



GREATER SAGE-GROUSE RANGE-WIDE COMPENSATORY MITIGATION FRAMEWORK

[insert date], 2014

PURPOSE OF THIS DOCUMENT

In 2010 the U. S. Fish and Wildlife Service (Service) determined that the greater sage-grouse (*Centrocercus urophasianus*; hereafter sage-grouse) warranted protections under the Endangered Species Act (ESA). This finding was based on two primary factors: 1) the present or threatened destruction, modification, or curtailment of habitat or range, and 2) the inadequacy of existing regulatory mechanisms.

The purpose of this document (Framework) is to communicate how the Service will evaluate the efficacy of mitigation programs in reducing threats and addressing the inadequacy of regulatory mechanisms when assessing the status of the sage-grouse. The framework is intended to assist states, the Bureau of Land Management (BLM), and other partners as they develop or refine their mitigation programs. Our goals in providing this framework are twofold:

- Help partners develop robust mitigation programs and processes across the range to reduce threats and the potential need to list the species under the ESA; and
- If the sage-grouse is eventually listed, application of these recommendations will improve permitting processes, compensatory mitigation outcomes, and contribute to sage-grouse recovery.

Generally, while mitigation programs can be flexible to accommodate social and economic elements, it is important that program elements are based in scientific integrity and are defensible. Quality of compensatory mitigation actions must be ensured to provide conservation gain to the species. Ultimately, we all must be able to prove that impacts are truly unavoidable and that compensatory actions appropriately mitigate residual impacts.

The Service recognizes that state wildlife agencies have management expertise, authority, and responsibility for sage-grouse conservation and private and public land managers have management expertise and authority for sage-grouse habitat conservation. Using this Framework as a guide can promote consistency in mitigation programs across the range while allowing for some degree of local flexibility.

- Consistency will better enable stakeholders to implement meaningful mitigation actions that positively affect sage-grouse conservation while also enabling the Service to assess the intended biological effects of these mitigation efforts at the range-wide scale. Therefore, it is important that locally adopted processes support national and regional sage-grouse management goals and result in a reporting process that is sufficiently standardized so that data, threats, and accomplishments can be rolled up to a level for reporting to the Service.

Comment [SG1]: General comments to address:

- Be clearer on standards and what we want to see
- Be consistent with other policy language; align with BLM/FS NPT messages
- Add CCAA section
- Add public funding section (see LPC language)
- Italicize first use of terms that are in the glossary.
- Capitalize "Framework"?
- Spend more time on avoid/min?
- Include Disturbance?
- Which term, mitigation *sequence* or *hierarchy*?
- More details here on adv. Crediting? Appendix? Separate document?

Comment [SG2]: If this Framework addresses avoidance more or disturbance thresholds, the title may need modification

Comment [SG3]: Is this really our purpose here?

Comment [JB4]: It seems like it's at least one primary purpose, given the multiple references to Service evaluation of mitigation programs in the document

Mitigation is used in this document as defined by the White House Council on Environmental Quality in NEPA regulations as to avoid, minimize, rectify, reduce over time, and compensate - hereafter referred to as the mitigation hierarchy (40 CFR 1508.20).

- The Service believes it is important to maintain flexibility in this Framework to accommodate the many differences in the regulatory, socio-economic, and ecological environments between and within states that influence the efficacy of any tool. Flexibility will also allow for and encourage local innovation as programs are developed and tested.

GOALS FOR THIS FRAMEWORK

As described above, the Service expects mitigation approaches across the various states to be flexible and innovative in how development impacts to sage-grouse and sage-grouse habitat are mitigated. However, we recommend that all mitigation programs strive for the following goals and incorporate the principles and standards outlined in this document to increase likelihood of contributing to successful sage-grouse conservation.

1. **Strive to achieve net positive conservation.** Programs should be strategically designed to result in net overall positive outcomes for sage-grouse by employing compensatory mitigation actions that best address population-level threats within landscape-level plans, are based on accepted scientific principles and standards for mitigation, and are based on the best available science for sage-grouse conservation.
2. **Don't reinvent the wheel, use existing processes.** To the extent practical and where national management and reporting goals are supported, the program should utilize or build upon existing regional, state, and local-level processes as the authorizing, implementing, and enforcement tools for a mitigation program.
3. **Make sage-grouse an asset, not a liability.** The mitigation program should provide economic incentives for private landowners and industry to conserve and restore sage-grouse and its habitat. The program should allow for well-sited, well-designed and appropriately mitigated actions to move forward smoothly and quickly.
4. **Be consistent and fair.** The mitigation sequence should apply consistently across anthropogenic activities that impact sage-grouse (e.g., [including energy, infrastructure development, transmission, roads, land conversion, commercial and residential development, and mining, and others as appropriate](#)).

