

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Endangered and Threatened Wildlife and Plants; Notice of Availability for Draft Recovery Crediting Guidance**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft guidance document issued to promote implementation of the Endangered Species Act. The document describes a crediting framework for Federal agencies in carrying out recovery of threatened and endangered species. The text of the guidance is included in this notice. Under the draft guidance, Federal agencies could show more specifically how adverse effects of agency activities to a listed species are offset by beneficial actions taken elsewhere for that species. The combined effects of the adverse and beneficial actions would have to provide a net conservation benefit to the species. We solicit comment from all interested parties on the contents of the draft guidance and likely effects of its implementation.

**DATES:** Comments from all interested parties on the draft guidance document must be received on or before December 3, 2007.

**ADDRESSES:** The draft guidance may be downloaded from our Web site at <http://www.fws.gov/endangered/policy/oct.2007.html>. To request a copy of the draft guidance, write to U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting; or call 703/358-2171. You may also send an e-mail request to [recovery\\_crediting@fws.gov](mailto:recovery_crediting@fws.gov). Specify whether you wish to receive a hard copy by U.S. mail or an electronic copy by e-mail.

Send comments by any one of the following methods. See "Viewing Documents" and "Public Comments Solicited" under **SUPPLEMENTARY INFORMATION** for important information.

- Mail: U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting.
- Hand Delivery/Courier: Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203-1601.
- E-mail: [recovery\\_crediting@fws.gov](mailto:recovery_crediting@fws.gov). Include "Recovery Crediting comments" in the subject line of the message.

- Fax: 703/358-2175. Include "Recovery Crediting comments" in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Direct all questions or requests for additional information about the draft guidance to Dr. Richard L. Sayers; Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants; U.S. Fish and Wildlife Service; 420 ARLSQ; Washington, DC 20240 (703/358-2171). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1-800-877-8337 for TTY assistance, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:****Background**

The ultimate goal of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), is the recovery of endangered and threatened species and the ecosystems on which they depend. In administering the recovery provisions of the Act, the Service collaborates with many partners, including Federal, State, and local agencies, Tribal governments, conservation organizations, the business community, and private landowners.

Effective recovery planning and implementation depend in part on creative processes and agreements with Federal partners as well as other non-Federal partners in community-based recovery efforts. Examples of innovative conservation tools under the ESA include Safe Harbor Agreements, Habitat Conservation Plans, Recovery Permits, and Conservation Banks. The ultimate success of conservation and recovery of endangered and threatened species depends on a variety of innovations, such as these, that may be used in concert with one another or alone. We expect Recovery Credit Systems to complement them further. Additional information concerning these tools is available through the sources listed above under **ADDRESSES**.

The recovery credit approach provides Federal agencies with an additional recovery tool developed using existing authorities. As described below, this tool was initially established in Texas to allow Fort Hood Military Reservation to accrue credits for conservation measures that it arranged by contract with neighboring landowners. The arrangement we developed with Fort Hood can be applied by other Federal agencies which may obtain credit for advancing the recovery of a listed species, and this credit may be expended, or debited, to offset potential adverse effects of future

actions. A recovery crediting system can allow a Federal agency to accrue credit for recovery actions in advance of effects resulting from any specific action with adverse effects. We expect this process to increase incentives for Federal agencies to use their authorities to further the purposes of the ESA.

The Service recognizes that recovery crediting is a mechanism with broad potential application. The Service may expand recovery crediting to entities other than Federal agencies or employ additional methods for Federal agencies. That is, we may be able to use credits as a measure of the benefit of conservation actions taken on Federal lands and we may consider other credit trading systems, beyond conservation banks, for landowners who take conservation actions on their own land or other private lands. We invite comment on how these or other arrangements may be provided for by this guidance and how these or other arrangements may be provided for by future guidance.

**Viewing Documents**

The complete file for the recovery crediting guidance as well as the comments and materials we receive are available for inspection, by appointment, during normal business hours at the Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203-1601.

**Draft Guidance**

The text of the draft guidance follows.

