

Special Areas Planning Meeting
May 22, 2013
1:30 pm

Randy Bates (by phone)
Mike Daigneault
Tammy Massie
Ian Gill

Mike began by clarifying that the purpose of the meeting was to discuss Randy's direction regarding Special Area management plans. Randy suggested starting from Mike's May 17 email and walking through our interpretation of his direction, then talking through the details of specific plans.

Randy indicated that he was "willing to be educated" and was not looking to change the process or ownership of these plans, that nothing that he was suggesting conflicted with Special Areas planning history, and that he was attempting to give guidance that would "tighten up" the language of the goals and policies of current draft Special Area management plans.

Randy clarified that our interpretation that "future plans will be habitat division only documents" was not his intent. He indicated that he thinks management plans are clearly departmental documents that need to continue to be worked on with all current collaborators. He indicated that he thinks the Goals of a plan should provide an overriding philosophy that would guide the management of an area, and that the Policies in a management plan should be "those pieces that will be authorized by permit." Randy referenced a description of what constitutes a management plan Policy from a 1985 memo between the Habitat (HAB) and Wildlife Conservation (WC) divisions outlining the elements of a management plan; namely, that Policies need to give "specific guidance on decisions we make in the permitting arena."

Mike pointed out that if a plan's Goals are to provide the philosophy for the management of an area then it would seem that the Policies by nature would have to provide guidance for implementing those goals and address broader management functions beyond HAB's permitting decisions

Randy asked "what types of management would be accomplished on a refuge?" and if WC would be involved? Mike clarified that WC has a Refuge management team that looks to these policies for guidance. Randy pointed out that WC would still need a permit. Mike clarified that WC manages the area to help achieve the goals of the area and as such has a broader role than would be addressed by permit-only policies.

Randy referenced the purpose of the plans in the 1985 memo was to "guide decisions on land use and the issuance of permits. Mike clarified that the full purpose statement from that memo included permit decisions as one among several other things.

Randy suggested that the Implementation section of a management plan was the appropriate section for anything that did not directly address a HAB permitting decision. Mike read the description of Implementation section from the memo, pointing out that it seemed too narrow to include so many items related to the purpose of the plans.

Randy asked for a specific policy that would not work with his interpretation of a management plan. Mike clarified that his question was broader and related to the long-range management of the area. Randy indicates that he may buy into that interpretation of what a Policy might be, and brought up the example of "intent" language in the Dude Creek CHA and Willow Mountain CHA plans.

Tammy noted that the issue seemed to be whether or not certain policies are adopted into regulation (based on whether they are found in the Policy or Implementation section), and clarified that moving certain items to the Implementation section may mean it would need to be adopted as well. Randy asked for clarification, and Ian pointed out that the 1985 Attorney General's (AG's) opinion on DNR and ADF&G authority in Special Areas indicates that we are obligated to adopt as a regulation anything that addresses how we relate to the public.

Randy suggested looking at the Information and Education policy from the Dude Creek CHA draft management plan. Mike suggested keeping the discussion general for now and not getting caught up in the details of that specific plan. Randy indicated that he support the intent of the policy and called it "good government," but felt that it was unenforceable and as such should not be in the Policies section. Ian pointed out that since it relates to how the agency deals with the public then the AG's opinion indicates that it would need to be in the Policies section so it would be adopted as a regulation.

Tammy pointed out that the stand-alone regulations contained in a management plan are the real enforcement tools, and that the Policies section isn't intended to be strictly enforceable. Randy disagreed and stated that only enforceable items should be in the Policies section. Tammy pointed out that in the Administrative Procedure Acts (APA), several items are defined as "regulations" that are not enforceable. Randy disagreed and indicated that there was a sliding scale of what should be adopted into regulation, stating that there are several departmental documents that "we keep in draft form so that we don't have to adopt them into regulation because we want to keep them malleable." Mike clarified that we were simply attempting to interpret the AG's ruling as it related to the planning process and what should be included in policy.

Randy raised the example of the Information and Education policy, and asked when we implement that at the McNeil River SGS, for example. Ian clarified that staff interact with the public on a daily basis there, and that anything that is used by the agency in dealing with the public should be adopted as a regulation, as per the AG's opinion.

