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Introduction:

The National Environmental Banking Association (NEBA) shares your agency's interest in creating permitting efficiency for all those regulated by Section 404 of the Clean Water Act while allowing the necessary development and energy exploration our country requires. We support President Trump's August 15 [Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure](#) which calls for a more transparent, timely, and coordinated process for environmental review and permitting for energy, transportation, and other infrastructure projects.

NEBA represents small businesses committed to high standards for environmental restoration and preservation of our wetlands and natural habitats through the use of ecosystem service banks. The Association's members have established and operated mitigation, conservation and other banks throughout the United States since the early 1990's. NEBA members know that under consistent, common sense government policy, private investment offers the most effective avenue to address the growing number of environmentally damaged resources, resulting in a net gain for the environment in many cases.

Accordingly, we respectfully submit the following suggestions intended to help specifically with the timely processing of Mitigation Banking Instruments - the permits at USACE which appear to take longest of all to approve.

Problem Statement:

Back in 2014, Mitigation Bankers across the U.S., National Mitigation Banking Association (Survey Summary 20140324) were asked about their experiences with the timeliness of review and processing for mitigation banking instruments and those results were summarize by USACE Division, specifically whether agency staff are responding generally within timelines as defined in the 2008 Rule.

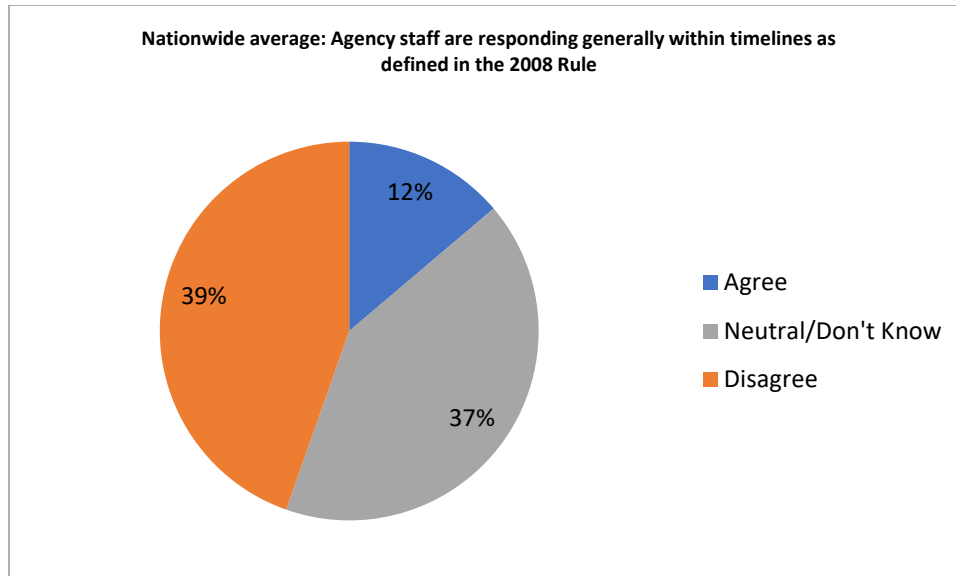


Figure 1 – Nationwide average from survey whether agency staff are responding within timelines defined in the Rule.

See Attachment 1 for District and Division specific data of the survey results.

It is broadly recognized that processing of these permits by USACE can take several years and in many cases may be inconsistent from project-to-project. To compound this, the RIBITS tracking system for mitigation bank projects, doesn't provide transparency for processing timelines or create a 'compliance' mechanism to insure the permit is processed per the 2008 Mitigation Rule.

This situation has caused some in industry to preference Permittee-Responsible Mitigation (PRM), the lowest form of mitigation in the hierarchy within the Rule. PRM, though similarly used to offset environmental impacts under Section 404 of the Clean Water Act is typically processed faster and consistent with Individual Permits (the most extensive, highly scrutinized permits at USACE.)

