

Status of Wisconsin's Wetland Compensatory Mitigation Program (2023-2024)

A Biennial Report from the DNR to the Wisconsin State Legislature



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Contents

| | |
|---|----|
| Purpose of the Report | 3 |
| Executive Summary | 3 |
| Wetland Compensatory Mitigation in Wisconsin..... | 3 |
| What is Mitigation? | 3 |
| Service Areas | 5 |
| The Mitigation Hierarchy..... | 5 |
| What is a Credit? | 6 |
| Legislative History of Mitigation in Wisconsin | 6 |
| When is Mitigation Required?..... | 7 |
| Mitigation Required in the 2023-2024 Biennium..... | 7 |
| Mitigation Credits Currently Available | 8 |
| Mitigation Credit Sales 2012-2024 | 9 |
| Wetland Mitigation Banking Program..... | 9 |
| Background..... | 9 |
| Bank Credit Sales | 9 |
| Mitigation Bank Sites..... | 11 |
| Wetland Mitigation Bank Profile: 46 North Mitigation Bank | 12 |
| In-Lieu Fee Program | 12 |
| Background..... | 12 |
| ILF Credit Sales & Credit Prices..... | 13 |
| ILF Sites | 15 |
| ILF Project Profile: Bohn Farms | 16 |
| Permittee-Responsible Mitigation | 16 |
| Background..... | 16 |
| Permittee-Responsible Sites..... | 17 |
| Stream Mitigation..... | 17 |
| Wetland GP Surcharge Restoration Program..... | 17 |
| Summary..... | 18 |
| Additional Resources | 18 |

Cover photo: The Shawano County Highway Department wetland mitigation bank in Shawano County, 2023.

Purpose of the Report

This biennial report is submitted to the Legislature to fulfill the requirements of [s. 281.36\(13m\) Wis. Stats.](#), which requires the Department of Natural Resources (DNR) to submit “an analysis of the impact of the implementation of mitigation on wetland resources and on the issuance of permits or other approvals”. The report provides background and status of wetland compensatory mitigation and permitting in Wisconsin. The report focuses on the most-recent biennium, 2023-2024, but also provides summary information for wetland mitigation since 2012. The report provides background, data, and trends for the three types of wetland mitigation available in Wisconsin.

Executive Summary

Wetland mitigation allows for wetland permittees to meet state and federal laws, complete their development projects, and protect and restore the valuable wetland resources of Wisconsin. In this biennium, DNR approved 116 wetland permits or authorizations that required the purchase of over 163 wetland mitigation credits. Eleven new mitigation banks were constructed in the biennium, resulting in 1,438 acres of additional restoration and the generation of 700 new wetland credits for permittees.

Since 2012, wetland mitigation in Wisconsin has resulted in the restoration of 5,225 acres and generated 2,632 wetland mitigation credits. The DNR mitigation program, which employs two staff, will continue to approve, oversee, and administer all aspects of mitigation in Wisconsin. Wetland mitigation will continue to play an integral part in economic development and environmental protection in the state.

Wetland Compensatory Mitigation in Wisconsin

What is Mitigation?

Wetlands provide many ecosystem services, including flood control, water quality improvement, and fish and wildlife habitat. When unavoidable adverse impacts to wetlands occur, it is beneficial to *mitigate* for those impacts by restoring wetlands to ensure no net loss of wetland functions occur in a watershed over time. Wetland compensatory mitigation is the process of restoring wetlands to compensate for permitted wetland impacts.

The DNR, in partnership with the US Army Corps of Engineers (USACE), ensures that quality wetland mitigation projects are completed statewide by reviewing and approving private and permittee-responsible mitigation banks, and by administering the In-Lieu Fee (ILF) Mitigation Program. Through thorough review and planning, wetland mitigation projects are selected that provide the most benefits to the watersheds where they are located.



Wetland mitigation banks, like the Moonshine Road bank in Douglas County, provide water quality improvement, flood storage, and wildlife habitat.

There are three options for satisfying wetland mitigation requirements in Wisconsin: wetland mitigation banking, the ILF program (named the Wisconsin Wetland Conservation Trust), and permittee responsible mitigation. The DNR and USACE work with stakeholders to determine which type of mitigation is most appropriate to ensure that wetland functions and values are adequately replaced as close to the area of impact as possible. Detailed information on each type of mitigation is provided later in the report. During this biennium, 81% of the state's mitigation requirements were fulfilled by private banks and 19% using ILF credits. No development projects utilized permittee responsible mitigation in the past two years.

The Wisconsin Department of Transportation (WisDOT) also conducts wetland mitigation for state-administered transportation projects through a mitigation program agreement between DOT, DNR, USACE and EPA. Because the WisDOT administers its own mitigation program, WisDOT mitigation is not addressed in this report.

