

## Frequently Asked Questions

(updated September 21, 2021)

The purpose of this document is to address frequently asked questions pertaining to the Regional Conservation Investment Strategies (RCIS) Program (Program). These frequently asked questions (FAQ) may change as the Program evolves and as public interest in the Program grows. See the RCIS Program Guidelines for more specific information and details regarding of the Program. If there are any inconsistencies between this FAQ and the RCIS Program Guidelines, the most current published version of the RCIS Program Guidelines will take precedence.

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## **1. What is the purpose of the RCIS Program?**

The RCIS Program encourages a voluntary, non-regulatory regional conservation assessment process intended to result in high-quality conservation outcomes and advance mitigation tools. The Program uses a science-based approach to identify actions that, if implemented, will help California's declining and vulnerable species and natural resources by protecting, creating, restoring, and reconnecting habitat. The Program consists of three primary components: Regional Conservation Assessments (RCAs), Regional Conservation Investment Strategies (RCISs), and Mitigation Credit Agreements (MCAs). The Program provides a mechanism that allows any person or entity to develop mitigation credits through MCAs by implementing actions for focal species and other conservation elements within an approved RCIS.

RCAs and RCISs are intended to be ecologically based and may encompass varying geographic areas. The RCA will provide a broader ecoregional perspective, tying the biological and natural resource information into a larger ecoregional context. An RCIS will identify high-value conservation and habitat enhancement actions within a region that will aid in species recovery, adaptation to climate change, and resiliency in the face of wildlife and habitat stressors and pressures. The RCIS Program can assist in infrastructure and other land use planning in two ways: 1) by indicating biologically and ecologically important areas to protect and 2) by maximizing the value of mitigation funds through advance mitigation credits using an MCA. The credits, developed in advance of future impacts to natural resources, may be applied to offset future impacts to focal species, non-focal species, and/or other conservation elements included in an approved RCIS.

## **2. What is an RCA?**

An RCA is a voluntary, non-regulatory, non-binding conservation assessment that includes information and analyses of important species, ecosystems, protected areas, and habitat linkages at the USDA ecoregion section scale and may include more than one ecoregion section. RCAs include information supporting the development of long-term conservation priorities within one or more USDA ecoregion sections including ecosystem services such as carbon sequestration, water conservation, and preservation of agricultural lands. RCAs also support the development of RCISs that will more specifically identify areas of greatest conservation value. An RCA is not required to develop an RCIS.

## **3. What is an RCIS?**

An RCIS is a voluntary, non-regulatory, and non-binding conservation strategy that includes information and analyses relating to the conservation of focal species, their associated habitats, and the conservation status of the RCIS land base. An RCIS establishes biological goals and objectives at the species and other conservation elements (e.g., natural communities) level and describes conservation actions and habitat enhancement actions that, if implemented, will contribute to those goals and objectives. Those actions will benefit the conservation of focal species, habitat, and

other natural resources when implemented through conservation investments such as land acquisition, restoration, or to provide advance mitigation through the development of credits (see MCA question below) based on those actions. The development of an RCIS does not create, modify, or impose regulatory requirements or standards, regulate land use, establish land use designations, or affect the land use authority of a public agency. If approved by CDFW, an RCIS may be valid for up to 10 years. CDFW may extend the duration of an approved or amended RCIS for an additional 10 years provided the RCIS is updated to include new scientific information and the RCIS continues to meet the Program's requirements outlined in Fish and Game Code (Chapter 9, Section 1850, et seq.).

#### **4. What is an MCA?**

An MCA is a mitigation credit agreement developed under an approved RCIS. An MCA may be developed by anyone and is submitted for CDFW review and approval. MCAs create mitigation credits by implementing the conservation or habitat enhancement actions for the focal species and/or other conservation elements identified in an approved RCIS. Credits may also be created for any non-focal species listed in an approved RCIS by implementing the actions for the focal species and other conservation elements that the RCIS identifies them as being associated with. All MCAs must be within the boundary of an approved RCIS, but their associated service areas may extend outside of the RCIS boundary.

MCAs create credits that may be used as compensatory mitigation for impacts under the California Environmental Quality Act, the California Endangered Species Act (CESA), and the Lake and Streambed Alteration Program. At the discretion of the applicable regulatory agency, MCA credits may be used as compensatory mitigation for impacts under other state and federal laws.

