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# Mitigation Policy Revisions/Endangered Species Act; U.S. Fish and Wildlife Service Solicits Public Comment on Draft Policy

## Arkansas Environmental, Energy, and Water Law Blog

03/09/2016

The United States Fish and Wildlife Service (“Service”) announced in a March 8<sup>th</sup> Federal Register Notice proposed revisions to its Mitigation Policy (“Policy”). See 81 Fed. Reg. 12380.

The Service states that since the original 1981 development of the Policy the intent of the document has been “to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales, consistent with the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment.”

The changes to the original Policy are stated to include:

- Broadens its scope to address all resources for which the Service has authorities to recommend or require mitigation for impacts to resources
- Provide an updated framework for applying mitigation measures that will maximize their effectiveness at multiple geographic scales.

The revised Policy is stated to apply a landscape-scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from the proposed action. It is stated to integrate all authorities that allow the Service to recommend or require mitigation of impacts to Federal trust fish and wildlife services, and other resources identified in statute, during development processes.

Service motivation for revision of the Policy include:

- Accelerating loss, including degradation and fragmentation, of habitats and subsequent loss of ecosystem function since 1981;
- Threats that were not fully evident in 1981, such as effects of climate change, the spread of invasive species, and outbreaks of epizootic diseases, are now challenging the Service’s conservation mission;
- The science of fish and wildlife conservation has substantially advanced in the past three decades;
- The Federal statutory, regulatory, and policy context has substantially changed since the 1981 Policy; and
- A need to clarify the Service’s definition and usage of mitigation in various contexts, including the conservation of species listed as threatened or endangered under the Endangered Species Act, which was expressly excluded from the 1981 Policy.

Issues addressed by the revisions include:

- Definition of mitigation
- New threats and new science
- A focus on habitat conservation
- Applicability to the Endangered Species Act

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