Service Areas



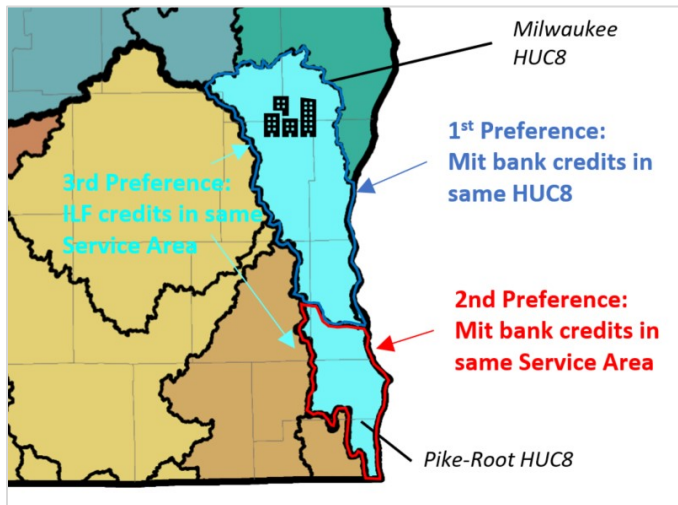
Figure 1. The 12 service areas in Wisconsin

To geographically group wetland impacts and credit sales, Wisconsin is divided into 12 “service areas”. A service area generally consists of a six-digit hydrological unit code (HUC-6) watershed (colored coded in Figure 1). Within those service Areas are smaller HUC-8 watersheds (outlined in grey in Figure 1). The intent of a service area is to ensure that mitigation occurs in the same HUC-6 or HUC-8 watershed where the impact occurred. For example, if a wetland was impacted in the Southwestern Lake Michigan Service Area then wetland mitigation (via a mitigation bank or ILF site) should occur in that same service area. See below for information about further determining where wetland mitigation takes place (referred to as the mitigation hierarchy).

The Mitigation Hierarchy

With three different mitigation options potentially available in 12 different service areas, a preference for mitigation fulfillment has been established based on location and credit availability to best offset wetland impacts. Typically, because mitigation banks must be approved before selling credits, mitigation bank credits are given preference over ILF credits. Permittee-responsible is typically the least preferred option because the mitigation only addresses one specific impact, versus many impacts spread across a watershed. The resulting preference is described as the mitigation hierarchy (Figure 2).

Figure 2. Mitigation hierarchy in the Southwestern Lake Michigan Service Area



If a wetland impact occurs in the Southwestern Lake Michigan Service Area (teal color), specifically in the Milwaukee HUC-8 watershed (blue outline), the first mitigation preference is for the permittee to buy mitigation bank credits in the same Milwaukee HUC8 watershed. If no bank credits are available in the Milwaukee HUC8, the second preference is for the permittee to purchase bank credits anywhere else in the service area (in this example in the Pike-Root HUC-8 (red outline)). Finally, if no bank credits are available anywhere in the service area, the third preference would be for the permittee to purchase ILF credits in the same service area.

This mitigation hierarchy mirrors changes to Wisconsin wetland law as part of [2019 Wisconsin Act 59](#). Act 59 requires wetland mitigation to occur as close to the permitted impact as possible: specifically within the same HUC-8 watershed where possible, or if no mitigation is available in the HUC-8 watershed, then in the same service area.

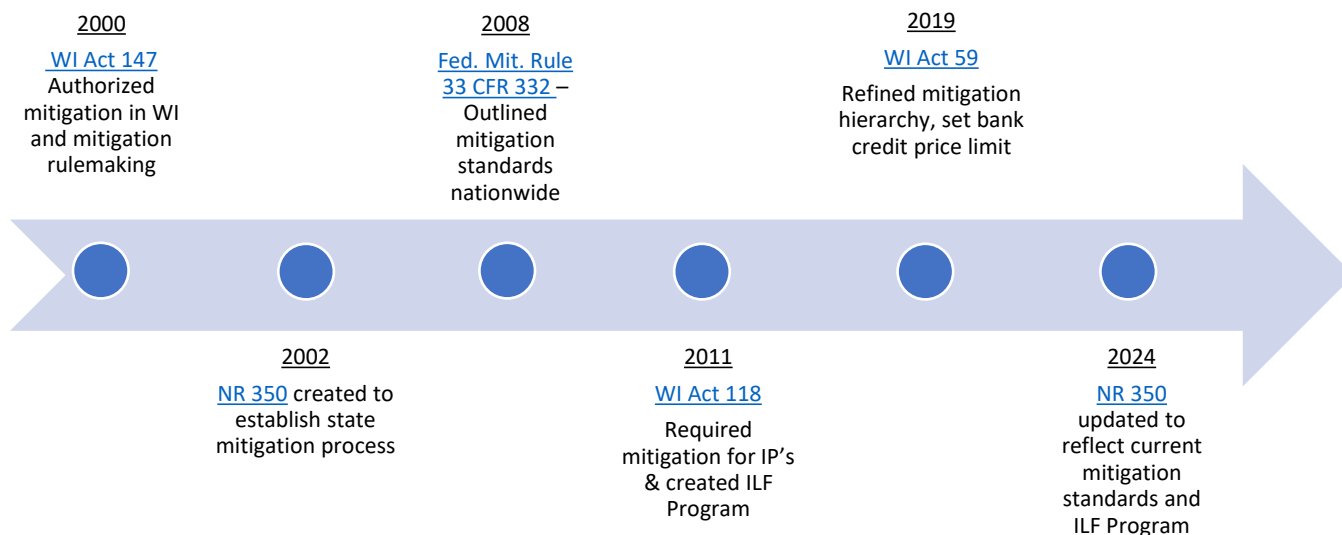
What is a Credit?

