

Appendix C. History of Wisconsin Karner Blue Butterfly HCP Partnership, Articles of Partnership and Partnership Anti-Trust Policy

This appendix provides a brief historical overview of the Wisconsin Karner Blue Butterfly HCP partnership effort. It also provides information on the institutional framework on which the HCP partnership has been based since its inception (i.e. the Articles of Partnership) and compliance with anti-trust laws.

A. History of Wisconsin HCP Partnership

The USFWS listed the Karner blue butterfly as an endangered species in December 1992. This listing extended protection and recovery provisions of the ESA to the Karner blue butterfly and made it unlawful to conduct activities which would result in "take" of this butterfly. Several current and planned land uses and management processes have the potential of resulting in take as defined in the ESA.

In February 1994, representatives of Georgia Pacific Corporation visited with key Wisconsin DNR administrators and staff members to discuss whether or not the DNR would help with the construction of a statewide HCP for the Karner blue butterfly. Georgia Pacific officials were planning to talk to USFWS staff and were interested in exploring the concept further with DNR. The company was interested in constructing an HCP as efficiently as possible and wanted to know what DNR's role could be in such a process.

A short time later, DNR staff met with USFWS Region 3 staff. USFWS staff challenged DNR personnel to "take the lead in the Wisconsin HCP process." DNR staff then met internally to determine which interested parties might be involved. A series of meetings to discuss what procedures and objectives could be outlined to complete the HCP followed. These meetings, involving forest products companies, several utilities, conservation organizations, and state and federal agencies led to the establishment of the HCP Articles of Partnership. These articles served as the process rules for the series of meetings at which the issues involving completion of the HCP were discussed and decided.

Beginning in the fall of 1994 and extending into 1998, HCP partnership meetings were held on a regular basis to provide direction for the development and drafting of the HCP, implementing agreement, individual partner species and habitat conservation agreements, appropriate guidelines and protocols, and other associated documents. On September 27, 1999 the HCP was approved and the DNR along with 25 other partners began to implement the HCP.

Wisconsin Karner Blue Butterfly Habitat Conservation Plan

From 1999 through 2009 the HCP Partners, now numbering 40, successfully implemented the HCP under an aggressive adaptive management program.

Included in this appendix are:

- Articles of Partnership
- Anti-Trust Policy
- HCP 5-Point Plan

The original Articles of Partnership were created to guide the development of the HCP and application for an incidental take permit. The Articles of Partnership included here have since been updated to reflect the ongoing implementation of the approved HCP.

Also included in this section are the Anti-Trust Policy, which precedes all Partner meetings and the HCP 5-Point Plan, which provided guidance to the adaptive management process from 2005-2009.

ARTICLES OF PARTNERSHIP

Wisconsin Statewide Karner Blue Butterfly Habitat Conservation Plan

Mission

1. Implement and maintain the Wisconsin Statewide Karner Blue Butterfly (KBB) Habitat Conservation Plan (HCP), which integrates conservation with economic and other land uses through a partnership among stakeholders sharing their collective knowledge and experience for as long as the species needs our conservation for its populations to be sustainable in the state.

Guiding Principles and Precepts

2. The strength and vision of our statewide partnership is founded in the basic principles of trust, commitment, and service toward a higher goal. Each acre of habitat enrolled in the partnership will contribute to the accomplishment of our overall goal, saving the Karner blue butterfly from extinction, by preserving and promoting a landscape of suitable habitat throughout the state, while continuing to reach our business goals.
3. We affirm that our partnership is formalized via Species and Habitat Conservation Agreements (SHCA) between each individual partner and the DNR;

Therefore, we set forth to achieve the following goals:

Goals

4. Focus primarily on the conservation of the Karner blue butterfly while fulfilling the commitments and responsibilities in respective conservation agreements and consistent with the Federal Endangered and Threatened Species permit number TE060014-x.
5. Provide sound barrens/savanna ecosystem management when performing management activities on the working landscape.
6. Encourage multiple species consideration in management planning for those ownerships where such measures are desirable and feasible and acceptable by the landowners.
7. There will be No Net Loss of Karner blue butterfly Habitat (NNLOH) as a result of HCP partner activities in the KBB High Potential Range (HPR).
8. To assist in Karner blue butterfly recovery in Wisconsin. The HCP partners' role in recovery can best be described as "voluntary" and a "support" role (*Also see article 12*).

