



One Size Does Not Fit All: Trends and Variations Across In-Lieu Fee Programs



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Roadmap

- Watershed Approach
- Service Area(s)
- Prioritization Strategies
- Stakeholder Involvement
- Audits
- General suggestions

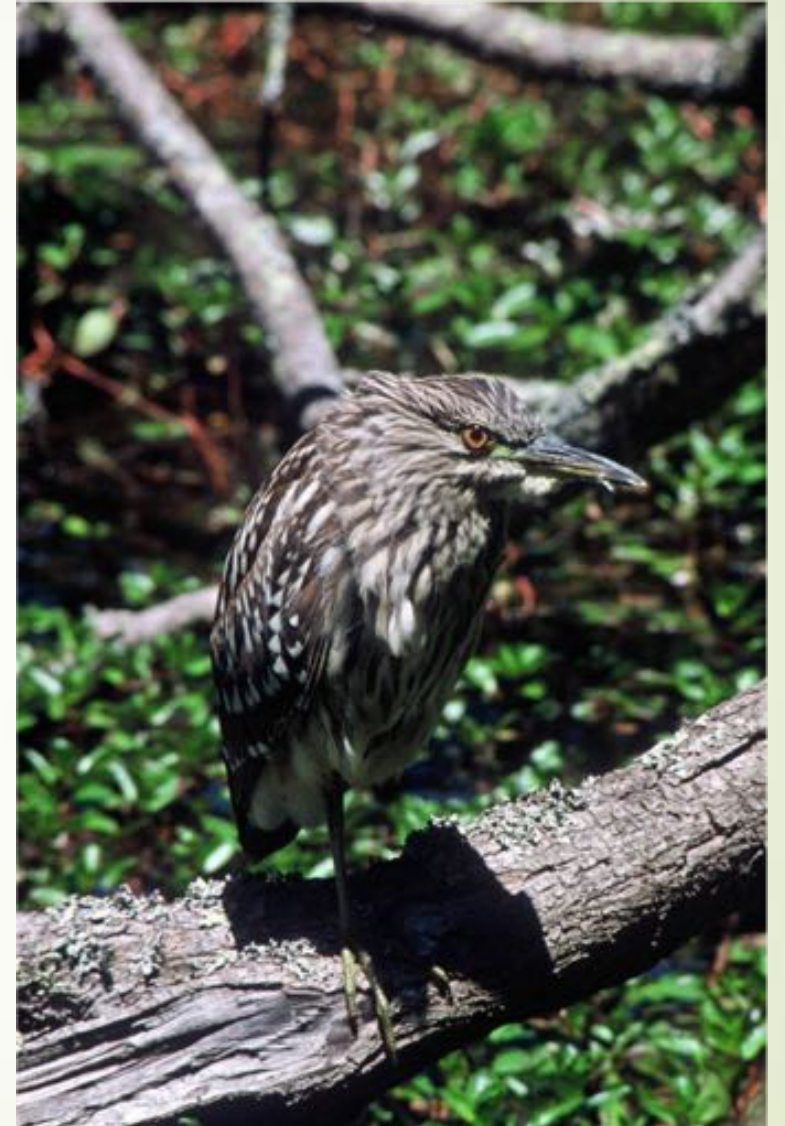


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Watershed Approach

- Definition

- “an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed” (33 C.F.R. § 332.2)

- Elements (from ELI & TNC 2014)

- Identify watershed needs

- Identify desired outcomes

- Identify potential sites

- Assess the potential of sites to sustainably meet watershed needs

- Prioritize sites, areas, and desired outcomes



Watershed Approach (continued)

- ▶ Compensation Planning Framework (CPF) requirements (33 C.F.R. § 332.8(c)(2))
 - ▶ Service area with watershed-based rationale
 - ▶ Description of threats (and how ILF program will help offset impacts)
 - ▶ Analysis of historic aquatic resource loss
 - ▶ Analysis of current state of aquatic resources (supported by field documentation)
 - ▶ Aquatic resource goals and objectives
 - ▶ Prioritization strategy
 - ▶ Explanation of use of preservation
 - ▶ Public and private stakeholder involvement
 - ▶ Strategies for long-term protection and management
 - ▶ Strategy for evaluation and reporting
 - ▶ Any other information required

Watershed Approach (continued)

- In practice
 - Spectrum (from ELI & TNC 2014)
 - Watershed-informed decisions
 - Watershed analyses
 - Watershed plans
- Examples
 - King County and Pierce County
 - Living River Restoration Trust
 - Keys Restoration Fund





Service Area(s)

- ▶ Definition and importance
 - ▶ Geographic area in which an ILF program may provide compensatory mitigation for permitted impacts to aquatic resources (33 C.F.R. §§ 332.2, 332.8(d)(6)(ii)(A))
- ▶ Number
- ▶ Size
- ▶ Boundary delineation
- ▶ Primary, secondary, and tertiary service areas
- ▶ Rationale and considerations

