

**A TRAINING COURSE FOR
MITIGATION BANKING AND IN-LIEU FEE PROGRAM
INTERAGENCY REVIEW TEAMS**



**Reference Document:
3rd Party Mitigation Oversight & Compliance**

A. Federal Policy

2008 Compensatory Mitigation Regulations

§ 332.2 Definitions.

Adaptive management

§332.4 Planning and documentation

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

(8) Maintenance plan.

(10) Monitoring requirements. (See § 332.6.)

(12) Adaptive management plan (See § 332.7(c).)

§332.6 Monitoring

(a) General.

(b) Monitoring period.

(c) Monitoring reports.

§ 332.7 Management.

(a) Site protection.

(b) Sustainability.

(c) Adaptive management.

(d) Long-term management.

§332.8 Mitigation banks and in-lieu fee programs.

(q) Reporting.

(1) Ledger account.

(2) Monitoring reports.

(3) Financial assurance and long-term management funding report

(u) Long-term management.

2003 Model Compensatory Mitigation Plan Checklist

- ☐ **Site Protection and Maintenance**
 - Maintenance plan and schedule
- ☐ **Monitoring Plan**
 - Provide monitoring schedule, identify party (ies) and responsibilities
 - Specify data to be collected, including assessment tools and methodologies
- ☐ **Adaptive Management Plan**
 - Identify party (ies) and responsibilities
 - Remedial measures (financial assurances, management plan, etc.)
- ☐ **Site Protection and maintenance**
 - Maintenance plan and schedule (e.g. measures to control predation/grazing of mitigation plantings, temporary irrigation for plant establishment, replacement planting, structure maintenance/repair, etc.).
- ☐ **Monitoring Plan**
 - Party(ies) responsible for monitoring. If more than one, identify primary party.
 - Data to be collected and reported, how often and for what duration (identify proposed monitoring stations, including transect locations on map).
 - Assessment tools and/or methods to be used for data collection monitoring the progress towards attainment of performance standard targets.
 - Format for reporting monitoring data and assessing mitigation status.
 - Monitoring schedule.
- ☐ **Adaptive Management Plan**
 - Party(ies) responsible for adaptive management.
 - Identification of potential challenges (e.g., flooding, drought, invasive species, seriously degraded site, extensively developed landscape) that pose a risk to project success. Discuss how the design accommodates these challenges.
 - Discussion of potential remedial measures in the event mitigation does not meet performance standards in a timely manner.
 - Description of procedures to allow for modifications of performance standards if mitigation projects are meeting mitigation goals, but in unanticipated ways.

2003 Operational Guidelines for Creating or Restoring Self-Sustaining Wetlands

§A. 5.: Conduct early monitoring as part of adaptive management.

B. Select District and State Mitigation and Monitoring Guidelines

Detroit District, U.S. Army Corps of Engineers. "Detroit District U.S. Army Corps of Engineers Mitigation Guidelines and Requirements." December 2008. (Includes guidance on monitoring and performance standards, and a mitigation plan checklist.)

New England District, U.S. Army Corps of Engineers. "New England District Mitigation Guidance." 2010. (Includes guidance on monitoring.)

Norfolk District, U.S. Army Corps of Engineers. "Norfolk District Corps and Virginia Department of Environmental Quality Recommendations for Wetland Compensatory Mitigation: Including Site Design, Permit Conditions, Performance and Monitoring Criteria." July 12, 2004.

South Pacific Division Regional Compensatory Mitigation and Monitoring Guidelines 2015 (Covers California, Utah, Nevada, New Mexico, Arizona, and western Colorado)

<http://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf>

ADDITIONAL RESOURCES:

Gardner, R. and T. R. Pulley. 2009. Corporate Shell Games: LLPs, LLCs, and Responsibility for Mitigation Sites. National Wetland Newsletter. 31(6):6-11

Gardner, R. 2012. Mitigation Banking and Reputational Risk. National Wetland Newsletter. 34(6):10-11

U.S. Army Corps of Engineers. October 10, 2008. *Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Creation, Restoration, and/or Enhancement of Aquatic Resources*. Regulatory Guidance Letter No. 08-03.

U.S. Government Accountability Office. September 2005. *Wetlands Protection: Corps of Engineers Does Not Have an Effective Oversight Approach to Ensure that Compensatory Mitigation is Occurring*. GAO-05-898.

