Appendix 1 to 735 FW 1

Fish and Wildlife Service

Policy Regarding Voluntary Prelisting Conservation Actions

TABLE OF CONTENTS

Section	Page no.
Policy Explanation	1
Section 1: Purpose	10
Section 2: Definitions	10
Section 3: Treatment of Voluntary Prelisting Conservation Actions	12
Section 4: Definitions of Voluntary Prelisting Conservation Actions	13
Section 5: Roles of the States	18
Section 6: Role of the Fish and Wildlife Service	20
Section 7: Principles and Requirements of Voluntary Prelisting Conservation Actions	20
Section 8: Program Administration	30
Section 9: Prelisting-Credit-Trading Process	33
Section 10: The Single Use of Voluntary Prelisting Conservation Actions as a Mitigation or Compensatory Measure	36
Section 11: Relationship of Voluntary Prelisting Conservation Actions to Candidate Conservation Agreements	36

Policy Explanation

Introduction: Incentivizing voluntary conservation action prior to listing. The policy has two stated purposes, as set forth in section 1. The first and more general purpose is to incentivize voluntary conservation actions on behalf of species before they reach the point at which they need to be listed as threatened or endangered under the ESA. Such voluntary conservation actions, if they address threats at a sufficient scale and for a long enough time, could result in stabilizing and increasing populations of the species such that the protections of the ESA would not be needed. In other words, the voluntary conservation actions could contribute to precluding the need to list the species. The policy seeks to reward those who voluntarily undertake actions to help the species when they have no legal obligation to do so. As described in more detail later, the reward is that the benefits to the species from a voluntary conservation action undertaken prior to listing may be available to be used—either by the person who undertook that action or by a third party—to mitigate or be a compensatory measure for the detrimental effects of another action undertaken after listing. In

this policy, the credit earned by undertaking a prelisting conservation action can be transferred to a third party if the prelisting conservation action and the credit are for the same species and within the appropriate biological area (i.e., service area). The service area may encompass more than one State.

Clarifying existing regulations at 50 CFR 402.14(g)(8). A second, more narrow, purpose of the policy is to clarify a provision that has been in the regulations that implement section 7 of the ESA since 1986, but that received little explanation then or thereafter. That provision, set forth in 50 CFR 402.14(g)(8), states that the Service "will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation" during the course of consultation under section 7(a)(2) of the ESA or "early consultation" under section 7(a)(3). The policy makes clear that beneficial actions "taken prior to the initiation of consultation" include actions taken prior to listing, provided they meet the policy's definition of a "voluntary prelisting action." Note that the Service will also give appropriate consideration during our consultation process to other beneficial actions that do not qualify for the special treatment described in this policy. In addition to clarifying that prelisting beneficial actions are among the actions to be given "appropriate consideration," the policy also clarifies how the Service will give appropriate consideration to those beneficial actions that are subject to the policy. Specifically, in the course of section 7 consultations, the Service will consider the beneficial effects of a voluntary prelisting conservation action to be included as part of the environmental baseline for the agency action if requested by the action agency or, in the case of an agency action involving a permit applicant, by such applicant.

The policy also makes clear that the Service will evaluate the conservation value of a prelisting conservation action based on its inclusion and priority in a conservation strategy for the species. A conservation strategy is a foundational document that should guide all conservation efforts for at-risk unlisted species, including Federal, State, Tribal, and private conservation actions. A

strategy can be authored by any one of these entities, but ideally it will be created as a collaborative effort, with States playing a primary role, and the public having an opportunity to contribute. A conservation strategy that is used in a voluntary-prelisting-conservation program must be reviewed by the Service if the Service is not an author, co-author, or part of the effort that developed the strategy. Coordinated efforts will likely result in better conservation outcomes for the species and efficiencies in implementing and monitoring conservation actions. While a strategy may cover more than one State and be ecosystem-based and thus include a suite of species, from the Service's perspective, the primary goal of the strategy is to provide the necessary detailed information to guide management of a species so that it is successfully conserved and does not need the protections of the ESA.

How voluntary prelisting conservation actions are to be treated. Section 3 of the policy sets forth in general terms how the Service will treat voluntary prelisting conservation actions. Two possibilities are described. First, such an action can be treated as a voluntary prelisting conservation action to offset the impacts of the incidental taking of a listed species for which a permit is sought under section 10(a)(1)(B) of the ESA in conjunction with a habitat conservation plan. Alternatively, where a proposed action that detrimentally affects a listed species is authorized, funded, or carried out by a Federal agency, the voluntary prelisting conservation action can be treated as a compensatory measure for the proposed action. Section 7 of the ESA, unlike section 10(a)(1)(B), does not explicitly require that detrimental impacts be mitigated, but it is a long-established practice under section 7 that Federal agencies or their permit applicants can incorporate mitigating measures into their proposed projects so as to reduce their overall impact. The policy makes clear that voluntary prelisting conservation actions can be used in this manner.

Section 3 of the policy also establishes that a voluntary prelisting conservation action undertaken by anyone, including a Federal agency, can be used as described in the policy. Unlike some other incentive-based policies (e.g., the Safe Harbor Agreements (SHAs) policy (64 FR 32717,

June 17, 1999) and the Candidate Conservation Agreements with Assurances (CCAAs) policy (64 FR 32726, June 17, 1999)) that apply only to non-Federal property owners, this policy applies to anyone or any entity that undertakes the prelisting conservation action through a program that follows this policy.

Defining voluntary prelisting conservation actions. Section 4 of the policy defines "voluntary prelisting conservation actions." The definition has three key components. First, the action has to be undertaken before the species it is intended to benefit is listed under the ESA. An action can be undertaken at any time prior to a species being listed. Once a species has been listed, however, no new voluntary *prelisting* conservation actions would receive credit under this policy, but ongoing actions initiated prior to a final listing would continue. Second, the policy also specifies that actions taken prior to the policy being finalized will not be considered under this policy. However, any conservation actions taken outside the policy would still be considered in a listing decision. Third, the action must be truly voluntary, one that is not required by the ESA or by any other Federal, State, or local regulatory mechanism.

The Service recognizes that State wildlife agencies have management expertise, authority, and responsibility for conservation of unlisted species in their respective jurisdictions. Acknowledging this jurisdiction, the third component requires that actions undertaken are part of a State-administered program, and the program must reference or include a conservation strategy for the species that has been developed or adopted by the State. The policy contemplates the active engagement of the States in designing and implementing a program to encourage voluntary prelisting conservation actions, as further described in section 5 of the policy. The policy envisions that the States will use a collaborative and transparent approach in designing such a program. The policy also makes it clear that States can use Federal funds in accordance with section 6 of the ESA to administer and oversee the implementation of the prelisting conservation program to ensure the successful implementation

and maintenance of the voluntary prelisting conservation actions as they relate to candidate species. The States may allow for another entity (e.g., local government or nongovernmental organization) to fulfill the measuring, monitoring, and oversight obligations that are necessary to ensure the successful implementation and maintenance of the voluntary prelisting conservation actions. Regardless of which State agency or entity is authorized to develop and track prelisting mitigation actions, the State agency with jurisdictional authority for the species identified (plant or animal) must be provided an opportunity to participate in the development of, and ultimately either approve or deny, any mitigation plans or criteria for issuing credits that may affect those populations.

