

Federal Regulations & Guidance

2008 Compensatory Mitigation for Losses of Aquatic Resources

- Final regulations governing compensatory mitigation for authorized impacts to wetlands, streams, and other waters of the U.S. under Clean Water Act §404 and Rivers and Harbors Act §10. The rule replaces provisions of the 1990 MOA that relate to the amount, type, and location of compensatory mitigation, and the use of preservation as a mitigation component. All other provisions of the 1990 MOA remain in effect. The rule replaces the entirety of the 1995 Mitigation Banking Guidance, the 2000 In-Lieu Fee Mitigation Guidance, and the 2002 Compensatory Mitigation Regulatory Guidance Letter (RGL 02-2).
- Department of Defense and Environmental Protection Agency. April 10, 2008. *Compensatory Mitigation for Losses of Aquatic Resources*. Final rule. Federal Register. Vol. 73, No. 70: pp. 19594-19705.
- Codified at: 33 CFR 325.1; 33 CFR 332.1-332.8; and 40 CFR Subpart J 230.91-230.98.
- <http://www.epa.gov/wetlandsmitigation/>

2008 Minimum Monitoring Requirements Regulatory Guidance Letter 08-03

- Guidance issued by the U.S. Corps Army Corps of Engineers (Corps) to the Districts and the regulatory community on minimum monitoring requirements for compensatory mitigation projects, as well as the required content of monitoring reports.
- U.S. Army Corps of Engineers. October 10, 2008. *Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources*. Regulatory Guidance Letter No. 08-03.
- http://www.usace.army.mil/CECW/Documents/cecwo/reg/rgls/rgl08_03.pdf

2007 Federal Aviation Administration Advisory Circular

- Guidance issued by the Federal Aviation Administration (FAA) on locating land uses, including wetland compensatory mitigation sites.
- U.S. Department of Transportation, FAA. August 28, 2007. *Advisory Circular: Hazardous Wildlife Attractants On or Near Airports*. AC No: 150/5200-33B.
- http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf

2005 Financial Assurances Regulatory Guidance Letter 05-01

- Guidance issued by the Corps on the use of financial assurances, and suggested language for special conditions for Department of the Army permits requiring performance bonds.
- U.S. Army Corps of Engineers. *Guidance on the Use of Financial Assurances, and Suggested Language for Special Conditions for Department of the Army Permits Requiring Performance Bonds*. Regulatory Guidance Letter No. 05-01.
- http://www.usace.army.mil/CECW/Documents/cecwo/reg/rgls/rgl05_01.pdf

2003 Model Compensatory Mitigation Plan Checklist

- Memorandum to the field issued by the Environmental Protection Agency (EPA) and the Corps that includes a model compensatory mitigation plan checklist and supplemental materials to guide permit applicants preparing compensatory mitigation plans.
- U.S. Army Corps of Engineers and U.S. Environmental Protection Agency. November 7, 2003. *Model Compensatory Mitigation Plan Checklist for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act*. Memorandum to the Field.
- <http://www.epa.gov/owow/wetlands/pdf/modelmitigationchecklist.pdf>

2003 Operational Guidelines for Creating or Restoring Self-Sustaining Wetlands

- Memorandum to the field issued by the Corps that identifies basic requirements for planning and siting successful mitigation projects.
- U.S. Army Corps of Engineers. October 29, 2003. *Model “Operational Guidelines for Creating or Restoring Wetlands that are Ecologically Self-Sustaining” for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act*. Memorandum to the Field.
- <http://www.epa.gov/owow/wetlands/pdf/nas404program.pdf>

2003 Interagency Memorandum of Agreement on Protecting Aviation from Wildlife Hazards

- A Memorandum of Agreement signed by the FAA and other federal agencies to coordinate efforts to minimize wildlife risks to aviation and human safety.
- Federal Aviation Administration, U.S. Air Force, Department of the Army, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture. July 2003. *Memorandum of Agreement Between the Federal Aviation Administration, the U.S. Air Force, the U.S. Army, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the U.S. Department of Agriculture to Address Aircraft-Wildlife Strikes.*
- <http://www.epa.gov/owow/wetlands/pdf/FAAmitigationmoa.pdf>

1990 Memorandum of Agreement

- Agreement between EPA and the Corps outlining the policy and procedures to be used in determining the type and level of mitigation necessary to demonstrate compliance with the §404(b)(1) Guidelines. The 2008 compensatory mitigation rule replaced the provisions of the 1990 MOA that relate to the amount, type, and location of compensatory mitigation, and the use of preservation as a mitigation component.
- U.S. Environmental Protection Agency and U.S. Department of the Army. February 6, 1990. *Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines.*
- <http://water.epa.gov/lawsregs/guidance/wetlands/mitigate.cfm#5>

1980 §404(b)(1) Guidelines

- Regulations issued by EPA that constitute the substantive environmental criteria used by the Corps in evaluating activities regulated under §404 of the Clean Water Act.
- U.S. Environmental Protection Agency. 1980. *Guidelines for Specification of Disposal Sites for Dredged or Fill Material.* Federal Register. Vol. 45, No. 249: 85336-85357.
- http://water.epa.gov/lawsregs/rulesregs/cwa/upload/CWA_Section404b1_Guidelines_40CFR230_July2010.pdf

