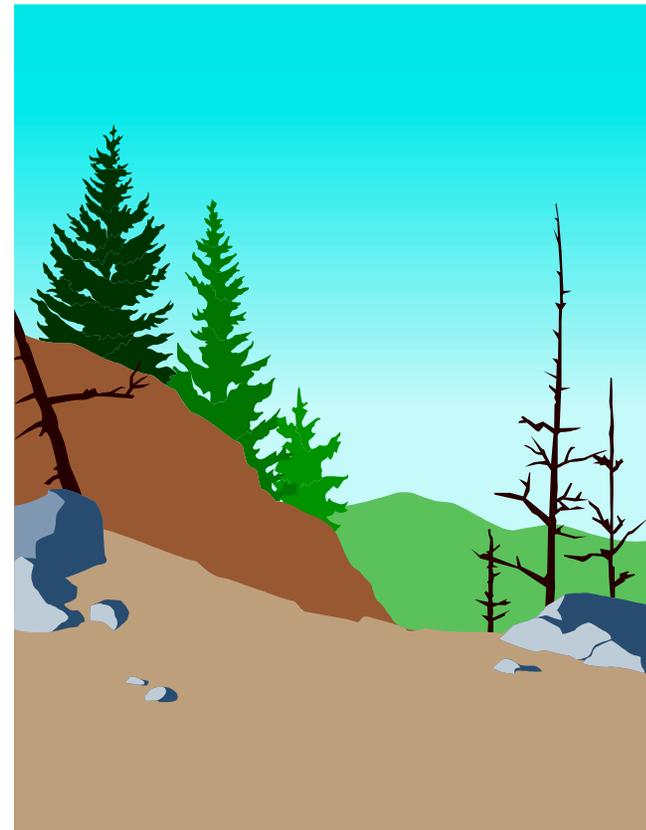

Effectiveness of In-Lieu-Fee Mitigation

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Stakeholder Forum on Federal Wetlands
Mitigation**

Millions of Acres of Wetlands Have Disappeared

- Due to agricultural activities and development, over half of the 220 million acres of marshes, bogs, swamps, and other wetlands have disappeared. And some of the remaining wetlands have degraded.
- Recognizing the value of wetlands, in 1989, the Bush administration established the national goal of “no net loss” of wetlands.



GAO's May 2001 Report

- Wetlands Protection: Assessments Needed to Determine Effectiveness of In-Lieu-Fee Mitigation (GAO-01-325, May 4, 2001)

Objectives of GAO's May 2001 Report

- How the in-lieu-fee option has been used to mitigate adverse impacts to wetlands
 - If the in-lieu-fee option has achieved its intended purpose of mitigating such impacts
 - Whether in-lieu-fee organizations compete with mitigation banks for developers' mitigation business
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In-Lieu-Fee Mitigation Option Available in 17 of 38 Corps Districts

- Since the late 1980s, 63 ILF agreements have been established.
 - Most used to restore, enhance, and/or preserve wetlands.
 - Through FY 2000, developers used ILF option for over 1,440 acres of adversely affected wetlands, and paid over \$64.2 million to ILF organizations.
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Pros and Cons of the In-Lieu-Fee Option

- Federal agencies and others agree that this option serves as a useful mitigation tool.
- However, federal agencies and others expressed concerns about whether fees are being spent in a timely manner and whether the Corps is providing adequate monitoring and oversight of the mitigation projects.
- October 2000 In-Lieu-Fee Guidance provides a framework for ILF mitigation.

Effectiveness of In-Lieu-Fee Mitigation Is Uncertain

- The extent to which the ILF option has achieved its purpose of mitigating adverse impacts to wetlands is uncertain.
- Data submitted by Corps did not support their claim that number of wetland acres mitigated by ILF equaled or exceeded acres adversely affected.
- Many districts acknowledged that they have not tried to assess ecological success.



Effectiveness of In-Lieu-Fee Mitigation Is Uncertain

- Some Corps districts use acreage as a measure for success.
 - Some districts assume success as soon as the developer pays a fee to an ILF organization even if no mitigation has been performed.
 - As a result, the Corps lacks assurances that in-lieu-fee mitigation has been effective.
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Competition Between ILF Organizations and Mitigation Banks

- Corps officials in 9 of 17 districts told us that ILFs and mitigation banks were competing with each other by providing services in the same geographic areas.
 - Some mitigation banks raised concerns that they bore greater costs and were at a disadvantage in competing with ILFs.
 - While the October 2000 Guidance gives preference to mitigation banks, it also allows for flexibility.
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Effectiveness of Ad Hoc Mitigation Is Unknown

- 24 Corps districts allowed ad hoc arrangements (typically for one-time projects without a formal agreement between the Corps and the third party receiving the funds).
- Oversight lacking in almost half of the districts using ad hoc arrangements.
- Responsibility for ecological success is unclear.



Effectiveness of Ad Hoc Mitigation Is Unknown

- EPA and Corps disagree as to whether ad hoc mitigation is covered by the October 2000 Guidance.
- Corps headquarters officials say that ad hoc mitigation is not covered under the guidance.
- EPA disagrees.

Conclusions

- ILF arrangements have the potential to be an effective compensatory mitigation tool that benefits the environment and provides developers flexibility.
 - It is not clear, however, whether such arrangements have, in practice, been an adequate method for mitigating adverse impacts to wetlands.
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Conclusions

- Corps districts supplied GAO with contradictory information or were not able to provide data to support claims that acreage and/or functions and values of wetlands that had been restored, enhanced, created, or preserved equaled or exceeded those that had been lost through development.
 - Several districts have never taken steps to assess whether ILFs have adequately mitigated for adverse impacts, and those that did make assessments used varying criteria.
 - Similarly, oversight of ad hoc mitigation has been lacking.
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Conclusions

- The Corps lacks assurance that mitigation efforts under in-lieu-fee or ad hoc arrangements have been effective.
 - Instead, the Corps sometimes relies on the “good faith” on the part of the organizations performing the mitigation.
 - October 2000 Guidance does not go far enough either to bring consistency to how determinations of ecological success should be made or to establish appropriate monitoring and oversight activities.
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Conclusions

- Agencies need adequate success criteria in order to measure whether progress is being made toward achieving the national goals of not net loss of the nation's remaining wetlands.
 - Once the agencies establish success criteria for ILFs, extending those criteria to all compensatory mitigation options would provide the agencies the opportunity to assess mitigation success more broadly.
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GAO's Recommendations

- To ensure that ILF organizations adequately compensate for adverse impacts to wetlands, GAO recommends that the Administrator of EPA, in conjunction with the Secretaries of the Army, Commerce, and the Interior, establish criteria to determine the ecological success of mitigation efforts and develop and implement procedures for assessing success.

GAO's Recommendations

- To better ensure the ecological success of mitigation efforts under ad hoc arrangements, GAO recommends that the Secretary of the Army instruct the Corps to establish procedures to clearly identify whether developers or recipients of funds are responsible for the ecological success of mitigation and, using the same success criteria applicable to ILF arrangements, to develop and implement procedures for assessing success.
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