Comment [JB5]: This way, all infrastructure is included – pipelines, cell towers, roads, transmission, etc.

PART I - provides goals for any mitigation program within context of the mitigation hierarchy, types of development activities that may impact sage-grouse and sage-grouse habitat, and the role of regulatory mechanisms and ESA regulatory predictability in developing mitigation programs.

PART II - provides overarching principles and recommendations for the development of compensatory mitigation programs organized in [seven specific elements](#):

- | | |
|------------------------------------|-----------------------------------|
| 1. Governance | 5. Durability, Ratios & Reversals |
| 2. Service Areas | 6. Land Tenure |
| 3. Conservation Actions & Outcomes | 7. Metrics & Accounting |
| 4. Baseline & Additionality | |

Comment [SG6]: These "elements" will be reworked

APPENDIX 1 – provides a glossary of important terms in this document; many are italicized on first use.

APPENDIX 2 –provides a list of detailed questions to work through when developing or assessing a mitigation program.

~~There is no one right or correct design for a mitigation program. Rather, Our~~ hope in providing this draft framework is that it will encourage consistency across the range and help our many partners develop compensatory mitigation programs that simultaneously conserve sage-grouse while maintaining or enhancing economic opportunities throughout the sage-grouse range. ~~There is no one right or correct design for a mitigation program. Programs should be~~ ~~There is only the program that key stakeholders agree~~ is fair, implementable, compensatory, and effective for sage-grouse.

Comment [JB7]: Some key stakeholders will never agree that compensatory mitigation should be required...

PART I

MITIGATION PROGRAM GOALS

A mitigation program should address how impacts will be avoided and how a net conservation gain may be achieved by mitigation for unavoidable impacts to sage-grouse across all habitats. The recommendations provided here are consistent with the information and conservation objectives provided in the 2013 Conservation Objectives Team (COT) Report¹. The Service recommends an avoidance first strategy be employed for all identified habitat in occupied sage-grouse habitat and that potential impacts to Priority Areas for Conservation (PACs) and other important sage-grouse habitat or populations identified as vulnerable be avoided all together. When avoidance and minimization of impacts to sage-grouse are insufficient to prevent a net loss to the species, and these disturbances are unavoidable, project developers may compensate for (offset) their impact (a *debit* to be mitigated) through identified eligible conservation actions (*credits* that mitigate debits).

Before developing a mitigation program, the Service recommends that one first consider the types of development activities that will be covered, the regulatory mechanisms that relate to those activities, and considerations of regulatory predictability within the context of the ESA. See Appendix 2 for specific questions to consider.

COVERED ACTIVITIES

A robust mitigation program will clearly identify the development activities and direct and indirect impacts that may negatively affect sage-grouse and the avoidance, minimization, and compensatory mitigation standards for addressing those impacts. At a minimum, the program should cover anthropogenic development and disruptive? actions which:

- Negatively impact sage-grouse habitat
- Are identified as threats in the COT report
- Create spatially discrete, measurable impacts

Activities such as limited recreational vehicle use or grazing may be difficult to both measure and address in mitigation programs due to their diffuse impacts and lack of clear regulatory mechanisms

Comment [JB8]: If development or a similar descriptor isn't provided, then it appears that we're recommending that actions such as grazing be subject to mitigation (since it's included as a threat in the COT Report).

¹ <http://www.fws.gov/mountain-prairie/species/birds/sagegrouse/COT/COT-Report-with-Dear-Interested-Reader-Letter.pdf>

- Are implemented, funded, or permitted by federal, state or local agencies

The program should describe the impact assessment methodology that will be used to measure a development activity's remaining direct and indirect effects to sage-grouse over the life of a development's impact, and quantify the potential direct and indirect impacts that likely accrue from each of the specific development types. The COT Report describes the types of developments that cause the greatest direct and indirect impacts to sage-grouse and its habitats, and it provides initial guidance on impact avoidance, minimization, and to a lesser extent compensatory mitigation for each of these development activities that should be applied in the mitigation program.