Service Area – Everglades National Park

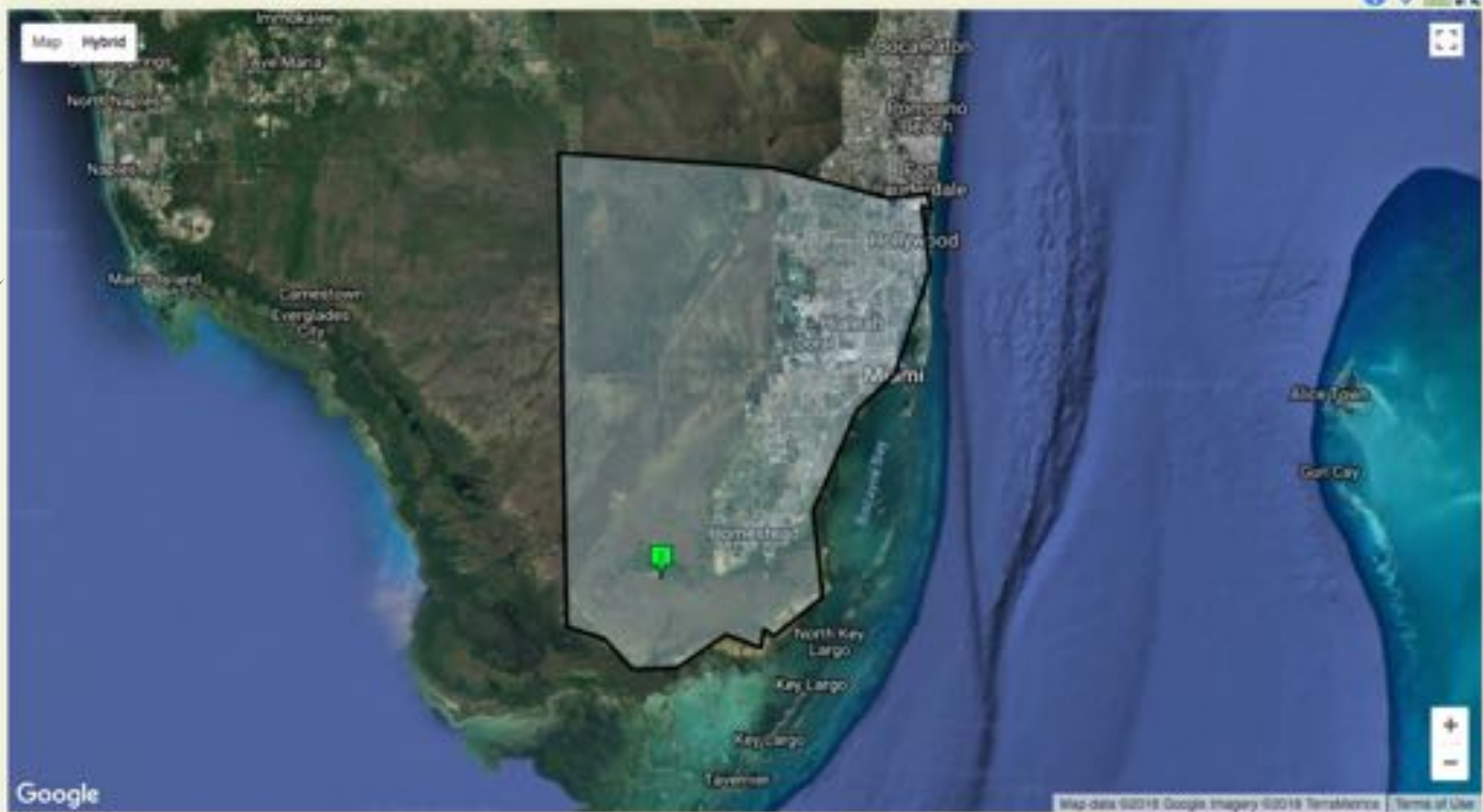


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Service Area – Living River Restoration Trust