**Draft Guidance on Recovery Crediting for the Conservation of Threatened and Endangered Species****I. Introduction***A. Purpose and Scope of Guidance*

This document is intended to provide guidance on the development, management, and use of recovery credits as a measure for mitigating adverse effects to and contributions to the recovery of species listed as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA). The guidance should assist Service personnel in determining the applicability of recovery credits for the conservation needs of a species, fulfill the purposes of the ESA, and provide consistency in the establishment, management, and use of recovery credits. For more detailed guidance and information on various other recovery programs, we included a list of helpful documents in section VII of this guidance. These documents will

help the reader have a more complete understanding of recovery programs as a whole.

Recovery crediting is an optional process for Federal agencies to use their authorities for the conservation of listed species. Recovery credits can provide an additional means of implementing "conservation measures," commonly offered by Federal agencies to offset effects to listed species resulting from Federal actions. As noted in the Service's Consultation Handbook, "When used in the context of the Act, 'conservation measures' represent actions pledged in the project description that the action agency or applicant will implement to further the recovery of the species under review." For further discussion of conservation measures, see *Endangered Species Consultation Handbook*, p. 4–18. In a recovery crediting system, the action agency would present credits as part of its project description. A pledge represented by a credit must be a legally binding commitment such as a contract with a private landowner.

Some potential benefits of a recovery crediting system include (1) better and more cost effective contributions to recovery through agency activities; (2) more exact analysis; and (3) increased predictability for all parties. The use of recovery credits as a conservation tool should be closely evaluated for each species or group of species, and may not be applicable in some situations. In other cases, recovery credits may be a valuable tool in advancing the recovery of a species.

This guidance is general in nature, as each process developed for using recovery credits will differ based on a variety of circumstances. A recovery crediting system should be tailored to the specific circumstances under which it would be applied; ideally it should be based on the relevant recovery plans and, when recovery plans are lacking or inadequate for the design of a recovery credit system, should rely on other Service-approved documents (see "B. Planning and Development Phase" below for examples). Recovery credit systems may complement mitigation tools and conservation programs currently available, such as conservation banking. This guidance also does not attempt to closely define or assign roles to the agencies and other participants in a recovery crediting system; we anticipate that these will vary to some degree in response to the circumstances surrounding particular systems.

### B. Background

Effective recovery planning and implementation for listed species require creative processes, including recovery actions by Federal land managing agencies with adjacent landowners, local communities, Tribes, States and other Federal agencies.

The concept of recovery credits was developed in Texas to allow the Department of Defense (DoD) to receive credit for conservation measures being implemented by Fort Hood Military Reservation. Fort Hood, which is home to the largest known population of the endangered golden-cheeked warbler within its breeding range, carries out conservation measures with neighboring landowners in an effort to offset adverse effects that may result from future on-base military readiness activities. In exchange for implementing recovery actions, DoD requested that these actions be considered for "banking" to offset effects attributable to training activities.

Although the Fort Hood example is very specific and limited in scope, the general concept can be applied more broadly: Federal agencies may obtain credit for conservation actions undertaken on non-Federal lands to advance the recovery of listed species, and this credit may be expended, or debited, to offset potential adverse effects of future actions. In other words, Federal agencies may "bank" recovery credits in advance in a particular recovery crediting system, and apply those credits at a later time to the analysis of an agency action. This process can add an incentive for Federal agencies to use their authorities to further the purposes of the ESA.

### C. What Is a Recovery Credit?

A recovery credit is a quantifiable unit of measure sanctioned by the Service representing a contribution to the recovery of a species listed under the ESA. For example, in its simplest form, one credit could equal a specified number of acres of habitat or the acreage necessary to support one nest of the target species. Recovery credits should be based on a commitment to implement recovery actions outlined in a particular species' recovery plan or alternative Service-approved document. Each recovery credit, therefore, may be considered to be part of recovery implementation leading towards the downlisting or delisting goals of a threatened or endangered species, taking into account the debits that have occurred.

A recovery crediting system is a specific program established to provide

recovery actions on non-Federal lands for specific species while creating a "bank" of credits that a Federal agency may use to offset the effects of its actions. That is, the Federal agency may develop and store credits to be used at a later time to offset particular adverse effects of its actions. The overall system must provide a net benefit to the conservation of covered species, as determined by the Service using relevant recovery plans or alternative Service-approved documents. Under this policy, only Federal agencies may apply recovery credits to the effects of their proposed actions, but the system is similar in principle to conservation banking and habitat conservation plans. As noted above, however, we seek comments whether this policy may be expanded so that States, landowners, tribes, and other non-Federal entities may accrue credits for contributions to recovery.

