



Private Property, Regulation, and Shorebird Habitat on Fort Myers Beach

Discussion Outline

- Background: Conflict among property owners and regulators over nesting shorebirds at Carols Pointe
- Purpose of Practicum: Goals and objectives
- Process: Using NRLI skills to facilitate a resolution
- Progress so far
- Results so far
- Next Steps



Background: Shorebirds at Carlos Pointe

- Snowy Plovers and Least Terns are protected at the state level
- Heavily groomed beach + proximity to major food source = perfect nesting habitat



Carlos Pointe



Little Estero Island CWA

Carlos Pointe



Background: Shorebirds at Carlos Pointe

- Property owners want to rake; obtain DEP permit
- Raking attracts the birds
- FWC and the town of Ft. Myers Beach rope off birds so property owners can't rake while they nest
- Vegetation grows up because there's no raking
- DEP prohibits further raking because now there is vegetation
- (Shorebirds don't come back next year because of vegetation)



Background: Shorebirds at Carlos Pointe

- After much negotiation, an eleventh-hour deal is struck.
- A permit is issued, but property owners have become disenfranchised
- They state they will not cooperate to allow posting of nests in 2010
- For the 2010 nesting season, DEP again shows reluctance to issue a permit, and property owners withhold permission to post until mid April, when the first nest is laid.



First Nest, April 8, 2010



Stakeholder Matrix

Stakeholders	Positions	Interests (List 6-10)	Power to influence situation	Relationship to other stakeholders
FWC	We wish to balance the needs of state and federally protected species with the needs of property owners and other stakeholders.	<ul style="list-style-type: none"> ▪ Ensuring that state and federally protected species are not negatively impacted by activities conducted or permitted on beaches. (sub) ▪ Upholding the law (pro) ▪ Not being perceived by stakeholders to be a heavy-handed regulatory entity (pro) ▪ Any compromises reached are scientifically sound/viable (psy) ▪ Good science is not ignored in the face of politics (psy) ▪ Any solutions reaches are not expensive for the agency (pro) 	Technically, as a regulatory agency, FWC has considerable power to intervene. However, that is not the role this agency typically takes on (both because FWC lacks enforcement capacity and because they try to take a more cooperative approach with stakeholders.	<ul style="list-style-type: none"> • FWC/DEP- long history with a mixed record of successful partnering, depending on the issue. • FWC/Audubon- have been “playing ball” together for a long time. Audubon is largely supportive of FWC but often feels they do not go far enough in enforcing their constitutional mandate.
DEP	It is our statutory obligation to issue and regulate permits for beach grooming. If an application for a permit meets statutory requirements (which make no reference to shorebirds or their habitat), we must authorize it.	<ul style="list-style-type: none"> • Ability to permit (or not permit) without being second-guessed by other stakeholders (sub) • Having permitted decisions be respected by permittees/other entities (psy) • Having any solutions reached be enforceable (pro) • Ensuring that any solutions reached fall within the realm of their statutory authority (pro) • Protection from legal action (pro) • Not admitting culpability by permitting activities that might be violating state or federal law (pro) 	DEP has the authority to deny permits but typically does not exert it, because it feels that it does not have the grounds. They also have considerable ability to negotiate alternative solutions, but are usually slow to do so out of an overabundance of caution.	<ul style="list-style-type: none"> • DEP/FWC- see above • DEP/Local Gov't.- DEP's field officers often work with local gov't. officials and largely have positive relations. However many local gov'ts are highly mistrustful of DEP “up in Tallahassee.” • DEP/condo owners- pretty much the same situation as with local gov't. • DEP/Audubon- much the same as that between FWC and Audubon.
Beach Condo Owners	The presence of shorebirds on our property should not hinder our ability to get a beach raking permit from DEP.	<ul style="list-style-type: none"> • The aesthetic quality of the beach in front of their property (sub) • The right to be able to groom/manage the beach as they see fit (sub) • Limits to the bureaucracy/permitting burden that they have to face (pro) • To some degree, having their “resident birds” and getting to watch the hatchlings grow up and fledge (psy) • Having their needs/desires be heard and respected (psy) • Not getting penalized when they try to comply but end up being unable to (pro) 	This group has no regulatory power, but they are very vocal and are usually private property rights advocates. They can certainly make life difficult for their local government authorities. In addition, if they threaten to sue DEP, they have the power to bring the entire issue to a standstill.	<ul style="list-style-type: none"> • Condo owners/ local gov't.- relationship unknown (probably different in different cities/counties) • Condo owners/DEP- see above • Other relationships?
County/ Municipal Government:	We wish to ensure that activities conducted on the local level do not contravene any federal, state or local laws, while also	<ul style="list-style-type: none"> ♦ Any solutions reached will be within their ability to enforce (pro) ♦ State gov't doesn't heap all the responsibility for problem solving on local gov't. (pro/psy) ♦ Local, state and federal laws are all upheld (sub) ♦ Residents continue to have a positive relationship with local gov't. agents (psy) 	Local governments have some local regulatory and enforcement capability, but I am uncertain how far that goes or what it would mean for negotiations. (Need to do	<ul style="list-style-type: none"> • Local Gov't./DEP/FWC- see above • Local access groups/local green groups- see above • I basically don't know much at all about the local government stake in this issue and will have to

