

Intermountain Region Greater Sage-Grouse Mitigation Guide Version 2.0

Background

The role of this guide is not to infer additional policy, but rather to assist Deciding Officials in interpreting existing policy, as established in the Records of Decision (RODs).

As of this writing, the 2015 Presidential Memorandum: “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment” is in effect, but the Forest Service (FS) has not finalized policy at the national level. Mitigation will follow the regulations from the Council on Environmental Quality to avoid, minimize, and compensate for impacts to sage-grouse (40 CFR Part 1508.20), and as detailed in the Sage-Grouse Plan Amendments. The Amendments provide specific direction that is expected to be equally or more prescriptive than future national policy. Therefore, the primary source of guidance should be the direction in the Mitigation Strategy Appendix B in the published Sage-Grouse RODs.

The Mitigation Strategy states: “To align with any existing compensatory mitigation efforts, *compensatory mitigation will be managed at a state-level (as opposed to a WAFWA Management Zone, a field office, or a forest)*, in collaboration with Forest Service partners (e.g., federal, Tribal, and state agencies).” The Strategy further states: “The Forest Service will be responsible for making decisions that affect National Forest System lands.” Thus, the Forest Service should favor use of state-managed systems when compensatory mitigation is required, but accepting particular compensatory mitigation stipulations is the responsibility of the Deciding Official.

Important Aspects of Mitigation for Sage-Grouse for Interpretation of RODs

Mitigation is specific means, measures, or practices that could reduce, avoid, or eliminate adverse impacts. Mitigation can include avoiding the impact altogether by not taking a certain action or parts of an action; minimizing the impact by limiting the degree of magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments. When an action that has been identified as a threat for habitat degradation (Table 2 of the Monitoring Framework, ROD Appendix A) results in a loss or degradation of sage-grouse habitat in PHMA, GHMA, IHMA, SFA, and Anthro Mountain, mitigation is required. These actions don’t include activities that don’t degrade habitat (e.g., proper livestock grazing or when minimization and avoidance prevent habitat degradation) and are not subject to compensatory mitigation requirements.

Compensatory Mitigation is not required unless, after Minimization and Avoidance, a residual impact to the sage-grouse habitat remains. In general, existing standards and guidelines will often be sufficient to avoid or minimize habitat loss and degradation so that compensatory mitigation would not be required for greater sage-grouse.

Net-conservation gain must be demonstrated for Compensatory Mitigation to be sufficient, but it is not a requirement when Minimizing or Avoidance are achieved and there are no residual impacts.

Residual Impact: The definition in the RODs is “Impacts from an implementation-level decision that remain after applying avoidance and minimization mitigation; also referred to as unavoidable impacts.” If an activity creates a footprint that degrades habitat, compensatory mitigation will be needed.

State Based Compensatory Mitigation Programs: As stated above, the FS will make every effort to rely on and use the state-based compensatory mitigation system developed for the state in which an action is permitted. State mitigation system calculations for habitat credits and debits should normally be adequate to ensure net conservation gain. However, the FS may not defer its authority and responsibility for project level approval and could require additional mitigation or more restrictive measures than state plans.

NEPA Alternatives and Mitigation: The Forest Service will consider Avoidance, Minimization, and (if necessary) Compensatory Mitigation in one or more NEPA alternatives for proposed actions. Appropriate mitigation actions, as determined by the Deciding Official, will be stipulated in decisions and land-use authorizations.

Key Elements for Interpreting the Sage-grouse Amendments Regarding Mitigation

1. Desired Condition, GRSG-GEN-DC-002 in CO, ID, SW MT, NV, UT:

The intent of the desired condition is to prioritize disturbances into Non-Habitat and GHMA to avoid PHMA. Deciding officials should favor locating potentially detrimental activities into less important habitats.

2. Standard, GRSG-TDDD-ST-015 in WY and GRSG-GEN-ST-005 in CO, SW MT, ID, NV and UT.

Any new land use must avoid and/or minimize impacts in PHMA, GHMA, IHMA, SFA, and Anthro Mountain. If residual impacts remain after avoiding and minimizing, then compensatory mitigation is required, subject to valid existing rights.

3. Definition of Net Conservation Gain: (ID and SW MT, page 97, NV page 133, UT page 195, NW CO page 89, WY page 117).

“The actual benefit or gain above baseline conditions. Actions which result in habitat loss and degradation include those identified as threats which contribute to GRSG disturbance as identified by the USFWS in its 2010 listing decision (75 Federal Register 13910) and shown in Table 2 in the Greater Sage-Grouse Monitoring Framework (Appendix A).” Note that the disturbances that create habitat degradation are most specifically documented in Table 2 of the *Monitoring Framework Appendix A*.

