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2.1 Phases of Habitat Conservation Plan Planning

The Habitat Conservation Planning (HCP) process can be divided into four phases: (1) Pre-application; (2) Developing the HCP and Environmental Compliance Documents; (3) Processing the Application, Making a Permit Decision, and Issuing the Incidental Take Permit; and (4) Implementing the HCP and Compliance Monitoring. The HCP process is not linear, it is iterative and some steps should occur concurrently.

Phase 1: Pre-application is described in:

Chapter 3 Getting Started

Chapter 4 Communicating and Coordinating

During phase 1, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services) provide guidance and assist potential applicants in deciding whether an incidental take permit is appropriate and if so, what type and scale of HCP would best fit the applicant's needs. The Services determine the level of National Environmental Policy Act (NEPA) (see the [HCP Handbook Toolbox](#)) analysis required based on the scale of the HCP and the anticipated impacts of covered activities on the human environment. The Services also explain to the applicant the HCP process; discuss compliance with other environmental laws [e.g., NEPA, National Historic Preservation Act (NHPA), and intra-Service section 7]; provide advice on selecting contractors; identify training opportunities; discuss section 6 HCP planning grants; and discuss developing timelines, determining HCP plan governance, identifying stakeholders, identifying climate change effects, etc. During phase 1, the Services also provide advice as to how to avoid common pitfalls that may delay HCP development or incidental take permit issuance later in the process.

Phase 2: Developing the HCP and Environmental Compliance Documents is described in:

- Chapter 5 Land Use Activities and Alternative Actions to the Taking
- Chapter 6 Identifying the Plan Area and Permit Area
- Chapter 7 Identifying the HCP Species and Information Needs
- Chapter 8 Calculating Take from Land and Water Use Activities
- Chapter 9 Developing a Conservation and Mitigation Strategy
- Chapter 10 Monitoring and Adaptive Management
- Chapter 11 Implementation Costs and Funding
- Chapter 12 Net Effects and Permit Duration
- Chapter 13 National Environmental Policy Act Compliance

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. Throughout this phase, the applicant may need to revise certain aspects of their HCP as updated information becomes available or as the scope/evaluation is narrowed or expanded. The goal of phase 2 is for the applicant, with our guidance and assistance, to prepare a draft HCP that is statutorily complete and meets the incidental take permit issuance criteria. At the conclusion of phase 2, the majority of the burden shifts from the applicant to the Services.

Phase 3: Processing the Application, Making a Permit Decision, and Issuing the Incidental Take Permit is described in:

- Chapter 14 Completing and Reviewing the Permit Application and NEPA Compliance Documents
- Chapter 15 Finalizing the HCP and Environment Compliance Documents
- Chapter 16 Making a Permit Decision

During phase 3, the Services begin the HCP public review and permit decision processes. This includes developing a “findings” document that presents the basis for the incidental take permit decision. Although stakeholders and other members of the public are usually engaged early in HCP development, the public has the opportunity at this point to provide comments on the HCP and NEPA documents during public comment periods. The length of this phase depends on the level of required environmental compliance (i.e., NEPA categorical exclusion, environmental assessment, or environmental impact statement) and the time required to resolve any remaining issues with the HCP. As long as fatal flaws are not identified, after the public comments are received and addressed, the applicant’s HCP is revised as necessary and finalized along with the environmental compliance and decision documents. Phase 3 is concluded by the Services’ permit issuance decision.

Phase 4: Implementing the HCP and Compliance Monitoring is described in:
Chapter 17 Implementing the HCP, Compliance Monitoring, and Making
Changes, if Necessary

Phase 4 is the HCP implementation phase. This is perhaps the most important phase because this is when the permittee proceeds with implementing the HCP conservation strategy and their covered activities. This phase includes implementing the avoidance, minimization, mitigation, monitoring, and reporting activities. We highly recommended that our staff maintain close coordination and communication with the permittee throughout implementation to cooperatively ensure the HCP is a success. HCPs are collaborative conservation tools for threatened and endangered species, and it is during implementation that the rewards of the conservation planning process are realized.

2.2 Considerations for Successful HCP Planning

Frequent and open communication between the Services and the applicant is key to successfully planning, developing, and implementing an effective HCP. We recommend that Services' staff spend as much time as necessary upfront guiding the applicant to fully outline how their HCP will be developed, explain the regulations and requirements, establish good communications, identify stakeholders, and establish realistic timelines before starting on the content elements required for the HCP itself. Diligent, thorough, and thoughtful planning from the outset will save time in the long run.

2.2.1 Understanding the Regulations

Services staff should have a strong working understanding of the regulations and requirements (see the [HCP Handbook Toolbox](#)) necessary for HCP approval and permit issuance (including the NEPA and Endangered Species Act (ESA) intra-service section 7 processes) because they are responsible for advising applicants on developing HCPs that will meet section 10 issuance criteria. It is also important that staff help the applicant clearly understand the pertinent regulations and requirements. The more the applicant knows about the process, the less likely we are to run into problems and delays.

There are many helpful tip sheets that FWS Regional offices have developed (e.g., compliance checklists, process for publishing *Federal Register* notices, etc.) to help make working through the process easier. We recommend you review the [HCP Handbook Toolbox](#) then ask a Regional HCP Coordinator or appropriate NMFS contact for help if you cannot find what you need.

2.2.2 Innovation Considerations

One of the strengths of the HCP program is its flexibility. While looking at past HCPs can be instructive, keep in mind that almost every HCP will have its own set of unique circumstances. Be open to fresh ideas that may fit the particular needs of each situation. In each case, the Services and applicants have the opportunity to develop innovative approaches and unique solutions to resolve specific challenges.