Recovery credits must be realized to create a "bank" of credits before they can be used to compensate for adverse effects to listed species. Unlike the situation with conservation banks, the recovery crediting system may be used for either permanent or temporary effects. However, the positive effects of the credits may be temporary (e.g., secured by a term contract) only if the negative effects to be offset are also temporary and, further, if the accounting function of the recovery credit system ensures that benefits of the credits are achieved in a way that actually offsets negative effects. The recovery actions represented by credits must take place within a geographic area that is biologically appropriate to offset the adverse effects, such as a recovery unit.

## II. Guidance Considerations

### A. Authorities

The ESA provides the framework for this guidance. The ESA's stated purposes include providing " \* \* a means whereby the ecosystems upon which [listed] species depend may be conserved \* \* \*" and " \* \* a program for the conservation of such [listed] species \* \* \*." Under section 3 of the ESA, conservation is defined as using " \* \* all methods and procedures which are necessary to bring any [listed] species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." Within the context of this guidance, these definitions help determine and evaluate appropriate conservation measures and benefits. Further, recovery planning is addressed under section 4(f) of the ESA, where provisions for the development of

recovery plans for the "conservation and survival of [listed] species" are provided. A recovery plan is one of the most important tools to ensure sound decision-making throughout the recovery process.

Section 7(a)(1) of the ESA requires that all Federal agencies " \* \* \* in consultation with and with the assistance of the [Service], utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of [listed species]." There is broad discretion for Federal agencies to determine the appropriate methods for implementation of section 7(a)(1). One possible method for agencies to utilize their authorities for the conservation of the species is through this recovery crediting system.

Establishing a recovery crediting system that results in a net conservation benefit to a listed species would contribute to that species' recovery. That is, the status of the target species will improve because, overall, a net conservation benefit must be sufficient to contribute to the recovery of the target species. Of course, each Federal agency will have to balance their authorities, statutory obligations and missions to determine if this policy is appropriate or viable for their purposes. For example, a Federal agency will have to determine if it has authority to acquire interest in non-Federal lands.

#### *B. Goals and Objectives*

The goal of a recovery crediting system is to enhance the ability of Federal agencies to promote the recovery of listed species on non-Federal land and offset adverse effects to listed species from proposed actions. Objectives are (1) to produce a net conservation benefit for the target species that advances its recovery, (2) to increase the flexibility of Federal agencies to accomplish their missions while meeting their requirements under the ESA, and (3) to promote effective Federal/non-Federal partnerships for species recovery.

In order to meet the first objective, the standard for establishing recovery credits should be implementing actions within an approved recovery plan or other Service-approved document (such as a conservation strategy or framework) that specifically addresses the major threats identified for a species. An important element of any recovery crediting system is the implementation of one or more specific tasks included in a species' recovery plan or an alternative Service-approved document necessary to meet downlisting or delisting criteria. Providing credits for

recovery tasks allows Federal agencies to work together with other entities to more effectively use conservation measures in achieving net benefits that contribute to recovery, rather than simply addressing on-site effects of particular projects. When it is possible to foresee the utility of a recovery crediting system during the preparation of a recovery plan, authors of a plan should incorporate elements of the system explicitly in the plan.

#### *C. Principles of Recovery Crediting*

Simply put, the recovery credit system is: (1) The development and accrual of credits, which would accomplish recovery tasks and have a net conservation benefit for the target species; and (2) A subsequent Federal action, which uses (debts) some portion of the credits, as part of the Federal action to offset adverse effects.

Federal agencies can employ a recovery crediting system to accomplish recovery tasks as well as offset the adverse effects of their actions. Although Federal agencies with appropriate authorities may also purchase credits in a conservation bank or employ other mitigation or conservation measures, a Federal Agency may want to establish a system specific to its needs. Recovery crediting works within the existing framework of the ESA and its implementing regulations. This guidance is intended to assist in the early stages of planning and development of a proposed recovery crediting system. While no two crediting systems are likely to be identical, this guidance serves to address fundamental principles that would apply to all situations.

