Mitigating Impacts to Waters and Wetlands: In-Lieu Fee Programs

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U.S. Environmental Protection Agency
May 2014

Background

- Clean Water Act of 1972
- § 404 requires a permit to discharge dredged or fill materials into waters of the US
  - Includes lakes, rivers, streams and wetlands
- Primary agencies involved:
  - U.S. Army Corps of Engineers
  - U.S. Environmental Protection Agency

Mitigation Sequence

1. Avoid

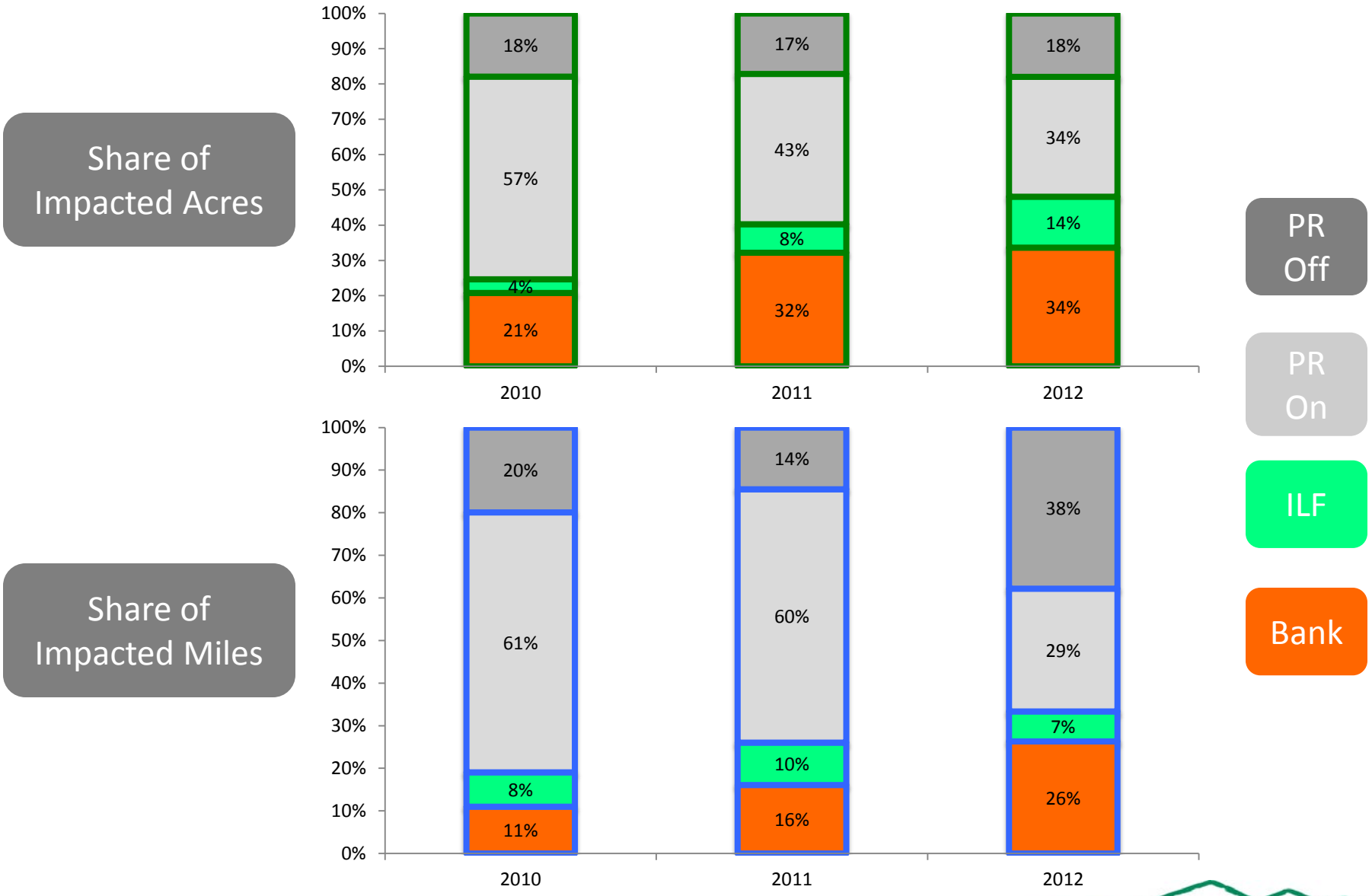
Evaluate alternative project locations and designs

2. Minimize
   - Least Environmentally Damaging Practicable Alternative
3. Compensate – offset unavoidable losses with wetland, stream, or other aquatic resource:
   - Restoration
   - Establishment
   - Enhancement
   - Preservation

