



Highlights of [GAO-05-898](#), a report to the Ranking Democratic Member, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

Because wetlands provide valuable functions, the administration set a national goal of no net loss of wetlands in 1989. Section 404 of the Clean Water Act generally prohibits the discharge of dredged or fill material into waters of the United States, which include certain wetlands, without a permit from the U.S. Army Corps of Engineers (Corps). To help achieve the goal of no net loss, the Corps can require compensatory mitigation, such as restoring a former wetland, as a condition of a permit when the loss of wetlands is unavoidable. Permittees can perform the mitigation or pay a third party—a mitigation bank or an in-lieu-fee arrangement—to perform the mitigation. GAO was asked to review the (1) guidance the Corps has issued for overseeing compensatory mitigation, (2) extent to which the Corps oversees compensatory mitigation, and (3) enforcement actions the Corps can take if required mitigation is not performed and the extent to which it takes these actions.

What GAO Recommends

GAO recommends that the Secretary of the Army direct the Corps to establish an effective oversight approach that will ensure that permittees and third parties are performing required compensatory mitigation. In commenting on our report, the Department of Defense generally agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-05-898.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

WETLANDS PROTECTION

Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure That Compensatory Mitigation Is Occurring

What GAO Found

The Corps has developed guidance that establishes two primary oversight activities for compensatory mitigation: requiring the parties performing mitigation to periodically submit monitoring reports to the Corps and conducting compliance inspections of the mitigation. However, parts of the guidance are vague or internally inconsistent. For example, the guidance suggests that the Corps place a high priority on requiring and reviewing monitoring reports when “substantial mitigation” is required, but it does not define substantial mitigation. Furthermore, one section of the guidance directs district officials to conduct compliance inspections of a relatively high percentage of compensatory mitigation sites, while another section designates these inspections as a low priority, leading to confusion by Corps officials.

Overall, the seven Corps districts GAO visited performed limited oversight to determine the status of compensatory mitigation. The Corps required monitoring reports for 89 of the 152 permit files reviewed where the permittee was required to perform compensatory mitigation. However, only 21 of these files contained evidence that the Corps received these reports. Moreover, only 15 percent of the 152 permit files contained evidence that the Corps had conducted a compliance inspection. The Corps districts provided somewhat more oversight for mitigation performed by the 85 mitigation banks and 12 in-lieu-fee arrangements that GAO reviewed. For the 60 mitigation banks that were required to submit monitoring reports, 70 percent of the files contained evidence that the Corps had received at least one monitoring report. However, only 36 percent of the mitigation bank files that GAO reviewed contained evidence that the Corps conducted an inspection. For the 6 in-lieu-fee arrangements that were required to submit monitoring reports to the Corps, 5 had submitted at least one report. In addition, the Corps had conducted inspections of 5 of the 12 arrangements.

The Corps can take a variety of enforcement actions if required compensatory mitigation is not performed. These actions include issuing compliance orders, assessing administrative penalties of up to \$27,500, requiring the permittee to forfeit a bond, suspending or revoking a permit, implementing the enforcement provisions of agreements with third parties, and recommending legal actions. District officials rarely use these actions and rely primarily on negotiation to resolve any violations. In some cases, GAO found district officials may not be able to use enforcement actions after detecting instances of noncompliance because they have limited their enforcement capabilities. For example, because they did not always specify the requirements of compensatory mitigation in the permits, they had no legal recourse for noncompliance.