

Compensatory Mitigation Mechanisms Under Section 404

The previous chapter provides an overview of the statutory and regulatory framework for compensatory mitigation. Agency guidance suggests that there are three general, discrete mechanisms for providing compensatory mitigation: permittee-responsible mitigation, mitigation banks, and in-lieu fees. In practice, however, there are many variations within and among these mechanisms. This chapter expands on the discussion in the previous chapter to further compare and categorize compensatory mitigation mechanisms. In developing these categories, the committee considered the following areas of possible differences as reflected in regulations, guidelines, and field practice:

- Where the compensatory mitigation is located: on-site or off-site.
- Who is legally responsible for meeting regulator-defined criteria for compensatory mitigation compliance: the permittee or a third party.
- What compensatory mitigation actions are required before the permittee is allowed to proceed with the activity authorized by the permit.
- Whether the criteria for compensatory mitigation actions have been approved through the interagency Mitigation Banking Review Team (MBRT) process.
- Whether requirements are imposed for the stewardship of the compensatory mitigation site.

Each area is discussed and then used to develop a taxonomy of six mechanisms for securing compensatory mitigation. Permit-specific and