

COMMISSION MITIGATION POLICY

INTRODUCTION

The Wyoming Game and Fish Commission (Commission) establishes this mitigation policy in recognition that growth and development will occur in Wyoming. It is mutually beneficial to project sponsors and wildlife managers to establish early cooperative relationships, since early communication provides the best opportunity to avoid or minimize project impacts to wildlife. This mitigation policy encourages project sponsors to seek early Wyoming Game and Fish Department (Department) involvement in project planning to minimize or avoid impacts to wildlife and to minimize conflicts later in project development. When adverse impacts are unavoidable, the Department is directed to recommend to project sponsors how they might best offset or replace wildlife values.

The mission of the Department is to provide all publics with diverse, quality wildlife-associated recreation; contribute scientific, educational, aesthetic and economic benefits to society; and ensure all people have equal opportunity to enjoy the wildlife resource. In this context, it must be emphasized that wildlife and habitat are inseparable. No wild species can be maintained effectively outside of a biotic community in which it can perform its natural functions. Therefore, irreversible changes in fauna and flora are discouraged. If such changes are to occur, they should only be after the most searching study and then only in areas where the impact on land, water and wildlife is minimal and mitigation is guaranteed.

PHILOSOPHY STATEMENT

One of Wyoming's most unique and valued resources is its abundant, free-ranging wildlife. The Department is frequently called upon to help protect wildlife as development proceeds throughout the state. The Commission recognizes its responsibility to assist efforts to evaluate and mitigate adverse impacts to wildlife resources. The objective of this policy is to set forth a clear, consistent process to formulate effective mitigation recommendations for adverse wildlife impacts.

Wyoming's natural resources and vast expanses of wildlands are among its most valued assets. Individual developments are seldom viewed collectively or considered "significant." Rather than attempt to predict some point beyond which cumulative impacts become significant, the Commission believes adverse impacts of development warrant mitigation. The adverse effects of each development on habitat should be avoided, minimized, repaired, or compensated. By adequately dealing with each increment of development, we can avoid or at least forestall the point at which serious cumulative wildlife impacts occur.

The Commission has identified certain habitats (such as crucial winter range) which limit populations of important species. These habitats relate directly to the carrying capacity of the environment. Development activities that affect limiting habitat components must receive priority attention.

The need for mitigation will be based upon the immediate, physical alteration of habitats or direct threat to wildlife. Development activities should not necessarily be excluded from consideration because they affect an "insignificant" portion of the state's surface or because a wildlife population is at its current management objective.

The Commission is the principle advocate for maintaining and perpetuating wildlife as development proceeds in Wyoming. The Department, under the direction of the Commission, shall pursue resolution of conflicts between development activities and wildlife habitats. In conformance with Wyoming Statutes, and in cooperation with the U.S. Fish and Wildlife Service and other federal agencies under authority of the National Environmental Policy Act, the Federal Fish and Wildlife Coordination Act, the Endangered Species Act, Section 404 of the Clean Water Act, and other applicable laws, the Commission directs the Department to:

- Using Department databases and expertise, assist project sponsors in identifying important wildlife and wildlife habitat in the area of each proposed development.
2. Identify and quantify wildlife and wildlife habitat impacts associated with each project alternative, and assist with the formulation of alternatives compatible with wildlife.
 3. Encourage the alternative least disruptive to wildlife and wildlife habitat, and recommend practices to avoid or minimize wildlife impacts resulting from the selected alternative. Negotiate mitigation for unavoidable, adverse impacts.
 4. Work cooperatively with private and public entities to assure mitigation efforts are successful, including the securement of written commitments from participants to assure mitigation projects will be successfully completed.
 5. Make mitigation recommendations consistent with the Wyoming Game and Fish Department Strategic Plan and this Mitigation Policy.
 6. Disclose irreversible and irretrievable impacts to wildlife resources to developers and the public, ensuring all parties are fully informed of the extent and consequences of the loss.

DEFINITION OF MITIGATION

The President's Council on Environmental Quality defined the term "mitigation" in the National Environmental Policy Act regulations to include: "(a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments." [40 CFR Part 1508.20 (a-e)]. For purposes of this policy, the Commission supports and adopts this definition of mitigation.

MITIGATION APPROACHES

Mitigation approaches are placed into two broad classes, as follows

1. **Resource Protection** - avoiding, minimizing, rectifying, reducing or eliminating adverse wildlife impacts through project planning.

