



## A TRAINING COURSE FOR MITIGATION BANKING INTERAGENCY REVIEW TEAMS



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### Reference Document: Service Area Determination

#### A. Federal Service Area Determination Policy

##### 2008 Compensatory Mitigation for Losses of Aquatic Resources

###### §332.2 Definitions

*Service area* means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

###### § 332.8 Mitigation banks and in-lieu fee programs.

###### (c) Compensation planning framework for in-lieu fee programs.

(2) The compensation planning framework must contain the following elements:

- (i) The geographic service area(s), including a watershed-based rationale for the delineation of each service area;
- (ii) A description of the threats to aquatic resources in the service area(s), including how the in-lieu fee program will help offset impacts resulting from those threats;
- (iii) An analysis of historic aquatic resource loss in the service area(s);
- (iv) An analysis of current aquatic resource conditions in the service area(s), supported by an appropriate level of field documentation;
- (v) A statement of aquatic resource goals and objectives for each service area, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide;

###### (d) Review process

(2) *Prospectus*...A complete prospectus includes the following information:

- iii) The proposed service area.

###### (6) Draft instrument.

(ii) For mitigation banks and in-lieu fee programs, the draft instrument must include the following information:

- (A) A description of the proposed geographic service area of the mitigation bank or in-lieu fee program. The service area is the watershed, ecoregion, physiographic province,

and/or other geographic area within which the mitigation bank or in-lieu fee program is authorized to provide compensatory mitigation required by DA permits. The service area must be appropriately sized to ensure that the aquatic resources provided will effectively compensate for adverse environmental impacts across the entire service area. For example, in urban areas, a U.S. Geological Survey 8-digit hydrologic unit code (HUC) watershed or a smaller watershed may be an appropriate service area. In rural areas, several contiguous 8-digit HUCs or a 6-digit HUC watershed may be an appropriate service area. Delineation of the service area must also consider any locally-developed standards and criteria that may be applicable. The economic viability of the mitigation bank or in-lieu fee program may also be considered in determining the size of the service area. The basis for the proposed service area must be documented in the instrument. An in-lieu fee program or umbrella mitigation banking instrument may have multiple service areas governed by its instrument (e.g., each watershed within a state or Corps district may be a separate service area under the instrument); however, all impacts and compensatory mitigation must be accounted for by service area;



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## B. Examples of Corps District & State Service Area Determination Methods

### Florida Mitigation Bank Service Areas

- Florida rules governing the practice of mitigation banking went into effect on February 2, 1994. The rules require the Florida Department of Environmental Protection (FL DEP) or the water management districts (WMDs) to establish a mitigation service area for each mitigation bank permit. Mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area depend on the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

In determining the mitigation service area, the department or the WMDs must consider the characteristics, size, and location of the mitigation bank and, at a minimum, the extent to which the mitigation bank: contributes to a regional integrated ecological network; will significantly enhance the water quality or restoration of an offsite receiving water body that is designated as an Outstanding Florida Water, a Wild and Scenic River, an aquatic preserve, a water body designated in a plan approved pursuant to the Surface Water Improvement and Management Act, or a nationally designated estuarine preserve; will provide for the long-term viability of endangered or threatened species or species of special concern; is consistent with the objectives of a regional management plan adopted or endorsed by the department or water management districts; and can reasonably be expected to offset specific types of wetland impacts within a specific geographic area. A mitigation bank need not be able to offset all expected impacts within its service area.

FL DEP and the WMDs must use regional watersheds to guide the establishment of mitigation service areas. Drainage basins established pursuant to state rules may be used as regional watersheds when they are established based on the hydrological or ecological characteristics of the basin.

- Fl. Stat. § 373.4136(6).

- [http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App\\_mode=Display\\_Statute&Search\\_String=373.4136\(6\).&URL=0300-0399/0373/Sections/0373.4135.html](http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=373.4136(6).&URL=0300-0399/0373/Sections/0373.4135.html)

### **Georgia Mitigation Bank Review Team, Mitigation Bank Service Areas**

- The service areas used by the Georgia MBRT are based on the "State of Georgia Hydrologic Unit Map." The maps are intended to assist in the development and expeditious approval of proposed commercial wetland and stream mitigation banks. Although the MBRT strongly recommends the service areas depicted by these maps, their use is not mandatory. For banks sponsors proposing alternate service areas, adequate information must be provided to document how the unique aquatic and/or ecological functions of the bank would offset impacts to similar wetlands located in the alternative service area. The maps are to be used as follows:
  - Determine which of the primary service areas would include the location of the proposed bank. Within this primary service area, credits generated by the bank could be used, in accordance with established policies and procedures, to mitigate projects authorized by both Nationwide Permits (NWP) and Individual Permits (IP).
  - For a bank's corresponding secondary service area, credits could only be used to mitigate products authorized by NWP.
- Georgia Mitigation Bank Review Team. Undated. "Draft, Mitigation Bank Service Areas."
- <http://www.sas.usace.army.mil/regulatory/banking.html>

### **Mobile District, U.S. Army Corps of Engineers: Proximity Factors**

- In 2002, the Mobile District developed guidance for mitigation bank sponsors on how to calculate a proximity factor. Proximity factors are used to determine the replacement ratios that will be assigned to bank credits based on the hydrologic and ecological context.
- U.S. Army Corps of Engineers, Mobile District. April 2002. "Joint Federal/State Procedures for the Establishment and Operation of Wetland Mitigation Banks in the U.S. Army Corps of Engineers Mobile District." Draft.
- Explanation of proximity factors  
Go to RIBITS>Mobile District>Bank and ILF Establishment or refer to CD

### **Sacramento District, U.S. Army Corps of Engineers:**

- In 2010, Sacramento District issues guidance to be used in determining mitigation bank service areas. At a minimum, the service area will be the 10-digit watershed containing the bank site. Documentation and justification must be provided for expansion of the service area from the 10-digit watershed. The level of documentation and justification the sponsor must provide increases in a step-wise progression with each additional 10-digit watershed, or portion thereof. Additions where all of the following are true require minimal justification: a) areas abutting the 10-digit watershed in

which the Site is located, b) within the same 8-digit sub-basin as the Site and c) within the same ecoregion as the Site.

<http://www.spk.usace.army.mil/pub/outgoing/co/reg/pn/201000374-service-area-final-pn.pdf>

### **Virginia State Water Control Law**

- Virginia's State Water Control Law allows for the use of a mitigation bank as long as "(1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site" or if the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits "shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date."
- Va. Code § 62.1-44(15)(5)(E).  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15C23>