

***Karner Blue HCP 6-month Review Meeting
April 19, 2007
10-3:30 DNR Madison, GEF2 – Room 428***

Attending: Louise Clemency (FWS), Cathy Carnes (FWS), Jimmy Christenson (DNR), Darrell Zastrow (DNR), Bob Hess (DNR), Kozue Nogami (DNR), Dave Lentz (DNR), Rebecca Schroeder (p.m. only, DNR), Jason Fleener (DNR, Recorder)

MINUTES

1. Review Previous Action Items

- **Action:** Identify and agree on priority recovery actions. Cathy suggested looking at the recovery tasks for WI in the KBB Recovery Plan as a starting point.

-Completed

- **Action:** Cathy will discuss with Louise options to use White River Marsh (WRM) as a research area for minimum VP sustainability.

Cathy recommended collecting more information on the Kbb population at WRM; modeling would be useful, possible priority for distance sampling. Bob stated that the WRM property does not have optimal habitat due to heavy grass, heavier soils, and the presence of wetlands. Property is on southern edge of Kbb range. Assessment of soils and habitat is needed along with management goals of property. There are about 100 acres of suitable habitat in five areas. Need to assess whether this is enough to support a viable population (should have at least 3-5 subpopulations connected by dispersal corridors - more is better); should also assess whether there is suitable land near WRM that could be purchased to expand Kbb suitable habitat. The possibility of Kbb recovery at another site was briefly discussed if WRM not feasible e.g., KBB SNA or Crystal Lake. Cathy briefly talked about the proposal to reintroduce Kbb to northeast Illinois.

Darrell stated that there is currently no master plan for WRM, but one is anticipated within 5 years and that a recovery implementation plan could serve as an interim measure.

New Action: Bob to talk with Jim Holzwart about the property and monitoring training on the property. Check with Jimmy about the master planning, andy WEPA needs, and historical data of the property (if property managers Ok with recovery implementation planning for Kbb, then don't have to check with FA). Kozue and Jason can help with Distance sampling at WRM. Darrel suggested looking into including Kbb habitat management within any master planning updates on these properties. Jimmy suggested checking to see if master planning for Kbb would be consistent with federal aid requirements (including purchase of lands for Kbb).

Re: Jackson County State Forest - there are about 400 acres of forest in the 0-15 year old category.

- **Review Enbridge Energy Project** – Final information is available on acres of “take” and habitat replacement; objective is to approve. Cathy agreed we needed to move forward with approval of the project. She also stated that when other Federal agencies are involved in a project that may affect the Kbb (e.g., a COE permit was needed by Enbridge Energy), that Federal agency will need to consult with the FWS per Section 7 of the ESA - a S7 consultation process exist that streamlines such coordination (*for the Enbridge Energy Project, FWS developed a COE permit condition requiring a Kbb mitigation plan approved*

by the FWS and WDNR). The more we streamline consultation processes the shorter the time to approve projects.

Action: Cathy will continue to work with Dave on review and approval of the reclamation plan.

IOC Meeting Highlights (4/18/07) by Dave Lentz:

Jim Zahasky, Jackson Co., may be new IOC chair; Joel Aenensen may stay on after retirement in spring of 2008. Significant discussion item resulted in a clear commitment by IOC to leverage KBB Conservation Fund (NRF) to help support Kbb recovery in Wisconsin; currently the fund has about \$10,000. The IOC decides how the money is to be spent -DNR has no legislative authority to hold or spend the funds - cannot collect money from those they regulate.

2. Discussion on results of meeting with Wendi Weber (ARD) 3/27/07. Service's take and HCP/Recovery implications. Louise briefly recounted the March 27th discussions which were very positive. The FWS's Regional Office is very supportive of the Kbb recovery efforts by the HCP Partners and plans to help Louise bring national attention to the HCP partners and their conservation and recovery focus. The Regional Office also provided advice on potential National Fish and Wildlife Foundation (NFWF) grants that may help provide staff for recovery tasks - see No. 5. Suggestions by Darrel were given about separating a budget between HCP and Recovery.

