



Ten-Year Anniversary of the Mitigation Rule: *Changing Policies, Perceptions, and the Path Forward*

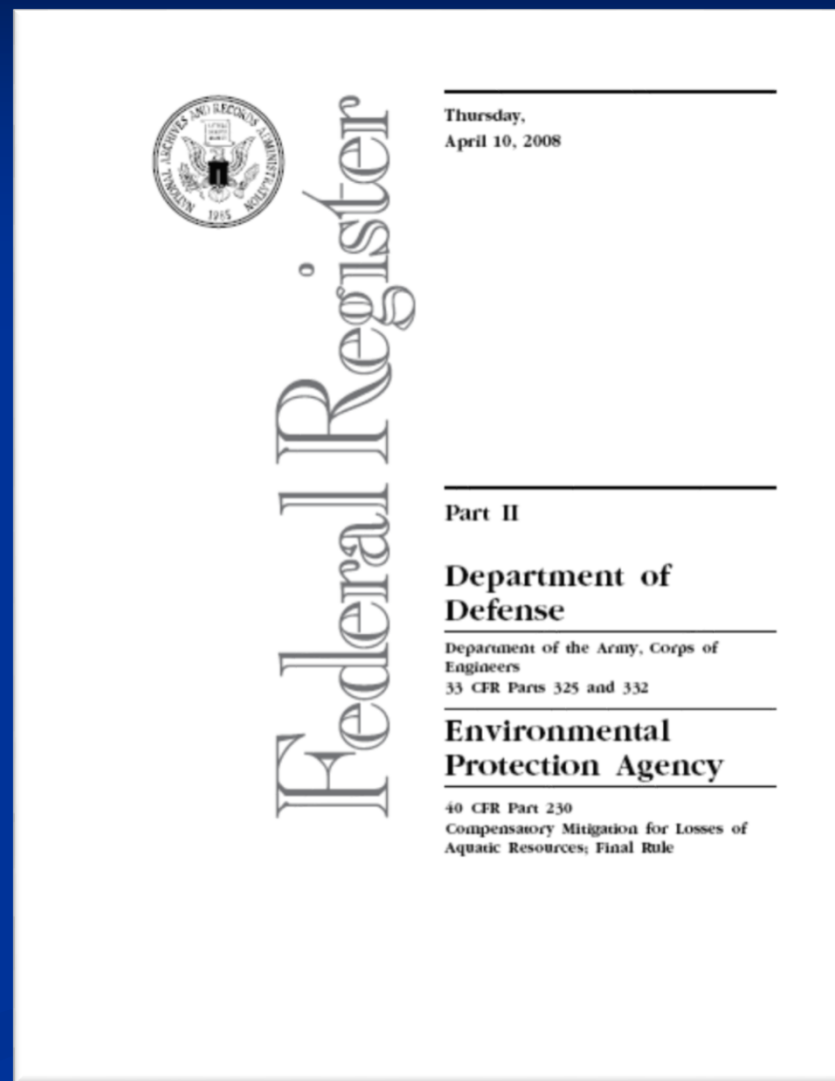
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U.S. Environmental Protection Agency

August 2018

Overview

- Background
- What the 2008 Mitigation Rule changed
- Major trends over the last 10 years
- Current focus



Background

- Clean Water Act of 1972
- Section 404 requires a permit to discharge dredged or fill materials into waters of the US
 - Includes lakes, rivers, streams, wetlands, territorial sea
- Primary agencies involved:
 - U.S. Army Corps of Engineers
 - U.S. Environmental Protection Agency
 - CWA Section 404(b)(1) Guidelines (40 CFR Part 230)
 - Mitigation requirements: avoid, minimize, and compensate

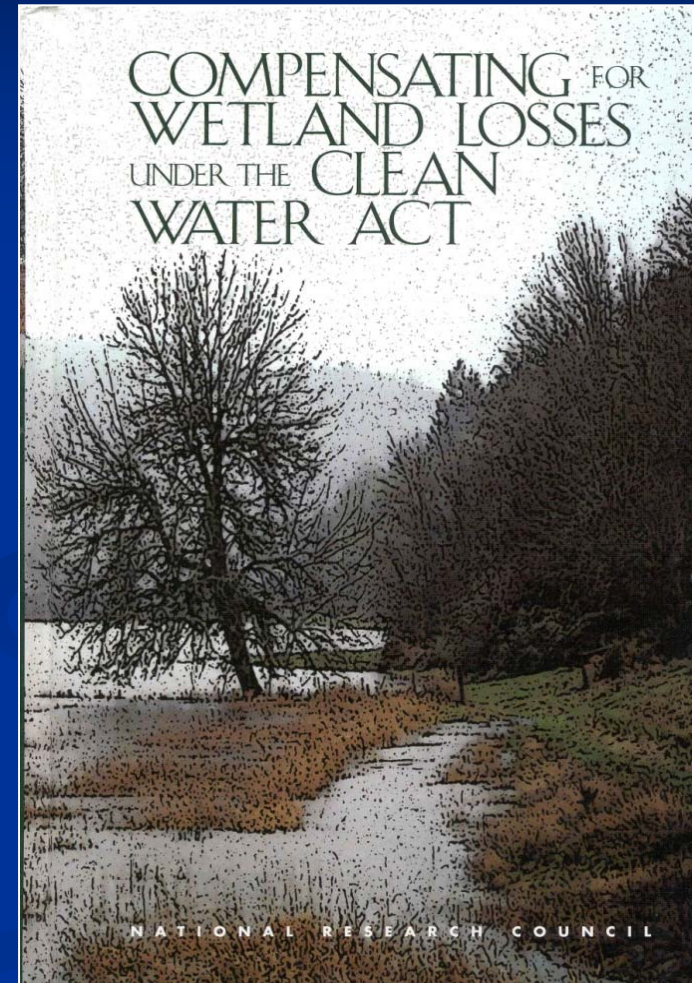
Compensatory Mitigation

- What is it?
 - The restoration, establishment, enhancement and/or in certain circumstances the preservation of aquatic resources
 - For the purpose of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (40 CFR 230.92)

- How do you provide it?
 - Mitigation bank credits
 - In-lieu fee program credits
 - Permittee-responsible mitigation

Major Drivers of 2008 Rule

- Improving effectiveness of compensation projects
 - 2001 National Research Council Report
- Ensuring equivalent standards for all compensation providers
 - 2004 National Defense Authorization Act



What were some of the major changes in the 2008 Mitigation Rule?

