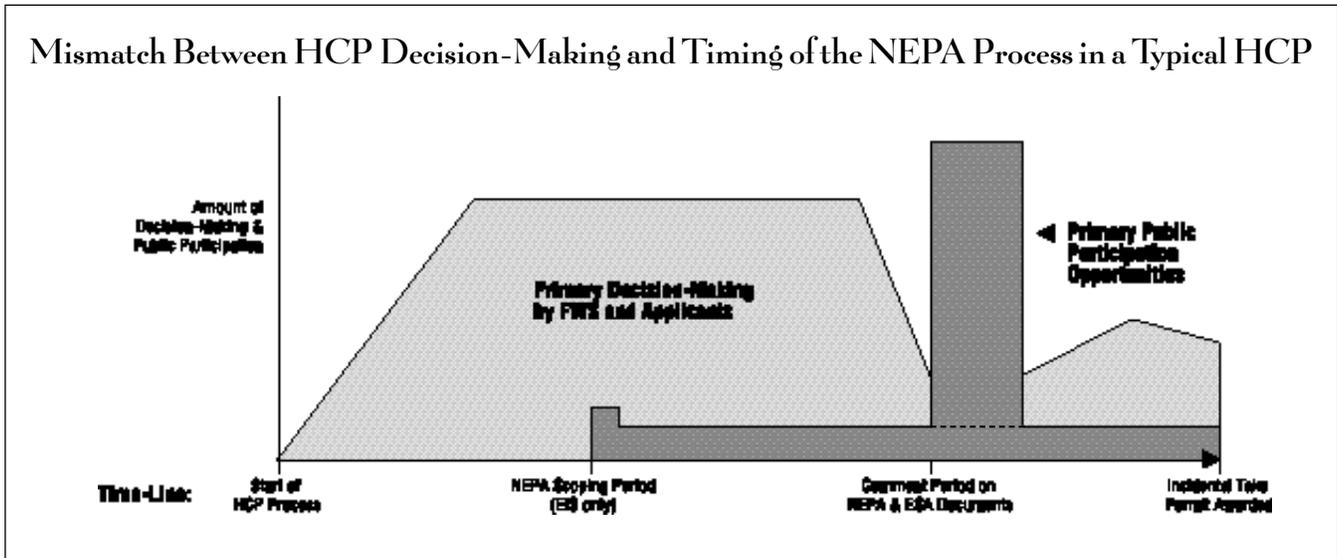
This timing problem is magnified by the dynamics of HCP negotiations, which can be intense, involved, and protracted. Over time, issues become increasingly interconnected, and negotiators become vested in specific elements of the agreement and reluctant to unravel tentative agreements. Several FWS staff indicated that once a planning process is underway, every plan provision becomes hinged to every other. As Bill Vogel of the FWS explained “an HCP becomes like a house of cards where you don’t want to risk altering too much for fear the whole structure will collapse.” By the

time ESA and NEPA documents go out for public review late in the planning process, negotiators are increasingly unlikely to change tentative agreements even if new information is discovered or legitimate concerns are raised during the comment period. As Ruth Siguenza of the EPA said: “The culture of [NEPA and HCPs] is a very rough fit. NEPA alone is not a very effective tool when it comes to HCPs in terms of affecting changes that come out of the whole process. I have seen folks at the FWS go back to the negotiating table after NEPA but it is very hard to do that.”

FWS staff are also reluctant to make significant substantive changes to HCPs because they do not want to prepare supplemental NEPA documents. Applicants can use this reluctance to their advantage and out-negotiate FWS staff. As a FWS staff person acknowledged: “The political pressures got pretty nasty. Because the public comment period had already occurred, there was tremendous pressure brought on us not to change the HCP too much. People said, ‘If you change it too much, you’ll have to do a supplemental EIS.’”

“Once you get to the draft EIS they have already cut the deal. At that stage, you can’t really do too much to the document.”

— JIM MATTHEW  
*Fisheries Biologist*  
*Yakima Indian Nation*



Similarly, as the planning process nears completion, negotiators become increasingly less open to scientific input that challenges tentative agreements. Indeed, the burden of proving that there are scientific problems with a negotiated agreement can shift away from the applicant and the FWS and onto independent scientists and interest groups concerned with HCP provisions. In the Plum Creek case, Dave Whipple of the Washington DFW said, “We had to prove that what Plum Creek was proposing was bad, not necessarily that they had to prove what they were proposing was good.”

The mismatch between the NEPA process and the character of HCP decision-making can be extremely frustrating to outside stakeholders who often invest significant amounts of time reviewing, commenting, and trying to influence HCPs at the end of the process when their comments are less likely to be useful or incorporated into the HCP. Our case study and survey results indicate that public participation before the comment period on ESA and NEPA documents results in more substantive changes to HCPs than participation during other phases of planning or implementation. Yet we also found that interest groups tend to be more involved during the comment period on ESA and NEPA documents than during any other planning phase.

Outside stakeholders also expect their input to be incorporated into the plan, and when it is not, they tend to be dissatisfied and unsupportive of the process and resulting HCP. According to Timothy Neely, the county planning administrator involved in developing the Orange County Central-Coastal NCCP/HCP: “The problem was people felt they had already missed the point to really affect the plan and that the decisions were already made [by the point of the NEPA comment period]. A lesson we learned was the need to do more public workshops before the comment period—when it was easier to make adjustments.”