The threats identified in the Monitoring Framework, Table 2 are: oil and gas wells and development facilities, coal mines, wind towers, solar fields, geothermal, active locatable, leasable, and saleable mining developments, roads, railroads, power lines, communication towers, other vertical structures or other developed rights-of-way. If the footprint of these land uses cause loss or degradation to existing sage-grouse habitat, compensatory mitigation (with a net conservation gain, subject to valid existing rights) will be required.

The footprints in Table 1 below (as inserted from ROD Appendix A, Monitoring Framework, Table 6, page 227) can be used as a minimum amount of equivalent land requiring compensatory mitigation, in accordance with state-based compensatory mitigation systems. The footprints of existing developments can also be used to identify areas of existing disturbance where new activities can be co-located in order to minimize and avoid new disturbances on the landscape.

Details to Consider When Choosing Appropriate Type and Scale of Compensatory Mitigation for NEPA Alternatives

Sequence of steps when analyzing a proposed activity:

- 1) Determine if a proposed activity is within GHMA, PHMA, IHMA, Anthro Mountain, or SFA.
 - a) If not within these areas, mitigation is not required for greater sage-grouse.
 - b) If within SFA, go to 3.¹
 - c) If within GHMA, PHMA, IHMA, or Anthro Mountain, go to 2.

- 2) Determine if the proposed activity is within habitat or non-habitat. When determining if the area is non-habitat, consider 3rd and 4th order HAF suitability criteria, the vegetation and habitat implementation guides, and/or evaluation by a professional wildlife biologist.
 - a) If proposed activity is in non-habitat, mitigation is not required.
 - b) If the proposed activity is within sage-grouse habitat, go to 3.

- 3) Apply Standards and Guidelines and other alternatives to avoid or minimize impacts of the activity. For example, relocate the activity outside of mapped sage-grouse habitat or co-locate

¹ Recent court decision in Nevada indicated that a SEIS is needed to address SFAs. Current language in RODs stands until further notice or changes made within an SEIS.

the activity with other anthropogenic disturbances (e.g., Standard GRSG-LR-SUA-ST-014), then go to 4.

4) After required avoidance and minimization options are identified, determine if the proposed activity will create a residual impact (a footprint within PHMA, GHMA, IHMA, SFA, or Anthro Mountain).

- a) If no residual impacts remain in these areas, no compensatory mitigation is required.
- b) If a residual impact remains within these areas, compensatory mitigation is required. Go to 5.

5) Develop Appropriate Compensatory Mitigation Alternatives. In collaboration with state-based mitigation systems, assess the adequacy of potential credits for durability, timeliness, additionality and uncertainty as outlined in the ROD Mitigation Strategy Appendix B. Use Table 1 values as minimum acreages needed for effective compensatory mitigation, but adjust for differences in habitat quality between a mitigated and an impacted site, as per the Mitigation Strategy. To select a proposed action alternative, the Compensatory Mitigation Measure must result in a benefit to sage-grouse above current (baseline) conditions (i.e., a net conservation gain).

Table 1. Project Scale Activities as Adapted from Table 6 of Monitoring Framework

Degradation Type	Specific Activity	Feature Buffer Radius
Oil and Gas		
	Wells	263 feet (5.0 ac buffer)
	Power Plants	263 feet (5.0 ac buffer)
Coal		
	Mines	Digitized Polygon Area
	Power Plants	Digitized Polygon Area
	Coal Bed Methane Ponds	Digitized Polygon Area
Wind		
	Wind Turbines	204 feet (3.0 ac buffer)
	Power plants	204 feet (3.0 ac buffer)
Solar		
	Fields/Power Plants	316 (7.2 ac buffer)
Geothermal		
	Wells	204 feet (3.0 ac buffer)
	Power plants	Digitized Polygon Area
Mining		
	Locatable Developments	Digitized Polygon Area
Roads		
	Surface Streets*	40.7 ft
	Major Roads	84.0 ft
	Interstate Highways	240.2 ft
Railroads		
	Active Lines	30.8 ft
Powerlines		
	1-199 kV	100 ft
	200-399 kV	150 ft
	400-699 kV	200 ft
	700+ kV	250 ft
Communication		
	Towers	186 feet (2.5 ac buffer)
	Meteorological towers	186 feet (2.5 ac buffer)
Facilities		
	Nuclear Energy Facilities	Digitized Polygon Area
	Airport Facilities	Digitized Polygon Area
	Military Range Facilities	Digitized Polygon Area
	Hydroelectric Plants	Digitized Polygon Area
	Recreation Areas and Facilities (>0.25 acres)	Digitized Polygon Area

