



FISH AND WILDLIFE SERVICE RETRACTS MITIGATION POLICIES

On July 30, 2018, the U.S. Fish and Wildlife Service (USFWS) announced the withdrawal of two Obama-era environmental policies that addressed mitigation for impacts to natural resources. The announcement, which was indicated to be effective immediately, was published in the Federal Register and retracts both the [Mitigation Policy](#) and the associated Endangered Species Act (ESA) [Compensatory Mitigation Policy \(CMP\)](#).

A little background

Established in late 2016, [both policies](#) set a broad “net conservation gain” goal, or a minimum of a no-net-loss, for mitigating the impacts of water and land developments. The Mitigation Policy served as a general framework to govern the USFWS’s approach to mitigation planning, while the ESA-CMP required energy developers, land developers and others to provide for the restoration and protection of wetlands and other habitats as compensation for unavoidable impacts to habitats of endangered or threatened species.

The USFWS solicited public comments on the mitigation policies from November 6, 2017 to January 5, 2018, before concluding that it did not have authority to require “net conservation gain” under the ESA, and that the policy itself was inconsistent with current administration policy.

What does this mean?

Withdrawing these policies means that the Department of the Interior will [no longer require](#) off-site compensatory mitigation. Furthermore, the USFWS has reinstated all prior mitigation policies that preceded the 2016 mitigation policies, including [a mitigation policy from 1981](#) (46 FR 7644-7663).

This change is just one of various proposed revisions to the ESA and its implementation. Stay tuned for additional information on changing ESA regulations or contact us with your questions.

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