Practicum Goal: Long-term solution to the conflict between property owners, birds, and regulators

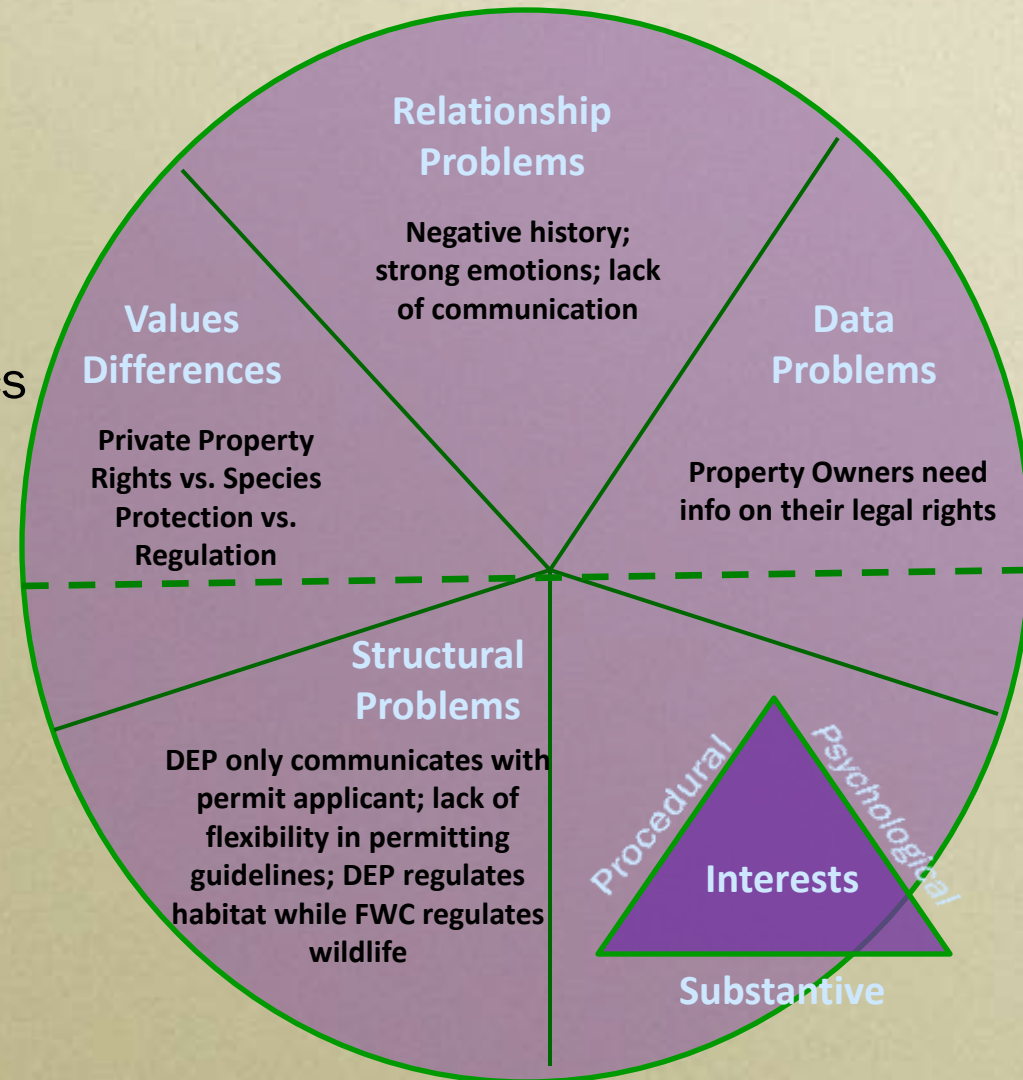
Objectives:

- Improve relations between property owners and regulatory entities
 - DEP
 - FWC
 - Town of Ft. Myers Beach
- Re-start negotiations between all parties
- Reach agreement between parties on a mechanism or long-term resolution that addresses regulatory concerns, protects birds, and protects property owners investment in their beach

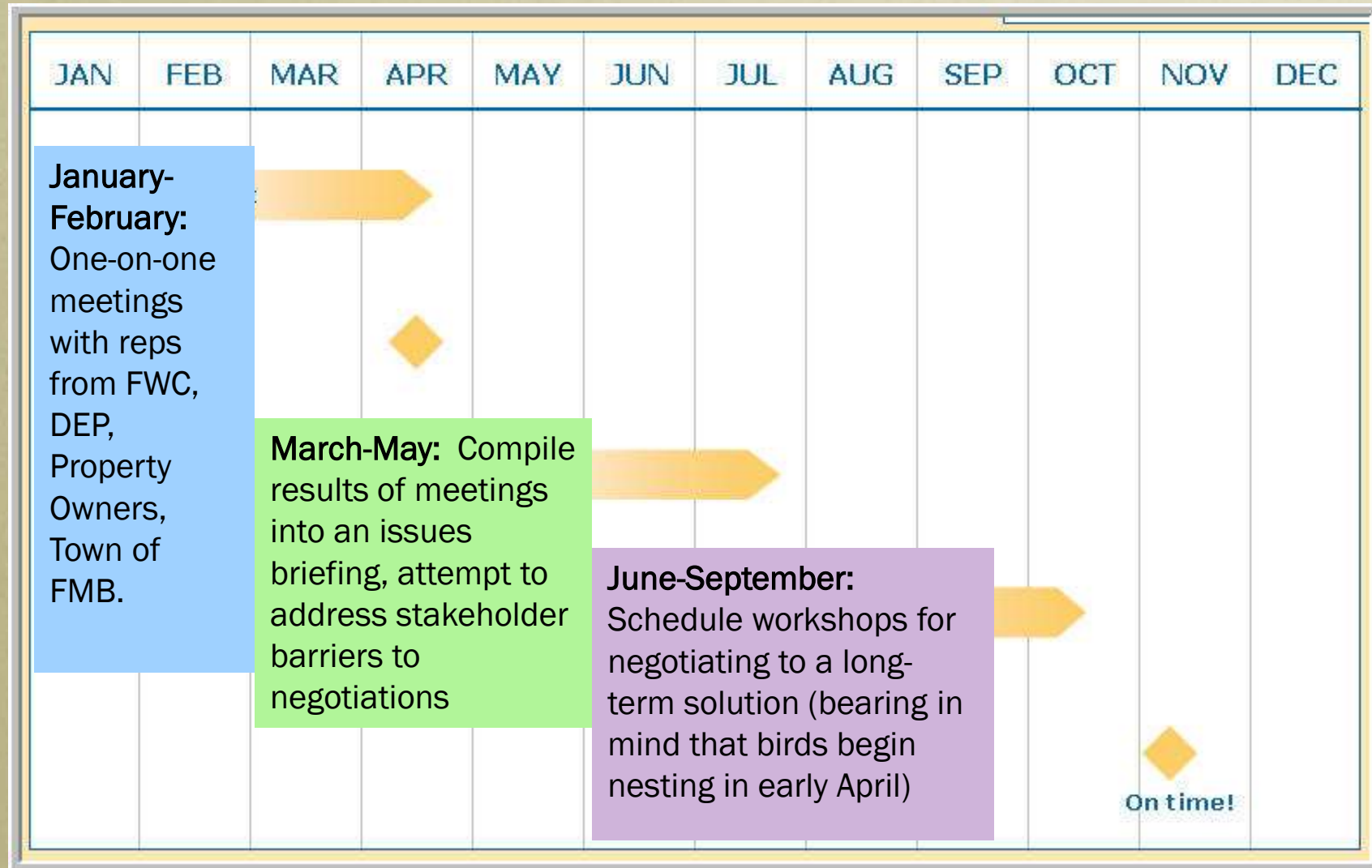


Process: NRLI Skills and Tools Used

- Stakeholder analysis of interests versus positions
- Negotiation
- Listening
- Understanding Group Dynamics
 - The “groan zone”
- Multi-stakeholder Process Design
 - Including process agendas that cover multiple events
- Facilitating Effective Group Decision-making
 - Team building exercises
 - Brainstorming
 - SWOT analyses



Process: Anticipated Steps and Timeline



Progress So Far: One-on-One Meetings

- Conducted Three Meetings with a Focus Group- like approach
 - One for FMB property owners, beach raker, and town Staff; one for DEP staff; one for FWC staff
 - Meetings conducted in a comfortable setting for each group
 - List of questions and conversation topics prepared
 - Explained my objectives and role in advance
 - Strong focus on Active Listening, and repeating back to ensure participants that their concerns were being heard

- Compiled Results
 - Using information gathered, outlined stakeholder interests and clarified sources of conflict
 - Got a freebie! FMB had already compiled a white paper