Role of the States. The role of the States under the policy, should they choose to participate, is addressed in greater detail in section 5. This section of the policy aims to ensure the primacy of the States in conserving species before they are listed, while also ensuring an effective partnership with the Service so that voluntary prelisting conservation actions will be recognized by the Service in the event that the species is later listed. An important role of the States is to ensure that voluntary prelisting conservation actions are effectively implemented and maintained. The primary tracking and oversight is to be done by the States, which will then annually provide information on the conservation actions to the Service. However, in some cases, a single State may be unable to take a lead role in implementing a program that qualifies under this policy. States may then decide to form partnerships or consortiums in order to pool resources or to better manage species whose ranges include multiple States. Additionally, under some circumstances, no State agencies within a State may be able to fully implement a program under this policy. In these cases, the Service or another entity may assist a State, if requested. To avail themselves of the postlisting opportunity provided by the policy, persons planning to undertake voluntary prelisting conservation actions must do so within the framework of a State- or multi-State-approved program and a State conservation strategy for the species or multi-species-ecosystem- or landscape-conservation strategy; the Service must have

reviewed both the program and conservation strategy. If no State conservation strategy exists, the State may adopt a strategy developed by another entity.

Some States may have their own laws or regulatory authorities (separate from the ESA) under which they can require mitigation requirements for certain activities. If that is the case, and a person who undertakes a voluntary prelisting conservation action is allowed by the State to treat the benefits of that action as fulfilling the mitigation requirements of State law, the individual cannot subsequently use the same action as mitigation for a separate activity carried out after listing. That is, if used prior to listing to meet the mitigation requirements of State law, the benefits of prelisting conservation actions cannot be used again as mitigation for separate actions carried out later. Use of prelisting conservation actions to meet State mitigation requirements should be reflected in the register maintained by a State so as to avoid using the same credit(s) for multiple actions.

Role of the U.S. Fish and Wildlife Service. The role of the Service is addressed in section 6 of the policy. This section explains that the Service will assist the State(s), as requested, in tracking the implementation and maintenance of the prelisting conservation actions, as well as reviewing any voluntary prelisting conservation programs developed under this policy. While States have the primary role in managing species that are not listed under the ESA, they may not have the necessary resources or authority to implement a conservation program for some species or to fully track the prelisting conservation actions. Consequently, the Service may assist the States, if requested by a State, to help achieve the mutual goal of conserving species before they are listed under the ESA. Additionally, the Service will coordinate between the State(s) and other Federal agencies to help develop conservation actions and assist in tracking the implementation and maintenance of those actions, if requested. Should a species be listed, the Service will review and approve the use of credits from voluntary prelisting conservation actions as compensatory measures or mitigation under sections 7 and 10, respectively, of the ESA.

Quantifying beneficial and detrimental impacts. Providing credit for an effort to mitigate or serve as a compensatory measure for the impacts of a detrimental action to a species (or any other resource) requires measuring both the detrimental impact and the offsetting benefit to be secured through a voluntary prelisting conservation program. Section 7 of the policy provides that, in evaluating the impacts of both detrimental actions and beneficial actions, the Service will use the same criteria, standards, and metrics to quantify the former as it is used to quantify the latter. While the policy provides general guidance on establishing the metrics, and references the FWS's ESA mitigation policies for further information, it does not specify the metrics that will be used for particular species. Instead, those will need to be developed independently and are likely to vary from species to species or situation to situation. However, the benefit of a voluntary prelisting conservation action for which credit may be available must be greater than the detriment from the action for which the credit will be used; that is, the benefit from the prelisting action, combined with the detriment from a later action, must result in a net conservation benefit to the species. This would be achieved by permanently setting aside a minimum of 10 percent of the credits for each action to gain a net conservation benefit to the species (i.e., net benefit credits). The percent set aside could be greater than 10 percent in some cases—if, for example, the status of the species is declining precipitously. The specific percentage will depend on the status of the species and the nature of the actions. Some additional credits will also be set aside to manage for risk of the conservation actions failing to achieve their intended purpose; these do not need to be permanently set aside. Also, a voluntary prelisting conservation action can be supplemented with an additional postlisting conservation action so that the combined benefit of prelisting and postlisting conservation actions is greater than the detriment from the postlisting detrimental actions.

Over time, new scientific information may indicate that the metric may need revision or a new metric should be used. The Service will work with the program administrator to decide if the metric

needs to be changed. However, any new or improved metrics will not undermine or devalue existing credits or voluntary conservation action agreements except in cases where failure to utilize a new or revised metric would appreciably reduce the likelihood of survival and recovery of the affected species in the wild. In these cases, the Service will require a new or improved metric for credits not yet used or sold and will work with the landowner to find alternatives to address the needed changes.

Preferential use of voluntary prelisting conservation actions to offset the impacts of postlisting activities. Since the purpose of the policy is to incentivize voluntary prelisting conservation actions by allowing the benefits of such actions to serve as mitigation or a compensatory measure for the detriments of postlisting actions, that purpose would clearly be undercut if the Service were routinely to require some other form of mitigation or compensatory measure for actions that it consults on or authorizes after listing. Put differently, those who invest in voluntary prelisting conservation actions under the policy are likely to want a reasonable assurance that, when the Service evaluates the mitigation or compensatory measure needs for postlisting activities, we will give first consideration to these already-established mitigation or compensatory measures. However, although prelisting conservation actions may be proposed by a proponent as mitigation or a compensatory measure for postlisting detrimental actions, this policy does not prevent the Service from encouraging or recommending an alternative mitigation or compensatory measure in circumstances where it is determined to clearly produce a better, or more certain, environmental outcome. Such circumstances are expected to be the rare exception to the preference to use existing credits from voluntary prelisting conservation actions. Likewise, if the proponent of a postlisting action can achieve a commensurate or better environmental outcome with less effort, cost, and time expended, the policy allows the proponent the flexibility to make that choice.

Effect of using voluntary prelisting conservation actions to offset the impact of postlisting activities. As previously noted, section 5 of the policy makes clear that, if a State treats the benefits of

a prelisting conservation action as meeting State mitigation requirements for actions carried out prior to listing, the use of those benefits precludes their later reuse. In a parallel fashion, section 8 of the policy provides that, after listing, once the Service allows the benefits of a prelisting conservation action to serve as mitigation or a compensatory measure for the impacts of a postlisting action, those same benefits cannot not be used again to offset the impacts of other later postlisting actions.

