

**PROTECTION OF WILDLIFE RESOURCES
1200 SERIES**

1201. WILDLIFE PLANS

- a. **Wildlife Protection Plan.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations requiring a new Form 2A, Oil and Gas Location Assessment outside of High Priority Habitat require a Wildlife Protection Plan that includes a description of the Rule 1202.a operating requirements applicable to the Oil and Gas Location. Wildlife Protection Plans may address multiple Oil and Gas Locations if supplemental site-specific information is provided as needed to meet Rule 1202.a operating requirements at each Oil and Gas Location. Wildlife Protection Plans do not require Colorado Parks and Wildlife (“CPW”) consultation or approval.

- b. **Wildlife Mitigation Plan.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations within High Priority Habitat require a Wildlife Mitigation Plan that includes a description of the Rule 1202.a operating requirements, and the additional operating and mitigation requirements in Rules 1201.b.(1)–(4), 1202, & 1203. Wildlife Mitigation Plans may address one or multiple Oil and Gas Locations. Pre-existing CPW-approved Wildlife Mitigation Plans in effect on January 15, 2021 may meet these requirements subject to written concurrence from CPW that the Wildlife Mitigation Plan satisfies the requirements of this Rule 1201.b. The Wildlife Mitigation Plan will include the following:
 - (1) A description of any pre-application consultation with CPW, which may include an alternative location analysis pursuant to Rule 304.b.(2).B.viii, or identifying site-specific measures to Avoid, Minimize, or Mitigate Adverse Impacts to Wildlife Resources;
 - (2) A description of Best Management Practices incorporated into the proposed Oil and Gas Operations that the Operator commits to implementing for the purposes of minimizing impacts to wildlife;
 - (3) A description of the Rule 1202.b operating requirements applicable to the Oil and Gas Location; and
 - (4) A description of the Rule 1203 mitigation commitments to offset Unavoidable Adverse Impacts to Wildlife Resources.

1202. OPERATING REQUIREMENTS

- a. The operating requirements identified in this Rule 1202.a apply to Oil and Gas Operations statewide unless the Operator obtains a signed waiver from CPW and the Director or Commission approves a Form 4, Sundry Notice or Form 2A documenting the relief.
 - (1) In black bear habitat, Operators will install and utilize bear-proof dumpsters and trash receptacles for food-related trash at all facilities that generate trash.
 - (2) Operators will disinfect water suction hoses and water transportation Tanks withdrawing from or discharging into surface waters (other than contained Pits) used previously in another river, intermittent or perennial stream, lake, pond, or wetland and discard rinse water in an approved disposal facility. Disinfection practices will be repeated prior to completing work and before moving to the next water body. Disinfection will be performed by scrubbing and pre-rinsing equipment away from water bodies to remove all mud, plants, and organic materials and then by implementing one of the following practices:
 - A. Spray/soak equipment with a CPW-approved disinfectant solution capable of killing whirling disease spores and other aquatic nuisance species defined by CPW; or