3. Update on Louise's visit with *Feingold and Obey* on 4/11/07:

These briefings went well; both interested in Kbb HCP; will invite them to the HCP Summer Event.

4. **NFWF:** Update discussion with Neal Freeken on 4/10/07.

NFWF grants require 2:1 match (1= NFWF). DNR Forestry has \$100-200,000 in-kind match available every year. Match (in-kind or monetary) could also come from HCP partners. However, Dave suggested not using in-kind match from HCP partners as there would likely be too much overlap with HCP required activities. Darrell suggested that DNR could develop budget codes to separate out recovery activity vs. HCP required activities.

Action: Cathy and Louise will further explore NFWF grant options.

5. **Dale Hall - summer HCP Team event?**

Meeting could possibly occur during last 2 weeks of July or first week of August this year if Kbb and flowering habitat is desired. Louise would like to get FWS Washington and Regional staff participation in the HCP Summer Event, e.g., Dale Hall, FWS Director.

New Action: Louise to follow up to see if this is a possibility and get back to Dave.

6. **Solicitor's opinion on Significant Portion of Range.** How might this affect KBB?

This could take several years to be tested. The WI recovery situation will be better understood in 3-4 years. Timing may be right to apply SPR to the Kbb status in the future; wait to see how use of the policy develops.

7. **Service rethinking ESA.** How might this affect KBB?

Louise clarified that there is currently a group of career professional FWS biologist working on revisions to the ESA regulations and we anticipate positive results from this effort. This should NOT be confused with an earlier report of negative information on a similar initiative that did not involve FWS biologist, but rather DOI employees under past DOI leadership.

FWS Intrepid 2F Consultation with EPA:

The FWS is working with EPA on the use of Intrepid 2F (a pesticide) by the cranberry industry in Wisconsin; Intrepid 2F is lethal to the Kbb. The FWS has been discussing Kbb issues

pertinent to use of Intrepid 2F and has advised EPA to initiate consultation w/ them to help resolve issues pertaining to the pesticide's use.

8. **WEPA/NEPA** press release (DNR to do press release and request comments)

Jimmy suggested we address the update with a press release which will serve to provide much more information to the public and stakeholders rather than use a mere notice of potential to prepare an EIS Supplement. The emphasis should be on public information and outreach, not just the WEPA/NEPA process, although a commenter could propose a supplement be prepared. The FWS does not see this as part of an EIS process and recommends not tying it to a WEPA/NEPA process. The change in the Kbb high potential range would be a minor amendment to the HCP and not a major action w/ significant environmental affects that would warrant WEPA/NEPA review. We should think of the change in the Kbb high potential range as *more precisely defining the Kbb range* (rather than reducing the range).

Action: Dave to get documentation between Jim Pardee, Lentz and Service to recognize that this isn't a NEPA/WEPA issue.

9. **Recovery Issues**

Bob provided a handout titled "Recovery Issues" dated April 19, 2007 that provided an overview of recovery related tasks he is working on (refer to handout). The handout includes:

- LTE seasonal position offered to the Black River SF
- A second proposal for up to 8 summer seasonals to work on Kbb monitoring and recovery related issues (Bob working with UW-SP (Forest entomologist). UW-Madison (David Mladenoff) is another option as DNR already has a contract w/ them and the Wildlife and Forestry Department may be combining at UW-Madison.
- Progress on development of Recovery Working Group (charge, composition, tasks)
- Still need to find statistician mentor to help with distance sampling
- USGS teaching Distance workshop at Crex June 6-8, 2007.

Bob talked to Peter Bakken about recruitment process and needs support from the Black River State Forest to hire intern.

Bob foresees a greater need for distance sampling in the summer of 2008 and is looking for qualified interns to help. There are thoughts on looking for a distance a sampling mentor in the university system from UWSP or UW Madison (UWSP: Tim Ginnett?)