Although outside participants understand the legal importance of filing written comments for the public record, some outside stakeholders have also learned strategies for dealing with these dynamics. Dave Whipple of the Washington DFW reported: “What I learned is to be super prepared. If we don’t comment or have feedback when something is presented they will take it for approval. Silence is really consent in these arenas.” Other outside stakeholders push for advisory committees to be created as a vehicle for providing input throughout the negotiations. Others design innovative ways to provide comments that are difficult to ignore. For example, environmental groups concerned about the Weyerhaeuser Willamette HCP commissioned two scientific review panels to analyze the HCP.

By itself, NEPA also fails to facilitate active communication among the parties interested in an HCP. In HCPs with broad public support, stakeholders often build personal relationships and open new lines of communication with other participants. These lines of communication help build trust among the participants, dispel misinformation, and open new opportunities for cooperation in the future. But the NEPA process—with its focus on written documentation—does not facilitate this type of cross-party communication. As Rich Winger of Weyerhaeuser said: “A lot of comments came out of NEPA. With many, we thought we could handle or answer them, but that is not our job. Once you go through public comment, it is the Service’s job to respond and the applicant isn’t supposed to be involved. It’s frustrating. I don’t think a lot of environmental groups realize all the things that we have since worked through and resolved.” In an effective process, the lines of communication would be open so that the interested parties would know about these types of changes and might actually be working with the applicant to craft them.

Designing a reasonable range of alternatives, as required by NEPA, is also difficult in many HCPs. As Ruth Sigenza of the EPA said, “What is quirky about HCPs is that because they are voluntary and negotiated, it is hard to come up with three or four reasonable alternatives as the process leads you to some sort of settlement.” Tony Metcalf of the San Bernardino Audubon Society similarly complained of the Riverside Stephens kangaroo rat HCP: “If you look at the various alternatives that were proposed by the environmentalists, you don’t see them anywhere. The only thing that comes even close, unfortunately, is a ‘no project’ alternative which nobody was really happy with.”

Although the FWS and applicants have adequate room within the guidance of NEPA and the ESA to craft processes that provide more opportunities for effective public participation, they rarely do so. As currently applied, the formal public participation process is misleading to outside stakeholders and an unsatisfactory decision-making process.



## Ineffective Management of HCP Negotiations

**A** PPLICANTS and the FWS have also structured and managed individual HCPs in ways that fail to capture the full benefits of public participation. Research and experience in other natural resource decision-making arenas suggests that managers of effective negotiations design dynamic processes in which stakeholders share information about their interests and concerns, test the validity of competing technical arguments, develop trust through face-to-face interaction, and work together to find creative and acceptable solutions to problems.<sup>18</sup> They also ensure that participants' roles are well defined, the agenda and scope of the negotiations are defined early in the process, all legitimate interests are represented, and participants have an incentive to be involved in a good-faith manner. In our research, we found a number of examples where these elements of an effective process are not incorporated into HCP negotiations.

Managing effective negotiations requires a different approach than the traditional public participation approach that most HCPs follow. Most HCP negotiations are not structured so that the outside stakeholders concerned about an HCP can continue to communicate with and learn from each other throughout the planning process. As Jim Fries of The Nature Conservancy of Texas commented on the traditional nature of the process in the Balcones Canyonlands HCP: "The public participation process allows people who already have preconceived positions to continue to state them and argue for them, not to adjust their positions based on new information. That's a real deficiency. I don't think it's a dynamic or real iterative process; it's a real static process."

“The public participation process allows people who already have preconceived positions to continue to state them and argue for them, not to adjust their positions based on new information. That’s a real deficiency. I don’t think it’s a dynamic or real iterative process; it’s a real static process.”

There is often confusion during HCP development about the role of certain stakeholders, particularly the role of

FWS staff. For example, in the Riverside Stephens kangaroo rat HCP and the Balcones Canyonlands HCP, Service staff initially took a hands-off approach while participants expected them to provide more guidance. Alan Glen, a committee member representing the Greater Austin Chamber of Commerce, said of the Balcones HCP, "There was confusion about whether the FWS was really a participating member or whether they were a resource for the committee." In both HCPs, the resulting misunderstanding led to significant frustration on the part of participants.

— Jim Fries

*The Nature Conservancy of Texas,  
Balcones Canyonlands HCP*

While the FWS officially defines its role in steering committees and other HCP processes as that of a "technical advisor,"<sup>19</sup> in a more effective process it would play a host of different roles.

At various times throughout HCP negotiations, FWS staff may need to act as experts, facilitators, leaders, stakeholders, and final decision-makers. These roles are different from those played in traditional regulatory decision-making processes and will require FWS staff to learn new skills. These roles should also be articulated clearly and repeatedly to other HCP stakeholders throughout the planning process.

With few exceptions, the public has little role in negotiating the agenda or scope of HCP planning processes, even though the scope and agenda have a significant effect on the shape of final HCP agreements. More typically, applicants, acting to varying degrees with the FWS, determine the basic scope and agenda of planning

processes. This leads to frustration and, at times, distrust among stakeholders. For example, in negotiating the scope of the Orange County Central-Coastal NCCP/HCP, the primary negotiating parties excluded from the negotiation a major toll road that eventually bisected a key HCP reserve and at the end of the process included a controversial development project located away from the main permit area. Interest groups and the public tried unsuccessfully to affect these decisions. In particular, the last minute addition of the development project damaged trust among those involved in the HCP. Dave Harlowe, an assistant FWS field supervisor working on the project, said, “In the long run, this one issue really hurt us in terms of understanding and support.”

