

# **BIOLOGICAL ADVISORY TEAM OF THE SOUTHERN EDWARDS PLATEAU HABITAT CONSERVATION PLAN**

## **MINUTES**

**DATE:** February 22, 2010  
**LOCATION:** Schertz City Hall  
Bob Andrews Conference Room  
1400 Schertz Parkway  
Schertz, Texas 78154

### **Meeting #3**

#### **1. Call to Order - Richard Heilbrun, Texas Parks and Wildlife Department (TPWD)**

Richard Heilbrun called the meeting to order at 9:00am. A quorum of BAT members was present to begin the meeting.

#### **2. ACTION ITEM – Review and approve minutes, with any appropriate changes, from January 29 and February 8, 2010 BAT meetings.**

The BAT discussed corrections to the minutes of the January 29 and February 8, 2010 BAT meetings.

MOTION (Jackie Poole): Approve the January 29 and February 8, 2010 meeting minutes as amended. SECOND (Jayne Neal). VOTE: Voice vote carried unanimously.

#### **3. Public Comments (3 minutes per speaker)**

Richard Heilbrun called for public comments. None were received.

#### **4. Report from consultant team.**

Clifton Ladd reported that the CAC met on February 18, 2010 and discussed a charge and operational rules. Mr. Ladd also reported that the CAC elected co-chairs and adopted the BAT recommendation on the Plan Area. He reported that the next CAC meeting was scheduled for March 1, 2010.

Andy Winter added that there were suggestions to mention protection of Camp Bullis in the CAC charge, that the CAC asked for posting of public comments on the website, and that the CAC meeting was recorded.

#### **5. ACTION ITEM – Discussion and possible action on adopting operational procedures for the BAT.**

Allison Elder (Braun & Associates) reported on issues pertaining to hearing from citizens during BAT meetings. She reported that the Texas Open Meetings Act does not provide

a right for citizens to be heard during meetings, but that the BAT could allow members of the public to speak provided that all citizens are treated fairly. Ms. Elder also stated that the BAT could adopt rules that limit the total time for the “citizens to be heard” parts of the meeting. If all the time is used before all citizens who wish to speak do so, the BAT is not required to extend the time. The purpose is not to keep citizens from speaking, but to avoid meetings that last an excessively long time only because of public comment. Ms. Elder recommended the adoption of written operational rules.

The BAT discussed how to provide for public comments and how to receive input from agency entities during meetings.

Allison Elder suggested that BAT rules provide that the chair retains the discretion to allow agency representatives and citizens to speak to the committee at any time. She suggested that rules could be established that limit citizens speaking time during specified public comment agenda items. Ms. Elder also suggested having a sign-in sheet for all citizens who wish to speak during the public comments periods. A sign-in sheet would provide a record of speakers and also could be used to establish a speaking order.

The BAT discussed procedures for voting and whether to require motions and seconds for action versus acting by consensus. Allison Arnold (USFWS) and Clifton Ladd (Loomis Partners) suggested that motions and seconds may be good for the meeting record to identify who is proposing and supporting a certain action and to make it clear the specific action that is being taken.

Richard Heilbrun requested that all BAT member communications be copied to the BAT chair. A speaker from the floor also requested that such communications be copied to the City of San Antonio, as well as Bexar County.

The BAT discussed possible rules for discussions among BAT members outside of posted meetings. Allison Elder noted that discussions among BAT members are permissible provided that a quorum is not present, but recommended establishing a rule for BAT members to refrain from discussing SEP-HCP business with other BAT members outside of a posted meeting. She explained that discussing committee business with other BAT members in groups of less than a quorum outside of a posted meeting is allowed, provided that such discussions are not intended to circumvent the requirements of the Texas Open Meetings Act and provided that the sub-group does not have decision making authority. Allison Elder also noted that the Open Meetings Act does not apply to discussions with people not on the committee.

Allison Elder also noted that all BAT members must receive training on the Texas Open Meetings Act and the Texas Open Records Act within 90 days of appointment and that no continuing education is required. Richard Heilbrun requested that BAT members provide training certificates to him by the May meeting.

MOTION (Jayne Neal): Adopt the BAT operational rules as amended. SECOND (Jackie Poole). VOTE: Voice vote carried unanimously.

## **6. ACTION ITEM – Discussion and possible action on recommending categories for addressing species in the SEP-HCP.**

Clifton Ladd and Amanda Aurora (Loomis) introduced a draft proposal for categories for addressing species in the SEP-HCP that included 1) Covered Species; 2) Future Covered Species; 3) Voluntarily Conserved Species; and 4) Additional Species.