#### **5. What are the criteria for selecting or defining an RCA or an RCIS geographic boundary?**

Criteria for selecting or defining RCA or RCIS boundaries should reflect ecological considerations, as set forth in the requirements of Fish and Game Code Sections 1852, and 1853, but may also include administrative or jurisdictionally based aspects. An RCIS area should be a complete, unfragmented geographic area, shall not overlap another RCIS area, and shall explain why the specific geographic area was chosen (including the rationale for excluding any areas). Entities proposing an RCA or RCIS are encouraged to work with CDFW early in the process to develop the geographic boundaries.

#### **6. Who can create credits under an approved RCIS?**

Any person or entity may by an MCA proponent and enter into an MCA with CDFW to create credits, even if the person or entity was not involved in the development of the RCIS. The MCA sponsor may use or sell MCA credits upon CDFW's finding that the credits have been created in accordance with Program requirements.

## **7. How is an RCIS different from a Natural Community Conservation Plan (NCCP) and Habitat Conservation Plan (HCP)?**

Unlike an NCCP and HCP, an RCIS is a non-regulatory document. Approval of an RCIS will not result in a permit or include take authorization under CESA or the federal Endangered Species Act and will not alter in any way a project proponent's obligation or need to obtain take coverage under CESA (or federal ESA) through an appropriate permitting mechanism. The purpose of an RCIS is to provide regional planning that will identify important ecological resources and conservation or enhancement actions that, if implemented, will advance the conservation of focal species and their habitats and other conservation elements. In contrast to the typical jurisdiction-based boundary of an NCCP, an RCIS boundary should be ecologically based and may be consistent with or overlap county or other jurisdictional boundaries.

An RCIS must include provisions ensuring that it will be consistent with and complementary to any administrative draft NCCP, approved NCCP or HCP, state or federal recovery plan, or other state or federal approved conservation strategy that overlaps an RCIS.

## **8. Can an RCIS overlap with an NCCP?**

Yes, but RCISs that overlap an NCCP have additional requirements. An RCIS that overlaps an NCCP must be consistent with the NCCP or must provide an explanation for why it is inconsistent.

Several RCISs do overlap with NCCPs, such as the Santa Clara Valley RCIS and the Yolo County RCIS. In those situations, the RCIS may provide additional mitigation opportunities beyond those of the NCCP. For example, an RCIS boundary may extend beyond the boundary of the NCCP, allowing for mitigation opportunities in the areas outside of the NCCP. An RCIS may include focal species or non-focal species that are not covered species under the NCCP, in which case mitigation could be developed under the RCIS which is not available under the NCCP. For projects in the RCIS/NCCP overlap area that are denied take coverage under the NCCP, or for projects whose activities aren't considered "covered activities" by the NCCP, the RCIS may provide opportunities for mitigation by enabling development of MCAs.

## **9. How will MCAs interact with NCCPs and HCPs?**

The NCCP's Implementing Entity must provide advance written approval prior to development of an overlapping MCA. The credits may be used for an approved NCCP's covered activities only in accordance with the requirements of the NCCP. Individuals and entities eligible for coverage as a Participating Special Entity under an approved NCCP may use mitigation credits provided through MCAs only if the Implementing Entity declines to extend coverage to the covered activity proposed by the eligible individual or entity.

Any person or entity may develop MCAs for CDFW's consideration and approval, including NCCP Implementing Entities. These credits may be sold or transferred to entities that are not Participating Special Entities or to entities whose impacts are not included in the NCCP's covered activities.

**10. How is this Program different from CDFW's mitigation and conservation banking program?**

Similar to banks, MCAs create mitigation credits. However, MCA credits are created by implementing conservation and enhancement actions for focal species, non-focal species, and other conservation elements included in an approved RCIS. Some sections from the MCA statute also suggest that MCAs were intended to fit a slightly different role than that of banks. For example, habitat enhancement actions, by definition, do not include permanent preservation of the land. These types of actions could create "near permanent" credits with a near-perpetual long-term durability agreement, rather than a conservation easement, or could create term credits that could be used to offset temporary impacts. Other things mentioned in statute that suggest intended differences between these programs include an MCA proponent that will use, rather than sell, the credits, credits created by implementing excess mitigation, and credits created by implementing wildlife crossing and fish passage projects.