Relationship to Candidate Conservation Agreements. Although CCAs, CCAAs, and voluntary prelisting conservation actions covered by the policy serve the same purpose, conservation of unlisted species before they become listed, they employ different mechanisms, have different approval requirements, and have other important differences.

First, a CCAA is intended to provide a landowner (non-Federal) with an assurance that, if the species covered by the CCAA is later listed as threatened or endangered, no new restrictions or conservation obligations will be imposed on the landowner for that species. In contrast, the purpose of the policy's treatment of a voluntary prelisting conservation action is to give a landowner (Federal or non-Federal) the opportunity to have that action serve as mitigation or a compensatory measure for the detrimental impact of an action undertaken after the species is listed as threatened or endangered.

Second, CCAAs are subject to more exacting approval requirements. To qualify for a CCAA, a non-Federal landowner must commit to carry out conservation measures that are designed to reduce or eliminate those current and future threats on an enrolled property, that are under the control of the property owner, in order to provide a net conservation benefit to the covered species. In contrast, to be treated as a voluntary prelisting conservation action under the policy, an action need only be beneficial to a particular species; the policy requires no specific magnitude of benefit. While it is possible for a voluntary prelisting conservation action to satisfy the requirements of both the CCAA policy and this policy, the action cannot be treated under both policies. Using the same conservation action as mitigation or a compensatory measure against a future detrimental action is inconsistent with

the intent of the CCAA policy to secure durable conservation commitments that would constitute a particular landowner's contributions necessary to preclude the need to list a species. However, a landowner may participate in both a CCAA and a voluntary prelisting conservation actions program if the actions taken under a mitigation program are in addition to those taken to satisfy the CCAA requirements. Also a landowner may terminate their participation in a CCAA and participate in any type of mitigation program. In this situation, the assurances and the incidental take permit associated with the CCAA would no longer be in effect. Section 10 of the policy clarifies this relationship between candidate conservation agreements and prelisting conservation actions as defined by the policy.

Policy Regarding Voluntary Prelisting Conservation Actions

Section 1. Purpose. The purpose of this policy is to incentivize voluntary conservation efforts on behalf of species before they are listed as endangered or threatened species under the Endangered Species Act (ESA); and to clarify the manner in which the Service "will give appropriate consideration to any beneficial actions taken by the Federal agency or applicant, including any actions taken prior to the initiation of consultation" under section 7(a)(2) or 7(a)(3), or to offset the impacts of incidental take of a listed species under section 10(a)(1)(B), of the ESA, as provided at 50 CFR 402.14(g)(8).

Section 2. Definitions. The following definitions apply specifically to this policy:

Additionality: Conservation benefits of a conservation action or measure that improve upon the baseline condition of the impacted species or its habitat in a manner that is demonstrably new and would not have occurred without the prelisting conservation action.

Compensatory measures: Under section 7(a)(2) or 7(a)(3) of the ESA, actions that provide

compensation for unavoidable adverse impacts to species or their habitat. Under this policy, these actions are taken in advance of the impact.

Conservation strategy: A science-based foundational document or a best conservation practice that can guide Federal, State, Tribal, and private conservation actions for candidate and other at-risk unlisted species. A conservation strategy identifies the current condition of the species, includes an assessment of threats, and identifies conservation and science needs, actions that address those threats and needs, and their implementation and monitoring.

Credit (species credit, habitat credit): A defined unit of trade representing the increase or improvement of populations, or quantity or quality of habitat of a species, at a mitigation site or within a mitigation program. Credits are often expressed as a measure of habitat surface area (e.g., an acre or hectare); linear distance of constant width (e.g., stream mile); number of individuals, mating pairs, or family groups of a particular species; habitat function (e.g., habitat suitability index); or other appropriate metric that can be consistently quantified and traded.

Debit: A defined unit of trade representing the loss of populations, decrease in number of individuals, or decrease in habitat quantity or quality of a species at an impact site. Debits will be expressed using the same metrics used to value credits at mitigation sites.

Mitigation: Under section 10(a)(1)(B) of the ESA, programs, projects, or actions intended to offset known or projected impacts to species or their habitats. Under this policy, these actions are taken in advance of the impact.

Net benefit credits: Credits set aside that are not available for use as mitigation. For the purposes of this policy, net benefit credits are used to achieve the net conservation benefit.

Net conservation benefit: The cumulative benefits of the mitigation or compensatory measures (i.e., beneficial actions taken under a voluntary prelisting conservation program) that provide for an increase in the population(s) of the species of interest directly or indirectly through the enhancement

or restoration of its suitable habitat, or maintenance of currently suitable habitat, that reduces or eliminates current and future threats, taking into account the duration of the voluntary prelisting conservation actions and all the adverse effects of the impact project. The net conservation benefits must be sufficient to contribute, either directly or indirectly, to the conservation of the species.

Program administrator: The entity with enforcing authority for the establishment, operation, and management of a voluntary prelisting conservation program. The administrator or their designee(s) must have the authority to enforce management actions, reconcile funding issues, implement adaptive management, track debits and credits, report results, and perform other activities as needed.

Service area: The geographic area within which credits may be applied to offset debits associated with future development activities. Service areas are mapped geographies with unique ecological significance and sometimes political boundaries. The area should be based on the conservation needs of the species as outlined in a conservation strategy for that species.

Section 3. Treatment of Voluntary Prelisting Conservation Actions. If requested to do so by the person, Tribe, or Federal, State, or local government agency that undertakes a qualifying voluntary prelisting conservation action, or by a third party to whom the credits have been transferred, the Service will treat the action as (1) a measure to minimize and mitigate the impact of the taking of an endangered or threatened species pursuant to section 10(a)(1)(B) of the ESA, or (2) an intended compensatory measure of a proposed Federal agency action subject to the consultation requirements of section 7(a)(2) or 7(a)(3) of the ESA. Specifically, in the course of section 7 consultations, the Service will consider the beneficial effects of voluntary prelisting conservation actions to be included as part of the environmental baseline for the action under consideration if requested by the action agency or, in the case of an agency action involving a permit application, by such applicant. Under section 10(a)(1)(B) of the ESA, the Service will consider the credits available through voluntary

prelisting conservation actions when determining the mitigation actions a non-Federal entity needs to implement under a habitat conservation plan. The Service's determination of the effects, or the mitigation needs, of the action being considered under these sections of the ESA will reflect the credits previously awarded under an approved conservation program for the voluntary prelisting action based on priority actions identified in a conservation strategy for the species. The credits earned by undertaking a prelisting conservation action may be transferred to a third party but must be used for the same species, or suite of species, and within a recognized "service area" for particular species. Establishing service areas is critical to ensuring that future impacts are adequately offset. In general, larger service areas provide greater flexibility to trade credits and debits.