We encourage creative thinking to resolve complex issues during HCP development. However, carefully consider the practicality and potential unintended consequences before embarking on any creative idea or concept, especially one that may be groundbreaking or precedent-setting or that may adversely impact conservation efforts elsewhere. Carefully weigh the positive benefits of a potential creative approach against the possible negative repercussions, as well as the complexity of its implementation, legality, workload burden, and conservation contribution. Describe how the concept will be implemented in detail to ensure that it will be successful.

The answers to the following seven questions may help to determine whether a specific idea or approach has merit for inclusion in an HCP:

1. Will it meet statutory or regulatory requirements?
2. Will it streamline permit issuance?
3. Will it help or hinder permit implementation or enforcement?
4. Will it increase conservation outcomes and contribute to species recovery or contribute to the decision to preclude listing?
5. Are there any legal constraints or risks with it, and if so, which party will incur the constraints or risks?
6. Will it affect staff workload for the Services or applicants/permittees either before or after permit issuance? If so, how and when?
7. Will it establish a legal or other precedent or practice that could cause difficulties for future HCPs or other conservation efforts?

2.2.3 Going Fast by Starting Slowly

During phase 1, instead of quickly launching into the technical aspects of the HCP, work with the applicant to carefully plan how the HCP will be managed and governed as it is being developed and implemented. This is especially important for development of landscape-scale HCPs. Taking the necessary time to carefully plan in advance can save time and money when developing and implementing an HCP. Starting slowly results in developing the HCP more efficiently and expeditiously to meet the applicant's needs, and it helps to get effective conservation on the ground more quickly.

The first step to success includes getting the right people in place and building a highly functioning team. The applicant should carefully and thoughtfully select their HCP project manager and consultant. The project manager does not need to be a biologist. In fact some of the most successful are not. The HCP consulting firm should have a strong background in science and HCP development. Likewise, the Services should assign good communicators and negotiators who are knowledgeable and have experience commensurate with the size and complexity of the HCP. The Services should also ensure that the NEPA consulting firm, if used, has the requisite knowledge and experience to prepare the NEPA document. If the team includes stakeholders, it is equally important that the representatives have similar skill sets and are committed to following through to the end of the process. Having the right people in place is vital to successful HCP development and planning.

The next step includes identifying the governance of HCP development, such as deciding: (1) what to address in the HCP; (2) what are the mechanics of HCP development (who is responsible for what, where, when, how much will it cost, what is the conflict resolution process, meeting management, record keeping; how will the team make decisions, and if applicable, what is the level of involvement by elected officials and managers, etc.); (3) at what key stages will preliminary decisions or approvals be sought (applicant and Services' management); (4) what are the roles of stakeholders; and (5) what are the mechanics of HCP implementation (e.g., how to handle exchange of funding, resources, procedures, organizational structure, etc.)?

This concept is discussed in more detail in Chapter 3.6.

2.2.4 Partnerships, Collaboration, and Communication

Although some listed species are located on wildlife refuges, national parks, military bases, and other Federal lands, the majority of them are on non-federal lands. The Services and other Federal agencies cannot recover those listed species alone. Flexible, creative partnerships between the public and private sectors that consider the best available science, apply good judgment, and focus on collaboration are key to reconciling the impacts of non-Federal development and land use activities. It occurs in a manner that is compatible with the conservation needs of affected species and with the applicants' desire to do what they need or want to do – while complying with the ESA.

To ensure that those partnerships benefit species, we encourage applicants to develop conservation plans that are consistent with the recovery plans and contribute to the recovery of covered species. We can provide examples and technical support to help prepare effective conservation approaches that will also ensure that the HCP can meet permit issuance criteria.

Field offices have a wealth of expertise with listed species and the HCP process. Regional offices are ready to provide guidance to field office staff when needed to help complete the HCP process more quickly and effectively.

The Services also use the NEPA process to involve other stakeholders, including tribes, other affected individuals, the public, non-governmental organizations (NGOs), and anyone that would have an interest in the project to identify concerns early in the HCP development process.

2.2.5 State and Local Coordination

Some States have laws similar to the ESA and prohibit take of State-listed species, or they have laws similar to NEPA, and most States have “sunshine laws” similar to the Freedom of Information Act. We recommend the appropriate State agency or agencies be involved early in the process to facilitate and streamline coordination and information exchange.

Under section 6 of the ESA, States with adequate and active cooperative agreements are our partners in conserving listed species. The Services should discuss this partnership with prospective applicants and strive to accommodate State requirements in the development of HCPs.

Our staff should also cooperate with States so that their concerns for non-ESA-listed species are considered in HCP planning. We should encourage applicants to include State-recommended conservation measures in HCPs. However, even if a proposed incidental take permit application and its accompanying HCP complies with the ESA, the HCP still may not fully satisfy all State management goals in all instances. The applicant is required to comply with all other applicable Federal, State, and local laws.

2.2.6 Good Communication

One of the many keys to successful HCP planning is building a strong relationship with the applicant, their consultants, and stakeholders. It begins with effective and efficient communication. Maintaining open lines of communication builds trust and cooperation while reducing the chance of being blindsided by concerns or issues that could lead to delays. Good communication also helps to build cooperation among stakeholders involved in the HCP process.

