

Public Participation

Plan Development

Citizens should be able to participate in negotiations in plan development, because conservation plans affect not only the private landowner(s) involved but public resources. This is especially true for plans that cover large areas or natural areas important to local citizens. Citizens from various stakeholder groups have no formal role in the HCP process except through the public comment period and, for some plans, through the National Environmental Policy Act (NEPA) or requirements of state or local law. Often, by the time public meetings occur or official drafts are released for comment, however, both the regulated interests and the services have invested so much money and time in plan development that they are unlikely to change course.

Within this context, it becomes very important for citizens to participate in plan development from the early stages, when decisions about conservation strategy and preserve design are being made (Kostyack 1997). Nevertheless, citizens (including those representing the environmental community) generally have not had a seat at the negotiating table in many major recent negotiations despite the fact that conservationists (in addition to FWS) represent the public's interest in protecting endangered species. This problem is compounded by the reluctance of planners to include environmentalists who have been vociferously opposed to the economic activity in question (or HCPs in general). In addition, planners are intimidated by the huge task of

structuring public participation so that planning can remain focused even though diverse views are represented. In some cases, however, meaningful involvement of the public has improved plans and given them greater credibility.

Positive Examples

This conservation plan, made up of several documents regarding Louisiana black bear management and recovery, is truly a citizen-led program. The Black Bear Conservation Committee (BBCC), which developed the conservation strategy, is made up of diverse interests, including the timber industry, farmers, environmentalists, academics, bee keepers and other concerned citizens. Anyone can be at the table negotiating conservation strategies, as long as he or she is open-minded and demonstrate a commitment to participate actively. Considering the extent of the black bear's decline and the large role that private landowners have in protecting remaining habitat (see box on Louisiana black bear, p. 42), this open approach is the only one with a good probability of success. By coordinating a large number of groups and interests, the conservation recommendations contained in the *Louisiana Black Bear Restoration Plan* and the *Black Bear Management Handbook* for private landowners are more realistic and well considered. In addition, this group is able to brainstorm and implement innovative funding mechanisms to carry out strategies laid out in those documents.

Of the plans reviewed here, the NCCP in California most explicitly incorporates public participation into plan development. Under the NCCP Act of 1991, natural community conser-

Louisiana Black Bear

In Louisiana and parts of Texas and Mississippi, a subspecies of black bear — the Louisiana black bear (Theodore Roosevelt's original "teddy" bear) — once roamed throughout the region. Currently, the bear only occupies five to ten percent of that original range, restricted almost solely to the bottomlands of the Atchafalaya River basin and the Tensas River basin of Louisiana. Although the region formerly had as many as 50,000 black bears, only about 400-500 individuals live there today.

Today, the bears stay away from humans and highly fragmented habitat. They are mainly confined to large tracts of bottomland hardwood forests that are not crisscrossed by roads. For denning in the winter, the bears use hollow trees, brush piles and ground nests, but pregnant females tend to have greatest success in rearing young from tree dens.

Like many other predators, the bears require large areas of wilderness; these bears can occupy home ranges of more than 20 square miles. Some bears may live for over 25 years in the wild. Because the bears have a relatively slow reproduc-

tive rate, the population cannot grow quickly, and the loss of even one adult female has a significant impact on the small, isolated populations of this subspecies.

The largest threat to the Louisiana black bear is habitat destruction. By 1980, 80 percent of the original habitat had disappeared, and degradation and fragmentation of that habitat has continued ever since. In addition, poaching and road kills have brought the bear population down. For example, at least 21 bears were killed between 1988 and 1995, from such direct human-caused mortality (FWS 1995).

The Louisiana black bear is in dire straits, but the key to conservation lies in the private landowners of the region: 90 percent of the forested habitat is privately owned. Fortunately, many landowners in the region wish to see black bears back on their property, and they are engaging in management activities that will make their natural lands suitable for black bears. To prevent poaching, there are efforts to coordinate law enforcement better, and Defenders of Wildlife sponsors an anti-poaching reward fund.

