

U.S. Fish and Wildlife Service Proposed, Revised 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 proposed 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 revisions are an opportunity to address new challenges, including an accelerating loss of habitats, the effects of climate change and the need for a more ecologically- and cost-effective mitigation approach. A major incentive for revising the policy is 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 are 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 the 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 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 mitigation of wetland impacts on private lands is appropriate on refuge properties under Clean Water Act subsection 404. That policy is not likely to change, but will become a referenced element of the overall final Service Mitigation Policy. Similarly, other existing Service policies or guidance documents will be incorporated by reference or directly into the 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 Service Mitigation 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 Presidential [Memorandum](#) on mitigation. The new 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.

Can the federal share or matching share in a financially assisted project be used to satisfy mitigation requirements?

With very limited exceptions, neither the federal share nor the matching share in a financially assisted project may be used to satisfy mitigation requirements. The exceptions include situations in which:

- 1) The match provided exceeds the required minimum match;
- 2) The federal funding is specifically authorized for the purpose of mitigation; or
- 3) The work funded by the federal financial assistance award is subject to an authorization that requires mitigation as a condition of the authorization.

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

How can comments be provided on the proposed, revised policy?

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-2015-0126]; or
- U. S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-HQ-ES-2015-0126]; Division of Policy, Performance and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike - MS: BPHC Falls Church, VA 22041-3808.

The revised policy will publish in the *Federal Register* on March 8, 2016. Comments must be received within 60 days, on or before May 9, 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 in summer 2016.

Where can more information be found online?

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