

The WILCO RHCP

Integrating the ESA Section 7 and Section 10 Processes in Texas: Past, Present, Future

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- RHCP manager for Williamson County Conservation Foundation
- Liaison between County Government, USFWS, and conservation community
- Reviews research proposals for covered and additional RHCP species

Steve Carothers

(Founder & Senior Scientist, SWCA Environmental Consultants)

- 30-year expert on Covered Species (karst and avian)
- One of 3 senior authors on WILCO RHCP and associated EIS
- Participates in karst monitoring and annual RHCP report to USFWS



Have worked together 12 years on
Williamson County Regional
Conservation Plan (WILCO RHCP)

WILLIAMSON COUNTY REGIONAL HABITAT CONSERVATION PLAN Overview

- Incidental take permit (ITP) issued in 2008
- County-wide coverage
- Covered species: two karst (cave-dwelling) invertebrates and two songbirds
- Four salamander and 19 additional karst invertebrate species of concern



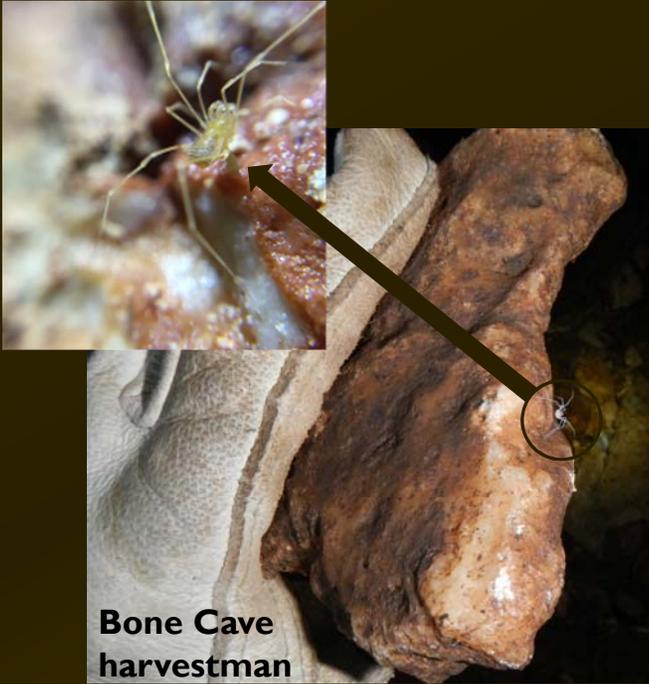
WILLIAMSON COUNTY RHCP Covered Species



Golden-cheeked warbler



Black-capped vireo (delisted 2018)



Bone Cave harvestman

WILLIAMSON COUNTY RHCP

Additional Species of Concern (4 salamanders plus 19 more karst invertebrates)



Georgetown salamander



Salado salamander

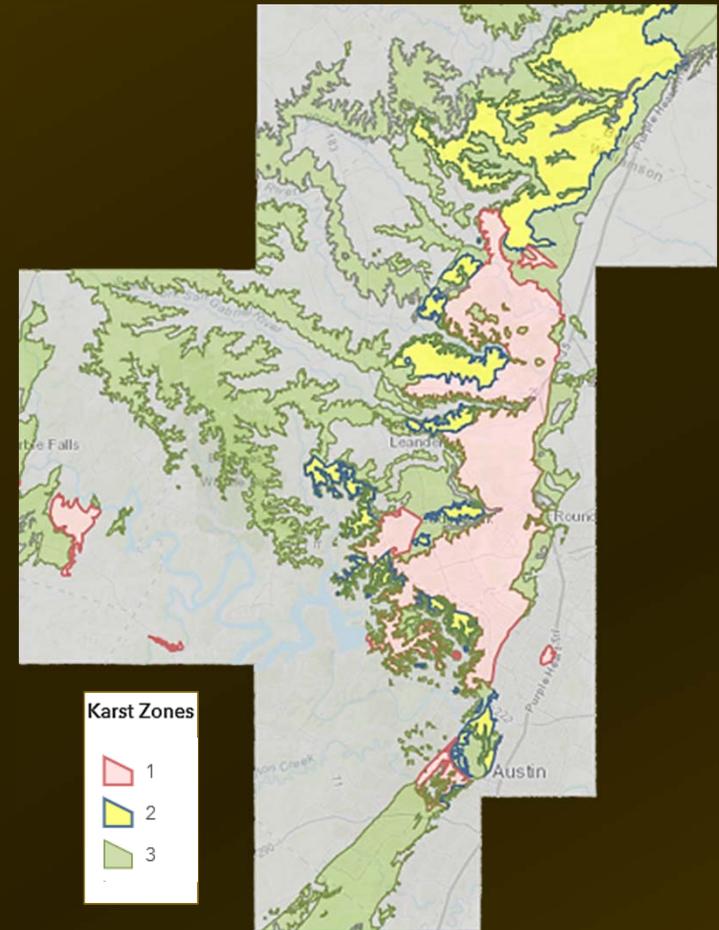
Buttercup Creek salamander
(reclassified as Jollyville Plateau salamander)



