

MITIGATION AND CONSERVATION BANKING IN THE US— A MODEL TO CONSIDER

Presented at

Biodiversity Compensation within the
Environmental Impact Assessment System:
sustainability challenges for the productive sector

Santiago, Chile October 23, 2013

By

Wayne White

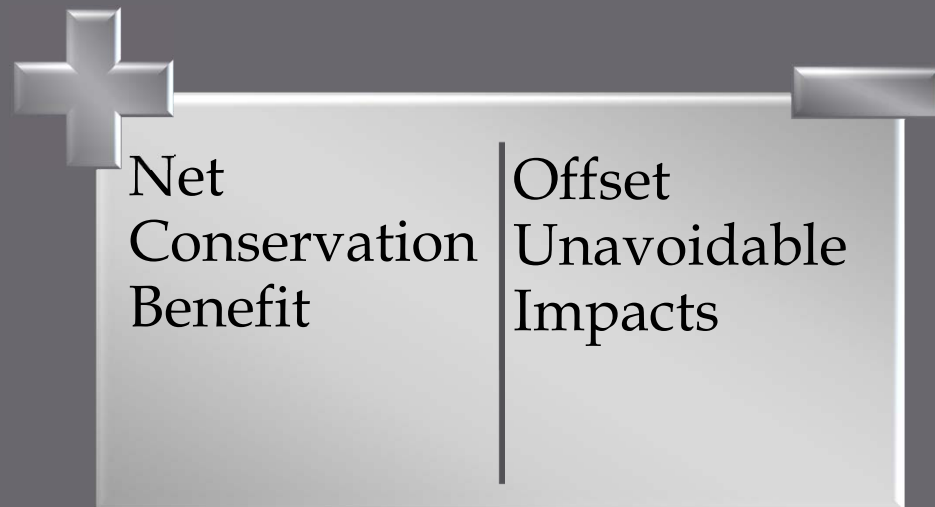
Wildlands, Inc

Overview

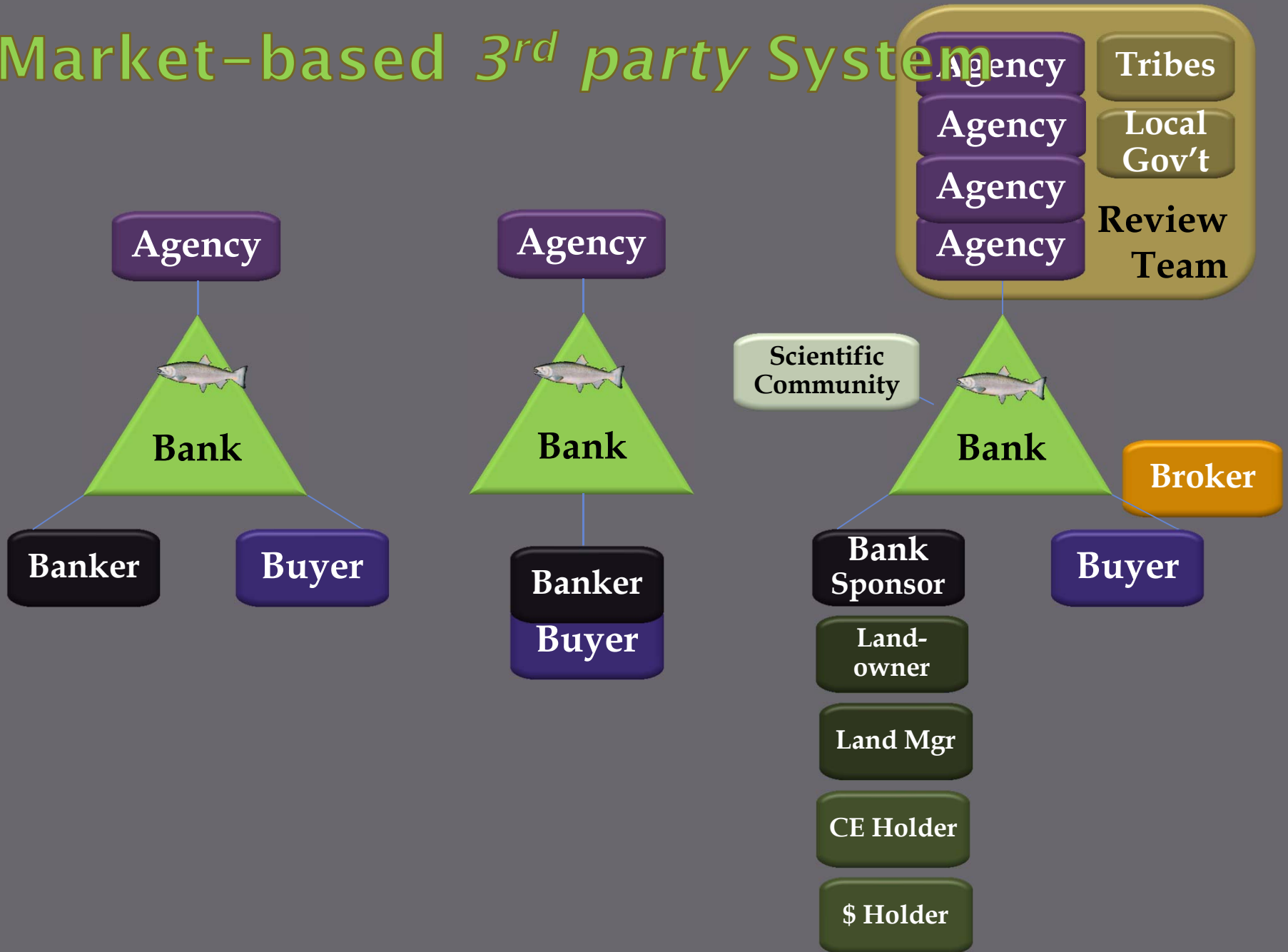
- What is a mitigation/conservation bank?
- Regulations require mitigation/offsets
- History of US banking
- Benefits of banks-
- Agency requirements for bank approval
- Service area and credits
- Offsets around the world
- Key messages
- Principles of mitigation and recommendations