Wetland impacts and wetland mitigation project restoration benefits are measured in *credits*. Mitigation credits are bought by permittees and sold by both mitigation bankers and the ILF Program. When a permittee purchases credits from a mitigation bank in the same service area, they will typically purchase 1.2 credits per acre of impact. If the bank credits for the same wetland type as that impacted are unavailable, the mitigation purchase requirement may be increased. When a permittee purchases ILF credits, they typically must purchase 1.45 credits per acre. ILF credits must be purchased in the same service area as where the wetland impacts occurred. In some instances, a permittee's project will result in temporary or secondary impacts. In these instances, a credit purchase requirement of less than 1.2 credits per acre may be required. These credit ratios are broadly outlined in [s.281.36 \(3r\)\(d\) Wis. Stats.](#)

Legislative History of Mitigation in Wisconsin

Mitigation was first authorized in statute in 2000 when [Wisconsin Act 147](#) was signed into law (Figure 3). Act 147 granted authority to DNR to consider mitigation in its wetland permitting decisions and granted DNR rulemaking authority related to mitigation. As a result, a new administrative code, [NR 350](#), was created in 2002 to set requirements and outline a process for wetland mitigation in Wisconsin. In 2023 and 2024, NR350 was revised to account for the many changes in wetland compensatory mitigation in Wisconsin since 2002. The final revised rule was published in February 2024.

Figure 3. Recent state and federal legislation related to wetland mitigation



When is Mitigation Required?

According to state law, ([s. 281.36 \(3r\)\(a\), Wis. Stats.](#)), wetland mitigation is generally required in two instances: 1) when wetland impacts are authorized under a wetland individual permit, and 2) when certain wetland impacts are authorized under a nonfederal wetland exemption, specifically exempt wetland impacts between 10,000 square feet and 1 acre of wetlands in urban areas, and impacts between 1.5 acres and 3 acres of wetlands in rural areas. If it is determined that a wetland fulfills all applicable artificial wetland exemption requirements, wetland mitigation is typically not required by DNR, but still may be required by the USACE. Past federal changes to the definition of Waters of the United States (WOTUS) have increased the number of nonfederal wetlands in Wisconsin and therefore the number of nonfederal wetland exemption requests to DNR may increase over time, though it is still too early to note any trends. Though only 32 nonfederal exemptions required mitigation, 192 nonfederal exemptions total were processed in this biennium (Figure 4). Occasionally, the USACE will require mitigation on a site that is determined to meet the Wisconsin artificial exemption, which occurred five times during the biennium.

Mitigation Required in the 2023-2024 Biennium

Over the biennium, DNR approved 79 wetland individual permits and 37 exemptions requiring mitigation. These permits and exemptions resulted in 160.44 acres of wetland impacts requiring the purchase of 163.87 wetland mitigation credits (both bank and ILF credits) (Table 1).

Table 1. 2023-2024 biennium wetland authorizations requiring mitigation (mitigation banks & ILF)

| Authorization Type | # of Authorizations Approved | # of Mitigation Credits Required | Acres of Impact Approved |
|-------------------------------|------------------------------|----------------------------------|--------------------------|
| IP | 79 | 142.55 | 114.93 |
| Nonfederal Wetland Exemption | 32 | 16.08 | 12.92 |
| Artificial Wetland Exemption* | 5 | 5.24 | 14.26 |
| TOTAL | 116 | 163.87 | 160.44 |

*Mitigation for these artificial wetland exemptions was required by the USACE only (not by DNR)

In addition to wetland individual permits, DNR also authorizes wetland impacts through general permits, which typically do not require mitigation. General permits are issued for activities or projects with wetland impacts less than 10,000 square feet. In 2011, Act 118 created a surcharge on wetland general permit fees intended to fund wetland restoration projects to help offset impacts authorized by general permits (see the Wetland GP Surcharge Restoration Program section below) . In this biennium DNR issued general permit coverage for approximately 752 projects and for approximately 34 acres of impact, none of which required mitigation (Table 2). Further, of the 580 wetland exemptions approved (nonfederal and artificial), 543 did not meet the acreage threshold that triggers the wetland mitigation requirement. Impacts resulting from these non-mitigated exemptions totaled approximately 152 acres.

Table 2. 2023-2024 biennium wetland authorizations *not* requiring mitigation*

| Authorization Type | # of Authorizations Approved | Acres of Impact Approved but Not Mitigated | # of Mitigation Credits Required |
|------------------------------|------------------------------|--|----------------------------------|
| General Permit | 752 | 34.32 | 0 |
| Nonfederal Wetland Exemption | 160 | 30.63 | 0 |
| Artificial Wetland Exemption | 383 | 121.36 | 0 |
| Total | 1,295 | 186.31 | 0 |

**Due to permitting complexities, these acreages are estimated.*

Mitigation Credits Currently Available

As of December 31, 2024, Wisconsin has 475.97 mitigation bank credits available and 625.08 ILF credits available statewide (Table 3). There are currently no open banks in the Upper Miss. Maquoketa Plum (UP MS MAQP) Service Area. Credit ledgers are maintained by DNR and publicly available at the respective [DNR Wetland Mitigation Banking](#) and [In-Lieu Fee Program](#) websites. Credits from permittee responsible mitigation sites are not available to the public, so are not tracked here.