Within the Services, good internal, cross-program communication within the field office and between the Regional office is critical to the delivery of high quality technical assistance to applicants with developing the conservation program under the HCP. This will ensure the maximum conservation benefit to the covered species and to provide the best recommendations to the applicant so that the applicant will receive a permit that allows for their activities to proceed while protecting covered species and their habitats. Communication with the Regional office on HCP policy is important to ensure consistency across the nation.

2.2.7 Well-written Documents

Since many incidental take permits have long permit durations and may extend beyond the careers of those who were involved in the HCP planning effort, it is important that the HCP, incidental take permit, and associated documents are written clearly so that future users can fully understand how to implement the HCP and to ensure it will meet the stated goals and objectives. Although all parties actively developing the HCP may fully understand what is expected and anticipated, future responsible parties will only have what is written in the HCP, permit, and associated documents to guide them. Be mindful of the future when reviewing the draft HCP and its associated documents. If it is not clear, recommend revisions to clarify specific sections or to better explain the intent and rationale behind decisions or approaches.

It is equally important that the Services' decision documents are clear, well-written, and meet all legal requirements. Decision documents should provide a rational connection between the facts we used and the decisions we made. We should inform applicants of this standard and strongly encourage them to ensure their documents are well-written as they will be part of the administrative record supporting the Services' final decisions. When our documents are made available to the public, we are evaluated by their quality.

We must show our work (e.g., calculations) and clearly explain the chain of logic that led us to our decision. Our documents should be easily understood, well-written, well-organized, and demonstrate scientific integrity. Well-written documents developed by the applicant and the Services ultimately save time during the various internal review and surname processes. Poorly written documents are more prone to litigation, which costs time, money, and conservation

potential for the applicant and us. Litigation also may delay HCP implementation or force abandonment of the HCP, which in turn eliminates the potential conservation benefits of the plan.

2.3 Tips for Success

As discussed above, successful HCP planning often requires consensus building, negotiation, and integration of numerous interests, especially for large-scale, regional planning efforts. Also, biological issues are not always clear-cut and sometimes are subject to interpretation. Combine flexibility, creativity, good science, and good judgment when providing technical assistance to HCP applicants. The following "rules of thumb" should be helpful to you in meeting these challenges:

- **Use good science:** Services staff should involve the applicant in assembling the best available scientific and commercial information. Stay abreast of new biological developments and state-of-the-art techniques and research. In coordination with the applicant, interpret the information, identify key assumptions and uncertainties, and use best practices to resolve uncertainty to the extent feasible during analyses, planning, and in the design of mitigation and adaptive management. Although the Services cannot require that applicants actively work toward recovering species, we should encourage applicants to develop HCPs that produce a net conservation gain that contributes to recovery of the species. Remind participants that they would benefit from species recovery, which leads to delisting and removal of prohibitions and other related regulations. The Services should examine recovery plans and other relevant documents to help identify strategies to minimize and mitigate the effects of the covered activities. When recovery plans are not available or have not been updated to include the best available science, contact recovery teams, State wildlife agencies, or other species experts to obtain information (i.e., 5-year reviews, recovery outlines, updated information on climate change effects) pertinent to HCP development. When appropriate, staff should engage in internal cross-program coordination by seeking assistance or more active participation by recovery team members and species leads.
- **Know the regulations:** Keep up-to-date on applicable statutes and policies, including the ESA, its implementing regulations, and court decisions. Understand the authorities and limitations of the ESA and NEPA. When in doubt, seek input from your legal counsel. Access to legal counsel can be helpful, especially to advise and review documents during key stages in HCP development.
- **Remember the HCP is the applicant's document:** Keeping in mind that the HCP is the applicant's document, we cannot force requirements into the HCP that applicants are not willing to undertake. Instead, we should collaborate with the applicant to develop the best strategy for the HCP that will meet permit issuance criteria. Provide technical advice and work with the applicant through the process discussed in this Handbook. Applicants more readily accept recommendations and requirements when they see the logical basis for them.

- **Clearly understand the proposed action:** It is important to work with the applicant to fully understand the intricacies of their proposed action. This can be accomplished by breaking down the proposed action into components, which will help identify the covered activities and the resulting range of possible impacts to listed species. More information can be found in Chapter 5.3.
- **Identify important issues early:** Work with the applicant to get important issues on the table as early as possible in the HCP development stage. Help the applicant understand at the outset the section 10 issuance criteria and any regulatory or biological issues that they will need to address in the HCP. Ensure frequent and open communications. Be transparent in decision-making.
- **Work with the applicant to develop a conservation strategy that offset impacts:** Some HCP conservation strategies and mitigation approaches are relatively straightforward, while those for large-scale, regional planning efforts may be quite complicated. Because flexibility is key, we offer very few ironclad rules for mitigation programs. However, we do have a few rules that must be met. Applicants must minimize and mitigate the effects of their actions to the maximum extent practicable and the measures must be manageable and enforceable. Also, the applicant must clearly articulate the biological goals and objectives in the HCP with measurable success criteria.
- **Coordinate frequently with the Regional office:** The Services field and Regional offices should coordinate regularly throughout the HCP process and work as a team. This is essential to ensure timely reviews of documents, ensure consistency with past and current HCP efforts, resolve issues, make leadership aware of any issues they may need to address, and keep abreast of any policy changes and novel approaches. Do not hesitate to contact Regional HCP Coordinators with any question or for guidance on developing a HCP. No question is too trivial or unsophisticated.
- **Communicate early and frequently with your legal counsel:** The Department of the Interior (DOI) Solicitor's Office and the National Oceanographic and Atmospheric Administration (NOAA) General Counsel's Office, Commerce Department, collectively referred to as legal counsel in this Handbook, serve as legal counsel to the Services. It is important to identify and address potential legal concerns early in the development of the HCP, particularly if it is a controversial or complex plan. Before contacting your legal counsel, first contact your Regional HCP coordinator to help coordinate legal review. Together with your legal counsel, determine how best to communicate issues or concerns to ensure they are engaged as soon as possible. At a minimum, early legal review will help the Services and the applicant to better prepare documents that are legally sufficient and save time.
- **Ensure close coordination between FWS and NMFS:** In cases where our jurisdictions overlap for an HCP, the agencies must closely work together to provide guidance to the applicant and coordinate reviews and approvals.
- **Include State wildlife agencies early:** Encourage the applicant to include affected State wildlife agencies at the beginning of HCP development. The State wildlife agencies share

