

## Greater Sage-Grouse Range-Wide Compensatory Mitigation Framework

The [February 2013 Greater Sage-grouse \(\*Centrocercus urophasianus\*\) Conservation Objectives: Final Report \(COT Report\)](#) ~~COT Report~~ urges an avoidance first strategy for Priority Areas for Conservation (PACs). When [complete impact](#) avoidance is not possible, meaningful [impact](#) minimization and finally compensatory mitigation [for remaining](#) ~~of~~ impacts is recommended.

When avoidance and subsequent minimization of sage-grouse disturbance are not sufficient, project developers may choose to offset their disturbance (a debit to be mitigated) through identified eligible conservation ~~objective~~ actions (credits that mitigate debits) [that are consistent with the conservation objectives](#) identified ~~in from~~ the COT Report. The offset actions, which should be considered ~~a last~~ [in the mitigation sequence of impact avoidance, minimization, and compensation](#) ~~option~~, are referred to as **compensatory mitigation**. Currently, states and conservation groups are working on developing **compensatory mitigation programs**. States have or may in the future each develop their own compensatory mitigation programs; in some cases there may even be more than one compensatory mitigation program in a state (e.g. WAFWA's mitigation program for the lesser prairie-chicken and EDF's habitat credit exchange for the lesser prairie-chicken).

The Service will evaluate the efficacy of mitigation programs through two different lenses: 1) when assessing the status of the sage-grouse and the [overall](#) conservation value of compensatory mitigation programs; and 2) [with regard to potential](#) for **Advanced Credit Acquisition** ~~Purchases~~ when parties receive regulatory assurances for future development by funding sage-grouse conservation [in the present](#) ~~now~~. This document explains the **mitigation framework** which provides Service recommendations that will help cooperators and partners to optimize the conservation value and confidence that the Service can provide when evaluating mitigation programs. The recommendations are consistent with the information and conservation objectives provided in the COT Report. Recognizing that state wildlife agencies have management expertise and management authority for the sage-grouse and given the variability in ecological conditions across the range of the sage-grouse, the framework outlines the Service's conceptual recommendations for mitigation. However, the states will decide how to implement compensatory mitigation. The compensatory mitigation framework will also form the basis by which the Service evaluates the relative value of different mitigation programs across the range for the sage-grouse status assessment and for Advanced Credit [Acquisition](#) ~~Purchases~~.

Benefits derived from development of a mitigation framework should include: (a) streamlined and expedited project review/permitting, (b) utilization across multiple local, state and federal regulatory frameworks, (c) regulatory predictability, (d) increased public transparency and confidence, (e) increased economic incentives for landowners engaged in conservation actions, (f) a foundation for incorporating mitigation into other conservation programs, and (g) legal, scientific, political, and economic defensibility and credibility of actions and entities covered under the program.

**Background/Conservation Setting** (summary of and reference to COT Report / PAC strategy).

On March 23, 2010, the U. S. Fish and Wildlife Service (FWS) determined that the greater sage-grouse (*Centrocercus urophasianus*; sage-grouse) warranted the protections of the Endangered Species Act of 1973, as amended, 1531 et seq. (ESA), but that adding it to the List of Endangered and Threatened Wildlife under the ESA was precluded due to other higher priority actions. The 2010 Finding determined that the sage-grouse was warranted for listing under the ESA based on two primary factors - the present

**Comment [UF&WS1]:** They may not necessarily have to buy the credits

or threatened destruction, modification, or curtailment of habitat or range, and the inadequacy of existing regulatory mechanisms.

Species found to be warranted for listing but precluded by higher priority listing actions (“warranted but precluded”) are placed on the federal list of candidate species under the ESA. Shortly after the sage-grouse became a candidate species, the FWS entered into a court-approved settlement agreement with environmental groups which formalized a schedule for making listing determinations on over 200 candidate species nationwide, including the sage-grouse and its Distinct Population Segments (DPSs). The court-approved schedule indicates that a decision on whether to proceed with listing the Columbia Basin sage-grouse DPS, or withdrawing the “warranted but precluded” finding, is due by September 30<sup>th</sup>, 2015.

