

Overview

- Mitigation Review Team (MRT)
- Banking Partners
- Process and Documents
- Mitigation Management
- Best Practices

Where do we find FWS?



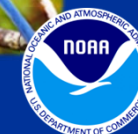
170 Approved Conservation Banks and 6 ILF Programs

8 NMFS Banks; 32 Joint Banks with USACE

>249,000 acres; >70 ESA-listed species



Data source:
RIBITS, Oct. 2020
ILFs not in RIBITS



How does FWS think about Banks?

FWS implements the Endangered Species Act

Impacts to species by federal agencies under section 7

Impacts to species by non-federal entities under section 10

FWS approves conservation banks with the recognition that the adverse affects to species resulting from section 7 and 10 regulatory approvals can be offset by credits because the bank is providing for the conservation needs of the species.

Typical Steps to Bank Establishment

- Early Coordination
- Proposal
- Instrument Development
- Final Instrument



Early Coordination

Optional but recommended*

Bank Sponsor

Engagement with Field Office
Engagement with Review Team
Assess agency interest
Assess market interest

Review Team

Provides early feedback
Review Team asks questions
Review Team makes suggestions

*May also submit a Draft Proposal to determine if a full proposal may be appropriate.

Early Coordination

Draft Proposal contains the following:

- Objectives
- Description of property and biological resources, current use
- Maps, aerial photos and narrative descriptions of the site and surrounding area
- Site selection considerations: Ownership; mineral, water, timber rights; Existing encumbrances
- Potential credits (e.g., acres, type and number credits)
- Proposed Service Area
- Contact information for the sponsor, landowner
- Entities that will be connected to the Bank
- Additional information at Agencies' request

Proposal

- **Required** for consideration by Agencies
- Contains much greater detail than a Draft Proposal to evaluate suitability
- More site-specific information
- Identification of roles: Sponsor, property owner, land manager, etc...
- Evaluate project suitability
- An accepted proposal does not guarantee an approved instrument

Proposal

Contents include (in addition to draft information):

- Mitigation work plan (development)
- Species/Biological baseline
- Proposed ownership and long-term management
- Preliminary title report (encumbrances)
- Phase I Environmental Site Assessment
- Assurances of sufficient water and mineral rights
- Service Area and type/number of credits
- Sponsor qualifications
- Identify proposed easement and endowment holder(s)
- Site visit is recommended

Proposal

Agency Review

- Is the submittal complete?
- Is it clearly explained?
- Have all MRT questions been answered?
- Agency has discretion to reject the Proposal

Potential Deal Breakers:

- Title issues
- RECs (Phase I ESA)
- Species not onsite



Instrument Development

- Utilize templates
- Multiple drafts
- Multiple levels of review
 - Field office
 - Regional office
 - Solicitor's office
 - Other agencies review concurrently

Bank Enabling Instrument (BEI)

- What is the Bank Enabling Instrument?
 - It is the document that memorializes the agreement between the sponsor/property owner and the agency
 - Describes bank operations
 - BEI Content = Instrument + Exhibits
 - Conservation/Mitigation banks – CBEI/MBEI
 - In-lieu Fee (ILF) programs – BEI

Typical provisions in a BEI

- Parties
- Definitions
- Bank Establishment Date
- Bank Evaluation
- Development Plan
- Service Area
- Credit Release Schedule
- Management Plan(s)
- Responsibilities
- Financial Assurances
 - Long-term
 - Short-term
- Bank Closure
- Maintenance/Monitoring
- Reporting
- Other provisions

Typical Exhibits to BEI

- A General Location Map and Site Location Map for Conservation Bank Property
- B Title Report, Legal Description and Legal Parcel Map for Conservation Bank Property
- C Service Area Map and Description
- D Management Plans & Economic Analysis (e.g., PAR) incl. Biological Description of Site, and Interim and Long Term Management
- E Credit Evaluation
- F Conservation Easement
- G Subordination Agreement (when required)
- H Property Assessment and Warranty
- I Level I Environmental Assessment
- J Credit Receipt Instructions and Template Forms
- K Endowment Deposit Declaration of Trust/Trust Agreement (includes target amount, target date, interim account)

Final Instrument

- Final Agreement signed by:
 - Review Team agency(ies)
 - Property owner
 - Bank sponsor