management responsibilities for many species, can provide excellent scientific and technical expertise, and often are more familiar with the local politics and issues. Some States have their own ESA statutes and NEPA equivalents that we should consider during HCP development.

- **Include tribes early:** If an applicant's project could affect tribes, tribal or ancestral lands, or tribal trust resources, coordinate with your Tribal Liaison and begin formal Government-to-Government consultation early in development of the HCP and separate from the NEPA public review process. Tribal interests are important. Do not assume tribes are not interested if you do not receive an immediate response to the consultation letter. Continue to reach out to affected tribes. Specific information about how to coordinate with tribes can be found in Chapters 1.3.6 and 4.1.3 as well as in the [HCP Handbook Toolbox](#) .
- **Clearly define stakeholders roles:** Specifically, describe who will be part of the process. Work with the applicant to determine their roles and limitations. Also, determine when stakeholders will be involved in the HCP process. Describe what, if any, role they have in governance or guiding the applicant.
- **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.
- **Engage the applicant's and Services' decision-makers early in the process:** Decide when and how they will be engaged in the process. Document their role(s) in the governance process and what information they will need to make the decision. Determine what role they will have in resolving conflicts.
- **Read and reread this Handbook:** This tip has fundamental merit. Read through the entire Handbook before embarking on your first HCP. Even if you already have experience with HCPs, this Handbook includes new approaches; clarifies policies and processes that can greatly help you navigate the HCP process; provide valuable guidance to applicants; and most importantly, lead to conservation benefits for listed and at-risk species.

2.4 Factors Influencing How Long the Process Takes

How long the process takes depends on several factors, such as:

- The size and scale of the proposed HCP, including the scope of the proposed covered activities;
- The complexity of the HCP (e.g., the number of species, stakeholders, tribes, and applicants; long or short permit duration; consideration of climate change effects and

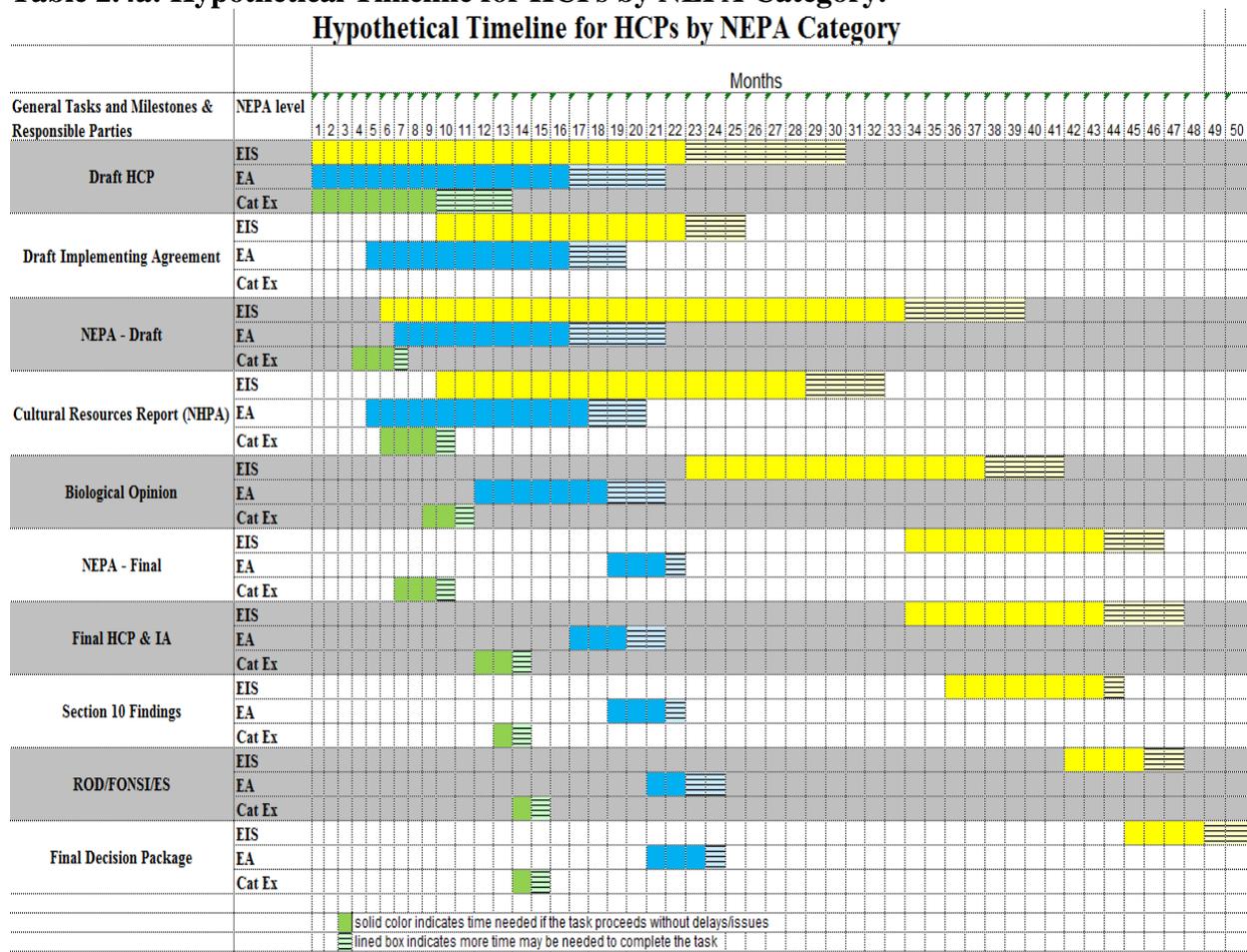
other environmental changes, and interactions among them; extent of the conservation program; mitigation structure; funding assurances; etc.);