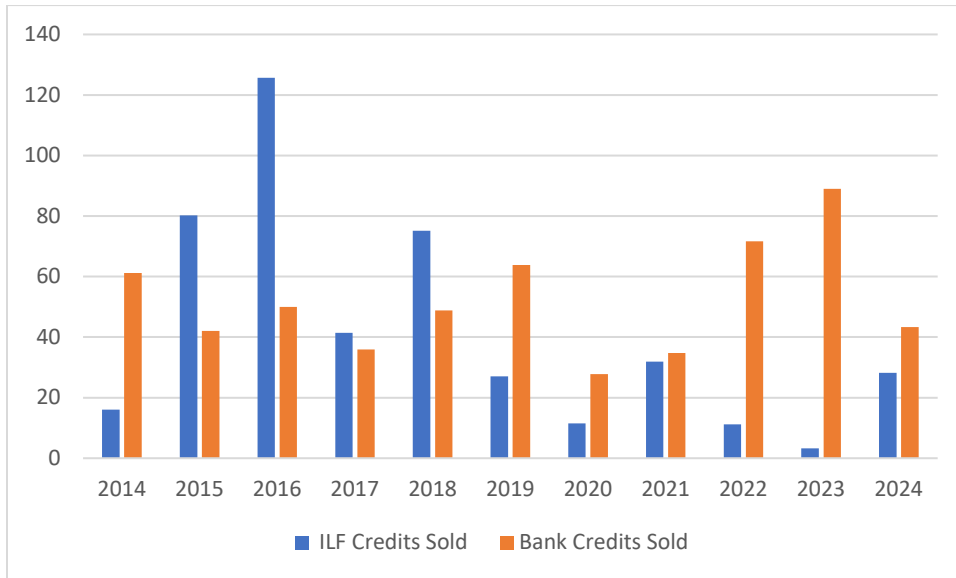
Table 3. Currently available (12/31/2024) mitigation bank and ILF credits, by service area

| Service Area | Current Mitigation Bank Credits Available | Current ILF Credits Available |
|--------------|---|-------------------------------|
| CHIPPEWA | 108.08 | 44.02 |
| FOX | 65.50 | 70.64 |
| LK SUPERIOR | 54.73 | 51.79 |
| LOWER WIS | 106.56 | 35.66 |
| NW LK MICH | 5.14 | 83.71 |
| ROCK | 47.78 | 91.46 |
| SW LK MICH | 0.42 | 28.86 |
| ST CROIX | 16.43 | 30.00 |
| UPPER IL | 23.22 | 43.29 |
| UP MS BLRT | 3.39 | 26.11 |
| UP MS MAQP | 0.00 | 30.00 |
| UPPER WIS | 44.72 | 89.54 |
| TOTAL | 475.97 | 625.08 |

Mitigation Credit Sales 2012-2024

The passage of [2011 Wisconsin Act 118](#), which required wetland mitigation in the state, signaled the beginning of consistent mitigation bank and ILF credit sales (Table 4). The ILF Program started selling its credits in 2014. Due to fewer approved mitigation banks and extensive development, higher ILF credit sales occurred in 2015-2018. More recently, more mitigation banks have been approved, resulting in somewhat higher mitigation bank credit sales and lower ILF credit sales. This trend is anticipated to continue. Since 2014, bank credit sales have averaged 51.67 credits per year while the ILF program has averaged 41.06 credit sales per year.

Table 4. Annual ILF (blue) and bank (orange) credit sales since 2014



Wetland Mitigation Banking Program

Background

Wetland mitigation banks are publicly or privately-owned restored wetlands whose purpose is to sell credits to permittees to offset impacts to existing wetlands. Mitigation banks in some form have been operating in Wisconsin since the late 1990's. Since mitigation became required in Wisconsin starting in 2011, the number of mitigation banks have gradually increased. To establish a mitigation bank, landowners typically contract with consultants and submit plans to an Interagency Review Team (IRT), which is comprised of USACE, EPA, and DNR for review and approval. After plans are approved, the bank can begin selling credits. Portions of the project's total credits are approved for sale as the project meets predetermined performance standards over 5-10 years.

Bank Credit Sales

In 2023 and 2024, 132.37 credits were sold statewide by mitigation banks to permittees to mitigate for 138.39 acres of wetland impacts. Since 2012, a total of 595.22 mitigation credits have been sold (Table 5).

Table 5. Mitigation bank credit sales and acres impacted, by biennium and since 2012

| Mitigation Bank Credit Sales <u>2023-2024 Biennium</u> | | | Mitigation Bank Credit Sales <u>2012-2024 Cumulative</u> | | |
|---|-------------------|----------------------|---|-------------------|----------------------|
| Service Area | Told Credits Sold | Total Acres Impacted | Service Area | Told Credits Sold | Total Acres Impacted |
| CHIPPEWA | 1.50 | 1.50 | CHIPPEWA | 45.63 | 44.98 |
| FOX | 45.38 | 48.94 | FOX | 109.93 | 107.99 |
| LK SUPERIOR | 3.74 | 2.41 | LK SUPERIOR | 120.93 | 129.74 |
| LOWER WIS | 6.68 | 8.76 | LOWER WIS | 61.01 | 96.91 |
| NW LK MICH | 1.71 | 1.50 | NW LK MICH | 18.20 | 14.02 |
| ROCK | 20.70 | 33.18 | ROCK | 67.09 | 75.22 |
| ST CROIX | 0.56 | 0.70 | ST CROIX | 6.32 | 5.54 |
| SW LK MICH | 48.70 | 38.36 | SW LK MICH | 90.31 | 67.13 |
| UP MS BLRT | 0.26 | 0.21 | UP MS BLRT | 36.29 | 25.85 |
| UP MS MAQP | 0 | 0 | UP MS MAQP | 3.80 | 2.62 |
| UPPER IL | 0 | 0 | UPPER IL | 24.99 | 23.74 |
| UPPER WIS | 3.14 | 2.83 | UPPER WIS | 10.73 | 9.40 |
| Total | 132.37 | 138.39 | Total | 595.22 | 603.13 |

To account for the current credit sales to date shown above, and for future credits sales, mitigation banks statewide have restored over 4,300 acres of habitat, resulting in over 2,100 *potential* mitigation bank credits (Table 6). These expected credits will only be available to sell if these mitigation projects continue to meet performance standards. For example, in the Southwestern Lake Michigan (SWLM) Service Area, a new bank received approval in 2024 and received an initial release of 6.31 credits. This new bank has the potential to generate 62.84 credits total, but most of those credits will not be available for several years until after the bank meets several performance standards.

