



## Policy Resolution 2022-06

### 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, and the resulting loss of ecosystem services and public opportunity, 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 refers to required or voluntary strategies that a permittee undertakes either in advance or as a result of a development project to offset or compensate for ecological impacts resulting from that project. Strategies include, but are not limited to, habitat protection, habitat restoration, establishment, enhancement, or conservation activities and advance mitigation where conservation benefits or the funds necessary to carry out those actions 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 onsite restoration where appropriate. 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> As the project proceeds and mitigation actions are implemented, monitoring of project impacts and mitigation actions, should occur to assure adequacy of the mitigation program. If shortcomings are detected in the mitigation program, subsequent corrective measures in the form of adaptive management should be implemented to achieve the identified goal.

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

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 jurisdiction. This is particularly challenging in western states, where federal ownership constitutes a generally higher percentage of overall land ownership.

## **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 effects on 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, recognizing that the net effects from a project may be minimal in some locations; in those circumstances, compensatory mitigation may not be appropriate and/or necessary.
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 that state's management authority or jurisdiction. Western Governors support legislation and regulatory policy that defers management to the state, particularly when a federal agency has been the primary cause of an environmental impact in need of mitigation efforts,
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 work with federal agencies in the development or amendment of compensatory mitigation programs and policies.
5. Western Governors recognize that the diversity of 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 effective assessment criteria for mitigation goals that include accounting for unknown projected risks such as climate change, wildland fires, and drought.

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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.

6. Western Governors recognize that mitigation of development impacts to habitat or natural resources might 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.
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 any quantifiable lost or degraded values, services and functions caused by the impact, recognizing that compensatory mitigation may not be appropriate and/or necessary for all projects and locations when considering the net overall impact.
  - Incorporate adaptive management measures to account for the risk that a particular compensatory mitigation action may fail or not achieve its stated objectives. Adaptive management alternatives should be sufficient to address the 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 and geographic location of highest benefit.
  - Provide benefits to fully compensate for any realized adverse impacts, both short and long term. Where effects are permanent, perpetual mitigation is ideal.
  - Encourage the application of compensatory mitigation prior to the impact occurring to ensure no lag time occurs between impacts and offsets where such mitigation or conservation banking exists. If completing the mitigation prior to impact is infeasible, the mitigation shall be secured with a funding assurance such as a surety bond or irrevocable letter of credit prior to the initiation of impacts.
  - Apply regulatory processes that 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.

*This resolution will expire in December 2024. Western Governors enact new policy resolutions and amend existing resolutions on a semiannual basis. Please consult <http://www.westgov.org/resolutions> for the most current copy of a resolution and a list of all current WGA policy resolutions.*