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vation planning is defined as a process that brings together stakeholders as well as agencies, and public input is identified as a crucial aspect of developing subregional plans (California DFG and California Resources Agency 1993). Nevertheless, the extent to which citizens have actually influenced the subregional plans has varied. The subregional plan reviewed here, the MSCP in southwestern San Diego County, has had more public involvement than subregions that started planning earlier, such as the Central-

Coastal Orange County Plan (NRDC 1997).

In practice, it can be difficult for interest groups to obtain involvement throughout negotiations that can consume one staff person for years. This has been true for environmentalists and the MSCP, where most of the local groups participated in the plan's development to some extent, although only a few individuals were involved in regular meetings and intensive negotiations with city and county officials.

Nevertheless, the involvement of particular

individuals and coordination between local environmental groups achieved significant plan improvements that might not have occurred otherwise. For example, once the final overall plan was developed, each city in the planning area and the San Diego County Planning Commission had to approve their parts of the plan. Conservationists took those opportunities to work with the planning councils to attempt to remedy unacceptable provisions and close legal loopholes. In the MSCP, public participation has been more effective because a few individuals from groups like the Endangered Habitats League and the San Diego chapter of the Sierra Club have developed personal relationships with plan decision-makers and met with them frequently. This dynamic could not have occurred, however, without the eagerness of planning officials to make sure that members of the environmental community did not disapprove of the plan. Nevertheless, although this participation has improved the MSCP's effectiveness for species conservation, different environmental groups have different opinions about the MSCP, and some groups seriously question its basic conservation strategies.

Controversy and the San Bruno Mountain HCP

In this first HCP, some members of the environmental community did participate, but their participation did not ensure support from all environmentalists. A steering committee that developed the HCP was composed of representatives from Thomas Reid Associates (the environmental consulting firm), the four local jurisdictions receiving the permits, FWS, landowners

and developers, and the Committee to Save San Bruno Mountain (an environmental organization). The involvement of the environmental group illustrates the difficulties of incorporating a wide range of environmental concerns into plan development. David Schooley, a local environmentalist, claimed that two attorneys from the environmental group "quietly hammered out a compromise" with developers that sacrificed important habitat. When the details of the HCP became known to the rest of the group, many founding members (including Schooley) vehemently disagreed with the plan. As a result, the Committee to Save San Bruno Mountain broke up, but the two attorneys on the HCP steering committee then appropriated the name for their own group. From then on, David Schooley (now with Bay Area Land Watch) has fiercely opposed the HCP and associated development on the mountain.

National Trends

Clearly, public input into conservation plans can be highly contentious, and citizens sometimes disagree about what is acceptable for plans. This is a challenge for constructing efficient ways of incorporating public input. For the vast majority of plans, however, public participation was not adequate, given the plans' large effects on public resources. The most glaring examples are large-scale, single-landowner plans that significantly affect public resources, like the Weyerhaeuser Willamette HCP for 400,000 acres, the Plum Creek Timber Company HCP for 170,000 acres and the Swan Valley Agreement for hundreds of square miles of

mixed land ownership important for grizzly bears. While those plans did have public meetings and/or formal comment periods, the conservation strategies resulted from private negotiations with largely token attempts at listening to the public's concerns. In addition, numerous small-scale HCPs reviewed here involved exclusive negotiations between the landowner and FWS, including the A. Teichert and Sons HCP, the Black Hawk PG&E HCP, the Fel-Kran Plumbing HCP, the Sarah N. Bradley HCP, the Brandon Capitol Corporation HCP, the Gross/Snow Construction HCP, the Ben Cone HCP and the Coleman Company HCP.

In some cases reviewed in this report, public participation was required, but whether that participation truly influenced the plans is open to question (e.g., the NCCP). For HCPs where a public agency or jurisdiction was the permittee, state or local laws mandated opportunities for public involvement. For example, in developing the Massachusetts Division of Fisheries and Wildlife HCP for piping plovers, the division issued a press release announcing its intent to develop the HCP and held public meetings throughout 1995 with plover and tern managers, environmental organizations, recreational groups and beach managers. Other jurisdictional HCPs such as the Balcones Canyonlands Conservation Plan and the Clark County HCP involved public meetings and steering committees with conservationists. Currently, planning officials are trying to establish a public advisory committee for public input on plan implementation.