Equivalent and Effective Standards: *Level Playing Field for all Providers*

Mitigation Plan Components

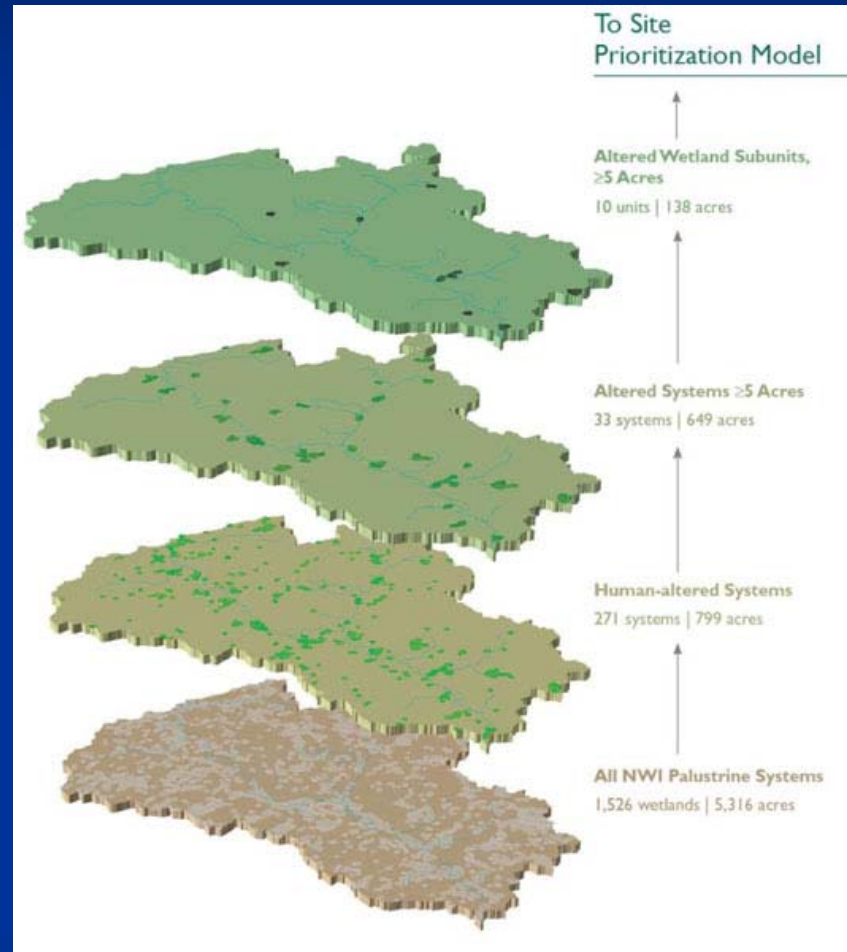
1. Objectives
2. **Site protection**
instrument
3. Baseline information
4. Work plan
5. Maintenance plan
6. **Performance standards**
7. **Monitoring requirements**
8. Financial assurances
9. Site selection factors
10. Credit determination
11. **Long-term management
plan**
12. Adaptive management
plan

Preference Hierarchy for Compensation

1. Mitigation bank credits/In-lieu fee released credits
 2. In-lieu fee advance credits
 3. Permittee-responsible mitigation
 - Using a watershed approach
 - On-site and/or in-kind
 - Off-site and/or out-of-kind
- Consider what is “environmentally preferable”
 - Also consider likelihood of success, risk, uncertainty, and temporal loss

Watershed/Landscape-Scale Approach

- Framework for compensation decision-making
- **Goal:** more strategic selection of compensation sites
- Emphasizes using available and relevant plans, information, and data



Performance Monitoring




- Ecological performance standards
- Monitoring Requirements:
 - Parameters to be monitored
 - Length of monitoring period
 - Party responsible
 - Content of monitoring reports
 - Frequency of report submittal

Permanence/Durability

- Site protection instrument
 - Goal “permanent protection”
 - Prohibits actions that would degrade site (e.g., conservation easement)
- Long-term management
 - Identify responsible party
 - Describe necessary tasks and funding arrangements

Exhibit D-5 LONG TERM MANAGEMENT PLAN

I	Introduction	3
A	Purpose of Establishment	3
B	Purpose of this Long Term Management Plan	3
C	Bank Manager and Responsibilities	3
II	Property Description	4
A	Setting and Location	4
B	History and Land Use	5
C	Cultural Resources	5
D	Hydrology and Topography	5
E	Soils	10
F	Existing Easements and Mineral Rights	10
G	Adjacent Land Uses	10
III	Habitat and Species Descriptions	12
A	Biological Resources Survey of Bank Property	12
B	Summary of Bank	
C	Endangered and Threatened Species	
IV	Management and Monitoring	
A	Habitat Management	
Element A.1	Seasonal Management	
Element A.2	Giant Hogweed	
Element A.3	“Non-Point Source” Management	
Element A.4	Non-Point Source	
Element A.5	Mosquito Management	
B	Site Security and Protection	
Element B.1	Trash	
C	Infrastructure and Land Use	
Element C.1	Gates	
Element C.2	Water	
D	Agricultural Use Elements	
E	Outreach and Recreation	
Element E.1	Hunting	
Element E.2	Education	
F	Biological Monitoring	
Element F.1	Giant Hogweed	
Element F.2	Vegetation	
G	Reporting and Administration	
Element G.1	Annual	
V	Transfer, Replacement, and Amendment	
A	Transfer	
B	Replacement	
C	Amendments	33
D	Notices	33

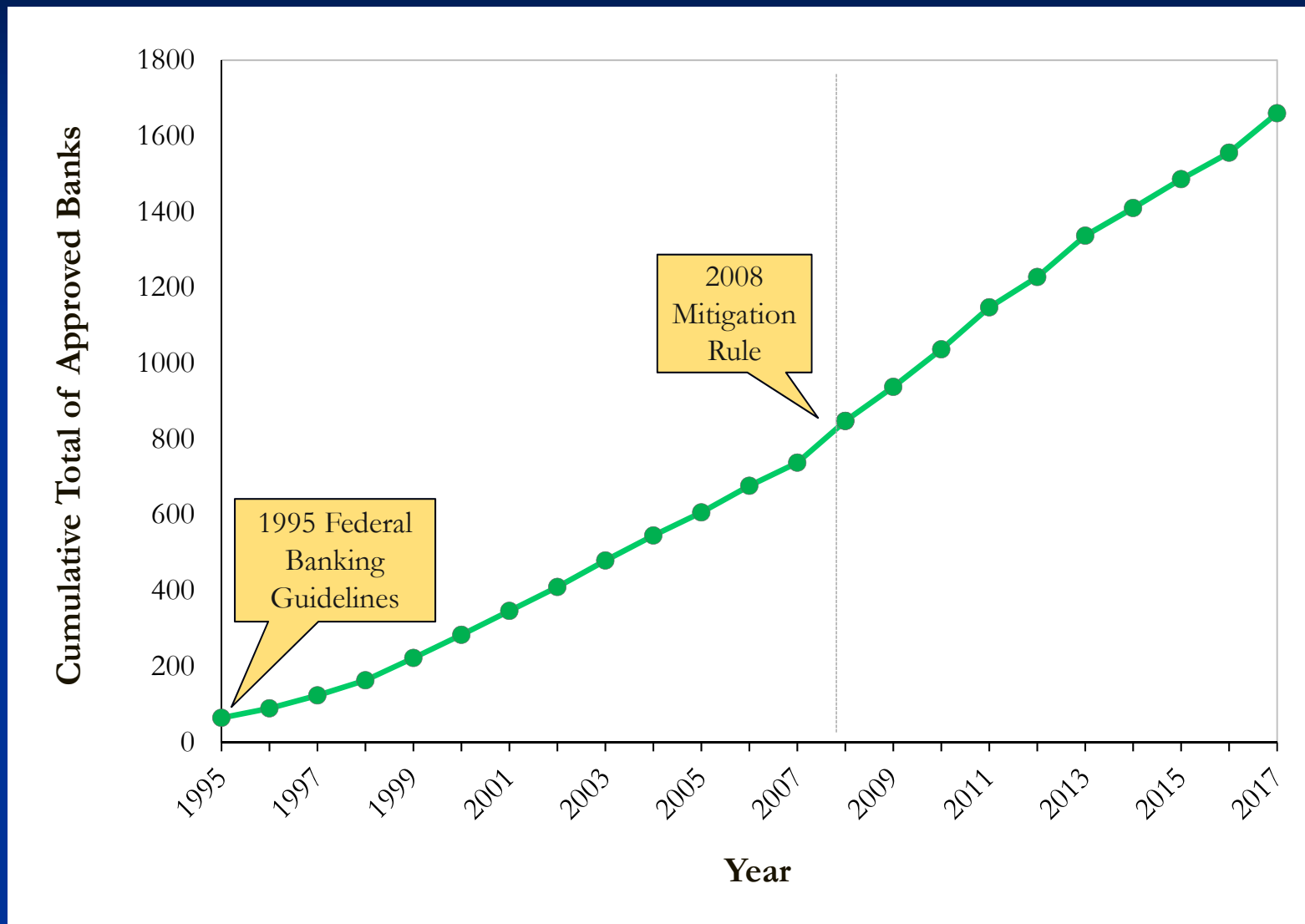


Colusa Basin Mitigation Bank
Exhibit D-5 Long Term Management Plan FINAL May16 2014

