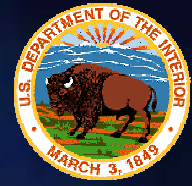
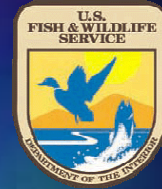


U.S. Fish & Wildlife Service

Division of Federal Program Activities



**3rd Stakeholder Forum on
Federal Wetlands Mitigation**

National Wetlands Mitigation Action Plan

TASK in 2004

**Guidance on the Appropriate Use of
Preservation for Compensatory Mitigation**

Mitigation Action Plan Task: Guidance on Use of Preservation

Background

- 1990 MOA Army/EPA
- 1995 Mitigation Banking Guidance
- RGL 02-2
- Mitigation Action Plan



1990 Army/EPA MOA

Memorandum of Agreement concerning the determination of mitigation under the CWA S.404(b)(1) Guidelines

“Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts which remain after all appropriate and practicable minimization has been required.”



1990 Army/EPA MOA

- o purchase or preservation of existing wetlands only in exceptional circumstances
- o EPA and Army will develop specific guidance for preservation



1995 Mitigation Bank Guidance

Federal Guidance for the Establishment, Use and Operation of Mitigation Banks

“Mitigation banking means the restoration, creation, enhancement, and in exceptional circumstances preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.”



1995 Mitigation Bank Guidance

- ❑ Credit given when preservation done in conjunction with restoration, creation or enhancement activities, AND
- ❑ when demonstrated that preservation augments functions of the restored, created or enhanced wetlands.
- ❑ Preservation in perpetuity may be authorized as the sole basis for generating credits in banks only in exceptional circumstances...



1995 Mitigation Bank Guidance

Determination of whether preservation is appropriate:

- o is preservation of the wetland's physical or biological functions important to the Region?
- o is there a demonstrable threat of loss or substantial degradation?



Christmas RGL

Regulatory Guidance Letter 02-2

COE Guidance on compensatory mitigation projects for aquatic resource impacts

- ❑ use watershed and ecosystem approaches when determining comp.mit. requirements
- ❑ defined Protection/Maintenance/Preservation as the removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland.



Regulatory Guidance Letter 02-2

Preservation Credit:

- Preservation is done in conjunction w/establishment, restoration or enhancement activities
- Preservation will augment functions of established, restored or enhanced wetlands
- If preservation alone is used, consider:
 1. Whether functions are important to protect/maintain in the Region
 2. Whether preserved wetlands are under demonstrable threat