Other than the NCCP and HCPs that allow for public participation, there has been an over-

whelming lack of public input into conservation plans except by stakeholders who stand to gain significant economic benefit from the planning. This lack of public participation has resulted from an absence of formal requirements to involve the public and the limited leverage of citizens who do not have a direct financial stake in negotiations. Moreover, even when a formal opportunity for participation is offered, citizens are hard-pressed to commit to attending multiple planning meetings over several years. In the absence of real public participation, rhetoric about conservation plans being "win-win solutions" becomes a hollow slogan that applies to landowners and federal agencies rather than the American public.

Formal Public Review

Whether or not there is a formal procedure for public input into conservation planning from the earlier stages of plans, a draft plan is typically released for public comment, and there is a period of 30 to 90 days for public review. Many large conservation plans have public comment on environmental assessment documents required under NEPA. All HCPs and environmental impact statements (EIS) under NEPA must include an analysis of several alternatives to the proposed plan that were considered, including a no-action alternative. In addition, the development of environmental impact statements must include a public scoping process, in which citizens express their opinions at public meetings.

Unfortunately, public comment at the formal draft stage has been largely ineffectual because of

several factors. First, the draft plan is crafted over months or years of planning, and comments that question the basic tenets or strategy of the plan often cannot be incorporated without a major overhaul of the plan. Second, citizens not involved earlier in the plan may not have the time, patience or expertise to understand the intricacies so they can make suggestions that are based on factual evidence. This is particularly difficult for very large HCPs, when citizens must amass and review hundreds or thousands of pages of documents. Third, comments on alternatives are ineffectual, because any formal alternatives are quickly dismissed for a variety of reasons, especially economic arguments (even if an economic analysis has not been performed).

It is beyond the scope of this report to evaluate all draft plans, public comments and final plans in order to assess the responsiveness to comments for all plans reviewed here. There are several examples, however, of plans that have minimized procedural requirements for public review and of plans that have clearly incorporated major suggestions from the public.

Adequate Response to Public Comment

In the Volusia County HCP for several species of sea turtles, the draft document consisted of a strategy for controlling vehicular traffic on beaches and for monitoring sea turtle nests. Many public comments on the draft, however, pointed out that this amounted to a plan only to minimize take of sea turtles without mitigating incidental take to the maximum extent practicable (as required under law). FWS recognized this lack of mitigation measures: "The service

agrees that not enough mitigation was offered in the proposal outlined in the submitted application.... The service determined that additional lighting measures were needed to adequately mitigate the impacts of beach driving activities on sea turtles" (p. 7, Set of Findings, November 1996). This remedy was meant to address another major problem that sea turtles face on populated beaches — artificial lights disorienting turtle hatchlings and nesting females.

Before the HCP, the lighting ordinances in Volusia County had largely been unenforced. If lighting problems actually killed hatchlings by disorienting them, Section 9 was difficult to enforce through documenting the take and assigning blame. As a result of public comment, in the final HCP, the incidental take permit includes a requirement that by November 1, 1997, the county develop a beach lighting management plan. This plan will assess the adequacy of the existing lighting ordinance and its enforcement, develop a protocol for addressing lighting issues that takes into account the varying amount of urbanization and beach use along the coast, and institute lighting surveys that would cite, document and address lights that create problems for sea turtles.

When the draft MSCP went out for public comment in the fall of 1996, environmentalists voiced a multitude of concerns, including two major problems: (1) that there was little explicit justification for including particular species in the covered species list, especially when some of those species were deemed at "high risk" under the plan and (2) that the compliance monitoring and reporting were too vague and infrequent for

adequate implementation oversight and enforcement. In response, the wildlife agencies provided more information on the extent of planned protection for species on the covered species list (although they did not establish protection standards for such species). The wildlife agencies also said some species would require site-specific preserve design and special management procedures while others (e.g., mountain lion) could be covered through preserve design at the landscape level. Finally, planners established a more detailed system of “habitat accounting” in which reports on the extent of development and preserve protection (which is defined more specifically) are required annually. All of those changes were made as a result of formal public comment on the plan.

