



## Policy Resolution 2019-03

### Compensatory Mitigation

#### A. BACKGROUND

1. Through their sovereign and statutory powers, states have primary management authority over all fish and wildlife within their borders. Following decades of work by staff and contractors, states have developed extensive science, expertise, and knowledge of species within their borders.
2. Governors bear responsibility for managing state interests, authorities and property rights within state borders – including fish and wildlife – and oversee state agencies charged with properly managing wildlife, habitat and related resources within their states.
3. States are the primary recipients of economic benefits associated with healthy species and ecosystems. At the same time, the economic costs of compliance with federal environmental regulations can fall disproportionately on western states and local communities. States recognize the importance of economic development and acknowledge the challenges of managing the risk of impacts to fish and wildlife populations and habitat while advancing economic development.
4. Compensatory mitigation plays an important role in fish and wildlife management and conservation, and states rely on its use in developing and executing species conservation strategies. Compensatory mitigation strategies employed by states include, but are not limited to, habitat protection, habitat restoration, establishment, enhancement, or conservation activities and advance mitigation where conservation benefits are secured before project impacts occur.
5. The mitigation hierarchy is a commonly referenced and widely utilized strategy in determining compensatory mitigation requirements for projects. The mitigation hierarchy consists of first avoiding adverse impacts to fish and wildlife populations and habitat where practicable, then minimizing adverse impacts where they cannot be avoided including on-site restoration where possible. The next step is employing compensatory mitigation measures to replace resources or offset direct and indirect adverse impacts that remain following avoidance and minimization. This practice is memorialized under the Council of Environmental Quality's implementing regulations and other federal policy and guidance.<sup>1</sup> Some states have identified and utilized a final step in the mitigation hierarchy, monitoring project impacts and mitigation actions and taking appropriate corrective measures to achieve the identified goal.
6. While states exercise primary management authority over fish and wildlife within their borders, habitat for fish and wildlife often spans a patchwork of land ownership types, complicating state efforts to manage and conserve species under their management jurisdiction. This is particularly challenging in western states, where federal ownership constitutes a generally higher percentage of overall land ownership.

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<sup>1</sup> [40 CFR 1508.20](#)

## **B. GOVERNORS' POLICY STATEMENT**

1. States have the responsibility to establish appropriate statutes, regulations, policies and programs to manage fish and wildlife within their borders. This responsibility extends to the development of compensatory mitigation standards and implementation of compensatory mitigation for species under their management purview.
2. Compensatory mitigation approaches vary from state to state, but they are designed to fully offset residual impacts to habitat function and value<sup>2</sup>. Governors recognize that habitat functionality and value are the primary metric by which mitigation outcomes are measured. Compensatory mitigation efforts must be sufficient to fully offset direct and indirect residual impacts to habitat function at the appropriate scale necessary to meet conservation goals.
3. Where state mitigation programs or standards are in place, consistency with existing state policy should be the primary guiding principle for a federal agency's development or implementation of compensatory mitigation on lands within their management authority or jurisdiction.
4. Whether or not state mitigation programs or standards are in place, Western Governors urge federal agencies to coordinate with states in the development of compensatory mitigation programs and policies. Where state compensatory mitigation programs or standards exist, federal agencies should adopt and implement state-supported compensatory mitigation programs and policies. Consistency between federal mitigation standards and those in state-supported programs allows wildlife managers, state and federal regulators, and developers to use a consistent compensatory mitigation program across differing land ownership within a state. States will engage federal agencies in the development or amendment of compensatory mitigation programs and policies.
5. Western Governors recognize that the diversity of conceivable species, habitat, and project specific circumstances make quantifying measures, with clearly defined goals for compensatory mitigation, challenging for both state and federal agencies. Governors urge federal agencies, in consultation with states, to provide consistency in the use of and improve assessment criteria for mitigation goals. Governors believe mitigation goals should establish clear expectations backed by effective assessment criteria.
6. Western Governors recognize that mitigation of development impacts to habitat or natural resources must account for a level of risk and uncertainty that a particular compensatory mitigation action may fail to adequately offset adverse impacts to fish, wildlife and habitat. Federal agencies should acknowledge a variety of tools and measures for incorporating risk and uncertainty based on the diverse experience of states in designing and implementing compensatory mitigation programs.

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<sup>2</sup> Habitat value is an assessment of the affected fish and wildlife habitat based on three attributes; scarcity, suitability and importance. Importance is the relative significance of the affected habitat, compared to other examples of a similar habitat type in a landscape context.

7. Governors believe that federal mitigation policies should be developed in coordination with Governors, and the state agency officials they designate, to achieve the following objectives:
  - Provide measurable and documentable habitat and conservation values, services and functions that are at least equal to the lost or degraded values, services and functions caused by the impact.
  - Incorporate measures to account for a level of risk that a particular compensatory mitigation action may fail or not achieve its stated objectives, and uncertainty about the level and duration of estimated impacts.
  - Compensatory mitigation projects should be sited and designed strategically to support the most effective conservation or restoration projects; the effectiveness of mitigation actions should be based on the best available science.
  - Provide benefits that are durable and in place for at least the duration of the residual adverse impacts.
  - Encourage the application of compensatory mitigation prior to the impact occurring to ensure no lag time occurs between impacts and offsets.
  - Offer transparency and certainty to developers, regulators, and the public to the extent feasible. This necessitates early and substantive consultation with states and consistency with state-designed compensatory mitigation standards where they exist.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

*Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult [westgov.org/resolutions](http://westgov.org/resolutions) for the most current copy of a resolution and a list of all current WGA policy resolutions.*