

Reversing the Loss of Our Nation's Wetlands

"A little fill here and there ... and a precious natural resource may disappear forever."

While jurisdictional challenges defined federal wetland regulations during the last decade, potentially removing protection for many wetlands nationwide, Wisconsin's legislature granted protection to "nonfederal" wetlands. The author looks at how Wisconsin's approach might help other states reverse the ongoing loss of their wetlands.

BY MICHAEL J. CAIN

Over the past decade, there have been enormous challenges to wetland regulation that resulted from the U.S. Supreme Court's *SWANCC*¹ and *Rapanos*² decisions. This has created an untenable burden on the U.S. Army Corps of Engineers (the Corps) and the U.S. Environmental Protection Agency (EPA) staffs' ability to protect wetlands, as far too much time is spent on determining jurisdiction for Clean Water Act (CWA) §404 protection.

Wisconsin has been affected less than most states and federal agencies by the confusion created by the *SWANCC* and *Rapanos* decisions because our legislature adopted, unanimously, statutory provisions to assure that any wetland that was found to be a "nonfederal wetland" pursuant to the *SWANCC* decision "or any subsequent interpretations of that decision" would be protected under our state water quality certification process.³

The Wisconsin Department of Natural Resources (WI DNR) recently updated its formal wetland plan, *Reversing the Loss*, to lay out a strategy for the next biennium to assure continued progress toward its goals. Importantly, it notes that under the current wetland regulatory program, it permits an average of 250 acres of wetland filling per year (including those filled for road construction) and that permitting takes, on average, 30 days after receipt of a completed application.⁴ This seems especially noteworthy, given the current regulatory challenges.

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While one size does not fit all, Wisconsin's program may offer some helpful insights into designing effective regulations across the country. In particular, while the state enjoys broader public support for protecting wetland resource than elsewhere, ecological and hydrological arguments, as well as financial, can be clearly made in support of better wetland protection and gain the public's backing.

It is apparent, as we look at the mosaic of state wetland programs across the United States, that the strong public support for protection of wetlands that exists in Wisconsin does not exist in all states. What has created this support for wetlands and water resources in Wisconsin? Are there actions citizens and other states can take to foster an increased recognition of the value of wetlands and the benefits of protecting these resources? Are there elements of the Wisconsin program that should be followed in the programs of other states and the federal wetland regulatory programs?

Wisconsin's Public Trust Doctrine: Foundation for Protection

Our state constitution incorporated provisions from the 1787 Northwest Ordinance declaring, that "the river Mississippi and the navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between the same, shall be common highways and forever free. . . ."⁵ This language serves as the cornerstone for Wisconsin's public trust doctrine, which protects its navigable waters and wetlands. The evolution of this doctrine, from the time of statehood in 1848, has served as the foundation of our state regulatory programs.

In recognizing the public nature of waters, and recognizing the public's right to travel, fish, hunt, and recreate on these waters, the Wisconsin Supreme Court noted in 1914 that we needed to broadly construe the public trust doctrine so the "people reap the full benefit of the

grant secured to them” relating to our waterways. The Court further noted that the “wisdom of the policy which steadfastly and carefully preserved to the people the full and free use of public waters cannot be questioned. Nor should it be limited by narrow construction.”⁶

One of Wisconsin’s adopted sons, Aldo Leopold, served to reinforce the foundations of Wisconsin’s long heritage of protecting its water resources when he articulated the land ethic, where people move “from conqueror of the land-community to plain member and citizen of it.”⁷ This conservation ethic, and the ecological principles articulated by Leopold and others, serves as the modern foundation for many of our state and federal environmental programs.