Delays and other problems arise when critical outside stakeholders are not included in the planning process. The exclusion of a critical viewpoint from an advisory committee can undermine the legitimacy of a committee, lead to increased controversy and litigation, and prevent plans from being implemented. For example, according to Ralph Costa of the FWS, the applicants for the Georgia Safe Harbors HCP chose members for its steering committee “just by intuition and a lot of knowledge about the players.”

The committee included an environmental representative from the Georgia Wildlife Federation, but it did not anticipate needing a national environmental group representative. After the HCP was released in draft form, national environmental groups raised serious concerns about the plan and successfully delayed approval of the final HCP. Similar problems can arise when advisory committee members do not represent the positions of their organizations or claim to represent interests they do not actually represent.

HCP negotiations can also bog down because important participants do not have the incentive to begin negotiating or make hard choices. Paul Selzer, the facilitator in the Clark County HCP, described that highly collaborative process as a “balance of terror.” He further stressed: “The process works only when every member [of the steering committee] is convinced that the product will be the best available alternative at that time. So the challenge becomes finding that alternative so that they become convinced over time that it is better to participate than fight.”

“[The FWS] were supposed to be the authorities on how much is enough... The whole process of the plan was like trying to construct something in a pitch black room and somebody saying you’re kind of close.”

— KRISTI LOVELADY  
*Riverside County Habitat  
Conservation Agency*

For example, in the Orange County and San Diego HCPs, the listing of the California gnatcatcher and the threat of development restrictions gave certain parties more incentive to move the planning processes forward and made the HCP ripe for negotiation. Designers of the piping plover HCP in Massachusetts failed to thoroughly consider the incentives facing the beach managers whom they wanted to apply for coverage under the HCP. Only one beach manager applied. According to Susanna von Oettingen of the FWS: “Because the HCP was so restrictive, most of the beach managers didn’t want to bother. Too much work for not enough payback.”

Planning process organizers are not always sensitive to the needs of certain participants. For example, Ann DeBoviose, an individual landowner affected by the San Diego MSCP Plan, complained that important working group meetings took place in the middle of the day, which made them inconvenient and burdensome to attend. Allison Rolfe of the Southwest Center for Biodiversity, among others, complained that meetings were poorly advertised and getting on mailing lists was difficult. Moreover, while the San Diego working group regularly accepted public comments, it did so at the end of its meetings, which often lasted two or three hours.

Advisory committees present unique challenges to managing a multi-party planning process. For example, in the Balcones HCP, participants acknowledged that employing a consistent, neutral facilitator may have improved the process. Facilitators can keep lines of communication open and ensure that the process is designed to build trust among parties. They can also keep the process moving forward by defusing conflict and promoting cooperation and compromise. In Balcones, two interviewees spoke of decisions often being made “behind the scenes” in unofficial meetings with only a select group in attendance. Other committee participants disputed this, but the distrust of those who believed the process was unbalanced and unfair may have been alleviated if an experienced facilitator had helped the Balcones committee set up ground rules and communicate about the activities of its members.

Outside stakeholders often do not have the resources to participate as effectively in the planning process as they would like. This can lead to nonparticipation by important stakeholders, significant power differences among participants, and approval delays. In particular, independent scientists currently have few professional or financial incentives to participate in the HCP planning process. Landowner Ann DeBovoise stressed: “It was irritating to look around and see all these people who were getting paid to do this, especially when their decisions affect our land and a lot of other people. To participate and protect our interests took all of our spare time, evenings, and weekends.” In the Riverside HCP, environmental representatives had a particularly difficult time attending HCP meetings because they were all volunteers.

Both the applicant and FWS staff complained that delays occurred in the Plum Creek HCP because the National Marine Fisheries Service (NMFS) did not have the resources necessary to participate effectively in the planning process. As Mike Collins of Plum Creek stressed: “The biggest frustration I had was that NMFS

was a partner in this process in theory only. In practice, because of severe staffing limitations, they were not able to participate as a true partner. They sometimes intervened at points when we thought we had an agreement with the government. We assumed because of their absence at meetings that the FWS was speaking for both of them, which it couldn’t.”

Applicants and the FWS can also have difficulty gauging the public’s level of interest in an HCP at the outset of the planning process. In a number of our cases, applicants and the Service tried to involve the public early, during the scoping phase of the planning process, only to find little public interest in their efforts. In some of these cases, the applicant and FWS assumed that low turnout or minimal controversy at early public meetings justified fewer or no public meetings later in the process. In the Plum Creek HCP, this assumption added to public frustration with the HCP. Several dissatisfied participants reported that while Plum Creek offered them a number of opportunities to air their concerns early in the process, it was not very responsive to their concerns later in the process. As Charlie Raines of the Sierra Club said, “Plum Creek and the Service started with this big splash that didn’t bring them much, and so later on they rationalized ‘let’s just get these documents out: these meetings are a waste of time.’”

As the examples illustrate, applicants and the FWS do not always manage negotiations or public participation as effectively as they could. HCPs are a different decision-making environment than traditional FWS regulatory decision-making. In these differences lie the great potential for HCPs to balance public and private interests, but only if HCP dynamics are managed more effectively on-the-ground. Indeed, a greater understanding of the dynamics of the negotiation process and how to manage public participation could go a long way to improving HCP planning. 

## Fear of Public Participation

**T**HE BENEFITS of public participation are also not realized in the HCP planning process because applicants, the FWS, and outside stakeholders fear the burdens of public participation.