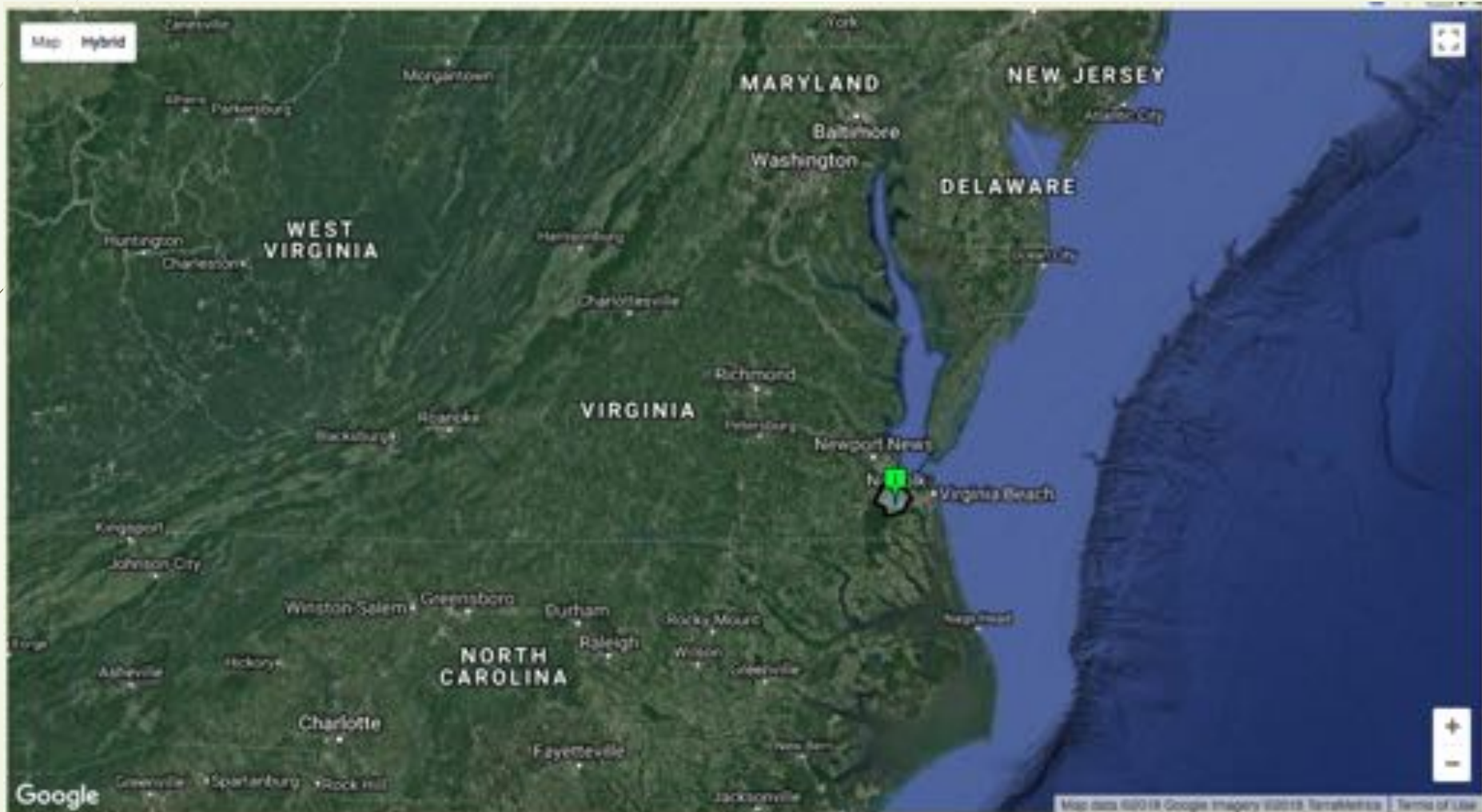


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Service Areas – MT-MARS ILF

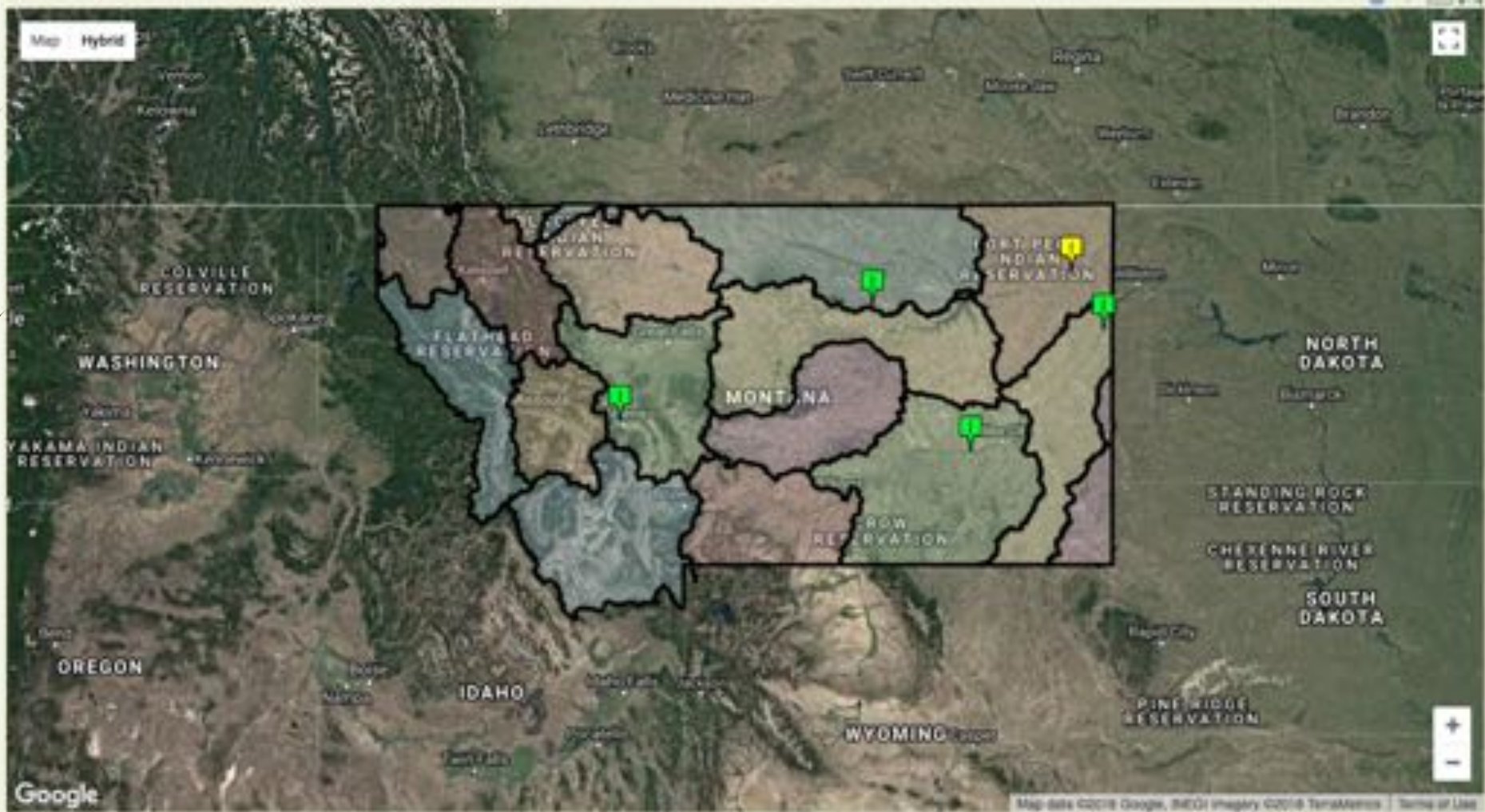


Image: RIBITS, <https://ribits.usace.army.mil>



Prioritization Strategy

- The 2008 Rule requires “[a] prioritization strategy for selecting and implementing compensatory mitigation activities” as part of the CPF (33 C.F.R. § 332.8(c)(2)(vi))
- Single strategy v. multiple, tailored strategies
- Mitigation actions
- Rankings, criteria, decision support tools
- External support
- Factors considered

Stakeholder Involvement

- What is a stakeholder?
 - “a person (or group) who is responsible for making or implementing a management action, who will be significantly affected by the action, or who can aid or prevent its implementation” (EPA 2013)
- Types of stakeholders
 - Current and potential
 - Organizations, small groups, individuals
 - Public and private sectors
 - Often have environmental, restoration, or conservation focus or connection
- When stakeholders may be involved
 - Initial program development, project selection and design, project implementation, assessment and monitoring, and/or long-term stewardship
- Roles for stakeholders
- Engaging with stakeholders



Audits

- ILF program account
- “The district engineer may audit the records pertaining to the program account. All books, accounts, reports, files, and other records relating to the in-lieu fee program account shall be available at reasonable times for inspection and audit by the district engineer.” (33 C.F.R. § 332.8(i)(4))
