

U.S. Fish and Wildlife Service Final Mitigation Policy Questions and Answers

What action is the U.S. Fish and Wildlife Service taking?

The U.S. Fish and Wildlife Service (Service) is announcing final revisions to its Mitigation Policy (46 FR 7656 (1981-01-23)), which has guided agency recommendations on mitigating the adverse effects of land and water developments on fish and wildlife since 1981. The Service considered all comments received on the proposed revised policy and has now finalized those revisions. The final policy is an opportunity to address new challenges, including accelerating habitat loss, the effects of climate change and the need for a more ecologically- and cost-effective mitigation approach. A major incentive for revising the policy was the need for clear guidance on how to design mitigation measures that ensure the greatest conservation for the investment across large geographic areas or “landscapes.”

Within this context, the Service’s objectives for revising the policy were to:

- a) Clarify that it addresses *all* impacted resources for which the Service has the authority to recommend or require mitigation; and
- b) Provide an updated framework for mitigation planning that promotes measures that will be effective and efficient at conserving fish and wildlife resources across the landscape.

What is the difference between this revised Mitigation Policy and the 1981 Mitigation Policy?

The revisions include integration of all authorities (laws and regulations) that allow the Service to recommend or require the mitigation of impacts to fish and wildlife resources. Notably, the revised policy will include the Service’s authorities under the Endangered Species Act, not included in the 1981 Policy, to conserve federally-listed species and the ecosystems upon which they depend.

The revised policy also establishes a set of guiding principles for Service-recommended mitigation across all Service programs, including a goal to improve (i.e., a net gain) or, at minimum, to maintain (i.e., no net loss) the current status of affected resources, whenever the situation merits and doing so is allowed by law. It establishes a landscape-level approach that will integrate mitigation planning into broader regional strategies for conserving species and habitats.

The revised policy is intended to be a single umbrella policy under which more detailed Service policies or guidance documents covering specific activities may be issued in the future.

What is the difference between the final revised policy and the proposed revised policy?

The final policy differs from the proposed revised policy in a few substantive respects. For example, in the General Policy and Principles section, the Service added a principle to emphasize the importance of the avoidance tier of the mitigation hierarchy. This new principle reinforces existing direction in the draft policy that Service staff will recommend avoidance of all impacts to high-value habitats as the only effective means of mitigating impacts at these locations. As another example, in the Compensation section, the Service clarified the difference between on-site compensation and rectifying impacts. The final policy also contains many editorial changes in response to comments the agency received that requested greater clarity of expression regarding various aspects of the policy purpose, authorities, scope, general principles, framework for formulating mitigation measures and definitions.

The most common editorial change in the final policy addresses concerns we received that the policy was unclear regarding the Service’s authorities to either recommend or require mitigation. The final policy

clarifies the limited circumstances under which the Service has specific authority to require, consistent with other applicable laws and regulations, one or more forms of mitigation for impacts to fish and wildlife resources.

In the final policy, the Service clarifies language that emphasizes the policy provides a common framework for Service discretion across the full range of our authorities, including those for which the agency may require mitigation, but cannot and does not alter or substitute for the regulations implementing any of our authorities.

What are the benefits of revising the Mitigation Policy?

The revised policy seeks to improve collaboration and coordination between all interested parties when the Service is engaged in mitigation. The policy establishes a framework for incorporating landscape-level mitigation measures and supports “advance mitigation plans.” Advance mitigation plans identify the most ecologically effective mitigation measures on a landscape prior to the proposal of specific development activities. This makes it easier, faster and more effective to mitigate the impacts of individually proposed projects.

Additionally, advance mitigation plans should more effectively address potential indirect and cumulative impacts of development and incentivize private investments in pre-development compensation activities, such as mitigation and conservation banking. Aligning mitigation planning with broader, regional planning is an example of how the policy as a whole is intended to improve the conservation outcomes the Service pursues with its partners.

Does the Service have other mitigation policies in place? Is the intent to also revise those policies?

The 1999 National Wildlife Refuge System Mitigation Policy describes the limited circumstances when compensatory mitigation for wetland impacts on private lands is appropriately sited on refuge properties under Clean Water Act section 404. That policy is not changed by the Service’s current action, and is a referenced element of this final policy. Similarly, other existing Service policies or guidance documents are incorporated by reference or directly into this final policy. Future guidance addressing specific Service responsibilities or activities (e.g., addressing compensatory mitigation for impacts to species listed under the Endangered Species Act) following the principles outlined in the revised policy may be developed.

How does this policy relate to other mitigation policies in the Department of Interior?

The revised policy is consistent with and supported by Secretarial Order 3330 - *Improving Mitigation Policies and Practices of the Department of the Interior* issued on October 31, 2013. The policy is also consistent with the Departmental Manual and November 2015 Presidential [Memorandum](#) on mitigation. The revised policy’s emphasis on using a landscape-level approach to mitigation planning, seeking a net conservation benefit through more effective mitigation measures and incorporating all trust resources, including listed species, is well aligned with these three higher-level policy statements.

This policy is generally consistent with the existing regulations applicable to Department of the Army [permits](#) under the [Clean Water Act](#), published in 2008.

Where can more information be found online?

For more information, please visit: <http://www.fws.gov/ecological-services/habitat-conservation/cp.html>. The revised policy will become effective upon publication in the *Federal Register* on November 21, 2016.