**11. Are there fees associated with the Program?**

CDFW shall collect fees from: a) a public agency that proposes an RCIS or RCA, and b) a person or entity that proposes to enter into an MCA. Fees shall be used to pay for all or a portion of CDFW's costs associated with the Program including proposed RCAs, RCISs, and MCAs. The fee structure and schedule for RCAs, RCISs, and pilot MCAs are available on the Program website. The Program fees are adjusted annually using the Implicit Price Deflator (IPD) for State and Local Government Purchases of Goods and Services, as published by the United States Department of Commerce. Additionally, the Program fees may be updated periodically based on the actual number of staff hours required to review submitted documents.

**12. Does the Program provide funding to develop an RCA or RCIS?**

The Program does not provide funding to develop an RCA, RCIS, or MCA. RCA or RCIS development is funded by the public agency that creates them. Collaboration with different stakeholders and other entities may provide opportunities for cost-sharing. Additionally, there may be various grant programs that provide opportunities to fund, in whole or in part, RCA or RCIS development. For example, as of 2021, the Wildlife Conservation Board is providing a total of \$5 million from Proposition 68 for RCIS development.

Development of MCAs and all actions associated with implementing them, including review of environmental documents and implementing conservation and

enhancement actions, will be funded by the entity that seeks to create credits through an MCA.

**13. Has CDFW prepared guidelines? If so, what do they cover and where can they be found?**

CDFW prepared RCA and RCIS Guidelines, which are posted on the Program website. CDFW prepared draft MCA Guidelines and template in April of 2019 that were released for public review and comment. However, stakeholders requested that CDFW initiate an MCA pilot project and hold off on finalizing the MCA Guidelines until after the pilot was approved. CDFW agreed to this approach and selected the Southport MCA project as the first pilot. As of 2021, CDFW has been working with the Southport sponsor to develop the pilot MCA and intends to update the MCA Guidelines, including the MCA template, shortly after the pilot is complete. The pilot project is meant to identify and inform changes and updates that need to be made to the draft Guidelines and template.

The Program Guidelines will be reviewed periodically by CDFW and may be amended over time. The Guidelines are to provide guidance on the components needed and resources available to prepare RCAs, RCISs, and MCAs, and the submittal, review, and approval processes for those documents. The current Guidelines provide direction on development of RCAs and RCISs, including selecting focal species and other conservation elements, determining goals and measurable objectives, developing conservation and enhancement actions, indicating data and analysis standards, and determining performance standards and metrics. The Guidelines also include recommendations on stakeholder involvement, guidance on the public review process, and how an RCIS will be consistent with administrative draft and approved Natural Community Conservation Plans (NCCPs) and Habitat Conservation Plans (HCPs) that overlap an RCIS area.

**14. Which RCISs were “grandfathered” (allowed to meet the requirements of the June 2017 Guidelines) when the September 2018 Guidelines were released?**

All RCISs were subject to the September 2018 Guidelines, except for RCISs that were initiated prior to January 1, 2017 or filed a Notice of Intent (NOI) pursuant to Fish and Game Code Section 1854(c)(1) on or before September 13, 2018. To be considered for exemption from the September 2018 Guidelines, RCIS proponents must provide CDFW with adequate written documentation that they have met either one of the criteria. Those RCISs that meet the criteria will be subject to the June 2017 RCIS Guidelines unless they choose to follow the September 2018 Guidelines. Any RCIS subject to the June 2017 Guidelines had to be submitted to CDFW for completeness review by March 29, 2019. All RCISs submitted after March 29, 2019 are subject to the September 2018 Guidelines. Notwithstanding the above, all grandfathered RCISs are subject to requirements in the following sections (including subsections) of the September 2018 Guidelines: 1.4 – Program Contacts; 2.1 – Terms, Abbreviations, Acronyms, and Definitions; 4.2.2 – Description of the RCIS

Area; 4.2.4 - Consultation, Consistency and Compliance; 4.2.5.3 – Non-focal Species Information; 4.6 – Review and Approval Process; 4.7 – Amending an RCIS; and 4.8 – Updating and Extending an RCIS.

