In-Lieu Fee Programs

Session 5

Differences Between Banks & ILF

- Mitigation banks:
  - Public or private sponsor
  - Site secured & mitigation initiated in advance of debits
  - Single or multiple project sites
  - Corps has no authority over bank expenditures
- In-lieu fee programs:
  - Sponsor is government or non-profit conservation organization
  - Fees usually received before securing/implementing project
  - Multiple project sites
  - Corps approves project funding

Benefits of ILF programs

- 3rd party mitigation where there are no banks
- Compensation for a variety of aquatic resources
- Sponsor, Corps, and IRT can direct site selection using a watershed approach
  - Sponsor conducts analysis of watershed needs
- Sponsor has interest in resource restoration & conservation

Drawbacks of ILF programs

- Risk of mitigation not being provided
- Potential for migration of functions and services
- ILF project failure may result in substantial loss of aquatic resource acreage or function
- Temporal lag between permitted impacts and ILF project implementation

ILF Reforms for Equivalency

- The rule retains ILF mitigation but with significant reforms:
  - Advance planning requirement
  - Cap on “advance” credits
  - Financial accounting requirements
  - Similar admin/ecological standards as banks
  - Same public/IRT review process as banks

Compliance with Rule

- Deadline for compliance – June 9, 2010
  - ILFs approved before June 9, 2008 may continue to operate under that instrument for 2 years
- An additional 3 years is possible for *"good cause"*
- ILF instruments approved or modified on or after June 9, 2008 must comply with regs

Status of Compliance (as of June 2011)

- 47 active pre-rule ILF programs:
  - 3 of those since approved under regs
    - NC EEP, LRRT, VA ARTF
  - 7 not seeking reauthorization
  - 2 on verge of approval
    - 2 in KY
  - 35 granted extensions
- 4 new ILFs approved
- 13 pending ILF proposals
  - 2 -3 of those on verge of approval

Overview: ILF Instrument Development

- Draft prospectus
- Prospectus
- Draft instrument
- Final instrument

Prospectus includes:

33 CFR 332.8(d)(2):

- Objectives
- How ILF will be established and operated
- Proposed service area
- Need and technical feasibility
- Ownership arrangements
- Qualifications
- Compensation planning framework
- Description of ILF program account

ILF Instrument Includes:

