

A TRAINING COURSE FOR MITIGATION BANKING AND IN-LIEU FEE PROGRAM INTERAGENCY REVIEW TEAMS



Reference Document: The Role of State and District Mitigation Banking Policy and Regulations

A. State Mitigation Banking Policies

State Statutes, Regulations, and Guidance Documents Related to Mitigation and Mitigation Banking.¹

State	Statute(s)	Regulation(s)	Guidance Document(s)
Alabama	*	*	*
Alaska	*	*	*
Arizona	*	*	*
Arkansas	Ark. Code Ann. §§15-22-1001 – 1012.	Ark. Reg. §§1201.1 – 1206.3.	Arkansas Department of Environmental Quality, Arkansas Soil and Water Conservation Commission, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, USDA Natural Resources Conservation Service. "Umbrella Memorandum of Agreement for the Establishment, Development, and Operation of an Arkansas State-Sponsored Wetlands Mitigation Bank Program." 1998.

¹ General data sources for this chart include: Environmental Law Institute. September 2002. *Banks and Fees: The Status of Off-Site Wetland Mitigation in the United States*. Washington, D.C.: Environmental Law Institute. Appendix E, pp. 165-169. Available at: http://www.elistore.org/reports_detail.asp?ID=10695; Environmental Law Institute. January 2005. *State Wetland Program Evaluation: Phase I*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11079; Environmental Law Institute. June 2006. *State Wetland Program Evaluation: Phase II*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11152; Environmental Law Institute. March 2007. *State Wetland Program Evaluation: Phase III*. Washington, D.C.: Environmental Law Institute. Available at: http://www.elistore.org/reports_detail.asp?ID=11215.

State	Statute(s)	Regulation(s)	Guidance Document(s)
California	Cal. Fish & Game Code §§1175-1796, 1850 – 1851.	Cal. Code Reg. tit. 23, § 3856(h)(5).	California Resources Agency and California Environmental Protection Agency. "Official Policy on Conservation Banks." April 7, 1995. ²
Colorado	*	*	*
Connecticut	*	*	*
Delaware	*	7-7201 DEL. CODE RAGS. § 1 et seq. ³	*
Florida	Fla. Stat. ch. 373.4135-.4137, ch. 373.414, ch. 403.9322.	Fla. Admin. Code Ann. R. 62-342.100 – 62-342.850.	"Joint State/Federal Mitigation Bank Review Team Process for Florida." October 1998. ⁴
Georgia	*	*	Savannah District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Region IV, U.S. Fish & Wildlife Service, Southeast Region, and Georgia Department of Natural Resources. "Guidelines on the Establishment and Operation of Wetland Mitigation Banks in Georgia." Undated; ⁵ "Addendum 1 to the Guidelines." January 16, 1996. ⁶
Hawaii	*	*	*
Idaho	*	*	*
Illinois	*	*	*
Indiana	*	*	Louisville and Detroit Districts, U.S. Army Corps of Engineers, <i>et al.</i> (Indiana Mitigation Banking Review Team). "Interagency Coordination Agreement on Wetland Mitigation Banking Within the State of Indiana." April 24, 2002; ⁷ Natural Resources Commission. Revised November 14, 2006. "Wetlands and Habitat Mitigation." Information Bulletin #17. Indiana Register. 20 IR 3546. ⁸

² See: <http://ceres.ca.gov/wetlands/policies/mitbank.html>.

³ See: <http://www.dnrec.state.de.us/water2000/Sections/SurfWater/Library/RGCWP.pdf>

⁴ See: <http://www.saj.usace.army.mil/regulatory/permitting/mitigation/mBanks.htm>.

⁵ See: <http://www.sas.usace.army.mil/bankguid2.htm>.

⁶ See: <http://www.sas.usace.army.mil/ADDEND1.doc>.