AVOIDANCE AND DISTURBANCE CAPS

REGULATORY MECHANISMS

The need for a mitigation program originates from a variety of drivers: regulatory, risk management, market speculation, and philanthropic or voluntary incentives. Regulatory mechanisms are the strongest and most consistent drivers of the mitigation hierarchy. The combination of increased development and a lack of regulatory mechanisms requiring proposed development to avoid impacts is a pressing issue for sage-grouse conservation. States hold the primary responsibilities for the management of sage-grouse, while federal agencies manage almost two-thirds of the species total sagebrush habitat. The Service recommends clearly identifying the federal, state, local and tribal regulatory mechanisms for siting and permitting for each major development type that impacts sage-grouse. It is important to note if environmental review is triggered for each development type and how that review may result in avoidance, minimization, and offset recommendations. A lack of clear regulatory incentives for mitigation will decrease the Service's ability to assess the long-term likelihood of successful implementation.

REGULATORY PREDICTABILITY AND ESA

While it is essential that a mitigation program function outside the ESA, users and suppliers of compensatory mitigation may wish to know from the Service that their actions contribute to larger efforts that could preclude the need to list sage-grouse. Suppliers of compensatory mitigation credits may also want regulatory predictability that, should the species become federally listed, the management to which they agreed would not change and incidental take coverage would be provided for these management actions. Developers may also want the ability to purchase credits well in advance of proposed developments. A program that utilizes advanced credit acquisitions could provide a major market driver for a compensatory mitigation program. In the event of a listing, coverage for incidental take under the ESA may be desired for those advanced credits. The Service will work closely with interested states or other stakeholders to provide greater regulatory predictability for implemented mitigation actions.

If a species is listed, robust mitigation programs implemented prior to the listing decision can provide benefits to participants and the species. Most importantly, programs will more likely be designed to

Comment [JB9]: Compensatory mitigation is barely touched upon in the COT, and not for all development activities – so just trying to qualify this statement.

Comment [JB10]: "Considered" instead of "applied"? The COT states that the measures are not mandatory...

Comment [SG11]: If this topic is covered...insert Service's message here.

Comment [JB12]: Since there multiple approaches to avoidance, it seems we could get into a quagmire here by trying to provide a comprehensive avoidance discussion. It seems we should stay more general and certainly stress avoidance, but not get overly detailed and run the risk of failing to mention a certain measure, project type, etc. Maybe that's not the intent though. My two cautionary cents anyway...

Programs with advance credit acquisition options that wish to have these credits treated as measures to minimize and mitigate the impact of the take, should sage-grouse be listed, will need to enter into an agreement with the Service.

contribute to recovery. In addition, if the species is listed as threatened the Service may propose a special rule under section 4(d) of the ESA to allow for take incidental to activities conducted pursuant to the mitigation program if it provides a net conservation benefit.

PART II

MITIGATION PRINCIPLES AND PROGRAM ELEMENTS

Any mitigation program with a compensatory mitigation component is best developed with the goals outlined in the beginning of this document and with the following principles:

- **Aim for net conservation gain:** Overall outcomes must result in *no net loss* to the species at the population or landscape scale; to achieve this, striving for a *net conservation gain* would buffer risk and uncertainty and improve overall conservation status.
- **Observe an appropriate mitigation sequence:** Compensatory mitigation is only considered after all avoidance and minimization measures have been explored. However, avoidance is the only way to guarantee sage-grouse will not be impacted by development.
- **Use a Landscape-Scale approach to inform mitigation:** Develop mitigation programs in conjunction with, or guided by, a landscape-level conservation plan. Cross-jurisdictional partnerships shall be fostered to design mitigation strategies that will prevent fragmented landscapes and restore core areas and connectivity necessary to sustain species.
- **Ensure transparency, consistency, and participation:** Use timely and transparent processes that provide predictability and uniformity through the consistent application of standards, protocols, and metrics developed to achieve effective mitigation. Appropriate and effective stakeholder participation in mitigation recommendations and decisions should be facilitated.
- **Base mitigation decisions in science:** Use the best available science in formulating mitigation recommendations and decisions, consistent with all applicable policy.

The following discussion provides specific standards to meet the above listed principles and technical elements and to consider when developing a compensatory mitigation program:

1. Governance
2. Service Areas
3. Conservation Actions & Outcomes
4. Baseline & Additionality
5. Durability, Ratios & Reversals
6. Land Tenure
7. Metrics & Accounting

Since the rest of Part II is being re-worked, it has been temporarily removed from the document...