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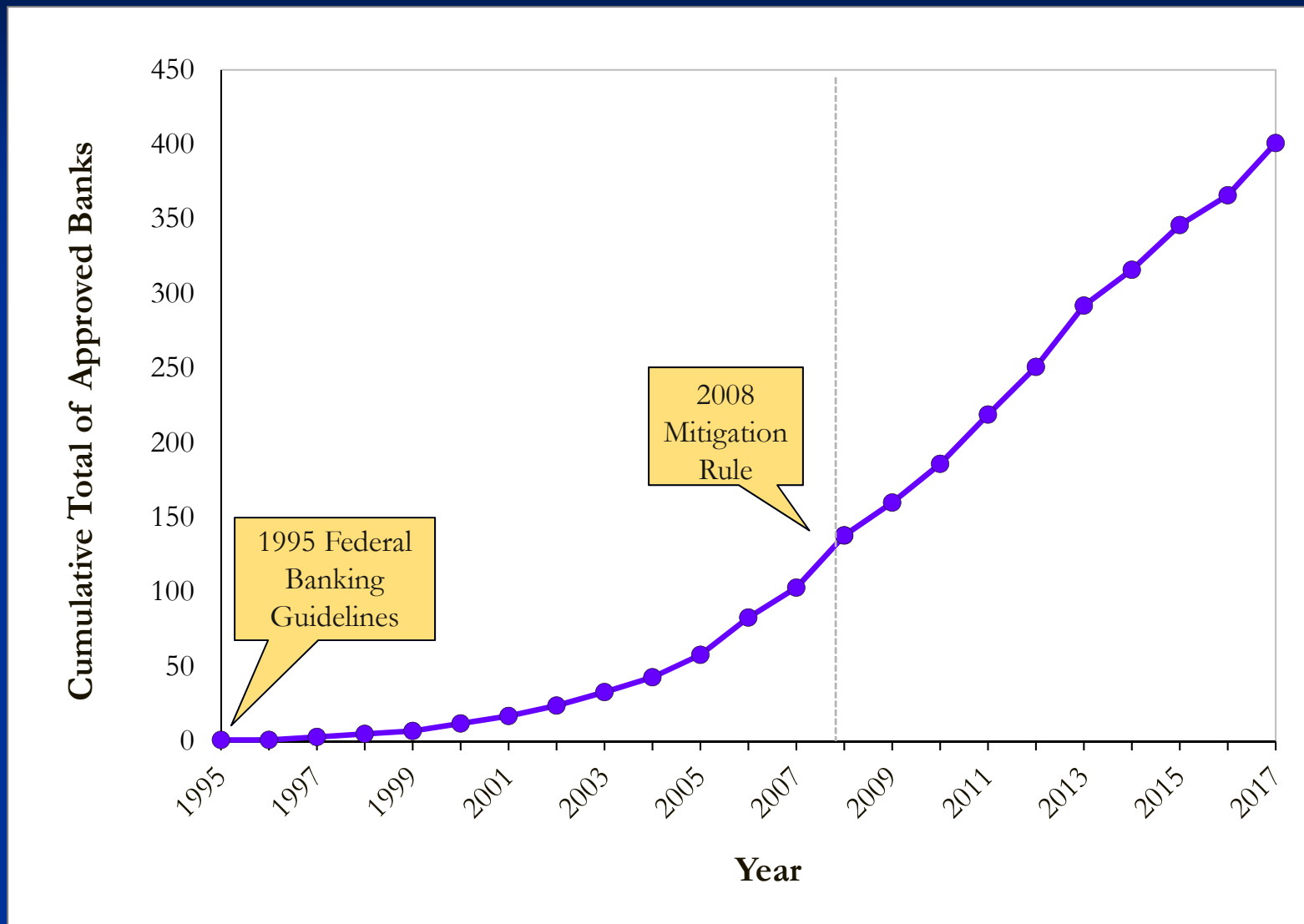
What are some of the major trends over the last 10 years under the Mitigation Rule?

Bank Establishment Over Time



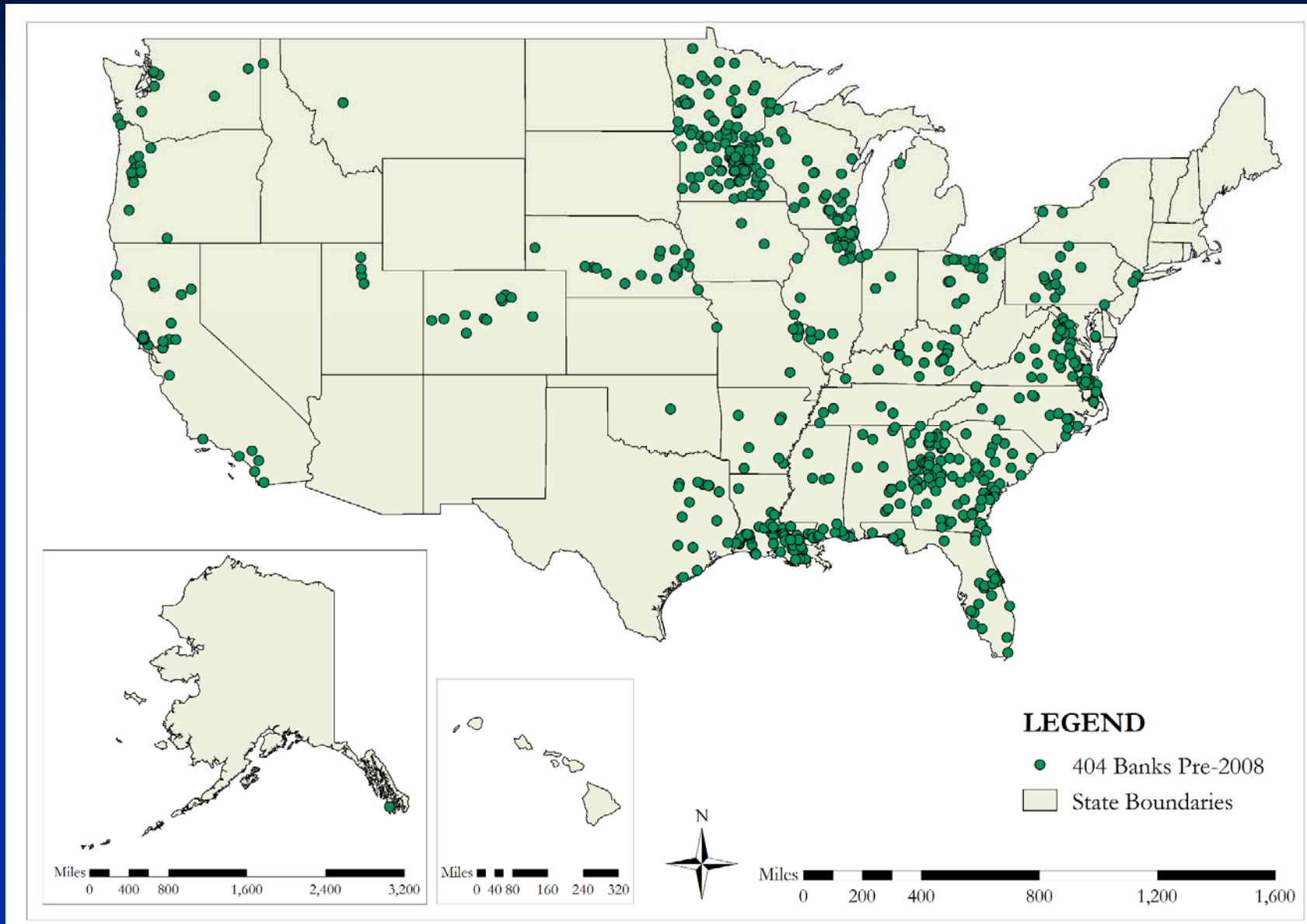
Source: RIBITS (July 17th, 2018)

