



Institute for Water Resources

On the Web:
<http://www.iwr.usace.army.mil>

For More Information:
+1 (703) 428-9090

November 2, 2015

IWR Releases The Mitigation Rule Retrospective: A Review of the 2008 Regulations Governing Compensatory Mitigation for Losses of Aquatic Resources

Alexandria, Virginia. In 2008, the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) issued regulations clarifying compensation requirements for impacts to wetlands, streams, and other aquatic resources authorized by permits issued under Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act (RHA) of 1899. The 2008 Mitigation Rule incorporates recommendations from the National Research Council for improving the planning, development, implementation, and performance of wetland compensatory mitigation projects, including the adoption of a Watershed Approach to guide compensatory mitigation project site selection and design, and establishes equivalent standards for aquatic resource compensatory mitigation projects. The report summarizes the progress made in implementing the 2008 Mitigation Rule, including analysis of trends in aquatic resource impacts and compensation from 2010 to 2014 and trends in mitigation banking and in-lieu-fee programs from the mid-1990s through 2014, and found that substantial progress has been made in implementation of the 2008 Mitigation Rule.

Over the past five years, the Corps issued approximately 56,400 written authorizations per year under its permit authorities, approximately 10% of which required compensatory mitigation. This modest percentage reflects the fact that, during the review process managed by the Corps, permit applicants are required to avoid and minimize aquatic resource impacts to the maximum extent practicable prior to offering compensatory mitigation. When compensatory mitigation is required, the vast majority of compensatory mitigation is done to offset authorized wetland and stream impacts. There has been continued growth in the numbers of mitigation banks and new in-lieu fee programs being approved to provide 3rd party compensatory mitigation and a marked increase in the proportion of the country served by 3rd party mitigation options. As of December 2014, there were 1,428 mitigation bank sites and 45 in-lieu fee programs that have been approved by the Corps.

The Corps and EPA continue to strive to carry out the 2008 Mitigation Rule and have identified specific future steps to ensure effective implementation. The Corps and EPA will continue investment in education to all stakeholders (e.g., Interagency Review Teams, mitigation bank and in-lieu fee sponsors, and Federal field staff) and database enhancements to improve and expand upon existing capabilities. Corps districts will further refine and enhance guidelines to allow for greater applicability to their specific environment.

This retrospective prepared by the Corps and EPA focuses on the administrative aspects of executing the 2008 Mitigation Rule. It does not evaluate the ecological performance of compensatory mitigation projects approved after the effective date of the rule.

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