- Importance of audits
- Auditing entity
 - Corps, IRT, program sponsor/administrator, independent auditing entity, state or state agency
- Frequency and timing
- Notice
- Cost



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General Suggestions



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- Be creative
- See the forest and the trees
- Use existing resources
- Talk with each other
- Embrace an interdisciplinary approach
- Thoroughly research and document decisions
- Be flexible and adapt as needed

Questions?



Image: USFWS National Digital Library

References

- ▶ 33 C.F.R. Pt. 332, *Compensatory Mitigation for Losses of Aquatic Resources*.
- ▶ Environmental Law Institute & Stetson University College of Law. (October 2018 draft), *In-Lieu Fee Mitigation: Review of Program Instruments and Implementation Across the Country*.
- ▶ Environmental Law Institute & The Nature Conservancy. (2014). *Watershed Approach Handbook: Improving Outcomes and Increasing Benefits Associated with Wetland and Stream Restoration and Protection Projects*.
- ▶ United States Environmental Protection Agency. (2013). *Getting in Step: Engaging Stakeholders in Your Watershed*. EPA 841-B-11-001 (2d ed.).



For more information or to support Stetson's Institute for Biodiversity Law and Policy, please email okuno@law.stetson.edu or visit www.stetson.edu/law/biodiversity

**Thank
you!**



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