Developing an HCP takes significant time and resources, especially given the complexity of most HCPs. Most interviewees reported that public participation adds to the cost and length of the planning process even if it provides other benefits. Applicants who have significant investments at stake in an HCP are legitimately concerned about delays and the costs of responding to public demands. As Bruce Beckett, a Weyerhaeuser representative stated: “The HCP effort is going to die under its own weight. The more the FWS burdens the process down, the less willing people are going to be to enter it.” FWS policies and practices echo concerns that active public participation will scare away potential HCP applicants.

Outside stakeholders may also not have the interest or resources to participate in an HCP. Participating in an HCP can have high opportunity costs, and stakeholders can grow frustrated if they feel applicants are not seriously addressing their concerns. Some are concerned that their involvement will lend credibility to an inadequate HCP. National Audubon’s *A Citizen’s Guide to Habitat Conservation Plans* recommends that activists “carefully evaluate the time required to fully participate, as well as the limits of such participation....If participation does require some measure of support for the final plan, or a role in negotiating the plan itself, conservationists should think carefully before agreeing to participate.”<sup>20</sup>

While developing an effective public participation process can be challenging, our analysis suggests that applicants, the FWS, and the HCP benefit significantly by making public participation more meaningful. As the facilitator in the Clark County HCP, said: “We worked out differences without imposing solutions. This is a longer process and more expensive—but it works.”

“Public participation is a nuisance. It is a pain in the butt. It slows things down and it can be difficult to deal with divergent views. But at the same time, it is a nuisance worth dealing with, as it results in a better product.”

— FWS STAFF BIOLOGIST

Different HCP applicants and stakeholders have different needs, and there is no one-size-fits-all approach that works for everyone. Indeed, not every applicant should pursue a multi-stakeholder HCP negotiation like the Clark County HCP. Meaningful participation may mean forming an advisory committee with a clearly defined mission that educates key stakeholders about HCP trade-offs or calling stakeholders to discuss their input. Outside stakeholders should approach applicants by demonstrating their value to the process. What do they have that applicants want, and how can applicants meet the group’s interests and still meet their own needs?

This all takes time and effort. Still, our research suggests that increasing communication early in the process, seeking input within clearly articulated parameters, and working face-to-face with others to solve problems, pays off handsomely in terms of increased credibility, trust, relationships, and support. As such, we strongly encourage applicants and the FWS to explore ways to make their policies and practices more effective. 

## Policy Recommendations: Making Public Participation More Meaningful

### Policy Recommendations

#### *Expand Participation Policies and Procedures*

1. Require HCPs with major effects to be guided by a public advisory committee.
2. Require new public disclosure and comment periods throughout the HCP process.
3. Extend NEPA comment periods.
4. Eliminate target processing times.
5. Clarify the “maximum extent practicable” standard and document its determination.  
Expand independent science.

#### *Expand Independent Science*

6. Facilitate the involvement of independent scientists in all HCPs with major effects.  
Develop regional HCPs.

#### *Develop Regional HCPs*

7. Encourage local governments to pursue programmatic HCPs. Create new incentives.

#### *Create New Incentives*

8. Create a grant program that encourages public participation.
9. Acknowledge the public’s right to enforce HCP agreements. Enable FWS and applicants.

#### *Enable FWS and Applicants*

10. Increase funding to hire and train additional HCP field staff.
11. Redirect staff to encourage applicants to pursue expanded public participation.
12. Provide HCP staff with public participation and negotiation training.
13. Create a public participation resource team to help design effective planning processes.
14. Make HCP information more readily accessible to the public.

### Expand Public Participation Policies and Procedures

1. *Congress and the FWS should require that HCPs with major effects be designed and guided by an advisory committee that includes outside stakeholders.*

Steering or advisory committees can provide a structure that enables participants to get involved earlier and more consistently in the development of HCPs, thereby helping to capture many of the benefits of public participation. Committees that include all affected outside stakeholders, including independent scientists, interest groups, and members of the public, can find innovative ways to solve problems, strengthen relationships among stakeholders, and develop plans that are more biologically and politically viable. HCPs with major effects include those with significant impacts on species, public lands, or public finances or significant public demand for inclusion in the HCP process.

2. *Congress and the FWS should build new public disclosure and comment periods into the HCP planning process. These periods can be held periodically or at trigger points in the planning process. All HCPs should require public scoping under NEPA.*

Public participation must be better structured to deal with the dynamics of the negotiation process. In particular, the process must consider the ongoing nature of HCP negotiations and the strong disincentives to change tentative agreements once they have been made. Comment periods on ESA and NEPA documents, as they are currently implemented, generally come too late in the process.

Comment and disclosure periods would be more useful if they occurred throughout the HCP negotiation process. As such, all HCPs, including those that only require an EA should hold scoping periods. Other trigger points for public disclosure and comment should also be added. These points could be structured for each planning process and be negotiated by stakeholders early in the process.

Points for review might include:

- (a) after completion of draft and final conservation strategies or reserve designs,
- (b) directly before the preparation of NEPA documents (i.e., the project has been designed and alternatives can be evaluated), and
- (c) after applicants submit their application to the FWS.<sup>21</sup>

The FWS could deem these additional requirements satisfied for applicants using advisory committees.

3. *NEPA comment periods should be extended to a minimum of 90 days for steering committee HCPs and 120 days for all other HCPs.*

Many members of the public find current comment periods prohibitively brief, especially considering the complexity and risk associated with HCPs. As such, the length of comment periods on ESA and NEPA documents should be extended. Having comparatively shorter comment periods for open steering committee processes could provide an incentive for applicants to increase public participation. Presumably, outside stakeholders involved in an HCP with a committee process would also be more knowledgeable about the HCP and better able to comment quickly on it.

