

Mitigation Program Agreement Options and Standards
GRSG Mitigation Review Team

I. FWS recognition of the mitigation Program through a letter.

- Program improves state's ability to track voluntary participation in compensatory mitigation.
- Program provides streamlined access to mitigation projects.

Standards

Avoidance & Minimization process:

- State provides guidance on avoidance and minimization

Program Governance (including compliance and enforcement):

- Program administrator facilitates transactions between credit buyers and sellers

Siting:

- Credit projects occur within current species range

Duration:

-

Additionality:

- Credit projects provide benefits beyond those that would be achieved if the mitigation actions did not take place and exceed what is otherwise required by federal, state, and local regulations.
- Net conservation benefit measured programmatically

Effectiveness:

-

Durability:

-

Metrics:

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Risk Management:

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II. **FWS support and recognition of using the Program within a regulatory framework.**

- Agreement between the Program, regulatory agency and Program
- Recognize the Program as a reasonable method for meeting required compensatory mitigation to offset unavoidable impacts in species habitat (such as under BLM RMP revisions).

Standards

Avoidance & Minimization process:

- Regulatory agencies (state and federal) provide guidance on avoidance and minimization

Program Governance (including compliance and enforcement):

- Program administrator facilitates transactions between credit buyers and sellers

Siting:

- Credit projects occur within current species range

Duration:

-

Additionality:

- Credit projects provide benefits beyond those that would be achieved if the mitigation actions did not take place and exceed what is otherwise required by federal, state, and local regulations.

Effectiveness:

-

Durability:

-

Metrics:

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Risk Management:

-

III. **FWS approves credits generated through the Program regardless of species status.***

- Credits released/purchased/reserved prior to a listing decision could be used to meet necessary mitigation identified if the species is listed.
- No assurances that the credits would be sufficient to fully offset the impacts to which they were applied.
- Pre-listing mitigation credits would be weighed against necessary mitigation identified during consultation, residual impacts might be measured using the Program methods or by another method identified by the FWS.

Standards

Avoidance & Minimization process:

- Regulatory agencies (state and federal) provide guidance on avoidance and minimization

Program Governance (including compliance and enforcement):

- Program administrator facilitates transactions between credit buyers and sellers
- Program administrator has the authority and resources to enforce compliance with credit development contracts, requiring remedial actions and financial penalties when appropriate

Siting:

-

Duration:

-

Additionality:

- Credit projects provide benefits beyond those that would be achieved if the mitigation actions did not take place and exceed what is otherwise required by federal, state, and local regulations.

Effectiveness:

-

Durability:

-

Metrics:

-

Risk Management:

-

** **Credit Providers and CCAAs.** A landowner's decision to seek regulatory assurances under a CCAA is separate from a decision to participate in the CHE. A CCAA must provide a conservation benefit that*

would preclude the need to list if replicated by other landowners. The level of benefit that exceeds the CCAA standard could be sold as a credit in the CHE. The CCAA level of conservation benefit could be identified as a minimum function per acre (i.e. a number greater than the regional average site-scale %).

DRAFT

IV. **FWS approves Program method of debit calculation.**

- In order to recognize a programmatic approach to debit calculations, the Service would need to know that avoidance and minimization of impacts are required prior to measurement of debits. BLM RMPs may require avoidance and minimization. On private lands, the state could establish land use regulations that require avoidance and minimization or the CHE could adopt the components of the BLM RMPs (NSOs, CSOs, etc.) to achieve comparable avoidance and minimization.

Standards

Avoidance & Minimization process:

- Avoidance and minimization required prior to calculation of debits and credit obligation
- Regulatory agency has the authority and resources to require additional avoidance and minimization measures when necessary

Program Governance (including compliance and enforcement):

- Program administrator facilitates transactions between credit buyers and sellers
- Program administrator has the authority and resources to enforce compliance with credit development contracts, requiring remedial actions and financial penalties when appropriate
-

Siting:

-

Duration:

-

Additionality:

- Credit projects provide benefits beyond those that would be achieved if the mitigation actions did not take place and exceed what is otherwise required by federal, state, and local regulations.
- Net conservation benefit measured at the project level

Effectiveness:

-

Durability:

-

Metrics:

-

Risk Management:

V. **FWS approves credits generated and debit calculations through the Program regardless of species status.**

- Assurance that impacts fully offset with credits that produce a net conservation benefit will not be subject to further mitigation requirements through post-listing consultation.
- Post-listing consultation may still require additional mitigation for impacts not included in the Program debit calculation.