**15. If substantive changes (e.g., adding new focal species) are made to a “grandfathered” RCIS, does it then become subject to meeting the requirements of the September 2018 version of the Program Guidelines?**

Any changes to an RCIS would require adherence to the amendment process, which depends on the type of amendment. The RCIS Guidelines has defined two types of RCIS amendments: simple and complex. A simple amendment could be made without updating the whole RCIS to meet the requirements of the 2018 Guidelines. However, a complex amendment would necessitate updates to the RCIS such that the RCIS would meet the requirements of the 2018 Guidelines. Additionally, complex RCIS amendments are subject to the same public notice requirements, review and approval processes, and fees required for original RCISs.

**16. What information should be included in an RCA or RCIS?**

Required information in an RCA differs from an RCIS. Chapter 9, Section 1853 (RCA) and Section 1852 (RCIS) of the Fish and Game Code describe requirements for developing these assessment documents. Refer to Program Guidelines for clarification of terms and definitions and for further direction on the development, review, and approval of RCAs and RCISs.

Generally, RCAs cover larger geographic areas and provide ecoregional assessments using geospatial information for species, natural community distributions, standard vegetation classifications, and other standardized data. RCAs identify and summarize relevant regional pressures and stressors, including climate change vulnerability, conservation areas and habitat connectivity values and consider existing conservation plans such as the State Wildlife Action Plan, recovery plans, and approved or administrative draft NCCPs.

Similar to RCAs, RCISs include descriptions of geographic areas and identify important ecological resources and processes, natural communities, focal species, habitat, habitat connectivity, and existing protected areas. RCISs include summaries of stressors and pressures in RCIS areas that affect these resources, including climate change vulnerability. RCISs generally cover smaller geographic areas than RCAs. RCISs incorporate the best available existing scientific data and information to identify conservation goals and measurable objectives for focal species and other conservation elements, and identify conservation and enhancement actions that, if implemented, would further those goals and objectives. Conservation and habitat enhancement actions address or respond to focal species’ and other conservation element stressors and pressures and advance the conservation of focal species and other conservation elements including ecological processes, natural communities, biodiversity, and habitat connectivity. RCISs also consider the conservation benefits



of preserving working lands for agricultural uses. RCISs identify existing mitigation banks and available credits and include provisions ensuring consistency with approved or administrative draft NCCPs, federal HCPs, and recovery plans. RCISs must also reasonably indicate foreseeable infrastructure development, housing, and renewable energy projects. However, anticipated impacts from those development projects are not included in RCISs.

### **17. What is the difference between a conservation action and a habitat enhancement action?**

The main difference between a conservation action and a habitat enhancement action is whether the land is permanently protected with a conservation easement.

Fish and Game code 1851(d) defines a conservation action as an action to preserve or to restore ecological resources, including habitat, natural communities, ecological processes, and wildlife corridors, to protect those resources permanently, and to provide for their perpetual management, so as to help to achieve one or more biological goals and objectives for one or more focal species. Conservation actions may include, but are not limited to, actions to offset impacts to focal species.

Fish and Game code 1851(g) defines a habitat enhancement action as an action to improve the quality of wildlife habitat, or to address risks or stressors to wildlife, that has long-term durability but does not involve land acquisition or the permanent protection of habitat, such as improving instream flows to benefit fish species, enhancing habitat connectivity, or invasive species control or eradication.

### **18. What information is required to be included in an MCA?**

Section 1856 of the Fish and Game Code describe requirements for developing MCAs. Additionally, the MCA draft Guidelines will be updated and further developed after the completion of the pilot MCA. The MCA guidelines will provide clarification of terms and definitions and further direction on the development, review, and approval of MCAs.

An MCA identifies information related to the proposed credit developer, indicates the MCA site's manager, and fully describes the location and type of conservation or habitat enhancement actions. MCAs describe proposed types and quantities of mitigation credits and the supporting rationale that directly correlates their creation to the RCIS's focal species and other conservation elements. MCAs also identify metrics or indicators to measure how proposed conservation or habitat enhancement actions contribute to achieving the RCIS's goals and objectives. MCAs must document baseline conditions and identify where public and permanently protected lands occur in the vicinity of the proposed MCA site(s). Additionally, MCAs ensure that the implemented conservation actions or habitat enhancement actions will be adequately funded and have long-term protection, monitoring, enforcement, and management.

