



Obama Administration Makes its Mark in Species Conservation Through Last-Minute Policies

By: [Theresa Sauer](#)

In the final months of the Obama Administration, the oil and gas industry saw a number of complex rulemakings and policy changes that could substantially impact routine operations in special status species' habitat. There were new policies regarding habitat conservation, mitigation strategies, conservation agreements, and even changing the way the federal government creates its land use plans. While the new Congress, sworn in on January 9, has indicated that it will reverse many of the Obama Administration's last-minute regulations, there will still be lasting impacts.

Below is a sampling of the rules, regulations, and policies issued in the last months of the Obama Administration addressing species issues.

Presidential Memorandum

While not new, the [Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment](#) (Presidential Mitigation Memorandum), issued on November 3, 2015, introduced a new direction from President Obama to the agencies that there are certain resources that should be protected above all else, allowing environmental concerns to trump industry.

The Presidential Mitigation Memorandum introduced the concept of net conservation benefit, emphasized no net loss, and prioritized large-scale planning. The effects of this Presidential Mitigation Memorandum are seen throughout the Obama Administration's last-minute policies.

Endangered Species Act Compensatory Mitigation Policy

Taking cues from the Presidential Mitigation Memorandum, the United States Fish and Wildlife Service (FWS) finalized its [Endangered Species Act \(ESA\) compensatory mitigation policy](#) in December 2016. The ESA compensatory mitigation policy adopts a landscape-scale approach and requires compensatory mitigation to a net conservation benefit standard. Industry argues that this heightened requirement for mitigation exceeds FWS's statutory authority, and will be asking that the policy be overturned.

Conservation Planning for Listed Species

The FWS also recently released a revised [Habitat Conservation Planning \(HCP\) Handbook](#), which modifies the procedures for developing a habitat conservation plan and the requirements for issuance of an incidental take permit. An incidental take permit is needed when operations in an endangered or threatened species' habitat may negatively impact the listed species.

The revised HCP Handbook follows the Presidential Mitigation Memorandum's direction, also directing permit applicants to plan on a landscape-scale and to achieve net conservation benefit through the habitat conservation planning process. Industry pushed back on the draft HCP Handbook, and will be asking that the final HCP handbook be rescinded.

Conservation Planning for Unlisted Species

In addition to changing FWS's expectations for conservation planning for listed species, FWS also recently finalized its [policy for Candidate Conservation Agreements with Assurances \(CCAAs\)](#), which address conservation planning for unlisted, but at-risk, species. The revised CCAA rulemaking adds a net conservation benefit standard, raising the bar for conserving non-listed species.

Industry opposed the draft rulemaking, arguing that the increased conservation requirements will make it more difficult to develop CCAAs, and will be asking that this rulemaking be overturned.

Mitigation Strategy on Public Lands

For Bureau of Land Management (BLM)-managed lands, the BLM finalized a [regional mitigation policy](#), which also calls for landscape-scale planning and mitigation to a net conservation benefit standard. Because this was a policy change only, and did not go through any rulemaking process, it should be something that the incoming Trump Administration can easily overturn.

For more information on the Obama Administration's last-minute rules, regulations and policies, or potential steps to roll these regulations back, please contact [Theresa Sauer](#).