Stream Bank Establishment Over Time



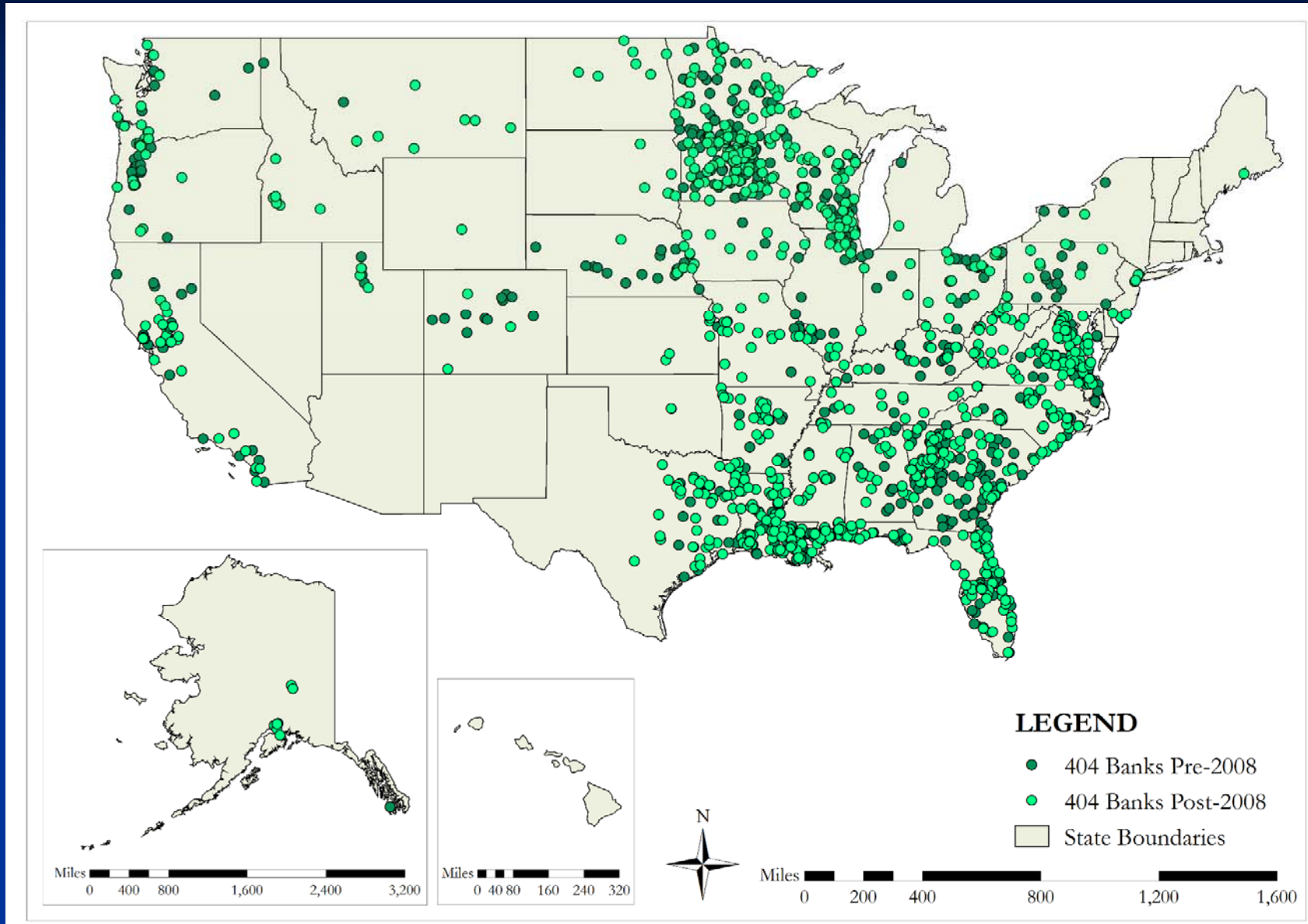
Source: RIBITS (July 17th, 2018)

Approved Banks as of June 2008



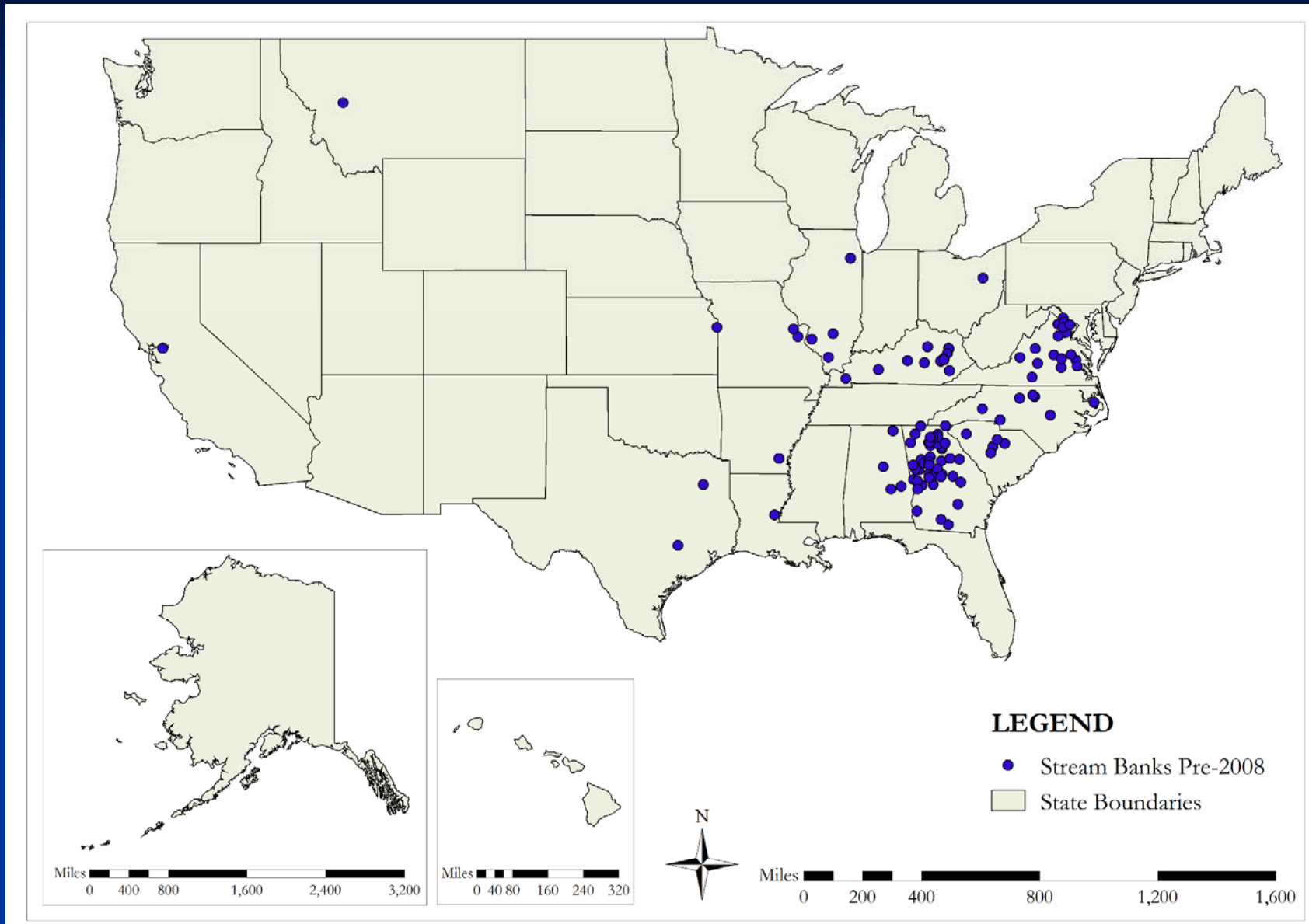
Source: RIBIT'S (July 17th, 2018)