The general principles of establishing a recovery crediting system include:

##### *The Recovery Crediting Process*

- Information gathering and analysis;
- Planning and credit development phase; and

• Consultation on the credit accrual process (may be combined with the consultation on the debiting process)

##### *The Recovery Debiting Process*

- Debit development phase;
- Programmatic debiting

consultation; and

• Project specific consultation under programmatic consultation.

##### *Project Specific Application*

• Project specific consultation under programmatic consultation; and

- Actual debits of the credits.

While these bullets are based on multiple consultations, the Service believes that consultation can be achieved in many cases through a two-step consultation process: (1) A programmatic consultation to establish

the recovery credit and debiting process and (2) a project specific consultation.

#### *D. Coordination Process*

The Service has neither the resources nor the authorities to implement many, if not most, recovery actions. Collaboration with a wide variety of potential stakeholders is essential for the implementation of recovery plans. An appropriate recovery crediting system can assist the Service, other Federal agencies, and their partners to achieve more effective implementation of recovery plans.

The Service and the Federal action agency will coordinate to ensure that the crediting system complies with all applicable laws. The Service and the Federal action agency should coordinate to ensure that the crediting system complies with all applicable laws. In particular, action agencies and the Service may need to review laws relating to privacy such as the Freedom of Information Act ("FOIA") and the Privacy Act. Further, depending on the system used to create the recovery credits, action agencies and the Service may need to review the Federal Advisory Committee Act ("FACA"). The National Environmental Policy Act ("NEPA") may be a relevant consideration as well. Service employees can consult with their appropriate solicitor's office for more specific advice with regard to these laws.

The Service will coordinate with appropriate Federal and State partners, and we will encourage State and local entities, both governmental and non-governmental, to participate on the various workgroups and committees formed under the recovery crediting system that will be central to each process involved. For example, a local scientific committee may be established to assist the Service in defining recovery credits. While accrued recovery credits are only used by the Federal agency, the accrual process (as described below) is the key to success and should include participation by whatever non-Federal entities are appropriate.

### **III. Recovery Crediting Process**

#### *A. Information Gathering and Analysis Phase*

This phase involves the identification of threats and the conservation actions needed to address those threats. Generally, the species' recovery plan will provide a framework for analysis. This analysis establishes the means by which a credit in a recovery crediting system will be measured and accounted for. Information gathering and analysis

involves the compiling of available information sources, identifying data gaps, and evaluation of target species. As stated above, a central element to defining a recovery crediting system is coordination with appropriate Federal and State partners, as well as interested local and non-governmental entities.

Within this phase, two important issues should be addressed: (1) Evaluation of the conservation needs of the target species, and (2) determination whether a recovery crediting system is feasible based on the conservation needs of the listed species. Critical to both issues is the ability to evaluate measurable conservation benefits to the target species. Recovery crediting systems will vary in details, and some listed species may not be appropriate for inclusion in a credit system based on their conservation needs. Examples may include:

- Species with poorly understood threats,
- Species for which even minimal incidental take is likely to result in a jeopardy determination,
- Species with recovery plans that only provide interim objectives due to a lack of information necessary for recovery, or
- Species for which credits cannot easily be valued due to the nature of threats (e.g., a local endemic threatened by impoundment of a river).

#### *B. Planning and Development Phase*

This phase uses the results of the information gathering and analysis to establish in detail what constitutes a credit. As in other conservation programs, the planning and development phase is likely to be the most important and time-consuming part of the process. Although debiting of credits will not come into play until after the credits are established, the debiting must be considered in the credit development phase in order to meet the standard of a net conservation benefit. As part of the planning process, Federal agencies may identify future needs, locations of future projects, types of future projects, and associated project activities. Values may be assigned to different tasks within a recovery plan or alternative Service-approved planning document based on priority, and the use of debits may be limited depending on the needs of the species' recovery. In addition, the recovery crediting system must integrate monitoring and reporting of both accrual and debiting of credits.

Any recovery crediting system should address the threats that caused the species to be listed, advance the conservation goals of the species and must be based on sound scientific

principles. An important part of the identification of credits is to first identify the threats to the species and measures to remove or ameliorate those threats to establish a conservation framework for the species. When conservation goals for the species have been established, the Service will be able to identify the appropriate unit of measure to establish a credit. The connection between threat, conservation measure, and credit must be transparent. That is, the system must demonstrate the relationship between the conservation value of the conservation measure as it applies to the credit.

