

June 29, 2010

Dr. Joy Nicholopoulos
Texas State Administrator
U.S. Fish and Wildlife Service
1505 Ferguson Lane
Austin, Texas 78754-4501

Dear Dr. Nicholopoulos:

The 81st Legislature created the Interagency Task Force on Economic Growth and Endangered Species (task force) as a mechanism to assist communities and landowners in implementing innovative and cost-efficient programs to help protect and recover threatened and endangered species. The task force has been charged with looking at all options for endangered species programs in the state, including recovery crediting. I serve as presiding officer of the task force.

Over the past four years, landowners, conservation organizations and state and federal agencies have been involved in the development of the Recovery Credit System (RCS) for recovery of the golden-cheeked warbler in Texas. The purpose of a recovery credit system is three fold. First, it provides a net benefit for recovery of species. RCS also increases the flexibility of federal agencies to achieve their operational goals while still complying with their Endangered Species Act requirement. Finally, RCS encourages greater efforts to develop partnerships between federal and non-federal entities.

To date, RCS serves its purposes by allowing Fort Hood to gain temporary mitigation credits. Twenty landowners are actively involved in RCS at Fort Hood, and approximately 14,000 acres — it is estimated that 2,200 of these acres are prime warbler habitat — are under contract. As a result of its contracts with landowners, Fort Hood received permission to thin 238 acres of habitat on the installation. We understand that Fort Hood is currently requesting use of several of the remaining credits to thin an additional 218 acres of habitat. Robertson Consulting Group recently confirmed the success of RCS at Fort Hood in its *Third Party Evaluation of the Recovery Credit System Proof of Concept*, which found that the pilot RCS at Fort Hood promoted effective partnerships with landowners for species recovery.

But more can and should be done to allow for permanent recovery credits at Fort Hood as well as other areas of the state. As a recommendation for improvement, the Robertson Consulting Group report suggested that RCS participants “think actively about the length of impacts and recovery of habitat and match contract enrollments accordingly.” Where there is a need for permanent mitigation credits, the contracts with landowners must require permanent mitigation activities.



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To address this need, a state working group is currently reviewing all options available for use in generating permanent recovery credits. This group is also working to include additional metrics in the RCS framework to give more credit for options that provide higher contributions to recovery. Concurrently, work is being done to establish a market-based system to enable private landowner participation in generating permanent credits.

Another specific option being considered is whether state park land can be used to generate permanent recovery credits. The Fish and Wildlife Service guidance on recovery credits issued July 31, 2008, allows federal agencies to “obtain credit for actions taken on non-Federal lands to advance recovery of listed species.” The guidance further states that the overall system for recovery credits “must provide a net benefit to recovery for covered species...[which] will generally be found when an action directly or indirectly provides a material increase in a species’ population and/or a material enhancement, restoration, or protection of that species’ habitat.” Given this guidance, the task force believes that it may be possible for Fort Hood to generate permanent recovery credits by doing conservation activities on state park lands. Texas state parks lands are under the jurisdiction and management of the Texas Parks and Wildlife Department (TPWD).

The following points support our position:

- 1) Under state law, the TPWD has broad discretion in the management of lands under its jurisdiction. **TPWD is not required by state statute to specifically manage state park properties for endangered species.** Internally, TPWD does manage one classification of land, wildlife management areas, for the benefit of native wildlife, including endangered species. State parks, state natural areas and state historical areas under TPWD’s management are not necessarily managed to benefit a specific endangered species; however, these properties are managed and stewarded in the context of an ecosystem approach, which may benefit endangered species.
- 2) **Under applicable federal law (the Endangered Species Act), in many instances, TPWD is held to the same management standard as any other non-federal landowner, unless subject to specific agreements or restrictions.** That is, TPWD is required to avoid net loss of habitat, or take. Federally owned and managed lands, and lands with a federal nexus (such as lands acquired or managed with federal funds), on the other hand, may require management to the higher recovery standard.
- 3) **Lands under state ownership, including TPWD lands, are not necessarily automatically afforded permanent protection.** Unless limited by a deed restriction, conservation easement, a restriction based on the source of funding for the acquisition or management of the land, or other similar restrictions, TPWD is not generally prohibited from disposing of property.



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With this background, the task force is looking for additional guidance from U.S. Fish and Wildlife Service about whether or not state park lands could be utilized for permanent mitigation credits to meet the goal of recovery under a RCS. Any lands that would be considered for use in this potential option would not be currently subject to federal investment or agreements for endangered species management. We ask the following questions to provide direction going forward in developing this option for permanent mitigation credit.

- 1) If TPWD were to obligate itself to manage a state park specifically for endangered species recovery at the higher federal recovery standard on lands not currently managed in that way, would this obligation of increased management at this higher standard then create a net benefit to recovery?
- 2) Further, should TPWD obligate to protect these lands permanently, does the obligation of permanent protection then create a net benefit to recovery?
- 3) Does the combination of increased management at the federal recovery standard, combined with the obligation to manage and protect these lands in perpetuity, create a **greater** net benefit to recovery?"
- 4) If implementation of these actions creates a net benefit to recovery, would the generated credits be available for immediate use in mitigation?

Thank you for your attention to these timely questions. We look forward to a response from you in an expedient manner so we can quickly move forward in working to recover golden-cheeked warblers in Texas. Please let us know if we can provide additional information.

Sincerely,

Susan Combs