Approved Banks as of July 2018



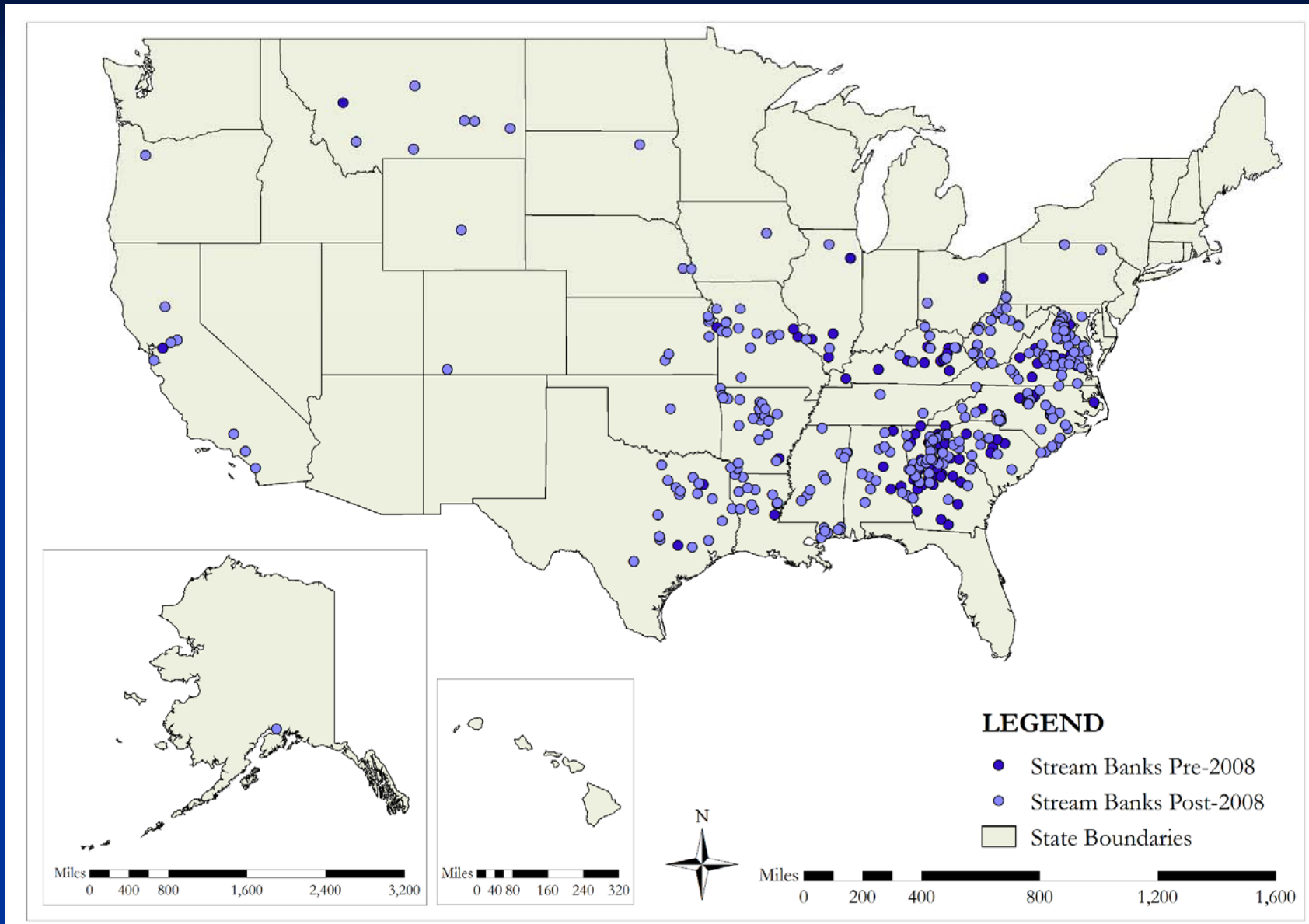
Source: RIBIT'S (July 17th, 2018)

Approved Stream Banks as of June 2008



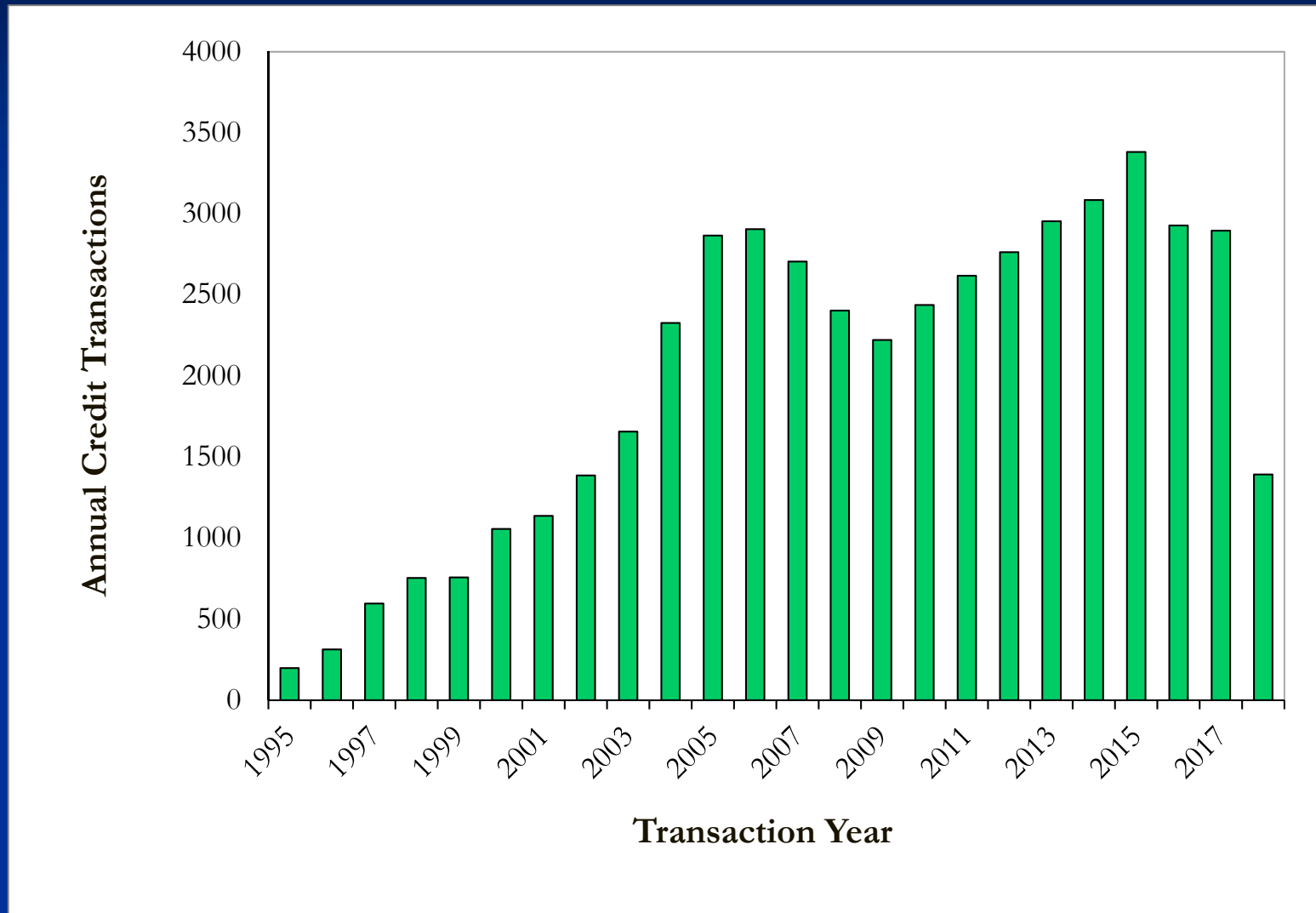
Source: RIBIT'S (July 17th, 2018)