- The thoroughness of phase 1 pre-planning by the team (applicant, consultants, Services, etc.);
- The allocation and commitment of resources (staff and funding) by the applicant and the Services;
- The timing and level of engagement by the Services in the applicant's HCP preparation effort;
- The availability of necessary data or information to help us make an informed decision;
- The level of uncertainty and controversy related to the HCP;
- The number and composition of stakeholders;
- The extent of legal review required by the Services' solicitors and general counsel of the HCP and decision documents; and
- Completion of the NEPA compliance process, and other factors.

All of these factors come into play and should be addressed at the very beginning of the HCP process, which is described in Chapter 3. Advanced planning, good communication and governance, setting goals and expectations, establishing milestones, and jointly developing an HCP completion timeline are some of the keys to success. Advice and recommendations are threaded through the Handbook to assist you with your effort to guide the applicant down the most efficient planning path and how to avoid common pitfalls.

The following Gantt chart provides an idealized timeframe for HCPs depending on the level of NEPA analysis required, assuming that every step proceeds perfectly. However, every HCP is different and these timeframes may be shorter or longer depending on the factors described above, as well as the unique set of circumstances pertaining to the HCP.

Table 2.4a: Hypothetical Timeline for HCPs by NEPA Category.
Hypothetical Timeline for HCPs by NEPA Category



(Note: This is an approximate timeline to show relative lengths of various tasks and the sequence of tasks. Each HCP timeline is different.)

2.5 Roles and Responsibilities

Table 2.5a: This table highlights the roles and responsibilities of the various stakeholders in the HCP process.

Task	Role			
	Services	Applicant/ permittee	Consultant	Outside expert
Planning/Development of the HCP				
1) Decision to develop HCP	Support	Decide	Support	
2) Identify plan area and species	Contribute. Support. Prelim. Approval. Review	Decide	Support	
3) Identify covered activities	Contribute. Support. Prelim. Approval. Review	Decide	Support	
4) Assess take caused by covered activities	Contribute. Support. Prelim. Approval. Review	Decide	Support	
5) Develop biological goals and objectives	Contribute. Support. Prelim. Approval. Review	Decide	Write	Contribute Support Review
6) Identify conservation actions to meet goals and objectives	Contribute. Support. Prelim. Approval. Review	Decide	Write	Contribute Support Review
7) Develop reserve design/conservation strategy	Contribute. Support. Prelim. Approval. Review	Decide	Write	Contribute Support Review
8) Develop monitoring and adaptive management program	Contribute. Support. Prelim. Approval. Review	Decide	Write	Contribute Support Review
9) Develop funding strategy (estimate costs, assurances, etc.)	Support. Prelim. Approval. Review	Decide	Write	Write Contribute Support Review
10) Determines if the permit application is statutorily complete.	Decide	Contribute		
Implementation of the HCP				
10) Implement conservation actions	Support. Prelim. Approval. Review	Implement	Contribute. Support	Support
11) Implement the effectiveness and compliance monitoring program activities	Support. Prelim. Approval. Review	Implement	Contribute. Support	Support
12) Update understanding and models to inform future management decisions	Support. Review	Implement	Contribute. Support	Support

Write=	Writes the document
Decide =	Makes decision
Implement=	Responsible for implementing
Contribute=	Contribute to effort
Review =	Review and comment
Support=	Technical support provided as needed, could be advise, data, etc.
Prelim. Approval=	Preliminary approval required by this entity at appropriate planning stages

2.5.1 Applicant

The applicant's first responsibility is to decide whether an incidental take permit is the right tool under the ESA to meet their need. If the applicant chooses to seek an incidental take permit, they must prepare an HCP as part of the application. Though the HCP is generally developed in collaboration with the Services, the development of an HCP is the responsibility of the applicant. The most successful HCPs are those where the Services are involved early, provide guidance and technical assistance, and are invited to stay engaged throughout the HCP development process.

To request an incidental take permit, an applicant must submit a section 10 permit application package. The complete application package includes:

1. for FWS, an endangered species permit application form (3-200-56) and permit processing fee; or for NMFS, one of three application forms, depending on the species likely to be taken – Marine Mammals, Sea Turtles, or other listed species(see application links in the [HCP Handbook Toolbox](#)). NMFS does not require a processing fee;
2. draft HCP; and
3. if applicable, draft implementing agreement.