Section 4. Definition of Voluntary Prelisting Conservation Actions. As used in this policy, the term "voluntary prelisting conservation action" refers to any conservation measure undertaken to benefit an unlisted species of plant or wildlife as described below, including but not limited to:

- The acquisition or transfer of ownership of land or water or interests therein for conservation purposes;
- The restraint or relinquishment of the lawful use of a particular resource negatively affecting such species;
- The establishment, restoration, enhancement, preservation, or commitment (e.g. financial or legal) to continue management of habitat for such species; and
- The cooperation either in the introduction of such species into a portion of its historical range where it is absent or in the augmentation of such species in an area where it occurs.

Prelisting conservation actions may be supplemented with additional postlisting conservation

actions. The benefit of those combined conservation actions must be functionally greater than the detriment of the action for which the credit is used and retired. That is, the benefit from the conservation actions combined with the detriment of the postlisting action must result in a net conservation benefit to the species (see definition in **Section 2**).

A voluntary prelisting conservation action must be:

(1) Beneficial to an unlisted species that is, or may become, a candidate for listing as threatened or endangered;

(2) Started prior to the date a final rule is published in the **Federal Register** to list the species as an endangered or threatened species under the ESA and after the date this policy is finalized. The actions must be part of an already established conservation program that meets the principles and requirement of this policy, or be included in a voluntary conservation program that has been developed under this policy after the date this policy is finalized. Note that in contrast to the conservation action, the voluntary prelisting conservation program must be operational and generating conservation benefits for the species before the date on which a proposed rule to list the species is published in the **Federal Register**;

(3) Undertaken as part of a State- or multi-State-administered program (including a program that consists of a partnership or consortium of States) that implements a conservation strategy for the species and is intended to encourage voluntary conservation measures for the species; and

(4) Not required by any Federal, State, or local law, regulation, permit, or other regulatory mechanism.

If voluntary prelisting conservation actions have served as mitigation or a compensatory measure for the environmental impacts of activities regulated by the State and

undertaken prior to the listing of a species as an endangered or threatened species, such voluntary prelisting conservation actions cannot earn credit under this policy. Funds available under section 6 of the ESA may be used to supplement funding that is generated by the program itself to administer and oversee the implementation of the program.

The program must be reviewed by the Service to ensure it is in compliance with this policy and the Service's mitigation policies. The voluntary-conservation-action program must identify:

- The service area;
- The metrics that will be used to measure progress toward meeting the conservation outcomes;
- The type and location of compensatory actions;
- A registry or tracking system that ensures transparency;
- Defined process for seeking approval of compensatory-mitigation projects;
- Defined process for a credit buyer to secure credits through a contractual agreement;
- Administrative standards that define monitoring, adaptive-management, financial-assurance, and oversight roles (see sections 7 and 8, below, for additional information); and
- Potential amount or level of take associated with voluntary prelisting conservation actions if the species of interest becomes listed.

Conservation Strategy

To contribute to efforts to prevent the listing of a species, conservation actions must be carefully planned and focused on specific threats in particular areas. If well crafted, conservation actions will stabilize and increase populations of candidate and other at-risk species (at-risk species

are unlisted species that are declining and are at risk of becoming candidates for listing under the ESA; at-risk species may include, but are not limited to, State-listed species, species identified by States as species of greatest conservation need, or species with State heritage ranks of G1 or G2). A species conservation strategy is essential to guide the development of a voluntary-prelisting-conservation program. Without a conservation strategy it is difficult to determine the value to assign to a specific prelisting conservation action. Should the species subject to prelisting crediting be listed under the ESA, the strategy can be the basis for developing a recovery outline and plan.

A strategy is a living document and should be updated as new information is obtained; of particular importance would be new information on the species' status, threats, and aspects of its biology that would change management practices, as well as compatibility with other management plans and conservation actions. Strategies, especially initial ones, do not need to be as complex as a recovery plan, nor is it necessary to know everything about a species before one is developed. However, a strategy does need to include enough information to set preliminary demographic and habitat targets for the species and to guide the on-the-ground conservation actions designed to meet these targets. The strategy-development process should be a collaborative effort and the information used in a strategy should undergo scientific peer review or be derived from scientific literature that has already been peer reviewed.

A voluntary-prelisting-conservation program must be based upon a conservation strategy that includes the seven elements listed below.

1. *Goals, Objectives, and Criteria.* The goal is a statement of what the strategy is designed to achieve. For example, for a candidate species, the goal may be to contribute to precluding listing by increasing the number of populations and individuals through habitat management. Objectives describe the conditions and means necessary for achieving the goal; they can be identified in terms of reduction or elimination of threats to the species, or demographic parameters. Criteria, or

performance standards, are the values by which it is determined that an objective has been reached; they must be specific, measurable, achievable, realistic, and results-oriented, and have a timeframe.

2. *Geography or Landscape Context.* Provide a description of the lands where the species currently exists (e.g., locations, what land ownerships are involved, how many acres are involved). Include available maps. This information will assist in prioritizing work with landowners and in setting service areas. Include available maps in a standard GIS format, e.g., map package, shape file, or file geodatabase, and maps with descriptive information about objectives and criteria values.

3. *Current Conditions*:

A. Species Information.

i**.** Identify the more important populations or core areas that are necessary for the conservation of the species.

ii**.** Summarize appropriate biological information about the species, including its taxonomy, life-history characteristics, biological needs (including habitat requirements), current distribution and abundance, and other relevant information. Much or all of this information can be cross-referenced if it is already available.

B. Conservation Efforts. Include a description of ongoing action or actions that are part of a formalized conservation effort that is being implemented or is about to be implemented. Indicate the threat(s) that the action(s) is addressing, the anticipated response of the species, how long the effort will be in place, and the extent of the range of the species it covers. Describe how the different efforts complement each other and fit within the strategy.

4. *Assessment of Threats*. Develop a concise description of known, suspected, and anticipated threats to the species; include a deconstruction of the threats into sources and stressors, and consider the exposure of individuals and populations to the threat (geographical and temporal (seasonal, ongoing, or near future)). Indicate which threats may have more significant impacts on the species. A

geographical representation of the threats across the landscape, or species' distribution, or local occurrence level of the species would be beneficial. If the conservation strategy is intended to define what conservation actions would preclude the need to list the species, indicate the threats that must be addressed and the anticipated response of the species.

5. *Conservation Action; Priorities and Implementation*. Provide a description of the specific conservation actions or best management practices needed to address the identified threats and to achieve sustainable populations. Prioritize the actions to address the more significant threat(s), indicate key partners or cooperators to engage to implement them, and indicate when the actions should commence. Identify where these actions need to be implemented and indicate if any actions can be combined or if particular actions need to be completed or initiated before others.

6. *Measurement and Reporting of Success*. Include a monitoring plan describing procedures to monitor and report progress on the implementation and the effectiveness of the specific conservation actions called for in the strategy by creating benchmarks for species populations or habitat indicators. If the conservation strategy is intended to inform a future listing decision, annual reporting should include a description of the degree to which the threats are being addressed by the conservation actions in the strategy and the response of the species to date.

