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Subject: Timing of Third-Party Contractor Engagement
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In the bi-weekly call between USFWS and NPPD on October 28, 2021, we discussed if there was any update on third-party scope of work. USFWS indicated that, based on input from the Solicitor's Office and the National HCP coordinator, USFWS decided they needed to go out for new competitive bids for the third party to help USFWS complete the remand process. USFWS indicated that NPPD and USFWS should be well into the revision of the HCP before the third-party contractor comes on board. NPPD indicated that they cannot send out a Request for Proposals for the third-party contractor until USFWS reviews and edits and approves the draft Scope of Work. This draft Scope of Work was prepared by NPPD based on the Scope of Work prepared for the original Project. USFWS indicated that they believed that they needed a more developed/revised HCP to use as a baseline for the Scope of Work for the third-party contractor.

After the meeting, NPPD reviewed again the process used by USFWS for the initial project. During the initial permitting process, the third-party contractor was retained approximately a year before the draft HCP was completed. Thus, the scope of work was finalized well before the HCP was developed. During this remand process, it is appropriate to take a similar approach to getting the third-party contractor retained and starting to work while NPPD and USFWS revise the HCP because much of the work that the contractor will be doing is supplementing the EIS to address the court's decision. The content of the HCP will not change the tasks the contractor will need to do on remand; it will only affect some of the content of the permitting documents.

We also reviewed the HCP Handbook to see if it had any guidance on this process. Below are the references in the HCP Handbook that support the position that, while NPPD is developing the updates to the HCP, USFWS should be currently developing the environmental compliance documents, which includes the NEPA, NHPA, and intra-Service section 7 consultation processes.

- Page 2-2: "During phase 2, the results of all of the upfront planning under phase 1 are applied while assisting the applicant with developing their HCP, as well as concurrently developing the environmental compliance documents (e.g., NEPA, NHPA, and intra-service section 7 consultation) (see the HCP Handbook Toolbox) as well as coordination with your legal counsel, as appropriate."
- Page 2-9: "Consider all applicable laws early in the process: At the beginning of the HCP process, explain to the applicant the Services' section 7, NEPA, and NHPA obligations for issuing an incidental take permit, as well as other laws such as MBTA

and BGEPA, if applicable (see the HCP Handbook Toolbox). ***Always consider compliance with these laws and HCP development as concurrent, integrated processes, not as independent and sequential.***” (emphasis added).

- Page 3-29: “Early during HCP negotiation is the time to identify the analysis to be conducted for our NEPA review.”
- Page 4-4: “To avoid this, we will begin integrating the intra-Service section 7 consultation process at the start of the HCP development phase, and to regard them as concurrent and related, not independent and sequential, processes. In procedural terms, this means that considerations of intra-Service section 7 consultation requirements should start at the beginning of the HCP development phase, not during the permit processing phase.”
- Page 13-1: “Our preparation of the NEPA documents should progress along with the HCP as we gather and analyze data.”

NPPD should add this topic to the agenda for the next bi-weekly call, so we can revisit this topic based on the prior practice for the Project and the excerpts from the HCP Handbook.