Approved Stream Banks as of July 2018



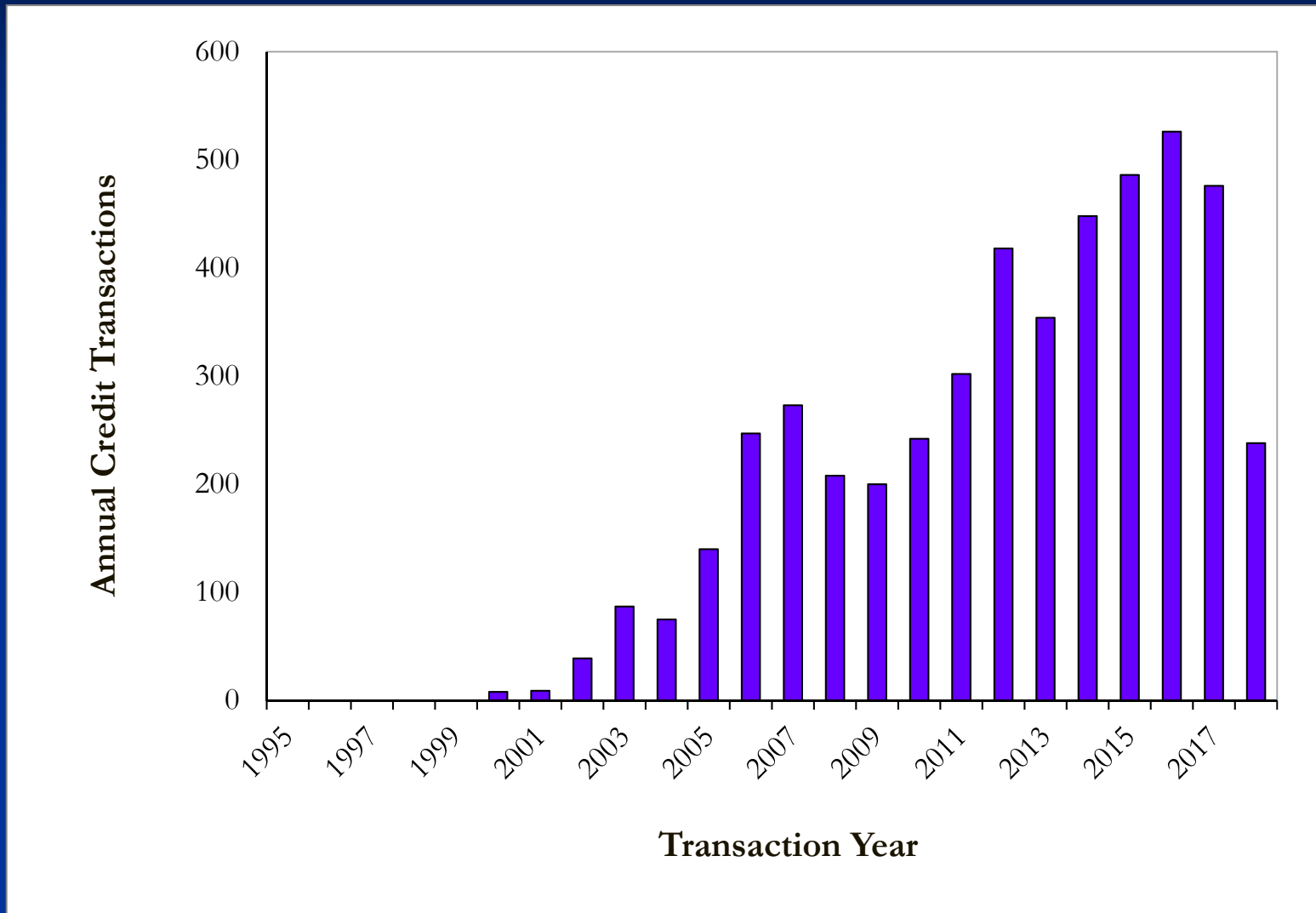
Source: RIBITS (July 17th, 2018)

Credit Withdrawals Over Time



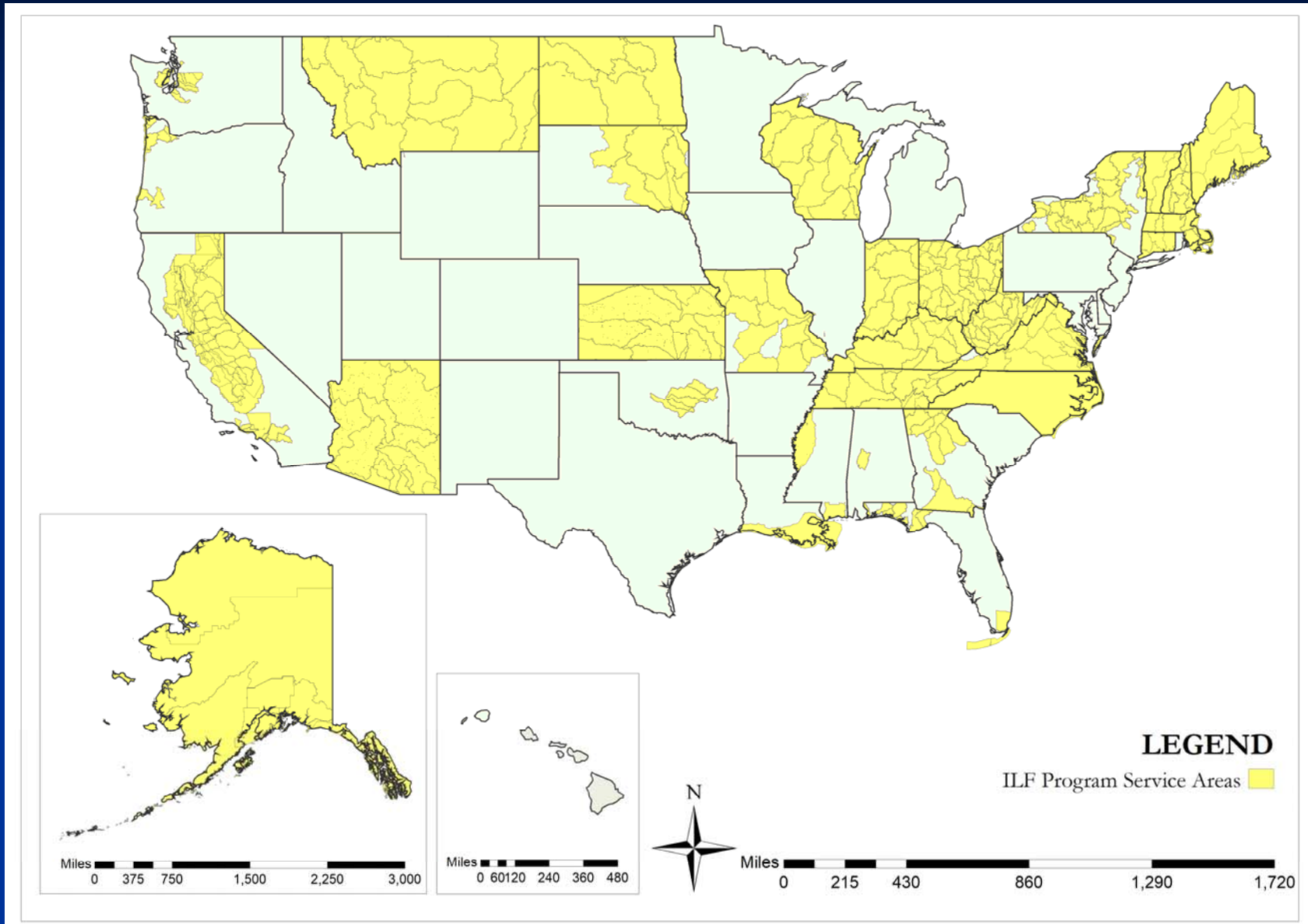
Source: RIBITS (July 17th, 2018)