-Technical Resource: Tim Wilder?

Action: Cathy ask USGS in LaCrosse for statistical assistance (*done; Wayne Thogmartin a statistician from USGS plans to attend Crex training*). Cathy and Bob continue to work on identifying recovery needs and finding statistical support. Bob - talk to Paula Klentjes (UW-Eau Claire) about possibly providing monitoring interns.

Streamline approval processes

10. Major vs. Minor Amendments: (agenda item from April 11, 2006 HCP review meeting notes not discussed): What activities qualify for major vs. minor amendments. This relates to what would be considered a "substantive" vs. non-substantive change to the HCP conservation program. We can discuss this at the meeting if you like, or wait until we actually have an amendment issue in front of us to consider. There's guidance relative to this topic on pp. 173-175 of the HCP.

It was agreed that all amendments to the HCP so far have been minor. It is not necessary to spend time defining the difference at this time.

- 11. One-time permittee process:** How do we want to handle 1-time permittees, like the Pulaski development in Portage County? DNR not comfortable with go-between (messenger) role in developing mitigation plans, especially since DNR not in the approval process. In dealing with the Pulaski development, DNR realizes that we may not have a role in this process; also don't have resources to provide extensive education and screening assistance to developers.

One time permittees do not develop an SHCA and they do not become partners to the HCP. Approval and issuing a CI is needed from FWS. One time permittees get incidental take authority through the HCP's ITP. The only other connection to the HCP is that there is a fee to the HCP partnership. Jimmy suggested that the FWS work with the permittee on the mitigation plan; the approved mitigation plan would be sent to WDNR with an application to become a one-time HCP permittee. FWS would issue the CI; WDNR would monitor mitigation requirements.

There was additional discussion related to the potential for mitigation or possible fees in lieu of mitigation from one time permittees being used toward recovery support activities rather than having the permittee do mitigation on properties that do not contribute to recovery. WDNR is agreeable w/ mitigation taking place on state recovery properties; mitigation funds could also be put into the already established KBB Natural Resources Fund for use on recovery projects.

Action: Dave to look at appendix D and one-time permittee application process for particulars and opportunities to channel mitigation toward partnership goals of recovery.

- Short-term take vs. Permanent take Definitions:** Review last draft; discuss issues to finalize definitions. The definitions are OK with the IOC. Cathy and Bob provided some revisions to the draft definitions.

Attached take definitions with short-term take definition revisions is attached at bottom.

- 12. Construction Projects: Major vs. Minor** construction and maintenance projects (as relates to pre-approval and project plan documentation.) Gary Birch and Matt Krumenauer have offered guidance (attached):

PROPOSED

ROW CORRIDOR MAINTENANCE AND CONSTRUCTION ACTIVITIES MAJOR VS. MINOR

A. UTILITY CORRIDORS (M. Krumenauer)

Here is a list of minor maintenance work:

- Pole replacements and repairs: change-outs wood pecker repairs, reinforcements, hardware replacements
- Pipeline repairs: repair small sections of pipe, repair exposed pipe ect. involves small localized excavation and heavy equipment
- Rebuild of existing lines on the same ROW with same alignment: this is going to be a larger impact similar to new construction, but will leave the site as it was with no new additional impacts

- Emergency Repairs
- patrols, vegetation management, remedial pole treatment, facility locates (diggers hotline) and painting--involves travel on ROW with vehicles should not be considered a construction activity.

Major Construction would be limited to new utility construction, major re-builds, and new right of way/property acquisition.

B. ROAD ROWS (G. Birch)

I think majors should still be pre-approved because of public perception and it keeps our engineers aware of what's going on (that visibility thing). Pre-approval is not a big deal if there is reasonable turn-around time, e.g., a week a month. It's not reasonable when 3-4 months to a year is taken as it has been in the past.