4. *The Service should eliminate target processing times in its HCP Handbook.*

These deadlines send the message that efficiency is more important than public participation and put pressure on agency staff to speed through the NEPA process and their review of the HCP application.

5. *The Service should develop criteria used to evaluate whether an applicant has mitigated take to the "maximum extent practicable" and explicitly document its determination of this standard in NEPA documents for all HCPs.*

Before the FWS can approve an HCP it must determine that the plan will mitigate the take of endangered species to the "maximum extent practicable." This approval standard is not very well defined, however, and FWS staff have significant discretion to determine its meaning in individual HCPs. In cases of scientific ambiguity, applicants often limit public disclosure and participation in their HCPs because they fear that public input will cause the FWS to interpret the standard to their disadvantage. As Bruce Beckett of Weyerhaeuser said, "When you don't know what you are shooting for, your distrust among participants increases." Moreover, the public often does not have access to the information or logic the FWS uses to make its determination of this important standard. The standard should be clarified, and the evidence supporting the FWS's determination should be made available to the public.



## Expand Involvement of Independent Scientists

6. *The Service should facilitate the involvement of independent scientists in all HCPs with major effects.*

The involvement of independent scientists benefits everyone. It helps clarify how regulatory standards will be interpreted in individual HCPs, makes the decision-making process more credible and efficient, and provides applicants with greater certainty. It may also help bolster the negotiating position of FWS field staff.

In HCPs with major effects, FWS staff should work to ensure that independent scientific review happens early and consistently as HCPs develop, particularly after baseline data collection and analysis are complete. Funding to implement this recommendation is critical. One approach would use a blind trust arrangement with funds provided by the government or the applicant. To keep the process independent, the Service should coordinate selection of scientists in conjunction with professional societies and other federal and state agencies. Scientists involved with relevant recovery and other scientific plans should be included. The comments of independent scientists should be made available to the public, perhaps on an anonymous basis.

## Encourage Development of Regional HCPs

7. *The Service should encourage more local governments to initiate programmatic HCPs.*

Rather than working with a large number of individual private landowners, FWS staff should encourage local governments to pursue programmatic HCPs.

Once a programmatic plan is approved, the local government or other public entity that holds the HCP permit provides certificates to landowners who agree to follow the HCP's requirements. Local governments often have incentive to pursue these HCPs because they can be held liable under the ESA for issuing building permits that result in the take of endangered species.

There are a number of benefits associated with pursuing programmatic HCPs. The FWS can develop proactive and broad-scale plans to protect affected species. They can also better address the cumulative effects of development activities on ecosystems. Programmatic HCPs are also more efficient. Rather than participating in a number of small HCPs, FWS staff and outside stakeholders, including independent scientists, can participate in a larger process. This would also expedite the process for landowners, who would be able to apply to their local government for the proper certificate once the programmatic HCP is developed and approved rather than applying for their own federal HCP permit.

Programmatic HCPs are also likely to have more public participation because more people would be affected by the HCP and interested in the planning process. Interest groups and other outside stakeholders are also likely to invest more resources in the process than they would in individual landowner processes. Finally, HCPs that are initiated by local governments typically have more opportunities for public participation than individual landowner HCPs. As one local government official involved in HCPs said, "The successful HCP is a government applicant HCP, because the process must be public and totally open."



## Innovative Ways To Involve Outside Stakeholders

### International Paper's Red-Hills Salamander HCP: Involving Scientific Experts

There was very little controversy regarding International Paper's HCP for the Red-Hills salamander, in part because of the company's willingness to include scientists in the planning process. Joe McGlincy of International Paper said that he asked three salamander experts to review the HCP the company had developed. "I could anticipate that if we were going to get criticism, it would be from these two or three people. Asking them to review our plan made them aware of what we were doing as well as brought them on board with us....When the HCP came out in the *Federal Register* for the general public review, those guys had already seen it, and there wasn't a big surprise in it for them."

The company also contracted a highly respected scientist to perform much of its fieldwork, and had a strong reputation for taking cooperative steps to protect salamanders in the past—all of which helped make the HCP noncontroversial.

### Karner Blue Butterfly HCP: Expanding the Range of Involved Stakeholders

In the Karner blue butterfly HCP in Wisconsin, those involved in the HCP divided themselves into two groups: *partners* who had land or other assets at stake and participants who were other active members of the public. The Wisconsin DNR sought to include as many partners and participants as possible in the process. Fred Souba of Johnson Timber Corporation credited the DNR for their work. "[Short of] actually dragging people to the meetings, I think there's been an excellent effort made to involve as many public entities and individuals as possible."

Moreover, decision-making in the process was primarily by consensus. According to Dave Lentz, the HCP coordinator for the Wisconsin DNR: "it's consensus of all participants—in other words, if we have a nonpartner who dissents on an issue, we don't just tell them to go away. We want them there. We want to know their position, we want them to try and convince us and work to great ends to do that." In only one or two cases were partner-only votes taken because a decision had to be made: in all other cases the process remained consensus-based. As a result of the inclusive HCP process, several participants noted improved relationships. The draft HCP is anticipated to be completed during the summer of 1998.