Recommend to applicants that they wait to submit the full application package, including the application fee, until we have preliminarily reviewed the HCP and concluded that it should be adequate to meet all the incidental take permit issuance criteria.

2.5.1.1 Consultants and Contractors

Since applicants typically do not have in-house knowledge or experience with the HCP process, they often hire environmental consultants or contractors to assist with preparing the HCP. If an applicant elects to hire a consultant, recommend that they choose carefully and thoughtfully. It is important for applicants to actively participate in preparing the HCP along with their consultants and stay engaged with the Services. Applicants should manage their consultants in a manner that ensures efficient and timely development of an HCP that will fulfill the stated goals and meet the incidental take permit issuance criteria. While consultants may write the HCP, any permit issued will be to the applicant, who is responsible for fully implementing the HCP and the permit terms and conditions.

The most successful applicants and consultants have a thorough understanding of the incidental take application process and requirements under section 10 of the ESA, the requirements and standards of both the ESA and NEPA, and what is required to develop an adequate HCP. Many applicants prepare an HCP only once, so they may be unfamiliar with the HCP process. Help

applicants to become informed on the process and familiar with the expectations for developing the HCP. One approach we suggest to help applicants become informed about the process and learn the expectation for developing the HCP is to take a short course offered by the FWS at the National Conservation Training Center (NCTC) or a similar course offered by consultants or other parties. New applicants may also talk to others who have completed the HCP process to receive advice and suggestions. However, we should caution applicants that no two HCPs are alike. Each HCP is tailored and negotiated to meet specific project or species requirements, which may not be appropriate in other circumstances. Finally, recommend to applicants that they hire consultants or contractors with prior experience developing HCPs for which incidental take permits have been issued.

2.5.2 The Services

The NMFS Headquarters office located in Silver Spring, Maryland is responsible for HCP planning and permit processing for marine mammals, sea turtles while in the ocean, and other listed species under NMFS jurisdiction except anadromous fish on the West Coast. Within the West Coast Region of NMFS, there are 12 local offices that have responsibilities for HCP planning concerning anadromous fish in that Region.

In this Handbook, we refer to these offices as NMFS field offices, as they are largely equivalent in responsibilities to the FWS field offices. The NMFS field offices are under the direction of the West Coast Regional office. Other permits are processed by the NMFS Headquarters office. These NMFS field offices, the West Coast Regional office, and the NMFS Headquarters office are responsible for working with applicants on the development of HCPs applicable to their species responsibilities.

The HCP organizational structure for FWS is different from NMFS. Because more HCPs fall under the jurisdiction of the FWS, allocation of the workload is distributed primarily between the FWS field and Regional offices where the resources and local knowledge is strongest. The roles of the FWS field, Regional, and Headquarters offices are described in more detail below.

2.5.2.1 Field Offices

FWS Field Offices

The field office is usually the primary point of contact for the applicant. It is important for the field office to provide guidance to the applicant, lead the process and negotiations, as well as help find or suggest solutions to challenges throughout the HCP process. However, the HCP is the applicant's document. We should not write the plan for the applicant or refuse to consider an HCP.

The development of an HCP is an iterative, negotiated process and the field office should continue to provide technical assistance to the applicant throughout. For example, if the field office staff become aware of emerging science, changes in the status of the species, or new approaches to conservation of the species or its habitat, they should provide this information and analysis to the applicant promptly. In some instances, the applicant or stakeholders involved may be subject-matter experts, and they should openly share information and analyses with the

Services. The field office should share with the applicant any lessons learned from other HCP projects and especially any involving the same (or similar) species, habitats, or covered activities.

A key role of the Services' staff is to develop, build, and nurture a strong working relationship with the applicant and their consultants throughout the HCP process. The field office has primary responsibility for:

- helping the applicant decide if an HCP is the appropriate conservation tool to meet their needs;
- working with the applicant to develop appropriate biological goals and objectives for the HCP;
- coordinating with the Regional office when an applicant seeks an incidental take permit;
- providing active guidance to applicants early and throughout the HCP development process;
- ensuring transparency;
- maintaining coordination and communication between the field office and all parties early and throughout the process to facilitate development of a legally sufficient HCP and expedite its review;
- providing the applicant with scientific information regarding the species' needs, distribution, habitat, life history, survey methodologies, conservation strategy, and other relevant information;
- providing the applicants or their consultants with tools such as habitat suitability models, population viability models, information on climate change effects, GIS data, survey protocols for detecting species or evaluating habitat;
- coordinating with Landscape Conservation Cooperatives (LCC), the Regional Climate Science Center, or the local or Regional climate change specialist to help take advantage of conservation partnering opportunities, and to stay abreast of the latest climate change information relevant for the HCP effort;
- compiling and maintaining the decision record, the final administrative record, and keeping the Services' tracking databases up to date;
- reviewing drafts of the HCP;
- advising the applicant when the HCP is ready for submission as a complete application package;
- when appropriate, conducting public meetings, reviewing and compiling public comments;
- briefing decision-makers on key decisions concerning the HCP;
- serving as a link between the applicant and others in the Services, including the Regional office, Headquarters office, and solicitor's or general counsel's office;
- initiating internal cross program coordination within the field office to ensure consistency, increase communication between teams, and to gather the most current species data or other information;
- maintaining communication up and down the chain of command throughout the development of the HCP;
 - regularly brief their managers and other program staff within the field office and

keep the Regional HCP Coordinator informed, especially regarding any issues that are likely to be controversial, complicated, or may be elevated (by the applicant, their consultant, or their attorney),

- assisting the Regional office by drafting the public notice, NEPA decision documents, findings documents, and the incidental take permit;
- coordinating with the Regional office on outreach associated with the HCP;
- participating in implementation evaluation meetings or reviews established in the HCP and incidental take permit;
- giving permittees guidance as they implement their HCP in accordance with their incidental take permit; and
- ensuring that the permittee is in compliance with their incidental take permit and is implementing the HCP effectively and appropriately.