Streamlining and speeding the processing of Mitigation Banking Instruments, consistent with the intention of the rule and its timeline (Attachment 3), will help to position lower cost credits in places where infrastructure and energy development most demand.

Recommendations:

Mitigation, Conservation, Nutrient and other Environmental Banking solutions allow industry to develop and prosper while insuring that unavoidable impacts from development are offset. While environmental banking solutions reduce risk, costs, and uncertainty for government they also provide certainty and clear transfer of liability for those impacting natural resources like water or species.

NEBA understands that what industry most needs is clarity and certainty. Unfortunately, the often extended and uncertain Mitigation Banking Instrument (MBI) timelines are causing and will cause further uncertainty to the banking industry and likely drive up the costs of mitigation credits to market as a result. And, that situation is likely to result in less private conservation/mitigation investment, higher project development costs, delays in providing offsets, and fewer economic benefits for industry.

For example: The Seattle District informs potential bankers that it will likely take ten months to a year to merely review the initial prospectus for completeness before giving permission to move ahead with a Banking Instrument. Historically, it takes many years after that to get a Banking Instrument approved.

In Galveston and Wilmington, NEBA members recently saw 3-year PROSPECTUS processes, where rounds of required additional information and requests for additional work consumed more than twice the time specified for the ENTIRE MBI process.

In Chicago, one NEBA member reports that the agencies continue to pay little attention to the timeline even a decade after the 2008 Mitigation Rule was finalized

Importantly, we believe these long processing times negatively impact our members, their businesses across the United States and many important national and international businesses which are our customers.

NEBA recommends, consistent with the [Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure](#) which calls for a more transparent, timely, and coordinated process for environmental review and permitting for energy, transportation, and other infrastructure projects, the following:

1. Strict Application of the Timeline to improve timeliness of processing Mitigation Banking Instruments (MBI's)
2. Transparent Reporting of the MBI Process with RIBITS and/or ORM2 to improve transparency
3. Use of Common Project Management Tools (i.e.; agreed-to Gantt timeline with known milestones/deadlines) to enable better coordination
4. Improved leadership by USACE Project Managers within the Inter-Agency Review (IRT) Process in application of their position as LEAD to the IRT
5. Use of Templates and Standard Operating Procedures for MBI's and other documents required by the process to improve transparency, timeliness and coordination

Best Regards,



Donna Collier, Chairwoman

Attachment 1: Survey Results by Division and District

The following graphs represent the survey results whether mitigation practitioners have experienced agency staff responding generally within the Timeline (Figure 10) as defined within the 2008 Rule and are organized by USACE Division and District.

