

Corps / EPA Compensatory Mitigation Rule General Mitigation Requirements



Regulatory Branch
U.S. Army Corps of Engineers

Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency

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Complete Application

(33 CFR 325.1)

Mitigation statement required for individual §404 permit applications

- Mitigation statement: how avoidance, minimization, & compensation will be accomplished.



General Considerations

(33 CFR 332.3(a))

- Objectives
 - Offset impacts
 - Practicable
 - Environmentally preferable
- Commensurate with impacts
- Methods
 - Restoration*
 - Enhancement
 - Establishment
 - Preservation



Type & Location of Mitigation

(33 CFR 332.3(b))

Within same watershed as impact AND where most likely to replace lost functions

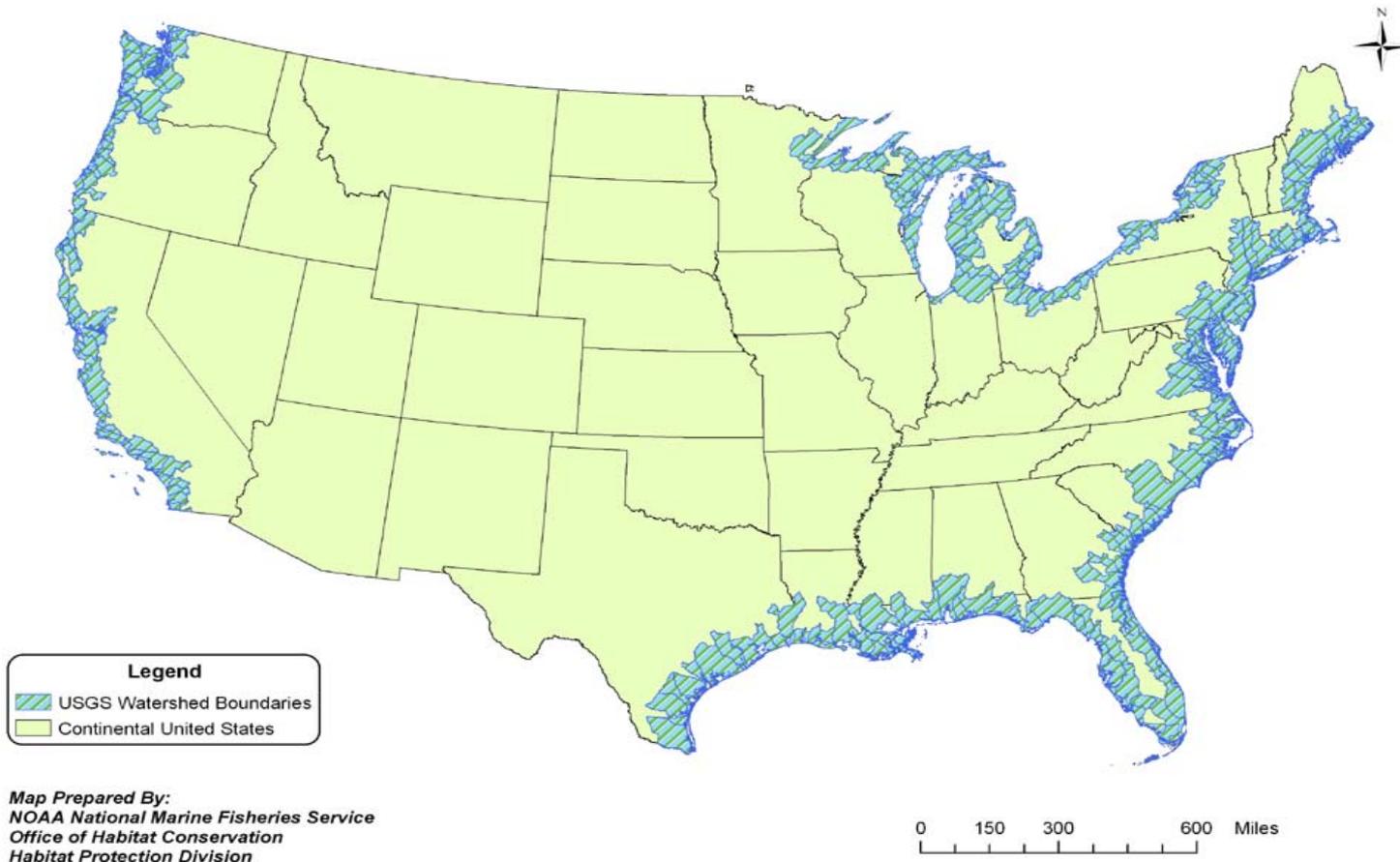
- Consider:
 - Habitat diversity
 - Connectivity
 - Land use trends
 - Compatibility with adjacent uses
- Marine resources
- Risks to aviation
- Coastal Watersheds





Defining “Coastal”

Figure 1: Coastal Watersheds Based Upon U.S. Geological Survey Hydrologic Units.