What is a conservation (habitat)bank?

“A site or suite of sites containing natural resource values that are conserved and managed in perpetuity for specified listed or other at-risk species and used to offset impacts occurring elsewhere to the same type of resource.”



Market-based 3rd party System



Regulatory Driven Market

Federal Government

- Clean Water Act- Sec 404
- (No-net loss: Mitigation banks)
- Endangered Species Act- Sec 7
- (BO's: Conservation banks)
- Natural Resource Damage Assessment
(Restoration to offset impacts)

State and local Governments

- Varies- water, protected species and natural resources

History of Banking

Clean Water Act 1972



Restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

No Net Loss Policy (1989)

Permit from USACE or State
Avoid, Minimize, Compensate impacts

Compensatory Mitigation:

Bank over In-Lieu fee over PRM
Clear policy regulation
Creation/Restoration over Preservation

Endangered Species Act 1973



...provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved...

Unlawful to "take"

Permit from FWS or NMFS
Avoid, Minimize, Mitigate impacts

Compensatory Mitigation:

No clear mitigation type preference
No overall mitigation policy
Depends on species needs

History of Banking

- 1972 – Clean Water Act
- 1973 – Endangered Species Act (ESA)
- 1983 – FWS memo recognizing mitigation banking potential
- 1984 – First wetland mitigation bank approved
- 1992 – First conservation bank established
- 1995 – California “official policy” on conservation banks
- 1995 – Federal Guidance on Establishment, Use and Operation of Mitigation Banks (wetlands)
- 1996 – FWS issues first programmatic biological opinion promoting use of conservation banks
- 2003 – FWS Guidance (Policy) for the Establishment, Use, and Operation of Conservation Banks
- 2008 – “New” Wetland Mitigation Rule
- 2012 – Landowner Incentives ANPR – pre-listing mitigation
- 2013/4 – Developing mitigation policy for all authorities

Why do Banking?

As opposed to permittee responsible mitigation...