*Includes graded gravel roads and those more improved, but not dirt or two-track roads or trails

Considering Compensatory Mitigation Credits and Debits on Federal vs State or Private Lands

Compensatory mitigation credits (for habitat loss or degradation on lands under Forest Service (FS) or other landownership) can be created on National Forest System (NFS) land if a project will demonstrably augment, rather than displace, existing and funded investments identified in Federal appropriations (i.e., additionality is achieved).

Similarly, compensatory mitigation credits may be created on non-Federal land for habitat loss or degradation occurring on NFS lands if activities will demonstrably augment, rather than displace, existing and funded investments by FS or other entities.

There are three potential approaches to create compensatory mitigation credits on NFS lands. The first approach may be the most difficult, as it would require identifying lands where other uses are that are incompatible with credited sage-grouse habitat are precluded. The second and third approaches do not guarantee no other uses, and thus have durability risks, but they would allow work to be completed that could create habitat credits without any FS liability. In the second approach (see section I below), a contract or agreement would be created (e.g., through Stewardship or Good Neighbor authorities), which allows a proponent to improve and maintain lands as sage-grouse habitat.

The third approach (see section II below) would also allow a proponent to improve lands, but in this scenario a range permittee would have language requiring habitat work to be written into a range permit. In both approaches all creation and accounting of credits would be entirely independent of any compensatory mitigation site. In most circumstances, the proponent would be responsible for funding any required NEPA.

State and Federal Roles Regarding Compensatory Mitigation

All credit creation, assigning, and land condition monitoring is the sole responsibility of the state (through state mitigation program). The FS has no part in creating or guaranteeing credits and will not create any special use or additional designation for a parcel. The role of the FS is limited to allowing land improvement activities to occur in sage-grouse habitat (through the mechanisms described below).

Contractual Mechanisms

I. Habitat Proponent Contracting or Agreement

High priority areas may be identified by a proponent, who may then enter into an agreement (partnership or contract) with the FS to do habitat improvements on a parcel. Any subsequent agreements (e.g., to maintain lands for durability considerations) will be the responsibility of the proponent to pursue, and the FS will not guarantee contracts or agreements beyond the time limits of its authority. In general, the proponent will receive no compensation from the

FS for habitat work completed, but may receive credits, independently, from a state program. Unless performed under an appropriate authority (e.g., Stewardship agreement), the proponent can receive no financial benefit from the sale of forest products.

Necessary NEPA for must be completed before habitat improvement activities begin, and the cost of NEPA is borne by the Proponent.

II. Grazing Permit Modification

Grazing Permittees may be “fast-tracked” for improving lands by incorporating language into their current permits.

Potential language may be: “Lands of the allotment may be moved toward desired conditions (in accordance with appropriate NEPA), by the permittee (at the cost of the permittee). Habitat improvements may be funded or reimbursed by a third party, but the permittee may not remove forest products from the lands or receive any direct economic gain from the removal of forest products.”

Necessary NEPA for must be completed before habitat improvement activities begin, and the cost of NEPA is borne by the Permittee.

III. In some high-priority areas, FS, may create “shelf-stock” NEPA that would allow a Permittee or Proponent to begin habitat improvement activities (through above processes) without having to pay for the NEPA.

Outcomes, Metrics, and Stipulations. When evaluating whether state-based credits are sufficient compensatory mitigation for loss or degradation of sage-grouse habitats on NFS lands, the requirements should include metrics (measurable outcomes) and identify responsible parties

1. Mitigation measures should be defined by outcomes and not limited to outputs. An outcome is a measurable result of mitigation, whereas an output is something measurable that is done. Seeding sagebrush, for example, is an output. Establishing new sagebrush growth is outcome.
2. For authorized land uses, the outcome-based mitigation should be adequately described in the special use authorization. Normally, a state mitigation system will be responsible for monitoring mitigation sites for achieving and maintaining outcomes. Failure to achieve outcomes may result in non-compliance of a permitted activity, and require additional actions consistent with the mitigation terms and conditions until the outcome is achieved.