

## **Proposed, Endangered Species Act Compensatory Mitigation Policy Questions and Answers**

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

The U.S. Fish and Wildlife Service (Service) is announcing the proposed Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP). The proposed CMP covers all compensatory mitigation mechanisms including, but not limited to, permittee-responsible mitigation, conservation banking, in-lieu fee programs, habitat credit exchanges and other third party mitigation arrangements 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 mitigation 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.

In addition, 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.

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

Yes. The proposed CMP when finalized will replace the Service's 2003 Guidance on the Establishment, Use and Operation, of Conservation Banks and the 2008 Recovery Crediting Guidance. The proposed CMP retains the conceptual and many of the procedural elements of the two guidance documents it will replace and provides more detailed and prescriptive guidance specific to compensatory mitigation lacking in these older guidance documents.

### **What is the difference between the proposed CMP and previous guidance documents?**

The proposed CMP is the first comprehensive treatment of compensatory mitigation under authority of the ESA to be issued by the Service. The policy covers all compensatory mitigation mechanisms (e.g., permittee-responsible mitigation) for all species and habitat protected under the ESA and for which the Service has jurisdiction. It sets forth clear standards that apply to all compensatory mitigation mechanisms that may be proposed by federal agencies or applicants to offset impacts to listed species and/or designated critical habitat, as well as mitigation proposals

by mitigation sponsors for conservation banks, in-lieu fee programs and other third party mitigation arrangements.

The proposed CMP establishes a landscape-level approach to mitigation planning and implementation that aligns our compensatory mitigation requirements and recommendations with landscape-level conservation goals to improve ecological outcomes for the species through regulatory and voluntary conservation processes. It adopts the guiding principles from the Service's proposed revised [Mitigation Policy](#), including the goal of ensuring that, at a minimum, an action results in no net loss toward achieving conservation outcomes for affected resources, or a net benefit in conservation outcomes, whenever the situation merits and 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. The CMP provides more detailed prescriptive guidance than the previous guidance documents for achieving sustainable compensatory mitigation on the landscape.

### **What are the benefits of developing the Compensatory Mitigation Policy?**

The CMP seeks to improve collaboration and coordination between all interested parties when the Service is engaged in compensatory mitigation planning and implementation. It supports use of the mitigation hierarchy and the incorporation of compensatory mitigation measures into landscape-scale conservation plans. 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.

### **Does the Service have other mitigation policies in place? How does the proposed Compensatory Mitigation Policy relate to those policies?**

The Service's 1981 Mitigation Policy is currently being revised to encompass all authorities under which the Service can provide mitigation recommendations or requirements, including the ESA. 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 detailed prescriptive guidance for compensatory mitigation under the ESA.

The Service's 1999 National Wildlife Refuge System Mitigation Policy describes the limited circumstances when it is appropriate to mitigate impacts regulated under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act on refuge properties. This existing Refuge Mitigation Policy is an example of a policy that nests under the revised Mitigation Policy similarly to the new proposed CMP.

### **How can comments be provided on the proposed policy?**

The proposed policy will publish in the *Federal Register* on September 2, 2016. Written comments and information concerning this proposal can be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. [FWS-HQ-ES-2015-0165]; or
- U. S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-HQ-ES-2015-0165]; Division of Policy, Performance and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike - MS: BPHC Falls Church, VA 22041-3808.

Comments must be received within 45 days, on or before October 17, 2016. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

The Service expects to finalize the policy by the end of 2016.

**Where can more information be found online?**

For more information, please visit: [https://www.fws.gov/endangered/improving\\_esa/cmp.html](https://www.fws.gov/endangered/improving_esa/cmp.html).