MITIGATION BANK ENABLING INSTRUMENT

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Service Review & Approval Process

Region 1

FO

RO

SOL

Signatory

Field Office

Regional Office

Solicitor

Asst. Regional Director

Field
Supervisor



Service Review & Approval Process



Regions 2, 3, 5

FO

RO

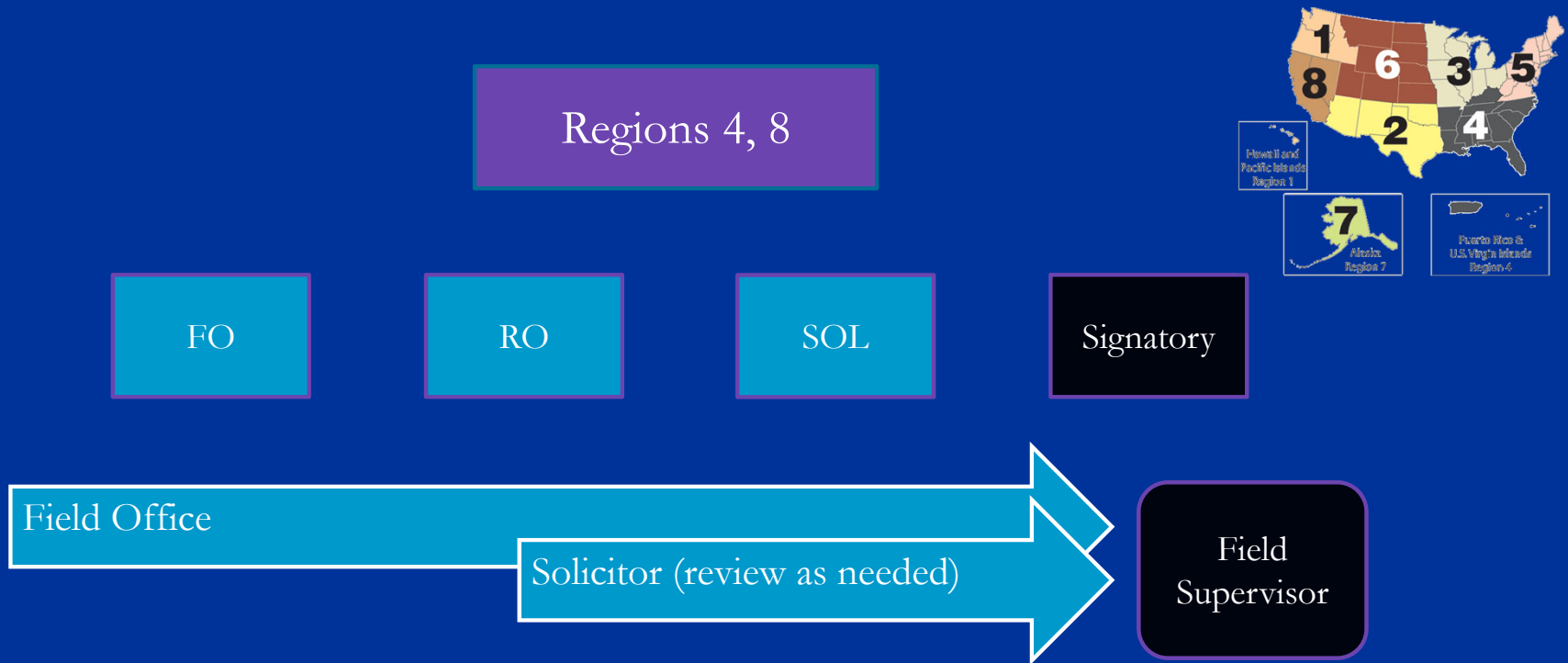
SOL

Signatory





Service Review & Approval Process





Important Establishment Milestones

- Instrument signed
- Real estate protection granted and recorded
- Short-term securities funded
- Endowment established (but not necessarily funded)
- Interim management – until endowment fully funded





Final Thoughts

- Early coordination – sponsor with FO, FO with SOL
- Refer to available guidance – species, operational, templates
- Site visit(s) – schedule early in the process
- Identify CE holder, endowment holder, and long-term manager early in the process
- Pay attention to details
 - Well-organized documents lead to a more smooth review
 - Regional differences with the instrument and process
- Agency involvement and oversight depends on resources