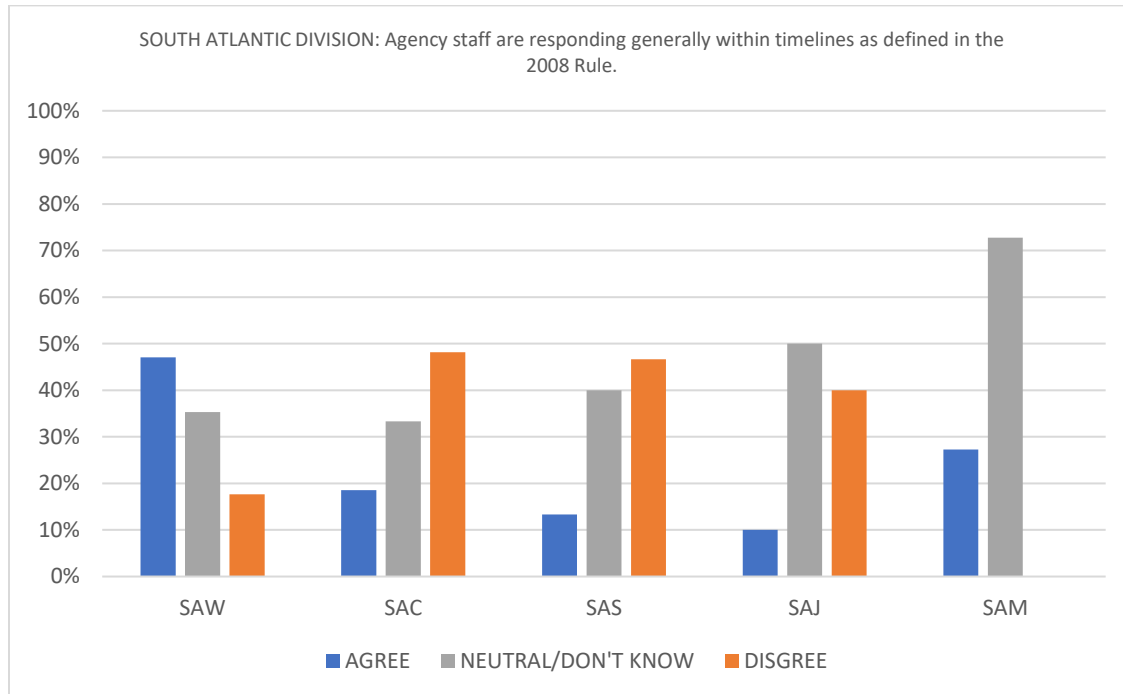


Figure 2 - SOUTH ATLANTIC DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

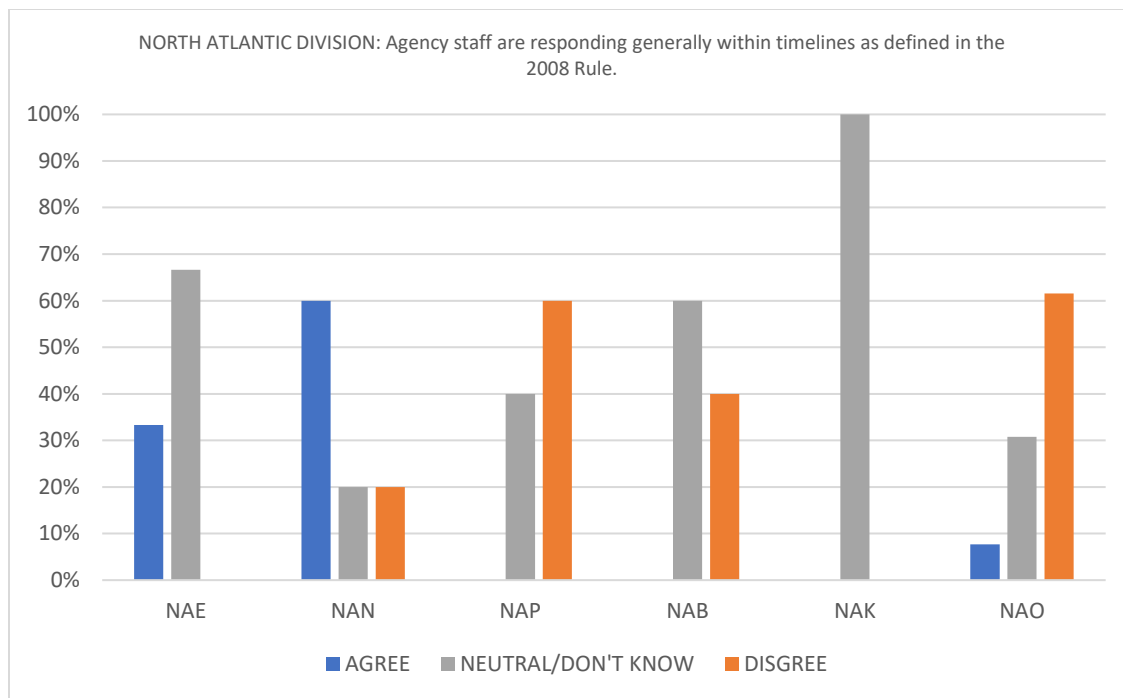