Coastal Wetlands Trends 1998-2004 (including Great Lakes)

- Average annual net loss of 59,000 acres
- Freshwater wetlands experienced 82% of that loss
- About 70% of the loss was to development
- The Gulf of Mexico experienced the majority of the wetland loss

Preference Hierarchy for Mitigation *(33 CFR 332.3(b))*

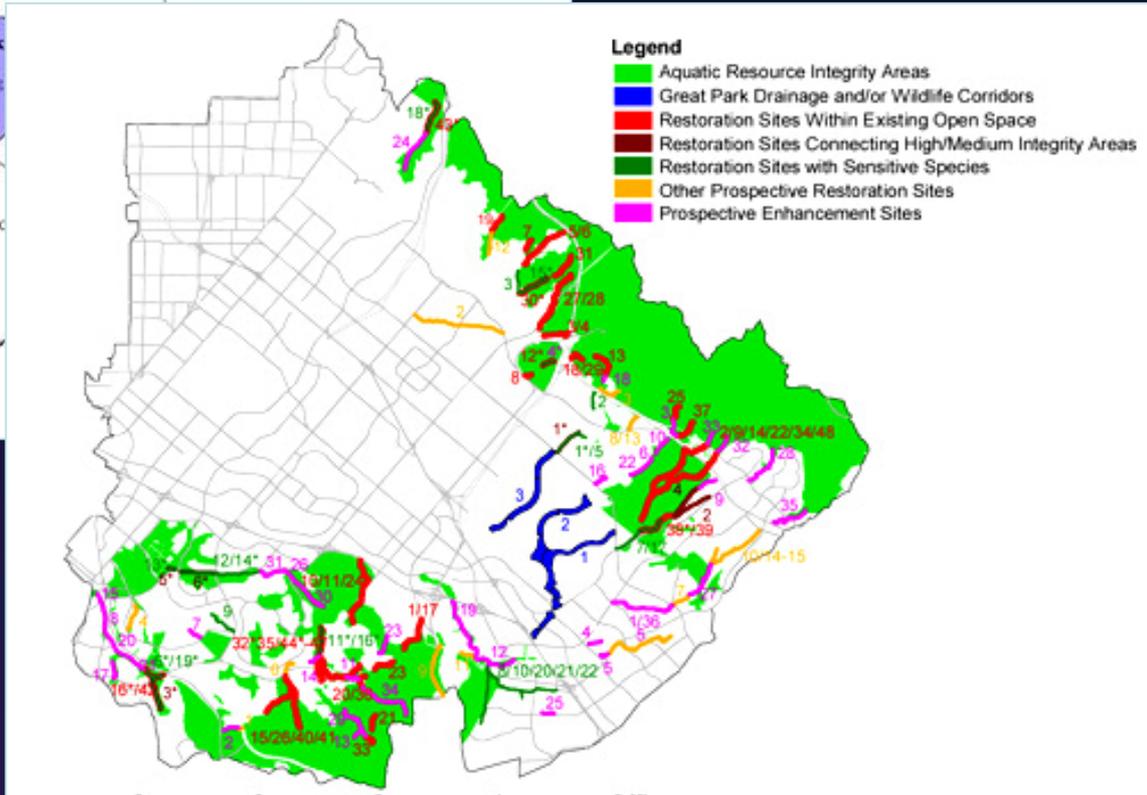
1. Mitigation Bank credits
2. In-Lieu Fee program credits
3. Permittee-responsible mitigation under a watershed approach
4. On-site and/or in-kind permittee-responsible mitigation
5. Off-site and/or out-of-kind permittee-responsible mitigation