7. *Climate-Change Impacts and Resilience*. Identify and promote measures that help reduce the effects of climate change and improve the resilience of the species and its habitat. Such measures include:

- Protecting and restoring core, unfragmented habitat areas, and the key habitat linkages among them;
- Anticipating and preparing for shifting wildlife and plant movement patterns;
- Monitoring, preventing, and slowing the spread of invasive species whose introduction does or is likely to cause environmental harm; and

- Developing, analyzing, and using mitigation measures that account for uncertainty and risk, as needed, particularly when considering change agents such as climate change.

Section 5. Role of the States. A State choosing to participate in the voluntary-prelisting-conservation program established by the policy will assign conservation value to credits, approve and record transactions transferring and trading credits, and maintain a register of all voluntary-prelisting-conservation actions that is publically accessible. The State will provide appropriate oversight to ensure the effective implementation and maintenance of voluntary-prelisting-conservation actions and provide a mechanism to notify the Service at least annually of each voluntary-prelisting-conservation action taken under a program. Regardless of which State agency or entity is authorized to develop and track prelisting-mitigation actions or compensatory measures, the State agency with jurisdictional authority for the species identified (plant or animal) must be provided an opportunity to participate in the development of, and ultimately either approve or deny, any mitigation plans or criteria for issuing credits that may affect those populations. In addition, the State agency with jurisdictional authority for the species may decide whether they also want to approve each credit assignment. The voluntary-prelisting-conservation actions must be based on conservation actions identified within a State conservation strategy for the species. If no State strategy exists, a State may adopt a strategy developed by another entity. The Service must review the strategy that is used in conjunction with the voluntary-prelisting-conservation program. Partnerships among States (e.g., a consortium) are encouraged to facilitate the implementation and oversight of voluntary-prelisting-conservation programs for species whose ranges encompass multiple States. Utilization of existing resources such as landscape conservation cooperatives (LCCs) can provide support for such landscape conservation-planning efforts. In addition, oversight functions can be performed by another entity, including a Federal agency.

A State may designate a third party (e.g., an entrepreneurial conservation banker) as its agent in carrying out the State role in implementing a voluntary-prelisting-conservation program, but must retain an effective role in oversight of any program implementation assigned to a third party.

Section 6. Role of the Fish and Wildlife Service. The Service, when requested, may assist the State in any aspect of a voluntary-prelisting-conservation program. The Service will coordinate between the State and other Federal agencies to help develop conservation actions and review implementation of actions taken by other Federal agencies to ensure effectiveness and maintenance of those actions. The Service will review any voluntary-prelisting-conservation program for consistency with this policy and the other mitigation policies and guidelines established by the Service.

The Service's involvement in any given voluntary-prelisting-conservation program will include the following roles:

- Provide ongoing expertise and advice to State voluntary-prelisting-conservation programs and State wildlife agencies as requested;
- Collaborate with States and review conservation strategies that are to be used in conjunction with voluntary-prelisting-conservation programs;
- Accept and evaluate annual reports from voluntary-prelisting-conservation programs, including evaluation of the effectiveness of any voluntary prelisting conservation action performed in relation to both the species of interest and the program;
- Review programs that seek to provide credits under this voluntary-prelisting-conservation policy; and
- Provide, as necessary, any conferencing or consultations under section 7 of the ESA that may be required for projects under a voluntary-prelisting-conservation program on Federal lands.

Section 7. Principles and Requirements of Voluntary Prelisting Conservation Actions. A voluntary-prelisting-conservation program must explain how the net-conservation-benefit requirement will be met. Each voluntary prelisting conservation action, regardless of land ownership, must provide benefits additional to those that would be achieved if the voluntary prelisting conservation action had not taken place during ongoing land-use activities. The additional value (additionality) may result from conservation benefits to the species of interest associated with restoration, enhancement, or creation of habitat; protection of habitat (e.g., fire-protection measures, legal and financial site protections); other activities that reduce threats (e.g., threats from disease or predation); and most likely a combination of all three categories. The amount of credit a voluntary prelisting conservation action will earn is determined at the time the action is proposed or initiated.

The proposed voluntary prelisting conservation actions must comply with all applicable Federal, State, and local laws. Lands already designated for conservation or mitigation purposes cannot be used to generate credits under a voluntary-prelisting-conservation program unless the proposed mitigation project would add additional conservation benefit for a particular species above and beyond that attainable under the existing land designation. Examples of lands that cannot be used to generate credits under this policy unless additional conservation benefit is achieved include public lands already dedicated for conservation purposes; private lands enrolled in government programs that compensate landowners who permanently protect, restore, or create habitat for the species of interest; or lands protected by a habitat-management agreement with the Service or similar programs.

Conservation actions on non-Federal lands that are supported by Federal funds or an associated non-Federal match are not eligible to accrue credits for purposes of this policy. However, credit can be accrued for actions on those same lands that provide additional conservation benefits to that generated by Federal funds and the associated non-Federal match (e.g., if a landowner maintains the conservation action beyond the term of the Federally-funded conservation effort), but only if the

conservation benefit can be clearly demonstrated and is legally attainable.

In the exceptional case in which: 1) acquisition of private land easements through U.S. Department of Agriculture (USDA) conservation easement programs are an essential element of an effective species conservation strategy, 2) crediting of the non-federal contribution to the USDA conservation easement program to mitigation purposes is necessary in order to make participation financially feasible for the affected private landowners, and 3) USDA agrees to allow the non-federal contribution to be credited for mitigation, the pro-rata share of benefits of a USDA conservation easement program associated with the non-federal contribution may be accepted as a qualifying voluntary prelisting conservation action. All other required characteristics of voluntary prelisting conservation actions and the associated conservation program set forth in Sections 4 and 7 of this policy must also be satisfied.

Credits may be generated by activities undertaken in conjunction with, but additional to, Federally-funded conservation programs in order to maximize the overall ecological benefits of the restoration or conservation project. For example, when Natural Resources Conservation Service (NRCS) financial assistance is used for habitat restoration for a species, a landowner may participate in a voluntary-prelisting-conservation program once the financial term of the NRCS contract expires or for activities additional to the NRCS contract. Where federal assistance is solely technical in nature and there is no financial assistance, there are no additional restrictions for landowners to participate in and receive credit under a voluntary prelisting conservation program. In treating any voluntary prelisting conservation action as a measure to minimize and mitigate the impact of the taking of any endangered or threatened species pursuant to section 10(a)(1)(B) of the ESA, or as an intended part of any proposed Federal action subject to the consultation requirements of section 7(a)(2) or 7(a)(3) of the ESA, the Service will evaluate the beneficial impacts of such action according to the same criteria, standards, and metrics that it uses to evaluate the detrimental impacts of activities

that give rise to mitigating or compensatory measures. The following principles, requirements, and elements must be incorporated into any voluntary-prelisting-conservation program established under this policy.

