

**DRAFT – 12/23/02**

**Protecting and Restoring America’s Wetlands:  
Agency Actions to Improve Mitigation and “No Net Loss” Policies**

**Q’s and A’s**

***National Wetlands Mitigation Action Plan***

Q: What is the National Wetlands Mitigation Action Plan?

A: The Plan is a comprehensive set of actions that the U.S. Environmental Protection Agency and the U.S. Army Corp of Engineers, in conjunction with the Departments of Agriculture, Commerce, and Interior, will undertake to improve the ecological performance and results of compensatory mitigation for impacts to wetlands under the Clean Water Act and related programs. It will help ensure the effective restoration and protection of our Nation’s wetlands, consistent with the goals of our clean water laws.

Q: Why was the Plan developed?

A: The Plan was developed to improve the success of mitigation activities. Independent evaluations published in 2001 by the National Academy of Sciences (NAS) and the General Accounting Office (GAO) reviewed the effectiveness of wetlands compensatory mitigation for authorized losses of wetlands and other waters under Section 404 of the Clean Water Act. In its study, the NAS concluded that despite progress in the last 20 years, the goal of no net loss of wetlands is not currently being met for wetlands functions by the compensatory mitigation program. (Links to both the NAS and GAO reports are available at: [www.epa.gov/owow/wetlands/guidance/](http://www.epa.gov/owow/wetlands/guidance/))

Q: How was the Plan developed?

A: The Plan was developed by an interagency workgroup that was developing improvements to the October 2001 Mitigation Regulatory Guidance Letter (see below). The workgroup was informed by recent independent evaluations of mitigation activities under the wetlands program and the contributions of stakeholders concerned with the mitigation of wetlands and other aquatic resources. The federal agencies hosted a stakeholder forum in October 2001 to seek the input of a diverse group of organizations involved in wetlands mitigation and discuss the most pressing issues raised by the NAS, GAO, and other recent commentaries. (Links to the forum proceedings are available at: [www.epa.gov/owow/wetlands/](http://www.epa.gov/owow/wetlands/))

Q: How does the Plan address concerns raised by the NAS and GAO?

A: The Plan was crafted in response to, and is consistent with, the recommendations made in those reports and at the stakeholder forum. These recommendations resulted in the development of a variety of technical, programmatic, and policy initiatives for improving the effectiveness of compensatory mitigation. The Plan includes such specific action items as the development of guidance on the use of in-kind vs. out-of-kind mitigation and on-site vs. off-site mitigation, the appropriate use of preservation and vegetated buffers as mitigation, and technical guidance on stream mitigation that will assist resource agencies in making better decisions regarding mitigation in a watershed context. The Plan also includes efforts to collect and analyze information on performance standards to enable measurement of mitigation success at replacing lost aquatic functions. In addition, the Plan includes important efforts to analyze existing mitigation tracking methodologies and develop a national database to improve our ability to track the success of mitigation sites into the future.

Q: Does the Plan establish new regulations?

A: No. The Plan establishes a framework for the development of additional research, technical guidance, and policy to help ensure that mitigation activities are successful.

Q: Are the Federal agencies still charged with tracking wetland losses and gains?

A: Yes. Section 401 of the Emergency Wetlands Resources Act requires the U.S. Fish and Wildlife Service to update its wetlands status and trends information at ten-year intervals. Data in this and previous status and trends reports provide important long-term trend information about specific wetlands gains and losses in the United States. The study includes sampling and analysis of natural and human-induced wetland and deepwater habitat gains and losses in the conterminous United States, but does not include information on wetland quality. Further information is available from the U.S. Fish and Wildlife Service website at: <http://wetlands.fws.gov/>. In addition, the Natural Resources Conservation Service in the U.S. Department of Agriculture also assesses losses and gains of the nation's wetlands as part of the Natural Resource Inventory. Their reports are issued every five years and include data on wetland loss and gain trends for the nation's non-federal lands. Further information is available from the Natural Resources Conservation Service website at: <http://www.nrcs.usda.gov/technical/NRI/>.

Q: How do the Federal agencies intend to ensure no overall net loss of the Nation's wetland resources in light of the 2001 decision of the Supreme Court in the case Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers (SWANCC)?

A: While the decision of the Supreme Court in the SWANCC case did decrease federal jurisdiction over certain wetlands and other waters under the Clean Water Act, the goal of the federal regulatory program continues to be no overall net loss of wetlands. The agencies intend to provide the public with an opportunity to comment on any potential regulatory changes addressing Clean Water Act jurisdiction. In the meantime the agencies will continue to implement their responsibilities under the Act, consistent with the Court's decision.

In addition, the agencies will advance a variety of Federal and non-Federal efforts to protect the Nation's wetlands and other aquatic resources. There are a number of innovative and successful non-regulatory, voluntary efforts to protect and restore America's wetlands. Among these are the conservation provisions of the Farm Bill, such as the Wetlands Reserve Program, as well as programs that assist States and others with technical and financial means to protect specific lands and develop comprehensive wetlands protection programs.