Figure 3 - NORTH ATLANTIC DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

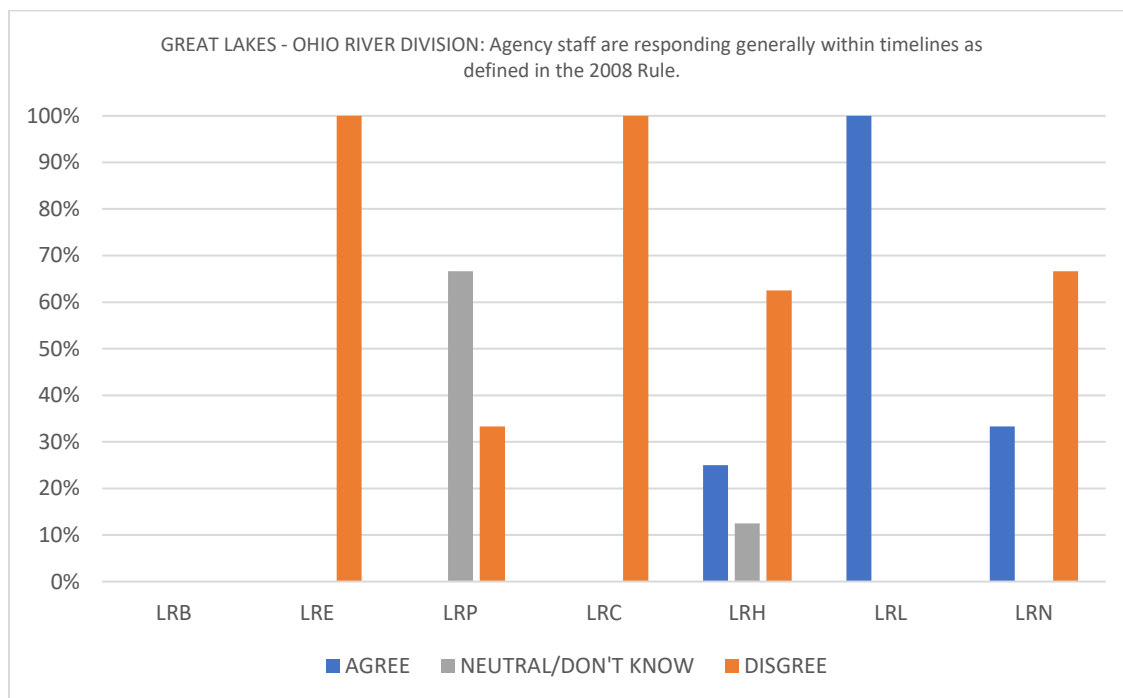


Figure 4 - GREAT LAKES - OHIO RIVER DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