Providing Compensation/Offsets

1. Mitigation Banks (*Preferred*):
   - Initiated in advance of impacts*
     - All credit release tied to performance
   - Sponsors: private, government, non-profit
2. In-Lieu Fee (ILF) programs:
   - Generally, initiated after impacts
   - Sponsors: <u>government or non-profit</u>
3. Permittee-Responsible Mitigation (PRM):
   - Generally initiated concurrent/after impacts
   - Permittee retains responsibility

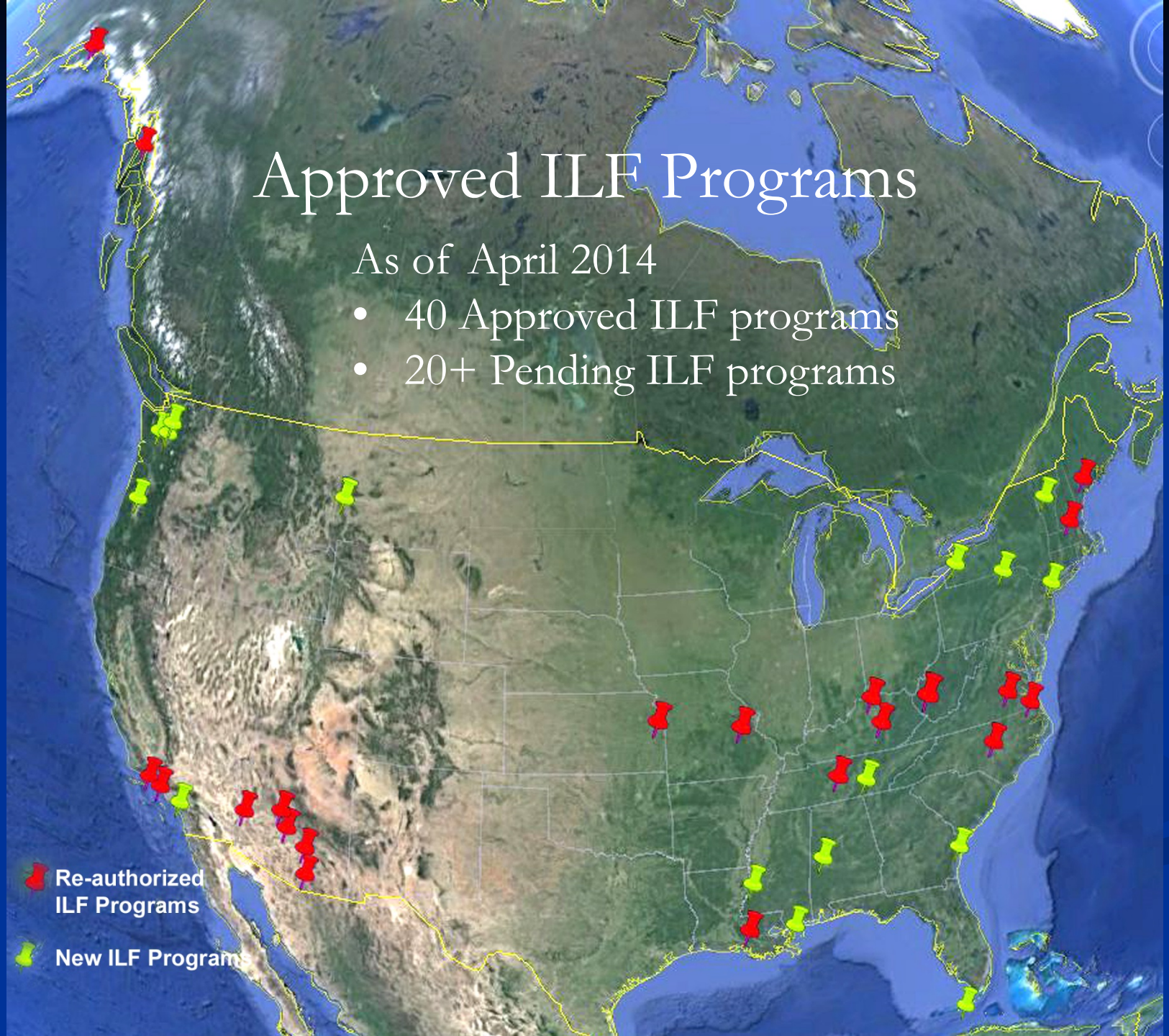
Mitigation Market Share, 2010 - 2012



Approved ILF Programs

As of April 2014

- 40 Approved ILF programs
- 20+ Pending ILF programs



Service Areas for Approved ILF Programs

ILF Instrument Includes:

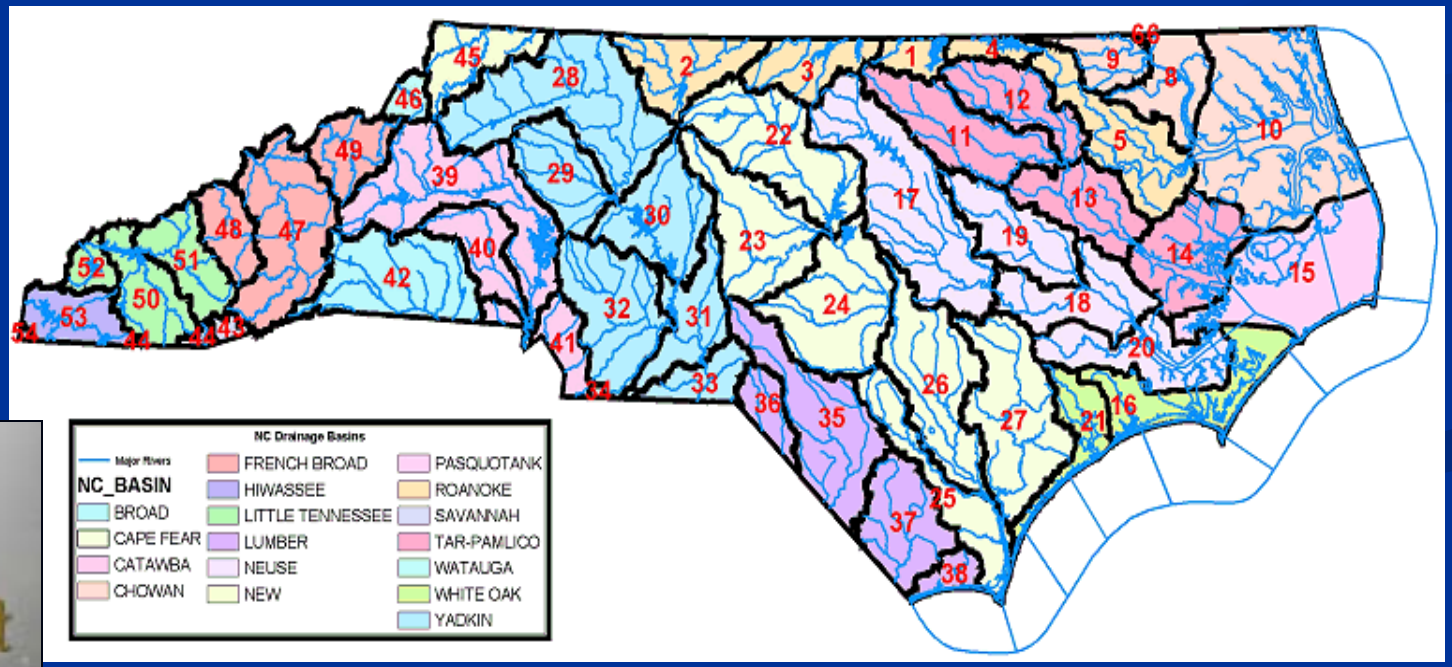
33 CFR 332.8(d)(6):

- Service area(s)
- Accounting procedures
- Provision stating legal responsibility
- Default and closure provisions
- Reporting protocols
- Compensation planning framework
- Advance credits
- Fee schedule
- Method for determining fees and credits
- Description of in-lieu fee program account

Example: North Carolina

- Has formal agreement with Federal/State govt, operates statewide
- Collects funds for impacts within service areas – based on fee schedule
- Conducts mitigation projects within same service area
  - Generally not in advance of impacts

Service Areas, North Carolina Ecosystem Enhancement Program (NC EEP)