The President's support of wetlands protection was recently reiterated this October in his observation of the 30<sup>th</sup> anniversary of the Clean Water Act and proclamation of 2002-2003 as the Year of Clean Water, "Recent studies show that we are close to achieving our goal of halting overall wetlands loss, and we are hopeful that in the near future we will begin increasing the overall function and value of our wetlands."

### ***Regulatory Guidance Letter (RGL) 02-2***

Q: Why is the Corps reissuing the Mitigation RGL?

A: RGL 01-01 was issued on October 31, 2001, to provide consolidated guidance pertaining to compensatory mitigation. While there was support for a number of elements of the original RGL, concerns also were voiced indicating that the RGL would benefit from clarification. RGL 02-2 responds to those concerns and improves the Corps ability to meet the goal of no overall net loss of wetlands. It includes measures that will improve the quality of wetland mitigation required under Corps permits as well as permittee compliance with mitigation requirements. Completion of RGL 02-2 is the first action item in the new National Wetlands Mitigation Action Plan.

Q: Does this RGL have concurrence from the other Federal agencies?

A: Yes. Although RGL 02-2 was developed primarily by Corps of Engineers field staff, it was developed in coordination with a Federal interagency working group assembled by Army Civil Works, and is being released jointly by the Department of the Army and Environmental Protection Agency. Preparation of RGL 02-02 was extensively coordinated with other Federal agencies including the Office of Management and Budget, Council on Environmental Quality, Environmental Protection Agency, the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, the Natural Resources Conservation Service, the Federal Highway Administration and the Tennessee Valley Authority. This coordination has resulted in guidance that is consistent with other Federal statutory, regulatory and policy documents.

Q: Does this RGL replace RGL 01-1?

A: Yes, this RGL rescinds and replaces RGL 01-1

Q: Where can I obtain a copy of the RGL?

A: The RGL, along with links to the NRC/NAS report, is available on the Corps web page under latest news at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

Q: Does the RGL respond to the NRC/NAS Report on mitigation in the Corps Regulatory Program?

A: Yes. RGL 02-2 positively responds to the National Research Council/National Academy of Sciences Report on mitigation in the Army Civil Works Regulatory Program. This guidance will improve the planning and construction of mitigation projects and provide a basis for improved performance monitoring and enforcement. Additionally, the RGL discusses how permit conditions can be used to provide assurances and other requirements necessary for successful mitigation of unavoidable impact to the aquatic environment, including wetlands. The Corps is committed to improving its mitigation and permit compliance record.

Q: Does the RGL support the goal of no overall net loss of wetlands?

A: Yes. RGL 02-2 strongly supports the no overall net loss goal of mitigation for wetlands. This support is stated throughout the guidance, and the guidance contains helpful information on mitigation planning and monitoring that we believe will make important contributions to this goal. The RGL will also improve the Corps ability to meet the goal of no overall net loss of wetlands by improving the quality of wetland mitigation that is required as conditions on Corps permits, and thus improving the compliance with required mitigation by permittees. Evaluation and continual improvement of the quality of mitigation wetlands will be achieved through information collection and analysis on mitigation site performance standards, thus creating opportunities for further improvement. The RGL focuses on taking a watershed approach, requiring wetland mitigation in the context of the watershed's ecological needs, and ensuring protection of wetlands and other aquatic areas established as mitigation.

Q: Does the RGL affect issued permits?

A: No. Detailed mitigation proposals already submitted and approved as part of Department of the Army permit applications will not be affected by this guidance. However, if an issued permit was approved with only a conceptual mitigation plan, the follow-up plan may be required, on a case-by-case basis, to include the details outlined in the guidance such as success criteria.

Q: Does the RGL change existing guidance?

A: The RGL is consistent with existing guidance, but elaborates on field experience in implementing the regulatory program and other information such as the NRC/NAS report. The guidance will move the program to a more watershed-based approach and substantially improve the success of required mitigation.

Q: Will the RGL result in improved environmental protection?

A: Yes. In response to the growing need for consistency in mitigating impacts to the aquatic environment, the need for more rigor in the permit conditions issued and follow-up enforcement of permit conditions, and the need for a watershed approach to requiring mitigation, the Corps issued RGL 02-2. This RGL will substantially improve mitigation consistency among Districts, and permit compliance by establishing the need for a mitigation plan and success criteria.

Q: Will the RGL increase permit workload and slow down permit decisions?

A: A RGL 02-2 assembles existing guidance on compensatory mitigation and provides it in concise fashion, thereby ultimately improving the quality and efficiency of the Corps management of compensatory mitigation in all of its Districts. While there may be individual circumstances where additional questions arise or clarifications are necessary on the mitigation components of proposed projects, we anticipate that the RGL's detail will help ensure that mitigation expectations are clear to applicants up front, that mitigation proposals will include all the necessary pieces of good, enforceable mitigation plans, and that fewer requests for supplementary information will be necessary. Furthermore, improved permit conditions for mitigation will reduce compliance problems and, therefore, workload.