### Weyerhaeuser Willamette HCP: Interest Groups Involve Scientists

Environmental groups who were excluded from the negotiations surrounding the Weyerhaeuser Willamette HCP commissioned two scientific panels to review the plan. One panel reviewed the HCP's aquatic protections and the other its terrestrial protections. The environmental groups then submitted the panels' comments to the FWS as part of their official NEPA comments. The groups felt that the panels provided new information and analysis and helped depoliticize the HCP decision-making process. For a number of reasons, including concerns raised by the panels, final approval of the HCP continues to be delayed. 

## Create Incentives to Encourage Public Participation

8. *Congress or the FWS should create a grant program that encourages public participation.*

Congress should authorize and appropriate funds to the FWS to establish two competitive grant programs. The first would support innovative programs for involving the public in the HCP process beyond current legal requirements. The FWS should select recipients based on criteria such as the balance of interests represented, ease of participation, and potential of replication.

The second grant program would support stakeholders with limited resources who want to participate in the HCP process. There is precedent for funding participants with limited resources. In six of the HCPs responding to our survey, either the applicant or the Service provided citizens with financial support to participate in the planning process. Also, in the negotiated rule-making model that we studied, federal agencies financially assisted participants who had inadequate resources.

9. *Congress and the FWS should explicitly acknowledge the public's right to enforce HCP agreements.*

Outside stakeholders may sue to enforce the ESA and most other environmental laws. HCPs, however, lack clear outside stakeholder enforcement mechanisms and most recent HCP agreements do not acknowledge citizen enforcement rights. Under traditional contract law, this failure to either explicitly or implicitly acknowledge the rights of outside stakeholders means that they lack third-party beneficiary status and may not be able to enforce the agreements.<sup>22</sup>

Providing outside stakeholders with the explicit right to enforce HCP agreements, either in Section 11 of the ESA or in individual HCP agreements, would provide more incentive for HCP applicants to address the concerns of outside stakeholders and include them more meaningfully.

## Enable the FWS and Applicants to Involve the Public More Effectively

10. *Congress and the FWS should increase funding to hire and train additional FWS field-level HCP staff.*

Currently, Service HCP staff are stretched thin, often handling multiple HCPs under significant time constraints. The lack of adequate resources limits the Service's ability to handle the scientific basis of HCPs, let alone effectively incorporate the public into the process. In certain cases inadequate Service resources can also contribute to significant HCP processing and approval delays. Increasing staff funding would improve the efficiency of the planning process.

11. *The FWS should reaffirm guidance in the HCP Handbook to encourage applicants to pursue expanded public participation.*

To its credit, the FWS has included valuable information about designing an effective public participation process in its *Handbook*. The *Handbook* makes special mention of encouraging the development of stakeholder advisory committees and the involvement of other federal and state agencies and Native American tribes. According to the *Handbook*, advisory committees can help guide development of an HCP; consider appropriate development, land use, and mitigation strategies; and communicate progress to their larger constituencies, all of which can reduce conflict surrounding the HCP. The *Handbook* also outlines a number of valuable suggestions for making committee processes function more effectively.<sup>23</sup>

While this is sound advice, we found that many Service staff are not making public participation a high priority with applicants. Given conflicting messages about the importance of public participation relative to other Service priorities, FWS staff need to be told clearly that public participation is a high priority within the Service. Moreover, in the case of large effect HCPs, the FWS needs to require expanded participation.

The Service should also make information about effective public participation more accessible to applicants and staff and develop literature that illustrates the benefits of public participation. This literature could include case studies of successful public participation processes in completed HCPs. Staff should distribute this literature to applicants during initial conversations about preparing an HCP.

*12. The Service should provide HCP staff with public participation and negotiation training.*

Communicating effectively with the public, designing effective and efficient public participation processes, and negotiating complex agreements require skills that many FWS staff do not have. Public participation training would better enable staff to negotiate HCPs that best meet the needs of the species, the Service, applicants, and the public. The Service should prepare a training curriculum that addresses communication and negotiation with a particular focus on the HCP experience.



*13. The FWS should create a public participation resource team made up of individuals with HCP, public participation, and negotiation experience.*

The resource team could be called to help other FWS staff and HCP applicants design effective and efficient public participation processes or overcome participation roadblocks. Drawing on field experience, the team would develop an understanding of the factors that facilitated successful HCPs. It could then share this knowledge with other FWS staff and help them network with those who have experienced similar public participation challenges. The team could also help staff strategize for HCP negotiations.

*14. The FWS should make information about HCPs more readily accessible to the public.*

The public often has difficulty obtaining current, centralized information about the status of HCPs (both completed and in-process). To alleviate this problem, the FWS should create a publicly accessible, comprehensive HCP database that tracks the progress of in-process HCPs. This database should be posted on the World Wide Web and revised often.

We also found that outside stakeholders can have problems obtaining key HCP and NEPA documents. The FWS should require that field-level staff make NEPA and other documents readily available to the public. To obtain copies of NEPA documents, those interested in an HCP should neither be directed to HCP consultants nor asked to pay exorbitant fees.



## Advice to HCP Practitioners: Making Your HCPs More Effective

### Building Effective HCPs

1. Involve the public early and consistently in the process.
2. Form a steering committee.
3. Involve independent scientists.
4. Define stakeholders' roles early in the planning process.
5. Tell outside stakeholders how they can help the process.
6. Use a variety of public outreach tools.
7. Hold public meetings, workshops, and field trips.
8. Make planning documents available.
9. Communicate with the public about their input.
10. Begin following existing FWS guidance.

**D**URING our conversations with FWS staff, applicants, and other HCP stakeholders and our research on public participation, we heard several consistent messages about how to design more effective public participation processes.

