

## Mitigation Actions and Applicability on Monarch CCAA/CCA Adopted Acres

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### Purpose and Need

Adopted acres under the Agreement may include a variety of land uses. In some cases, adopted acres may include mitigation lands, or lands that were established to compensate for temporary or permanent losses to resources. Conservation activities on mitigation lands are often *required* to replace (or offset) impacts to wetland, rare species, or other environmental resources.

By contrast, the purpose of CCAA is to encourage participants to take *voluntary* actions that will provide a net benefit to species that are candidates for listing under the Endangered Species Act, are already proposed for listing, or that may become candidates.<sup>1</sup> Some conservation measures on mitigation lands may or may not be applicable for tracking as adopted acres. This guidance document provides direction to Partners to help them determine whether or not mitigation lands on which conservation measures are applied may count as adopted acres under the CCAA.

### Key Takeaways

1. The CCAA/Agreement's "net benefit standard" presumes the use of conservation measures *above-and-beyond* those that are required to compensate for lost resources.
2. Activities that directly mitigate, compensate, or are required by a permit for losses to other regulated resources (e.g. wetlands, other listed species) cannot be applied as conservation measures in the Agreement.
3. Activities that are considered "best practices" and not directly required by a permit, compensating for another resource loss, or otherwise "above-and-beyond" what is required at a mitigation site, can be applied as conservation measures in the Agreement.

### When are conservation measures in association with mitigation not applicable under the CCAA?

Under the Agreement, the Program Administrator and USFWS considers conservation measures implemented on enrolled lands not applicable as adopted acres when they are:

- ✗ Required (in scope, scale, and frequency implemented) as part of a required mitigation plan,
- ✗ Required as part of a permit to carry out an action that would otherwise be prohibited under some statute, or
- ✗ Activities directly related to compensating for the loss of some other regulated environmental resource such as wetlands, waterways, or rare species.

If any of these apply to the activity considered as a conservation measure under the CCAA, then the activity may not be used for adopted acre tracking purposes, unless it is expanded in some way to address specific threats for monarchs, as described in further detail below.

<sup>1</sup> From the USFWS's and National Marine Fisheries Service's [Candidate Conservation Agreements With Assurances Policy](#), December 2016.

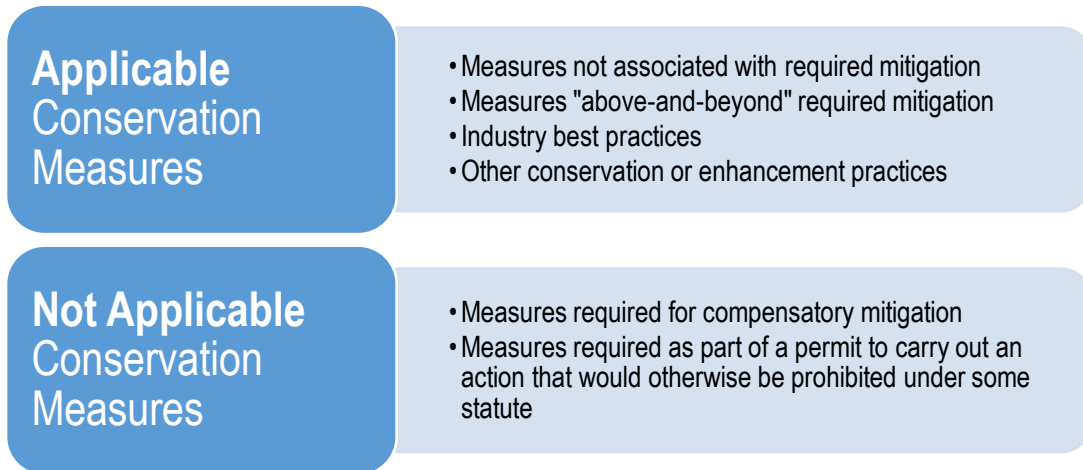
**When are conservation measures in association with mitigation applicable under the CCAA?**

Under the Agreement, the Program Administrator and USFWS considers enrolled mitigation lands on which conservation measures are implemented applicable as adopted acres when they are:

- ✓ Outside of the scope, or “above-and-beyond” the compensatory actions required (in scope, scale, and frequency implemented) as part of a mitigation plan,
- ✓ Not specifically required to address compensatory losses as part of a permit specifically, or
- ✓ Not otherwise directly required for compensating losses of some other federal or state regulated environmental resource, such as wetlands, waterways, or rare species.