Currently, there is no mitigation bank proposed or approved in the in the Upper Miss. Maquoketa Plum (UP MS MAQP) Service Area. There is an approved bank in the Upper Illinois (UPPER IL) Service Area, but it is out of credits as of December 31, 2024.

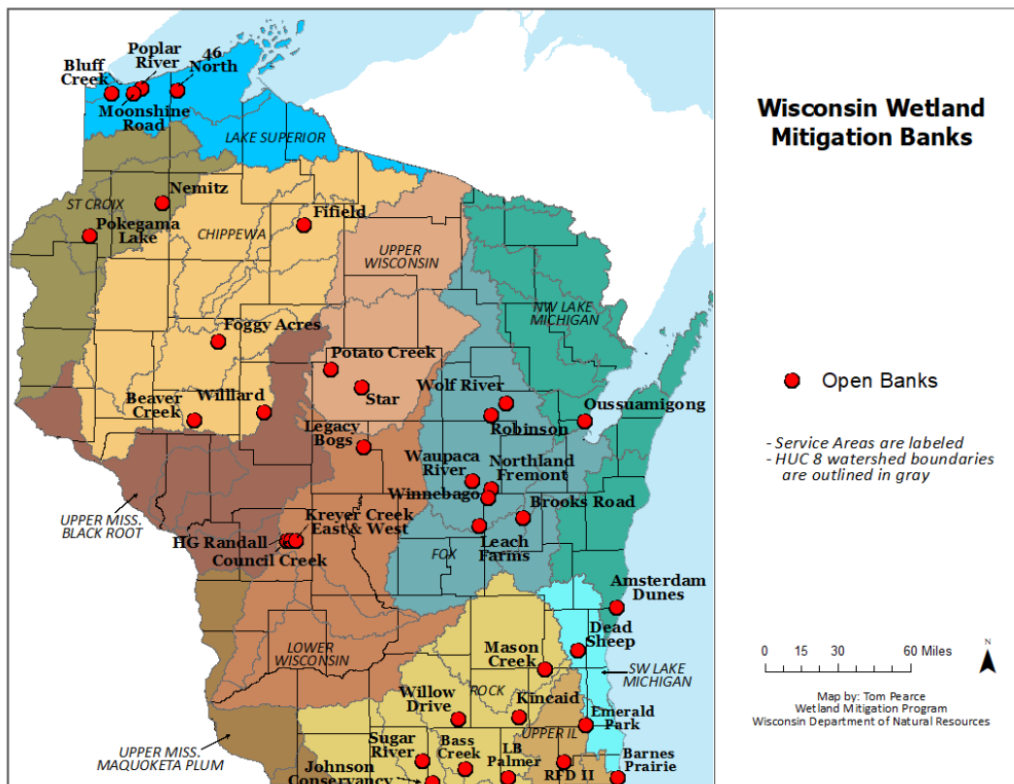
Table 6. Potential mitigation bank credits to be generated, and total acres restored

| Service Area | Potential Credit Generation | Total Restoration Acres |
|--------------|-----------------------------|-------------------------|
| CHIPPEWA | 302.87 | 584.65 |
| FOX | 517.80 | 958.71 |
| LK SUPERIOR | 196.67 | 345.00 |
| LOWER WI | 348.68 | 478.33 |
| NW LK MICH | 145.27 | 346.37 |
| ROCK | 143.65 | 542.73 |
| ST CROIX | 115.66 | 474.15 |
| SWLM | 275.35 | 494.73 |
| UP MS BLRT | 18.12 | 30.00 |
| UP MS MAQP | 0.00 | 0.00 |
| UPPER IL | 25.39 | 26.26 |
| UPPER WI | 81.31 | 91.41 |
| Total | 2,170.77 | 4,372.34 |

Mitigation Bank Sites

As of September 2024, Wisconsin currently has 39 open and approved mitigation banks, and several additional proposed mitigation banks (not shown in Figure 5). Specifically to the 2023-2024 biennium, 10 new mitigation banks were approved. Banks are active in 11 of the 12 service areas in Wisconsin.

Figure 5. Open mitigation banks in Wisconsin



Wetland Mitigation Bank Profile: 46 North Mitigation Bank



The 46 North Wetland Mitigation bank (left) is a 79.50-acre bank located in Bayfield County within the Lake Superior Service Area. A history of logging and agricultural practices on the site has left the wetlands drained and degraded over time. With the threat of emerald ash borer nearby, the bank hopes to increase resiliency in the forested wetland ecosystems that currently support both black ash and green ash by increasing woody species diversity. Restoration of the site will also provide habitat connectivity and

increase water infiltration rates on site by plugging man-made drainage ditches, reestablishing shallow depressions lost due to historic grading, and revegetating or controlling invasive species in forested, fresh wet meadow, and shallow marsh wetland communities. This bank's restoration goals address a critical issue within the Lake Superior clay plain, an area that experiences low infiltration rates and flashy runoff on clay soils that is exacerbated in logged and agricultural settings.