NC EEP Fee Schedule

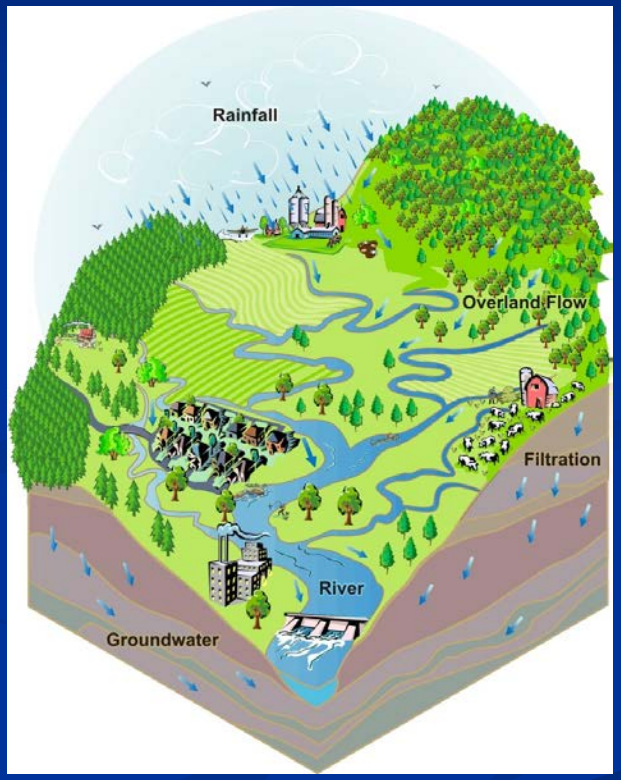
Fee Category	Unit	Fee per Unit - Higher Fee HU	Fee per Unit - Lower Fee HU
Riparian Buffer	Sq.ft	$1.02	$1.02
Stream	Lin.ft	$374	$283
Non-riparian wetland	Acre	$49,423	$25,416
Riparian wetland	Acre	$68,502	$38,730
Coastal wetland	Acre	$168,510	$168,510

The Compensation Planning Framework (CPF) is a tool for strategic selection of mitigation projects

Objective: a mechanism to identify sites that meet aquatic resource needs in watershed

Guides selecting, securing, and implementing compensatory mitigation projects

- "Essentially a watershed plan"
- "Must support a **watershed approach**"



Compensation Planning Framework

- Components:
  - Service area (watershed-based)
  - Analysis of historic aquatic resource loss and current condition
  - Threats to aquatic resources
  - How threats are addressed
  - Aquatic resource goals and objectives
  - Prioritize mitigation projects
  - Use of preservation
  - Description of stakeholder involvement
  - Long-term protection and management
  - Evaluation and reporting

Fish Habitat Partnerships and ILF Programs

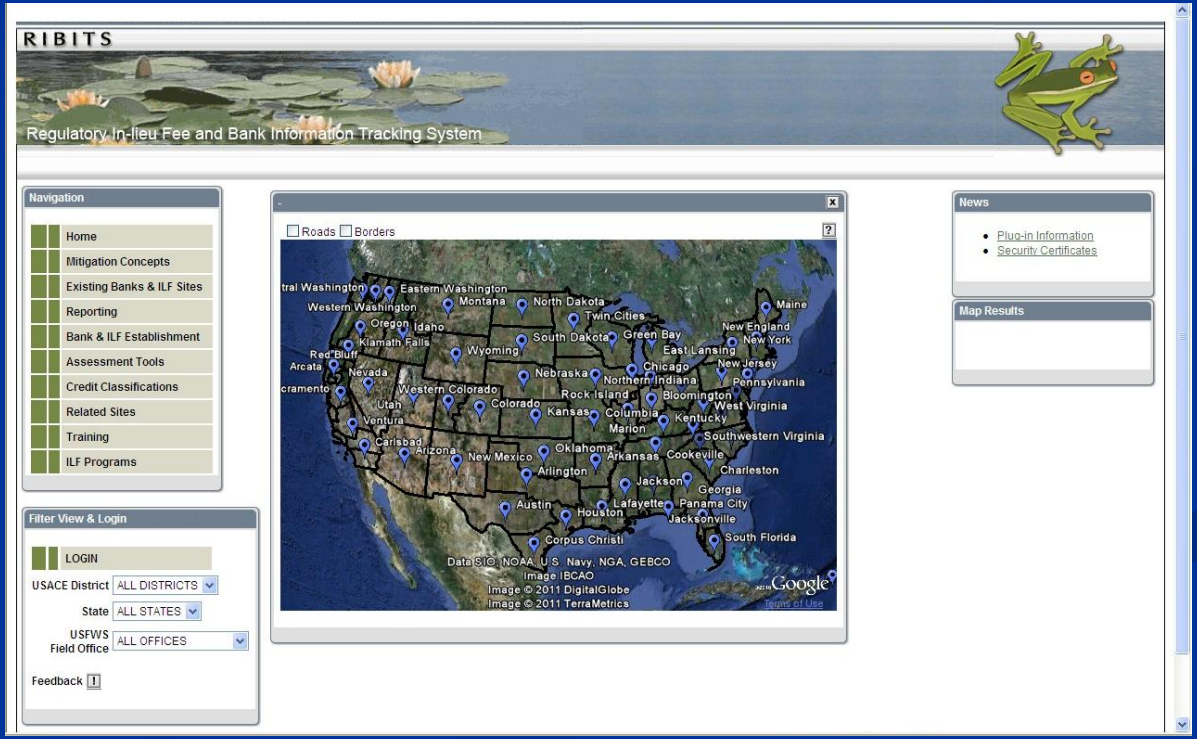
- FHPs can:
  - Sponsor an ILF program
    - Must be governmental or non-profit natural resources management entity
    - ILFs generally operate within state boundaries
    - Many areas are already covered by existing or proposed ILFs
  - Inform ILF project site selection (for ILF sponsor)
  - Implement ILF projects (for ILF sponsor)

