

Legislative Research Commission House Study Committee on Wetland and Stream Mitigation

February 27 , 2014

Committee Charge



The Committee shall study issues related to the overall policies and roles of agencies within State government, the federal government, and the private sector to plan, construct, and monitor wetland and stream mitigation.

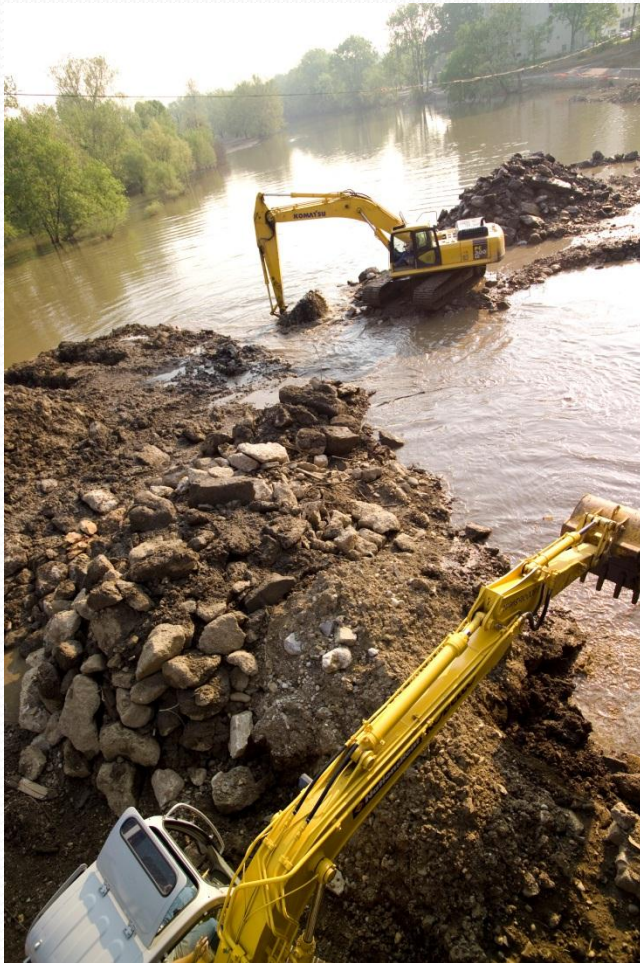
The Committee may study a number of specific issues related to wetland and stream mitigation that are enumerated in the Subcommittee's charge.

Clean Water Act: Objective

The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.



Clean Water Act: Prohibition on Discharge of Material



The CWA prohibits the discharge of dredged or fill material into the waters of the United States unless a permit issued by the United States Army Corps of Engineers (Corps) under Section 404 of the CWA authorizes such a discharge.

Clean Water Act: Discharge Permit Requirements



In order to receive a 404 permit to discharge into a wetland, there cannot be a practicable alternative to the discharge and the permittee will be required to avoid, minimize, and compensate for the adverse impacts to the wetland.

Compensatory Mitigation

Compensatory mitigation refers to compensation for the loss of or adverse impacts to existing wetlands.

Compensatory mitigation may be achieved through:

- Restoration
- Creation
- Enhancement
- Preservation



Compliance with Compensatory Mitigation Requirements

Compliance with compensatory mitigation requirements may be accomplished in one of three different ways:

- Mitigation by the permittee.
- Mitigation banking.
- In-lieu fee mitigation.