33 CFR 332.8(d)(6):

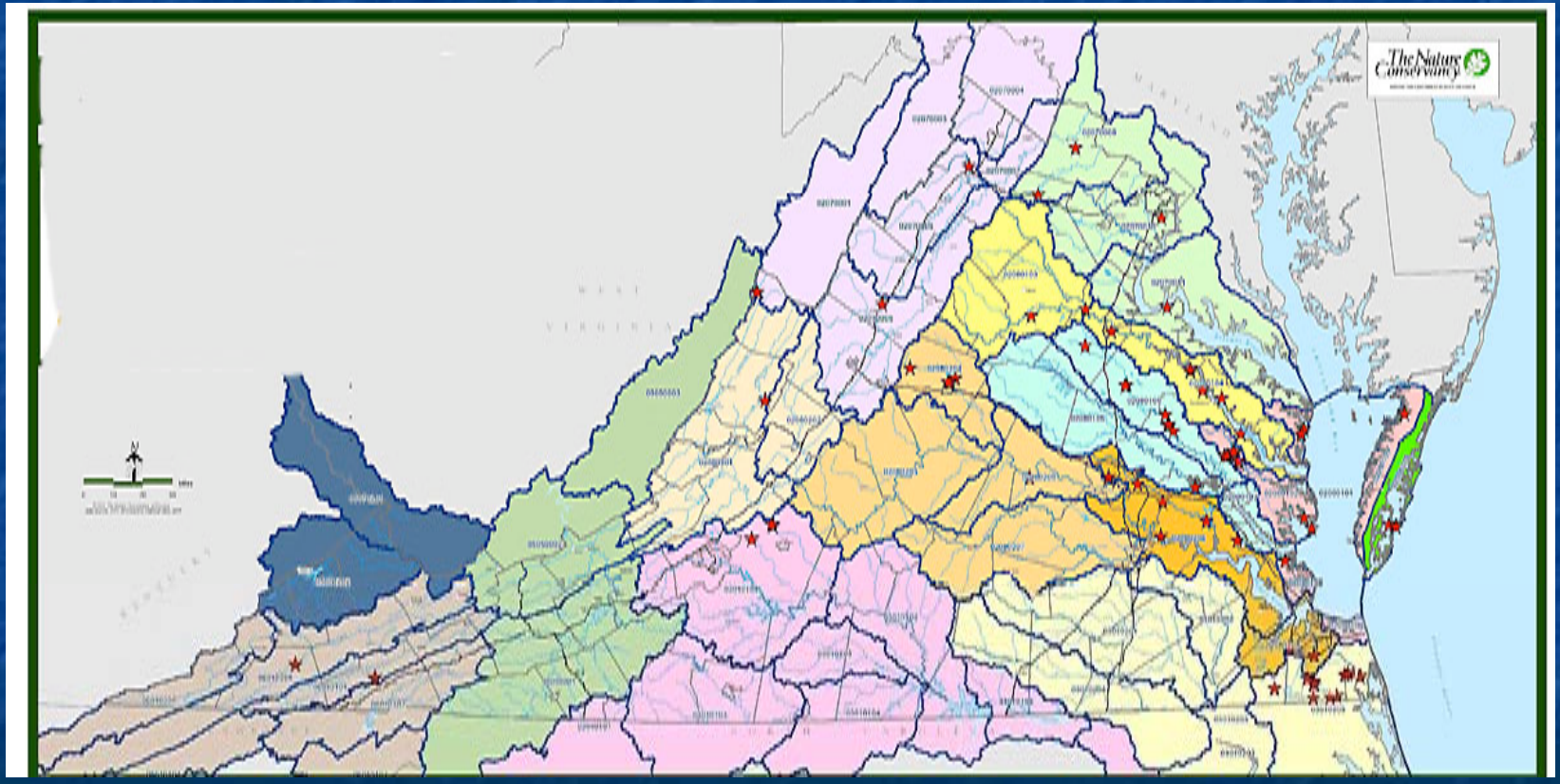
- Service area(s)
- Accounting procedures
- Provision stating legal responsibility
- Default and closure provisions
- Reporting protocols
- Compensation planning framework
- Advance credits
- Method for determining fees and credits
- Description of in-lieu fee program account
- Any other information required by DE

ILF Instrument: Service Area

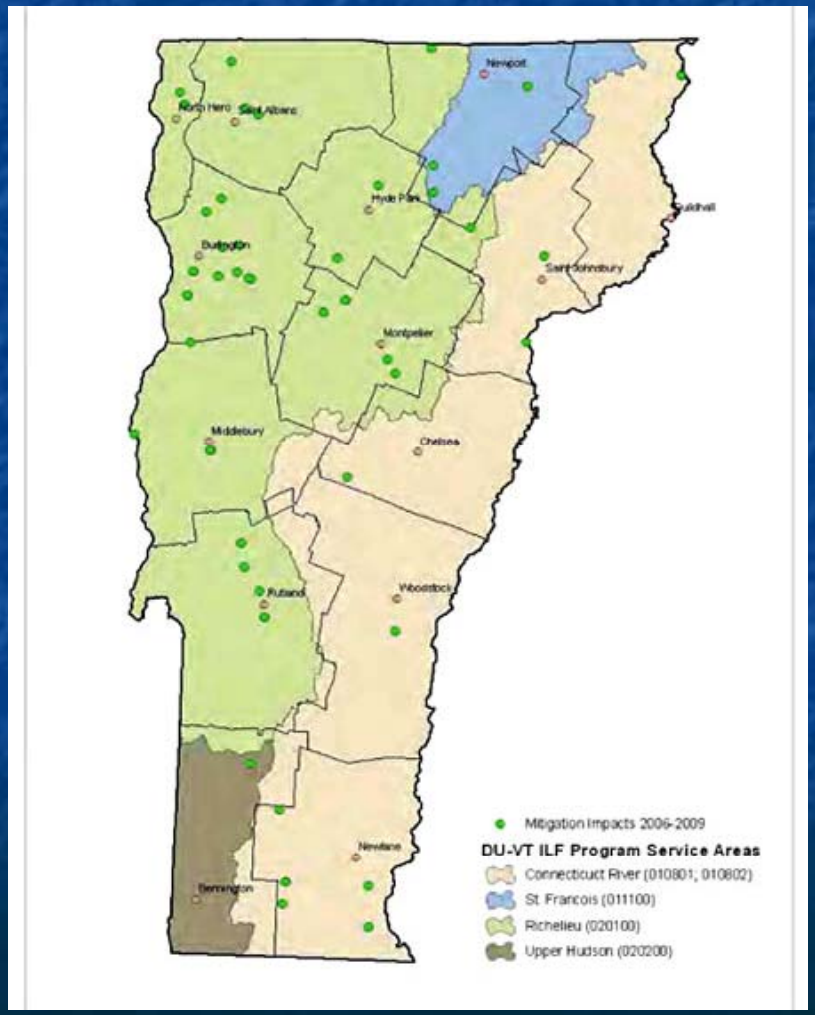
33 CFR 332.8(d)(6)(ii)(A)

