



A TRAINING COURSE FOR MITIGATION BANKING INTERAGENCY REVIEW TEAMS



Reference Document 16 Wetland Credit Release Schedules and Ecological Performance Standards

A. Wetland Credit Release Schedules

2008 Compensatory Mitigation for Losses of Aquatic Resources

§332.2 Definitions

Advance credits means any credits of an approved in-lieu fee program that are available for sale prior to being fulfilled in accordance with an approved mitigation project plan. Advance credit sales require an approved in-lieu fee program instrument that meets all applicable requirements including a specific allocation of advance credits, by service area where applicable. The instrument must also contain a schedule for fulfillment of advance credit sales.

Release of credits means a determination by the district engineer, in consultation with the IRT, that credits associated with an approved mitigation plan are available for sale or transfer, or in the case of an in-lieu fee program, for fulfillment of advance credit sales. A proportion of projected credits for a specific mitigation bank or in-lieu fee project may be released upon approval of the mitigation plan, with additional credits released as milestones specified in the credit release schedule are achieved.

Fulfillment of advance credit sales of an in-lieu fee program means application of credits released in accordance with a credit release schedule in an approved mitigation project plan to satisfy the mitigation requirements represented by the advance credits. Only after any advance credit sales within a service area have been fulfilled through the application of released credits from an in-lieu fee project (in accordance with the credit release schedule for an approved mitigation project plan), may additional released credits from that project be sold or transferred to permittees. When advance credits are fulfilled, an equal number of new advance credits is restored to the program sponsor for sale or transfer to permit applicants.

§332.8 Mitigation Banks and in-lieu fee programs.

(d) Review Process

(6) Draft instrument.

(iii) For a mitigation bank, a complete draft instrument must include the following additional information:

(B) A credit release schedule, which is tied to achievement of specific milestones. All credit releases must be approved by the district engineer, in consultation with the IRT,

based on a determination that required milestones have been achieved. The district engineer, in consultation with the IRT, may modify the credit release schedule, including reducing the number of available credits or suspending credit sales or transfers altogether, where necessary to ensure that all credit sales or transfers remain tied to compensatory mitigation projects with a high likelihood of meeting performance standards;

(iv) For an in-lieu fee program, a complete draft instrument must include the following additional information:

(B) Specification of the initial allocation of advance credits (see paragraph (n) of this section) and a draft fee schedule for these credits, by service area, including an explanation of the basis for the allocation and draft fee schedule;

(C) A methodology for determining future project-specific credits and fees...

(m) Credit withdrawal from mitigation banks. The mitigation banking instrument may allow for an initial debiting of a percentage of the total credits projected at mitigation bank maturity, provided the following conditions are satisfied: the mitigation banking instrument and mitigation plan have been approved, the mitigation bank site has been secured, appropriate financial assurances have been established, and any other requirements determined to be necessary by the district engineer have been fulfilled. The mitigation banking instrument must provide a schedule for additional credit releases as appropriate milestones are achieved (see paragraph (o)(8) of this section). Implementation of the approved mitigation plan shall be initiated no later than the first full growing season after the date of the first credit transaction.

(n) Advance credits for in-lieu fee programs.

(1) The in-lieu fee program instrument may make a limited number of advance credits available to permittees when the instrument is approved. The number of advance credits will be determined by the district engineer, in consultation with the IRT, and will be specified for each service area in the instrument. The number of advance credits will be based on the following considerations:

(i) The compensation planning framework;

(ii) The sponsor's past performance for implementing aquatic resource restoration, establishment, enhancement, and/or preservation activities in the proposed service area or other areas; and

(iii) The projected financing necessary to begin planning and implementation of in-lieu fee projects.

(2) To determine the appropriate number of advance credits for a particular service area, the district engineer may require the sponsor to

provide confidential supporting information that will not be made available to the general public.

Examples of confidential supporting information may include prospective in-lieu fee project sites.