Principles of Voluntary-Prelisting-Conservation Programs

Any program developed for unlisted species that includes voluntary prelisting conservation actions for the purposes of generating credit to be used as mitigation (under section 10 of the ESA) or compensatory measures (under section 7 of the ESA), should a species be listed, must incorporate all of the following principles:

- Attain net conservation benefit: Overall outcomes must result in a net conservation benefit to the species; programs will be structured to attain this net conservation benefit. The net conservation benefit will be achieved by permanently setting aside a minimum of 10 percent of the credits generated that cannot be applied to offset the effects of a detrimental action that requires mitigation or a compensatory action (these are known as net benefit credits; see definition in **Section 2**). The percent set aside will be based on the status of the species and the nature of the action(s). In some cases, a voluntary-prelisting-conservation program may require that the percent set aside be greater than 10 percent (for example, if the status of the species is declining precipitously).
- Use a landscape-scale approach to inform mitigation when appropriate for the species of interest;
- Ensure transparency, consistency, and participation; and
- Base crediting decisions in science.

The latter three principles are described in greater detail in the Service's mitigation policy.

Requirements of Voluntary-Prelisting-Conservation Programs

We expect that approaches to voluntary prelisting conservation that follow the above principles and adhere to the requirements below will achieve the best outcomes for conservation through effective management of the risks associated with voluntary prelisting conservation actions. Application of equivalent requirements across all mitigation sources will better ensure conservation goals are met. For the following requirements, see the Service's mitigation policy for information:

- *Site Selection*: Voluntary-prelisting-conservation programs should ensure that conservation actions are sited in priority locations that are identified in species-specific conservation strategies and are the most likely to successfully and fully contribute to conservation of the species of interest.
- *Duration*: The length of time that the voluntary prelisting conservation actions persist on and influence the landscape should be commensurate with the value of the credits issued for the action. A voluntary conservation action that provides temporary benefits to the species should receive proportionately fewer credits than an action whose benefits to the species are permanent. The conservation program must ensure that credit transactions assign enough credits to fully offset the duration and amount of projected project impacts that will negatively affect the species.
- *Effectiveness*: Voluntary-prelisting-conservation programs should be designed to be reasonably likely to deliver expected conservation benefits, target those actions that will provide the greatest benefit to the species of interest, and be measurable.
- *Durability*: Actions or plans proposed as voluntary-prelisting-conservation programs must be accompanied by adequate management, and legal and financial assurances that ensure the program and associated conservation actions will be in place and effective for the intended duration.

Best Available Science

Voluntary prelisting conservation programs must incorporate best-available science into conservation strategies, decisions, and continually seek better information in areas of greatest uncertainty. Programs should develop and utilize the scientific information and tools necessary to identify efficient and effective means to determine baseline and future conditions, and to monitor and evaluate effectiveness of prelisting conservation actions.

Metrics

Metrics developed to measure an increase in ecological functions and services at voluntary-prelisting-conservation-program sites (credits) and to measure an expected loss in ecological functions and services at impact sites (debits) must be science-based, quantifiable, and peer reviewed; repeatable; sensitive; transparent; practical; and based on the conservation goals for the species as outlined in a conservation strategy for the species. See the Service's mitigation policy for further explanation of metrics.

Site Selection, Conservation Actions, and Management

Voluntary-prelisting-conservation programs should be established on private, public, or Tribal lands where they will provide the greatest benefit and reduce the greatest threats to the species of interest. Priority areas where voluntary prelisting conservation actions should be located should be biologically based, identified in the species' conservation strategy, and integrated, as appropriate, among private and public land ownerships.

Minimum requirements for establishment and operation of voluntary-prelisting-conservation-program sites include real estate assurances, financial assurances, a management plan, and a site-level

agreement. See the Service's mitigation policy for information on real estate and financial assurances, and management plans.

Site-level Agreements

The site-level agreement defines the roles and responsibilities of the landowner, the agencies, and any other parties, and provides an operational framework for development, implementation, monitoring, and compliance of the project. Site-level agreements must include a description of the amount of voluntary-prelisting-conservation-program credits to be provided, including a brief explanation of the metric used for this determination, and a process for adaptive management that will address uncertainties, including new information and unforeseen or unregulated situations (e.g., weather, fire). Each agreement must identify discrete ecological- and administrative-performance standards to be met, and possible contingencies and consequences for not meeting standards. Monitoring will be designed to validate the effectiveness of the conservation actions, answer program questions, contribute to filling knowledge gaps, and provide data to inform adaptive-management decisions.

Site-selection criteria will outline the types of sites that are ecologically suitable for providing the desired habitat conditions and functions based on the species conservation strategy. In determining the ecological suitability of the project site, the following factors will be considered, to the extent practicable:

- Physical characteristics of the site;
- Landscape-scale features, such as habitat diversity, function, and connectivity;
- Juxtaposition of the voluntary-prelisting-conservation-action site relative to other areas of suitable habitat and ecological features;
- Ecological compatibility with adjacent land uses;

- Legal compatibility with existing and adjacent land uses;
- Compatibility with existing conservation plans and assessments;
- Development trends;
- Anticipated land-use changes;
- Habitat status and trends;
- The relative locations of the impact and compensation sites; and
- Local or regional goals for the protection or restoration of particular habitat types or functions.

Site Selection—Pre-project Baselines

In order to determine conservation benefits from voluntary prelisting conservation actions, pre-project baselines must be assessed. "Pre-project baseline" refers to the habitat or species population conditions at any given point in time against which conservation actions are measured to determine ecological gain or loss. Baseline conditions should be assessed and measured using the same methodology employed to predict future conditions during project-planning stages and ultimately to verify project conditions and associated credits during periodic and final monitoring of voluntary-prelisting-conservation-action sites. A consistent methodology must also be applied to predict impacts to a species of interest and its habitat (see *Metrics*). For voluntary-prelisting-conservation-program sites, baseline measures should explicitly acknowledge the potential threat of anthropogenic and natural disturbance, as well as the overall landscape resiliency of the site.

Pre-project baseline methods will be consistently employed across the area covered by the voluntary-prelisting-conservation program, unless variation of conditions and available data justify differences. The Service has not developed or endorsed any one specific methodology for determining pre-project baseline conditions. States and other management entities may find it useful

to cooperatively develop, adapt, adopt, or align methods that can be consistently applied across larger landscapes. The methods that will be used for measuring these types of baselines should be determined early in the voluntary-prelisting-conservation-program development. Consider including information about scale (e.g., plan-level, State-level), vegetation base layers, existing disturbance layers, breeding area date, occupied habitat, etc.