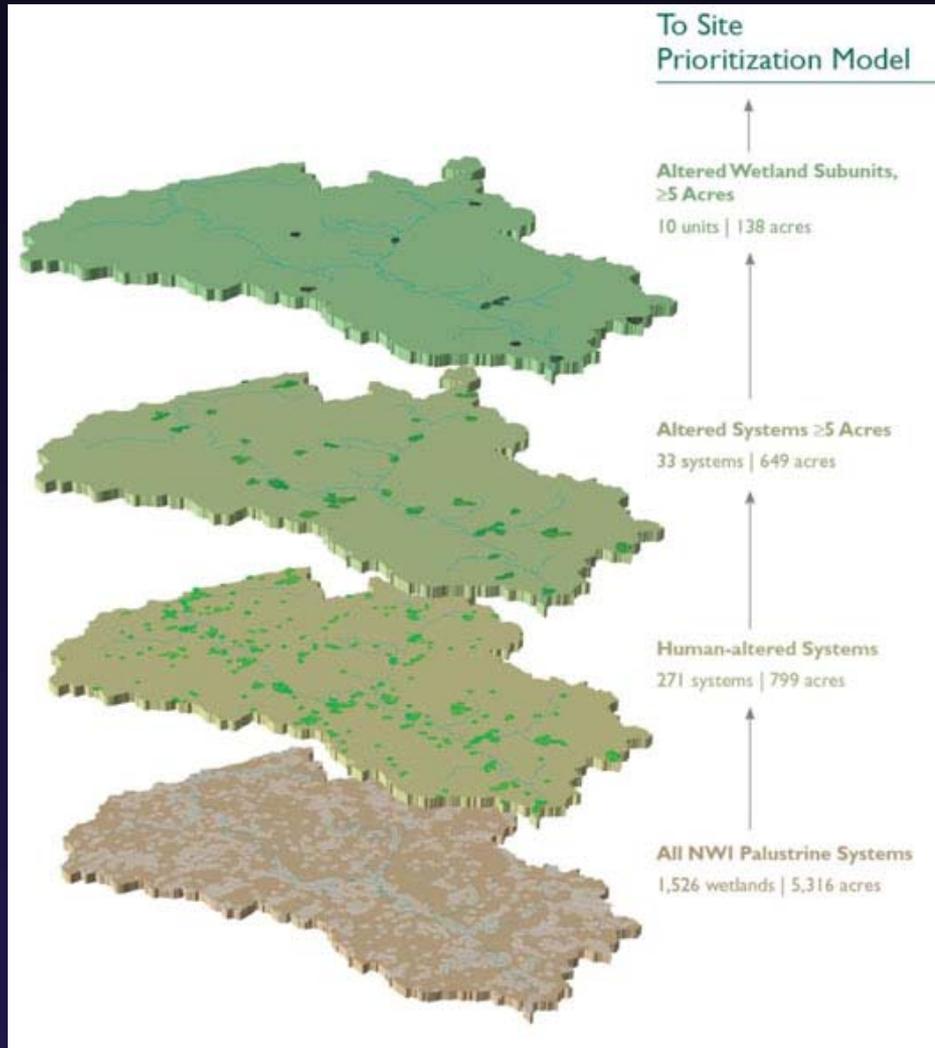


Watershed Approach to Mitigation *(33 CFR 332.3(c))*

- Existing watershed plans
- Without suitable plan, use available information on condition and needs
- Consider landscape position and sustainability
- Provide suite of functions
- Level of information and analysis commensurate with impacts







New Hampshire ILF Program – Merrimack River Watershed

Site must be > 5 ac

Consider:

- Ecological integrity
- Significant habitat
- Flood flow control potential
- Groundwater use potential
- Water quality functions
- Sustainability
- Landscape position



General Mitigation Requirements

(33 CFR 332.3(d) & (e))

- Mitigation type
 - In-kind preferred
 - Difficult to replace resources (e.g. bogs, fens, streams)
- Timing
- Amount of compensation
 - 1:1 minimum
- Temporal Losses



General Considerations and Requirements *(33 CFR 332.3(d) & (i))*

- Site selection

1. Physical & chemical characteristics
2. Watershed scale features
3. Size & location
4. Adjacent land use
5. Foreseeable effects of project