⁷ See: <http://www.lre.usace.army.mil/functions/rf/html/inbank.pdf>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Iowa	*	*	Iowa MBRT. "Mitigation Banking in Iowa." Draft. ⁹
Kansas	*	*	*
Kentucky	Ky. Rev. Stat. Ann. §150.255.	*	*
Louisiana	La. Rev. Stat. Ann. §49:214.41.	La. Admin. Code tit. 43:I §724(F).	*
Maine	Me. Rev. Stat. Ann. Tit. 38, §480-Z.	310 Code Me. R. §§5, 7.	Maine Land Use Regulation Commission. "Wetland Compensation Guidelines." 1998. ¹⁰
Maryland	Md. Regs. Code tit. 26, §§23.04.01 - .07, 26.24.05.01.	Md. Code §5-910.	*
Massachusetts	*	*	*
Michigan	*	12 Mich. Admin. Code R. §§281.951-.961. ¹¹	"MDEQ Wetland Mitigation Banking Handbook." September 2001. ¹²
Minnesota	Minn. Stat. Ann. §103G.2242.	Minn. R. §§8420.0200(1), .0510, .0630, .0700 - .0760.	Minnesota Board of Water & Soil Resources. "Wetland Banking Fee Policy." December 2003 ¹³ ; Minnesota Board of Water & Soil Resources. "Wetland Banking Fee Policy." September 2007. ¹⁴
Mississippi	*	*	*
Missouri	*	*	*
Montana	*	*	*
Nebraska	Neb. Rev. Stat. §39-1320.	*	*

⁸ See: <http://www.in.gov/legislative/register/20061213-IR-312060562NRA.xml.pdf>.

⁹ Referenced in: Smith, Duane and Steve Andrie, Dennis Kroeger. November 2006. "Smart Wetlands Mitigation for Iowa Department of Transportation Projects." Iowa Department of Transportation. http://www.ctre.iastate.edu/reports/wetlands_mitigation.pdf.

¹⁰ See: <http://www.maine.gov/tools/whatsnew/attach.php?id=2811&an=1>.

¹¹ See:

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=28100951&Dpt=EQ&RngHigh=.

¹² See: <http://www.deq.state.mi.us/documents/deq-water-wetlands-webhandbook.pdf>.

¹³ See: <http://www.bwsr.state.mn.us/wetlands/wetlandbanking/fees.html>.

¹⁴ See: <http://www.bwsr.state.mn.us/wetlands/wetlandbanking/fees-2008.html>.

State	Statute(s)	Regulation(s)	Guidance Document(s)
Nevada	Nev. Rev. Stat. §244.388.	*	*
New Hampshire	*	*	*
New Jersey	N.J. Stat. Ann. §§13:9B-3 – 13:9B-5, 13:9B-13 – 13:9B-15.	N.J. Admin Code tit. 7, §§7A-14.1 – 14.6.	*
New Mexico	*	*	*
New York	*	*	Memorandum from Patricia Riexinger, New York Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, Bureau of Habitat, to Natural Resource Supervisors, New York Department of Environmental Conservation (Dec. 24, 2002).
North Carolina	N.C. Gen. Stat. §§143.214.8 - .11.	N.C. Admin. Code tit. 15A 02R.0302, 0402.	*
North Dakota	*	*	*
Ohio	Ohio Rev. Code Ann. § 6111.027.	Ohio Admin. Code §3745-1-54.	*
Oklahoma	*	*	Oklahoma Department of Transportation, Oklahoma's Office of the Secretary of the Environment, Oklahoma Conservation Commission, Oklahoma Department of Wildlife Conservation, Oklahoma Department of Environmental Quality, The Nature Conservancy, Tulsa District of the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, Natural Resources Conservation Service, and Federal Highway Administration. "Memorandum of Agreement." 1996.
Oregon	Or. Rev. Stat. §§196.600 - .665.	Or. Admin. R. 141-085-0115, 141-085-0260 – 0650.	Portland District, U.S. Army Corps of Engineers. "Wetland Mitigation Banking Guidebook for Oregon." October 2000. ¹⁵

¹⁵ See:

<https://www.nwp.usace.army.mil/op/g/docs/documents/Mitigation%20Banking%20Guidebook.pdf>

State	Statute(s)	Regulation(s)	Guidance Document(s)
Pennsylvania	*	*	*
Rhode Island	*	*	*
South Carolina	*	*	Charleston District, U.S. Army Corps of Engineers, <i>et al.</i> "Joint State/Federal Administrative Procedures for the Establishment and Operation of Mitigation Banks in South Carolina." September 2002. ¹⁶
South Dakota	*	*	*
Tennessee	Tenn. Code Ann. §70-1-302(e).	*	Memphis and Nashville Corps Districts, Tennessee Department of Environment and Conservation, Tennessee Wildlife Resources Agency, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, Federal Highway Administration, and Tennessee Department of Transportation. "General Wetland Banking Memorandum of Agreement." June 12, 1995.
Texas	12 Tex. Nat. Res. Code Ann. §§221.001-.048.	*	*
Utah	*	*	*
Vermont	*	*	*
Virginia	Va. Code Ann. §§28.2-1308, 33.1-223.2:1, 62.1-44.23.	4 Va. Admin. Code § 20-390-10 et. seq.	Virginia Marine Resources Commission and Virginia Institute of Marine Science. "Guidelines for Establishment, Use and Operation of Tidal Wetland Mitigation Banks In Virginia." 1998. ¹⁷

