

INSIGHTS

Obama Administration Adopts Wide-Ranging Natural Resource Mitigation Requirements

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By: [Kevin A. Ewing](#)

Earlier today, the Obama Administration adopted an expansive set of [mitigation requirements](#) for all its natural resource management agencies. Under the voluntary policy, the Department of Defense, Department of the Interior, Department of Agriculture, Environmental Protection Agency, and National Oceanic and Atmospheric Administration will aim "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 mitigated. The mitigation policies are intended to "establish a net benefit goal or, at a minimum, a no net loss goal for natural resources the agency manages that are important, scarce, or sensitive, or wherever doing so is consistent with agency mission and established natural resource objectives." This policy essentially applies to all natural resources what the Clean Water Act and Executive Order have required of the U.S. Army Corps of Engineers (Corps) with respect to wetland impacts (namely avoidance, minimization and mitigation, with mitigation aiming for no net loss of wetland functions and values). This is an expansive additional set of analyses and mitigation requirements and has the potential to significantly expand these agencies' permitting obligations and timelines. Depending on how it is implemented, the policy has the potential to overshadow the procedural environmental review requirement mandated under the National Environmental Policy Act (NEPA) by imposing a substantive environmental action obligation on agencies such as the Bureau of Land Management (BLM), Corps, National Park Service (NPS), and U.S. Forest Service. The Policy requires each agency to adopt specific manual and handbook guidance implementing the avoidance, minimization and mitigation requirements, most within one year, with the Forest Service adopting them within 180 days. It does not appear that public comment will be required for these guidance documents before they are finalized, although the Forest Service will be adopting a rule within two years, which will follow the typical rulemaking process.