Circumvention of Formal Review

The draft Weyerhaeuser HCP covers a planning area of 400,000 acres in northwestern Oregon, and the incidental take permit applies to currently listed species (including the northern spotted owl, marbled murrelet and Umpqua River cutthroat trout), as well as species proposed for listing (coho salmon, coastal steelhead trout and bull trout) and other species when they are listed in the future. FWS determined that an EIS was not required despite the fact that the HCP covers a large geographic area, will guide management for 40 to 80 years, affects an important spotted owl migration corridor, and is a plan for multiple species. Instead, an environmental assessment (EA) was prepared. This has implications for the extent of public involvement, because EAs typically have shorter public

comment periods and do not undergo a public scoping process.

This conservation agreement was prepared without an EA or EIS even though it covers some 600 square miles very important to grizzly habitat connectivity within one of only five grizzly ecoregions in the lower 48 states. Moreover, Plum Creek Timber Company may be incidentally taking grizzly bears under the agreement but was not required to develop an HCP. Instead, the agreement is in the form of a federal agency (Section 7) consultation. FWS has allowed Plum Creek Timber Company to bypass preparing an HCP for the portions of the agreement that pertain to state and private lands. This has profound implications for public input, because Section 7 consultations take place without mandatory public review and comment, without consideration of alternatives to a proposed agreement and without the duty to minimize and mitigate taking impacts to the maximum extent practicable.

National Trends

Through the two examples here of the MSCP and Volusia County, there is some hope that the NEPA procedure can result in some improvements to HCPs as a result of public comment. Fulfilling NEPA requirements can be burdensome for applicants preparing HCPs, but the services now encourage applicants to combine HCP and NEPA documents (FWS and NMFS 1996). The basic dilemma of incorporating significant changes at the late stage of a final draft HCP, however, is not resolved, and the vast majority of HCPs do not change significantly

between the draft and final versions. For greater public input, the public must become involved earlier in planning.

Technically, public scoping meetings offer the public an opportunity for this. Scoping can occur in the preparation of EAs but typically occurs only for plans with EISs. In addition to scoping, other aspects of NEPA could enhance conservation planning. In particular, the analysis of alternatives could be greatly improved so that meaningful consideration of alternatives and an alternative that minimizes the impact on biodiversity could be developed (Bear 1996).

There is a disturbing trend toward minimizing the already weak role of NEPA and public comments. This has taken two forms. First, “low-effect” HCPs are categorically excluded from NEPA (no EA or EIS is required). Low-effect HCPs are defined as “those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats and (2) minor or negligible effects on other environmental values or resources” (p. 5-2, FWS and NMFS 1996). Second, the Weyerhaeuser draft HCP raises concern that FWS will rarely deem an EIS required for HCPs. This is stated in the HCP Handbook (1996), which reinforces the concept of a “mitigated EA” — the determination that there is no significant impact because mitigation under the plan reduces the effect of the plan on imperiled species and other environmental factors. Indeed, a draft HCP for 21 counties in eastern Texas for take of red-cockaded woodpeckers, released in May, 1997, was accompanied by an EA instead of an EIS. This circumvention of public scoping and more thor-

ough analysis that accompanies an EIS is a troubling trend toward even less public participation than provided now.

Funding

A plan cannot be effective unless a permanent mechanism provides adequate funds for the life of the plan. Indeed, funding various aspects of conservation plan implementation (including necessary plan changes) may end up being the key political challenge upon which the rest of the private land initiatives depends.

Implementation

One of the requirements for approval of an HCP is that “the applicant will ensure that adequate funding for the plan will be provided” (Section 10(a)(2)(B)(iii) of the ESA). The permittee must demonstrate that it has the funds to carry out all activities under the plan, including conservation activities, plan administration and biological monitoring. This requirement does not explicitly apply to other conservation plans and agreements. Funding mechanisms vary widely. Our discussion focuses on their adequacy and likelihood of success and highlights some innovative examples.

Funding techniques for conservation plans are as diverse as the plans themselves. For single landowner HCPs, the landowner shoulders all of the financial burden of the HCP, which raises an important concern about what happens to an HCP when a landowner goes bankrupt or must sell off holdings before the planning period ends. For the Black Hawk Pacific Gas and Electricity