Jollyville Plateau salamander

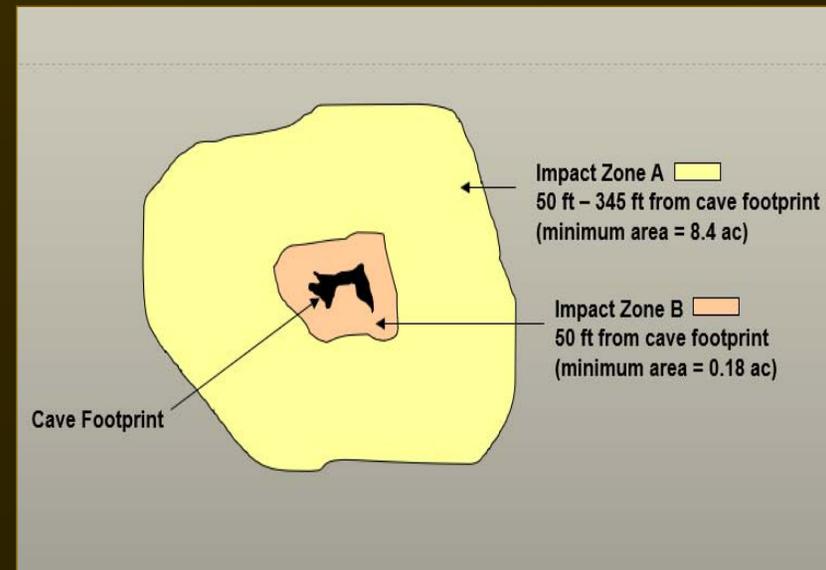
WILLIAMSON COUNTY RHCP Karst Species Coverage

- Applicants conduct due diligence to determine karst feature presence
- Applicants purchase coverage (\$100/acre) if working on Karst Zone 1 and/or Zone 2 not in the vicinity of a known species cave to cover previously undetected cave
 - ✓ Zone 1: Known to contain listed karst invertebrate species
 - ✓ Zone 2: Have high probability of containing suitable habitat for listed karst invertebrate species
 - ✓ Zone 3: Probably do not contain listed karst invertebrate species



WILLIAMSON COUNTY RHCP Karst Invertebrate Species Coverage

- When applicant does not leave a 345-ft buffer around a species-occupied cave a level of impact is assessed
- Impact based on effects to cave moisture regime (surface recharge area) and nutrient input (primarily cave cricket foraging area) measured in distance from cave
- Mitigation fees:
 - ✓ Impact Zone A - \$10,000 per acre
 - ✓ Impact Zone B - \$400,000 flat fee



WILLIAMSON COUNTY RHCP Bird Species Coverage

- Applicants conduct due diligence to determine potential for impacts to golden-cheeked warbler habitat (no longer required for delisted black-capped vireo)
- If impacting potential warbler habitat, applicants purchase credits from conservation banks at market rate



WILLIAMSON COUNTY RHCP Remarkably Successful

- Public (schools, roads, utilities) and private development has boomed in Williamson County since RHCP approval
- Impacts to covered species *much* lower than anticipated

Covered Species	RHCP Anticipated Impacts		Actual Impacts	
	Per Year Impacted Habitat (Caves)	Impacted Habitat through 2018 (Caves)	Impacted Caves in 2018	Impacted Caves through 2018
KARST				
Bone Cave Harvestman & Coffin Cave Mold Beetle	Impact Zone A: 5	Impact Zone A: 50	Impact Zone A: 1	Impact Zone A: 26
	Impact Zone B: 2	Impact Zone B: 20	Impact Zone B: 2	Impact Zone B: 20
BIRDS				
	Per Year Impacted Habitat (Credits)	Impacted Habitat Through 2018 (Credits)	Impacted Habitat in 2018 (Credits)	Impacted Habitat through 2018 (Credits)
Golden-cheeked Warbler	200.0	2,000.0	40.7	928.7
Black-capped Vireo	142.2	1,422.3	[delisted]	22.5

