

# Compensatory Mitigation for Losses of Aquatic Resources (Mitigation Rule): U.S. EPA/Corps of Engineers Webinar Addressing Possible Revisions



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The United States Environmental Protection Agency and Corps of Engineers (collectively “Corps”) is undertaking a review of the Comprehensive Mitigation for Losses of Aquatic Resources rule (“Mitigation Rule”).

The Mitigation Rule is found at 40 C.F.R. Part 230, Subpart J and 33 C.F.R. Part 332.

As part of this effort the Corps is seeking input from the various stakeholders potentially affected by the Mitigation Rule. The Corps is holding a webinar on July 23rd from 1:00-3:00 p.m. (Eastern time) to discuss potential revisions to the Mitigation Rule.

By way of background, Section 404 of the Clean Water Act requires a permit to be obtained from the United States Corps of Engineers for certain activities in jurisdictional waters. A frequent condition of such permit is mitigation of environmental impacts to rivers, streams, or wetlands. A party proposing the project may be required to purchase credits from a mitigation bank or otherwise undertake compensatory mitigation in the same area to compensate for such impacts.

Stated differently, compensatory mitigation means mitigating and aquatic resource impact by replacing or providing substitute aquatic resources for impacts that remain after avoidance and minimization measures have been applied, and is achieved through appropriate and practicable restoration, establishment, enhancement, and/or preservation of aquatic resource functions and services.

A mitigation bank is generally a wetland, stream or other aquatic resource area that has been restored, established, enhanced, or (in certain circumstances) preserved for purpose of providing compensation for unavailable impacts to aquatic resources permitted under Section 404 of the Clean Water Act. The value of a bank is defined in compensation mitigation credits. The bank’s instrument identifies the number of credits available for sale and an assessment is typically undertaken to certify that the credits provide the required ecological functions.

The Association of State Wetland Managers notes that potential changes to the Mitigation Rule identified by the Corps to date include:

- Removal of the IRT Process
- Alternatives to add efficiencies in mitigation bank and ILF program evaluation
- Compliance with Miscellaneous Receipts Statute
- ILF program accounting

- Multipurpose compensation projects
- Change to the mitigation regulations to address Tribal/State assumption of the Section 404 program
- Clarity for principal unit of credits for stream mitigation projects

June 20th slides from a Corps presentation titled *Proposed Mitigation Rule Amendment Rulemaking – Pre-Proposal State and Local Government Outreach* can be downloaded [here](#).

A link to information regarding registration for the webinar can be found [here](#).