

# GENERAL CONSERVATION / MITIGATION STRATEGY GUIDANCE

## OVERVIEW

**Purpose** of the SEP-HCP is two-fold: 1) facilitate compliance with the Endangered Species Act; and 2) conserve the Covered Species.

**Conservation Strategy** – composed of several parts:

*Note: some or all of the components of the conservation strategy may be different for different species*

1. Biological Goals – what does the plan aspire to accomplish? What is the expected outcome?
2. Specific Biological Objectives – what are the measurable targets designed to achieve goals
  - a. Total acres of habitat to be protected
  - b. Types of habitat to be protected
  - c. General distribution of preserves (*caution: avoid “green-lining”!!!*)
  - d. Management targets / desired conditions
  - e. Others...
3. Implementation Measures – specific conservation commitments / actionable plan to meet objectives
  - a. Preserve acquisitions
    - i. Available conservation tools: fee simple ownership, conservation easements, regulations (?)
    - ii. General approach for acquisitions (up-front preservation, phased acquisitions, “pay as you go”, rolling/term acquisitions, mitigation banking; mitigation funds, etc...)
  - b. Management plan
    - i. General species and habitat management
    - ii. Dealing with threats
    - iii. Managing other uses of preserve land: agriculture, public uses, infrastructure corridors, hunting, etc...
  - c. Monitoring and reporting program – track progress towards meeting commitments and achieving goals and objectives; monitor status of covered species in preserves
4. Participation Process – how to determine mitigation needs for RHCP participants
  - a. Application process
  - b. Habitat determinations
  - c. Mitigation assessments
  - d. Fees and other forms of acceptable mitigation

## GENERAL REGULATORY GUIDANCE and POLICY on MITIGATION

### Endangered Species Act Section 10(a)(2)(B):

If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that –

- i. the taking will be incidental;
- ii. the applicant will, ***to the maximum extent practicable, minimize and mitigate the impacts of such taking;***
- iii. the applicant will ensure that adequate funding for the plan will be provided;

- iv. ***the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;*** and
- v. the measures, if any required under subparagraph (a)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. [*emphasis added*]

#### USFWS HCP Handbook (Chapter 3, Section B-3 – starting on page 3-19)

- Mitigation programs should be based on sound biological rationale; they should also be practicable and commensurate with the impacts they address. (pg. 3-19, 3<sup>rd</sup> paragraph)
- Mitigation actions under HCPs usually take one of the following forms:
  - Avoiding the impact (to the extent practicable);
  - Minimizing the impact;
  - Rectifying the impact;
  - Reducing or eliminating the impact over time; or
  - Compensating for the impact. (pg 3-19, 4<sup>th</sup> paragraph)
- Issuance of a Section 10 permit must not “appreciably reduce” the likelihood of the survival and recovery of the species in the wild. Note that this does not explicitly require an HCP to recover listed species, or contribute to their recovery objectives outlined in a recovery plan. This reflects the fact that HCPs were designed by Congress to authorize incidental take, not to be mandatory recovery tools (pg 3-20, 2<sup>nd</sup> paragraph). However, recovery is nevertheless an important consideration in any HCP effort... Thus, contribution to recovery is often an integral product of an HCP, but it is not an explicit statutory requirement (pg. 3-20, 3<sup>rd</sup> paragraph). [*original emphasis*]
- Re: Habitat Banks/Mitigation Credit Systems –
  - ... considerable promise as a mitigation strategy because:
    - i. It allows owners of endangered species habitat to derive economic value from their land as habitat;
    - ii. It allows parties with mitigation obligations to meet their obligations rapidly (mitigation lands are simply purchased as credits); and
    - iii. The mitigation lands are provided prior to the impact (eliminating uncertainty about whether a permit might fail to fulfill the HCP’s obligations after the impact has occurred). (pg. 3-21, 3<sup>rd</sup> paragraph) [*original emphasis*]
- The type of mitigation habitat and its proximity to the area of impact will need to be considered. Generally the location of replacement habitats should be as close as possible to the area of impact, it must also include similar habitat types and support the same species affected by the HCP. However, there may be good reason to accept mitigation lands that are distant from the impact area -- e.g., if a large habitat block as opposed to fragmented blocks can be protected or if the mitigation lands are obtained through a mitigation fund. (pg 3-21, paragraph 4)
- Potential types of habitat mitigation include, but are not limited to
  - i. Acquisition of existing habitat;
  - ii. Protection of existing habitat through conservation easements or other legal instruments;
  - iii. Enhancement or restoration of disturbed or former habitats;
  - iv. Prescriptive management of habitats to achieve specific biological characteristics; and
  - v. Creation of new habitats. (pg 3-21, 5<sup>th</sup> paragraph)
- When habitat losses permitted under an HCP are permanent, protection of mitigation lands normally should also be permanent. (pg. 3-22, 4<sup>th</sup> paragraph)