Given the broad implications of potentially listing the sage-grouse under the ESA, in December 2011, Wyoming Governor Matt Mead and Secretary of the Interior Ken Salazar co-hosted a meeting to address coordinated conservation of the sage-grouse across its range. The primary outcome of the meeting was the creation of a Sage-Grouse Task Force directed to develop recommendations on how to best advance a coordinated, multi-state, range-wide effort to conserve the sage-grouse, including the identification of conservation objectives to ensure the long-term viability of the species. With the backing of the Task Force, the FWS Director tasked staff with the development of range-wide conservation objectives for the sage-grouse to define the degree to which threats need to be reduced or ameliorated to conserve sage-grouse so that it is no longer in danger of extinction or likely to become in danger of extinction in the foreseeable future. Recognizing that state wildlife agencies have management expertise and management authority for sage-grouse, the FWS created a Conservation Objectives Team (COT) of state and FWS representatives to accomplish this task. The February 2013 [Greater Sage-grouse \(Centrocercus urophasianus\) Conservation Objectives: Final Report](#) (COT Report) was the outcome of the COT’s efforts.

### Compensatory Mitigation Program Elements

#### **Compensatory Mitigation Debts**

Demand for a compensatory mitigation program may ~~originate~~<sup>come</sup> from regulatory, risk management, market speculation, or philanthropic drivers. State or local regulatory policy may require mitigation for proposed or existing disturbances. Members of the energy industry have expressed interest in Advance Credit ~~Acquisition~~<sup>Purchases today</sup>, so that future incidental take for as yet to-be-determined activities will be covered ~~by present conservation actions~~. Philanthropic interests may also invest in a mitigation program for purely conservation reasons.

The COT Report and 2010 Finding provide detailed discussion regarding how sagebrush habitat loss and fragmentation is a primary cause of sage-grouse population decline. Habitat fragmentation, largely a result of human activities, can result in reductions in lek persistence, lek attendance, population recruitment, yearling and adult annual survival, female nest site selection, nest initiation, and complete loss of leks and winter habitat. Functional habitat loss also contributes to habitat fragmentation, as sage-grouse avoid areas due to human activities, including noise, even though sagebrush remains intact. Habitat loss and fragmentation contribute to the population’s isolation and increased risk of extirpation.

#### **i. Development Sectors** –*type and scope of impacts from development, e.g. energy*

A mitigation program should clearly assign value to the potential impacts or disturbances from an industrial sector if the sector’s activities are to be eligible for compensatory mitigation. What

types of impacts or disturbances warrant offsets when avoidance and minimizing disturbance are not sufficient? Which ones are currently regulated or could be regulated in the future by local or state authorities?

**Recommendation:** By state, develop a table that shows development sectors and activities ranked by degree of impact.

- ii. **Federal/State/Tribal/Local regulatory mechanisms** –*regulatory mechanisms that create mitigation requirements, e.g. state laws, local ordinances*

Regulatory mechanisms are the strongest and most consistent drivers of supply for mitigation programs, as they are mandatory and not voluntary (refer to 5-factor analysis language on inadequacy of regulatory mechanisms). The Service recognizes that federal, state and local laws vary across the landscape. However, when determining the adequacy of regulatory mechanisms, those that alleviate threats and can show certainty in doing so for the long term are better. (Add in ranking of the strength of these mechanisms, i.e. state law is stronger than an executive order, etc.?)

**Recommendation:** based on the major threats to greater sage-grouse in your state as identified in the COT Report, identify existing authorities and processes currently used by agencies to permit major project types. Note where there is overlap and where efficiencies can be realized in a short timeframe.