- Service area: Geographic area within which the ILF program is authorized to provide compensatory mitigation credits.
- ILF program may have multiple service areas, but impacts & compensatory mitigation must be accounted for by service area.

Service Areas:
VA Aquatic Resources Trust Fund



Service Areas:
Vermont In-Lieu Fee Program



ILF Program Account

33 CFR 332.8(i)

- Funds for mitigation projects only
- Interest income remains in account
- Administrative costs – small %
- Corps responsible for funding approval
- Annual reports
  - Fees collected, funds expended
  - List of permits using ILF program
  - Credit balances, by service area
- Program audit

Examples of Program Accounting

- Mitigation funds kept separate from other monies:
  - VA Aquatic Resources Trust Fund
  - AZ Game and Fish Dept
- Administrative expenses:
  - Georgia Wetland Trust Fund (schedule)
  - VT ILF (% of fees)
- Annual Reporting:
  - VA ARTF, AZDGF, NC EEP
- Program audit: Georgia Wetland Trust Fund

Legal Responsibility
33 CFR 332.8(d)(6)(ii)(C)

- Instrument must state legal responsibility for compensatory mitigation lies with sponsor once a permittee secures credits
  - Identify parties responsible for implementation, performance, and long-term management of projects
  - Documentation to DE

Compensation Planning Framework

- Components:
  - Service area (watershed-based)
  - Analysis of historic aquatic resource loss and current condition
  - Threats to aquatic resources
  - How threats are addressed
  - Aquatic resource goals and objectives
  - Prioritize mitigation projects
  - Use of preservation
  - Description of stakeholder involvement
  - Long-term protection and management
  - Evaluation and reporting