The Commission believes it is better to protect wildlife resources than attempt to compensate for adverse impacts. By providing information and recommendations early in the planning process, the Department seeks to avoid conflicts and adverse impacts to wildlife.

Other than the avoidance approach, mitigation does not assure zero impacts. The Commission recognizes that acceptance of mitigation is equivalent to accepting a degree of wildlife or habitat loss.

2. **Resource Compensation** - development and implementation of measures to cancel or moderate unavoidable wildlife impacts associated with a particular development. This consists of: (a) offsetting impacts by restoration, rehabilitation or replacement of an appropriate quantity of a similar resource, or (in certain instances and only as a last resort), (b) financial compensation.

Resource compensation should be based on replacement of habitat function rather than gross area. Since various approaches could be used to develop compensation, several avenues for negotiation may be available. Duration of habitat loss will be considered when recommending resource compensation.

In rare instances, project-specific habitat manipulations may be neither possible nor practical. The Department can establish a mitigation account to accept funds (financial compensation) in lieu of habitat replacement. The amount of financial compensation will be based on the estimated cost of habitat replacement sufficient to provide mitigation for impacts of the project, including costs to the Department for implementation and maintenance. Funds will be held by the Department in a mitigation account

until there is an opportunity to develop/improve habitat as resource compensation for project impacts. However, an impacting entity using this approach will remain contractually obligated until mitigation is completed. While it is an available option, financial compensation will only be considered after all other options have been exhausted.

Mitigation measures recommended by the Department are advisory recommendations to project proponents and permitting agencies to be used as local, state and federal law provides. It is recognized that mitigation recommendations may become binding through conditions in permits issued by other agencies. Nothing in this policy will be construed to vest authority in this Commission, Department, or other entities where no such authority exists.

The Commission also recognizes mitigation costs may increase costs of developments, but costs associated with wildlife mitigation are the responsibility of project sponsors. Wildlife mitigation costs should be given equal consideration with all other development costs. Involvement of the Department early in the process will help minimize mitigation costs through selection of viable alternative actions and will allow cost estimates for mitigation measures to be incorporated early in project feasibility analyses.

IMPACT EXCLUSION

The Commission recognizes that some wildlife or wildlife habitats are so rare, complex and/or fragile that mitigation options are not available. Total exclusion of adverse impacts is all that will ensure preservation of these irreplaceable habitats. To be considered irreplaceable, they must be so designated by the Commission.

MITIGATION CATEGORIES

Mitigation categories are established by this policy. A specific list of habitat types and wildlife species which could be adversely impacted can be prepared for each development action. This list of wildlife resources includes criteria to select the Mitigation Category (or categories) which applies to a specific project. Wildlife resources associated with a project dictate the Mitigation Category.

Each Mitigation Category has a corresponding objective for unavoidable adverse impacts. This objective is the amount of resource mitigation expected for a given Mitigation Category. Successful implementation of mitigation recommendations to achieve the objective is necessary to resolve unavoidable impacts.

Each habitat type and each development action presents unique concerns and opportunities for mitigation. While selection of the Mitigation Category may be consistent, mitigation recommendations will vary from

project to project due to the uniqueness of each development proposal and its associated wildlife resources. Where two or more criteria apply, the more restrictive category will be emphasized for the application of mitigation objectives. When appropriate and to the extent possible, mitigation will be made compatible with lower priority species or resource values.

<u>Criteria</u>	<u>Description</u>	<u>Mitigation Category</u>
Species or Species Habitats	Federally Listed T&E Species	Irreplaceable
	State Rare Wildlife	Vital
	Native Game Fish	High
	Non-native Game Fish	Moderate
	Furbearing Animal	Moderate
	Federal Category 1 & 2 Spp	Vital
	State Priority 1 Species	Vital
	State Priority 2 Species	High
	State Priority 3 Species	Moderate
	Raptors	High
	Migratory Birds of High Federal Interest	High
	Trophy Game Animal	High
	Big Game Animal	Moderate
	Game Birds	Moderate
	Small Game	Low
	Other "Protected Animal"	Moderate
	Other "Protected Bird"	Moderate
Other Nongame Wildlife	Low	
Special Habitats	Critical Habitat (Federal)	Irreplaceable
	Crucial Habitat (State)	Vital
	Big Game and Trophy Game Winter-Yearlong Range	High
	Other Big and Trophy Game Seasonal Ranges	Moderate
	Parturition Areas	High
	Raptor Nesting Habitat	High
	Riparian Habitat	High
	Wetlands	Vital
	Other Important or Limited Habitats (e.g. Aspen/Old Growth/Snag/Cliff/Cave)	High
Stream Class	1	Vital
	2	High
	3	Moderate
	4	Low
	5	Low