Duration and Timing

The length of time voluntary prelisting conservation actions persist on and influence the landscape needs to be sufficient to generate credits to fully offset the duration and degree of harm from the projected impacts from a project. Duration includes the time extent of the direct, indirect, and cumulative effects of an impact as well as the time period for an impact site to be fully restored for the affected species. As a general rule, the Service will expect that credits generated through voluntary prelisting conservation programs be permanent in nature, particularly if they are evaluated as contributing to precluding the need to list. However, some impacts may be temporary and in these cases, the benefits of the conservation actions can be temporary.

While voluntary prelisting conservation actions will begin before a project that negatively affects the species begins, their implementation may overlap with that project. However, because negative impacts typically begin to occur in the early stages of projects (i.e., construction and initial operations), the benefits of voluntary prelisting conservation actions should accrue before or as early in the life of the project as possible. When the success of the voluntary prelisting conservation actions is demonstrated prior to impacts occurring, ecological risk (due to uncertainty of implementation and time lag) is reduced. These benefits need to be verified via standardized monitoring.

Effectiveness—Biological

Voluntary prelisting conservation actions must have a high likelihood of success based on the biophysical setting. Actions must be supported by sound science. Actions that are unproven, especially those where time lags in providing conservation benefits are not adequately addressed, should not be prioritized for implementation. However, such unproven actions can be encouraged without causing significant environmental risk by allowing a portion of credit to be released for implementation of actions, and holding back the majority of credit until defined and observable performance criteria related to habitat quality are achieved (see *Credit Release* in **Section 8**).

Conservation actions are also more likely to be meaningful if they are aggregated. Voluntary-prelisting-conservation-action sites are most effective if they are large enough so that they will, either in themselves or in conjunction with adjacent landscape conditions, provide long-term, targeted biological benefits. Voluntary prelisting conservation actions are not effective if they occur in areas affected by a development project (i.e., on-site), where future development is likely to occur, or in areas where benefits are likely to be reduced over time by incompatible land uses and surrounding landscape-edge effects. Applying credits from one area to multiple debit sources in the same service area may provide more concentrated landscape-level conservation benefits.

Potential credits associated with proposed restoration and enhancement activities will be evaluated on a given site in comparison with both pre-project baseline and projected future condition that would be expected in the absence of the proposed voluntary prelisting conservation actions. Preservation projects will be evaluated, and credits proportionately assigned, according to the magnitude and likelihood of existing and future threats to the habitat and/or the value of that site to conservation of the species. Crediting for such avoided loss may be acceptable if it reduces threats, is discounted according to the likelihood of loss, and includes actions above and beyond closure to development (e.g., permanent conservation easement).

Adaptive Management

Adaptive management is an iterative approach to decision-making, providing the opportunity to adjust decisions in light of learning with an overarching goal of reducing uncertainty over time. Incorporating adaptive-management strategies into conservation strategies and voluntary-prelisting-conservation management plans can help to manage risk and uncertainty for any type of conservation action area. Adaptive-management processes require establishment of management benchmarks to ensure progress toward goals, protocols to monitor progress related to these benchmarks, and the resources and ability to make adjustments as needed to ensure objectives are achieved. The adaptive-management plan should include triggers for identifying when corrective actions should be taken.

Over time, new scientific information may indicate that the metric may need revision or a new metric should be used. The Service will work with the program administrator to decide if the metric needs to be changed. However, any new or improved metrics will not undermine or devalue existing credits or voluntary conservation action agreements, except in cases where failure to utilize a new or revised metric would appreciably reduce the likelihood of survival and recovery of the affected species in the wild. In these cases, the Service will require a new or improved metric as appropriate and will work with the program administrator and landowner(s) to find alternatives to address the needed changes.

Section 8. Program Administration. The program administrator (State or other entity) will be the entity with enforcing authority for the establishment, operation, and management of a voluntary-prelisting-conservation program. The administrator or their designee(s) must have the ability to enforce management actions, reconcile funding issues, incorporate adaptive management, ensure that monitoring of implementation and effectiveness of voluntary conservation actions is completed, track debits and credits, report results, and conduct other activities as needed.

The authority granted to the administrator ensures that conservation benefits from voluntary prelisting conservation actions will persist. As successful habitat conservation will most likely require coordination across Federal, State, tribal, and private interests, the program administrator should be recognized through a formal agreement developed with major stakeholders including Federal, State, and tribal partners. The agreement should clearly articulate the selection process for any entity responsible for administration of various elements of the program.

The entity handling funds (usually the program administrator) must have the ability to separately manage, collect, and distribute funds. Prior to collection of any funds, plans should be in place that explain the maximum time funds can be held before being spent, how funds will be invested (including inflation protection), tracking and accounting for benefits generated by funds, guidelines for avoiding potential conflicts of interest between collecting and spending funds, and responsibility for performance of voluntary prelisting conservation actions.

Compliance and Enforcement

Compliance will be monitored by the program administrator; compliance measures must include a credit-verification process, a tracking system, and a review of periodic monitoring reports. Processes to verify that conservation actions meet program standards provide assurances that voluntary-prelisting-conservation-action sites are delivering benefits. A system to track both debits and credits is essential in ensuring compliance, increasing transparency, and allowing the administrator to determine the success of the actions in achieving conservation. Monitoring reports at both the program and site level will be required at least annually, and copies must be submitted to the Service. Monitoring will be structured to provide feedback on which conservation actions successfully yield intended results and which have a higher likelihood of failure. Site-level reports will document site conditions, attainment of administrative- and ecological-performance standards

(measurable attributes used to determine if the management plan meets the agreed-upon goals and objectives), and management actions taken and expected to be taken in the future.

Enforcement structure and procedures will be developed at the program level. At the site level, agreements must include clear enforcement provisions that dictate the consequences of non-compliance, including a requirement that if the conservation actions fail to meet performance standards, the credit provider provide equal compensation through other means. If the agreement holder does not satisfy the crediting requirements, the regulating entity must have the ability to suspend or terminate credit releases, credit sales, or the agreement itself, and to pursue penalties for violations as appropriate.

Credit Release

To manage risk and uncertainty, a voluntary conservation program should create release schedules that only allow use of prelisting conservation actions when specific success criteria are met. Success criteria must be designed to identify when risk and uncertainty have been substantially reduced. The Service recommends providing phased credit releases based on both ecological and administrative performance. A legally binding credit agreement must be in place between any party generating credits and the program administrator. The credit agreement will provide a schedule for credit releases as appropriate milestones are achieved. Failure to meet these milestones will result in suspension of credit release to ensure compliance. Administrative criteria that allow for initial credit release could include: Site agreement and management plan have been approved; the site has been secured with an appropriate real estate instrument; and appropriate financial assurances have been established. Subsequent credits may be released for meeting ecological milestones (as determined through site monitoring) and financial milestones (e.g., endowments partially funded by portions of each credit sale). The credit-release schedule will reserve a significant share of the total credits for

release only after full achievement of performance standards. As discussed in **Section 4** of this policy, credits must be permanently set aside to achieve the net-conservation-benefit requirement.