WILLIAMSON COUNTY RHCP Remarkably Successful

- RHCP anticipated 700 acres preserved for karst invertebrates by 2025
- Current preserve holdings exceed this amount and the County is actively searching for more

Preserve Type	GOAL: Minimum Acquired Cave Preserve Acreage by 2025	Current Preserve Acreage (2018)
Williamson County-Owned	500	738.6
Conservation Easement	200	203.0
TOTAL	700	941.6

- Over \$1 million has been spent on research for the Georgetown salamander
- **SUMMARY:** WILCO RHCP well funded, ahead of schedule for preserve acquisition & fewer actual impacts to species than expected ... however ...

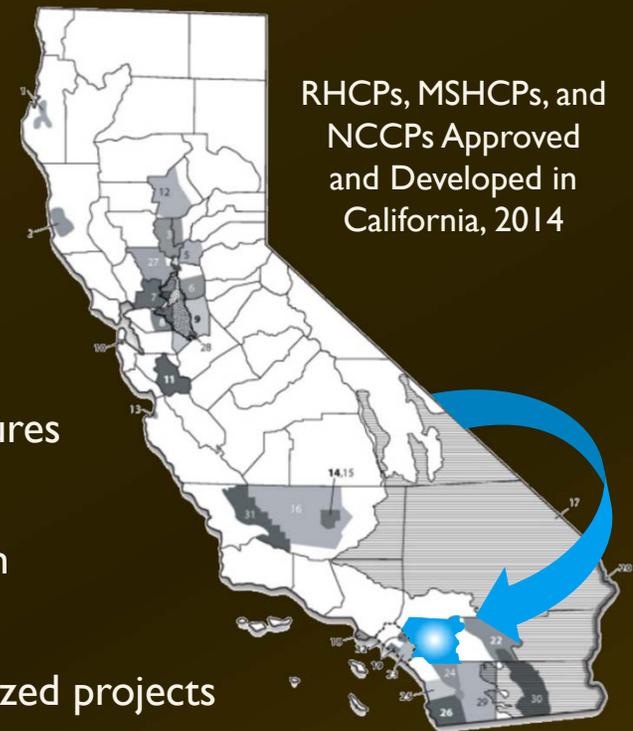
PAST

Federalized projects were unexpectedly excluded from participation in the WILCO RHCP, resulting in unanticipated costs and delays

- After WILCO RHCP ITP was issued, County learned USFWS not consistent re participation of federalized projects in RHCPs:
 - ✓ California (Region 8) – RHCP participation provided incidental take coverage for federalized projects via a cost-effective, streamlined Section 7 process
 - ✓ Texas (Region 2) – RHCP participation denied. Federalized projects required costly, time-consuming individual Section 7 consultations with no consideration for analyses and benefits of the RHCP

INCONSISTENCY BETWEEN USFWS REGION 8 AND REGION 2 Western Riverside County MSHCP (Region 8)

- ITP issued June 2004; covers 146 species
- Goal: “Establishes consistent mitigation standards for MSHCP Covered Species for potential application by the USFWS under Section 7...”
- Projects use the HCP biological findings and mitigation strategy for Section 7 consultation, expediting the process
- Projects commit to same minimization and mitigation measures set forth in the RHCP
- Clear Section 7 projects in 45 days that would have taken an estimated 3 years without the HCP
- Streamlining saves significant time and resources for federalized projects



INCONSISTENCY BETWEEN USFWS REGION 8 AND REGION 2 Williamson County RHCP (Region 2)

- The WILCO RHCP (page 1-7) was also created with federalized projects in mind:

While HCPs typically apply to projects without Federal nexus, RHCP implementation will also be available for projects . . . that have other Federal nexi (e.g., Clean Water Act section 404 permit application, Federal funding, etc.).

