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Mitigation Policy

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Originating Office: Division of Habitat Conservation

2.1 Purpose. This chapter provides guidance to ensure consistent and effective application of the U.S. Fish and Wildlife Service Mitigation Policy published in the Federal Register, Vol. 46, No. 15, January 23, 1981, as corrected in the Federal Register of February 4, 1981. ([Appendix 1.](#))

2.2 Objective. The application of the Mitigation Policy and the guidance contained in this chapter are designed to assist Service personnel in the development of consistent and effective recommendations to protect and conserve valuable fish and wildlife resources and to allow Federal and private developers to anticipate Service recommendations and incorporate mitigation measures into the early stages of the planning process.

2.3 Scope. The provisions of this chapter apply Servicewide for personnel involved in making recommendations to protect or conserve fish and wildlife resources.

2.4 Policy. In the interest of serving the public, it is the policy of the Service to seek to mitigate losses of fish, wildlife, and their habitats, and uses thereof, from land and water developments.

2.5 Authority. The Mitigation Policy is established in accordance with the Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)-754), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667(e)), the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001-1009), and the National Environmental Policy Act (42 U.S.C. 4321-4347).

2.6 Coverage. With three specific exceptions, the Mitigation Policy applies to all activities of the Service related to the evaluation of land and water developments and the subsequent recommendations to mitigate adverse impacts. The Mitigation Policy does not apply to:

- A. Threatened or endangered species,
- B. Service recommendations for completed Federal projects or projects permitted or licensed prior to enactment of Service authorities, or
- C. Service recommendations related to the enhancement of fish and wildlife resources.

2.7 Resource Categories and Mitigation Goals. The Mitigation Policy identifies four Resource Categories, defines designation criteria, and establishes a mitigation goal for each.

A. Resource Category 1. The designation criteria for habitat in Resource Category 1 is "habitat to be impacted is of high value for evaluation species and is unique and irreplaceable on a national basis or in the ecoregion section." The mitigation goal for habitat in Resource Category 1 is "no loss of existing habitat value."

B. Resource Category 2. The designation criteria for habitat in Resource Category 2 is "habitat to be impacted is of high quality for evaluation species and is relatively scarce or becoming scarce on a national basis or in the ecoregion section." The mitigation goal for habitat in Resource Category 2 is "no net loss of in-kind habitat value."

C. Resource Category 3. The designation criteria for Resource Category 3 is "habitat to be impacted is of high to medium value for evaluation species." The mitigation goal for habitat in Resource Category 3 is "no net loss of habitat value while minimizing loss of in-kind habitat value."

D. Resource Category 4. The designation criteria for Resource Category 4 is "habitat to be impacted is of medium to low value for evaluation species." The mitigation goal for habitat in Resource Category 4 is "minimize loss of habitat value."

2.8 Rationale for Determination of Resource Categories. All Resource Category determinations, and subsequent Service actions guided by such determinations, are to be fully supported by adequate technical rationale, demonstrate good professional judgement, and be consistent with other determinations. [Appendix 2](#) provides a checklist of supporting technical information which should be included in Service reports to justify Resource Category determinations. Simple identification of the Resource Category of the habitat that may be impacted is not sufficient justification to support subsequent mitigation recommendations. The determination must be supported by descriptive technical information.

2.9 Responsibility for Resource Category Determinations. Project leaders have the authority to make Resource Category determinations. Regional Directors are expected to exercise appropriate quality control over Resource Category determinations. The Regional Director may exercise the option to review and approve Resource Category 1 determinations prior to those determinations becoming the final Service position.

2.10 Impact Analysis. Prior to formulation of mitigation recommendations, the impacts of the proposed project or action need to be analyzed and evaluated. The Mitigation Policy states that "Habitat Evaluation Procedures will be used as a basic tool for evaluating project impacts and as a basis for formulating subsequent recommendations." When the Habitat Evaluation Procedures do not apply, other evaluation systems may be used such as Instream Flow Incremental Methodology. Where specific impact evaluation methods or mitigation technologies are not available, Service personnel shall continue to apply their best professional judgement to develop mitigation recommendations.

2.11 Mitigation Means and Measures. The Mitigation Policy outlines five types of actions that can be incorporated into mitigation recommendations. These five types of actions are to be considered in the following order: Avoid the impact; minimize the impact; rectify the impact; reduce or eliminate the impact over time; and finally, compensate for the impact. It is important that Service personnel remember projects should be designed first to avoid adverse impacts. Compensation is to be considered only if habitat value losses are likely to remain after the first four means have been considered.

2.12 Using Resource Categories in the Formulation of Mitigation Measures. The Service Mitigation Policy provides guidelines, based on the mitigation goal of each Resource Category, as to the types of mitigation recommendations that are appropriate.

A. Resource Category 1. The Service will recommend that all losses of existing habitat be prevented, as these one-of-a-kind areas cannot be replaced. Insignificant changes that do not result in adverse impacts on habitat value may be acceptable provided they will have no significant cumulative impact.

B. Resource Category 2. The Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend ways to immediately rectify them or eliminate them over time. If losses remain likely to occur, then the Service will recommend that those losses be compensated by replacement of the same kind of habitat value so that the total loss of such in-kind habitat value will be eliminated.

C. Resource Category 3. The Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend ways to immediately rectify them or reduce them over time. If losses remain likely to occur, then the Service will recommend that those losses be compensated by replacement of habitat value so that the total loss of habitat value will be eliminated. In most cases, it is preferable to recommend ways to replace such losses in-kind. However, if the Service determines that in-kind replacement is not desirable or possible, then out-of-kind replacement of habitat values will be recommended.

D. Resource Category 4. The Service will recommend ways to avoid or minimize losses. If losses are likely to occur, then the Service will recommend ways to immediately rectify, reduce, or eliminate them over time. If losses remain likely to occur, then the Service may make a recommendation for compensation, depending on the significance of the potential loss.

2.13 Timeliness of Mitigation Recommendations. In order for Service recommendations to receive full consideration, they should be practicable, presented in as much detail as possible, and provided at the earliest possible stage of project planning. The Service encourages active participation in the early stages of planning, as project features may be modified more easily than in the final stages.

2.14 Location of Mitigation Lands. First priority will be given to the recommendation of a mitigation site within the planning area. Second priority will be given to the recommendation of a mitigation site in proximity to the planning area within the same ecoregion section. Third priority will be given to a mitigation site within the same ecoregion section.

2.15 Responsibility for Implementing. Service mitigation recommendations will be made under the explicit expectation that these means and measures are the ultimate responsibility of the appropriate Federal action agency to implement or enforce, and that they provide for a duration of effectiveness for the life of the project, plus such additional time required for the adverse effects of an abandoned project to cease to occur.

2.16 Follow-up. The Service encourages, supports, and may initiate post-project evaluations to determine the effectiveness of recommendations in achieving the mitigation planning goal. In those instances where the Service determines that Federal action agencies or private developers have not carried out those agreed upon mitigation means and measures, then the Service will request that the responsible Federal agency initiate corrective action.

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