9. Seek to reduce or eliminate regulatory compliance requirements associated with the Incidental Take Permit (ITP).
10. Set a good example for collaborative, grass roots conservation and responsible stewardship.

Strategic Intent

The Karner Blue butterfly Habitat Conservation Plan (HCP) intends to:

11. Apply a structured Adaptive Management strategy that incorporates sound science, societal needs and economics.
12. Implement the statewide HCP in ways that will not prevent the management or recovery of other species.
13. Implement the Wisconsin Statewide Karner Blue Butterfly HCP as a collaborative process designed, consistent with these Articles, to include all interested parties.

Description of Partnership

14. Partners are those persons, agencies or organizations:
 - a. Entering into and agreeing to these Articles of Partnership; and
 - b. Having an ownership interest i.e. fee title or easement in land with existing or potential Karner blue butterfly habitat; or
 - c. Having economic assets at risk as a result of the listing of the Karner blue butterfly as endangered; or
 - d. Having a role in implementing the HCP e.g. municipalities, utility providers, etc.

The status (inclusion or exclusion) as a "Partner" will be determined by the Implementation Oversight Committee (IOC). A recommendation of inclusion will be after consideration of an application for partnership, supporting the party's eligibility. A recommendation of exclusion will be determined following consideration of evidence of failure to act in good standing as a partner. A Partner may withdraw by letter of request consistent with their SHCA.

15. Decision making process of the HCP partnership:

- a. Consensus in the partnership process, whether partners or not, will be the goal in making decisions or determining direction. Where consensus cannot be reached, the partners present shall determine. The vote of a minimum of three-fourths (3/4's) of the partners present plus one is necessary to support a decision. All partners are equal in this development process and have an equal vote. Partners may designate proxies.
 - b. Consensus will likewise be the goal of the IOC decision making process. Where consensus cannot be reached, the IOC representatives present shall determine. The vote of a minimum of three-fourths (3/4's) of the IOC members or alternates present is necessary to support a decision. All IOC members are equal in this process and have an equal vote. IOC members may designate proxies when their alternate cannot attend.
16. Persons or organizations other than partners are invited and encouraged to participate in the HCP process. Their opinions and advice will be considered.
 17. Noncompliance with the Articles of Partnership shall result in the Partner(s) forfeiting partnership status and the right to vote under Articles 14 and 15.
 18. The Administrator of the Partnership shall be the Wisconsin Department of Natural Resources. The Department's role shall include, coordination and facilitation of the process, provision of administrative support, oversight of the process, principle administrator of all applicable documents related to the permit, including National Environmental Policy Act (NEPA) documents, holder of the Incidental Take Permit and implementation and oversight of activity under the permit and in accordance with the Implementing Agreement (IA), all consistent with the direction of the Partnership, the IOC and approval of the Natural Resources Board and the Governor and State Legislature. The Department's role as partner will be consistent with this agreement and in furtherance of conservation of endangered species.
 19. The U.S. Fish and Wildlife Service shall be invited and encouraged to serve in an advisory capacity to the process.

Rules of Procedure

20. All meetings of the Partnership shall be noticed and held as public meetings. Participants, as defined in Article 23.c, may provide advice and shall be involved in the business of the meetings consistent with Articles 15 and 16.
21. A minimum of two-thirds (2/3) of the Full partners shall be present at a meeting to constitute a quorum to vote on an issue under articles 14 and 15.

22. Meetings of the Partnership may be held at a variety of locations in the state. Dates and times of meetings shall be determined by the Partnership, Committees, Subcommittees or Teams. Arrangements for meetings shall be made by the HCP Coordinator, committee chairs, or team leaders as appropriate.