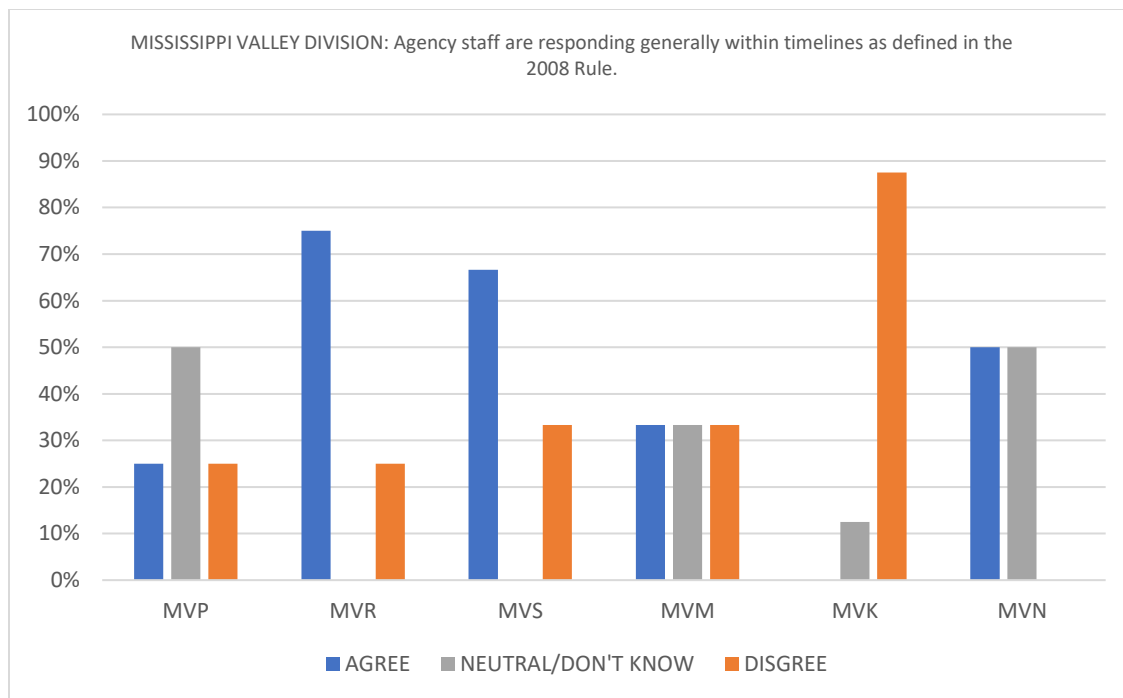


Figure 5 - MISSISSIPPI VALLEY DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