North Carolina Ecosystem Enhancement Program

River Basin Restoration Priority Plans

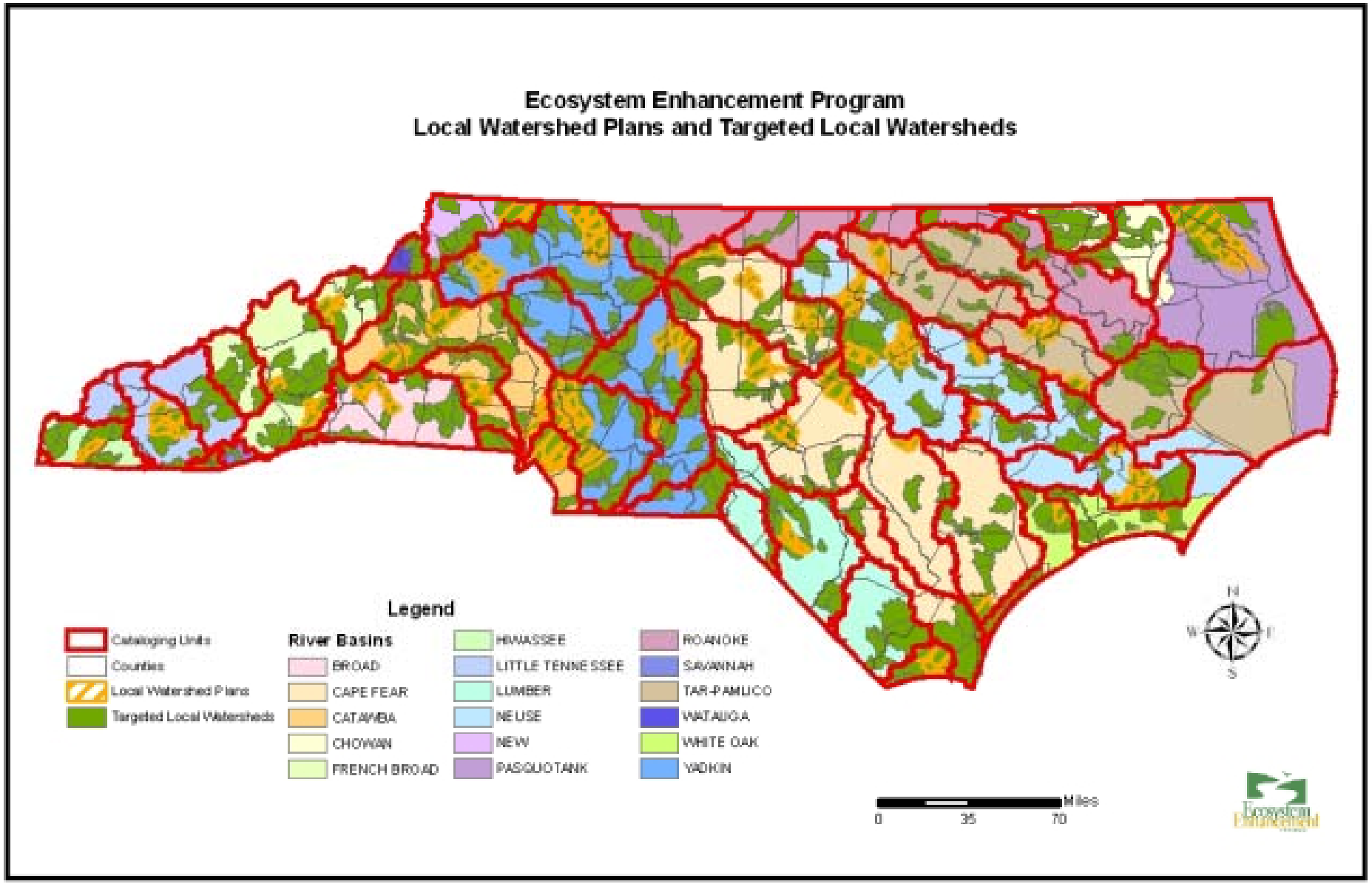
- For 17 river basins (1,000-10,000 mi^2)
- Identifies goals for each 8-digit CU (500-2,000 mi^2)
- Identifies priorities as targeted local watersheds at 14-digit scale (10-100 mi^2)

Local Watershed Plans (30-150 mi^2)

- Watershed assessment report, project atlas, watershed management plan
- Local stakeholder involvement

Priority subwatersheds (1-5 mi^2)