We are responsible for ensuring compliance with other Federal laws such as NEPA and NHPA during the HCP development process. However, we typically do not have adequate staffing and resources to complete those processes in the time most applicants prefer. Thus, most applicants fund an independent contractor or consulting firm to expedite preparation of our NEPA or NHPA documents. In those cases, we must approve the contractor, ensure the contractor has no conflicts of interest and understands that the Services, not the applicant, will supervise the content of the NEPA or NHPA document. The Services must closely and frequently coordinate with those preparing the documents to ensure they will meet our needs. Keep in mind, it is not appropriate for the same consulting team developing the HCP to also prepare the NEPA documents (see also Chapter 3.8.2 for more specific information). Expectations should be clearly outlined in the Statement of Responsibilities and Consultant Disclosure Statement. You can find examples in the [HCP Handbook Toolbox](#).

Many HCPs are likely to directly or indirectly affect tribes, stakeholders, or third parties. The field office may help the applicant identify who the most appropriate stakeholders are and may broker communications between the parties. However, coordination with Tribes cannot be delegated to an applicant or consultant since it is our responsibility to communicate government-to-government with tribes (see Chapter 4.1.3). For large-scale or controversial HCPs, the field office may assist in outreach efforts by conducting public meetings as part of the NEPA scoping process, answering questions from the public, or educating the public or stakeholders about the process or objectives of the HCP.

Where appropriate, the field office should strive to ensure their decisions, recommendations, standards of adequacy, processing, etc. are consistent with implementation of the HCP program and standards used throughout the country. However, minimization, mitigation measures, or other species-specific requirements are determined case-by-case. Likewise, the field office must ensure that the HCP is consistent with other legal requirements.

Early and frequent coordination between the field and Regional offices at important points in the process is key to streamlining the HCP process. When working with the applicant to develop the schedule, it is important to incorporate and allocate adequate Regional and legal counsel review time because the experts in those offices serve the Region, and the FWS solicitor's office serves the entire Department.

The field office routinely prepares but seeks Regional office assistance with: (1) developing the incidental take permit decision documents; (2) developing the *Federal Register* notices; (3) collating and responding to public comments; and (4) preparing the incidental take permit terms and conditions. The field office and Regional office should communicate regularly to ensure that all reviews and approvals are progressing in a timely manner.

Because field office staff often has other priorities to manage in addition to assisting with the development of HCPs, these competing commitments may result in delays with drafting the necessary documents to complete the HCP process. To address this concern, in Region 2 (Southwest), managers have developed a workload management tool where a Project Plan Agreement is signed between the Assistant Regional Director and field office Supervisor to ensure adequate staff time will be allocated to an HCP and manage expectations. Although required in Region 2, the use of this or a similar tool is voluntary in other Regions. A template of the workload tool can be found in the [HCP Handbook Toolbox](#).

The June 24, 2014, FWS Service Manual 730 FW1 (see the [HCP Handbook Toolbox](#)) allows incidental take permit signature authority to be delegated to the field office supervisor by the Regional Director for HCPs that meet categorical exclusion (e.g., low-effect HCPs) and for incidental take permits for HCPs that meet the environmental assessment requirements under NEPA. In these cases, the field office closely coordinates with the Regional office, but the tasks usually assumed by the Regional office to issue the permit are the responsibility of the field office. This process is described in more detail in Chapters 13-15. Not all regions have delegated such authority to field supervisors, so check with the Regional HCP Coordinator before proceeding.

NMFS Field Office

Although most of the same concepts discussed above for FWS apply to NMFS, section 10 permit approvals have not been delegated to the NMFS Alaska, Pacific Islands, and Greater Atlantic Regions. These Regions work with NMFS Headquarters on such permits and Conservation Plans. However, the NMFS West Coast Region has been delegated such authority, and the field offices in that Region work closely with the Regional office on HCP development.

2.5.2.2 Regional Offices

FWS Regional Offices

The Regional HCP Coordinators are an important resource for HCP related policy interpretation and guidance. They also help to resolve complex or difficult issues and process the incidental take permit application (including reviewing the final HCP and associated documents). Another important role of the Regional HCP Coordinator is to serve as the conduit between Headquarters and the field office. Regional HCP Coordinators should relay information gained during the monthly National HCP call to the field to ensure they have the most current guidance available. Regional HCP Coordinators should hold regular calls with their field offices to facilitate internal communication, foster team building, and ensure national consistency.

The Regional office provides policy guidance based on their communication with other Regional offices and Headquarters. Although major policies are generally well known, interpretations evolve as we encounter and resolve new issues in implementing a specific policy. Communication with the field office on HCP policy is critical to providing the maximum conservation benefit to the covered species and the best recommendations to the applicant. Regional Coordinators should share this information with their field offices.

Once the field office has determined the draft HCP is statutorily complete, the draft HCP and decision documents are sent to the Regional office for review. The Regional HCP Coordinators review the draft HCPs and associated documents. The Coordinators review all draft documents for legal risk, adequacy and consistency with law, policy, and regulations. If the field office has communicated early and consistently with the Regional office throughout the development of the HCP, review of documents are typically smooth and less time consuming than without that communication. The Regional office provides comments, and suggested or required revisions, to the field office. The Regional office also coordinates the NEPA process with Headquarters and the *Federal Register* to publicly announce and request comments during the NEPA process.