- iii. **Regulatory Predictability with Respect to ESA** –*regulatory certainty from the Service for pre-listing voluntary actions that contribute to precluding the need to list and/or advanced mitigation credits for potential post-listing needs*

Both the purchasers and suppliers of mitigation may wish to receive regulatory predictability or assurances from the Service should listing occur. However, the conservation standard necessary to for each is different.

Private landowners who supply compensatory mitigation credits to offset impacts from their own projects / operations may seek to receive regulatory predictability from the Service through CCAAs, Section 10, and HCPs. The private landowners ~~may would~~ seek predictability that the management that they had agreed to in order to provide credits would not change and that incidental take would be provided for actions that might occur while following the conservation practices spelled out in their agreement with the Service.

Advanced Credit ~~p~~Purchasers /~~developers~~ of compensatory mitigation ~~may would~~ seek regulatory certainty from the Service that their mitigation would provide them with incidental take ~~coverage permits~~ commensurate with the level of offset that they have purchased or developed. In this case, \$since they would be are seeking future take of a threatened or endangered species, the conservation standard would be is higher than the standard required of suppliers of mitigation credits (think HCP conservation standard). An Advanced Credit acquisition Purchase would lock in the credit value at the time of acquisition purchase; however the impact of debits would be calculated at the time impacts they are planned and implemented.

**Mitigation Credits** – When impact avoidance and minimization have been applied to their fullest extent and compensatory offsets are needed, then where, how and how long is key to a successful mitigation program.

**i. Scope**

To the degree possible, credits should supply the greatest conservation benefit to sage grouse, given political and logistical constraints. Local policy may require that offsets occur locally and local opportunities may be limited. However, opportunities may also permit bundling of credits from multiple debit sources to provide more concentrated conservation benefits on the landscape.

Identifying priority areas for mitigation where compensatory offsets can and should be focused will be necessary (siting, planning language here). For developers, this helps in planning. Jurisdictional issues may be relevant and for large service areas, you must address these (e.g. county permits may not allow for mitigation outside the county).

In general, effective conservation strategies are predicated on identifying key areas across the landscape that are necessary to maintain redundant, representative, and resilient populations. Most of the individual states within the range of sage-grouse have already undertaken considerable efforts to identify and map key habitats necessary for sage-grouse conservation in the development of their state management plans for this species. The COT Report used these existing maps to identify the most important areas needed for maintaining sage-grouse representation, redundancy, and resilience across the landscape. These areas were named *Priority Areas for Conservation* (PACs). PACs do not represent individual populations, but rather key areas that states have identified as crucial to ensure adequate representation, redundancy, and resilience for conservation of its associated population or populations. Additional finer scale planning efforts by states may determine that additional areas outside of PACs are also essential.

Compensatory sage-grouse mitigation efforts should be targeted in PACs and other essential habitats (such as winter habitats) to the extent possible, followed by general sage-grouse habitats; particularly those adjacent to PACs and/or with high potential to facilitate connectivity. Local sage-grouse population considerations should factor strongly into mitigation siting decisions.

**Recommendation:** States indicate where eligible project types should occur.

**ii. Eligible Project Types**

Eligible project types should address select conservation objectives identified in the COT Report (e.g. doubtful that fire suppression will be eligible but certain fire prevention approaches might be). However, eligible project types must still meet the additionality test.

Mitigation programs have to address restoration, including development of appropriate functional objectives, detailed implementation plans, performance standards, monitoring plans, and adaptive management plans. Out of kind compensatory mitigation may be appropriate in some cases if rationalized through quantitative analysis (e.g. offset of population impacts from direct habitat loss using problem fence marking / removal, transmission line burying (pole removal), etc.). Research, also controversial, may play a minor role if it can be shown how research ties into clear net conservation benefit to sage-grouse populations.

**Recommendation:** From the COT Report, for each state, the eligible project types should be identified and ranked.

### iii. Land Ownership/Management

**Recommendation:** We should develop a framework that will recognize compensatory mitigation on all ownership types.

BLM's draft MS-1794 policy: "Mitigation site, projects, and measures should be focused where the impacts of the use authorization can be best mitigated and BLM can achieve the most benefit to its resource and value objectives, regardless of land ownership. The most appropriate area for mitigation projects may be on Federal lands (the BLM or another agency) or on non-Federal lands."