- B.** Spray/soak equipment with water greater than 140° Fahrenheit for at least 10 minutes. All equipment and any compartments they contain will be completely drained and dried between each use.
- (3)** At new and existing Oil and Gas Locations, Operators will not situate new staging, refueling, or Chemical storage areas within 500 feet of the Ordinary High Water Mark (“OHWM”) of any river, perennial or intermittent stream, lake, pond, or wetland.
- (4)** To prevent access by wildlife, including birds and bats, Operators will fence and net or install other CPW-approved exclusion devices on new Drilling Pits, Production Pits, and other Pits associated with Oil and Gas Operations that are intended to contain Fluids.
 - A.** Such fencing and netting or other CPW-approved exclusion device will be installed within 5 days after the cessation of active drilling and completion activities and maintained until the Pit is removed from service and dried or closed pursuant to the Commission’s 900 Series Rules.
 - B.** The Director may require an operator to fence and net or install other CPW-approved exclusion devices on an existing Pit if the Director determines that the installation is necessary and reasonable to protect Wildlife Resources based on the analysis required by Rule 909.j, or other information that demonstrates additional protections for Wildlife Resources are appropriate.
 - C.** Operators will properly maintain and repair all fences, nets, and CPW-approved exclusion devices required by this Rule 1202.a.(4).
- (5)** For trenches that are left open for more than 5 consecutive days during construction of Pipelines regulated pursuant to the Commission’s 1100 Series Rules, Operators will install wildlife escape ramps at a minimum of one ramp per 1/4 mile of trench.
- (6)** When conducting interim and final Reclamation pursuant to Rules 1003 and 1004, Operators will use CPW-recommended seed mixes for Reclamation when consistent with the Surface Owner’s approval and any local soil conservation district requirements.
- (7)** Operators will use CPW-recommended fence designs when consistent with the Surface Owner’s approval and any Relevant Local Government requirements.
- (8)** Operators will conduct all vegetation removal necessary for Oil and Gas Operations outside of the nesting season for migratory birds (April 1 to August 31). For any vegetation removal that must be scheduled between April 1 to August 31, Operators may implement appropriate hazing or other exclusion measures prior to April 1 to avoid take of migratory birds. If hazing or other exclusion measures are not implemented, Operators will conduct pre-construction nesting migratory bird surveys within the approved disturbance area prior to any vegetation removal during the nesting season. If active nests are located, Operators will provide work zone buffers around active nests.
- (9)** Operators will treat Drilling Pits, Production Pits, and any other Pit associated with Oil and Gas Operations containing water that provides a medium for breeding mosquitoes with Bti (*Bacillus thuringiensis v. israelensis*) or take other effective action to control mosquito larvae that may spread West Nile virus to Wildlife Resources. Such treatment will be conducted in a manner which will not adversely affect aquatic Wildlife Resources.
- (10)** Operators will employ the following minimum Best Management Practices on new Oil and Gas Locations with a Working Pad Surface located between 500 feet and 1000 feet hydraulically upgradient from a High Priority Habitat identified in Rule 1202.c.(1).Q–S:

- A.** Contain Flowback and Stimulation Fluids in Tanks that are placed on a Working Pad Surface in an area with downgradient perimeter berming;
 - B.** Construct lined berms or other lined containment devices pursuant to Rule 603.o around any new crude oil, condensate, and produced water storage Tanks that are installed after January 15, 2021;
 - C.** Inspect the Oil and Location on a daily basis, unless the approved Form 2A provides for different inspection frequency or alternative method of compliance;
 - D.** Maintain adequate Spill response equipment at the Oil and Gas Location during drilling and completion operations; and
 - E.** Not construct or utilize any Pits, except that Operators may continue to utilize existing Pits that were properly permitted, constructed, operated, and maintained in compliance prior to January 15, 2021.
- b.** Operators will bore, rather than trench, Flowline and utility crossings of perennial streams identified as aquatic High Priority Habitat unless the Operator obtains a signed waiver from CPW and the Director or Commission approves a Form 4 or Form 2A documenting the relief. When installing culverts or bridges, such structures will not impact or prevent the passage of fish unless otherwise directed by CPW.
 - c.** Except as specified pursuant to Rule 1202.c.(2), Operators will not conduct any new ground disturbance and Well work, including access road and pad construction, drilling and completion activities, and Flowline/utility corridor clearing and installation activities in the High Priority Habitats listed in Rule 1202.c.(1).
- (1)** High Priority Habitats subject to this Rule 1202.c include:
- A.** Columbian sharp-tailed grouse (within 0.6 miles of the lek site);
 - B.** Greater prairie chicken (within 0.6 miles of the lek site);
 - C.** Greater sage-grouse (within 1.0 miles of the lek site);
 - D.** Gunnison sage-grouse (within 1.0 miles of the lek site);
 - E.** Lesser prairie chicken (within 1.25 miles of the lek site);
 - F.** Plains sharp-tailed grouse (within 0.4 miles of the lek site);
 - G.** Bald eagle (within 0.25 miles of an active nest);
 - H.** Ferruginous hawk (within 0.5 miles of an active nest);
 - I.** Golden eagle (within 0.25 miles of an active nest);
 - J.** Northern goshawk (within 0.5 miles of an active nest);
 - K.** Peregrine falcon (within 0.5 miles of an active nest);
 - L.** Prairie falcon (within 0.5 miles of an active nest);
 - M.** Least tern production area;

