



US Army Corps
of Engineers
Alaska District

Special Public Notice

SUBJECT: Service area guidance for mitigation banks and in-lieu fee programs operating in the U.S. Army Corps of Engineers, Alaska District

PUBLIC NOTICE DATE: October 31, 2013

EXPIRATION DATE: November 15, 2013

REFERENCE NUMBER: SPN-2013-599

PURPOSE: Due to the increased interest in compensatory mitigation in Alaska, the need for consistency (where appropriate) is evident. In an effort to provide direction for the regulated public, mitigation bank sponsors, and in-lieu fee program sponsors, the U.S. Army Corps of Engineers, Alaska District (Corps) has drafted the following guidance for establishing service areas for mitigation banks and in-lieu fee programs proposing credits to compensate for losses under Section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act of 1899. It is the Corps' intent to apply a watershed approach to approval of new mitigation bank and in-lieu fee sites immediately. This notice and service area example is to inform interested parties of the new guidance and request comments. This notice may also be viewed at the Corps website: www.poa.usace.army.mil/Missions/Regulatory/SpecialPublicNotices. Comments on this draft guidance should be sent to **Ms. Nicole Hayes** via e-mail at nicole.m.hayes@usace.army.mil, or mail at U.S. Army Corps of Engineers, Regulatory Division, CEPOA-RD, Post Office Box 6898, JBER, Alaska 99506.

AUTHORITY: Compensatory Mitigation for Losses of Aquatic Resources, 33 Code of Federal Regulations (CFR) Part 332 (Mitigation Rule)

LOCATION: All mitigation bank and/or in-lieu fee sites proposed throughout the State of Alaska

BACKGROUND: A service area is the watershed, eco-region, 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 permits¹. 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 (33 CFR 332.8(d)(6)(ii)(A)).

The Mitigation Rule requires the Corps and the Environmental Protection Agency to take a watershed approach to compensatory mitigation. A watershed approach is intended to maintain and improve the quality and quantity of aquatic resources within watersheds through

¹ In determining the appropriate compensatory mitigation to offset DA permitted impacts, the district engineer will adhere to the general compensatory mitigation requirements outlined in 33 CFR 332.3

strategic selection of compensatory mitigation sites. Therefore, the primary factor the Corps will use when determining service areas will be based on the U.S. Geological Survey Hydrological Unit Codes (HUC) which are mapped to identify sub-regions and watersheds.

GUIDELINES: In Alaska, establishment of service areas will follow these guidelines unless site specific circumstances warrant deviation from them. If site specific circumstances warrant deviation from these guidelines, the mitigation bank or in-lieu fee sponsor shall provide supporting documentation to justify this. All proposed service areas will be reviewed by the IRT and approved by the Corps. Each approved mitigation bank site or in-lieu fee project for umbrella instruments will have its own service area identified in the umbrella mitigation bank instrument or the in-lieu fee program instrument that correspond to the guidance below. As a result, the in-lieu fee program or mitigation bank site may not provide compensation throughout the advance credit service area identified in the in-lieu fee program instrument or general service area in the Umbrella Mitigation Bank Instrument.

1. Primary Service Areas². The primary service area is the designated geographic area, as described above, wherein a mitigation bank or in-lieu fee program can reasonably be expected to provide appropriate compensation for impacts to aquatic resources. For purposes of addressing Corps mitigation requirements, a mitigation bank's or in-lieu fee program's primary service area will have priority over any other approved mitigation bank's or in-lieu fee program's secondary or tertiary service areas, where appropriate credits are available.

In the Municipality of Anchorage, the primary service areas shall be established using a 10-digit HUC (watershed). In all other regions, the primary service areas shall be established using an 8-digit HUC (sub-basin) (see attached Service Area Guidance Example).

2. Secondary Service Areas. The secondary service area is the designated geographic area wherein a mitigation bank or in-lieu fee program can reasonably be expected to provide appropriate compensation for impacts to aquatic resources.

The secondary service area may be utilized for compensatory mitigation for any DA permit if: there are no available credits at any primary service area mitigation banks or in-lieu fee programs; and the applicant can demonstrate with supporting documentation that the credits in the secondary service area will compensate for the lost aquatic functions at the impact site.

In the Municipality of Anchorage, the secondary service areas shall be established using an 8-digit HUC (sub-basin). In all other regions, the secondary service areas shall be established using a 6-digit HUC (basin).

3. Umbrella Service Areas. For the purpose of this document, the umbrella service area is the maximum designated geographic area wherein an umbrella mitigation bank or in-lieu fee program can reasonably be expected to provide compensation for impacts to wetlands, streams, stream corridors, and/or other aquatic resources.

