USFS Conservation Finance Toolkit: Compensatory Mitigation

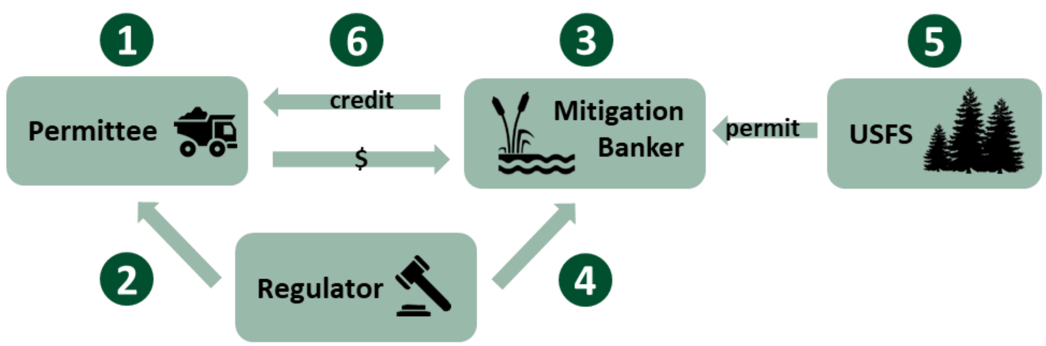
What is Compensatory Mitigation?

Local, state, and federal laws require that developers, or permittees, compensate for the residual impacts of development projects on regulated resources like wetlands, streams, and species, with the overarching goal of 'no net loss' of the regulated resource. Residual impacts are damages that remain after permittees take measures to reduce impact in order of the mitigation hierarchy – to first avoid, then minimize, then restore impacts onsite. Compensation activities can include restoring, enhancing, or preserving existing resources, as well as establishing new ecological resources. There are three ways in which permittees can meet compensation requirements.

1. **Permittee Responsible Mitigation (PRM).** Permittees conduct mitigation projects on their own, often using consultants. USFS has multiple PRM projects on NFS lands.
2. **In Lieu Fee Program (ILF).** Permittees pay fees into a non-profit fund that supports mitigation projects to offset permitted impacts. USFS has multiple ILF projects on NFS lands.
3. **Mitigation Banking.** In advance of permitted impacts a project developer implements mitigation projects across a site/suite of sites called a bank from which they generate saleable 'credits' for permittees to offset impacts.

How Can Compensatory Mitigation Work?

The diagram below illustrates how mitigation banking can work on NFS lands. The pathways for PRM and ILF mitigation are different.



1. **Permittee** (i.e. developer) plans project that impacts regulated resource
2. **Regulator** permits project that requires compensation for impacts in specified geography
3. **Mitigation banker** works with USFS to identify site (USFS forest plan priority, unfunded, NEPA approved, in service area, can generate credits)
4. **Regulator** approves mitigation bank being sited on NFS land
5. **USFS** issues special use permit to mitigation bank to site bank on NFS land
6. **Permittee** pays for and receives credit from mitigation bank

How Does Compensatory Mitigation Help the Forest Service?

Compensatory mitigation is a tool that can help USFS to:

- Restore or enhance resources located on suitable lands comprising NFS lands; and/ or,
- Restore, enhance, or protect adjacent private or other government lands; and/ or,
- Contribute suitable lands for addition to NFS ownership.

What is the Scale of Opportunity?

Analysis of 25 NFS units in watersheds with high potential for compensatory mitigation shows:

- 345,343 acres of unfunded and NEPA-approved priority restoration treatments
- 5,802 miles of unfunded and NEPA-approved stream restoration
- $357,483,783 in on-forest wetland and stream enhancement needs
- 61,228 acres of unfunded priority acquisitions for a total of $137,985,000 in land protection

Who are the Key Stakeholders?

Permittees. Legally required to compensate for residual impacts on regulated resources.

Mitigation Project Developer. Develops the PRM, ILF, or mitigation bank to achieve no net loss for permittees as approved by regulators (could be public, non-profit, or for-profit entity).

Regulator. Approves the impact/mitigation proposals to verify no net loss of regulated resource.

Land Owner. Land owners host mitigation projects (could be private or public land owners).

Implementer. Manages on-the-ground execution, and long-term management and monitoring.

What are Enabling Conditions for Compensatory Mitigation Success?

Criteria for Success	
Landscape	Large scale or significant impact to regulated resources creates demand
	Identified need for restoration within the service area of demand
	Unfunded NEPA-signed projects and/or parcels at risk of development have restorable resources
	Plans for implementation complete and project is “shovel ready”
Leadership	Strong USFS leadership, with interest in innovation at multiple levels
	Strong partner leadership and commitment
Capacity	Mitigation project developer exists to apply regulator for instrument
	Contractors available to implement on-the-ground work
	USFS, partners, contractors able to measure/monitor outcomes
Project Structure	USFS management meets regulator durability requirements
	Agreements and/or permits cover terms of reversal and long-term liability