Economies of Scale

Biological Benefits

- Aid in recovery (outcome-based & traceable)
- Preserve ecosystems
- Avoid piecemeal mitigation & time lag issues
- Contributes to conservation strategies;



*Vernal Pool
Tadpole Shrimp*

Business Benefits

- Streamlined permit/mitigation process
- Transfer of liability
- Provides assurances (mgmt, financial)
- Reduce agency time monitoring mitigation sites
- Reduce need for enforcement
- For-profit conservation



Key Benefit

- ▣ Private sector investment to conserve habitat not consume habitat- Profit conservation!
- ▣ Provides potential new economic engine for private landowner who want to maintain ownership
- ▣ Assist implementation of regional planning efforts
- ▣ Severance of liability

Banks Require Assurances

Process
procedures
timelines



Real Estate

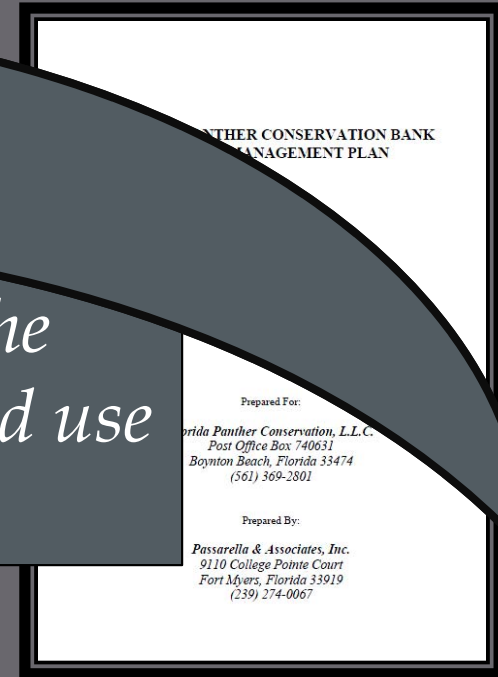
Financial

Biological



CBA

the legal document for the establishment, operation and use of a conservation bank



Perpetual
Conservation
Easement
(or alternative for
public lands)

Financial mechanism
sufficient to fund long-
term management,
monitoring and reporting
(non-wasting endowment
preferred)

Long-term
Management Plan
with Performance
Standards,
Monitoring, etc.



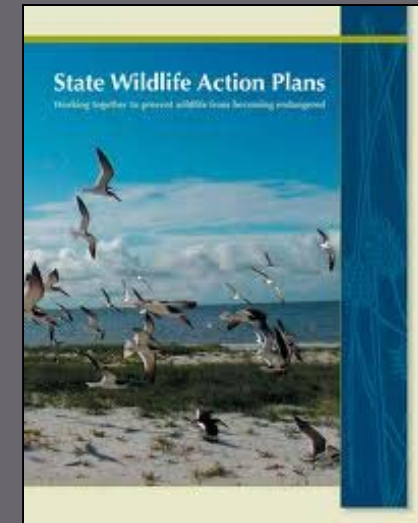
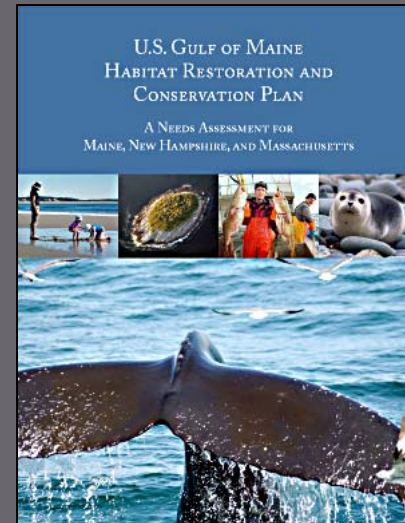
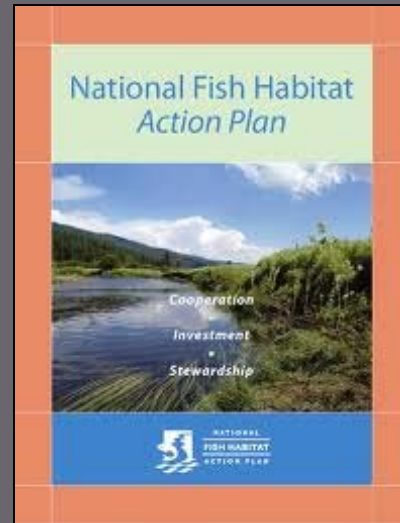
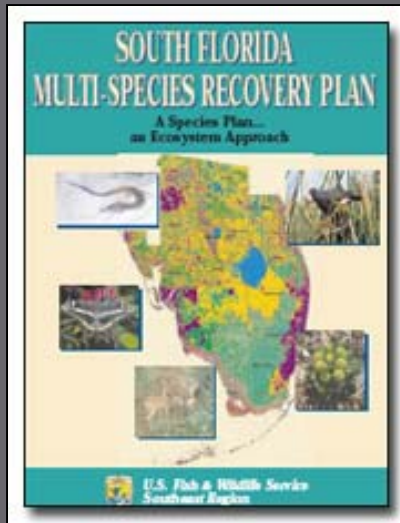
Bank Service Areas

Conservation
strategy



Service Area = the geographic area within which a banker may conduct credit trades.