Finding ILF Programs: RIBITS Database

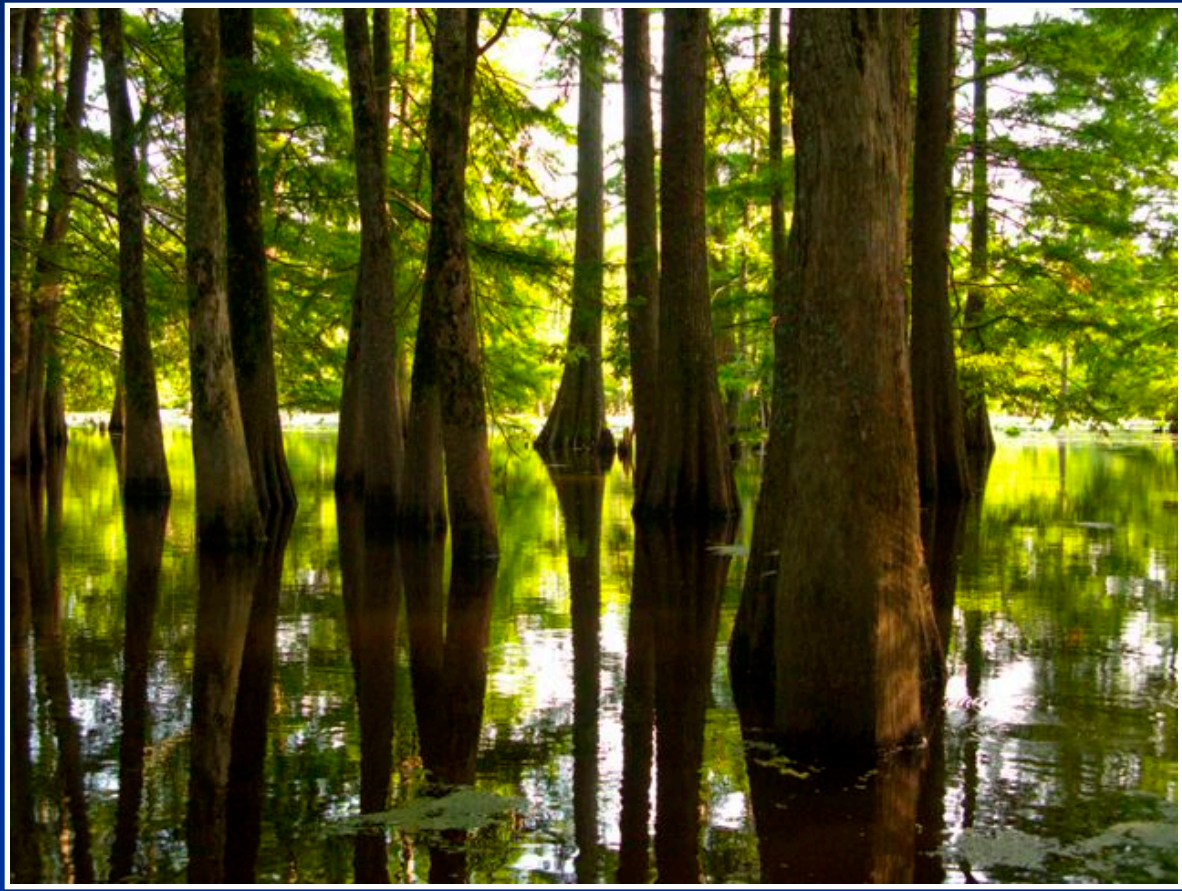
- Contacts
- Service areas
- Available credits
- Ledgers
- Reporting
- Bank & ILF documents
- Policy documents

RIBITS URL: http://ribits.usace.army.mil

RIBITS Helpdesk: ribits_helpdesk@araseas.com



Questions



http://www.epa.gov/wetlandsmitigation