### iv. Additionality test

Only the amount of sage-grouse conservation benefit that occurs beyond what would have happened (business as usual) without the mitigation project counts, or is additional. The value of a mitigation project is determined by the delta, or change that occurs due to the project. For compensatory mitigation, measures must be above what would already occur under normal management (legally and ecologically).

**Question:** Do we allow crediting for restoration that will provide benefits in the future? Or require that benefits are verified prior to providing credit? **Recommendation:** Yes, but we need to carefully figure out how to do so.

**Recommendation:** Develop a list of concrete examples of how additionality could be measured or judged. E.g. Ranchers managing habitat to a condition for GSG that is better than average range condition could be rewarded for the additional conservation benefit they provide with credits.

### v. Baseline

**Question:** Should we recommend a process to document and establish a baseline for each project type so that the delta can be measured? **Recommendation:** Yes.

### vi. Agreement Type—in lieu, MOUs, easements, credit exchange, banks

A legally binding agreement will increase the Service's confidence that the conservation benefits from compensatory mitigation will persist. Agreements can demonstrate durability of a mitigation program. (see principles) There are many options (see "c").

**Recommendation:** We should we rank the strength of different agreements that could be used. (CBAs v MOUs v CCAAs, etc?) Ranking factors to consider: perpetual conservation; clear performance standards; monitoring; adaptive management; financial assurances;

### vii. Duration

**Question:** How long should a credit last? Should a credit be required to last as long as the impact from the debit? **Recommendation:** A credit should last at least as long as the impact that is being mitigated.

#### viii. Reversals

The conservation value of a mitigation project may be lost due to natural disturbance (e.g. wildfire) or economic development. A mitigation program should have a system to ensure that unintentional and intentional reversals are mitigated so that conservation value is not lost.

**Recommendation:** Present a range of options that would help address the risk of reversals. E.g. Add a premium to the calculation of the cost of each mitigation project, the premium could then be used by the administrator of the mitigation program to invest in an insurance pool of projects that would replace any projects lost due to unintentional reversals. Intentional reversals should require compensatory mitigation by the new developer.

#### ix. **Governance/Administration of Mitigation Programs** – *who runs the program; agreement types and signatories, trades, verification, monitoring, reporting, compliance, etc.*

Related to the regulatory mechanism issue, who runs the mitigation program, what authority they have, their ability to deal with funds and long term management, etc. is important to show the Service durability.

**Recommendation:** The Service should describe the range of possibilities for administration that the Service finds acceptable.

#### x. Accounting System

A mitigation program should provide an accounting system whereby credits and debits can be exchanged. The credits and debits are based on a common “currency” that is based on sage-grouse conservation. Credits are generated by conservation actions that benefit sage-grouse while debits result from actions that negatively impact sage-grouse. The value of credits and debits is based on the type, scope, and location of actions and their relative value to the sage-grouse.

#### xi. **Currency/Metrics and Equivalence** – *e.g. measurement system for impacts & offsets, relationship to other program metrics (e.g. CCAAs, SGI)*

If the Service is going to provide future incidental take permits for credits that are purchased today, the Service will need to be able to convert credits or debits from different mitigation programs across the sage-grouse range. Ultimately, metrics must tie back to populations.

Credits should be measurable and proven to be reasonably likely to deliver expected conservation benefits. Monitoring and adaptive management should be important components mitigation programs to ensure success.

Although they may differ by state, mitigation ratios should be defined for the entire range, and may be determined based on several factors including temporal considerations (impact verses

mitigation timing), functional quality / importance of proposed impacted areas, projected functional quality of proposed mitigation areas, chances of restoration project success, degree of threat to proposed preservation areas, etc.