In-Lieu Fee Program

Background

DNR was authorized to establish and administer an In-Lieu Fee (ILF) Program via the [2011 Wisconsin Act 118](#). Wisconsin's ILF Program is named the Wisconsin Wetland Conservation Trust (WWCT). The WWCT was formally established in 2014 by the signing of the WWCT Program Instrument, the overarching guiding document for the program.

The purpose of the WWCT is to provide an additional method of compensatory mitigation to offset wetland impacts. The overall objective of the WWCT is to complete compensatory wetland mitigation projects in watersheds with the greatest environmental need (referred to as a watershed approach). Further, the WWCT selects projects which will provide the most benefits to the watershed. The WWCT only sells its credits in service areas where mitigation bank credits are not available at the time of the sale.



The Evansville ILF site (Rock County) showing tile breaks and ditch fills in the background, and Allen Creek in the foreground.

ILF Credit Sales & Credit Prices

The WWCT has been selling ILF credits since 2014. To date, the program has sold 451.65 credits to mitigate 496.06 acres of wetland impacts (Table 7). Though the typical ILF mitigation ratio is 1.45 credits for every 1 acre impacted, more wetland acres have been impacted (496.06 acres) than mitigated for (451.65 credits) due to temporary and secondary impacts that require a mitigation ratio lower than 1.45:1. ILF credit sales were highest in 2015-2018 when few mitigation banks were operating in the state. ILF credits are sold only when no mitigation credits are available in a service area.

Table 7. ILF credit sales and acres impacted, by biennium and since 2014

| ILF Mitigation Credit Sales 2023-2024 Biennium | | | ILF Mitigation Credit Sales 2014-2024 Cumulative | | |
|---|--------------------------|-----------------------------|---|--------------------------|-----------------------------|
| Service Area | Told Credits Sold | Total Acres Impacted | Service Area | Told Credits Sold | Total Acres Impacted |
| CHIPPEWA | 0 | 0 | CHIPPEWA | 11.29 | 7.78 |
| FOX | 0 | 0 | FOX | 57.92 | 54.52 |
| LK SUPERIOR | 0 | 0 | LK SUPERIOR | 30.61 | 103.92 |
| LOWER WIS | 0 | 0 | LOWER WIS | 28.12 | 53.51 |
| NW LK MICH | 2.51 | 2.02 | NW LK MICH | 53.21 | 51.57 |
| ROCK | 0 | 0 | ROCK | 8.95 | 6.50 |
| ST CROIX | 0 | 0 | ST CROIX | 3.64 | 2.51 |
| SW LK MICH | 4.28 | 2.85 | SW LK MICH | 81.63 | 53.93 |
| UP MS BLRT | 0 | 0 | UP MS BLRT | 48.32 | 52.03 |
| UP MS MAQP | 0.00 | 0.00 | UP MS MAQP | 0 | 0 |
| UPPER IL | 24.71 | 17.18 | UPPER IL | 107.76 | 68.26 |
| UPPER WIS | 0.00 | 0.00 | UPPER WIS | 20.2 | 41.53 |
| Total | 31.50 | 22.05 | Total | 451.65 | 496.06 |

Same as mitigation banks, if ILF projects meet standards, 461.81 credits will be generated with over 853 acres of restoration across the state (Table 8). As of 2024, all 853.25 acres of habitat have been restored through the implementation of 14 ILF projects.

Table 8. Potential ILF credits to be generated, and total acres restored

| Service Area | Potential Credit Generation | Total Restoration Acres |
|--------------|-----------------------------|-------------------------|
| CHIPPEWA | 17.04 | 42.65 |
| FOX | 70.11 | 124.54 |
| LK SUPERIOR | 48.57 | 116.45 |
| LOWER WI | 36.74 | 59.36 |
| NW LK MICH | 60.47 | 110.24 |
| ROCK | 23.20 | 40.10 |
| ST CROIX | 0.00 | 0.00 |
| SWLM | 63.51 | 101.77 |
| UP MS BLRT | 35.63 | 40.11 |
| UP MS MAQP | 0.00 | 0.00 |
| UPPER IL | 80.88 | 170.06 |
| UPPER WI | 25.66 | 47.97 |
| Total | 461.81 | 853.25 |

ILF credit prices are set annually by the ILF program for each service area. They are calculated based on land prices and estimated project costs. Credit prices in 2024 ranged from \$83,800/credit in the Lake Superior Service Area to \$112,500/credit in the Upper Illinois Service Area. The main difference between credit prices between service areas is land prices, which vary greatly across the state. As of 2024, 75% of credit fees go to on-the-ground restoration, with 20% to administrative costs and 5% to a contingency fund. As of December 31, 2024, the ILF Program has taken in nearly \$30 million via credit sales (Table 9).

