

Endangered Species Act Compensatory 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 its Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP). It is the first such policy issued by the Service. The policy covers all mechanisms for compensating for the impacts of development activities, including, but not limited to, permittee-responsible mitigation, conservation banking, in-lieu fee programs and habitat credit exchanges that the Service may recommend or require to offset unavoidable adverse impacts to endangered or threatened species (listed species) or other species at risk of being listed as threatened or endangered in the foreseeable future.

Why is the Service taking this action?

The policy is consistent with and follows the [Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment](#) released on November 3, 2015, directing certain federal agencies to adopt a common set of best practices to minimize the harmful impacts to wildlife and other ecological resources caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are appropriately addressed or mitigated.

The CMP will help the Service implement the Secretary of the Interior's [Order 3330 *Improving Mitigation Policies and Practices of the Department of the Interior*](#), issued on October 31, 2013. It is also identified as a policy deliverable in the report [A Strategy for Improving the Mitigation Policies and Practices of The Department of the Interior](#) announced on April 10, 2014. In particular, the proposed policy is needed to move from project-by-project to landscape-scale approaches to planning and implementing compensatory mitigation.

The policy will advance the landscape-scale mitigation strategy outlined in the Department's mitigation policy, [Implementing Mitigation at the Landscape-scale \(600 DM 6\)](#) from October 23, 2015. In addition, the CMP is the first policy issued under the umbrella of the Service's recently revised [Mitigation Policy](#) (81 FR 83440, November 21, 2016). The updated Mitigation Policy applies to authorities under which the Service can provide mitigation recommendations or requirements, including the ESA.

What are the benefits of developing the CMP?

The policy seeks to improve collaboration and coordination between all interested parties when the Service is engaged in compensatory mitigation planning and implementation. The policy will also: (1) provide Service personnel with direction and guidance in the planning and implementation of compensatory mitigation, primarily through encouraging strategic planning at the landscape level, and (2) setting standards that mitigation programs and projects must meet to achieve conservation that is effective and sustainable. This approach is proactive, ecologically effective and takes advantage of economies of scale that provide greater regulatory certainty and predictability to the regulated community while improving conservation outcomes for affected species.

How does the final policy differ from the proposed policy?

This final policy differs from the proposed policy in a few substantive respects, and contains editorial changes in response to comments the Service received that requested greater clarity regarding various aspects of the policy purpose, authorities, scope, general principles, framework for formulating mitigation measures and definitions. The most common editorial change to the final policy addresses the concern that the Service lacks authority to apply compensatory mitigation to the ESA.

The policy adds new text to the Authority section that identifies those circumstances under which the Service has specific authority to recommend or require, consistent with other applicable laws and regulations, one or more forms of compensatory mitigation for impacts to federally listed species, proposed species and candidates as defined in the ESA. It provides a common framework for the Service when identifying and implementing compensatory mitigation measures pursuant to the ESA. The policy, however, cannot and does not alter or substitute for the regulations implementing the ESA.

In addition, based on feedback, implementation language incorporated in the proposed policy will now be issued as separate guidance containing specific operational steps to assist Service staff in implementing this policy after publication of the final policy in the *Federal Register*.

Does this new policy replace any existing Service policies or guidance documents?

No. The policy clarifies the Service’s 2003 [Guidance on the Establishment, Use and Operation, of Conservation Banks](#) and the 2008 [Recovery Crediting Guidance](#). The final CMP retains the conceptual elements of these two guidance documents and provides more details. The Service will provide additional implementation information in a separate guidance document.

Does the Service have other mitigation policies in place?

The Service recently revised its Mitigation Policy to encompass all authorities under which the Service can provide mitigation recommendations or requirements, including the ESA. The revised Mitigation Policy establishes a new approach that will promote the most effective and efficient mitigation measures to be implemented across the landscape. This will require improved collaboration and coordination between all interested parties and effective integration of mitigation planning and landscape-level conservation strategies.

The Service’s revised Mitigation Policy is intended to be a single, umbrella policy under which more detailed Service policies or guidance documents covering specific activities involving mitigation may be issued. The CMP provides such guidance for and is specific to compensatory mitigation under the ESA.

What is the difference between the CMP and previous guidance documents?

The CMP is the first comprehensive treatment of compensatory mitigation under authority of the ESA to be issued by the Service. It covers all compensatory mitigation mechanisms used to compensate for unavoidable adverse impacts to listed species and their habitat including, but not limited to, permittee-responsible mitigation, conservation banking, in-lieu fee programs and habitat credit exchanges. It sets forth clear standards that apply to all compensatory mitigation mechanisms to offset impacts to affected ESA resources.

The policy incorporates a landscape-level approach to mitigation planning and implementation to improve conservation outcomes for affected species. It adopts the guiding principles from the Service’s revised Mitigation Policy, including the goal of improving or, at minimum, maintaining the current status of affected resources, whenever doing so is allowed by law.

The new policy has a stated preference for compensatory mitigation in advance of impacts and encourages consolidating compensatory mitigation on the landscape (e.g., use of conservation banks) when doing so will produce a better ecological outcome for the species.

Where can more information be found online?

For more information, please visit: <http://www.fws.gov/ecological-services/habitat-conservation/cp.html>.