In a case involving fill placed in a navigable lake in Wisconsin in 1966, the Wisconsin Supreme Court upheld the denial of a permit, stating that “one fill, though comparatively inconsequential, may lead to another and another, and before long a great body of water may be eaten away until it may no longer exist. Our navigable waters are a precious natural heritage; once gone, they disappear forever.”⁸

This directive, requiring the State of Wisconsin to consider the cumulative impacts of actions that affect our waters, is consistent with the ecological principles that had evolved since the late 1940s. It is a critical component of any environmental regulatory program. In the late 1960s and 1970s, Wisconsin developed shoreland and wetland zoning regulations, which required counties and municipalities to adopt ordinances to protect these resources.⁹

In a seminal case discussing wetlands regulations and takings, *Just v. Marinette*, the Wisconsin Supreme Court issued a decision in 1972 upholding the state’s shoreland regulations, and the denial of a project that proposed to fill wetlands adjacent to a lake. The language the Court used, recognizing that “swamps and wetlands serve a vital role in nature, are part of the balance of nature and are essential to the purity of water in our lakes and streams,” shows an evolving recognition in 1972 of the land/water ethic articulated by Leopold. The Court further noted, consistent with this “ethic,” that it is not reasonable for a property owner to assume that they can destroy the “essential natural character” of the land, in this case, wetlands, “so as to use it for a purpose for which it was unsuited in its natural state.” The public trust doctrine inscribed in the state’s constitution, and supported by Leopold’s land/water ethic, has provided a strong foundation for the Wisconsin courts to protect wetlands by rightly placing private ownership within a broader context of public benefits.

WI DNR’s Approach to Wetland Protection

Since the 1980s, Wisconsin has had significant concerns about the erosion of some components of the federal program. These problems appear to have been caused by intentional efforts of some past administrations to limit the wetland program and have been exacerbated by the confusion and administrative inefficiencies created by the recent U.S. Supreme Court decisions. In reaction to the federal judicial decisions, Sen. Russ Feingold (D-Wis.) has been one of the principal proponents of the Clean Water Restoration Act (CWRA) to restore the federal protection of wetlands.¹⁰ Our governor and the majority of our state’s congressional delegation support the CWRA.¹¹ Some suggest that, due to the strong protections for existing wetlands that have been established under Wisconsin’s laws, there is no need for the CWRA and for further

federal involvement in protection of Wisconsin’s wetlands. Such arguments fail to recognize the ecological connections that exist between Wisconsin’s wetlands, the fauna that utilize our wetlands, and other critically important wetlands of the nation, such as the prairie pothole region and the Mississippi flyway.¹² The perturbations that are occurring to wetlands across the nation due to loss of habitat, water quality, and flood storage have adverse impacts, ecologically, recreationally, and economically, for all of us.

The support for wetland protection that would be restored under the CWRA has been built over a long period. Wisconsin’s Natural Resources Board, which establishes policy for the WI DNR, continued the evolution of the land/water ethic when it adopted a wetland policy statement 33 years ago, entitled *Wetlands Preservation, Protection, Restoration and Management*, that created “a presumption against activities, which adversely affect those wetlands under department jurisdiction or control . . . (emphasis added).”¹³ The natural resources board expressed concern with the continued loss of natural wetlands, describing “Wisconsin’s wetlands as a critical component of ecosystems essential to the health and quality of life of our state’s diverse citizenry, plants, animals, and landscapes. . . .”

In 1966, the Wisconsin Supreme Court, in denying a permit to fill a navigable lake, noted that “one fill, though comparatively inconsequential, may lead to another and another, and before long a great body of water may be eaten away until it may no longer exist.”

In 1978, the Wisconsin Legislature mandated the establishment of the Wisconsin Wetlands Inventory to map Wisconsin’s remaining wetland resources.¹⁴ The Wetlands Inventory provided two critical tools—it established a baseline of the remaining wetlands in the state and provided information for prospective purchasers so that they could make a more well-informed decision as they planned projects.

To provide a mechanism for carrying out the Department’s wetland policies, we adopted rules for processing water quality certifications under §401 of the CWA in 1981.¹⁵ Shortly thereafter, we began to deny certification for the Corps’ Nationwide Permits, since we believed they were resulting in the unreasonable loss of Wisconsin’s wetlands. We negotiated with the Corps to establish special regional conditions to protect Wisconsin’s wetland resources. Eventually, we were involved in the development of State Programmatic General Permits, which allowed us more autonomy and provided better protection of our wetland resources.