Table 9. ILF revenue by service area & year (2014 – 2024)

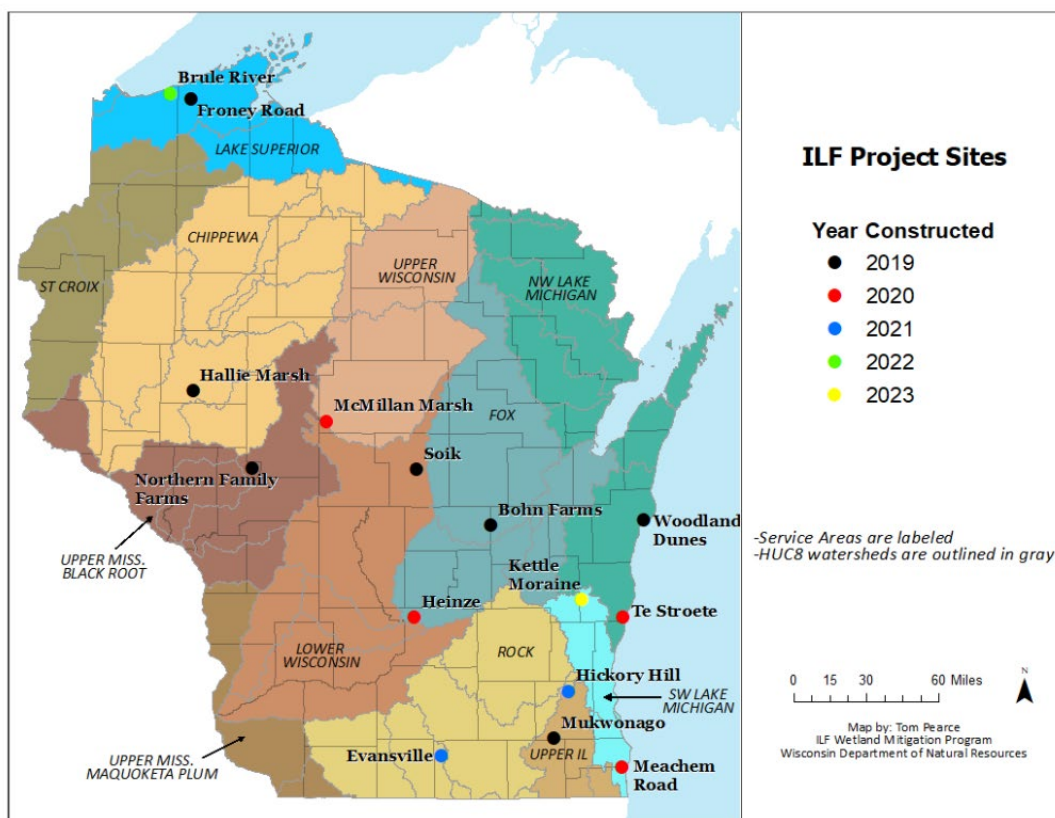
| Service Area | Total Revenue | Year | Total Revenue |
|--------------|---------------------|--------------|---------------------|
| CHIPPEWA | \$677,400 | 2014 | \$961,800 |
| FOX | \$3,564,710 | 2015 | \$6,716,970 |
| LK SUPERIOR | \$1,805,792 | 2016 | \$7,344,730 |
| LOWER WIS | \$1,708,910 | 2017 | \$1,025,710 |
| NW LK MICH | \$3,409,726 | 2018 | \$5,057,570 |
| ROCK | \$537,000 | 2019 | \$1,273,236 |
| ST CROIX | \$218,400 | 2020 | \$871,900 |
| SW LK MICH | \$5,669,762 | 2021 | \$2,360,783 |
| UP MS BLRT | \$3,039,972 | 2022 | \$909,056 |
| UP MS MAQP | \$0 | 2023 | \$307,296 |
| UPPER IL | \$8,065,810 | 2024 | \$3,100,631 |
| UPPER WIS | \$1,232,200 | Total | \$29,929,682 |
| Total | \$29,929,682 | | |

ILF Sites

The WWCT began constructing its mitigation sites in the summer of 2019. By the end of 2024, 14 sites have been constructed (Figure 6). It is expected that one additional site will be constructed by 2026. Once a project is constructed it enters a 5-10 year maintenance and monitoring phase, where it is required to meet hydrology and vegetation performance standards.

The 14 ILF mitigation projects total over 850 acres of on-the-ground restoration. As can be seen in Figure 6, they are located all over the state, and are composed of a variety of wetland community types including sedge meadow, forested wetland, and shrub wetland. ILF sites are targeted to provide the greatest environmental benefits to the watersheds where they are located. Currently, no projects have been implemented as part of the property development grant program authorized under [s. 281.37 Wis. Stats.](#)

Figure 6. ILF projects in Wisconsin



ILF Project Profile: Bohn Farms

The Bohn Farms ILF Project was one of the first ILF projects, constructed in 2019. The project is a partnership between the DNR ILF Program, the DNR Wildlife Program, and Ducks Unlimited (DU). DU initially purchased the site from the Bohn family and hoped to use ILF funds to restore it. After determining they would be unable to complete the project themselves, DU donated the property to the DNR Wildlife Program with the ILF Program selecting a contractor, Stantec, to complete the mitigation project. The project is a prime example of conservation groups, farmers, and different DNR programs working together to complete good conservation. Located in the Fox Service Area on the southern shore of Lake Poygan in Winnebago County, the 78-acre project contains a diverse mix of herbaceous wetland, forested wetland, and upland habitats. Shallow ditches were filled, and wetland species seeded to restore native wetland communities. The site has met all its performance standards and received its final credit release in late 2024.



The Bohn Farms ILF project is located in Winnebago County south of Lake Poygan.