 - Was able to identify some steps that would improve stakeholder trust
 - FWC Legal Document
 - Got a jump on Next Steps: DEP proposed a solution in the form of an Area Wide Permit



Progress So Far: Area Wide Permit

- In Workshop, DEP suggested Area Wide Permit
 - Not frequently used as a regulatory tool
 - Great flexibility for wording of permit conditions
 - 5-year duration would go a long way to addressing property owner concerns
 - Agreed to work closely with FWC and Town of FMB to customize permit
 - No mechanism for addressing management of the CWA

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
 Bureau of Beaches and Coastal Systems
 3900 Commonwealth Blvd - MS 500
 Tallahassee, FL 32399-3000
 (850) 488-7766

Permit Number: **7000006 - LE**
 No. of Pages Attached: **1**

FIELD PERMIT PURSUANT TO SECTION 161.053 or 161.052, FLORIDA STATUTES

FINDINGS OF FACT AND CONCLUSIONS OF LAW: This request for a permit was considered by the staff designer of the Department of Environmental Protection and found to be in compliance with the requirements of Chapter 62B-33, Florida Administrative Code (F.A.C.). Approval is specifically limited to the activity in the named location and by the project description, approved plans (if any), attached standard conditions, and any special conditions stated below pursuant to Paragraph 161.053(5), Florida Statutes. This permit may be suspended or revoked in accordance with Section 62-4.190, F.A.C.