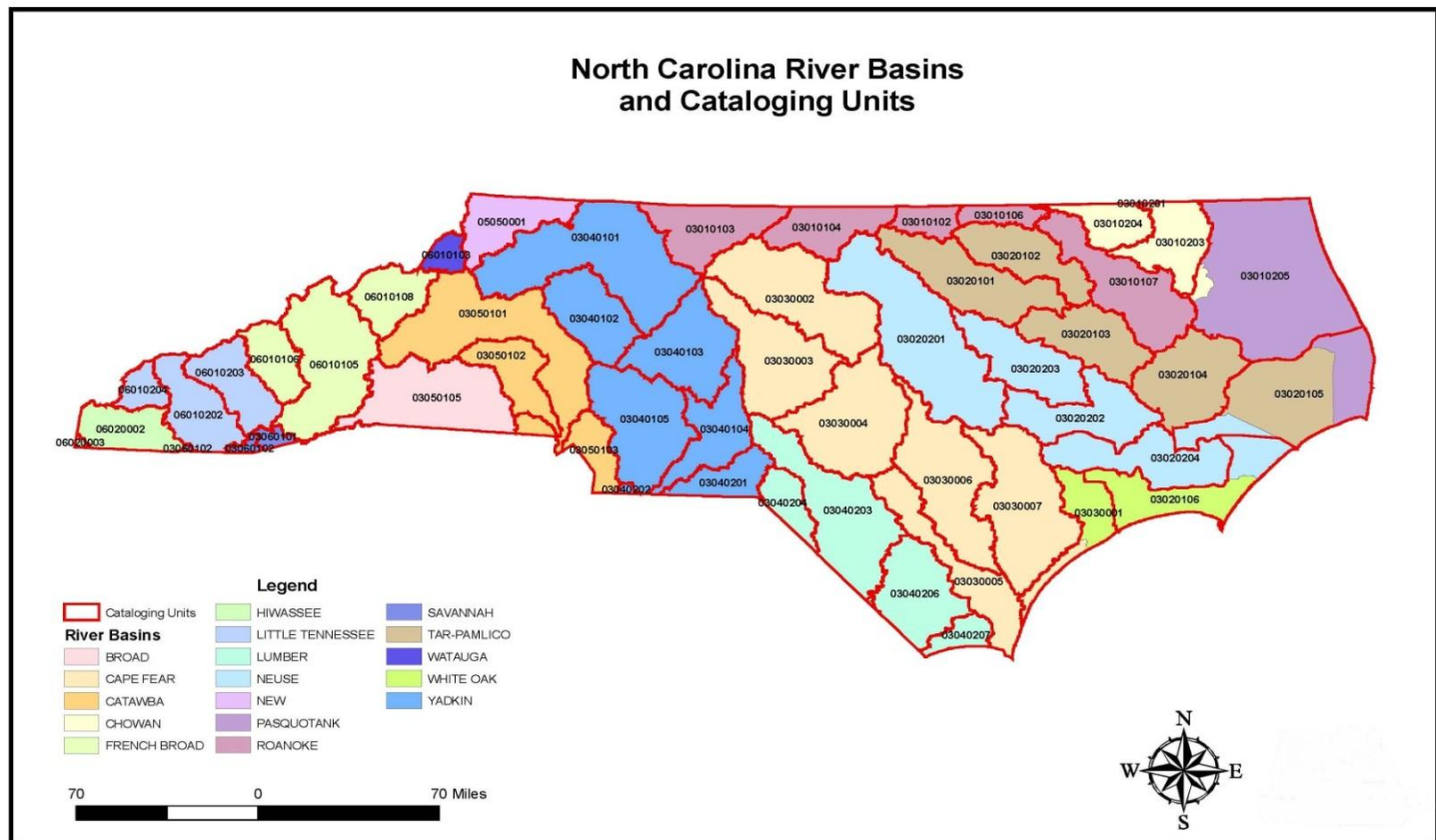
Mitigation in the Same Watershed



Generally, compensatory mitigation must occur within some degree of proximity to the permitted impacts. This proximity can be on the same site as the permitted impacts or within the same watershed as the permitted impacts.

Mitigation in the Same Watershed

In North Carolina, the Corps generally requires that the compensatory mitigation be performed within the same 8-digit hydrologic unit code (HUC) area as the permitted impacts.



Mitigation by the Permittee

The permittee undertakes the compensatory mitigation in order to compensate for the adverse impacts to wetlands caused by a specific project.



Mitigation Banking

A permittee can purchase credits from a mitigation bank to meet the permittee's mitigation requirements.

A wetland mitigation bank is a wetland area that has been restored, established, enhanced, or preserved and that is set aside to compensate for future adverse impacts to wetlands. The term “wetland mitigation bank” is also often used to describe the entity that organized the mitigation bank.



In-lieu Fee Mitigation

A public agency or non-profit organization can operate an in-lieu fee mitigation program.

Under this type of program, the in-lieu fee sponsor collects funds from multiple permittees in order to pool the financial resources necessary to build and maintain a mitigation site.

The Ecosystem Enhancement Program (EEP) within the Department of Environment and Natural Resources is an example of an in-lieu fee mitigation sponsor.

Ecosystem Enhancement Program

- In addition to wetlands mitigation, the Ecosystem Enhancement Program (EEP) also develops basinwide restoration plans and implements a riparian buffer restoration program and a nutrient offset program.
- The EEP charges fees for the services provided under these programs.
- Recent legislative changes to the EEP have largely restricted private and most public entities, other than DOT, from seeking mitigation from EEP if there is a private bank in the 8-digit HUC.



2013 Legislation

- **NC Farm Bill (S.L. 2013-265):** Section 22 requires DENR/DOT to jointly petition the Corps of Engineers for greater flexibility for performance of mitigation outside the subbasin where impacts occur, and report on progress to ERC.
- **H 938:** Different versions passed House and Senate. Session ended before any conference committee could be appointed. Eligible for the Short Session.

Questions?



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