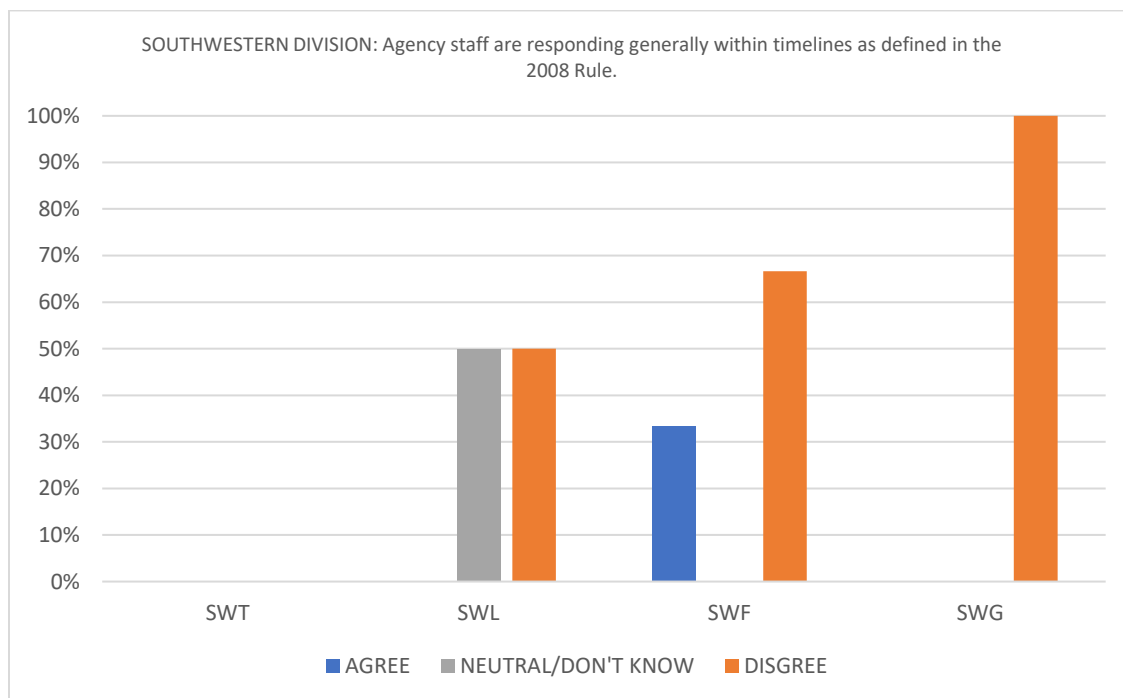


Figure 6 - SOUTHWESTERN DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

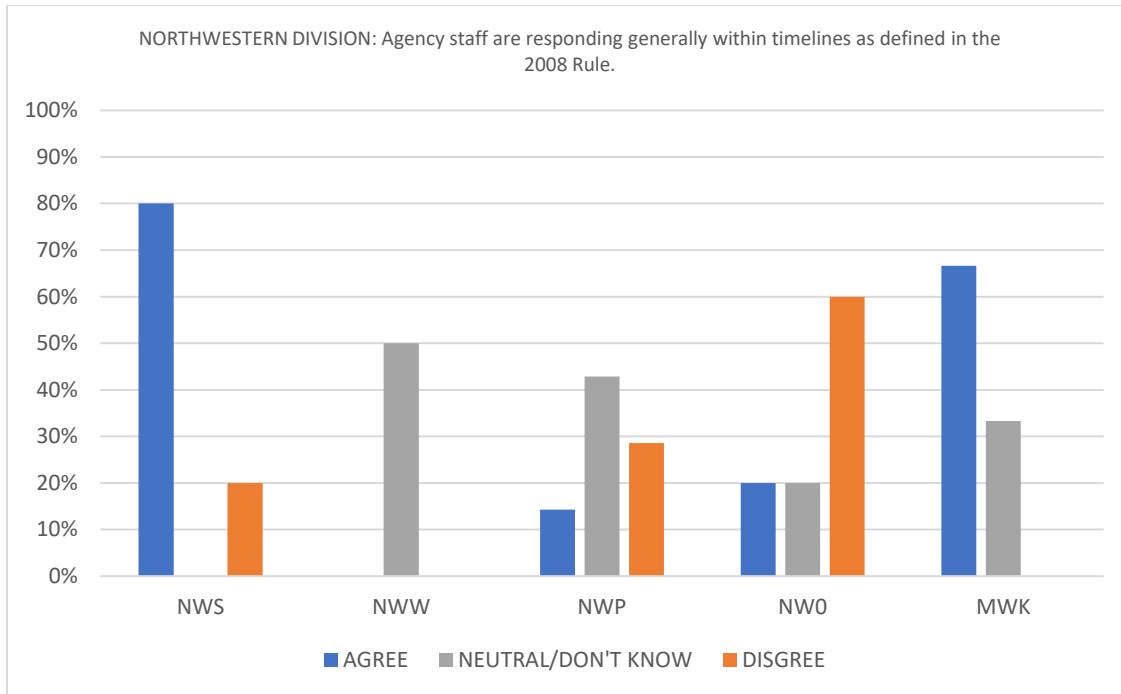


Figure 7 - NORTHWESTERN DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

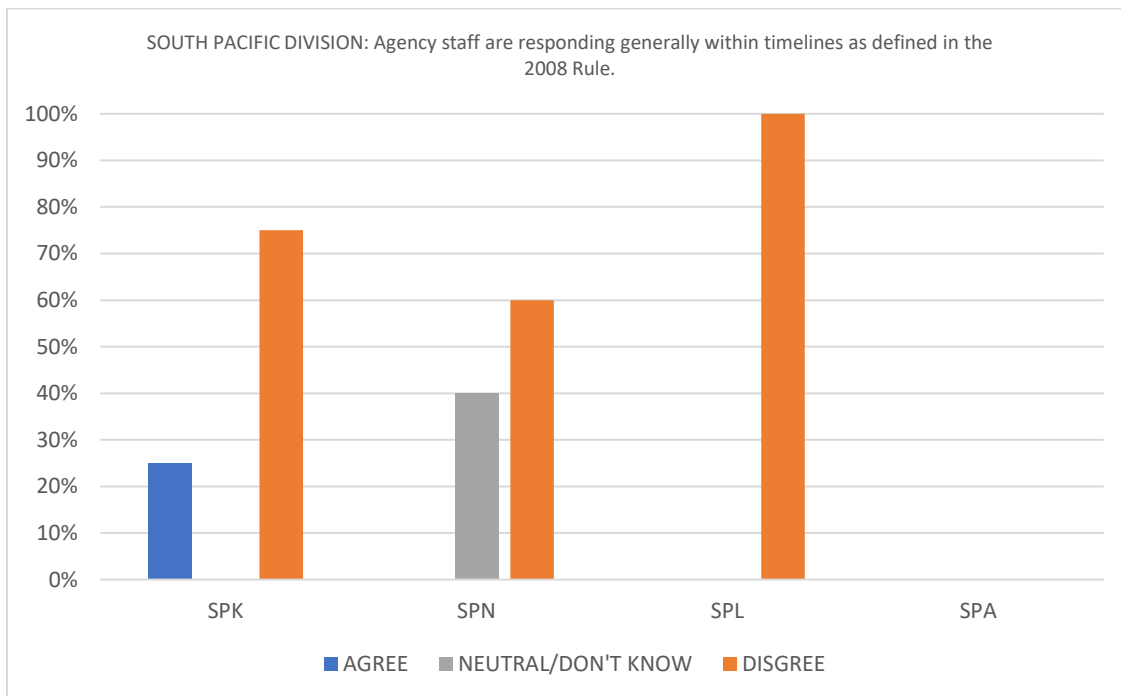