Section 7 does not trigger majors here. Nor does other federal involvement trigger majors, e.g., COE or EPA. Our minor projects are still very big in comparison to other entities, e.g, adding new lanes to existing highways, re-designed intersections. We're talking several to 30-40 acres of ripped-up land. Our majors are huge, e.g., the Marquette interchange, Hwy 10, Hwy 29 from Green Bay to Eau Claire, I-94 re-construction, hundreds, sometimes thousands of acres ripped-up.

C. Some additional minor ROW projects identified at the 2-21-07 HCP Winter Meeting by the ROW workgroup (Jim Heap was listing these on a flipchart) reminded by C. Carnes:

- culvert repair/replacement
- new driveways and related culvert work
- short segments of gas lines
- stump removal
- fence repair and installation

IOC Action Item from 4/18/07: Jim Heap and Gary Birch will write definitions and define characteristics. The point is not to have to approve "minor takes."

13. Short-term take approval: In the meeting notes from 4-11-06 it was noted that we verbally agreed that FWS pre-approval was not needed for activities resulting in short term take (formerly called temporary take). Time permitting, let's discuss; if this is still okay, then I think we should clarify definitions and officially document our decision on this.

Short-term take approval is not needed as long as a protocol is followed. IOC partners are in favor of "major projects" having FWS oversight and an approval process for public visibility and to facilitate section 7 consultations.

Miscellaneous Items

- Rx Burn study being proposed again on West field at Sandhill WA. Discussion/feasibility?

A study would be intended to see if recolonization occurs after a burn; some property managers believe Kbbs may survive in areas "burned to black," and are considering Sandhill's West Field as the study site - some consider the West Field an isolated KBB site. Cathy expressed some concerns including that the West Field may not be isolated from other KBB sites (KBBs in Bison Pasture, and along Co. Road X); also if it is isolated there's a possibility that burning the

whole site at once could eliminate the existing subpopulation. She suggested that such research could be done on burn areas within Necedah NWR (or possible Crex Meadows). The Refuge conducts prescribed burns in occupied Kbb sites every year; after the spring burns, burned areas could be searched for KBB larvae. She also stated that Judy Maxwell has documented in her PhD dissertation KBB survival after burns at Fort McCoy in fire skips areas. A research proposal could be approved by the FWS's GBFO per provisions of the HCP (*the proposal needs to include the information identified on page 124 of the HCP*).

Action Item: Dave will forward this on to those who desire to request research permission under the HCP and inform them that the Service is open to entertaining a research proposal.

- Land Acquisitions, other section 6 funded projects? The WDNR applied for a FWS HCP Land Acquisition grant to purchase the Sawyer and Plum Creek Tracts for Kbb's. Rebecca said that the Plum Creek tract would be purchased with funds from a previous HCP Land Acquisition grant rec'd by the WDNR. A conservation easement is possible for the Sawyer tract. Cathy stated that the FWS's FY 2008 Non-Traditional S6 grant requests (RFP) should be out soon.
- Update on UW GIS contract:
Contract proposal has been rewritten for a 3-year contract. Ted Sickley who did the modeling work will be replaced with another modeler that WDNR can use.
- Point 5: Start talking about the process for HCP permit renewal, i.e. 10-year program assessment, steps, responsibilities, and timetable.
Renewal was discussed with the IOC. The IOC is in favor of shorter renewal periods. It is planned that an IOC sponsored permit renewal proposal will be developed and presented to the partnership at the 2008 HCP Team winter meeting. New reporting components being considered are shifting mosaic and recovery.
- MSWG in Madison June 19

Multi-State Working Group works a lot with large companies. The organization is trying to address federal regulatory schemes, and looking for new legislative proposals regarding environmental management systems. Jim will look more into the organization and try to see what they want to accomplish.

Safe Harbor:

Briefly discussed potential of TNC to take the lead on developing and administering a Kbb Safe Harbor Program in WI. TNC is the lead on the IN and NY KBB Safe Harbor programs.

