

US Forest Service  
White Paper  
Seeking Recommendations in Formulating Agency Policy on Mitigating  
Adverse Impacts on National Forests and Grasslands

March 2016

### Executive Summary

The Forest Service has the responsibility to manage National Forest System (NFS) lands for multiple uses and the sustained yield of goods and services derived from those lands. The use of mitigation allows the Forest Service to support a wide variety of resource and land uses while helping ensure that NFS lands continue to provide the goods and services expected by the public. To help the Agency more effectively and efficiently use mitigation to meet its responsibilities, the Forest Service is inviting input on development of a new national policy concerning mitigation of adverse impacts on NFS lands.

### Background

Executive Order 13604 of March 22, 2012: Improving Performance of Federal Permitting and Review of Infrastructure Projects directed the Agency to establish processes that “inform decision-makers and affected communities about the potential benefits and impacts of proposed infrastructure projects, and ensure that projects are designed, built, and maintained in a manner that is consistent with protecting our public health, welfare, safety, national security, and environment.” In addition, EO 13604 required the Agency to ensure that “projects are designed appropriately to avoid, to the extent practicable, adverse impacts on public health, security, historic properties and other cultural resources, and the environment, and to minimize or mitigate impacts that may occur.” In response, the Forest Service began work on a mitigation framework to help guide the Agency’s use of mitigation during planning and implementation of activities on the National Forests and Grasslands.

The Forest Service was directed by the November 3, 2015 Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment (PM) “to avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) caused by land- or water-disturbing activities, and to ensure that any remaining harmful effects are effectively addressed, consistent with existing mission and legal authorities.” To that end, the Memorandum instructs the Agency to “adopt a clear and consistent approach for avoidance and minimization of, and compensatory mitigation for, the impacts of their activities and the projects they approve.” The Memorandum further instructs the Agency to put its policy in place within 180 days of its issuance.

### Methods & Goals

The Agency is reaching out internally and externally in an effort to seek input on the content of a new national policy on mitigation. The Agency anticipates that the new policy will consist of 1) a brief regulation that establishes clear goals for the use of mitigation on National Forest System lands, and 2) a detailed set of directives in Forest Service Manual and Handbook that clarify methods, tools, and their appropriate use.

The outreach effort will include a VTC with regional decision-makers, and a one-hour public informational webinar. Key stakeholders, including government entities and partners, will be included in the outreach. This process is designed to culminate in a fully operative and enduring regulation this year.

## Policy Considerations

For guidance in developing Agency policy in response to the Presidential Memorandum, Executive Order, and other Agency authorities, the following principles could be considered:

- Broad-scale policy integration with the Organic Act, MUSYA, NFMA, NEPA and other authorities;
- More consistent application of mitigation to activities, authorizations, and planning across the Agency;
- Consistent minimization of net loss of ecosystem functions and values over time, including the goods and services derived from the National Forests and Grasslands;
- Improved efficiency and effectiveness of permitting and environmental analyses;
- Location of compensatory mitigation on NFS lands from off-NFS private or public projects that offers opportunities for watershed, ecosystem, and other broad-scale restoration efforts; and
- Establishment or enhancement of partnerships and collaboration with the private sector, states, tribes, and local governments.

We also ask that several important concepts be included within the scope and applicability of any recommendations for a new national mitigation policy. The mitigation policy should:

- be consistent with agency mission and legal authorities;
- include options for mitigation on or outside of NFS lands;
- identify activities and projects that would prompt the Agency to consider or dismiss use of compensatory mitigation;
- clarify its applicability to projects or planning activities that have been initiated by the time that this regulation is placed into effect; and,
- address valid existing rights on NFS lands.

## Developing Policy Recommendations

We have identified several key questions that we believe should help frame our mitigation policy. We suggest that those providing recommendations—including a broad range of Agency staff, partners, and stakeholders—consider these questions:

1. Within existing law, regulation, and policy, what mechanisms and guidelines are needed to effectively avoid, minimize, and compensate for adverse impacts to National Forest System lands and their functions, values, and services in the completion of a project?
2. What opportunities exist to incorporate design standards or other mechanisms into project planning so that adverse impacts are avoided or minimized so that compensatory mitigation is rarely necessary?
3. What opportunities exist to incorporate a standardized, consistent approach to mitigation into the Agency's existing processes (NEPA, land management planning, Special Uses, other permitting processes)?

4. What opportunities exist to incorporate mitigation approaches into landscape-scale restoration, vegetation management, and watershed restoration?
5. How can mitigation practices lead to more sustainable contributions of the goods and services provided to the public?
6. How can we best incorporate the identification of potential resource restoration areas into our planning processes?
7. How can the Agency best identify opportunities on NFS lands for off-site compensatory mitigation from activities on non-NFS lands? Are there off-NFS private or public projects that should not be mitigated for on NFS lands?
8. What role can Forest Service Research and Development play to support the use of best available science and application of sound methods and protocols?
9. What role can Forest Service State and Private Forestry play to help partners in developing new approaches to mitigation of adverse impacts?
10. Are potential large-scale compensatory mitigation actions acceptable if there is a considerable delay in the delivery of goods and services as a result of mitigation action?
11. After all appropriate and practicable avoidance, minimization, and restoration measures have been applied, and compensatory mitigation is identified as necessary for proponent-driven projects, how can we best complete the decisionmaking process in an expedited and effective way?
12. How should we communicate mitigation principles and methods to Agency leadership, specialists and stakeholders?
13. How can the Forest Service encourage cooperation among governmental and private entities regarding mitigation opportunities?

### Timeline

We anticipate publishing a proposed mitigation regulation on or before June 1, 2016, with a final regulation by about October 15, 2016. We plan to begin focused work on the detailed directives only after we receive and process the comments on the proposed regulation. We anticipate publishing directives by November 2017.

While we work on the policy, we will also continue work on developing tools, best practices, lessons learned, and other support materials to help local decisionmakers incorporate appropriate mitigation in their decisions.