#### 1. *Involve the public early and consistently in the process.*

Early, consistent, and meaningful public participation facilitates learning about proposed projects and the complexities and trade-offs of the HCP planning process. It also gives outside stakeholders an opportunity to outline their interests and concerns before tentative agreements are reached that limit the negotiating parties' ability to make substantive changes to the HCP. Finally, early, consistent, and meaningful involvement can reduce conflict surrounding an HCP, help participants begin to trust each other, and build ownership of evolving agreements. As Susanna von Oettingen of the FWS said, "I think we are getting the message to get the public involved and knowledgeable as soon as possible. The trigger point for

getting people involved should be the start of the project. Let folks know, get the players involved."

To involve the public throughout the process, managers may want to consider forming a steering committee or accepting written comments at any time during the planning process. Interviewees also recommended distributing draft documents or newsletters throughout the process to solicit public comments.

#### 2. *Form a steering committee.*

Our research shows that outside stakeholders tend to be more satisfied with an HCP when public participation begins early in the planning process and involves a steering or advisory committee. Committees help participants understand the difficult issues and choices involved in designing an HCP. When managed well, they can also help establish trust among participants and build public support for the HCP. The steering committee's job in the Georgia Safe Harbor HCP was to oversee and approve the actions of advisory subcommittees. The system worked well, according to Ralph Costa of the FWS, "I don't see how you could do a plan of this magnitude without those committees."

Still, committees are not a panacea. Participants have to be given the opportunity to participate meaningfully in the process and have their input taken seriously by applicants and the FWS. Participants will be unsatisfied if "Everyone at the table has an equal voice and no power," as Tony Metcalf of San Bernardino Audubon Society described his involvement in the Riverside Stephens kangaroo rat HCP.

#### 3. *Involve independent scientists.*

An effective process is both technically sound and publicly credible. Independent scientists, especially when they are involved early in the process, can help achieve both of these goals. Their involvement also has the potential to make the process more efficient by helping to resolve the controversial technical issues that often surround HCPs.

## Running an Effective Advisory Committee

Advisory committees, working groups, and steering committees are particularly effective at involving outside stakeholders in the HCP process. The mix of technical expertise and the collaborative process can help shape HCPs with wide credibility and support. Practitioners offered the following advice for making committees more effective.

- *Ensure that all legitimate interests are represented.*

The exclusion of a critical viewpoint can undercut the legitimacy of a committee and lead to increased controversy, litigation, and delay. Orange County used a creative method to identify environmental community representatives: they allowed statewide conservation organizations to nominate environmental representatives.

- *Participate in committee meetings.*

Because applicants and the FWS are the decision-makers in the HCP process, their active involvement in meetings gives committees legitimacy, prevents end-runs around the committee process, and provides outside stakeholders with some assurance that their input will be used.

- *Form subcommittees.*

Subcommittees with certain areas of expertise can make the committee process more manageable and efficient, especially when the committee is faced with complex and controversial scientific or financial issues. Smaller groups can also help build trust among participants.

- *Hire a skilled facilitator.*

A facilitator can help keep negotiations moving forward, encourage compromise, and expand the negotiating pie by helping parties find creative solutions to problems. Participants in several HCPs, including Karner blue butterfly and Clark County, found a facilitator to be very useful.

- *Work to maintain committee member continuity.*

Building strong relationships among participants and developing an understanding of complex HCP issues can take a long time. Regular attendance at meetings and continuity of committee participants helps the process move more smoothly. According to landowners involved in the San Diego MSCP Plan, continuity helped participants move away from posturing, develop respect for divergent positions, and improve communication.

- *Assist committee members who lack the financial resources to fully participate.*

Environmentalists and other interest groups are often unable to fully participate because they lack adequate resources. Several of the HCPs we examined dealt with this problem by reimbursing some participants' expenses or otherwise helping these groups participate.

- *Open committee meetings to the public.*

Open meetings help communicate complex HCP provisions to citizens or interest groups who are not actively involved on an advisory committee. Open meetings can also help make the process more credible. The Balcones HCP took this idea further by televising several committee meetings and giving the public opportunities to voice their concerns following meetings.

- *Train committee members.*

The legal and scientific issues surrounding HCP processes can be very complex. The more participants know about the legal and scientific underpinnings of the HCP the better. Providing negotiation skills training can also help participants learn how to communicate their interests and participate more usefully. 

4. *Define stakeholders' roles early in the planning process.*

Applicants and outside stakeholders often grow frustrated when they have conflicting expectations of their roles or the FWS's role in the planning process. Defining the scope of the project, ground rules, timing of public participation, and different participants' roles in the process early in the planning process, can make the process more efficient and less frustrating. Indeed, the closer outside stakeholders' expectations are to reality, the less likely they are to be frustrated by the HCP process.

5. *Tell outside stakeholders how they can help the process.*

Applicants should explain their goals with their property and HCP, and ask outside stakeholders to help them figure out how to meet the group's interests while still meeting their goals. Many creative solutions have come from this approach. Applicants should be sure to preface their remarks by explaining their expectations of the relationship. Applicants can tell outside stakeholders that they do not need their permission to do a project, but that they want the stakeholders to be informed about it and will accept reasonable advice if it can be accommodated.

6. *Use a variety of public outreach tools.*

A number of HCPs use large mailing lists, personal phone calls, or newspaper, radio, or television advertisements to alert the public to the HCP process. Information displays in public places, such as libraries, may also be useful. In the Georgia Safe Harbors HCP, the FWS conducted a series of statewide public meetings, but attendance was low. Attendance increased considerably, however, after the Service advertised the meetings using newspapers, television, and radio.