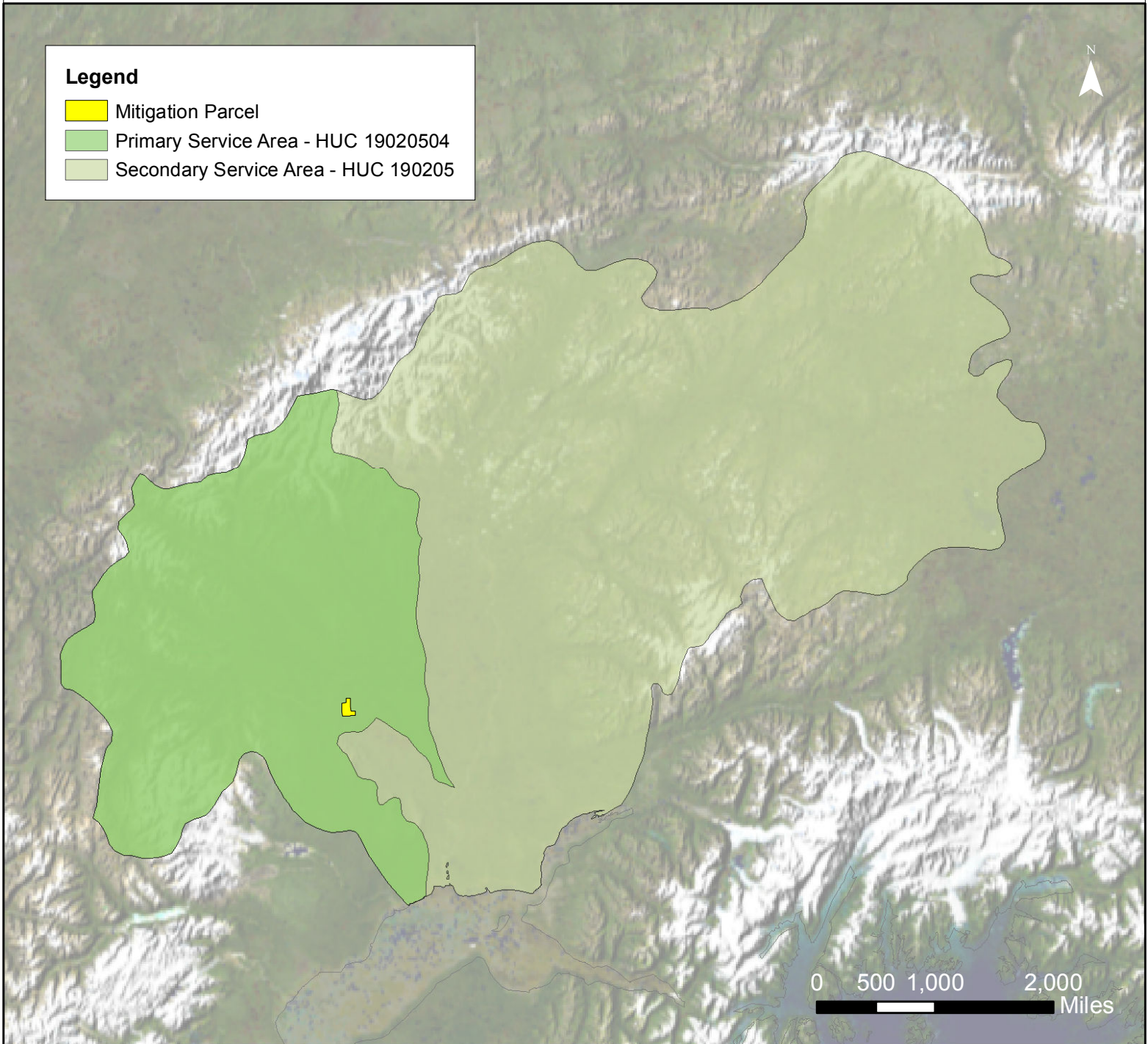
The umbrella service area shall be established using a 4-digit HUC, eco-region, or similar approach determined to be more appropriate through consultation with the IRT and approval

² In accordance with Mitigation Rule (33 CFR 332.3(b)(2)), preference will be given to mitigation bank credits, unless the in-lieu fee program has released credits, or the district engineer determines an alternative to mitigation bank credits to be environmentally preferable (33 CFR 332.3(a)(1)).

by the Corps. Advanced credits not associated with an in-lieu fee project site may be utilized for compensatory mitigation for any DA permit if there are not available credits of the type and/or amount in the primary or secondary service area of a mitigation bank or in-lieu fee program.

Attachment

Service Area Guidance Example



According to the proposed service area guidance for the Alaska District, the Primary Service Area would be based upon the Lower Susitna River sub-basin, which is an 8-digit HUC, and the Secondary Service Area would consist of the larger Susitna River basin, which is a 6-digit HUC.

This example does not represent an actual third-party mitigation provider and has been included for reference purposes only.