Figure 8 - SOUTH PACIFIC DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

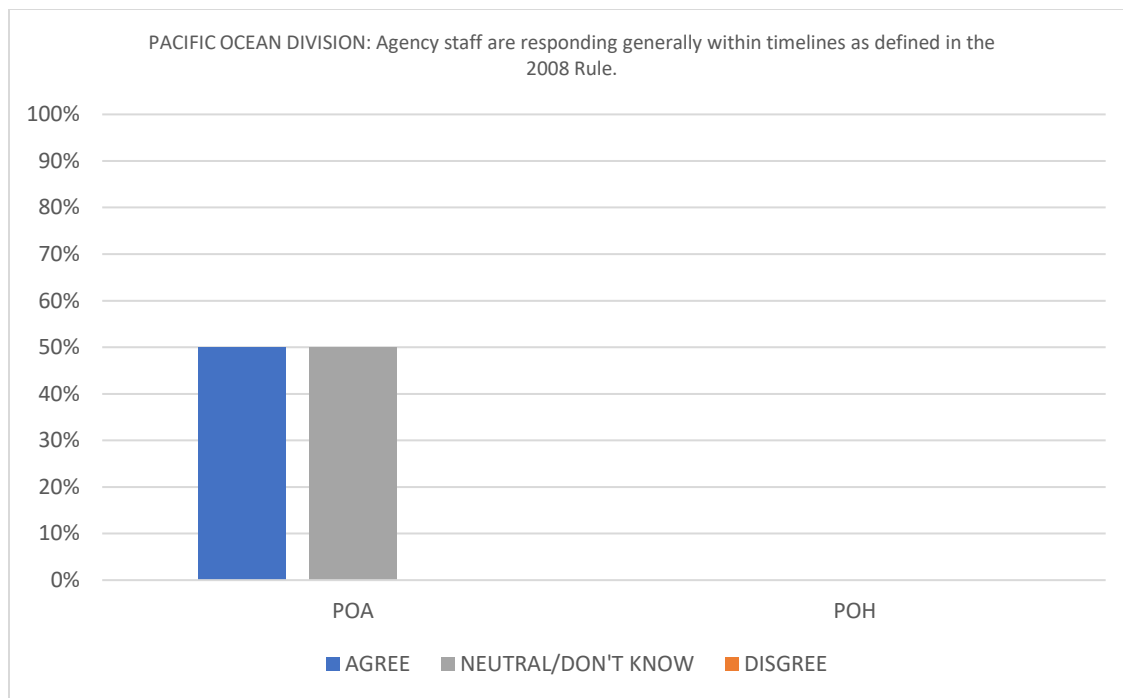


Figure 9 - PACIFIC OCEAN DIVISION: Agency staff are responding generally within timelines as defined in the 2008 Rule survey summary.