To provide further protection for Wisconsin’s wetlands, we adopted the nation’s first set of water quality standards for wetlands in 1991 in N.R. 103, Wisconsin Administrative Code (WAC). These standards are applied to “all department regulatory, planning, resource management, liaison and financial aid determinations that affect wet-

lands” (N.R. 103.06, WAC). These rules were modeled after the CWA §404(b)(1) guidelines,¹⁶ and required that a sequenced review of wetland projects be undertaken to determine whether the project is wetland dependent, whether there are practicable alternatives to undertaking the project, and, finally, whether the project will cause “significant adverse impacts” to the functional values of the wetland.¹⁷

The adoption of these rules was controversial, but after two iterations of the rule, and two rounds of hearings across the state, over 60 percent of the respondents were in favor of the rules, with only 12 percent objecting to their adoption. One of the objections from the real estate and construction industry was that they wanted to have the opportunity to request a “preliminary assessment of the scope of . . . alternatives and the potential for compliance” of a proposed project. The basis for this request was to give landowners and developers an opportunity to assess a project plan or potential real estate purchase. We enthusiastically agreed to this provision, since it also saved us potential conflicts that we preferred to avoid.¹⁸

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We specifically avoided the consideration of mitigation as part of project review for applying our wetland water quality standards when they were adopted in 1991. The primary reason for this was that we had seen the federal permitting process become less and less effective because mitigation was emphasized too heavily in the process. It was also clear to us that mitigation had not proven to be effective in replacing the natural wetland resources that were being lost through the federal permitting process.¹⁹

The adoption of these rules brought about significant changes in the regulation of projects that affected wetlands in Wisconsin. The loss of wetlands in the state from regulated projects dropped from 1,400 acres per year to an average of 100 acres per year. (There are also an average of 150 acres per year lost to highway construction projects.)

In my opinion, the adoption of the wetland water quality standards was a watershed event, which assisted in the acceptance of Wisconsin’s wetland regulatory program. The Department conducted statewide training after the rules were adopted, and many attorneys and consultants told us that they liked the rules, since they provided more objective criteria for assessing impacts and a logical, sequenced process for reviewing projects. I believe it became clear to agricultural and development interests, after experience with the rules, that they could modify their projects to avoid wetlands and still undertake their desired activities in most circumstances.²⁰

In 2000, the State of Wisconsin adopted a limited wetland mitigation program. In the statute establishing this program, it is specifically provided that mitigation cannot be considered for “areas of

special natural resource interest” and may not be considered until the “applicant demonstrates that all appropriate and practicable measures will be taken to avoid and minimize adverse effects on the wetland.”²¹ Mitigation remains a small part of Wisconsin’s wetland program.

In 2001, after the *SWANCC* decision, Wisconsin adopted a statute, unanimously in both houses of our legislature (which at the time were each controlled by different political parties), giving the department water quality certification authority over any wetland in Wisconsin that was declared a nonfederal, isolated wetland due to the *SWANCC* decision or any subsequent interpretation of the decision by the appellate courts or federal agency.²² This law has also captured any wetlands declared nonfederal after the *Rapanos* decision.

What Elements of Wisconsin’s Program Could Be Emulated in Other States?

The public trust, land/water ethic, and ecological principles enunciated by the Wisconsin courts on considering cumulative impacts and the ecological values of our waters should, given the scientific knowledge that currently exists relating to our wetlands and water resources, be applied in every regulatory regime. As the Wisconsin courts have recognized, “a little fill here and a little fill there” will result in the loss of our aquatic resources, and this “precious natural heritage will disappear forever.”²³ In our Wisconsin program, we look closely at all wetlands fills, and require avoidance of all fills, even hundredths of an acre, if there are practicable alternatives.