Credit Stacking and Bundling

The Service recognizes the inherent efficiencies in leveraging multiple conservation efforts on the landscape and encourages these coordinated efforts. However, prelisting conservation actions taken under a voluntary prelisting conservation program and other conservation actions that occur on the same mitigation site must be accounted for separately, and all aspects of the different actions must be managed and tracked in a transparent manner. Stacking mitigation credits within a mitigation site (i.e., more than one credit type on spatially overlapping areas) is allowed, but the stacked credits cannot be used to provide credits for more than one permitted environmental impact action even if all the resources included in the stacked credit are not needed for that action. To do so would result in a net loss of resources in most cases because using a prelisting conservation species credit separately from the functions and services that accompany its habitat, such as carbon sequestration or pollination services, would result in double counting (i.e., double dipping). Double counting is selling or using a unit of the same ecosystem function or service on the ground more than once. This can occur through an accounting error in which the credit is used twice, and it also can occur when stacked credits are unstacked and one or more functions or services are used separately. For example, a credit representing an acre of habitat is used once as a species habitat credit for a permitted action and again as a carbon credit for a different action in a different location. The loss of species habitat at the first impact site included all functions and services associated with that habitat including carbon sequestration, so selling that same unit of compensatory mitigation again for carbon sequestration results in no carbon offset for the loss of carbon sequestration at the second impact location. Using a stacked credit separately to reflect its various values is an ecologically challenging accounting

exercise.

Section 9. Prelisting-Credit-Trading Process. Individuals or entities that have engaged in the generation of voluntary-prelisting-conservation-action credits may trade or sell the credits before or after listing. The administrator will establish a process and a legal mechanism for transferring credits to a third party. While there is flexibility in how the process will work in each State, this policy lays out the minimum requirements for that process. An example of a legal mechanism would be a Conservation Banking Agreement, which is part of an established or new conservation bank. In this case, the agreement outlines the use and operation of such a bank. The Service established banking guidance in 2003, which is incorporated into the Service's mitigation policy.

Buyers of established voluntary-prelisting-conservation-action credits may include any public or private entity. The Service and any relevant State wildlife agencies must review the overall process for third parties to purchase prelisting credits from the administrator. The administrator controlling funds will have the ability to separately manage, collect, and distribute funds. Prior to collection of any funds, the administrator must have plans in place that establish: the maximum time funds can be held before being spent; how funds will be invested (including inflation protection); processes for tracking and accounting for benefits generated by funds; guidelines for avoiding potential conflicts of interest between collecting and spending funds; and responsibility for performance of prelisting-conservation-action projects. In the case where the State agency itself engages in implementing voluntary prelisting conservation actions to earn credits, we strongly recommend that either a third party acts as the administrator or a public review process is incorporated into the voluntary-prelisting-conservation program to ensure transparency.

In addition to designing the legal agreement to facilitate trading of prelisting credits, the administrator will address the following requirements to facilitate the exchange of prelisting credits:

- *Legal Instrument*. The mechanism for executing a specific trade such as a written agreement, conservation-banking agreement, contract, or other similar legal document.
- *Credit Calculation*. While the credits will have been established before a trade is conducted, credit calculation is necessary to confirm that the number of credits a potential buyer is required to purchase is based on the degree or amount of impact that the buyer's development action has on the species or its habitat. The credit calculation will include the amount needed to provide the required net conservation benefit.
- *Approval***.** Potential third party buyers of prelisting credits need formal approval from the necessary regulatory agencies, including the Service and program administrator, to be in compliance with their permit requirements through the acquisition (exchange/trading) of credits. This step determines that buyers are both eligible to purchase and need to acquire credits to offset their impacts.
- *Registry*. The register of prelisting credits, managed either by the State or program administrator, will track the acquisition of credits and certify that those credits are no longer available for use by another entity. Buyers may be required to pay an account origination fee that helps defer the costs of managing the registry.
- *Control of Funds*. Confirm the availability and use of sufficient budgetary and financial assurances (whether the responsibility of the State, project developer, or a third party) to ensure, with a high degree of confidence, the durability and effectiveness of prelisting-conservation-action measures.
- *Sale of Credits*. Third-party buyers and sellers will typically negotiate and finalize a credit purchase rather than the administrator. The registry will not set the price of the credits, and will not set the terms and condition of sales.

- *Verification Program*. Sellers will conduct appropriate verification of all credits on a set schedule through independent verifiers and provide the data to the State or program administrator using a monitoring and evaluation framework to determine the effectiveness of prelisting-conservation-action measures and progress toward the goals and objectives established by species strategies and plans, and to direct adjustments when necessary to correct reversals in voluntary prelisting conservation actions and adapt to changing conditions (see discussion under *Adaptive Management* in **Section 7**). In addition, verification of credits will be necessary before the time at which credits can be used as mitigation for a listed species and continue to be verified on a schedule or plan that would be identified in Section 7 or Section 10 documents.

Section 10. The Single Use of Voluntary Prelisting Conservation Actions as a Mitigation or Compensatory Measure. To the extent that a voluntary prelisting conservation action is treated by the Service as a measure to minimize or mitigate any future impact of the taking of an endangered or threatened species pursuant to section 10(a)(1)(B) of the ESA, or as an intended compensatory measure of a Federal agency action subject to the consultation requirements of section 7(a)(2) or 7(a)(3) of the ESA, that action and its associated credits may not be used again. However, a short term action generating credits that is subsequently continued beyond a previously specified ending date can earn additional prelisting conservation action credits generated during the new time period, as long as the new time period starts prior to the effective date of listing for that species.

Section 11. Relationship of Voluntary Prelisting Conservation Actions to Candidate Conservation Agreements. Landowners enrolled in Candidate Conservation Agreements (CCAs) or Candidate Conservation Agreements with Assurances (CCAAs) can receive credit under this policy

for prelisting conservation actions if the actions are additional to the conservation measures required by the CCA or CCAA. In order to track conservation actions and ensure additionality, conservation measures and prelisting conservation actions should be independently accounted for and reported to each respective program. Alternatively, a landowner can exit the CCAA program and enter the same property in a voluntary prelisting conservation program. However, the assurances and the incidental take permit associated with the CCAA would no longer be in effect.

Actions managed in perpetuity through an agreement associated with a voluntary-prelisting-conservation program would provide both additionality and durability to the conservation measures provided under often shorter term candidate agreements. The ability to fund additional conservation on individual CCA or CCAA properties through voluntary-prelisting-conservation-action dollars could further guarantee implementation of positive conservation actions. By keeping open the ability for those in CCAs or CCAAs to market their additional conservation improvements to others needing to offset unavoidable impacts, more landowners could be encouraged to enroll in candidate agreements. Providing a menu of conservation options for landowners and reducing risk and uncertainty by securing conservation actions under a voluntary-prelisting-conservation program may contribute to an overall positive conservation goal for a species that operates on a landscape scale and for which protection and management of existing habitat is key to its survival.