

# Habitat Exchanges: FWS Formal Recommendations

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*For the purposes of discussion, the term Habitat Exchange is being used in this document to collectively describe sage-grouse mitigation programmatic approaches under development including the Colorado Habitat Exchange (CHE), Wyoming Conservation Exchange, Nevada Conservation Credit System (CCS), Oregon program, and Utah program.*

*We have identified recommendations that, if followed, should increase Service confidence that the proposed Habitat Exchange programs can receive a level of regulatory assurance for the compensatory mitigation provided by these programs.*

**Recommendation A:** Service leadership should make a policy decision and identify the amount that Habitat Exchange credits must exceed the value of debits so that we are reasonably confident that a net conservation gain is being provided.

## **Pros:**

Provide a clear measure for Habitat Exchanges to determine if the programs achieve a net conservation gain.

## **Cons:**

The clear measure would be a subjective decision based on what is believed to achieve a net conservation gain and is considered reasonable and prudent.

## **Potential Mechanisms:**

- Require a retirement account, separate from the reserve pool, that consists of credits that can never be used to offset debits; or
- If credits and debits are measured equally and uncertainties are mitigated through risk management tools, applying a mitigation ratio overall (e.g. need credits equaling 1.5x the number of debits to offset); or
- Require such a high reserve account contribution that the Service has confidence that the reserve account will never be completely exhausted; or
- Use adjustment factors tied to qualitative habitat features that make it relatively easier to generate debits from each functional acre lost and harder to generate credits from each functional acre gained; or
- If credits and debits are measured equally and uncertainties are mitigated through risk management tools, require credits to have a longer duration than the impacts they offset (e.g. 20-year credit project to offset 10-years of disturbance)

### **How Does This Differ From Proposed Programs:**

The Colorado Habitat Exchange and Wyoming Conservation Exchange rely on uncertain conservation certificates and the consumable reserve accounts for net gain.

Nevada's CCS currently has an adjustment factor for the importance of habitat (priority, general, and other habitat. Functional acres are adjusted to a greater degree when calculating debits than when calculating credits.

The Oregon approach adjusts for importance and uncertainties in the crediting methodology which is based on functional acres. The habitat quantification tool, however, is still under development. Beyond the credit amount needed for an individual project to meet a net conservation gain standard, the Oregon approach employs a 50% reserve pool contribution as risk management against uncertainties from credit reversals.

**Recommendation B:** The Service should recommend the frequency (semi-annual, annual) of reporting the Exchange balance of credits and debits to the Service. Soft and hard triggers should be identified by the Species Lead Team, specific to the risk management and net benefit tools provided for each Exchange.

For those programs using reserve pools, for example, if the reserve pool credits dropped below the (soft trigger) level identified by the Service, the Exchange should increase the required contributions to the reserve pool. If the reserve pool drops below the lowest acceptable level (hard trigger) identified, the Service should suspend the agreement with the Exchange.

### **Pros:**

The addition of a hard and soft trigger would increase confidence that Habitat Exchanges are providing a net conservation gain.

### **Cons:**

If the triggers are not conservative enough, Habitat Exchanges might operate while not providing a net conservation gain.

### **How Does This Differ From Proposed Programs:**

Each of the Colorado, Wyoming and Nevada exchange manuals call for annual reporting of all credits tracked by the Credit System but do not have specific adaptive management triggers related to the reserve pool or other program operations.

The Oregon approach calls for adaptive management in several ways: 1) within one year of program implementation identify measureable objectives and adaptive management trigger points that would indicate changes to the program are needed, 2) conduct annual adaptive management reviews, and assesses whether trigger points or other indicators suggest changes

are needed, and 3) revisit the estimated probability of project failure as part of regular adaptive management reviews and adjust the reserve contribution requirement accordingly.

**Recommendation C:** Habitat exchanges should be tracked in the Regulatory In-Lieu Fee and Bank Information Tracking System (RIBITS) alongside conservation banks.

**Pros:**

Use of RIBITS is consistent with Service guidance for conservation banks. RIBITS is used by the Army Corps of Engineers, the Service, and NMFS. Exchanges have shown interest in using the system. Providing a one-stop shop for available credits can level the playing field with competing banks and in-lieu fee programs in an area. The Army Corps of Engineers and the Service are willing to expand the system and are looking for pilot projects.

**Cons:**

RIBITS is not currently set up for tracking non-permanent mitigation programs. We would need to test the system with a pilot program before adopting all programs. Exchanges may be resistant to entering into a federal tracking system.

**How Does This Differ From Proposed Programs:**

Currently all state programs have proposed to create databases and/or registries to track credit generation and use, though none have provided details.

**Recommendation D:** Debits should be offset by credit projects with at least commensurate duration. Minimum duration for credit projects used to offset debits that last 10 years or less should be 10 years. When debits are offset by dynamic (sequential) credit projects, the consecutive credits should be in 30-year increments at a minimum.

**Pros:**

Consistent with Service recommendations and proposed program structure in NV and OR. The sagebrush ecosystem is slow to respond to restoration and management efforts and there may be a time lag between restoration of a site and use by sage-grouse. Longer term credits provide more confidence that long term or permanent impacts will be adequately offset.

**Cons:**

The CO Habitat Exchange has developed their program to allow the use of 10-year dynamic credits.

### **How Does This Differ From Proposed Programs:**

The minimum credit duration for the Colorado, Wyoming, and Nevada habitat exchanges is 10 years. Oregon does not specify a minimum term. The Nevada CCS and Oregon program establish 30-year minimum credit duration for dynamic offsets (with Oregon limiting the total program to less than 50% dynamic permanent credits ), while the Colorado and Wyoming exchanges have no additional duration requirements for dynamic offsets.