BAT members discussed the definitions of species categories and suggested edits to the draft language to clarify the definitions.

Amanda Aurora noted that species in categories 1 and 2 would be considered “covered” in the plan.

Allison Arnold noted that the USFWS might not provide automatic incidental take authorization for karst species and that incidental take authorization for karst species might only be allowed on a case-by-case basis. Christina Williams further explained that authorizations for karst species might be subject to how the conservation plan is designed and the results of ongoing status reviews for the karst species. She suggested that if the plan provides for sufficient conservation upfront to achieve recovery of particular karst species, then the USFWS might be able to streamline approvals for incidental take of those karst species.

Clifton Ladd noted that Chapter 83 of the Texas Parks and Wildlife Code discourages the delineation of preserve systems in regional habitat conservation plans. Allison Arnold cautioned that the USFWS would not want to create a “first come, first served” situation for incidental take authorizations. Allison Elder stated that the community might not be satisfied with case-by-case authorizations by the USFWS.

BAT members noted that category 3 would be primarily used for federally listed plants, but could also include other species that would not be “covered” by the plan.

Christina Williams noted that she isn’t quite sure how to structure the plan for future take coverage (particularly for karst species) using a minor amendment to the permit. She also noted that the USFWS might not have enough information to provide guidance on appropriate mitigation strategies for many currently unlisted species, and that obtaining future incidental take coverage for such species might not be possible without a major amendment to the permit. She suggested that the BAT provide a list of category 2 species to the USFWS for further guidance as to an appropriate approach for addressing them in the plan.

Tom Hayes reported that he is coordinating the completion of status reports for the freshwater mussel species by mid-May.

The BAT discussed the definition of category 4 and the differences between categories. Amanda Aurora clarified that the species in category 4 would not receive targeted conservation measures, but might benefit from the conservation measures implemented for the species in categories 1, 2, and 3.

MOTION (Jayne Neal): Adopt the draft species categories for the SEP-HCP, as revised.  
SECOND (Justin Dreibelbis). VOTE: Voice vote carried unanimously.

**7. ACTION ITEM – Discussion and possible action on recommending list of species to be addressed by the SEP-HCP.**

Amanda Aurora briefly described the color-coding scheme from the prior meeting. Richard Heilbrun suggested a new classification of the species on the list with the newly adopted categories.

BAT members agreed that all “green” coded species should be classified as category 1 species.

BAT members discussed the classification for the whooping crane. Allison Arnold noted that the USFWS would not be likely to issue incidental take authorization at the current time for the crane due to jeopardy issues. Charlotte Kucera (USFWS) suggested that the project analyze the species in the NEPA document, and that it might be classified as a category 2 or 3. Christina Williams cautioned that it might be difficult to design an appropriate mitigation strategy at this time in order to authorize incidental take using a minor amendment process in the future. Allison Arnold noted that a habitat conservation plan is currently being developed for the whooping crane, and Christina Williams suggested that the SEP-HCP could refer participants to the USFWS for further guidance. Allison Arnold noted that the USFWS is currently working on guidelines for whooping crane conservation that would be applicable to landowners in the Plan Area. Allison Arnold and Christina Williams suggested that the SEP-HCP might not be the best framework for addressing large-scale crane conservation. The BAT agreed to classify the whooping crane as a category 3 species.

The BAT agreed to classify all “yellow” coded plants as category 3 species and all “red” coded species as category 4 species.

Jayne Neal reported on possible concerns regarding the classification of the white-faced ibis, due to a note on the TPWD website indicating possible future listing by USFWS based on new information. Christina Williams suggested that the BAT provisionally classify it as category 2 and give the USFWS an opportunity to provide guidance on species status. Ms. Williams offered to contact the USFWS office in Corpus Christi for a status check. Valerie Collins (BAT member) suggested classifying the species in category 4. Allison Arnold suggested that the priorities for the SEP-HCP may not be consistent with conservation of the ibis, but hold off on classification until the USFWS can report on the status of the species.

Jayne Neal reported on the interior least tern and suggested that conservation of this species was mostly related to water issues and river alterations. She reported that the species is mostly migratory in this area, and that the tern nests in old quarries in disturbed areas. Allison Arnold suggested that there may already be existing regulatory mechanisms in place to protect the species, related to USACE involvement in river alterations (which would require a Section 7 consultation). Christina Williams noted that the interior least tern was not included on the USFWS county lists of species for those counties being considered in the Plan Area. BAT members agreed to not address the interior least tern in the SEP-HCP (i.e., unclassified).