- For project implementation


Ecosystem Enhancement Program
Local Watershed Plans and Targeted Local Watersheds
Legend
Cataloging Units
Counties
Local Watershed Plans
Targeted Local Watersheds
River Basins
BROAD
CAPE FEAR
CATAWBA
CHOWAN
FRENCH BROAD
HIWASSEE
LITTLE TENNESSEE
LUMBER
NEUSE
NEW
PASQUOTANK
ROANOKE
SAVANNAH
TAR-PAMLICO
WATAUGA
WHITE OAK
YADKIN
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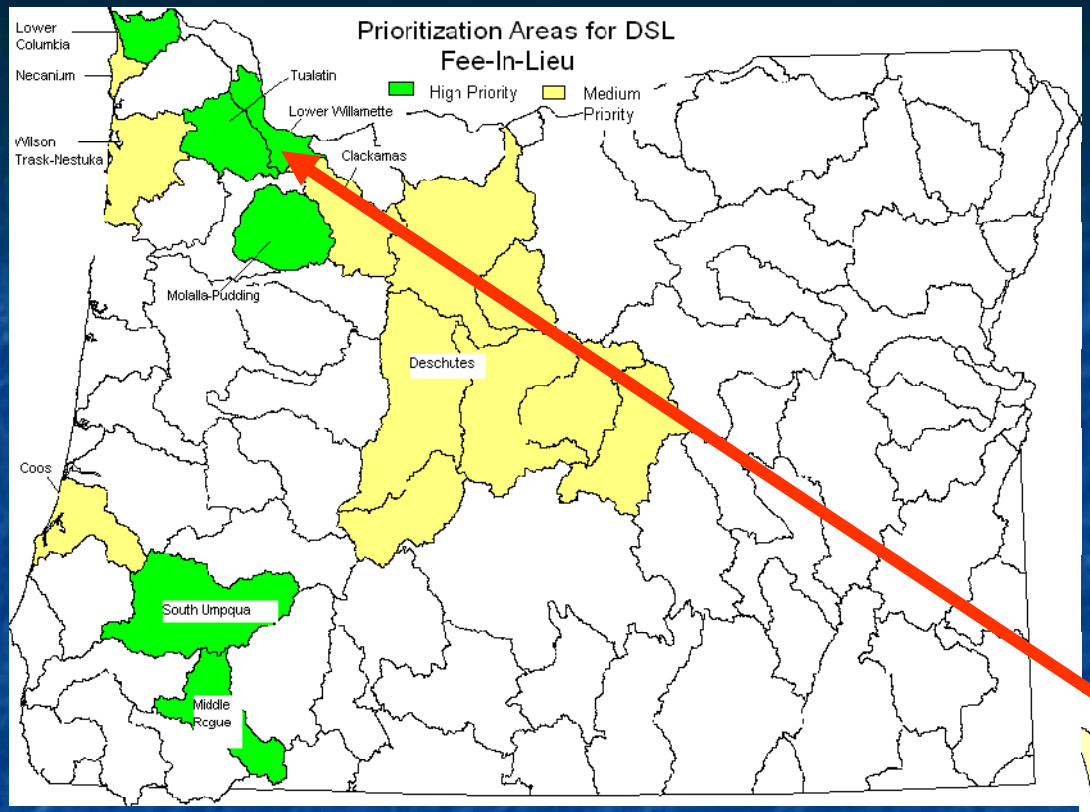
35
70
Miles

Oregon Dept of State Lands Compensation Planning Framework

- ILF awards grants for mitigation projects
  - Identified priority watersheds
  - Established criteria for site selection
    - Likelihood of success
    - Multiple objectives
    - Supports regional conservation efforts
    - Capacity of applicant & project team
    - Project costs
    - Long-term management