Attachment 2: Tabular Survey Results

Agency staff is responding generally within timelines as defined in the 2008 Rule Summary:

Table 1 - Agency staff are responding generally within timelines as defined in the 2008 Rule tabular summary.

Agency staff are responding generally within timelines as defined in the 2008 Rule			
District	Agree	Neutral/Don't Know	Disagree
South Atlantic Division			
SAW	29%	53%	18%
SAC	15%	41%	44%
SAS	13%	53%	33%
SAJ	10%	45%	45%
SAM	18%	73%	9%
North Atlantic Division			
NAE	67%	33%	0%
NAN	0%	40%	60%
NAP	20%	40%	40%
NAB	0%	40%	60%
NAK	0%	100%	0%
NAO	8%	15%	77%
Great Lakes - Ohio River Division			
LRB	0%	0%	0%
LRE	0%	0%	100%
LRP	0%	50%	50%
LRC	0%	10%	90%
LRH	13%	38%	50%
LRL	0%	100%	0%
LRN	0%	0%	100%
Mississippi Valley Division			
MVP	0%	100%	0%
MVR	75%	25%	0%
MVS	67%	33%	0%
MVM	33%	0%	67%
MVK	0%	13%	75%
MVN	0%	50%	50%
Southwestern Division			
SWT	0%	0%	0%
SWL	0%	50%	50%
SWF	33%	0%	67%
SWG	25%	25%	50%
Northwestern Division			
NWS	20%	20%	60%
NWW	0%	50%	0%
NWP	14%	43%	29%
NW0	0%	40%	60%

MWK	0%	67%	33%
South Pacific Division			
SPK	13%	38%	50%
SPN	0%	40%	60%
SPL	0%	0%	100%
SPA	0%	0%	0%
Pacific Ocean Division			
POA	0%	100%	0%
POH	0%	0%	0%

Attachment 3: Compensatory Mitigation Rule Timeline for Bank of ILF Instrument Approval

Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval*

		Event	# of Days**		
Phase I		Optional Preliminary Review of Draft Prospectus	30	DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.	
	Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness w/in 30 days of submission~				
Phase II	Day 1**	Complete Prospectus Received by DE			
		Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 30	30-Day Public Comment Period	30		
	Day 60				
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness w/in 30 days of submission~					
Phase III	Day 1	Complete Draft Instrument Received by IRT Members			
		30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90	Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
		DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60		
		Day 90			
Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~					
Phase IV	Day 1	Final Instrument Received by DE & IRT			
		DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
	Day 30	Remainder of time for initiation of dispute resolution process by IRT members	15		
		Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED		

EPA/Corps draft 4/02/08

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.

Figure 10 – USACE Compensatory Mitigation Rule Timeline for Bank or ILF Instrument Approval.

Attachment 4: USACE District and Division Abbreviations

Table 2 - USACE District and Division Abbreviation

USACE Districts and Divisions		
Division	Districts	
Great Lakes and Ohio River	LRB	Buffalo
	LRC	Chicago
	LRE	Detroit
	LRH	Huntington
	LRL	Louisville
	LRN	Nashville
	LRP	Pittsburgh
Mississippi Valley	MVK	Vicksburg
	MVM	Memphis
	MVN	New Orleans
	MVP	St. Paul
	MVR	Rock Island
	MVS	St. Louis
North Atlantic	NAB	Baltimore
	NAN	New York
	NAO	Norfolk
	NAP	Philadelphia
Northwestern	NWK	Kansas City
	NWO	Omaha
	NWP	Portland
	NWS	Seattle
	NWW	Walla Walla
Pacific Ocean	POA	Alaska
	POH	Honolulu
South Atlantic	SAC	Charleston
	SAJ	Jacksonville
	SAM	Mobile
	SAS	Savannah
	SAW	Wilmington
South Pacific	SPA	Albuquerque
	SPK	Sacramento
	SPL	Los Angeles
	SPN	San Francisco
Southwestern	SWF	Fort Worth
	SWG	Galveston
	SWL	Little Rock
	SWT	Tulsa

