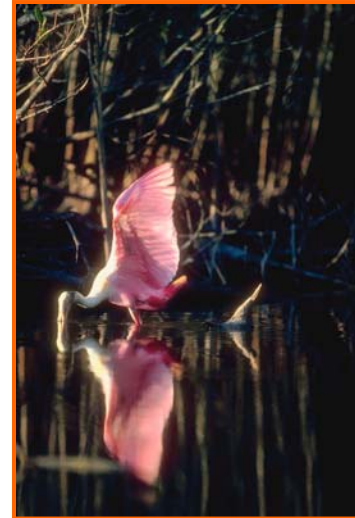


Army Corps and EPA Improve Wetland and Stream Mitigation

The U.S. Army Corps of Engineers and U.S. Environmental Protection Agency released a new rule on March 31, 2008 to clarify how to provide compensatory [mitigation](#) for unavoidable impacts to the nation's wetlands and streams. The rule will enable the agencies to promote greater consistency, predictability and ecological success of mitigation projects under the Clean Water Act. The rule goes into effect 60 days following publication in the Federal Register.

The new rule improves and consolidates existing regulations and guidance, to establish equivalent standards for all types of mitigation under the [Clean Water Act Section 404 regulatory program](#). The new rule will also provide one set of regulations for compensatory mitigation, instead of the numerous separate guidance documents that have been in use up to now. The rule does not change when compensatory mitigation is required, but it does change where and how it is required.



The rule establishes equivalent sets of standards that are based on better science, increased public participation, and innovative market-based tools. These equivalent standards take into account the inherent differences among mitigation banks, in-lieu fee programs, and permittee-responsible mitigation, in an effort to maximize the number of ecologically-successful compensatory mitigation projects that project proponents can use to offset their permitted losses of aquatic resources.

The most significant change required by the new rule is that compensation projects provided by all three compensation mechanisms (i.e., permittee-responsible compensatory mitigation, mitigation banks, and in-lieu fee mitigation) must have mitigation plans which include the same 12 fundamental components: objectives; site selection criteria; site protection instruments (e.g., conservation easements); baseline information (for impact and compensation sites); credit determination methodology; a mitigation work plan; a maintenance plan; ecological performance standards; monitoring requirements; a long-term management plan; an adaptive management plan; and financial assurances. This important change is expected to improve the planning, implementation and management of all compensation projects and ensure more effective wetland and stream replacement projects.

Mitigation banks are a "performance-based" form of wetland and stream replacement because, unlike in-lieu fee mitigation and permittee-responsible mitigation, the tradable aquatic resource restoration credits generated by banks are tied to demonstrated achievement of project goals. Thus, the rule establishes a preference for the use of credits from mitigation banks when appropriate credits are available. The new rule encourages the use of mitigation banks and in-lieu fee programs over use of permittee-responsible mitigation because mitigation banks and in-lieu fee programs usually provide consolidated compensatory mitigation projects that have less risk and uncertainty.

More Information:

U.S. Corps of Engineers:

- [Prepublication Copy of the Final Rule](#)
- [News Release](#)
- [Final Rule Questions and Answers](#)
- [Final Environmental Assessment and Regulatory Analysis](#)

[U.S. EPA Compensatory Mitigation.](#)