- Buffers

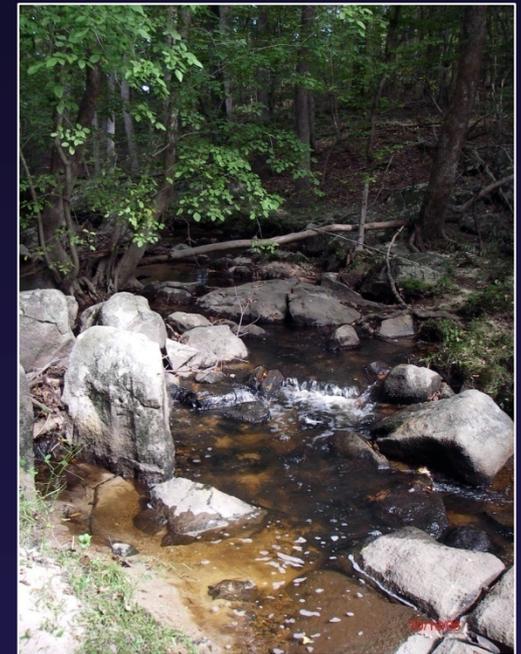


General Mitigation Requirements

(33 CFR 332.3(h))

Preservation – Requirements:

1. Provides important functions
2. Contributes to watershed sustainability
3. Appropriate & practicable
4. Permanently protected
5. Under threat of destruction or adverse modification



* Preferably in conjunction with restoration and other methods



General Considerations and Requirements *(33 CFR 332.3(j))*

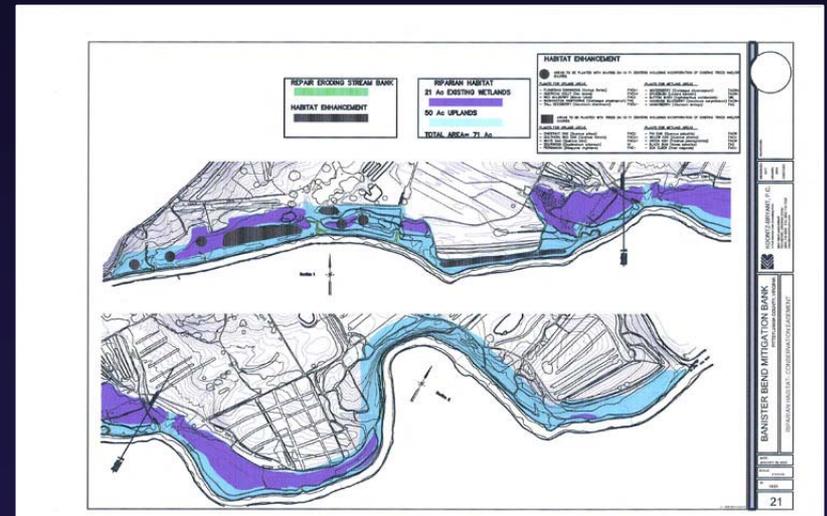
- Mitigation may be sited on public or private lands
- Other F/S/T/L programs
 - Must fully offset 404 impacts
 - No “double dipping”
- Federally funded projects (e.g., WRP, Partners for Wildlife) may not generate compensation credits
 - “Supplemental” projects



Mitigation Plan Components

(33 CFR 332.4(c))

1. Objectives
2. Site protection instrument
3. **Baseline information**
4. Work plan
5. Maintenance plan
6. Performance standards
7. Monitoring requirements
8. Financial assurances
9. **Site selection factors**
10. **Credit determination**
11. **Long-term management plan**
12. **Adaptive management plan**



General Considerations and Requirements *(33 CFR 332.3(k))*

- Enforceable permit conditions
 - Individual permits – final mitigation plan approved prior to permit issuance
 - General permit – final mitigation plan approved prior to initiating work
- If using mitigation bank or ILF program, provide:
 - Baseline (Impact) information
 - Determination of credits
- Financial assurances – “high level of confidence”



Ecological Performance Standards

(33 CFR 332.5)

- Objective and verifiable
- Based on best available science assessed in a practicable manner
- Enforceable



Enforceable Performance Standards must:

- Focus on a measurable outcome
NOT completion of an action
- Include clear measures:
 - Qualitative or
 - Quantitative



Monitoring *(33 CFR 332.6)*

- To determine if project is meeting performance standards



Mitigation plan must include:

- Parameters to be monitored
- Length of monitoring period
- Party responsible
- Content of monitoring reports
- Frequency of submittal



Management of Mitigation Projects

(33 CFR 332.7)

- Site protection
- Maintenance Plan
- Long-term management
 - Identify responsible party
 - If long-term management is required, funding arrangements must be described



Adaptive Management Plan

(33 CFR 332.7(c))

- Plan
- Construction
- Performance standards
- Monitoring
- Management activities



Questions?

