

**AMENDMENT TO H.R. 3898, AS REPORTED
OFFERED BY MR. CRAWFORD OF ARKANSAS**

Insert after section 16 the following:

**1 SEC. ____ . REVISION OF FRAMEWORK FOR COMPENSATORY
2 MITIGATION.**

3 (a) REQUIREMENT TO REVISE.—Not later than 180
4 days after the date of enactment of this Act, the Sec-
5 retary, in coordination with the Administrator of the Envi-
6 ronmental Protection Agency, shall publish in the Federal
7 Register a proposed rule, consistent with section 404 of
8 the Federal Water Pollution Control Act (33 U.S.C.
9 1344), to revise the regulations issued in the final rule
10 of the Department of Defense and the Environmental Pro-
11 tection Agency titled “Compensatory Mitigation for
12 Losses of Aquatic Resources” and published in the Fed-
13 eral Register on April 10, 2008 (73 Fed. Reg. 19594).

14 (b) SCOPE OF REVISIONS.—In carrying out sub-
15 section (a), the Secretary shall—

16 (1) incorporate lessons learned since the imple-
17 mentation of the final rule described in subsection
18 (a) and reflect advances in science, restoration prac-
19 tices, and regulatory efficiency;

1 (2) promote equivalency and flexibility among
2 mitigation options, including mitigation banking, in-
3 lieu fee programs, and permittee-responsible mitiga-
4 tion;

5 (3) expedite the approval of plans that use miti-
6 gation banks, in-lieu fee programs, and permittee-re-
7 sponsible mitigation;

8 (4) support regional watershed approaches, in-
9 cluding by—

10 (A) encouraging compensatory mitigation
11 credit generation and sales across primary, sec-
12 ondary, and tertiary service areas; and

13 (B) implementing mitigation requirements,
14 policies, and guidance that are consistent, pre-
15 dictable, and transparent;

16 (5) ensure timely coordination between Corps of
17 Engineers district offices and Interagency Review
18 Teams;

19 (6) ensure that, for projects involving tem-
20 porary impacts to aquatic resources, including min-
21 ing and other energy or infrastructure projects with
22 approved reclamation plans, the revised regula-
23 tions—

24 (A) take into account the temporary na-
25 ture of such impacts;

1 (B) recognize activities carried out under
2 an approved reclamation plan as a form of
3 minimization of such impacts, consistent with
4 the guidelines developed under section
5 404(b)(1) of the Federal Water Pollution Con-
6 trol Act;

7 (C) consider financial assurances already
8 required under applicable regulatory programs
9 (including instruments such as surety bonds,
10 collateral bonds, letters of credit, insurance,
11 trust funds, and, where permitted, self-bonding)
12 when determining the need for additional finan-
13 cial assurances; and

14 (D) allow the use, transfer, or sale of sur-
15 plus compensatory mitigation credits generated
16 through activities carried out under an ap-
17 proved reclamation plan, if such credits meet
18 applicable environmental performance stand-
19 ards;

20 (7) encourage the use of off-site and out-of-kind
21 mitigation options where appropriate; and

22 (8) include any other revisions determined ap-
23 propriate by the Secretary.

24 (c) GUIDANCE.—After issuing a final rule under this
25 section, the Secretary shall issue guidance establishing ob-

1 jective, measurable success criteria for activities carried
2 out under an approved reclamation plan for purposes of
3 generating compensatory mitigation credits, and a phased
4 credit release schedule tied to milestones for such activi-
5 ties.

6 (d) DEFINITIONS.—In this section:

7 (1) APPROVED RECLAMATION PLAN.—The term
8 “approved reclamation plan”—

9 (A) means—

10 (i) a reclamation plan approved pur-
11 suant to section 510 of the Surface Mining
12 Control and Reclamation Act of 1977 (30
13 U.S.C. 1260);

14 (ii) a reclamation plan, plan of oper-
15 ations, or other similar plan approved by
16 the Secretary of Agriculture or the Sec-
17 retary of the Interior with respect to the
18 mining or related operations of—

19 (I) minerals subject to location
20 under the general mining laws;

21 (II) minerals subject to leasing
22 under the mineral leasing laws; or

23 (III) mineral materials subject to
24 disposition under the Act of July 31,
25 1947, commonly known as the Mate-

1 rials Act of 1947 (30 U.S.C. 601 et
2 seq.);

3 (iii) a surface use plan of operations
4 approved pursuant to subpart 3162 of title
5 43, Code of Federal Regulations (or a suc-
6 cessor regulation);

7 (iv) a plan of operations or utilization
8 plan approved pursuant to subpart 3200 of
9 title 43, Code of Federal Regulations (or a
10 successor regulation); and

11 (v) a plan of development approved
12 pursuant to subpart 2805 of title 43, Code
13 of Federal Regulations (or a successor reg-
14 ulation) that includes enforceable reclama-
15 tion or surface restoration requirements;
16 and

17 (B) includes a plan of operations approved
18 under—

19 (i) subpart 3809 of title 43, Code of
20 Federal Regulations (or a successor regula-
21 tion); or

22 (ii) part 228 of title 36, Code of Fed-
23 eral Regulations (or a successor regula-
24 tion).

1 (2) SECRETARY.—The term “Secretary” means
2 the Secretary of the Army, acting through the Chief
3 of Engineers.