- N. Piping plover production area;
 - O. Townsend's big-eared bat, Mexican free-tailed bat, and myotis (within 350 feet of winter hibernacula);
 - P. Bighorn sheep production area;
 - Q. Waters identified by CPW as "Gold Medal" (within 500 feet of OHWM);
 - R. Cutthroat trout designated crucial habitat and native fish and other native aquatic species conservation waters (within 500 feet of OHWM);
 - S. Sportfish management waters not identified by CPW as "Gold Medal" (within 500 feet of OHWM); and
 - T. CPW-owned State Wildlife Areas and State Parks.
- (2) This Rule 1202.c does not apply to:
- A. Production operations at existing Oil and Gas Locations, including:
 - i. Routine maintenance, repairs, and replacements of Production Facilities that do not require a drilling or workover rig;
 - ii. Emergency operations;
 - iii. Spill and Release response;
 - iv. Ongoing Reclamation and site maintenance activities;
 - v. Habitat improvements that have been approved by CPW or the Commission to Mitigate Adverse Impacts to Wildlife Resources at existing facilities; or
 - vi. Commission- or Director-requested work.
 - B. Non-emergency workovers, including uphole recompletions, plugging operations, and site investigation and Remediation at existing Oil and Gas Locations, if:
 - i. The Operator has obtained prior approval from the Director;
 - ii. The Operator has consulted with CPW; and
 - iii. The Operator Minimizes Adverse Impacts to the species for which the High Priority Habitat exists.
 - C. Access road construction and Flowline/utility corridor clearing and installation activities within the High Priority Habitat identified in Rules 1202.c.(1).Q–S in association with an approved Form 2A may be allowed subject to Best Management Practices or other avoidance measures agreed to in consultation with CPW.
- d. All Oil and Gas Development Plans submitted after January 15, 2021, including amendments to previously-approved Form 2As, that cause the density of Oil and Gas Locations to exceed 1 per square mile in the High Priority Habitats listed in Rule 1202.d require a CPW-approved Wildlife Mitigation Plan pursuant to Rule 1201.b or other CPW-approved conservation plan and compensatory mitigation for Wildlife Resources pursuant to Rule 1203. This Rule 1202.d

applies to the following High Priority Habitat types:

- (1) Bighorn sheep migration corridors and winter range;
- (2) Elk migration corridors, production areas, severe winter range, and winter concentration areas;
- (3) Mule deer migration corridors, severe winter range, and winter concentration areas;
- (4) Pronghorn migration corridors and winter concentration areas;
- (5) Greater sage-grouse priority habitat management areas;
- (6) Columbian sharp-tailed grouse production areas;
- (7) Greater prairie chicken production areas;
- (8) Gunnison sage-grouse occupied habitat and production areas;
- (9) Lesser prairie chicken focal areas; and
- (10) Plains sharp-tailed grouse production areas.

1203. COMPENSATORY MITIGATION FOR WILDLIFE RESOURCES

- a. In High Priority Habitats listed in Rule 1202.d, the Operator will complete compensatory mitigation to Mitigate direct and Unavoidable Adverse indirect Impacts pursuant to Rules 1203.b–d. Direct impacts to wildlife are unavoidable and occur from direct mortality or displacement during construction activities and habitat conversion to industrial facilities. Indirect impacts to wildlife occur over time from the cumulative functional habitat loss from fragmentation and modified habitat use as development density increases. Indirect Impacts may be Avoided or Minimized through the application of alternative siting and Rule 1202 operating requirements. The Director, after consultation with CPW, will have discretion to determine whether compensatory mitigation proposed by the Operator is sufficient to protect wildlife from direct and Unavoidable Adverse indirect Impacts. An Operator may fulfill the obligation to complete compensatory mitigation by:
 - (1) Completing or causing to be completed a project approved by CPW and the Director as described in a Compensatory Mitigation Plan pursuant to Rule 1203.b; or
 - (2) Paying a habitat mitigation fee to CPW, as provided by Rules 1203.c & 1203.d. Any fee pursuant to Rules 1203.c & 1203.d will be calculated to reimburse all reasonable and necessary direct and indirect costs that will be incurred by CPW in completing compensatory mitigation sufficient to offset the direct and Unavoidable Adverse indirect Impacts to Wildlife Resources caused by the proposed Oil and Gas Operations.
 - (3) The Director may grant an exception from the compensatory mitigation requirement set forth in this Rule 1203 after consulting with CPW pursuant to Rule 309.e.
- b. If an Operator chooses to complete or cause to be completed compensatory mitigation to Mitigate the direct and Unavoidable Adverse indirect Impacts to Wildlife Resources:
 - (1) The Operator will submit a Compensatory Mitigation Plan to the Director with a level of detail commensurate with the scale, scope, intensity, and duration of the impacts to Wildlife Resources that includes, as appropriate:

- A. Plan objectives or mitigation goal, including a description of how the plan will address equivalence, timeliness, duration, durability, and additionality;
 - B. Coordination and concurrence with CPW;
 - C. Site selection;
 - D. Site protection instrument;
 - E. Baseline information on Wildlife Resources;
 - F. Mitigation schedule and workplan;
 - G. Maintenance plan;
 - H. Performance standards;
 - I. Monitoring and reporting requirements;
 - J. Long-term management plan;
 - K. Adaptive management plan, if necessary;
 - L. Financial Assurances; and
 - M. Other information as required by the Director.
- (2) The Director will consult with CPW about the adequacy of the proposed Compensatory Mitigation Plan.
- (3) The Director may accept the Operator's Compensatory Mitigation Plan if it meets the criteria of Rule 1203.b.(1) and, in the Director's judgment, based on the consultation described in Rule 1203.b.(2), provides adequate compensation for direct and Unavoidable Adverse indirect Impacts to Wildlife Resources from the proposed Oil and Gas Operations.
- c. **Direct Impact Habitat Mitigation Fee.** An Operator may fulfill its obligation to Mitigate direct Adverse Impacts to wildlife caused by new ground disturbance within High Priority Habitat types listed in Rule 1202.d by paying to CPW a habitat mitigation fee in the amount listed in Table 1203-1 no less than 30 days prior submitting a Form 42, Field Operations Notice – Notice of Construction or Major Change pursuant to Rule 405.b. The direct impact habitat mitigation fee is subject to update on a periodic but no more frequent than annual basis and will be modified only through the Commission's rulemaking process described in Rule 529. Notice of such rulemaking proceeding will be provided by January 15 of each year.

Table 1203-1 – Direct Impact Habitat Mitigation Fee

<u>Total Disturbance Acres</u>	<u>Fee</u>
1.0–10.99	\$13,750
11.0+	Determined based on site-specific conditions and consultation with CPW

d. Indirect Impacts.

- (1)** In High Priority Habitats listed in Rule 1202.d with a density of Oil and Gas Locations less than 5 per square mile, CPW will recommend to the Director whether compensatory mitigation is required to address the Unavoidable Adverse indirect Impacts of habitat fragmentation caused by the proposed Oil and Gas Development Plan.
- (2)** When determining whether to recommend that compensatory mitigation be required for Unavoidable Adverse indirect Impacts on Wildlife Resources, factors that CPW may consider include, but are not limited to:

 - A.** The existing landscape context, and extent to which the proposed Oil and Gas Operations are within land already used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such land uses;
 - B.** The estimated lifespan of the proposed Oil and Gas Operations;
 - C.** The extent to which the proposed Oil and Gas Operations incorporate alternative siting of Oil and Gas Facilities or Oil and Gas Locations to Avoid and Minimize Adverse Impacts;
 - D.** The extent to which the proposed Oil and Gas Operations incorporate the use of existing Oil and Gas Facilities, Oil and Gas Locations, roads, or Pipeline corridors to limit new surface disturbance and habitat fragmentation;
 - E.** The extent to which the proposed Oil and Gas Operations use technology and practices which protect Wildlife Resources, including but not limited to:

 - i.** Seasonal construction and drilling limitations;
 - ii.** Noise limitations;
 - iii.** Remote operations; or
 - iv.** Measures to reduce traffic volumes, including but not limited to transport of liquids through the use of Pipelines and storage in large Tanks.
- (3)** If the Director determines that compensatory mitigation for Unavoidable Adverse indirect Impacts to Wildlife Resources is necessary, the Operator may fulfill its obligation to Mitigate the indirect Adverse Impacts of its proposed Oil and Gas Operations by either:

 - A.** Completing or causing to be completed a project approved by CPW and the Director pursuant to Rule 1203.b; or
 - B.** Paying an additional habitat mitigation fee to CPW.
- (4)** The Director will determine the amount of the fee for each proposed Oil and Gas Location based on CPW's estimate of costs to reimburse all reasonable and necessary expenditures to complete compensatory mitigation sufficient to offset the Unavoidable Adverse indirect Impacts to Wildlife Resources from the proposed disturbance.