Stream Credit Withdrawals Over Time



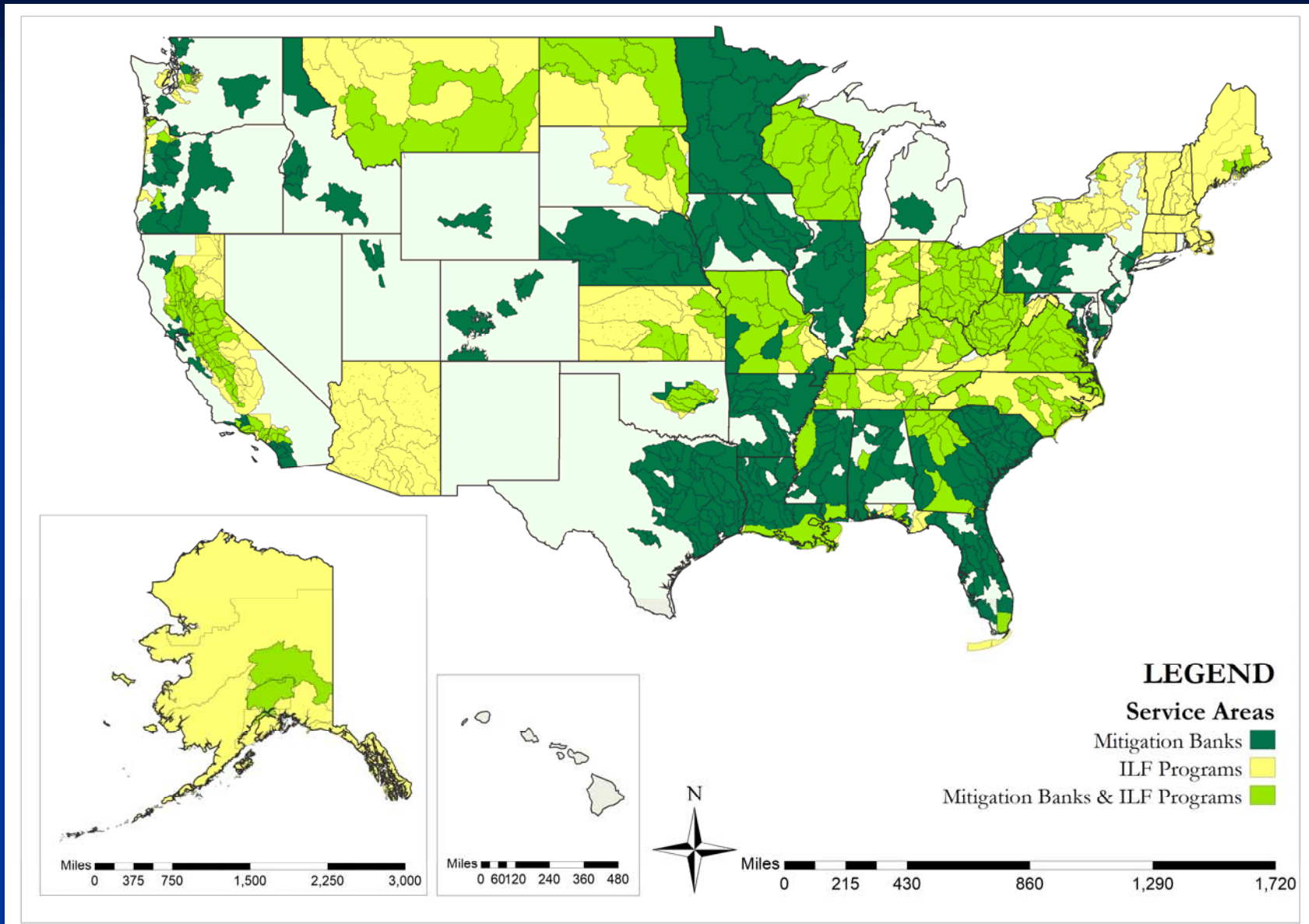
Source: RIBITS (July 17th, 2018)

ILF Program Service Areas

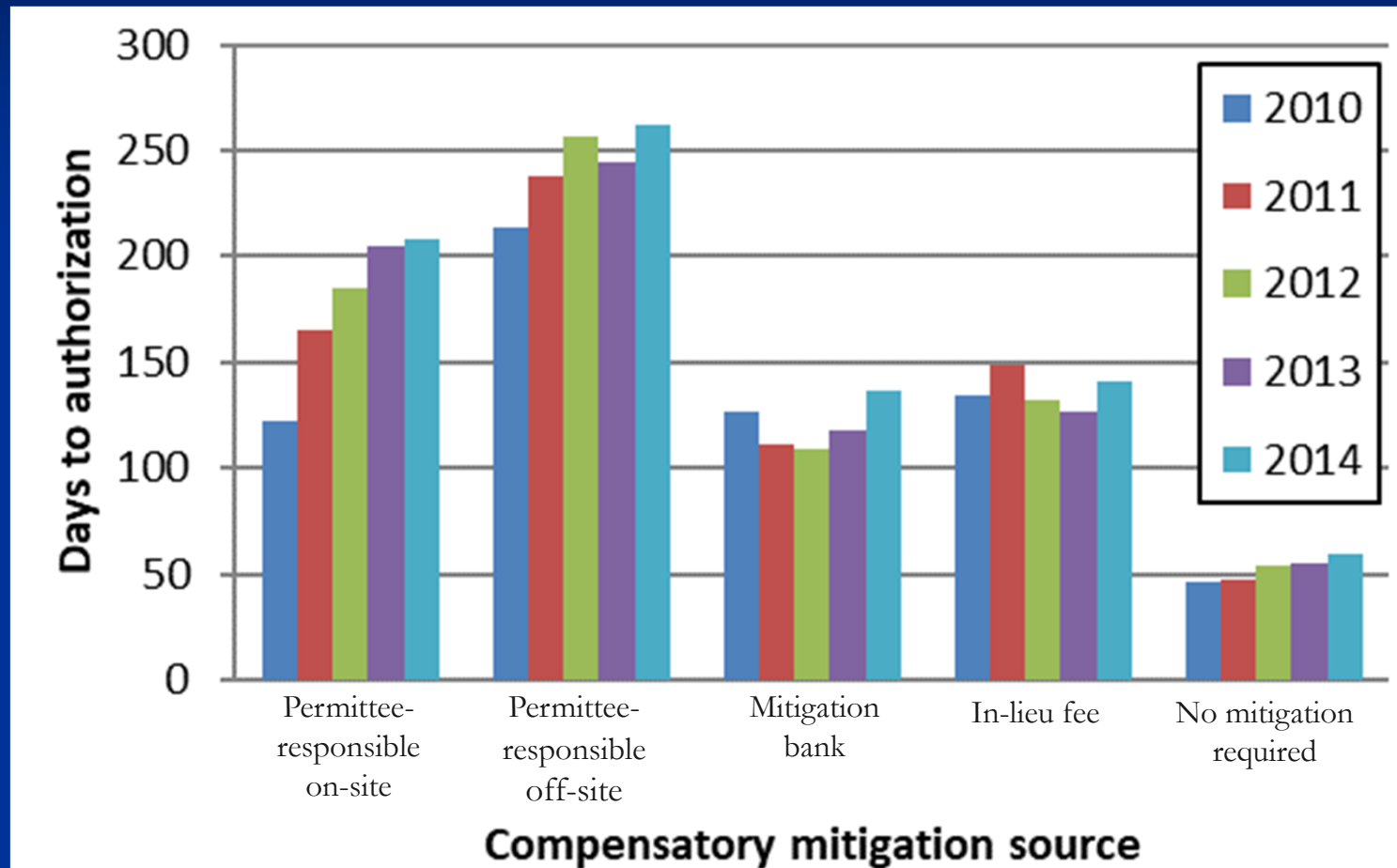


Source: RIBITS (July 17th, 2018)