Comment [LZC1]: Not sure about this. I added it because I remembered language in the Barrick agreement that limits RPMs to impacts that were not considered in the conservation forecasting tool.

Comment [SG2]: I think we need this type of language

Standards

Avoidance & Minimization process:

- Avoidance and minimization required prior to calculation of debits and credit obligation
- Regulatory agency has the authority and resources to require avoidance and minimization measures when necessary

Comment [SG3]: Additional?

Comment [LZC4]: I was thinking additional to what the developer proposed, we can probably just delete the word.

Deleted: additional

Program Governance (including compliance and enforcement):

- Administrator facilitates transactions between credit buyers and sellers
- Administrator has the authority and resources to enforce compliance with credit development contracts, requiring remedial actions and financial penalties when appropriate
- Sufficient oversight from agency responsible for managing the species so that the program will be consistent with conservation/recovery plans and policies

Comment [SG5]: Because in some cases the state may be the administrator...

Deleted: Oversight board has sufficient representation

Siting:

- Integrates with other landscape-level plans
- Strong incentives (or requirements) to focus conservation in highest-value habitat for populations impacted by the development to be offset
- Recognizes and includes incentives for protecting/improving limiting habitat types
- Service area(s) biologically based with explanations for jurisdictional constraints
- Allows credit trading across jurisdictional boundaries when biologically appropriate

Comment [SG6]: Let's think carefully on wording here

Comment [LZC7]: Would something like "Conservation priority for highest-value habitat..." be better?

Deleted: defined

Duration:

- Conservation actions should deliver biological conditions in a timeframe that is at least commensurate and proportional with the biological impacts to be offset
- 20-year minimum credit duration
- 30-year minimum for dynamic credits
- No gaps in coverage allowed when using dynamic credits
- Program restricts use of dynamic credits to x% of total program credits available

Comment [SG8]: It might be easiest to make this the same number...thoughts?

Comment [SG9]: Or something like that

Additionality:

- Credit projects provide benefits beyond those that would be achieved if the mitigation actions did not take place and exceed what is otherwise required by federal, state, and local regulations.

- Net conservation benefit measured at the project **level**
- Eligibility for credit projects include potential for species use, ability/authorization to implement conservation actions, and a minimum base habitat quality
- Baselines for credits and debits calculated consistently through on-the-ground pre-project evaluations
- Balance of preservation, enhancement, and restoration credit projects consistent with the threats to habitat and the needs of the species
- Use of public funding is excluded from generating credits, exclusions sunset over time following the expiration of public contracts

Comment [SG10]: I'm not sure we can make this a blanket requirement. The difference should be measured at the project level, but for some projects and regulatory scenarios NNL may be the best they can do.

Effectiveness:

- Credit projects deliver measurable biological **results** to habitat
- Incentives to steer conservation efforts towards the actions that will provide greatest benefit to the species
- **Project and program monitoring either includes species/population response or is part of larger species/population monitoring that informs conservation priorities and adaptive management of the program**

Comment [SG11]: ?

Deleted: uplift

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Deleted: of

Deleted: response

Deleted: to

Durability:

- Site agreements that commit administrator and participants to assurances, management, and reporting
- Incentives for holding real estate, mineral/water rights, land-use rights; penalties for projects without such protections
- Mechanisms to ensure durability on public land equal to durability on private land
- Appropriate financial assurances able to cover the cost of complete **restoration and long term management** of the site/project
- Force majeure defined within program as events that are more frequent or severe than current or projected trends

Comment [SG12]: At what level – the program? The Project? I don't think we can require this, especially at project level. At the program level, we should ask for where monitoring fits into species/population monitoring. It could be that program monitoring is reported to state, who rolls information into state population analysis (which program can use) for example. I tried to edit to reflect this.

Deleted: remediation

Metrics:

- Developed from a science-based transparent process
- Quantitative
- Reliable
- Repeatable
- Account for direct and indirect impacts
- Independent, third-party verification of habitat metrics prior to impacting activities and prior to credit releases
- **Monitoring, Performance Standards**
- Tracking system for project status
- Independent target species population monitoring

Comment [LZC13]: From SOP, needs clarification

Risk Management:

- Clear process and mechanism for (unintentional and intentional) reversals which includes a reserve or retirement account, insurance policies, and/or project level plans
- Clear process for dispute resolution and elevation, including what type of changes to program documents need what level of approval (i.e. what changes the administrator can make with or without approval of the oversight board)
- Differential in weighting/adjustment factors between credit and debit accounting (making it relatively harder to generate credits and relatively easier to generate debits) in order to address the inherent risk and uncertainty of compensatory mitigation.