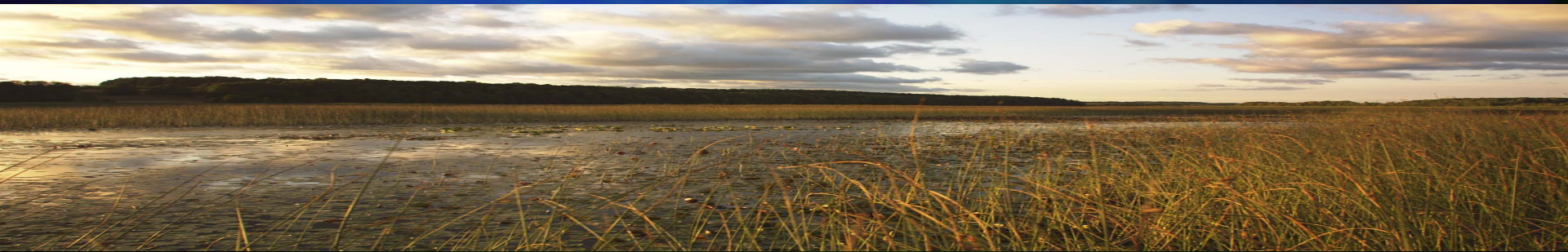
Considerations

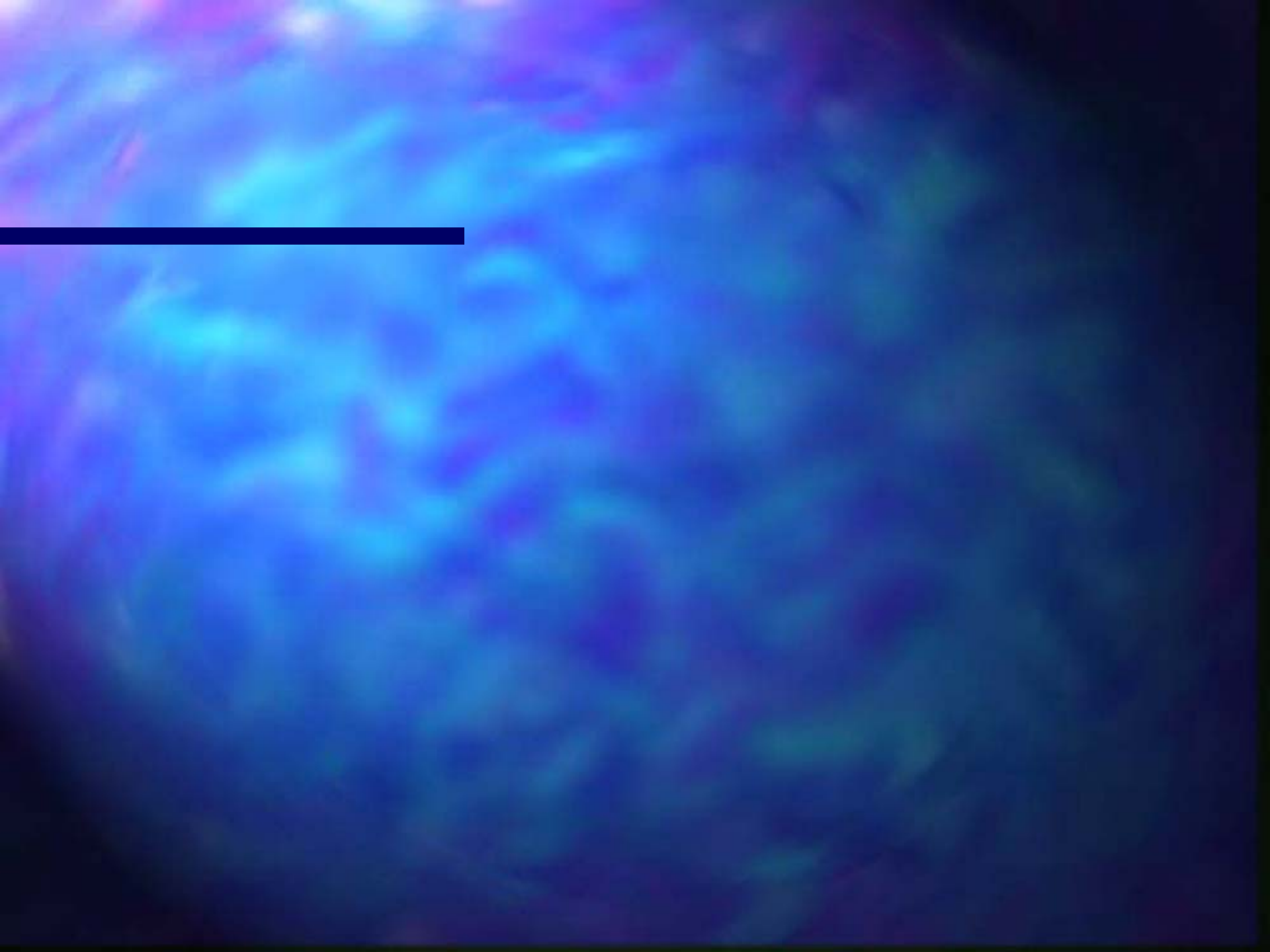
- Net loss of acres and functions
- Significance of resources preserved
- Reality of “threats”; why “at-risk”
- Importance in regional/watershed basis
- How to credit? Ratios/Function Lift/...
- Preference for restoration/enhancement/creation?
-



Discussion

Mitigation Action Plan: “To ensure the appropriate and consistent use of preservation as compensatory mitigation, the agencies will develop specific guidance that will clarify the exceptional circumstances described in current guidance in which preservation may serve as an effective and environmentally appropriate approach to satisfy compensatory mitigation requirements.”





1990 Army/EPA MOA

“Simple purchase or ‘preservation’ of existing wetlands resources may in only exceptional circumstances be accepted as compensatory mitigation. EPA and Army will develop specific guidance for preservation in the context of compensatory mitigation at a later date.”

1995 Mitigation Bank Guidance

- “Credit may be given when existing wetlands and/or other aquatic resources are preserved in conjunction with restoration, creation or enhancement activities, and when it is demonstrated that the preservation will augment the functions of the restored, created or enhanced aquatic resource.”*
- “In addition, the preservation of existing wetlands and/or other aquatic resources in perpetuity may be authorized as the sole basis for generating credits in banks only in exceptional circumstances...”*