Permittee-Responsible Mitigation

Background

If no mitigation credits are available for purchase, or if preferred, a permittee may satisfy their mitigation requirements through the completion of their own wetland mitigation project, referred to as permittee-responsible mitigation. The DNR supports the use of permittee responsible mitigation but finds it to be a generally less desirable approach for stakeholders given the significant cost, time, and process required to implement a mitigation project.

Permittee-responsible sites are typically located in the same service area as the impact. The permittee must first prepare a draft Compensation Site Plan (CSP) same as a mitigation bank sponsor or ILF project proponent. Permittees often contract with an experienced consultant to help meet the detailed requirements for planning, design, construction, and monitoring necessary for completing a mitigation site. After CSP approval and wetland permit issuance, the site is constructed and a maintenance and monitoring period follows, similar to mitigation banks and ILF sites.

Permittee-Responsible Sites

No new permittee-responsible sites were proposed or approved in this biennium. There are currently three active permittee-responsible sites in Wisconsin, totaling 41.94 acres of restoration. In the past decade, several other permittee-responsible sites met all monitoring requirements and are now closed.

Stream Mitigation

Just as wetland impacts can be mitigated, so can stream impacts. Section 404 of the Clean Water Act allows for compensatory mitigation of all aquatic resources, including streams, in addition to wetlands. Many states have required stream mitigation for many years. Wisconsin law does not require mitigation for stream impacts. Before 2023, stream impacts were regulated under Chapter 30 of the Wisconsin Statutes, and any stream mitigation requirements were determined via the permitting process on a project-by-project basis. Starting in 2023 the USACE released the [St. Paul District Stream Mitigation Procedures](#) that are applicable for use in Minnesota and Wisconsin. These procedures provide a framework and methodology to inform decisions and requirements for the mitigation of jurisdictional streams.

As of 2023, instead of completing any stream mitigation requirements themselves, permittees may be eligible to fulfill stream mitigation requirements by purchasing credits from an approved stream mitigation bank within the service area of impact or alternatively within the same HUC 4 watershed if no banks have stream credits available within the service area. The DNR participates in the Wisconsin stream mitigation process by reviewing and providing input on proposed wetland and stream mitigation banks as part of the IRT. In this biennium, three stream mitigation banks have been approved, one each in the Southwestern Lake Michigan, Lower Wisconsin, and Chippewa Service Areas.

Wetland GP Surcharge Restoration Program

Another restoration program authorized in statute is the Wetland GP Surcharge Restoration Program. Under [s. 281.36\(11\) Wis. Stats.](#), DNR must charge a surcharge fee, to be used for wetland restoration, for each Wetland General Permit 1 issued. Depending on the size of the permitted impact, the surcharge is either \$285 (for proposed impacts up to 0.10 acres) or \$425 (for proposed impacts between 0.10 acres and 10,000 sq. ft.) per general permit application. Funds generated from these surcharge fees are awarded to applicants through an annual application process to complete wetland restoration projects.

Through 2024, the GP Surcharge Program has funded over \$399,000 of conservation via 19 projects totaling over 480 acres of wetland restoration and 0.80 miles of stream restoration. Projects have been completed by conservation groups, such as Ducks Unlimited and Tall Pines Conservancy, the DNR Wildlife Program, municipalities such as Ashland County, and the U.S. Fish and Wildlife Service. The GP Surcharge Program will continue to provide an additional funding opportunity to conservation groups across the state to benefit wetlands and other aquatic resources.

Summary

Starting in 2000, but primarily since 2011, compensatory wetland mitigation has become a successful avenue to mitigate for unavoidable wetland impacts via three different types of mitigation. The three mitigation options in Wisconsin ensure that permittees can meet their wetland mitigation requirements for receiving a wetland permit.

Going forward it is anticipated that more mitigation banks will continue to be approved while the ILF program will sell its credits where no mitigation bank credits are available. The economy and state and federal policy will continue to influence how many mitigation bank and ILF credits will be required in the future to offset permitted impacts.

Wisconsin is a state rich in wetland resources, with an estimated 6.4 million acres on the landscape. Wetlands are an important part in maintaining the health and function of lakes, rivers, groundwater, and the state as a whole. Compensatory mitigation plays a key role in protecting this important resource while also allowing permittees to meet their regulatory obligations and acquire wetland permits.

Additional Resources

- Wisconsin DNR Mitigation Website: <https://dnr.wisconsin.gov/topic/Wetlands/mitigation>
- Wetland Mitigation Bank Credit Ledger: <https://dnr.wisconsin.gov/topic/Wetlands/mitigation/bankingRegistry.html>
- ILF Program Website: <https://dnr.wisconsin.gov/topic/Wetlands/wwct>
- ILF Program Credit Ledger: <https://dnr.wisconsin.gov/topic/Wetlands/wwct/credits.html>
- Wisconsin Guidelines for Compensatory Mitigation: <https://dnr.wi.gov/topic/Wetlands/documents/mitigation/WetlandCompensatoryMitigationGuidelines.pdf>
- Wisconsin DOT Wetland Mitigation Information: <https://wisconsin.dot.gov/Pages/doing-business/eng-consultants/cnslt-rsrcs/environment/wetland-waters.aspx>
- U.S. Army Corps of Engineers Mitigation (including information on stream mitigation): <https://www.mvp.usace.army.mil/missions/regulatory/mitigation/>
- GP Surcharge Restoration Program: <https://dnr.wisconsin.gov/topic/wetlands/GPSurchargeFunding>