Fisheries	Trophy Concept	High
Management	Species Concept	High
Program	Wild Native Game Fish	High
Direction	Wild Non-native Game Fish	Moderate
	Basic Yield Concept	Moderate
	Put-and-Take Concept	Low

The following definitions establish objectives for each Mitigation Category:

A. Irreplaceable - The Department is directed by the Commission to recommend no loss of habitat or habitat function (i.e., the impact activity is excluded). "Habitat function" means the arrangement of habitat features, and the capability of those features to sustain species, populations, and diversity of wildlife over time (a quantitative measure of habitat). Sites warranting this level of protection cannot be replaced or mitigated. This category includes critical habitats of federally designated threatened or endangered species. Other extremely significant sites or habitats may also be designated irreplaceable. Recommendations to include additional sites within this category will be evaluated on a case-by-case basis and must be approved by the Commission.

B. Vital - Habitat in this category directly limits a community, population, or subpopulation, and restoration or replacement may not be possible. The Department is directed by the Commission to recommend no loss of habitat function. Some modification of habitat characteristics may occur, provided habitat function is maintained (i.e., the location, essential features, and species supported are unchanged).

C. High - Habitat in this category is important to sustain a community, population, or subpopulation, but can be reconstructed or enhanced where avoidance is not possible. The Department is directed by the Commission to recommend no net loss of habitat function within the biological community which encompasses the project site. If impacts are likely, the Department will recommend replacement of the affected habitats or enhancement of similar habitats. Mitigation alternatives can include (a) converting low priority habitats into types which are equivalent to those lost, (b) restoring or rehabilitating previously altered habitat, (c) enhancing similar, nearby habitat to offset the loss of habitat function, or (d) a combination of these measures. By maintaining habitat function, the area can sustain populations of species associated with the affected habitats over time.

D. Moderate - Habitat in this category is common or of intermediate importance. Specific wildlife uses may be displaced in response to a development. The Department is directed by the Commission to recommend no net loss of habitat value while minimizing alteration of function. "Habitat value" means the relative importance of various habitat types and conditions

in sustaining socially or ecologically significant wildlife populations (a qualitative measure of habitat). If losses are anticipated, the Department will recommend measures that preserve function or are considered an equitable exchange of habitat value.

E. Low - Habitat in this category is abundant or not essential to sustain a community, population or subpopulation. The Department is directed by the Commission to recommend measures that minimize reduction of habitat value.

Mitigation of Secondary and Indirect Impacts

Secondary and indirect adverse impacts to wildlife can result from hazards associated with a project, noise and activity, or from the project's workforce. Hazards may include, but not be limited to, electrocution of raptors by powerlines, spills or disposal of hazardous materials, entanglement in fences, entrapment in intake structures, etc. Noise and activity associated with a project may reduce the effectiveness of adjoining habitats, thereby displacing animals. Workforce related impacts may include harassment or poaching of wildlife, increased vehicle collisions with wildlife, loss of wildlife habitat from urbanization associated with a large workforce, etc.

The Department is directed by the Commission to evaluate potential secondary and indirect adverse impacts to wildlife resulting from project development. The Department will recommend measures to avoid or minimize these impacts. If impacts are still likely to occur, then the Department will recommend that these impacts be mitigated in some manner. Given the broad range of potential secondary and indirect impacts, each project must necessarily be evaluated on a case-by-case with respect to the nature of the mitigation. Past examples have included recommendations for implementation of environmental awareness training programs, financial assistance in game law enforcement, busing or lowered speed limits to reduce vehicle/wildlife collisions, road closures, raptor-proofing of powerlines, screens on intake structures, etc. Recommendations may include habitat improvement projects to keep wildlife away from impact areas or to mitigate for lost habitat. Specific recommendations may also include monitoring or special studies.

DEFINITIONS

"Basic yield concept" is a fishery management program direction where management is primarily directed toward providing the fisherman with the opportunity to fish. Basic yield fisheries may be supported by stocking fingerlings or fry, but the yield to the fisherman is primarily fish which grew to catchable size in the wild (not the hatchery).

