

Chapter 14 Special Topics: Conservation Banking

The U.S. Endangered Species Act (ESA) prohibits “take” of fish and wildlife species officially listed as endangered or threatened, but can permit otherwise lawful activities that violate these prohibitions through Section 7(a)(2), for federal agencies, and Section 10(a)(1)(B), for private entities. The implementation of ESA Sections 7(a)(2) and 10(a)(1)(B) create the need for mitigation to offset impacts to listed species and their habitat (Ruhl 2005). Several different mitigation options are available to federal applicants and project proponents including implementing their own mitigation (often referred to as permittee responsible mitigation), paying into an in-lieu fee program, or the purchase of credits from a conservation bank.

The U.S. Fish and Wildlife Service (USFWS) describes conservation banks as permanently protected lands that contain natural resource values, which are conserved and permanently managed for species that are listed as endangered, threatened, candidates for listing as endangered or threatened, or are otherwise species-at-risk (USFWS 2012). Conservation banking is a market-based program that provides “credits” to landowners that undertake conservation activities, which they may then sell to parties that need to mitigate unavoidable impacts to a species. A credit is a defined unit of trade related to habitat or species of interest at the bank site. A credit may be equivalent to: (1) an acre of habitat for a particular species; (2) the amount of habitat required to support a breeding pair; (3) a wetland unit along with its supporting uplands; or (4) some other measure of habitat or its value to the listed species.⁹⁴ The number of credits associated with a particular conservation bank is determined by the USFWS and is a function of habitat condition, size and location of the parcel, and other factors.

The USFWS began approving banks for a number of federally listed species in the early 1990s in cooperation with other federal agencies or the State of California. Banks may be located on state and local government, private, or tribal lands; federal lands can be considered, but must be reviewed by the USFWS for applicability for mitigation and consistency with other regulations and policies. Banks located on federal lands are generally single-user banks established by an agency for its own use. Bankers can be corporations, individuals, companies, utilities, government agencies, non-profit organizations, and land trusts (Mead 2008). Buyers of bank credits include private sector entities (e.g., individual property owners, housing developers, energy developers, and non-profits) as well as public sector entities (e.g., state highway departments) (Hudson 2007, Bauer 2004). Conservation banks may allow other uses, beyond species conservation, as long as they are compatible with the primary purpose for which they were created. A 2005 survey of 32 banks found that 66% of the banks surveyed allowed cattle grazing, hunting, biking, horseback riding, hiking, and fishing (Fox and Nino-Murcia 2005).

Although the USFWS has not issued any regulations for its conservation banking program, it did issue a guidance document titled “Guidance for the Establishment, Use, and Operation of Conservation Banks” on May 2, 2003. The guidance was intended to help USFWS personnel (1) evaluate the use of

⁹⁴ USFWS. 2012. Conservation Banking: Incentives for Stewardship. http://www.fws.gov/endangered/esa-library/pdf/conservation_banking.pdf.

conservation banks to meet the conservation needs of listed species; (2) fulfill the purposes of the ESA; and (3) provide consistency and predictability in the establishment, use, and operation of conservation banks.

Leon and Mead (2010) outline the steps for creating a conservation bank as follows:

- Contact the USFWS office with jurisdiction over the proposed bank to determine if there is a conservation banking program that covers its resources.
- Provide the information necessary for evaluating the property's eligibility. This will likely include biological survey results for certain species on the property, a title report to assess encumbrances, and other information.
- Begin developing a conservation bank agreement in cooperation with USFWS, and possibly other government agencies, if the proposal also includes credits for resources regulated by other agencies.
- Grant a perpetual conservation easement to an eligible organization.
- Develop an adaptive management plan for the long-term stewardship of the property.
- Fund an endowment to cover the long-term stewardship of the property, including monitoring and management of the site.
- Once all parties have agreed to the terms and conditions of the conservation bank agreement and the document is executed, USFWS will release the credits in accordance with the agreement.

The USFWS and the National Marine Fisheries Service (NMFS) regulate federal conservation banks in accordance with the ESA and guidelines prepared by both agencies. USFWS, with 105 approved banks in 10 states and Saipan (as of October 15, 2012), regulates terrestrial and freshwater species and some marine mammals. NMFS, with 5 approved banks in California and Washington, regulates marine and anadromous species (Moody 2012).

Approximately 65% (68 of 105) of USFWS-approved and operational conservation banks are located in California (11 more banks are sold-out) (Layne 2012). California has another five state conservation banks that are managed for state-protected species (Rambarran 2012). In 2006, seven state and federal agencies in California signed an MOU agreeing to collaboratively develop a standardized process for both mitigation and conservation banking. A revised MOU was signed in 2011, adding an eighth agency.

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Additional material on this topic will be available in the coming months.