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U.S. Army Corps of Engineers
Regulatory Division
Alaska District

Mitigation in Alaska for Regulatory Permitted Activities



Summary of New Mitigation Rule

On April 10, 2008, the United States Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) published a new rule, entitled "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule". The rule became effective on June 9, 2008. The rule emphasizes the sequence to be followed for mitigating impacts to aquatic resources that result from work authorized by permit under the Corps Regulatory Program. All practicable steps to avoid and/or minimize impacts to aquatic resources must be taken before proposing compensatory mitigation to offset project impacts. The rule establishes standards and criteria for all types of compensatory mitigation, including mitigation banks, in-lieu fee (ILF) mitigation, and permittee-responsible mitigation, to offset authorized unavoidable impacts to waters of the United States (U.S.), including wetlands.

Mitigation Sequence

Avoid—Describe how, in your project planning process, you will avoid impacts to waters of the U.S. to the maximum extent practicable. Examples of avoidance measures include, but are not limited to, site selection, use of alternate routes, and modification of design configurations.

Minimize—Describe how your project design will incorporate measures that minimize unavoidable impacts to waters of the U.S. by limiting discharges of fill to the minimum amount/size necessary to achieve the project purpose.

Compensatory Mitigation—Once all efforts to avoid and minimize impacts have occurred, remaining impacts may be offset by compensatory mitigation. Describe how your proposed compensatory mitigation would offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project.

Mitigation Sequence (Continued)

Compensatory mitigation involves actions taken to offset authorized unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources (aquatic sites) authorized. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic resources.

What you are responsible for as an applicant

Pre-application meetings (recommended)

Nationwide Permit (NWP) Pre-Construction Notifications: Provide information as required by General Condition 20 of the NWPs with your pre-construction notification.

Standard Department of the Army (DA) Permit Application: Submit a mitigation statement with your application that describes how you will avoid and minimize impacts to waters of the U.S. **AND** include a compensatory mitigation plan.

Provide rationale that describes how your choice of compensatory mitigation will compensate for the impacts to the aquatic resource as a result of your project **OR** rationale as to why compensatory mitigation is not necessary.

If you are proposing compensatory mitigation by purchasing credits from a mitigation bank or paying an ILF, it is your responsibility to contact the bank or ILF sponsor for estimates.

In-kind/Out-of-kind, On-site/Off-site

While considering the type and the amount of mitigation to propose, consideration is given to the location of the mitigation in comparison to the location of the impacts and the type of waters of the U.S. to be improved in comparison to the type of waters of the U.S. to be impacted. The amount of mitigation proposed must be appropriate for the types of impacts and size of impacts that will be authorized.

Types of Compensatory Mitigation

Compensatory mitigation can be accomplished through one type of mitigation or a combination of types.

The following are the types of compensatory mitigation available:

- MITIGATION BANKS
- IN-LIEU FEE MITIGATION
- PERMITTEE-RESPONSIBLE MITIGATION

Mitigation Banks

Defined as a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.

All mitigation banks must have an approved banking instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits. Development of a mitigation bank requires site identification in advance, project-specific planning, and significant investment of financial resources.

When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

For information on the currently approved mitigation banks in your project area, please contact your local Corps office.

Types of Compensatory Mitigation (Continued)

In-Lieu Fee Mitigation

Defined as a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits.

All ILF programs must have an approved instrument signed by the sponsor and the district engineer prior to being used to provide compensatory mitigation for DA permits.

Similar to a mitigation bank, when permitted impacts are located within the service area of an approved ILF program, and the ILF has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.

For information on the current in-lieu fee programs in your project area, please contact your local Corps office.

Permittee-Responsible Mitigation

This is an aquatic resource restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

The four types of permittee-responsible mitigation include:

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions (e.g. flood retention, etc.) to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Types of Compensatory Mitigation (Continued)

Establishment means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

A mitigation plan for permittee-responsible mitigation should include:

- Objectives
- Site Selection Criteria
- Site Protection Instrument
- Baseline Information
- Determination of Credits
- Mitigation Work Plan
- Maintenance Plan
- Performance Standards
- Monitoring Requirements
- Long-term Management Plan
- Adaptive Management Plan
- Financial Assurances
- Other relevant information

Resources

Corps Alaska District Webpage:
<http://www.poa.usace.army.mil/reg/>

Corps Compensatory Mitigation Webpage:
http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/final_mitig_rule.pdf

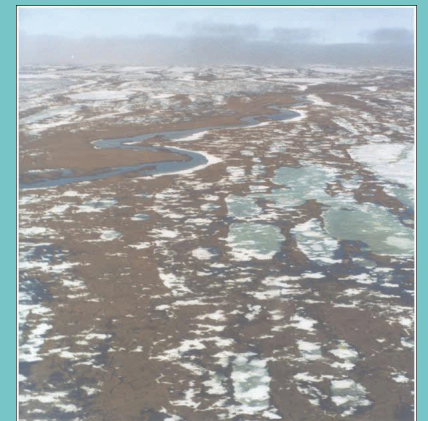
EPA Compensatory Mitigation Webpage:
<http://www.epa.gov/wetlandsmitigation/>

Questions and Answers about Compensatory Mitigation Rule:
http://www.usace.army.mil/CECW/Documents/cecwo/reg/news/comp_mitig_finalrule_qa.pdf

Wetlands Compensatory Mitigation Rule Fact Sheet:
<http://www.epa.gov/owow/wetlands/pdf/MitigationRule.pdf>

Mitigation Banking Fact Sheet:
<http://www.epa.gov/owow/wetlands/facts/fact16.html>

Guidelines for Specification of Disposal Sites for Dredged or Fill Material (404(b)(1) Guidelines):
<http://www.epa.gov/owow/wetlands/pdf/40cfrPart230.pdf>



Wetlands on Alaska's North Slope