"Big game animal" means antelope, bighorn sheep, deer, elk, moose or mountain goat; [W.S. 23-1-10(a)(i)]

"Category 1 (C1)" - Taxa for which the U.S. Fish and Wildlife Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. Proposed rules have not yet been issued, but development and publication of proposed rules are anticipated; (Federal Register 54(4): 554-579)

"Category 2(C2)" - Taxa for which information now in possession of the U.S. Fish and Wildlife Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. Further biological research and field study may be needed to ascertain the status of taxa in this category; (Federal Register 54(4): 554-579)

"Critical habitat" means those areas designated as critical by the Secretary of the Interior or Commerce, for the survival and recovery of listed Threatened and Endangered Species; (50 CFR, Parts 17 and 226)

"Crucial habitat" - crucial range can describe any particular range or habitat component (often winter or winter/yearlong range in Wyoming), but describes that component which is the determining factor in a population's ability to maintain and reproduce itself at a certain level (theoretically at or above the WGF population objective) over the long term; (The Wildlife Society, Wyoming Chapter)

"Federally listed species"

"Endangered" - Taxa in danger of extinction throughout all or a significant portion of its range;

"Threatened" - Taxa likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(Endangered Species Act, Section 3)

"Furbearing animal" means badger, beaver, bobcat, marten, mink, muskrat or weasel; [W.S. 23-1-101(a)(iii)]

"Game bird" means grouse, partridge, pheasant, ptarmigan, quail, wild turkey and migratory game birds; [W.S. 23-1-101(a)(iv)]

"Game fish" means bass, catfish, crappie, grayling, ling, northern pike, perch, salmon, sauger, sunfish, trout, walleye or whitefish; [W.S. 23-1-101(a)(v)]. Additional game fish designated by the Commission are sturgeon, freshwater drum, and tiger musky.

"Habitat function" means the arrangement of habitat features, and the capability of those features, to sustain species, populations, and diversity of wildlife over time. Habitat function is a quantitative measure of habitat.

"Habitat value" means the relative importance of various habitat types and conditions in sustaining socially or ecologically significant wildlife populations. Habitat value is a qualitative measure of habitat.

"Native game fish" means game fish which are indigenous to Wyoming waters, including: black bullhead, Bonneville cutthroat trout, channel catfish, Colorado River cutthroat trout, grayling, greenback cutthroat trout, ling, sauger, Snake River cutthroat trout, stonecat, shovelnose sturgeon, Yellowstone cutthroat trout, westslope cutthroat trout and whitefish.

"Non-native game fish" means game fish which have been introduced into Wyoming waters, including: black crappie, bluegill, brook trout, brown trout, flathead catfish, freshwater drum, golden trout, green sunfish, kokanee, lake trout, largemouth bass, northern pike, pumpkinseed, rainbow trout, redear sunfish, rock bass, smallmouth bass, tiger musky, yellow perch, walleye, and white crappie.

"Migratory Birds of High Federal Interest (MBHFI)" refers to bird species that the U.S. Fish and Wildlife Service and the Bureau of Land Management have identified as high interest species relative to regional coal development. Species selection is based on national importance or public value, the potential for regional decline, regional jeopardy, or long term impact, and status as an indicator species.

"Migratory game bird" means all migratory game birds defined and protected under federal law; [W.S. 23-1-101(a)(vi)]

"Other Important or Limited Habitats" are areas of especially high value for a diversity of wildlife or areas that provide certain habitat elements essential to the existence of certain groups of wildlife. For example, snag habitat for cavity-dependent species or cave habitat for bats.

"Parturition areas" means birthing areas commonly used by more than a few female members of a population; (The Wildlife Society, Wyoming Chapter)

"Priority I species" include federally listed threatened and endangered wildlife; also include species in need of immediate attention and active

management to ensure that extirpation or a significant decline in the breeding population does not occur; (WGFD, Nongame Bird and Mammal Strategic Plan, October 1987)

"Priority II species" include species which are in need of additional study to determine whether intensive management is warranted or whether low level management will suffice. Until intensive management is necessary, low level management will be implemented; (WGFD, Nongame Bird and Mammal Strategic Plan, October 1987)

"Priority III species" include species whose needs should be accommodated in resource management planning. However, intensive management programs to maintain or enhance populations are not warranted at present. Populations of these species should be monitored to determine if low levels of management continue to be adequate. Knowledge of some of these species is often very limited. (WGFD, Nongame Bird and Mammal Strategic Plan, October, 1987)

"Protected animal" means black-footed ferret, fisher, lynx, otter, pika or wolverine; [W.S. 23-1-101(a)(ix)]

"Protected bird" means migratory birds as defined and protected under federal law; [W.S. 23-1-101(a)(x)]

"Put-and-take concept" is a fishery management program direction where management is primarily directed towards providing the fisherman with the opportunity to harvest fish. The majority of the harvest from waters under this concept is comprised of fish which were raised to a catchable size in the hatchery.