As stated above, in instances where a recovery plan is not specific, is not available, or is outdated, the Service may consider other means to establish recovery crediting. We will use information we determine represents the best available scientific information on the needs of the species. One option may be to develop a local step down approach or strategy to address the needs of a species. Other documents that may be useful in this regard include a recovery outline, a 5-year status review conducted by the Service, State recovery plans, final listing rules, and State Wildlife Action Plans.

Credits should be valued based on recovery tasks, or analogous measures, available to a Federal agency. This phase will develop values to be assigned to recovery tasks, ensuring that a net conservation benefit is realized for the target species. Credit values are based upon achieving measurable objectives, and higher priority recovery tasks would generally receive more credit than lower priority ones. Ranking threats may be accomplished among or within tasks in a recovery plan. For example, various Federal conservation programs use a project selection process based on several considerations. Higher value (i.e., more credit) is typically placed on potential projects that:

- Preserve long term habitat.
- Address high priority conservation needs.
- Are larger in size (i.e., habitat size or quality).
- Are adjacent or in proximity to public lands or other permanently protected areas.
- Target a specific geographic focus area (e.g., recovery unit).
- Benefit multiple species.
- Establish corridors to accommodate migration or connect fragmented habitat.

In this phase, the temporal nature of potential effects on or needs of the species may be analyzed. Many species require active management (e.g.,

invasive species control, prescribed fire, etc.) or public outreach to contribute to recovery or research to support recovery. Thus, some credits may be temporary in nature, provided the action meets the conservation needs of the species. Temporary credits could be used to offset temporary adverse effects in appropriate situations that still allow a net conservation benefit. For example, many transportation and linear utility projects require temporary workspace for construction, which is later returned to pre-construction conditions. An agency could accrue credits for the restoration and temporary protection of degraded habitat to mitigate for habitat that has temporary adverse effect, with the duration of credit based on benefits achieved at the restored site and eventual restoration of the affected site.

In its simplest form, a single Federal agency would identify a recovery action(s) for establishment of a recovery crediting system. For example, a recovery plan may call for the permanent preservation of a viable population in a particular recovery unit. A Federal agency may identify that need, and develop a process for accruing credits through conservation easements that would meet that objective of the recovery plan (preserving the viable population). Credits reflecting habitat protection or restoration would be considered to be banked when conditions on the ground fully reflect the recovery goal supported by the credits. More complex crediting systems may involve multiple Federal agencies and may assign credits to several or all tasks within a recovery plan. In either case, a single Federal agency would be the holder of credits. Whenever possible, other partners should be included in the development process (e.g., State agencies, non-governmental organizations, etc.), and they may play a major role in implementing the credit accrual process.

Finally, in the development phase, it is important to address the transferability of accrued credits. Circumstances may arise in which a Federal agency may opt to sell or transfer banked credits to another agency. These situations should be considered early and be included in the crediting process, but may be defined in greater detail within the debiting process.

#### *C. Consultation on Credit Accrual Phase*

Upon completing the development of a proposed crediting process the Federal action agency will consult under section 7 of the ESA. Thus, the use of a proposed crediting system would be a

discretionary Federal action that “may affect” a listed species, which requires section 7 consultation. For the process developed to accrue credits, the net effect on the target species should be beneficial. Most credit accrual processes will be addressed through informal consultation, concluding with a “not likely to adversely affect” concurrence letter from the Service. (As noted above, this consultation could be part of a programmatic consultation.) In these cases, the Service will evaluate all potential effects of the credit accrual process and, if it is determined that the effects would be insignificant, discountable, or completely beneficial, provide an appropriately detailed rationale for the concurrence. In some instances, temporary adverse effects may be necessary to achieve the maximum conservation benefit to the target species. For example, a survey may involve some level of taking of a listed species. In these cases, it may be necessary to consult formally on the credit accrual process, if it is anticipated that incidental take may occur as a result of credit acquisition. Alternatively, a Federal agency may consult on the entire recovery credit system, covering accrual and debiting in one programmatic consultation.