¹⁶ See: http://www.sac.usace.army.mil/assets/pdf/regulatory/mitigation/establishment_operation_mitigation_banks_SC-Sept-2002.pdf

¹⁷ See: <http://www.mrc.state.va.us/regulations/bankguide.shtm>

State	Statute(s)	Regulation(s)	Guidance Document(s)
Washington	Wash. Rev. Code Ann. §§90.84.005 - .070, 47.12.330 - .360.	*	Washington Department of Ecology, Seattle District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Region 10. "Wetland Mitigation in Washington State: Part I – Agency Policies and Guidance." March 2006; ¹⁸ U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Federal Highway Administration, Washington State Department of Ecology, Washington State Department of Fish and Wildlife, Washington State Department of Transportation. "Washington State Department of Transportation Wetland Compensation Bank Program Memorandum of Agreement." February 15, 1994. ¹⁹
West Virginia	*	*	*
Wisconsin	Wis. Stat. § 281.37.	Wis. Admin. Code §§ 350.01 – 350.14.	St. Paul District, U.S. Army Corps of Engineers, Wisconsin Department of Natural Resources. "Guidelines for Wetland Compensatory Mitigation in Wisconsin." February 2002 ²⁰ ; Wisconsin Department of Transportation. "Wetland Mitigation Banking Technical Guidelines." July 1993.
Wyoming	Wyo. Stat. Ann. §§35-11-308 – 311.	Ch. 1 of Wyoming Water Quality Rules and Regulations § 12.	Wyoming Department of Environmental Quality. "Wyoming Statewide Wetland Mitigation Bank: Guidelines for Interpretation and Implementation." April 1995. ²¹

* If an entry is missing for a state, the state does not have wetland mitigation statutes, regulations and/or guidance.

¹⁸ See: <http://www.ecy.wa.gov/biblio/0606011a.html>

¹⁹ See: <http://www.wsdot.wa.gov/NR/rdonlyres/D2CB4169-FC69-4422-BC99-B65E7FD4F6A6/0/WetlandMOAFinal1994.pdf>

²⁰ See: http://dnr.wi.gov/org/es/science/publications/wetland_mitig.pdf

²¹ See: http://deg.state.wy.us/wqd/watershed/Downloads/Wetlands/wet_guidelines.pdf

B. Bibliography of Corps District Mitigation Banking Policy

SELECT DISTRICT GUIDELINES FOR COMPENSATORY MITIGATION:

Charleston District, U.S. Army Corps of Engineers. "Guidelines for preparing a Compensatory Mitigation Plan" October 18, 2010.

"Annual Monitoring Report Form"

New Orleans District, U.S. Army Corps of Engineers. "Compensatory Mitigation Standard Operating Procedures." 2010.

Rock Island District, U.S. Army Corps of Engineers. "Rock Island District Wetland Mitigation Monitoring Report."

Seattle District, U.S. Army Corps of Engineers, Washington Department of Ecology, U.S. Environmental Protection Agency, R10. "Wetland Mitigation in Washington State: Part I – Agency Policies and Guidance." March 2006.

MITIGATION BANKING GUIDANCE:

Charleston District, U.S. Army Corps of Engineers, *et al.* "Joint State/Federal Administrative Procedures for the Establishment and Operation of Mitigation Banks in South Carolina." September 2002.

Chicago District, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service. "Interagency Coordination Agreement on Wetland Mitigation Banking within the Regulatory Boundaries of Chicago District, Corps of Engineers." June 2008

Fort Worth District, U.S. Army Corps of Engineers. "Mitigation Banking in the Fort Worth District." June 2011.

"Fort Worth Mitigation Banking Guidance" August 2012

Norfolk District, U.S. Army Corps of Engineers and VA DEQ. "Mitigation Banks Do's and Don'ts." October 2009.

Savannah District, U.S. Army Corps of Engineers, "Draft Guidelines on the Establishment and Operation of Wetland and Stream Mitigation Banks in Georgia." 2011

Wilmington District, U.S. Army Corps of Engineers. "Wilmington District NCIRT Mitigation Review Framework – September 2011.