7. *Hold public meetings, workshops, and field trips.*

Holding public events or targeted meetings with particular outside stakeholders gives applicants opportunities to solicit early feedback and to educate outside stakeholders about their HCP vision and certain complex HCP issues. Field trips provide a special opportunity to educate stakeholders and spur relationships among participants.

8. *Make planning documents available.*

Outside stakeholders often have difficulty obtaining HCP documents, especially while HCPs are being developed. Some even have trouble during the NEPA comment period. The public needs easy and timely access to draft plans, ESA and NEPA documents, and other information to educate itself on HCP issues and participate meaningfully in the process.

9. *Communicate with the public about their input.*

If changes are made to an HCP based on public input, let outside stakeholders know about it. If changes are not made, explain to them why they were not. Involve outside stakeholders in crafting certain changes to the HCP. In many cases, public comments can be easily addressed. Involving the public in making those changes will build valuable relationships and trust.

10. *Begin following existing FWS guidance.*

The Handbook provides a number of useful ideas for structuring an effective HCP process, such as negotiating in good faith, assigning experienced staff to large-scale or regional HCPs, including all affected interests in the process, and paying attention to stakeholders' perceptions of the process.<sup>24</sup> Public participation would be more meaningful and effective if applicants and FWS staff regularly followed this guidance.

- <sup>1</sup> L. Hood, *Frayed Safety Nets: Conservation Planning Under the Endangered Species Act*, Defenders of Wildlife, Washington, DC, 1998, p. v1.
- <sup>2</sup> FWS, *Strategic Plan for 9/30/97–9/30/00*, p. 20.
- <sup>3</sup> *Frayed Safety Nets*; P. Brussard et al., A Statement on Proposed Private Lands Initiatives and Reauthorization of the ESA from the Meeting of Scientists at Stanford University, April 3, 1997; G. Meffe, Letter from 169 Scientists to Senator Chafee and Congressman Saxton, July 23, 1996; J. Kostyack, “Surprise,” *Environmental Forum*: March/April 1998, 15(2), pp. 23–28.
- <sup>4</sup> The California NCCP program is a state program that encourages conservation planning activities in urban southern California, with a special focus on coastal sage scrub habitat. It was passed by the California legislature in 1991 and has been marketed (much like the HCP program) as a means to resolve environmental-economic conflicts over endangered species on private lands. Two of the HCPs that we studied through case studies (Orange County Central-Coastal HCP and San Diego Multiple Species Conservation Program Plan) are moving through the HCP and NCCP processes concurrently.
- <sup>5</sup> Item includes 43 of 45 responding HCPs. Stakeholders were viewed as “involved” if FWS respondent reported that they were moderately or very actively involved in at least one of the following stages: before the comment period, during the comment period, or after the comment period.
- <sup>6</sup> *Las Vegas Review Journal*, November 17, 1997, p. B1.
- <sup>7</sup> M. Bean, S. Fitzgerald, and M. O’Connell, *Reconciling Conflicts Under the Endangered Species Act: The HCP Experience*, World Wildlife Fund, Washington, DC, 1991, pp. 66–78.
- <sup>8</sup> FWS and NMFS, *Habitat Conservation Planning Handbook*, (Washington, DC, US Department of Interior and Commerce, 1996).
- <sup>9</sup> Case study interviewees were asked to report their satisfaction level with the HCP process, product, and participation level using a scale of 1 to 5, with five being very high. The HCPs at the far left of the spectrum represent those in which all stakeholders reported low levels of satisfaction (1–2). HCPs written in italics received high and low satisfaction scores from different respondents. Interviewees for 3 cases did not provide sufficient information to place them on the spectrum.
- <sup>10</sup> *Handbook*, pp. 3–8, 6–22.
- <sup>11</sup> *Handbook*, pp. 1–10, 1–14.
- <sup>12</sup> *Handbook*, p. 5–2, 5–3.
- <sup>13</sup> *Handbook*, p. 5–3.
- <sup>14</sup> FWS, Notice of Availability of an Application by Gulf States Paper Corporation, *Federal Register*: 63(103): 29423–29424, May 29, 1998.
- <sup>15</sup> FWS, *Habitat Conservation Plans and the Incidental Take Permitting Process*.
- <sup>16</sup> *Handbook*, pp. 3–6.
- <sup>17</sup> ESA documents include a draft HCP and an implementation agreement.
- <sup>18</sup> J. Wondolleck, *Public Lands Conflict and Resolution*, Plenum Publ., New York, 1988; S. Yaffee, “Cooperation: A Strategy for Achieving Stewardship Across Agency Boundaries,” pp. 299–324, in R. Knight and P. Landres, *Stewardship Across Boundaries*, Island Press, Washington, DC, 1998.
- <sup>19</sup> *Handbook*, pp. 3–5, 3–6.
- <sup>20</sup> M. Minette and T. Cullinan, *A Citizen’s Guide to Habitat Conservation Plans*, National Audubon Society, August 1997, p. 12
- <sup>21</sup> T. Cullinan, “Habitat Conservation Plans in Industrial Forests of the Pacific Northwest” *End. Species Update*, July/August 1997, 14(7&8) p. 31.
- <sup>22</sup> John Kostyack, “Surprise,” *The Environmental Forum*, March/April 1998, 15(2) p. 28.
- <sup>23</sup> *Handbook*, pp. 3–4, 3–5.
- <sup>24</sup> *Handbook*, pp. 3–4, 3–5.