Valerie Collins reported that the TPWD Wildlife Action Plan only includes the arctic peregrine falcon as a priority species (none of the other TPWD rare species were included in the Wildlife Action Plan). Allison Arnold and Christina Williams noted that habitat conservation plans cannot cover delisted species. The BAT agreed to keep the birds classified as decided at the prior meeting.

Richard Heilbrun suggested that the BAT needs to hear from aquatic and insect experts, and that the committee needs to talk about the overall implications of including aquatics in the plan.

The BAT discussed considerations for addressing *Eurycea* salamanders in the SEP-HCP. Allison Arnold suggested that the plan could include conservation measures to help prevent future listings of the salamanders and Christina Williams cautioned that there might not be sufficient information available to adequately “cover” these species for incidental take if they did become listed. Jean Krejca (Zara Environmental) noted that there is some information available for the salamander species, that they tend to be more locally isolated, and are associated with smaller drainage basins than some of the deeper aquifer species.

Richard Heilbrun suggested that Andy Winter (Bexar County) identify the types of activities that the primary SEP-HCP partners might want to cover. Andy Winter noted that the primary driver for the plan is the protection of the mission at Camp Bullis related to encroachment by general land development activities. He also noted that the County is concerned about water quality, particularly related to total suspended solids in storm water runoff.. The BAT discussed the implications of addressing water quality issues in the SEP-HCP, including issues related to being able to appropriately describe and quantify water quality impacts on covered species and issues with designing effective and practicable conservation measures within the structure of the SEP-HCP. Richard Heilbrun requested that the consultant team work with Bexar County and the City of San Antonio to determine whether the plan should seek to address water quality concerns. Christina Williams suggested that the USFWS can provide additional guidance on their expectations on the issue.

Richard Heilbrun postponed further discussion on aquatic issues and the inclusion of insects until additional guidance is available. He also suggested forming a subcommittee to deal with aquatic species issues. The BAT agreed to seek presentations from Andy Gluesenkamp and/or a Texas Parks and Wildlife Department (TPWD) invertebrate specialist in March and from Robert Gulley (Edwards Aquifer Recovery Implementation Plan) and a TPWD mussel specialist (Bob Howell) in May.

**MOTION (Justin Dreibelbis):** Provisionally adopt the species classifications as revised, and revisit the list for species that have not yet been classified. **SECOND (Jayne Neal).**  
**VOTE:** Voice vote carried unanimously.

The BAT continued discussion of the species list after addressing agenda item 4. Richard Heilbrun agreed to give a report to the CAC at the March 1, 2010 meeting regarding the provisional species list for the SEP-HCP. Tom Hayes expressed concern that the list was not completed yet. Clifton Ladd noted that waiting until May or June to bring up a draft BAT recommendations for the species list with the CAC was not feasible for the project schedule, particularly if aquatic species are included in the plan. Valerie Collins requested that the consultant team be clear on limitations for the project as they discuss these issues.

The BAT discussed issues with the classification of aquatic species and potential limitations for covering them in the SEP-HCP. Andy Winter suggested that the BAT add a category for species that were considered and kept off the list to help the CAC understand the recommendation.

The BAT engaged in further discussion about future changes to the list and provisions for addressing aquatic species with respect to concerns for the project scope and schedule, protections for Camp Bullis, and a desire to provide the most conservation benefit possible for the community. The BAT requested the consultant team prepare a memo on the possible limitations, costs, and options for addressing aquatic species in the SEP-HCP for the CAC, Bexar County, and City of San Antonio to consider and provide guidance to the BAT on whether to consider aquatics on the species list.

**8. ACTION ITEM – Discussion and possible action on the SEP-HCP Plan Area.**

Tom Hayes suggested that some CAC members reported that they did not have the complete list of counties that were in the recommended Plan Area, particularly related to Gillespie and Uvalde counties. Richard Heilbrun stated that he explained to the CAC the BAT recommendation, which does not currently include Gillespie and Uvalde counties.

**9. Request for Future Agenda Items and Next Meeting - Richard Heilbrun, TPWD**


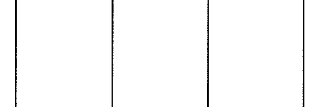
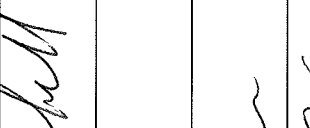



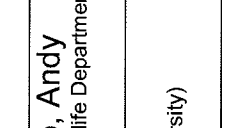
Richard Heilbrun suggested March 22 or March 29 as possible meeting dates and offered to send out a poll to decide on an appropriate date. He also offered to find an appropriate meeting location.