Lastly, MCAs identify any approved mitigation and conservation banks with overlapping service areas and explain the terms and conditions under which the proposed mitigation credits may be used or sold. MCAs describe specific methods proposed for reporting and maintaining a record of the creation, release, sale, or use of credits. MCAs include a proposed credit ledger, credit release schedule, and the performance measures or metrics used to determine credit release(s).

**19. Is the completion of an RCA a prerequisite for the development and submission of an RCIS?**

No, an RCIS can be submitted for an area that is not covered by an approved RCA.

**20. CDFW can only approve an RCIS if one or more state agencies request approval of the RCIS through a letter send to CDFW's Director. When does the letter need to be submitted? Are there any responsibilities of the state agency that writes the letter?**

The letter from the state agency requesting approval of the RCIS must be submitted to the Director concurrent with the submittal of the draft RCIS for initial completeness review. The state agency requesting approval has no responsibilities for preparing the RCIS, implementing or monitoring the RCIS, or for updating the RCIS (unless otherwise stipulated in the RCIS).

**21. How are land use change impacts addressed in an RCIS?**

RCISs must consider reasonably foreseeable development of infrastructure facilities, housing, and renewable energy. However, species and habitat impacts that may be associated with these developments are not to be included in RCISs. Developers that identify future projects and determine their likely compensatory mitigation needs may choose to use an RCIS for identifying potentially suitable mitigation opportunities and to voluntarily implement specific conservation or habitat enhancement actions to create mitigation credits through MCAs.

**22. Can development and/or restoration projects be permitted through this Program?**

RCAs, RCISs and MCAs are not permits and do not authorize any take of species. Also, the restoration and conservation actions in an RCIS are not a solid commitment and there is no guarantee that they will be implemented. RCISs are regional conservation strategies intended to help guide voluntary conservation investments, including the creation of mitigation credits through an MCA, which may be used to fulfill permit requirements for development and restoration projects.

**23. Can RCISs be amended if they don't cover an element desired by an MCA?**

Yes, an RCIS can be amended by the RCIS proponent or another entity with written authorization from the RCIS proponent or CDFW. However, this would be considered a complex amendment and would be subject to the same public notice

requirements, review and approval processes, and fees required for original RCISs. Additionally, the RCIS would have to comply with the latest version of the RCIS Guidelines, which may require updates beyond adding the new element if the RCIS had been developed under an older version of the Guidelines.

**24. Who will be responsible for the long-term ownership and management of mitigation sites that are developed under an MCA?**

MCAs identify the entities that will own the mitigation lands and be responsible for the long-term management. Requirements for entities to hold mitigation lands will be provided in the MCA Guidelines and will be consistent with existing CDFW requirements and applicable state laws. Additionally, a state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources (Government Code Section 65967).

**25. Could an MCA create credits by enhancing existing permanently protected lands?**

There may be opportunities for an MCA to create credits by enhancing existing permanently protected lands, which may include public lands or private lands protected by a conservation easement. However, mitigation credits cannot be created on a site that has already been permanently protected with a conservation easement if that land has been used, or is currently in use, to fulfill compensatory mitigation requirements for one or more projects.

**26. Can an MCA create temporary credits? If so, how would they be used?**

An MCA can create credits based on an approved RCIS's habitat enhancement actions that could be used to mitigate for temporary impacts. In general, both permanent and temporary credits may be considered for fulfilling mitigation requirements of temporary impacts so long as the credit duration is concurrent with, and at least as long as, the impact duration. Ultimately, the type and combination of credit types used to mitigate for impacts will be determined at the time that regulatory permits are issued.

**27. Can an MCA be created that would cover multiple MCA sites?**

An MCA may be approved with one or more MCA sites. Once an MCA is approved by CDFW, additional MCA sites can be added through an amendment process. An MCA cannot be approved without at least one MCA site included.