Regional HCP Coordinators are also responsible for facilitating legal counsel review of draft and final HCPs and related documents. When requesting legal counsel review of an HCP package, the Regional HCP Coordinator, in conjunction with the field office, should have previously reviewed the documents and flagged any potential issues that may need close attention (e.g., funding assurances, conservation easement language, etc.).

After the public review period closes and the HCP documents have been revised, as appropriate, to address public comments, the Regional office reviews the field office recommendation to issue or deny the permit. The field office, legal counsel, and Regional HCP Coordinator work together to determine whether the HCP and permit application meet the issuance criteria. If the HCP meets the permit issuance criteria, the Regional office will proceed with final processing of the application package and issues the permit, unless signature authority has been delegated to the field office. This includes compliance with NEPA, all public noticing, finalizing the findings and decision documents. Once all of the documents are finalized and the record of decision (ROD), finding of no significant impact (FONSI), or environmental action statement (EAS) is signed (see the [HCP Handbook Toolbox](#)), the Regional office will issue the permit to the applicant. See Chapter 15 for more information.

NMFS Regional Office

Coordination between NMFS field and Regional offices works in much the same way as FWS. The one exception is that NMFS does not have Regional HCP Coordinators. The field office must work with a designated Regional staff person for each given HCP and permit.

2.5.2.3 Headquarters Offices

FWS Headquarters Office

The primary role of Headquarters at the FWS is to support the Regional and field offices by providing guidance on policy, procedures, and precedence to ensure the HCP program is

implemented consistently across the Nation. This is particularly important concerning nationally significant or controversial issues or events. Generally, the Regional HCP Coordinator will contact the National HCP Coordinator at Headquarters with a request for specific guidance. This request may be as informal as a telephone call or email, or it may involve formal written correspondence. These discussions may include questions of precedence (e.g., whether a specific action or process has previously been employed by another Region and if so, what was the outcome); the advisability of specified actions; or the development of new ideas.

The FWS's Headquarters office is typically not involved in the development, review, or permitting of individual HCPs except as requested by the Regional office. In such cases, Headquarters may assist in resolving disputes or providing advice to facilitate coordination among Regions.

Headquarters is also responsible for briefing the Director and DOI officials on controversial or precedent setting issues. Similarly, Headquarters is responsible for responding to requests for information from members of Congress or from the public. These responsibilities may require that Headquarters staff request information from the Regions through data calls or through briefing papers on the topic of concern. Headquarters staff may also be invited to attend meetings between applicants and DOI officials or members of Congress to answer questions or provide information on behalf of the HCP program.

Headquarters staff drafts national policy or changes in Federal regulations, as appropriate. This may involve holding public meetings and convening teams of Regional and field office staff. All associated documents and public notice requirements are drafted and processed by Headquarters staff. Regulations and policies pertaining to HCPs can be found in the [HCP Handbook Toolbox](#).

Among the many duties of the National HCP Coordinator is maintaining communication with the Regional HCP Coordinators. At a minimum, the National HCP Coordinator should hold a monthly national conference call to discuss issues and share ideas with the Regions relating to HCPs or other relevant issues. Headquarters staff also responds to questions or requests for assistance from the Regions. Additional communications with individual regions occur as needed. These communications help to maintain consistency of application of regulations and policies where possible and appropriate, while recognizing the unique nature of each HCP and specific conservation needs of the covered species. Frequent communications also allow the Regional HCP Coordinators the opportunity to interact with and obtain information from other Regions who may be working with similar issues and pass this information along to the field office. Additionally, the National HCP Coordinator helps to prepare and deliver HCP specific training and provides other related training or technical assistance to the Regions and field, as needed.

NMFS Headquarters

The NMFS Headquarters office takes the lead on HCPs and incidental take permits for all east coast, Pacific Islands, and Alaska Region efforts. However, the Headquarters office may delegate the development, review, or permitting of individual HCPs for the east coast, Pacific Islands, and Alaska Region. The West Coast Region has been delegated the authority to develop, review, and permit individual HCPs and permits, so NMFS Headquarters office is typically not involved in

those activities. Much of the NMFS Headquarters office roles and responsibilities are similar to the FWS Headquarters, with the exception of having a staff person in the National HCP Coordinator role.

2.5.2.4 Legal Counsels

The DOI Solicitor's Office and the NOAA General Counsel's Office serve as legal counsel to the Services. They are important resources for the Services during the development of an HCP and the subsequent permit processing. Also, they are our advisors on all legal matters pertaining to HCP development, NEPA, or other statutory and regulatory compliance. We ask that our legal counsel provide advice on legal issues or interpretation of statutes and regulations, as well as conduct timely review of our decision documents to ensure they are legally sufficient.

As mentioned above, it is important that the FWS Regional office or NMFS field offices or NMFS Headquarters office notify our legal counsel of any issues that may need their review as early in the HCP development process as possible. Waiting until documents are fully drafted to involve your legal counsel can cause costly delays, especially if there are legal matters to address and if the HCP and associated documents are sizable. It makes a timely response difficult which can result in lost time, money, opportunities to address issues, and diminish trust between the Services and the applicant. The Regional HCP Coordinators should specifically flag issues of concern or that particularly need the review and advice of legal counsel.