Lower Willamette

OR Conservation Strategy – Lower Willamette

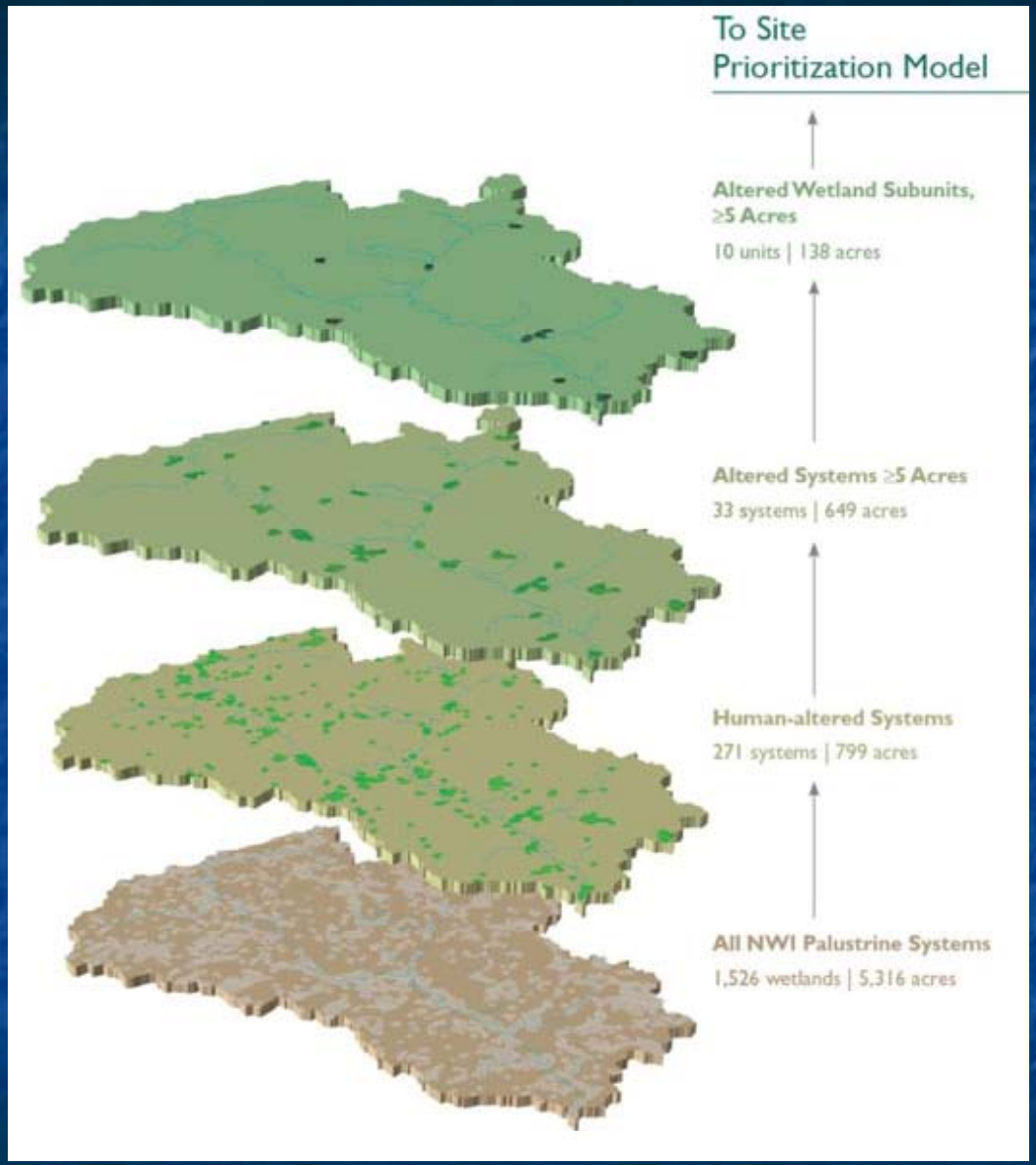
- Columbia River Bottomlands

Limiting Factors

- Urbanization
- Water quality

Restoration activities focus

- Restore water quality
- Reduce stormwater discharge
- Restore floodplain



New Hampshire ILF Program - Merrimack River Watershed

Site must be > 5 ac

Consider:

- Ecological integrity
- Significant habitat
- Flood flow control potential
- Groundwater use potential
- Water quality functions
- Sustainability
- Landscape position

Other approaches to site selection used by operational ILFs:

- Living River Restoration Trust (Elizabeth River Project)
- VA Aquatic Resources Trust Fund

ILF Program Advance Credits
33 CFR 332.8(d)(6)(iv)(B)

- Requires approved instrument.
- Limited number (cap) specified for each service area in the instrument.
- Available for sale prior to being fulfilled in accordance with mitigation project plan.
- As projects produce *released* credits, *advance* credits are fulfilled and available again.