"Raptors" are the birds of prey, including hawks, eagles, falcons, osprey, vultures and owls.

"Raptor Nesting Habitat" is that area adjoining an active raptor nest that must be free from significant disturbance to prevent nest abandonment or loss of young.

"Riparian habitat" means the transition habitat between the aquatic ecosystem and the adjacent terrestrial ecosystem, identified by distinctive vegetation that requires large amounts of free or unbound water in excess of that provided only by precipitation. Riparian habitats are the green zones along the banks of rivers and streams and around springs, bogs, wet meadows, lakes and ponds.

"Small game animal" means cottontail rabbit or snowshoe hare, and fox, grey and red squirrels; [W.S. 23-1-101(a)(xi)]

"State rare wildlife" means the shovelnose sturgeon, goldeye, Colorado River cutthroat trout, Bonneville cutthroat trout, northern pearl dace,

finescale dace, hornyhead chub, sturgeon chub, Kendall Warm Springs dace, suckermouth minnow, common shiner, silvery minnow, bluehead sucker, Rocky Mountain rubber boa, western smooth green snake, red-bellied snake, milk snake, and wood frog. These are species not addressed under the Wyoming Game and Fish Department Priority System, but are identified as rare in the Current Status and Inventory of Wildlife in Wyoming (1977).

"Stream Class 1" as defined by the Wyoming Game and Fish Department, means premium trout waters, fisheries of national importance;

"Stream Class 2" as defined by the Wyoming Game and Fish Department, means very good trout waters, fisheries of statewide importance;

"Stream Class 3" as defined by the Wyoming Game and Fish Department, means important trout waters, fisheries of regional importance;

"Stream Class 4" as defined by the Wyoming Game and Fish Department, means low production trout waters, fisheries frequently of local importance but generally incapable of sustaining substantial fishing pressure;

"Stream Class 5" as defined by the Wyoming Game and Fish Department, means very low production waters, often incapable of sustaining a trout fishery;

"Trophy" as a fisheries management concept applies to waters where management is primarily directed towards providing the fisherman with the opportunity to catch larger-than-average fish. A water that typically produces larger than average fish is not necessarily a trophy water unless this is a major objective of present and future management.

"Trophy game animal" means black bears, grizzly bear or mountain lion; [W.S. 23-1-101(a)(xii)]

"Species concept" is a fisheries management program direction where management is primarily directed toward providing fisherman with the opportunity to catch a unique species. Unique refers to those species which are relatively rare throughout the country and because of their scarcity, are highly prized by fisherman. Unique game fish species available to the fisherman include rare sub-species of cutthroat trout, golden trout, grayling, and rare exotic species which may be introduced experimentally or on a permanent basis.

"Wetlands" are those areas which are saturated or inundated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adopted for life in saturated soil conditions.

"Wild concept" is a fisheries management program direction where management is primarily directed toward providing the fisherman with the

opportunity to catch fish from a fishery totally supported by natural reproduction. The wild concept will include only those waters specifically designated for wild fisheries management and not those basic yield waters presently supported by natural reproduction. This distinction is made because future fishing pressure may require supplemental stocking of basic yield waters presently supported by natural reproduction, as opposed to a wild fishery where fishing pressure or harvest would be limited in lieu of supplemental stocking. Waters managed under the wild concept must meet the following criteria: 1) relatively free of man's influence and exhibiting excellent water conditions and habitat; 2) high potential for game fish reproduction; 3) supports densities of wild game fish capable of sustaining a fishery with no stocking; 4) public access not overly restricted with limited vehicular access; and 5) lends itself to evaluation.

"Wildlife" means all wild mammals, birds, fish, amphibians, reptiles, crustaceans and mollusks, wild bison designated by the Wyoming Game and Fish Commission and the Wyoming Livestock Board within Wyoming;
[W.S. 23-1-101(a)(xiii)]