- ▣ Defined by the Agencies
- ▣ Based on the conservation needs of the species:



Credits = Surrogate Measures for Recovery

Simplify Credits

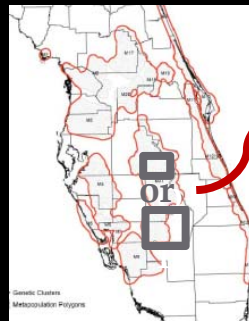


Hectares/
Meters



1000
hectares
habitat = 1
credit

Individuals



1
pair = 1
credit

Weighted
Function



Salmon Credit (Sc) Equation

$$Sc = ((S_p * Ln) + ((S_p * Lp) * 0.5))$$

= 1
credit

Time-Based?



Offset Examples Worldwide

- ▣ Australia- 1) NSW Biobanking in 1995 law. Mixed results; 450 hectares conserved so far; 2) Victoria BushBroker. Uses Habitat Hectare metric, market place for developers and landowners; mostly successful
- ▣ UK- Biodiversity Offsetting in England 9/13
- ▣ Germany- ILF to local jurisdictions may lack in-kind offsets
- ▣ India- Some legislative policy but lacks clarity and guidance; not successful

International Activities

- ▣ Habitat Banking in Latin America and Caribbean- A Feasibility Assessment- specific discussion of potential market in Chile
- ▣ Business and Biodiversity Offset Program- providing mitigation hierarchy with an emphasis on biodiversity offset guidance and standards consideration to us by corporations and governments

Messages Key



- ▣ Species Conservation Strategy
 - Habitat banking should be based on a larger landscape conservation strategy for the species and lead towards a net conservation benefit.
- ▣ Must develop Compensatory Mitigation policy
 - Have one standard for compensatory mitigation and implement it consistently for all forms of mitigation. Use mitigation plans and programmatic agreements when possible.
- ▣ Service Areas and Credit Methodologies
 - Careful selection of service areas and simple credit methodologies based on balance between needs of species and mitigation program.
- ▣ Program Process/Timelines
 - Policy or guidance on how the compensatory mitigation will operate, education of personnel, stacking, legal review, templates, tracking, etc.



Key Principles of Mitigation

- ▣ • Assure appropriate offsets are implemented that benefit the conservation of species and habitat
- ▣ • Provide a strong biological and legal framework for offsets to persist for the length of the impact
- ▣ • Communicate to all stakeholders the basic provisions expected of them in any situation where mitigation is required.

Principle 1– Strong Assurances

- ▣ Mitigation projects must contain strong **performance** assurances that restoration, enhancement, creation or preservation activities will be completed as required. This would include a **mix of legal and economic assurances** including support for the premise that mitigation **done in advance of impacts** is preferable to mitigation done after the fact.

Principle 2– Uniformity

- ▣ **Standards and metrics** should be used consistently for agreements or permits involving mitigation. These standards and metrics should apply for **permanent or temporary impacts**. Metrics should provide **meaningful information** about particular species and habitat characteristics. Standards must also insure **measurable and lasting benefit** using the same ecological criteria and metric that are used to measure impacts.

Principle 3– Landscape scale

- ▣ Offset proposals should take into account large scale **conservation strategies**. High priority habitats should be protected using the **mitigation hierarchy**- avoid, minimize then mitigate residue, unavoidable impacts. Low priority habitat less avoidance. **Like-for-like offsets** or trading up when fully justified.

Recommendations for Establishing a Compensatory Mitigation Program

- Review existing regulatory framework
- Establish policy and regulatory foundation with clearly defined processes (metric, service areas) and timelines
- Integrating with existing permitting processes
- Build capacity to implement mitigation policy
- Equivalency for types of mitigation – banks, in lieu fee. permittee responsible
- Strive for high standards
- Preference for banks over in lieu fee or permittee responsible mitigation
- Minimize the number of agencies