**Recommendation E:** The Service shall provide, where appropriate, regulatory predictability through Habitat Exchange programs to credit providers. To receive regulatory predictability, a credit provider would need to provide a conservation benefit commensurate with that provided by a CCAA.

The Service Species Lead Team would need to work with each Habitat Exchange to identify what measured level is necessary to be commensurate with CCAA benefits.

### **Pros:**

This approach provides a pilot program/proof of concept for developing Service pre-listing and mitigation policies. It also incentivizes mitigation, and continuation of the mitigation program, regardless of listing status. This may increase landowner participation in the Habitat Exchanges. The approach could obviate the need for landowners to obtain or keep a CCAA on the same lands.

### **Cons:**

The burden of proof will be on the Exchanges to show how the baseline measures, minimum site eligibility requirements and/or quantification of habitat values may provide a benefit similar to a CCAA.

### **How Does This Differ From Proposed Programs:**

All four Exchange programs have indicated desire to attain regulatory predictability from the Service for credit providers. The Service has provided some regulatory certainty language in the Barrick Agreement and the concept of providing regulatory certainty is supported in the Service's Sage-Grouse Mitigation Framework and draft national pre-listing policy. CCA/CCAAs in Oregon may be used to demonstrate that lands meet the minimum eligibility requirements of having a neutral or positive effect on sage-grouse before becoming a credit provider.

**Recommendation F:** Landowners enrolled in CCA/CCAAs should only be eligible to sell credits if the conservation benefits exceed the minimum conservation benefits required by the CCA/CCAA. Terms and conditions will need to be developed to ensure consistency and accounting between CCA/CCAAs, SGI, and the Exchanges.

**Pros:**

Ability to fund conservation measures on individual properties through mitigation dollars could further secure positive conservation actions. Leaving it open to choose one or both agreements, in any order, encourages early enrollment (i.e. landowners are less likely to delay entry into an agreement for fear a better option opens up later). Mitigation agreements can be perpetual in length - allowing both agreement types on a property can extend the conservation actions of the other past the agreement term.

**Cons:**

Separating CCA/CCAA measures from mitigation measures will be logistically challenging. There may be confusion when assessing each program's contribution to the listing assessment.

**Potential Mechanisms:**

Where CCAAs and mitigation agreements may cover the same lands, the following measures will apply to ensure both CCAA and mitigation program additionality standards are retained:

1. Baselines for CCAAs and for mitigation are measured using the same metric and at the same time (within 2 years) – OR - baseline metrics are reconciled in a transparent, scientific way.
  - i. If land has been under a CCAA for > 5 years or is within 2 years of its termination date, this provision need not apply.
  - ii. If the CCAA is surrendered and the original CCAA baseline metrics meet this provision, the original CCAA baseline may be used as the mitigation baseline.
2. At least 15% additional uplift from measureable activities is available for mitigation – OR – for preservation situations, the financial and real estate provisions under the mitigation agreement provide protection for at least the duration of the CCAA and such protections demonstrate avoided loss.
3. A process is identified for communication and reporting of measures for each program

**How Does This Differ From Proposed Programs:**

The Nevada CCS and Oregon approach allow for credit developers enrolled in CCAAs to work with the Administrator to generate credits if the benefits generated are additional to the minimum conservation measures required by the CCAA. In addition, CCA/CCAAs in Oregon may be used to demonstrate that lands meet the minimum eligibility requirements of having a neutral or positive effect on sage-grouse before becoming a credit provider.

**Recommendation G:** Avoidance and minimization must be applied to the maximum extent practicable prior to the use of compensatory mitigation for unavoidable impacts. A habitat exchange should require avoidance and minimization at least equivalent to that required by the BLM RMP amendments. Consideration of valid existing rights could be addressed as they were through BLM RMP amendments.

**Pros:**

This is the most practical method identified to determine sufficiency of avoidance and minimization.

**Cons:**

This will require a subjective assessment by the Service to determine if the avoidance and minimization required by a habitat exchange is sufficient.

**How Does This Differ From Proposed Programs:**

Consistent with what the Service has recommended to BLM.

All four Exchanges state a requirement for avoidance and minimization to be accepted into the program. However, for non-federal lands, only Oregon has the ability to actually require avoidance and minimization across the board as part of a state regulatory mechanism. WY has some avoidance and minimization through the core area strategy. NV does not regulate private land. CO oil and gas developments will have some requirements through state permitting, but the level and consistency application of avoidance and minimization is an unknown.

**Recommendation H:** Habitat Exchanges should include discrete, qualitative input in addition to the quantitative input from the Habitat Quantification Tool. Compensatory mitigation provided should exceed the net effect of the taking - the demographic impact to the population. To accomplish this, a qualitative analysis should be used in conjunction with the Habitat Quantification tool when calculating debits and credits. The qualitative analysis should be conducted by a group that is designated by the state to guide sage-grouse monitoring and conservation efforts. In Colorado that would likely be Colorado Parks and Wildlife.

**Pros:**

Improves the ability of Habitat Exchanges to target populations and habitat types. This approach encourages the development of conservation strategies for Service Areas.

**Cons:**

Additional workload for the state.

**How Does This Differ From Proposed Programs:**

The Colorado and Wyoming habitat exchanges rely solely on the quantitative vegetative measurements to calculate debits and credits.

To calculate debits and credits the Nevada CCS applies adjustment factors to functional acre outputs of the Habitat Quantification Tool. The adjustment factors reflect the qualitative aspects of habitat importance (core, priority, and general habitat categories), seasonal habitat scarcity, and the proximity of the credit project to the debit project.

The Oregon approach is linked directly to the state plan, which provides several decision support tools and other mechanisms to ensure mitigation is properly placed. In addition, because the program will be an in lieu fee approach, Oregon can decide on priorities and solicit specific credit projects to address local priorities.