**28. Can MCA credits be created that could be used as mitigation by other regulatory agencies?**

MCAs can be established to meet the requirements of CESA, CEQA, and LSA. Other regulatory agencies may propose additional requirements to be met by an MCA to meet their mitigation standards. When that is the case, CDFW will consider

the proposed requirements. If other regulatory agencies are not a signatory to the MCA, it is the responsibility and discretion of those agencies to determine the appropriateness of MCA credits to meet their compensatory mitigation requirements.

**29. Is the RCIS Program now permanent and is there a limitation on the number of RCISs CDFW can approve?**

The RCIS Program is established and no longer considered a pilot program. The passage of SB 103 (Section 800 of Streets and Highways Code) eliminated the January 1, 2020 sunset. It also exempted from the original limit of RCIS approvals, all RCISs that have a state water or transportation infrastructure agency letter requesting the RCIS's approval. RCISs submitted without such an accompanying letter are still subject to the maximum limit of eight (Streets and Highways Code Section 800.6(j)). This letter can also satisfy the requirements of Chapter 9, Section 1852(a) of the Fish and Game Code (letter from a state agency) if the letter includes all required elements and specifically acknowledges that it is intended to satisfy both statutes. For more information, see Section 4.6.1.1 – State Agency Letters, in the RCIS Program Guidelines.

**30. What is the public review process for developing and approving an RCIS?**

The RCIS proponents must follow Chapter 9, Section 1854 of the Fish and Game Code including notification to the Governor's Office of Planning and Research, conducting and advertising public meetings and publishing notices and the draft RCIS on the RCIS proponent's website. The RCIS proponent must also notify stakeholders about public meetings and public comment periods, including county boards of supervisors, county councils, and NCCP or HCP implementing entities.

Prior to submitting a draft RCIS, a state agency must request the approval of the RCIS by sending a letter to CDFW stating the RCIS will aid in meeting the State's goals of conservation and public infrastructure or forestry management. The letter must be submitted to the Director concurrent with the submittal of the draft RCIS for initial completeness review.

Once a draft RCIS is submitted to CDFW for completeness review, CDFW has 30 days to deem the draft complete or respond to the RCIS proponent with comments that describe what is needed to complete the RCIS. After a draft RCIS is deemed complete, CDFW will post it on its Program website for a minimum of 30 days for public review and comment and shall notify any public agency, organization, or individual that has filed a written request to CDFW to receive notices regarding draft RCISs. CDFW will concurrently conduct its substantive review of the draft RCIS. The RCIS proponent will then submit a revised draft RCIS to CDFW which will be evaluated to determine whether all public and CDFW comments have been addressed sufficiently and to ensure that the RCIS includes responses to the public comments. Once approved, CDFW will post approved RCISs on its Program website.

### **31. What is the process for developing, reviewing, and approving an MCA?**

CDFW is currently working on its first pilot MCA project. The results of that effort will inform changes and updates to be made to the current draft of the MCA guidelines and template. The MCA Guidelines and Template are anticipated to be published shortly after the pilot MCA is finalized. The following is anticipated to be the process for developing, reviewing, and approving MCAs.

MCA Sponsors may submit an optional MCA Concept, based on one or more conservation or habitat enhancement action(s) of an approved RCIS, which allows for early collaboration between CDFW and the MCA sponsor to clarify the intent of the MCA and to identify potential benefits and issues.

When the Draft MCA is submitted to CDFW for review, it must include all required elements and exhibits indicated in the checklist contained in the MCA Guidelines. The MCA Template must be used along with the MCA Guidelines that are in effect at the time of Draft MCA submittal. The Guidelines indicate all requirements for completing the Template. MCAs are submitted to CDFW for review and approval. The MCA Guidelines provides details of the requirements and timelines for MCA reviews.

### **32. Will final RCAs, RCISs, MCAs and their associated data be available to the public?**

Final RCA, RCIS, and MCA documents will be available on the Program website. All geospatial data that meets CDFW's standards will be accessible through [CDFW's Biogeographic Information and Observation System \(BIOS\) website](#).

### **33. How can I learn more about the Program?**

Additional resources are available on the [RCIS Program website](#), including the Program Guidelines. For further information, refer to the Guidelines or contact the Program by email at [rcis@wildlife.ca.gov](mailto:rcis@wildlife.ca.gov).