(3) As released credits are produced by in-lieu fee projects, they must be used to fulfill any advance credits that have already been provided within the project service area before any remaining released credits can be sold or transferred to permittees. Once previously provided advance credits have been fulfilled, an equal number of advance credits is re-allocated to the sponsor for sale or transfer to fulfill new mitigation requirements, consistent with the terms of the instrument. The number of advance credits available to the sponsor at any given time to sell or transfer to permittees in a given service area is equal to the number of advance credits specified in the instrument, minus any that have already been provided but not yet fulfilled.

(4) Land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer determines that more or less time is needed to plan and implement an in-lieu fee project. If the district engineer determines that there is a compensatory mitigation deficit in a specific service area by the third growing season after the first advance credit in that service area is sold, and determines that it would not be in the public interest to allow the sponsor additional time to plan and implement an in-lieu fee project, the district engineer must direct the sponsor to disburse funds from the in-lieu fee program account to provide alternative compensatory mitigation to fulfill those compensation obligations.

(5) The sponsor is responsible for complying with the terms of the in-lieu fee program instrument. If the district engineer determines, as a result of review of annual reports on the operation of the in-lieu fee program (see paragraphs (p)(2) and (q)(1) of this section), that it is not performing in compliance with its instrument, the district engineer will take appropriate action, which may include suspension of credit sales, to ensure compliance with the in-lieu fee program instrument (see paragraph (o)(10) of this section). Permittees that secured credits from the in-lieu fee program are not responsible for in-lieu fee program compliance

332.8(o) (8) Credit release schedule.

(i) *General considerations.* Release of credits must be tied to performance-based milestones (e.g., construction, planting, establishment of specified plant and animal communities). The credit release schedule should reserve a significant share of the total credits for release only after full achievement of ecological performance standards. When determining the credit release schedule, factors to be considered may include, but are not limited to: The method of providing compensatory mitigation credits (e.g., restoration), the likelihood of success, the nature and amount of work

needed to generate the credits, and the aquatic resource type(s) and function(s) to be provided by the mitigation bank or in-lieu fee project. The district engineer will determine the credit release schedule, including the share to be released only after full achievement of performance standards, after consulting with the IRT. Once released, credits may only be used to satisfy compensatory mitigation requirements of a DA permit if the use of credits for a specific permit has been approved by the district engineer.

(ii) For single-site mitigation banks, the terms of the credit release schedule must be specified in the mitigation banking instrument. The credit release schedule may provide for an initial debiting of a limited number of credits once the instrument is approved and other appropriate milestones are achieved (see paragraph (m) of this section).

(iii) For in-lieu fee projects and umbrella mitigation bank sites, the terms of the credit release schedule must be specified in the approved mitigation plan. When an in-lieu fee project or umbrella mitigation bank site is implemented and is achieving the performance-based milestones specified in the credit release schedule, credits are generated in accordance with the credit release schedule for the approved mitigation plan. If the in-lieu fee project or umbrella mitigation bank site does not achieve those performance-based milestones, the district engineer may modify the credit release schedule, including reducing the number of credits.

(9) *Credit release approval.* Credit releases for mitigation banks and in-lieu fee projects must be approved by the district engineer. In order for credits to be released, the sponsor must submit documentation to the district engineer demonstrating that the appropriate milestones for credit release have been achieved and requesting the release. The district engineer will provide copies of this documentation to the IRT members for review. IRT members must provide any comments to the district engineer within 15 days of receiving this documentation. However, if the district engineer determines that a site visit is necessary, IRT members must provide any comments to the district engineer within 15 days of the site visit. The district engineer must schedule the site visit so that it occurs as soon as it is practicable, but the site visit may be delayed by seasonal considerations that affect the ability of the district engineer and the IRT to assess whether the applicable credit release milestones have been achieved. After full consideration of any comments received, the district engineer will determine whether the milestones have been achieved and the credits can be released. The district engineer shall make a decision within 30 days of the end of that comment period, and notify the sponsor and the IRT.