As discussed above, although a Federal agency needs to consider how credits will be debited while determining how they will be accrued, once the agency establishes a recovery crediting system through the section 7 consultation process, a Federal agency may begin accruing credits through the procedures outlined in the plan.

#### IV. Recovery Debiting Process

##### A. Debit Development Phase

This phase establishes the standards according to which credits will be used. This phase may be conducted separately or concurrently with the credit accrual planning and development. An advantage of considering crediting and debiting at the same time is that a better match may be achieved between the credits accrued and the debiting needs. Establishing the guidelines for debit use and other factors, limitations, accounting, and monitoring and reporting may be created as a stand-alone document, but will eventually become the “Project Description” within a biological assessment or evaluation, and subsequent biological opinion. In addition, the debit process could consider the possibility of Federal agencies other than the Federal agency that established the Recovery Crediting System being able to use credits.

Consideration of debits includes ensuring that agencies maintain a net conservation benefit gained by credit accrual. In general, credits that accomplish tasks in a species’ recovery plan would normally meet a net conservation benefit standard. However, because credits would be used for mitigation, it is important to ensure the debit process does not limit, counter, or preclude necessary recovery objectives. Examples of using a debiting process to ensure a conservation benefit include:

- Using biologically-appropriate mitigation ratios in habitat-based crediting (e.g., more than one credit for each debit necessary to fully offset adverse effects).
- Maintaining a credit balance that ensures an incremental increase in the species’ conservation status.
- Restricting use of debits to areas deemed not essential to recovery.
- Limiting the types of activities available for debiting.

Similar to planning the crediting phase, it is essential that an activity or action’s potential effects to the target species be sufficiently understood in order for it to be included in the debiting process. In some instances, the effects of even well-understood actions may possess some level of uncertainty. The debiting process should be designed to accommodate uncertainty evaluated based on a clearly stated and explained set of assumptions.

##### B. Programmatic Debiting Consultation

The debiting process is subject to consultation under section 7(a)(2) of the ESA. This consultation determines whether a proposed agency action is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat. Programmatic consultation addresses programs or groups of similar actions implemented by a Federal agency. A non-jeopardy biological opinion also determines the amount or extent of anticipated incidental take, if any.

In implementing a recovery crediting system, the programmatic approach will be necessary due to the nature of credit and debit concepts, and to ensure a net conservation benefit to the species. The Federal action subject to consultation is the establishment of the debiting process and actions included therein. Under programmatic consultation, much of the effects analysis is completed upfront, rather than repeatedly for each individual action. By completing this analysis beforehand in a programmatic biological opinion, the anticipated effects of the action agency’s future projects can be added into the environmental baseline prior to

their actual completion. The appended and tiered methods of programmatic consultation involve a two-stage consultation process that would be appropriate here. The first stage is programmatic and analyzes the potential landscape-level effects that may result from the debiting process. The second stage addresses project-specific effects of each individual project under the action agency’s program and previously included in the programmatic biological opinion.

A Federal agency may include conservation measures in a proposed action as mandatory, non-discretionary actions or activities that will minimize adverse effects to listed species. A recovery crediting system would formalize that process and mitigate adverse effects to listed species by taking measures (accruing recovery credits) that may be included as conservation measures for a specific project in a specific geographic location. The Service would consider the use of recovery credits during the jeopardy analysis of a biological opinion. The ESA requires the Service to specify any necessary or appropriate minimization of the effects of incidental take exempted in a biological opinion. Because recovery credits would be acquired in advance of a specific Federal action and may not be associated with incidental take resulting from the proposed action itself, they would not normally minimize the effects of incidental take associated with the specific action. The biological opinion may still require reasonable and prudent measures and terms and conditions that address the incidental take resulting at the project-specific level.

The end product of programmatic consultation will be a comprehensive biological opinion issued to the Federal action agency that describes in detail the debiting process and all actions and activities involved. It will evaluate all potential effects of the actions (debits) as well as the credits used to offset the effects and provide a jeopardy analysis for listed species and destruction/adverse modification analysis for designated critical habitat if applicable. It is important to consider all listed species that may be affected, not just the target species, and any designated critical habitat occurring in the action area for the jeopardy/adverse modification analysis.