As in *Just*, the argument should also be made that an owner of wetlands has no inherent right to change the essential natural character of the land where public harm will occur. Our Wisconsin Supreme Court addressed this issue 35 years ago, contemporaneously with the adoption of the CWA. It is astonishing to me that persons are still allowed to argue, in many states, that they have a right to fill wetlands and adversely impact other water resources when they have purchased those lands after the CWA and other regulations are in place. We easily prevail when such arguments are made in Wisconsin, because there is no rationally supportable argument that a purchaser had a reasonable expectation to undertake such activities if the land was purchased since the late 1970s. It is disappointing that in other states, such as Florida, permits are still being granted by the states and the Corps to allow filling of hundreds of acres in a single permit. It is encouraging to see that some of these permits, such as the recent decision relative to the Mirasol project in Florida, are being overturned by the courts.²⁴

With the knowledge currently available relative to ecology and hydrology, it is possible to articulate, defend, and gain public support for a “land/water ethic” relating to protection of our wetlands. Our experience in Wisconsin is that these basic principles are now widely accepted, which has given us opportunities to adopt legislation and rules with broad public support and with bipartisan support in our legislature.

Collaboration and Public Outreach

Wisconsin has some geographical and historical advantages to support water protection programs, since we have over 15,000 named lakes,

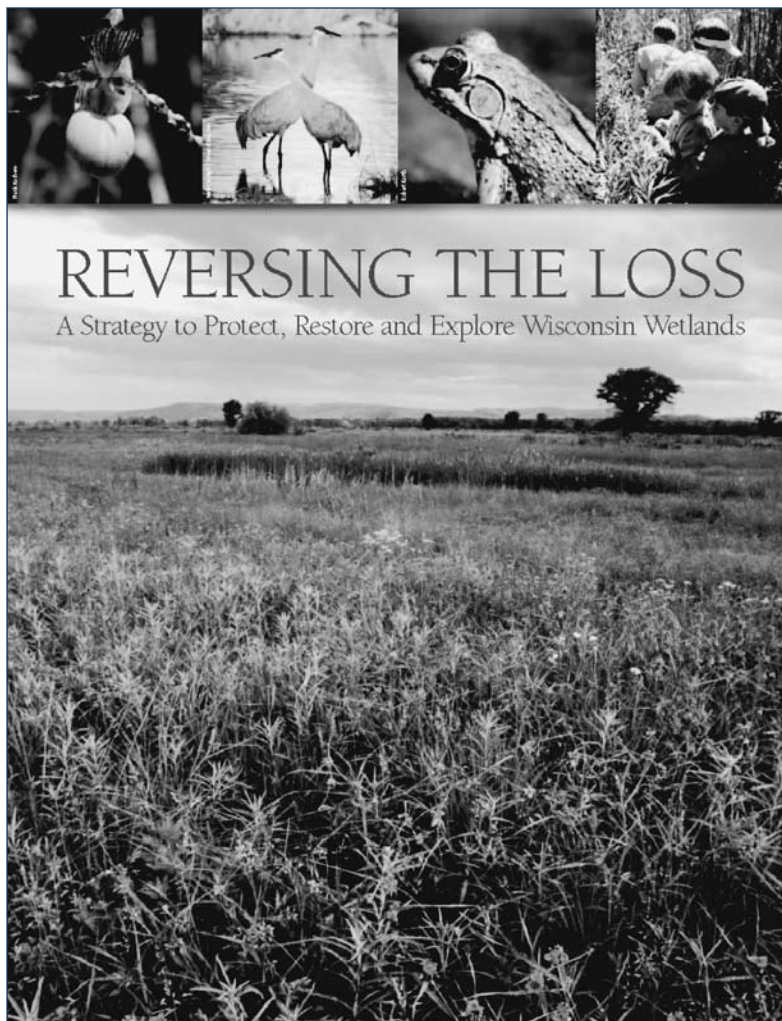
32,000 miles of rivers and streams, and 860 miles of Great Lakes shorelines within our borders.²⁵ Water-based tourism is an important part of our state's economy, generating approximately \$3 billion annually.²⁶ The University of Wisconsin conducts statewide polling annually to determine the opinions of Wisconsin's citizens on a broad range of issues. In 2008, citizens were asked whether they were concerned about the destruction of Wisconsin's remaining wetlands. Eighty-four percent of the respondents replied that they were concerned, while 86 percent of the respondents were also supportive of giving citizens a tax break if they protect or restore wetlands on their private property.²⁷