ILF project implementation

- Land acquisition and improvements must be initiated by 3rd growing season after first advance credit is secured by permittee

ILF Program Advance Credits
33 CFR 332.8(n)

- Number of advance credits based on:
  - Compensation planning framework
  - Service area size
  - Resources available to program
  - Sponsor's past project performance
  - Financing needed for mitigation projects
  - Other considerations

How to determine the number of advance credits in a service area?

Possible approaches:

- No advance credits (OR DSL)
- % of permitted impacts over time period
- % of required mitigation over interval
- Number of credits to offset 3 years of impacts
- Existing ILFs: % of approved but not implemented projects
- More credits for experienced/reliable sponsor than inexperienced
- Others?

Examples of Approaches to Advance Credits

- VT ILF (DU)
- Living River Restoration Trust (VA)
- La Paz County ILF (AZ)

NC EEP Advance Credits Calculation

- Based on EEP projected mitigation needs for next 5 years
- Calculated by River Basin and 8-digit CU
  - NCDOT: 5-year NCDOT forecast of mitigation need (TIP and other transportation plans)
  - MOU ILF (other ILF customers): Annual average of payments over last 7 years

NC EEP Advance Credits Calculation
Cape Fear Example

Cape Fear Calculation for Stream Mitigation

NCDOT 5 Year Forecast:	101,062
MOU ILF 7 yr Average * 5:	64,835
Subtotal:	165,897

Rounded to nearest 5000

Grand Total Cape Fear Basin: 170,000

NC EEP Advance Credit Allocation

River Basin	Cataloging Unit	Advance Stream Credits	Advance Wetland Credits
Cape Fear	TOTAL:	170,000	635
	03030002	62,841	112
	03030003	29,571	8
	03030004	53,717	125
	03030005	13,458	368
	03030006	9,723	4
	03030007	691	18

Existing ILFs may have released credits

- AZ GFD – Standing proposals

- VARTF Exceeded mitigation obligations in some service areas

Credits meeting performance standards

- Credits needed for program obligations

Released credits

Credit Release Schedule

- Specified in each site's mitigation plan
- Tied to performance-based milestones
- Reserve *significant* share of credits for release only after attainment of performance standards
- Credit release approval by DE in consultation with IRT

Credit Release Schedule:
ILF projects can mirror mitigation banks

% of total expected ILF project credits once:

1. Instrument approved
2. Project plan approved
3. ILF site has been secured
4. Financial assurances or contingency funding
5. Any other requirements set by Corps

Wilmington District Credit Release Schedule Example for Wetlands (non-forested)

Instrument approved; Mitigation plan approved Site secured; Financial assurances Record long term mechanism (e.g., easement)	15%
Initial physical & bio improvements	15%
Meets success criteria	10%
Meets success criteria	15%
Meets success criteria	20%
Meets success criteria	10%
Meets success criteria (YR 5 Monitoring)	15%

HANDOUT

- Example of Debiting and Releasing Advance Credits

Fee Schedule
332.8(d)(6)(iv)(B)

- Credit costs determined by the sponsor
  332.5(o)(5)
- Cost per credit must be based on:
  - Expected costs
  - Full cost accounting, including contingencies
- Fees may also be based on:
  - Type of aquatic resource credits being purchased
  - Location of compensation project
  - Size of impacts

NC EEP Fee Schedule

Fee Category	Unit	Fee per Unit - Higher Fee HU	Fee per Unit - Lower Fee HU
Riparian Buffer	Sq.ft	$0.96	$0.96
Stream	Lin.ft	$338	$256
Non-riparian wetland	Acre	$44,883	$23,081
Riparian wetland	Acre	$62,210	$35,172
Coastal wetland	Acre	$153,035	$153,035