Upcoming workload for Cathy and Dave (Priorities: **CC, ++DL)

Discuss upcoming workload and availability of Cathy and Dave

- ** Final approval new HPR (Ted's report is done.)
- ** 2007 Annual reporting process: incorporate changes and instructions to document NNLOH and measuring take.
- ++ Monitoring Guideline/protocols
- ++ Final approval for HCP User's Guide: Guidelines and Protocols (going on line soon)

Construction Guideline, i.e. complete protocols on development of reclamation plans for short term take projects such as ROW construction projects. Cathy and Dave briefly discussed.

Reclamation monitoring guidance and success criteria have been developed. Need to develop reclamation ratios - considering 1:1 with encouragement of more.

Action: Dave and Cathy will work together on completing reclamation guidelines.

- Emergency Guideline
- Mitigation & Reclamation site visits (Swiss, DOT, WCHD)
Ratios of reclamation were discussed, 1:1 ratio recommended by Cathy.
A question was addressed if reclamation is necessary if the sites have 25 plants or less along corridors and how it relates to level 1 and level 2 surveys.
- Shifting mosaic - how do we demonstrate? Perhaps Bob could come up with some ideas here.
Bob H's comment: We never did get around to talking about demonstration shifting mosaic. Is it critical that we prove that it works, or is common sense good enough? Can cause-effect monitoring prove it? Do we have any data to look at from those monitoring efforts? What happens if we don't prove it?

All Amendments in Process:

- **** Amendment related to "measuring take" in the HCP (Dave to redraft issue paper)**
- What do we do about amending the HCP for changes we are making?
- Letter formally requesting changes to HPR, etc.
- Amend ITP: Partner names, Scott Hassett as principle officer, and other updates.
- Changed Circumstances amendment proposal
- Proposed amendment to HCP/ITP to allow DNR to do audits on DNR lands (rather than FWS as it currently states).
- Commercial Forestry (clarified definition) amendment

TAKE DEFINITIONS 5-18-07

The HCP defines permanent take as:

Permanent take is an impact to Karner blue butterfly habitat, through land management or land use activities, that precludes Karner blue butterfly occupation. Such long-term impact involves taking that does not allow for the restoration and reoccupation of the site for a minimum of five years. Activities or projects that may fall within the definition of permanent take include, but are not limited to:

- construction of roadways and parking lots;
- construction of buildings or structures and associated facilities;
- other construction or development projects that cover or replace the habitat in a permanent manner (at least 5 years), such as an airport or a flowage; and
- residential housing developments. [Note: This category does not include a permanent or second home and associated structures that are owned or built by the owner for his or her own use. This provision applies only to those housing developments approved after the date of permit issuance.]

New short-term take definition:

Short-term take is an impact to occupied Karner blue butterfly habitat resulting from land management or land use activities, which results in habitat disturbance that renews declining habitat and/or restores or creates habitat to replace habitat lost to succession or as a result of a land use activity. Short-term take is conducted following approved conservation measures in the HCP in a manner to avoid and/or minimize harm to the KBB (e.g. through appropriate timing of activities, selective routing and siting of projects, etc.) and maintain, enhance, and/or restore KBB habitat.

Such short-term impacts allow Kbb survival and in cases of complete habitat removal, requires restoration of the site within five years. Activities or projects that may fall within the definition of short-term take include, but are not limited to:

- mowing of roadside rights-of-way
- repairing roadside ditches to restore proper drainage
- roadside ROW improvements
- brush removal along utility corridors
- forest management practices
- conservation management, e.g. mowing and brushing for wildlife management, herbicide applications, prescribed burning, etc.
- pipeline and road construction, electrical and cable installations, and other construction and development projects that DO NOT cover or replace the habitat in a permanent manner (see definition of permanent take) and allow for habitat restoration and Kbb re-occupation within 5 years.

Streamline\Take definitions 5-18-07.doc