Wisconsin established a Wetland Team in the late 1990s that meets quarterly to discuss issues and potential problems relating to Wisconsin's wetlands. The team includes representatives from all state agencies that deal with wetlands, including agriculture and roads, all federal agencies that deal with wetland issues, regional planning commissions, NGOs, and researchers from the University of Wisconsin (see *Reversing the Loss* for a list of members).

This group identifies potential problems, as well as mutual opportunities, to address wetland issues. The strategic goals identified in the plan developed by the Wetland Team include strengthening partnerships with all stakeholders, developing incentives for wetland conservation on private lands, and advancing public understanding and connection to wetlands. These goals are realistic, and there is a commitment by the persons and organizations involved to assure that these goals will be pursued.

Examples of things that have been developed include:

- Educational efforts, such as the Wetland Media and Tool Kits developed by WI DNR to educate the public about the values and presence of wetlands;²⁸
- Development of real estate forms and information in cooperation with the Wisconsin Realtor's Association to provide information and contingencies in real estate offers to assure that buyers are informed about the potential presence of wetlands and the potential impacts it could have for their intended use of the property;²⁹
- Mapping tools available online, so that potential purchasers can determine if there are mapped wetlands or soils that indicate potential wetlands on the property;³⁰
- Identification and public celebrations of Wisconsin's Wetland Gems by the Wisconsin Wetland's Association to raise awareness of all different types of wetlands around the state;³¹
- Initiatives to develop monitoring and assessment tools to aid in planning for wetland protection and restoration at the local watershed level.³²
- A tracking system that generates annual reports on wetland gains, losses, and conservation activities.³³



In 2008, the Wisconsin Department of Natural Resources updated its formal wetland plan, *Reversing the Loss*.

Conclusion

Wisconsin's wetland protection program is far from perfect, but we have, with much work by a broad spectrum of interested parties, ranging from government agencies, development interests, farming interests, NGOs, planning agencies, consultants, and academics, developed a program that is effective and has broad support. Current budget and staffing issues are a challenge, but the fundamental structure remains in place to assure continued success in reversing the losses of wetlands in Wisconsin.

The increasing knowledge of the role that wetlands play ecologically and hydrologically should make it possible to gain public support for these types of regulations across the country in the future. While there will always be tensions between the stakeholders in this arena, I am encouraged to see the broad spectrum of groups in Wisconsin that are now working together constructively to address these tensions. While it may be naïve to assume that this will ever be easy, I think there is reason for optimism that we can see continued recognition and commitment to working collaboratively to avoid losing this "precious natural heritage" to a "little fill here and a little fill there." ■

Resources

Reversing the Loss: A Strategy to Protect, Restore, and Explore Wisconsin's Wetlands can be found on the WI DNR's website, at <http://dnr.wi.gov/wetlands/strategy.html>.

Additional resources that WI DNR features online include:

Wetland Media and Toolkit, at http://dnr.wi.gov/news/mediakits/mk_wetlands.asp.

Wisconsin Realtors Addendum W, at http://www.wra.org/legal/pdf/AddendumW_sample08.pdf.

Wisconsin Wetland Mapping Tools, at <http://dnr.wi.gov/wetlands/mapping.html>.

Wisconsin Wetland Gems, at <http://www.wisconsinwetlands.org/gemsintro.htm>.