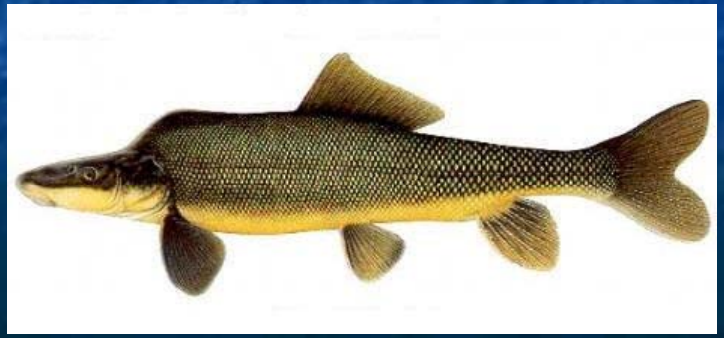
VARTF Advance Credit Fee Schedule

Basin	Non Tidal Credit ($)	Tidal Credit ($)	Stream Credit ($)
Potomac	100K	600K	700
York	55K	400K	400
Chesapeake Bay	100K	450K	400
Lower James	50K	500K	500
Chowan	30K	N/A	400

La Paz County ILF Fee Schedule

- Boat ramp: $500
- Removal of bankline: $5,000
- Removal of bankline during spawning season (1 Jan-30 Jun): $5,000
- Removal of bankline in critical habitat: $10,000
- Unauthorized beach creation: $5,000
- Subsequent violation: $5,000

Amounts are cumulative



Maine Fee Schedule

Resource dependant formula

Base Rate =
[Regional construction & monitoring costs] +
[County unimproved inland or coastal land cost]

X Multipliers

- 2:1 for ≥20K sf
- 2:1 for areas of special significance
- 4:1 for vernal pools and shorebird habitat

+ Additional fees for impacts to uplands that affect aquatic organisms (e.g. vernal pool species)

Examples of Fees for ME ILF

$33,000	14,000 sf	PFO/PEM
$220,000	64,000 sf	Vernal Pool (special significance)
$29,000	3,900 sf	Coastal wetlands
$116,000	29,000 sf	PFO

Additional ILF Requirements

- Mitigation plan
- Credit release schedule
- Financial assurances
- Site protection
- Reporting protocols
- Default and closure
- Long-term management

ILF mitigation project plans include:

- Mitigation plan elements *(33 CFR 332.4 (c)(2)-(14))*
  - Objectives
  - Site selection factors
  - Site protection instrument
  - Baseline information
  - Credit determination
  - Work plan
  - Maintenance plan
  - Performance standards
  - Monitoring requirements
  - Long-term management plan
  - Adaptive management plan
  - Financial assurances
  - Other information
- Credit release schedule

Financial Assurances

33 CFR 332.3(n)

- Amount determined by DE
  - May allow for alternate mechanism
- VA ARTF
  - 20% of full implementation costs set aside
  - Stewardship when monitoring phase over
- Alternate mechanism – NC EEP
  - Letter of commitment from NCDENR
  - No financial assurances required for mitigation projects

Reporting Protocols
33 CFR 332.8(d)(6)(ii)(E)

- Monitoring reports - 332.6(c)
- Credit transaction notification - 332.3(l)(3)
- Annual program reports
  - Program account (financial) reporting -332.8(i)(3)
  - Ledger (credit) reporting - 332.8(q)(1)
- Annual financial assurances and long-term management funding report - 332.8(q)(3)

Default and Closure

33 CFR 332.8(d)(6)(ii)(D)

- Specific ILF projects and/or overall program operations

- Corps can take “appropriate action” - 332.8(o)(10):
  - Adaptive management
  - Decrease available credits (or suspend sale)
  - Redirect funds to alternative mitigation
  - Utilize financial assurances
  - Terminate agreement

Long-term Management

33 CFR 332.7(d) & 33 CFR 332.8(u)

- LTM plan to ensure sustainability after performance standards achieved
- Compensation planning framework:
  - Long-term protection and management strategies
- Mitigation plan:
  - Site protection instrument
  - Party responsible (and transfer provisions)
  - Long-term financing (and transfer provisions)

Discussion?