Other References & Resources

RIBITS (Regulatory In-lieu fee and Bank Information Tracking System)

- Developed by the Corps with support from the EPA to provide information on mitigation banking and in-lieu fee programs across the country. RIBITS allows users to access information on the types and numbers of mitigation bank and in-lieu fee program sites, associated documents, mitigation credit availability, service areas, as well information on national and local policies and procedures that affect mitigation bank and in-lieu fee program development and operation.
- <http://ribits.usace.army.mil>

2011 Financial Assurance White Paper

- Published by the U.S. Army Corps of Engineers' Institute for Water Resources, this white paper was designed to serve as a resource for Corps districts on the establishment and oversight of financial assurances.
- Scodari, Paul, Steve Martin, and Aaron Willis. June 2011. "Implementing Financial Assurance for Mitigation Project Success."
- http://www.iwr.usace.army.mil/docs/iwrreports/Financial_Assurance.pdf

2009 Model In-Lieu Fee Instrument

- Published by the Environmental Law Institute (ELI), this paper provides model language that can be incorporated into in-lieu fee program instruments.
- Wilkinson, Jessica B. December 2009. "In-Lieu Fee Mitigation: Model Instrument Language and Resources." Washington, DC: Environmental Law Institute.
- http://www.elistore.org/reports_detail.asp?ID=11390

2006 Compensatory Mitigation Practices Working Paper

- Issued by the Corps' Institute for Water Resources, this paper summarizes the current practice and status of compensatory mitigation authorized by the Corps' regulatory program.
- Martin, Steven, Robert Brumbaugh, Paul Scodari, and David Olson. March 2006. *Compensatory Mitigation Practices in the U.S. Army Corps of Engineers*. U.S. Army Corps of Engineers Working Paper.
- http://www.eli.org/pdf/mitigation_forum_2006/Mitigation_Status_2005.pdf

2006 Status Report on Compensatory Mitigation in the United States

- Issued by ELI in April 2006, summarizes the findings of a survey of the 38 Corps districts, characterizes compensatory mitigation, and provides an updated list of approved mitigation banks and in-lieu fee mitigation programs.
- Wilkinson, Jessica and Jared Thompson. April 2006. *2005 Status Report on Compensatory Mitigation in the United States*. Washington, DC: Environmental Law Institute.
- http://www.elistore.org/reports_detail.asp?ID=11137

2006 Study on In-Lieu Fee Mitigation

- Issued by ELI, provides a comprehensive profile of the nation's active wetland and stream in-lieu fee mitigation programs.
- Wilkinson, Jessica, Roxanne Thomas and Jared Thompson. June 2006. *The Status and Character of In-Lieu Fee Mitigation in the United States*. Washington, DC: Environmental Law Institute.
- http://www.elistore.org/reports_detail.asp?ID=11151

2005 GAO report: Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure That Compensatory Mitigation Is Occurring

- A Government Accountability Office report released in September 2005, summarizing the Corps' oversight of compensatory mitigation projects.
- Government Accountability Office. September 2005. *Wetlands Protection: Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure That Compensatory Mitigation Is Occurring*. Washington, DC: GAO. GAO-05-898.
- <http://www.epa.gov/owow/wetlands/pdf/GAO05898.pdf>

2001 NRC Report: Compensating for Wetland Losses Under the Clean Water Act

- Published in 2001 by National Academies of Sciences' National Research Council, investigates the adequacy of currently available science and technology for replacing wetland functions and evaluates the effectiveness of the federal compensatory mitigation program in accomplishing the 'no net loss' goal for wetlands.
- National Research Council. 2001. *Compensating for Wetland Losses Under the Clean Water Act*. National Academy Press.
- <http://www.nap.edu/books/0309074320/html>

Acronyms & Shorthand References

404 – Section 404 of the Clean Water Act
404(b)(1) – The 1980 §404(b)(1) Guidelines
Corps – U.S. Army Corps of Engineers
CWA – Clean Water Act
DA – Department of the Army
EPA – U.S. Environmental Protection Agency
FAA – U.S. Department of Transportation, Federal Aviation Administration
FWS – U.S. Fish and Wildlife Service
HUC – U.S. Geological Survey hydrologic unit code
ILF – In-lieu fee mitigation
IRT – Interagency Review Team
IWR – U.S. Army Corps of Engineers, Institute for Water Resources
MBRT – Mitigation Bank Review Team, now referred to as the Interagency Review Team
Mitigation rule – The 2008 compensatory mitigation rule for losses of aquatic resources
MOA – The 1990 Memorandum of Agreement between EPA and the Corps
NRC – the National Research Council
NRCS – Natural Resources Conservation Service
PRM – Permittee-responsible mitigation
RGL – Pronounced “ree-gul,” a Regulatory Guidance Letter issued by the Corps
TEA-21 – The Transportation Equity Act for the 21st Century (federal transportation legislation)
USACE – U.S. Army Corps of Engineers
USDA – U.S. Department of Agriculture