- Moreover, RHCP “Covered Actions” section specifically identified federalized TxDOT projects
- USFWS reviewed draft RHCP/EIS multiple times without commenting on this text
- County, therefore, assumed federalized projects would be considerably expedited
- Proved not to be true in practice



WILLIAMSON COUNTY RHCP

Case Study – State Highway 195 Improvement

- A primary impetus for establishing an RHCP in the first place
 - Was specifically listed in the RHCP under “Covered Actions” – potential impacts of the project included in estimated RHCP take of karst invertebrates
 - However, not permitted to participate in the RHCP
 - Individual Section 7 consultation process resulted in 3-year delay costing an estimated \$11 million. “Mitigation” alone added 12 months and over \$2 million:
 - ✓ TxDOT spent \$1.5 million on mitigating impacts to known affected cave (created Cobb Cavern Preserve)
 - ✓ An additional \$1.1 million spent in preemptive mitigation to avoid further delays if previously undetected void(s) encountered (created Karankawa Cave Preserve)
- (Contrast these expenditures to RHCP fee of \$400,000 to fully “take” a species cave)

WILLIAMSON COUNTY RHCP

Case Study – D.B. Wood Road Intersection

- Unremarkable intersection upgrade in suburban area
- Formal consultation required for karst invertebrates due to project's occurrence within Karst Zone I (areas known to contain endangered karst species)
- USFWS required a full Biological Assessment (BA); took nearly a year to go through many rounds of comments
 - ✓ Subsequent BA revisions incurred thousands of dollars of additional reporting costs
 - ✓ Nearly a year delay
- Same level of information in BA could have been approved in a matter of weeks through expedited process

PRESENT

Federalized projects still denied “take” coverage under the WILCO RHCP ITP, but limited participation is allowed and, *since 2018*, individual Section 7 consultations have become more efficient

- Two recent (2018) Biological Opinions for federalized projects show a trend toward integration with the RHCP and streamlining Section 7 process
- Both were completed in less than 90 days from onset of formal consultation
- Both allow the project proponent to "participate" in the WILCO RHCP after the fact with mitigation money
- Procedures for previously undetected voids now closer to those required for RHCP participants and less cumbersome than in the past

FUTURE ? ? ?

Goal: Allow federalized projects in Williamson County to fully participate in RHCP following California example

- New USFWS Interagency Cooperation Regulations provide a pathway for further integrating Section 7 and Section 10 to expedite consultations for federalized projects in Williamson County
- Pursuant to [new 50 CFR 402.14\(l\), Expedited Consultations](#), USFWS and federal agencies may engage in an “optional process intended to streamline the consultation process”
- Designed for projects that will have minimal adverse impact but still require a BO and ITP and “where the effects are either known or are predictable” and are “unlikely” to cause jeopardy or adverse modification

Proposal for Expedited Section 7 Consultation for Federalized Road Projects in Williamson County

- Assumes action agencies and USFWS enter into a formal agreement for expedited consultation
- Federalized road project proponent follows the process for participation in RHCP (including conducting any surveys required for participation and paying any mitigation fees)
- Upon issuance of a certificate of inclusion, the proponent asks TxDOT to initiate consultation and provides brief BA; RHCP participation documents; copies of relevant pages of the RHCP, ITP, and RHCP-related BO; and describes the available mitigation
- USFWS, pursuant to new 50 CFR 402.14(h)(3), issues a project-specific BO based on the RHCP-related BO, the RHCP participation documents, and other materials provided by TxDOT in the request for consultation

No Surprises Assurances

- USFWS objection in the past to federalized project participation in the WILCO RHCP was based on the “No Surprises” clause in Section 10
- No Surprises assurances = If "unforeseen circumstances" arise, the USFWS will not require the commitment of additional resources or additional restrictions on land use beyond the level agreed to in the HCP without the consent of the permittee
- USFWS No Surprises assurances are not legally available to federalized projects
- Previously undetected voids are not treated under No Surprises in the RHCP itself. Rather, hitting undetected voids was assumed in our take and effects analyses in the RHCP and covered by the take authorization.

ULTIMATE OBJECTIVE

FULLY INTEGRATE FEDERALIZED PROJECTS INTO REGIONAL SECTION RHCP AND MSCP PERMITS

- “NHCPC supports aligned and streamlined procedures for projects with a federal nexus seeking Section 7 Consultations for participation in an approved regional Habitat Conservation Plan to the greatest extent possible.”

QUESTIONS?