ENDNOTES

1. *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001).
2. *Rapanos v. U.S.*, 128 S. Ct. 2208 (2006).
3. See 2001 Wis. Act 6 and Wis. Stats §281.36(1m) (2007).
4. REVERSING THE LOSS: A STRATEGY TO PROTECT, RESTORE AND EXPLORE WI WETLANDS, WISCONSIN'S WETLAND TEAM (2008), available at <http://dnr.wi.gov/wetlands/strategy.html>.
5. Wis. CONST. art. IX, §1.
6. *Diana Shooting Club v. Husting*, 156 Wis. 261 (1914).
7. ALDO LEOPOLD, A SAND COUNTY ALMANAC: AND SKETCHES HERE AND THERE, 203-04 (Oxford Univ. Press 1949).
8. *Hixon v. PSC*, 32 Wis. 2d 608 (1966).
9. Wis. Stat. §281.31.
10. See Clean Water Restoration Act, S. 787, 111th Cong. (2009).
11. Letter from Jim Doyle, Governor of Wisconsin, to Russell D. Feingold, U.S. Senator (July 9, 2007).
12. Wisconsin Waterfowl Strategic Plan, Wisconsin Department of Natural Resources (Dec. 5, 2007), available at <http://www.dnr.state.wi.us/org/land/wildlife/plan/waterfowl.htm>.
13. Wis. ADMIN. CODE, Subsection N.R. 1.95(3).
14. See <http://dnr.wi.gov/wetlands/inventory.html>. The initial wetland inventory was completed in 1984 and, with continued updating, serves as an important tool for the WI DNR and for landowners. Currently, digital wetland maps for 68 of Wisconsin's 72 counties are available online. The online maps provide information on both mapped wetlands and on both Mapped Wetlands and Potential Wetlands (areas with poorly drained soils). The Department is actively working to complete this task for all counties. This provides much better information for purchasers, consultants, landowners, and realtors.
15. Wis. ADMIN. CODE, ch. N.R. 299.
16. See <http://www.epa.gov/owow/wetlands/pdf/40cfrPart230.pdf>.
17. In administering the sequenced review process, we relied in part on the review process as articulated in Oliver A. Houck, *Hard Choices: The Analysis of Alternatives Under Section 404 of the CWA*, 60 COLO. L. REV. 773 (1989). These principles are still applied in Wisconsin and should be

reviewed by the federal agencies.

18. Wis. ADMIN. CODE, Subsection N.R. 103.08(1).
19. See the discussion of these issues by Royal C. Gardner and colleagues. Royal C. Gardner et al., *Compensating for Wetland Losses Under the Clean Water Act (Redux): Evaluating the Federal Compensatory Mitigation Regulation*, 38 STETSON L. REV. (Winter) (2009); see also Royal C. Gardner et al., *Compensating for Wetland Losses Under the Clean Water Act (Redux): Evaluating the Federal Compensatory Mitigation Regulation*, 31 NAT'L WETLANDS NEWSL. (Mar.-Apr.) 1 (2009). While there have been some improvements, many of these problems persist in the compensatory mitigation program.
20. WI DNR legal and technical staff conducted training sessions around that state for attorneys, consultants, municipal officials and property owners after the rules were adopted. These training sessions were critical to the understanding and acceptance of the water quality standards and the decisionmaking process.
21. See Wis. Stat. §281.37 (2007). "Areas of special natural resource interest" include a broad range of waters and wetlands, as outlined in the statute.
22. See Wis. Stat. §281.36 (2007).
23. *Hixon v. PSC*, 32 Wis. 2d 608 (1966).
24. See Craig Pittman's blog at <http://www.pavingparadise.org/blog/2009/10/24/judge-overturns-mirasol-wetlands-permit-says-corps-and-wildlife-service-failed-do-job/>.
25. Waters of Wisconsin (Wisconsin Acad. Sciences, Arts & Letters 2003).
26. See REVERSING THE LOSS: A STRATEGY TO PROTECT, RESTORE AND EXPLORE WI WETLANDS, WISCONSIN'S WETLAND TEAM (2008), at 8.
27. See the 2008 Wisconsin Badger Poll at www.news.wisc.edu/releases/14941.
28. See http://dnr.wi.gov/news/mediakits/mk_wetlands.asp.
29. See http://www.wra.org/legal/pdf/AddendumW_sample08.pdf.
30. See <http://dnr.wi.gov/wetlands/mapping.html>.
31. See <http://www.wisconsinwetlands.org/gemsintro.htm>.
32. See <http://dnr.wi.gov/wetlands/assessment.html>.
33. See <http://dnr.wi.gov/wetlands/assessment.html>.

