

Mitigation Policy/Endangered Species Act: U.S. Fish and Wildlife Service Announces Final Revisions



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05/15/2023

The United States Fish and Wildlife Service (“Service”) issued a prepublication notice of a policy titled:

Mitigation Policy and Endangered Species Act Compensatory Mitigation Policy (“Revised Policy”)

The Service describes the revised policy as establishing:

... fundamental mitigation principles and provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, no net loss of resources and their values, services, and functions resulting from proposed actions.

The stated intent of the Revised Policy is to:

- Establish compensatory mitigation standards
- Provide guidance for application of compensatory mitigation through implementation of the Endangered Species Act (“ESA”)

Compensatory mitigation in the context of the ESA is sometimes referred to as constituting the restoration, creation, enhancement, or preservation of habitat to offset unavoidable impacts that may occur through development.

The Revised Policy applies to all the authorities under which the Service can require or recommend mitigation. This includes the Service’s ESA authorities.

The Revised Policy includes clarifying information that identifies the Service’s mitigation planning goal as to maintain the current status of affected resources (referred to as “no net loss”). Further, the Revised Policy states that the Service’s mitigation and recommendations/requirements should:

... focus on important, scarce, or sensitive resources and be consistent with applicable statutory authorities and the responsibilities of action proponents.

The Service had withdrawn a previous policy in 2018 based on its then concern about inconsistencies between that policy and concepts in various federal judicial case law.

A copy of the Revised Policy can be downloaded [here](#).