Comments regarding:
Part II; Department of Defense, Department of the Army, Corps of Engineers, 33CFR Parts 325 and 332
Environmental Protection Agency, 40 CFR Part 230
Compensatory Mitigation for Losses of Aquatic Resources: Proposed Rule

Dear Sirs:

Tucson Audubon Society offers the following comments in response to the above-referenced Proposed Rule, specifically in reference to Section VI. In-Lieu Fee Programs/Arrangements. We oppose the changes proposed in that section.

Tucson Audubon is a non-profit non-governmental organization (NGO) that is a membership based, tax-exempt corporation located in Tucson, Arizona. Our mission is to improve the quality of the environment through conservation, education, recreation and by providing environmental leadership and information. We represent 3,000 households, located primarily in Southeastern Arizona.

Tucson Audubon is operating under a Memorandum of Agreement with the US Army Corps of Engineers, which has enabled us to restore riparian habitat through the In-Lieu Fee Program. To accomplish this restoration work we have partnered with the City of Tucson and Pima County to undertake habitat restoration on two in-lieu sites. In the fall of 2006, we will commence restoration on a third site. Results of these efforts are summarized below:

We use a watershed approach to select mitigation lands that are of local, state, federal and international importance. Lands selected are located on the Santa Cruz River and its tributaries and are in close proximity to vast expanses of land dedicated to permanent open space. The Santa Cruz River is a riparian corridor of international importance in the Sonoran Desert. Migrating birds pass through Sonoran Desert riparian areas each year on their annual journeys. Over 95 percent of riparian habitat has been lost in Arizona, making it the most vulnerable habitat type in the state. The Santa Cruz River is a proposed Important Bird Area (IBA). IBA is a globally significant designation as per Birdlife International’s Important Bird Areas program, which is operated in the United States by National Audubon Society. IBA site designations identify, preserve, and restore key avian resources.

We significantly improve the quality of habitat on in-lieu sites. To date, planting has occurred on 77 acres and seeding on an additional 105 acres at the in-lieu sites. Due to economies of scale, in-kind support
by the public landowners, and volunteer assistance at the site, the land area benefiting from this effort is over twice the area that is required to be restored through the in-lieu program. This program has enhanced a major river corridor providing an important benefit to wildlife, habitat and humans.

We utilize an adaptive management approach at in-lieu sites. Adaptive management practices have been used throughout the implementation period at the in-lieu sites, with adjustments made in restoration timing and techniques to address changing site conditions typical of riparian areas. Preparation of long-term stewardship plans are underway to specify monitoring, maintenance and financial mechanisms to steward the sites.

We monitor in-lieu sites to ensure that restoration efforts improve habitat quality. Monitoring has indicated an increase in the diversity of riparian-associated bird species at the longest-standing site over the 5-year monitoring period. Winter bird species diversity has increased over the same time period, most notably raptors. A candidate endangered species (yellow-billed cuckoo) has taken up summer residency at the site the last two summer seasons as documented during avian surveys.

We create a replicable model for habitat restoration that is utilized by agencies and individuals, thus increasing the net gain for habitat preservation on a regional scale. Tucson Audubon's in-lieu sites have become models of effective and cost-efficient restoration projects. Site visitors seeking specific information about project assessment and design, appropriate plant species, restoration techniques and monitoring efforts have included representatives from local, regional, and national agencies, NGOs, Indian Tribes, and private companies.

Our impact is quantifiable and well-documented. Standing Scopes of Work for each mitigation site are on file with the Corps of Engineers describing the restoration work to be undertaken for each additional unit of mitigation. Annual reports to the Corps of Engineers document the acreage of mitigation accomplished, results of monitoring efforts, and the balance of funds remaining.

Mitigation work must be a funded mandate. We provide exemplary service in habitat restoration through the in-lieu fee program and have documented a cost-effective benefit. We hope to continue to add additional mitigation sites using this same standard of service in the future. This work has been possible because the In-Lieu Fee Program provides in-lieu fees in advance with which to finance restoration work. This pre-payment is essential because of the extremely
high costs associated with undertaking restoration work. Hands-on environmental organizations like ours, which are interested in and capable of doing this kind of work, are typically not in a financial position to self-finance mitigation, nor should they be required to do so.

If the proposed rules are adopted, Tucson Audubon Society and many other land restoration and conservation experts will no longer be able to undertake new mitigation projects because of the lack of funds necessary to do the work. We are uniquely suited to this work because of our partnerships with governments and other NGOs, our capacity to draw on volunteers to augment the massive work needed to restore habitat, and our longevity in the bioregions we serve—a key factor in providing on-going stewardship of sites. It is questionable whether a privately funded mitigation bank would be able to provide the same level of habitat benefits.

We urge you to maintain the In-Lieu Fee Program in its current form and appreciate the opportunity to comment on this important topic. Should you require further information, please do not hesitate to contact me at (520) 622-5622.

Sincerely,

Sonja Macy
Executive Director