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8. 40 C.F.R. §230 Subpart H.
9. For more on federal avoidance and minimization policy, see THE FEDERAL WETLAND PERMITTING PROGRAM: AVOIDANCE AND MINIMIZATION REQUIREMENTS (Environmental Law Institute 2008).
10. For a list of citations and summary of several studies, see Rebecca L. Kihlsinger, *Success of Wetland Mitigation Projects*, 30 NAT'L WETLANDS NEWSL., (Mar.-Apr.) 14 (2008).
11. James Murphy et al., *Avoidance Avoided: How the New Rule Fails to Adequately Promote Avoidance and Places Difficult-to-Replace Systems at Risk*, 31 NAT'L WETLANDS NEWSL. (Mar.-Apr.) 14 (2009).
12. MITIGATION OF IMPACTS TO FISH AND WILDLIFE HABITAT: ESTIMATING COSTS AND IDENTIFYING OPPORTUNITIES (Environmental Law Institute 2007).
13. The 1990 MOA and 1995 Banking Guidance established a preference for using on-site compensation unless using off-site compensation was deemed environmentally preferable to on-site mitigation. See Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (Feb. 6, 1990) [hereinafter 1990 MOA]; and Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, 60 Fed. Reg. 58605-14 (1995).
14. NATIONAL RESEARCH COUNCIL, COMPENSATING FOR WETLAND LOSSES UNDER THE CLEAN WATER ACT (National Academy Press 2001) [hereinafter *Compensating for Wetland Losses*].
15. Mitigation Rule (2008), §332.2.
16. J.B. Ruhl & James Salzman, *The Effects of Wetland Mitigation Banking on People*, 28 NAT'L WETLANDS NEWSL., (Mar.-Apr.) 1 (2006)

17. Michael Bean et al., DESIGN OF U.S. HABITAT BANKING SYSTEMS TO SUPPORT THE CONSERVATION OF WILDLIFE HABITAT AND AT-RISK SPECIES (Environmental Law Institute 2008).
18. D.J. Spieles, *Vegetation Development in Created, Restored, and Enhanced Mitigation Banks of the United States*, 25 WETLANDS (Winter) 51-63 (2005); J.J. MACK & M. MICACCHION, OHIO ENVIRONMENTAL PROTECTION AGENCY, DIVISION OF SURFACE WATER, WETLAND ECOLOGY GROUP, OHIO EPA TECHNICAL REPORT WET/2006-1, AN ECOLOGICAL ASSESSMENT OF OHIO MITIGATION BANKS: VEGETATION, AMPHIBIANS, HYDROLOGY, AND SOILS (2006); K.C. REISS ET AL., FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION #WM881, AN EVALUATION OF THE EFFECTIVENESS OF MITIGATION BANKING IN FLORIDA: ECOLOGICAL SUCCESS AND COMPLIANCE WITH PERMIT CONDITIONS (2007).
19. "At some sites, compliance criteria were being met, but the hydrological variability that is a defining feature of a wetland had not been established." In COMPENSATING FOR WETLAND LOSSES, at 6.
20. Kihlsinger, *supra* note 10.
21. In a recent article, several members of the original NRC committee noted that "[f]rom a regulatory standpoint developing meaningful, reasonable performance standards is a challenge." Gardner et al., *Compensating for Wetland Losses Under the Clean Water Act (Redux): Evaluating the Federal Compensatory Mitigation Regulation*, 31 NAT'L WETLANDS NEWSL. (Mar.-Apr.) 1 (2009).
22. *Id.*
23. U.S. Government Accountability Office, GAO-05-898 Wetlands Protection: Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure That Compensatory Mitigation Is Occurring (2005).