23. Meetings shall be subject to the following:

a. The HCP Coordinator is responsible for HCP Team and IOC meeting minutes. A note taker, or the method of recording the discussion and decisions made at a meeting, shall be the responsibility of the HCP Coordinator. Comment periods and requests for information in the minutes shall be consistent with direction of the Partnership, if given. Minutes shall be prepared and distributed to the Partnership, and others attending the meeting. The minutes shall be routinely distributed within twenty (20) working days from the meeting. They may be amended if necessary, and shall be approved at the following meeting.

b. Committees, Subcommittees or Teams may establish review or comment periods for their membership and the Partnership.

c. Participants in the process, other than the Partners, shall be provided meeting minutes. Participants include:

(1) Those who serve in an advisory capacity; or

(2) Those who have a scientific interest in protection and recovery of the Karner Blue butterfly; and

(3) Those that were fully involved in discussions during the plan development and are involved in the implementation. Participants who attend are expected to be prepared for meetings.

d. Other persons interested in this conservation effort, upon request, and consistent with the Communications Plan, shall be provided with regular mailings on the implementation of the HCP and issues related to the ITP.

24. The Articles of Partnership may be amended by a two-thirds vote of the Full Partners.

25. Amendments to the HCP may not be acted on by the Partnership prior to IOC or Partner approval. The IOC will act on behalf of the Partners. However, at the discretion of the IOC, should those amendments be seen as having or potentially having significant, adverse impacts to the partners they represent, those partners will be apprised of the proposed action and given the opportunity to register individual opinion. This review may occur by contacting each partner individually, at a meeting of partners from an entity group, or at an annual HCP Team meeting.

26. Communications and public information, including press releases, shall be consistent with a public information plan or release agreed upon by the Partnership. This provision does not restrict the release of information subject to and consistent with the Public Records Law, Ch. 19, Wis. Stats.
27. The Karner Blue Butterfly HCP shall include and incorporate a public information component designed to effectively inform and update all interested persons on the proceedings and progress of the HCP.
28. The Partnership in the implementation of the Conservation Plan has no direct responsibility to the Recovery Plan; however, an open and clear line of communication between the Karner Blue Recovery team and this Partnership will be maintained in a support role consistent with these Articles and for the exchange of technical information.
29. The Karner Blue Butterfly HCP shall be statewide in scope, with reasonable and prudent goals, incorporating an incentive based approach to assure its broad and effective application in Wisconsin.
30. Land management, monitoring, and reporting activities will be consistent with the ITP, HCP, IA and individual SHCAs.

Original December 13, 1994
1st Amendment January 23, 1995
2nd Amendment April 25, 2009

(End)

Antitrust Policy

The conduct of this assembly is in no way intended to present any federal or state antitrust problems. However, the operation of this assembly requires that representatives of member organizations meet together, and since these member organizations in the normal course of their business may be competitors, it is deemed advisable to set forth this policy with regard to Antitrust Compliance.

The uncompromising policy of this assembly is:

STRICT COMPLIANCE WITH THE SPIRIT AND THE LETTER OF THE ANTITRUST LAWS.

In furtherance of this policy, the following rules are adopted to provide those assembled today with precepts to guide them in their conduct.

NO ACTIVITY OR COMMUNICATION SHALL:

1. be used for the purpose of bringing about or attempting to bring about any understanding, arrangement or agreement, written or oral, formal or informal, express or implied, directly or indirectly, among competitors with regard to (a) prices, terms or conditions of sales, distribution, volume, production, territories or customers, or (b) prices or purchases of any materials, equipment, services of supplies, or suppliers.
2. include discussion, directly or indirectly, for any purpose or any fashion regarding (a) sales prices or pricing methods, production quotas or other limitations on either the timing or volume of production or sales or allocation of products, territories or customers, or (b) purchase prices or pricing methods, purchasing quotas or other limitations on either the timing or volume of purchases or allocation of purchases of materials, equipment, services or supplies or allocations of territories or suppliers.
3. include any discussion which might be construed as an attempt to prevent any person or business entity (a) from gaining access to any market or customer for goods or services, or (b) from obtaining a supply of goods or otherwise purchasing goods or services freely in the market.
4. make any effort to bring about the standardization of any product for the purpose of or have the effect of preventing the manufacture, sale or purchase of any product not conforming to a specified standard.

In all discussions, formal or informal, all assembled are expected to observe and conduct themselves in accordance with these rules and in compliance with all antitrust laws and regulations, both federal and state.

Persons invited to participate in or giving presentations shall be advised of the need to comply with these rules and applicable laws and regulations.

It is the responsibility of all assembled to comply with the letter and spirit of these rules, and with all applicable state and federal antitrust laws.