**10. Adjourn**

MOTION (Justin Dreibelbis): Motion to adjourn the meeting. SECOND (Jayne Neal).  
VOTE: Voice vote carried unanimously.

Attachments: 1) sign-in sheets 2) approved operational rules; 3) approved draft species categories

# BAT MEMBER SIGN-IN SHEET

BAT MEMBERS		NAME	SIGNATURE (IF PRESENT)
1	Heilbrun, Richard (CHAIR – Texas Parks & Wildlife Department)		
2	Collins, Valerie (Pape-Dawson Engineers)		
3	Dreibelbis, Justin (Texas wildlife Association)		
4	Gluesenkamp, Andy (Texas Parks & Wildlife Department)		
5	Groce, Julie (Texas A & M University)		
6	Hayes, Tom (Greater Edwards Aquifer Alliance)		
7	Neal, Jayne (City of San Antonio)		
8	Poole, Jackie (Texas Parks & Wildlife Department)		

# GENERAL SIGN-IN SHEET

NAME	AFFILIATION	EMAIL ADDRESS	PHONE NUMBER
Amanda Aurora	Loomis Partners	aurora@loomis-partners.com	512-327-1180
Clifton Cadd	Loomis Partners	cladd@loomis-partners.com	512-327-1186
JEAN KRESKA	ZARA	jean@zaraenvironmental.com	512-294-8636
Niki Lake	TPWD	niki.lake@tpwd.state.tx.us	512-667-0786
Kristi Drake	TPWD	kristi.drake@tpwd.state.tx.us	210-688-9055
ALLISON ELDER	BRAUN & ASSOCIATES	elder@braunassociateslaw.com	210-508-1153
Sonia Jimenez	Jimenez + Associates	jimenez@swbell.net	210-384-2925
Judith Green	TPWD	Judith.Green@tpwd.state.tx.us	210-688-6444
Audly Winker	Bexar Co.		
Christina Williams	USFWS		
Allison Arnold	"		
Charlotte Kucera	"		





## **OPERATIONAL RULES FOR THE SEP-HCP BAT**

### **Actions of the BAT**

- A quorum of 5 BAT members must be present to deliberate or take action.
- Alternates or proxies for appointed BAT members will not be recognized.
- A motion and second from the BAT is required before action is taken on an issue.
- The BAT will strive for consensus, but if there is more than one dissenting vote then the motion does not carry.
- Dissenting opinions may be submitted for the record, at the discretion of the dissenter.  
The CAC will be informed of the vote count.

### **Minutes and Records**

- The consultant team will take notes at meetings and prepare draft minutes for BAT consideration, amendment (if necessary), and approval at the subsequent meeting.
- Approved minutes will be posted on the SEP-HCP website.
- All materials will be distributed to the BAT for consideration via email or the SEP-HCP website.

### **Public Comments**

- Each BAT meeting will include an opportunity for public comment identified on the agenda.
- Individuals will be limited to 3 minutes of speaking time per meeting during each public comment period. Citizens will be asked to sign a sign-in sheet.
- At the Chairs's discretion, the public can be recognized to speak on any item under discussion during the meeting.
- The BAT will not engage in discussion during the public comment agenda item.
- The public may provide written comments to the BAT at any time via [info@sephcp.com](mailto:info@sephcp.com).

**Communications**

- Less than a quorum of BAT members may discuss SEP-HCP business outside of a posted meeting, provided that they have not been delegated decision-making authority and further provided that they are not meeting with an intent to circumvent the Open Meetings Act.
- Email to and among BAT members will only be used to disseminate information.
- Comments, suggestions, and other communications from BAT members regarding SEP-HCP business outside of a posted meeting should be sent to the BAT Chair, Bexar County SEP-HCP representative, and/or the consultant team (cc Chair).

**DRAFT CATEGORIES FOR ADDRESSING SPECIES IN THE SEP-HCP**

1. **COVERED SPECIES:** Species for which incidental take authorization will be obtained upon permit issuance.
2. **FUTURE COVERED SPECIES:** Species that will be addressed in the SEP-HCP as if they were a Covered Species in anticipation of future listings or non-jeopardy determinations, but for which incidental take authorization may not be immediately available.
3. **VOLUNTARILY CONSERVED SPECIES:** Species for which incidental take coverage will not be sought, but for which conservation measures would be implemented to ensure a non-jeopardy determination or beneficial NEPA analysis (particularly for currently listed species that are not included as a “Covered Species”).
4. **ADDITIONAL SPECIES:** The list of other species that would benefit from the conservation actions implemented for species in categories 1, 2, and 3, but for which no specific conservation measures would be included.