Randy asked if Policies in general could be split into two categories, one that relates to the public and one that relates to land management agencies. Tammy pointed out that it could be done but that many policies addressed both categories. Randy noted that ATV

use would be hard to split between agencies and the public, as both may use ATVs in Special Areas. Ian pointed out that the Habitat Enhancement policy in the Dude Creek CHA draft plan would typically be used by the department, but given the local ownership of the area could easily address a desire from outside the agency to enhance the habitat of the CHA.

Randy asked about the relationship between the McNeil River SGR and the McNeil River SGS. Tammy clarified that the sanctuary gives the Board of Game more direct authority to manage hunts within the area, Mike added that McNeil River refuge and sanctuary were adjacent and contiguous, but not overlapping, and that the AG's opinion makes important distinctions between the three types of special areas (CHAs, refuges, and sanctuaries).

Randy asked to be walked through the AG's ruling regarding what needed to be adopted into regulation, quoting from page 49 that "an internal plan on where to use ADF&G's resources to enhance habitat or to conduct scientific investigations would not need to be adopted as a regulation." Ian clarified that both of those examples could also relate to a permitting decision regarding the public, so would seem to require adoption as regulations. Tammy pointed out that part of the intent of the policies is to make a formal commitment to the public about the management of their resource.

Randy suggested backing away from discussing specific policies, noting that he was short on time. He reiterated that his guidance was to tighten up specific goals and policies within Special Area management plans. Randy stated that he thought there were still some unanswered questions, and agreed that there may be some policies that need to be kept in the Policies section even though they do not relate directly to a HAB permitting decision. He indicated that he still believed that removing duplication was necessary, stating that we were not going to duplicate DEC's authorities and then go and enforce them. He said he understood why staff would want full and comprehensive management plans, but did not think we were the agency to do that.

Mike pointed out that the AG's opinion gives clear guidance that we are to work with the Department of Natural Resources (DNR) to co-manage these areas, and if ADF&G does not create comprehensive management plans for these areas will that fall to DNR? Randy suggested that we should only co-develop Special Area management plans with DNR for those areas where the statute explicitly directs us to, noting that their statutory authority applies to all state land and that ADNR will address land use activities under their own authority. Randy indicated that although a "one-stop shop for permitting" previously existed, we are not going to provide that option each agency involved needs to separately address land use activities under their authority.

Mike noted that there were a few statutes that directed us to co-develop plans with DNR. Tammy pointed out that both agencies permit the same activity by implementing our individual authorities. Randy stated that as long as we're implementing our own authority and nobody else's, then that's fine, that's great.

Mike stated that he was trying to interpret this new direction and remain optimistic about other agencies' involvement in the Special Areas planning process. Randy stated that he could appreciate that perspective but that "people will have to make a decision if they want to engage with these plans or not." Randy stated that he did not believe that his guidance was overhauling the Special Areas planning process. He reiterated that he merely wanted to see our Policies and Goals "tightened up and focused," wanted references to outside authorities removed. He noted that other agencies would probably appreciate that, even though public and private landowners might not. He stated that it is not appropriate for us to "continue down the path of being a one-stop shop for Special Area management plans."

Mike asked if we could set time for next meeting, pointing out that we may need to clarify whether Randy's direction was consistent with the goals of our State Wildlife Grant (SWG) funding for this program, which requires public involvement and agency coordination. Mike further noted that over the past few years Special Areas planning has already had an increasingly tenuous connection to SWG anyway and that we would need to decide in the next day or two how to apply for SWG grant with this new direction. Randy said he would be happy to continue the conversation. He stated that he thinks pursuing the SWG funding is still appropriate and does not think his changes would render us ineligible for that funding. He stated that he does not think there is any reason for the current draft management plans to be on hold and wants staff to resume making progress with them.

Specifically, Randy mentioned wanting to know the status of the Bristol Bay CHAs (BBCHAs) plan, which he has not seen. Mike pointed out that he had briefed Randy on that plan's status several times. Randy stated that he wanted to know how he could help move it forward.

Mike asked when Randy was available to talk again. Randy indicated that he had to leave immediately for his next meeting but did not think this week would work as he had some "heavy-hitting" stuff he has to finish. He indicated he would try to schedule something next week.