The programmatic biological opinion may not be able to describe take at the programmatic level. In this case, the specific take authorization and associated reasonable and prudent measures and terms and conditions

would be described in site-specific biological opinions. If the overarching biological opinion can describe, with appropriate documentation from the action agency, the project-specific actions, then a list of reasonable and prudent measures and terms and conditions can be included, and no additional opinion is needed for those actions. The Service must develop reasonable and prudent measures and terms and conditions in close coordination with the action agency. This coordination may identify specific measures the action agency will incorporate at the project-specific level.

### C. Project-Specific Consultation

As individual projects are proposed under the recovery crediting system, the action agency provides project-specific information as described in the programmatic biological opinion. This information should include, but not be limited to, the specific areas to be affected, the species and critical habitat that may be affected, a description of anticipated effects (in reference to those already analyzed in the programmatic biological opinion), a description of any additional effects not considered in the programmatic consultation, appropriate reasonable and prudent measures and terms and conditions, the resulting debits as ranked in the programmatic opinion, and the credit balance resulting from the action. The project-level consultation should be an expedited process because most of the needed analysis will have occurred at the programmatic level. This is an added incentive for Federal agencies to use programmatic consultation and recovery crediting.

### V. Monitoring

A monitoring program is essential to the success and the credibility of a recovery crediting system, both for the crediting and debiting aspects of the process. The scope of the monitoring plan should be commensurate with the crediting system's conservation framework, based on the goals and objectives of the species' recovery plan; the monitoring should measure the objectives as implemented by the crediting system. Ultimately, the Federal action agency is responsible for accounting for credits and compliance with the debiting process as determined through the programmatic biological opinion. The Service should provide technical assistance in the monitoring plan, and will be responsible for periodic review of the species' environmental status, either through an established protocol or more conventional methods (e.g., 5-year

review, programmatic biological opinions, etc.).

In general, monitoring may comprise two elements: Effectiveness monitoring and compliance monitoring. Effectiveness monitoring will evaluate the credit valuation and accrual process in achieving the goals and objectives of recovery actions. This monitoring focuses on the crediting process, involves principles of adaptive management, and includes all implementation partners. The responsibility of effectiveness monitoring belongs to the Federal agency that accrues and holds credits, although other entities would be involved. When the credit accrual process results in a biological opinion from the Service, effectiveness monitoring provisions are part of the project description. Any coverage under the incidental take statement, therefore, is dependent on the action agency carrying out the action as described in the project description.

Compliance monitoring audits and accounts for credits and debits, and ensures proper implementation of the agency action. Any monitoring and reporting must be incorporated into the project description as an integral part of implementing the recovery crediting system.

Although a recovery crediting system is a focused tool for Federal agencies to make a positive contribution towards the recovery of listed species while creating flexibility for offsetting effects of their other actions, the Service encourages the development and use of other types of crediting systems to meet other needs and circumstances. In addition, this guidance by no means restricts Federal agencies from developing other crediting systems such as conservation banks. A recovery crediting system is one method by which a Federal agency may contribute towards its section 7(a)(1) responsibilities. The Service encourages Federal agencies to develop other programs that would also contribute to the recovery of listed species on Federal and non-Federal lands.

### VII. References

The following is a list of documents that would be useful for establishing a recovery crediting system. Some are in draft form, but are readily available to Service personnel through Regional Offices or the Washington Office.

U.S. Fish and Wildlife Service. 1990. Policies and guidelines for planning and coordinating recovery of endangered and threatened species. Washington, DC. 14pp. + appendices.

U.S. Fish and Wildlife Service. 1999. Final Safe Harbor Policy. 64 FR 32717, June 17, 1999.

U.S. Fish and Wildlife Service. 2003. Guidance for the Establishment, Use, and Operation of Conservation Banks.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. Endangered Species Act Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences. Washington, DC.

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 2004 (updated 2006). Draft Endangered and Threatened Species Recovery Planning Guidance.

Williams, B.K., R.C. Szaro, and C.D. Shapiro. 2007. Adaptive Management: The U.S. Department of the Interior Technical Guide. Adaptive Management Working Group, U.S. Department of the Interior, Washington, DC.