Bank & ILF Service Areas

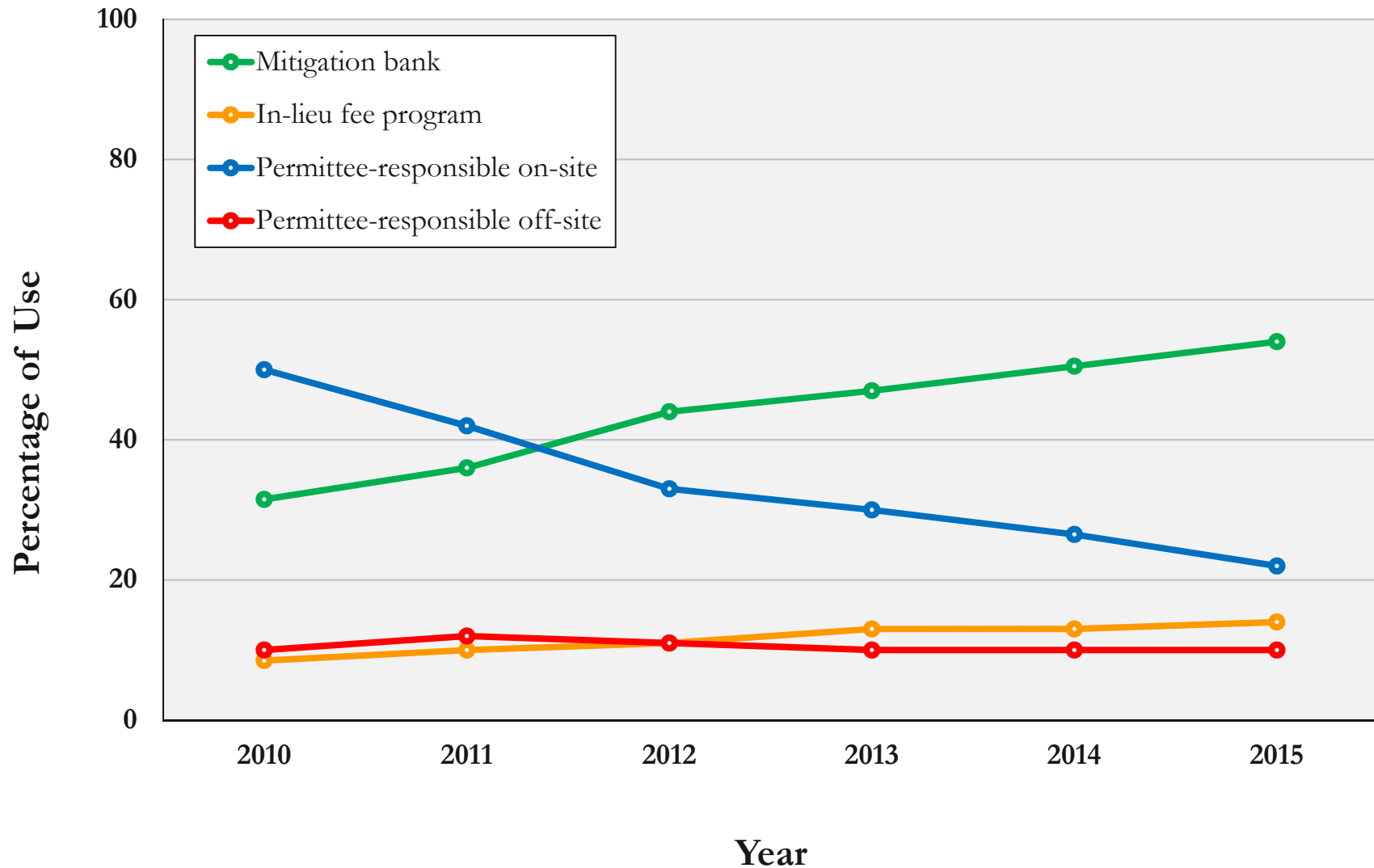


Bank and ILF Options Save Time for Permittees



Average processing times for permit authorizations, by compensatory mitigation source, for 2010-2014.

More Permittees Using Banks/ILF



What are we currently focused on?

Issue: Has Compensation Performance Improved?

- Reviewed evaluations from 2000-2015
 - Frequency of evaluations on the decline
 - Particularly since 2008 Rule
 - Large gaps exist in evaluation for certain:
 - Geographic areas (southeast, midwest, southwest)
 - Resource types (streams)
 - When evaluations are done – lack of consistency in how performance is defined



Morgan and Hough, 2015

Response: Technical Publication on Long-Term Approach

- Section 1 – Study design
 - Information on appropriate compensatory mitigation study design, including study design examples and considerations for each example
- Section 2 – Data management
 - Information regarding compensatory mitigation project data management, including recommendations and best practices for managing compensation-related data and making that data accessible
- Section 3 – Implementation
 - Information on conducting baseline evaluations as well as subsequent evaluations at regular intervals, including recommendations on potential funding sources and partnership opportunities

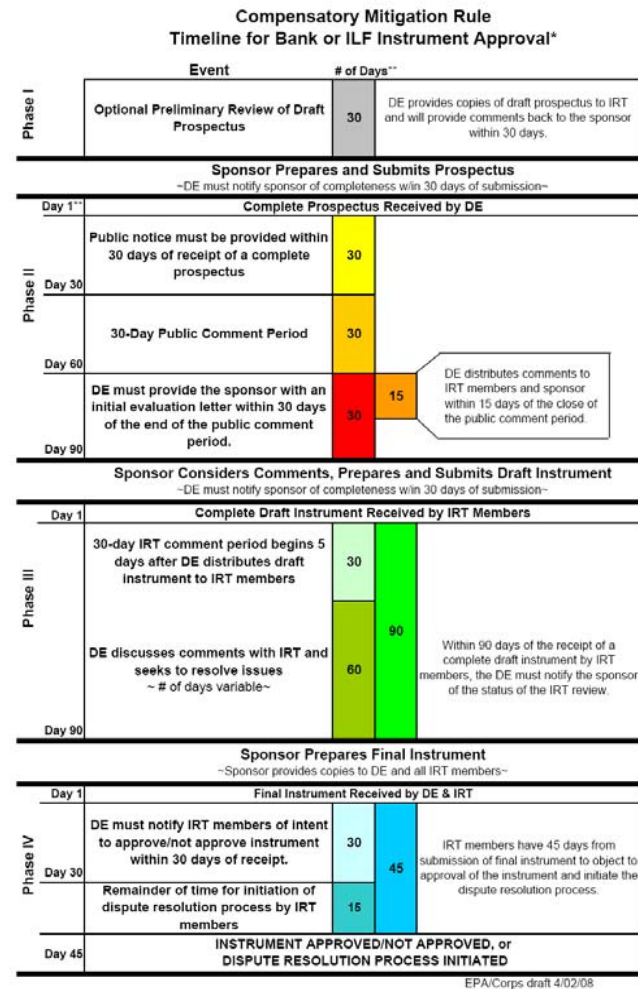
Issue: Can We Improve Efficiency?

1) Draft Prospectus (30)

2) Prospectus (90)

3) Draft Instrument (90)

4) Final Instrument (45)



Total Required Federal Review (Phases II-IV): ≤225 Days

*Timeline also applies to amendments

**The timeline in this column uses the maximum number of days allowed for each phase.

Response: Recommendations for Improving Efficiency

- Ecological Restoration Business Association, 6-4-18 letter to Corps HQ:
 - Establish GPRA performance metrics based on timelines in 2008 Rule
 - Invest in project management training
 - Adopt, at District-level:
 - Crediting/debiting and service area methodologies
 - SOPs for procedural aspects of bank review
 - Templates for bank instruments, site protection instruments, financial assurances, and long-term management plans
- Do not require opening the 2008 Rule

It's Still All About Implementation

- *“It could be the best of all worlds...or it could be the same old same old...It's all in the implementation.”*

- Dr. Joy Zedler, Chair 2001 NRC Compensatory Mitigation Study Committee – EM.com, 4-27-08

Questions

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- EPA Compensatory Mitigation Webpage:
 - <https://www.epa.gov/cwa-404/compensatory-mitigation>