Karner Blue Butterfly HCP
December 22, 2005 DRAFT
D. Lentz and J. Christenson

“10-YEAR + RECOVERY” PERMIT RENEWAL ALTERNATIVE

Five tenets form the basis of this Five Point Plan:

1. Kbb habitat needs periodic disturbance.
2. There are many more Kbb in Wisconsin than originally imagined; the Kbb is not in jeopardy here.
3. Land management activities that provide beneficial disturbance should not be discouraged by the prohibitions and requirements of the conventional endangered species protection mindset and incidental take permit features.
4. The DNR and other Partners and Participants to Wisconsin’s Karner blue butterfly KBB) conservation program have finite resources available to apply to the KBB. They have realized that in order to finish the conservation program successfully that they must assist in recovery efforts for the species.
5. In making commitments to recovery of the species in Wisconsin, the Partners and Participants recognize that under Section 4(f) of the Endangered Species Act of 1973 (ESA), the federal government is responsible to establish and implement recovery programs for listed species. Therefore, in volunteering to assist in recovery, the Partners and Participants will seek cooperation from the Fish and Wildlife Service to modify commitments to redirect available resources currently solely devoted to the HCP to recovery efforts. They will also seek reasonable modifications of the recovery provisions of the ESA to allow down listing or de listing invertebrates by distinct population segment or on a geographic or jurisdictional basis, e.g. by State or other considerations regarding management and regulatory treatment under the Act .

THE FIVE POINT PLAN FOR A STATEWIDE HCP
BEGINNING TODAY AND BEYOND 2009

1. **FOCUS HCP implementation on recovery areas.**
 - Focus efforts on recovery areas (SPAs and/or ACEs?)
 - De-emphasize focus on non-recovery areas; to the extent possible reduce time and resources for activities that serve to comply with regulations but do not add conservation benefits for the species
 - Eliminate or reduce non-value added, non-ESA required activities that do not add conservation value.
 - Redirect available resources toward the goals and objectives of this plan.
2. **STREAMLINE PROCESSES**
 - Reduce costs to the extent possible to DNR to administer statewide program and to DNR properties and partners to implement the HCP so they may be redirected towards recovery efforts and this Plan.
 - Redirect available resources toward the goals and objectives of this Five Point plan.
 - Develop a repeatable, consistent training and orientation program to assure appropriate and necessary conservation and permit compliance, which provides beneficial disturbance and successional management and reduces mistakes and rework so as to redirect resources to this Plan.

3. **IMPROVE PROTOCOLS AND GUIDELINES, i.e. monitoring and management protocols and guidelines.**
 - Accomplish desired results with only those resource expenditures likely and necessary to accomplish the goals of this Plan.
 - Redirect available resources toward the goals and objectives of this Five Point Plan.
 - Eliminate activities or methods unlikely to provide beneficial conservation or are inconsistent with this Plan.
 - Correct inaccurate or conflicting information.
 - Re-organize protocols & guidelines, and their delivery systems to be user-friendly, easily accessible and clearly understood to assure efficient use of available resources.

4. **RECOVER the KBB in WI**
 - Demonstrate KBB is in reality recovered in WI due to its persistence in the State based on historic and traditional on-going management of the land.
 - Develop recovery implementation plans that describe the long-term management plan being committed to by the DNR which describes how the DNR will maintain sustainable KBB populations.
 - Seek reasonable modification to the ESA to allow Distinct Population & Geographic Segment treatment in the ESA for invertebrates which will recognize efforts of public and private entities, reward those entities for sound conservation efforts and programs for rare species, and make available resources to then be applied to other rare species in the jurisdiction.
 - Document, or continue to develop data supporting KBB down listing for the WI KBB population segment.
 - Redirect available resources to other conservation and partnering opportunities that result from reduction of management and regulatory constraints or result from down listing or de listing the KBB in WI.

5. **Extend the TERM of the permit: Develop 10-Year ITP RENEWAL proposal**
 - Include a provision in the HCP/ITP, that after an additional 10 years of implementation of conservation programs under the HCP/ITP, with an additional focus on recovery that non-recovery area lands are given incidental take authority through the “voluntary” category inclusion.
 - Redraft Articles of Partnership to emphasize (include) and define partners’ recovery goals.
 - Amend HCP and Implementing Agreement, where necessary, to capture recovery direction commitments.
 - Redirect available resources toward the goals and objectives of this plan.

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