### Public Comments Solicited

The draft guidance is broad in nature and intended to be adaptable to a wide array of local conditions and circumstances. We are particularly interested in receiving comments on the following aspects of the draft document:

- The level of detail required to make the guidance most useful in the field.
- The clarity of the standards established for a recovery crediting system.
- The means by which a Federal agency will know that credits it accrues will be available for its use in the future.
- The potential relationship between recovery crediting systems and critical habitat.

We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information we receive, may lead us to adopt final guidance that differs from the draft. We prefer to receive comments via e-mail, but you may submit your comments by any method mentioned above in **ADDRESSES**.

Please submit e-mail comments to [recovery\\_crediting@fws.gov](mailto:recovery_crediting@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Recovery Crediting comments" in the subject line of the message, preferably with your full name and return address in the body of your message. Please note that the Internet address will be closed when the public comment period ends.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 25, 2007.

**Kenneth Stansell,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. E7-21563 Filed 11-1-07; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Deemed Approved Tribal-State Class III Gaming Compact.

**SUMMARY:** This notice publishes the Approval of the Tribal-State Compact between the State of California and the Yurok Tribe.

**EFFECTIVE DATE:** November 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The compact allows for two gaming facility and authorizes up to 99 gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2025. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Tribal-State Compact between the State of California and the Yurok Tribe is now in effect.

Dated: October 24, 2007.

**Carl J. Artman,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. E7-21624 Filed 11-1-07; 8:45 am]

**BILLING CODE 4310-4N-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[CO-840-07-1610-DQ-241A]

**Southwest Resource Advisory Council; Canyons of the Ancients National Monument Subgroup Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (SWRAC) Canyons of the Ancients National Monument (Monument) Subgroup, will meet as directed below.

**DATES:** The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup will meet on November 30, 2007 at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 9 a.m. Two public comment periods are planned and will begin at approximately 11:30 a.m. and 2:30 p.m. The meeting will adjourn at approximately 4 p.m. A second meeting will be held December 7, 2007 at the Anasazi Heritage Center in Dolores, Colorado. The meeting will begin at 9 a.m. Two public comment periods are planned and will begin at approximately 11:30 a.m. and 2:30 p.m. The meeting will adjourn at approximately 4 p.m.

**ADDRESSES:** The Southwest RAC Canyons of the Ancients National Monument (Monument) Subgroup meeting will be held at the Anasazi Heritage Center, located at 27501 Highway 184, in Dolores, Colorado.

**FOR FURTHER INFORMATION CONTACT:** LouAnn Jacobson, Monument Manager or Heather Musclow, Monument Planner, Anasazi Heritage Center, 27501 Hwy 184, Dolores, Colorado 81323; Telephone (970) 882-5600.

**SUPPLEMENTARY INFORMATION:** The 11-member Subgroup provides counsel and advice to the full Council for its consideration and deliberation concerning development and implementation of a management plan developed in accordance with FLMPA, for public lands within the Monument.

We plan to discuss include the content of the Monument's Draft Resource Management Plan/Draft Environmental Impact Statement and other issues as appropriate.

The meeting is open to the public and includes a time set aside for public comment. Interested persons may make oral statements at the meeting or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Subgroup meetings will be maintained at the Anasazi Heritage Center in Dolores, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days of the meeting. In addition, minutes and other information concerning the Subgroup can be obtained from the Monument planning Web site at: <http://www.blm.gov/rmp/canm> which will be updated following each Subgroup meeting.

Dated: October 26, 2007.

**LouAnn Jacobson,**

*Monument Manager, Canyons of the Ancients National Monument.*

[FR Doc. E7-21580 Filed 11-1-07; 8:45 am]

**BILLING CODE 4310-JB-P**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[UT-921-08-1430-FR-241E; UTU-85820]

**Filing of State Indemnity Selection Application and Termination of Exchange Segregation; Utah**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** On September 11, 2007, the State of Utah, School and Institutional Trust Lands Administration (State) filed indemnity selection application UTU-85820, to have the surface and mineral estate of 281.72 acres of Federal land transferred to the State pursuant to Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851-852). The lands have been selected by the State *in lieu* of school section lands granted to the State pursuant to the Utah Enabling Act of July 16, 1894, but for which title could not pass because the lands were otherwise encumbered or reserved at the time of statehood.

**FOR FURTHER INFORMATION CONTACT:** Joy Wehking, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155. Phone 801-539-4117.