If any of these apply to the activity considered as a conservation measure under the CCAA, then the activity may be used for adopted acre tracking purposes. Figure 1 depicts a summary of conservation measures applicable or not applicable based on their relation to required mitigation.

**Figure 1. Summary of conservation measures and their applicability compared to mitigation.**



## Example Scenarios

The following scenarios illustrate the conditions under which conservation measures may or may not apply under different permit conditions or mitigation scenarios.

### Wetland Mitigation Bank

A 60-acre wetland mitigation bank is established with a mix of native species, including flowering nectar plants. The restoration plan for the 50-acres of wetland restored onsite includes use of mowing, supplemental planting, targeted herbicide use, and prescribed burning as management tools. The authorizing permit requires a series of performance standards associated with the site's vegetative cover on those 50 acres of mitigated wetland. As the site manager, the Partner has identified that 5 treatments for vegetation management are needed annually to achieve the performance standards.

Because the vegetation management required under this scenario is directly associated with the site performance standards and site management scope of work, those actions would be not applicable as conservation measures under the Agreement.

### Wetland Mitigation Bank with Enhancements

Assuming the same example just described, but in this scenario, the Partner has undertaken *additional* enhancement measures above-and-beyond those actions directly associated with the site performance standards and site management scope of work. Those measures include:

- Installing native species that would provide nectar and/or larval food resources to monarchs on an additional 10 acres of upland buffer areas of the site that are not receiving mitigation credits,
- Conducting *additional* targeted herbicide treatments across the 50 acres of wetlands onsite that will enhance native floral diversity and that are clearly in addition to the standard treatments outlined in the mitigation plan or site management scope of work, and
- Supplemental planting of swamp milkweed at the site to encourage use by monarch butterfly across the same 50-acre wetland area.

In this example, these actions undertaken would be considered voluntary enhancements outside the scope of the mitigation required to compensate for resource losses. Thus, these actions would be applicable as conservation measures under the Agreement. The full 60 acres onsite can be tracked as adopted acres because the voluntary measures implemented exceed the required mitigation.

### Voluntary Exceedance of Permit Conditions

A Partner undertaking a modernization project is required by a state utility commission, state resource agency permits, or other federal/state regulatory authority to apply "native seed" to lands as part of approved permit conditions. The required use of native seed under the permit issued is non-specific and without any species requirements or seed mix criteria beyond the seeded species being native to the state where the project is located. While fulfilling their permit obligations, the Partner voluntarily implements industry best practices by applying a native seed mix containing a diversity of native grasses and wildflowers. For example, instead of applying a simplified seed mix of only native grasses and temporary cover, the Partner applies a mix containing milkweed and flowering nectar plants.

While the installation of native seed is a permit requirement, it's implementation was enhanced voluntarily by the Partner to meet resource needs of monarchs. Therefore, the installation of the native seed will contribute to a net conservation benefit to monarchs and these actions would be applicable as conservation measures under the Agreement.

### **Siting Permit Compensatory Habitat Replacement**

A Partner developing a project is required by a state utility commission, state resource agency permits, or other federal/state regulatory authority to install native seeding *to compensate* for temporary or permanent losses of native plants and pollinator habitats as part of approved permit conditions. Thus, the use of native seed and post-construction restoration activities are intended to replace (or compensate) for native plants or pollinator habitat temporarily or permanently lost during construction.

Under this scenario, the use of native seed on the project is directly related to compensating for loss of habitat or regulated resources as outlined in the permit authorizing the work. As a result, these actions would not be applicable as conservation measures under the Agreement.

### **How do I document conservation measures tracked as “above-and-beyond” on mitigation lands?**

Documentation of conservation measures used on mitigation sites, or related to other permit requirements, should be maintained by Partner record keeping practices. The Partner is not required to provide such documentation as part of annual reporting to the Program Administrator. However, if requested, the Program Administrator expects the Partner to demonstrate how the conservation measures, and corresponding adopted acres tracked, are either outside the scope of, or above-and-beyond, the compensatory mitigation or required permit condition.

Examples of documentation may include:

- A written summary outlining the required mitigation and how the conservation measure exceeded those requirements in quality, scope, or frequency.
- A mitigation site work plan and record(s) of treatments that are outside the scope of planned work required for mitigation.
- Email records demonstrating that the action undertaken is voluntary, or otherwise “above-and-beyond” what was required by a federal/state permit.
- Maps displaying the location of conservation measures applied to the Agreement as compared to the location of mitigation site measures required.