

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 207

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO WETLANDS; AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW  
2 CHAPTER 93, TITLE 67, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND  
3 PURPOSE, TO DEFINE TERMS, AND TO PROVIDE FOR LIMITATIONS.  
4

5 Be It Enacted by the Legislature of the State of Idaho:

6 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended  
7 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
8 ter 93, Title 67, Idaho Code, and to read as follows:

9 CHAPTER 93

10 COMPENSATORY MITIGATION FOR IMPACTS TO WETLANDS

11 67-9301. LEGISLATIVE FINDINGS AND PURPOSE. (1) The purpose of this  
12 chapter is to promote the availability of all types of compensatory miti-  
13 gation projects in the state of Idaho, consistent with the provisions of  
14 section 404 of the federal clean water act and the regulations promulgated  
15 pursuant to it, for the development of projects with unavoidable impacts to  
16 wetlands.

17 (2) In 2008, the United States army corps of engineers and the environ-  
18 mental protection agency issued revised regulations governing compensatory  
19 mitigation for impacts to wetlands under section 404 of the federal clean wa-  
20 ter act, which are contained at 33 CFR parts 325 and 332 and 40 CFR part 230  
21 and referred to as the 2008 compensatory mitigation for losses of aquatic re-  
22 sources rule. These regulations establish equivalent and effective stan-  
23 dards for all three (3) types of compensatory mitigation projects: mitiga-  
24 tion banks, in-lieu fee mitigation, and permittee-responsible mitigation.

25 (3) State agencies may review or permit activities associated with ap-  
26 plications for United States army corps of engineers section 404 permits and  
27 the corps' determinations regarding compensatory mitigation under the miti-  
28 gation rule.

29 67-9302. DEFINITIONS. As used in this chapter:

30 (1) "Compensatory mitigation" means the restoration, re-establishment  
31 or rehabilitation, establishment or creation, enhancement, and in certain  
32 circumstances preservation of aquatic resources for the purpose of offset-  
33 ting unavoidable adverse impacts that remain after all appropriate and prac-  
34 ticable avoidance and minimization have been achieved.

35 (2) "Compensatory mitigation project" means compensatory mitigation  
36 implemented by the permittee as a requirement of a corps of engineers section  
37 404 wetland permit, i.e., permittee-responsible mitigation, or by a mitiga-  
38 tion bank, or an in-lieu fee program.

39 (3) "Impact" or "impacts" means adverse effects.

1 (4) "Mitigation rule" or "2008 mitigation rule" means the federal regu-  
2 lations promulgated by the United States army corps of engineers and the en-  
3 vironmental protection agency, on April 28, 2008, pursuant to the federal  
4 clean water act, contained at 33 CFR parts 325 and 332 and 40 CFR part 230, and  
5 known as the 2008 compensatory mitigation for losses of aquatic resources  
6 rule.

7 (5) "Permittee" means any person making application for a federal clean  
8 water act section 404 permit from the United States army corps of engineers.

9 (6) "Person" means any individual, partnership, corporation, associa-  
10 tion, governmental subdivision or agency, or public or private organization  
11 or entity of any character.

12 (7) "State agency" means each state board, commission, department or  
13 officer, but does not include the legislative or judicial branches, exec-  
14 utive officers listed in section 1, article IV, of the constitution of the  
15 state of Idaho, in the exercise of powers derived directly and exclusively  
16 from the constitution, the state militia, or the state board of correction.

17 67-9303. LIMITATIONS. (1) No state agency, officer, or employee  
18 shall, as part of any action related to issuance of a federal clean water act  
19 section 404 permit, require mitigation for impacts to wetlands that is more  
20 stringent than federal compensatory mitigation requirements for impacts to  
21 wetlands under section 404 and the 2008 mitigation rule.

22 (2) The appropriate state agencies may assist the permittee as needed  
23 to meet the requirements of the 2008 mitigation rule, including identi-  
24 fication of any compensatory mitigation project, when such mitigation is  
25 required by the United States army corps of engineers under the mitigation  
26 rule. No state agency shall mandate the type of compensatory mitigation  
27 project to be proposed to the United States army corps of engineers by a  
28 permittee, nor shall any state approval be unreasonably withheld from a per-  
29 mittee because of the type of compensatory mitigation project proposed.

30 (3) Individual federal clean water act section 404 permit applications  
31 and the associated draft section 401 certifications shall be timely posted  
32 on the department of environmental quality website.

33 (4) The provisions of this chapter shall not apply to or modify the  
34 provisions of chapter 38, title 42, Idaho Code, regarding the alteration of  
35 channels of streams.