PROJECT LOCATION: Fort Moore Island, from CWA to Curlew Point at DEP R-MON- P.R. 201 50200/51400

PROJECT DESCRIPTION: Taking over the emergent vegetation that grew after this area was roped off as a sheltered nesting area during the previous nesting season. This authorization does not include the use of herbicides. All work will remain within the area that has been previously approved for vegetation removal. This permit does not authorize stump.

SPECIAL PERMIT CONDITIONS: This permit is valid only after all applicable federal, state, and local permits are obtained and does not constitute construction of local setback requirements or zoning or building codes. This permit and public notice shall be posted on the site immediately upon issuance and shall remain posted along with local approval until the completion of any activity authorized by this permit. Other special conditions of this permit include:
 No other activities are authorized. A pre-construction meeting with DEP representative, Avonni Grant shall be required prior to the removal of vegetation. See attached Standard Field Permit Beach Cleaning Conditions.

STANDARD PERMIT CONDITIONS: The permittee shall comply with the attached standard field permit conditions.

APPLICANT INFORMATION: I hereby certify that I am either: (1) the owner of the subject property or (2) I have the owner's consent to secure this permit on the owner's behalf; and that (3) I shall obtain any applicable licenses or permits which may be required by federal, state, county, or municipal law prior to commencement of the authorized work; (4) I acknowledge that the authorized work is what I requested; and (5) I accept responsibility for compliance with all permit conditions.

Applicant's Signature: *[Signature]* Date: 04/09/10 Telephone No.: (239) 765-0222 x 136
 Applicant's Printed Name: Keith Lashburner Address: 2522 Fort Moore Boulevard Fort Moore Beach, FL 33091
 If applicant is an agent: printed name of property owner: property owner's address: property owner's telephone no:

DEPARTMENT FINAL ACTION AND FILING AND ACKNOWLEDGMENT: This field permit is approved on behalf of the Department of Environmental Protection by the undersigned staff designer, and that on this date, pursuant to section 128.02, F.S., with the undersigned designated Deputy Clerk, receipt of which is hereby acknowledged.

Robert Halbert / *Shonna Carter* / *Robert Halbert* / *Shonna Carter*
 Staff Designer / Deputy Clerk / Printed Name of Designer / Deputy Clerk Date: 05 APR 2010

PUBLIC NOTICE IS ON THE BACK OF THIS PERMIT. EXPIRATION DATE: 01 DEC 2010
 Emergency permits issued pursuant to Section 62B-33.014, F.A.C., are valid for no more than ninety days and other field permits are valid for no more than 15 months. The staff designer may specify a shorter time limit.

EMERGENCY PERMIT: YES NO Approved plans are attached: YES NO
AND PUBLIC NOTICE CONSPICUOUSLY ON THE SITE

DEP form 73-122 (Updated 1/06) [White Copy-Tallahassee Office] [Yellow Copy-Applicant] [Pink Copy-Staff Designer]



Progress So Far: Hurdles and Changes of Direction

- Area Wide Permit is a medium term, not long term, solution
- Stakeholders shift focus away from negotiations and towards issuing permit before birds start nesting
- DEP unwilling to enter direct negotiations with property owners
- Keith breaks his hand!



Results So Far

- DEP, FWC, and FMB work closely together on permit conditions; permit is issued just in time for nesting
- Positive Press: two articles in the paper
- Shorebirds begin nesting in April!
 - First SNPL nest laid on April 1
 - Three additional pairs of SNPL ready to nest
 - Least terns already returning to the area
- Property owners so far willing to allow posting of nesting sites for 2011 and the next five years



Next Steps in the Process

- Long term resolution is still needed; possible solution lies in nearby CWA?
- Property owners still mistrust government; that will improve with time, continued open communication and more facilitated discussions
- DEP still unwilling to work directly with property owners; prefer to go through the Town; the goal is to gradually shift this attitude through open communication, good facilitation, and proof of results



Any
Questions
?



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