Examples of District Wetland Credit Release Schedules

Jacksonville District, U.S. Army Corps of Engineers. Joint state/federal Mitigation Bank Review Team Process, Section 5 Calculating Credits and Debits.
<http://www.saj.usace.army.mil/Divisions/Regulatory/DOCS/mj/jsfmbtrtp/sec5.pdf>

Mobile District, U.S. Army Corps of Engineers. "Habitat Success Criteria/Credit Release Schedule/Monitoring." Undated.
https://samribits.sam.usace.army.mil/bank_estab.php

San Francisco, Los Angeles, and Sacramento Districts, U.S. Army Corps of Engineers. "VII Credit Release, in Template Bank Enabling Instrument ." May 2008.
<http://www.spn.usace.army.mil/regulatory/PN/2008/MBEI.pdf>

Savannah District, U.S. Army Corps of Engineers. "Standard Credit Release Schedules for Mitigation Banks." March 2006.
<http://www.sas.usace.army.mil/APDX%20F%20Credit%20Release%20Schedule.pdf>

Wilmington District, U.S. Army Corps of Engineers.
"Wetland Credit Release Schedule." Undated.
<http://www.saw.usace.army.mil/wetlands/Mitigation/mitbanks.html#Wetland%20Credit%20Release%20Schedule>

"Framework for Mitigation Review in NC" April 2008.
http://www.saw.usace.army.mil/wetlands/Mitigation/2008-Updates/SAW-Mitigation-Framework4_22_08.pdf



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B. Ecological Performance Standards

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§332.2 Definitions

Performance standards are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

§332.4 Planning and documentation

(c) *Mitigation plan.* [The mitigation plan must include:]

(9) *Performance standards.* Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives. (See § 332.5.)

§332.5 Ecological performance standards.

(a) The approved mitigation plan must contain performance standards that will be used to assess whether the project is achieving its objectives. Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).

(b) Performance standards must be based on attributes that are objective and verifiable. Ecological performance standards must be based on the best available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position. The use of reference aquatic resources to establish performance standards will help ensure that those performance standards are reasonably achievable, by reflecting the range of variability exhibited by the regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where

practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.

2003 Model Compensatory Mitigation Plan Checklist

- Performance Standards
 - o Identify success criteria
 - o Compare functions lost and gained at impact and mitigation sites
 - o Describe soils, vegetation and hydrology parameter changes

5. Performance Standards

- a. Identify clear, precise, quantifiable parameters that can be used to evaluate the status of desired functions. These may include hydrological, vegetative, faunal and soil measures.(e.g., plant richness, percent exotic/invasive species, water inundation/saturation levels). Describe how performance standards will be used to verify that objectives identified in and 3(c) have been attained.
- b. Set target values or ranges for the parameters identified. Ideally, these targets should be mimic the trends and eventually approximate the values of a reference wetland(s).

Additional Resources:

Martin, Steven, Robert Brumbaugh, and Palmer Hough. March-April 2005. "Conceptualizing Mitigation Performance Standards." *National Wetlands Newsletter*. Washington, DC: Environmental Law Institute.

Nevel, Bonnie, Joan Milam, Gwen Arnold, and Rachel Harris. April 2004. *Measuring Mitigation: A Review of the Science for Compensatory Mitigation Performance Standards*. Washington, DC: Environmental Law Institute. See: http://www.elistore.org/reports_detail.asp?ID=10991

Washington State Department of Transportation. April 2008. "Writing Performance Measures and Performance Standards for Wetland Mitigation". <http://www.wsdot.wa.gov/NR/ronlyres/C3CBCEFE-6EA5-4818-9203-BEEBC774ED1A/0/WetMitWritingMeasuresStandards.pdf>

Washington State Department of Transportation. April 2008. "Woody Vegetation Performance Criteria for Wetland Mitigation Sites in Washington". <http://www.wsdot.wa.gov/NR/ronlyres/496AA0B1-8D4A-441E-80AE-9EC028EEEFB9/0/WetMitWdyPerfStandards.pdf>

Ossinger, Mary. 1999. Success Standards for Wetland Mitigation Projects – a Guideline. WSDOT. Environmental Affairs Office. <http://pnw.sws.org/forum/success.PDF>