



US Army Corps
of Engineers®

**12505-SPD
REGULATORY PROGRAM
UNIFORM PERFORMANCE STANDARDS
FOR COMPENSATORY MITIGATION
REQUIREMENTS**



**South Pacific
Division**

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1.0 Purpose. The purpose of this document is to outline the procedure for use of uniform performance standards associated with permittee-responsible compensatory mitigation requirements as required for processing of Department of the Army (DA) permits, and for the development of mitigation banks and in lieu fee programs, under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

2.0 Applicability. This process applies to the Regulatory Program within South Pacific Division (SPD), including its four subordinate districts, Albuquerque District (SPA), Sacramento District (SPK), Los Angeles District (SPL) and San Francisco District (SPN). Subordinate offices or organizations shall not modify this procedure to form a specific (local) procedure.

3.0 References.

Ambrose, R.F., Callaway, J. C., and S. F. Lee. 2007. An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State

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Water Resources Control Board, 1991-2002. Prepared for California State Water Resources Control Board. 158 pp.

Compensatory Mitigation for Losses of Aquatic Resources (33 C.F.R. Part 332).

Environmental Law Institute. 2004. Measuring Mitigation: A Review of the Science for Compensatory Mitigation Performance Standards. Washington D.C.

Gardner, R.C., Zedler, J., Redmond, A., Turner, R.E., Johnston, C. A., Alvarez, V. R., Simenstad, C. A., Prestegard, K. L., and W. J. Mitsch. 2009. Compensating for Wetland Losses Under the Clean Water Act (Redux): Evaluating the Federal Compensatory Mitigation Regulation. National Wetlands Newsletter, Vol. 31, No. 2, pp. 2-7, 20.

National Academy of Sciences. 2001. Compensating for Wetland Losses Under the Clean Water Act. NATIONAL ACADEMY PRESS 2101 Constitution Avenue, N.W. Washington, D.C. 20418. 332 pp.

Streever, B. 1999. "Examples of performance standards for wetland creation and restoration in Section 404 permits and an approach to developing performance standards." WRP Technical Notes Collection (TN WRP WG-RS-3.3). U.S. Army Engineer Research and Development Center, Vicksburg, MS.

4.0 Related Procedures.

[12501-SPD Standard Operating Procedure for Determination of Mitigation Ratios.](#)

5.0 Definitions.

Compensatory mitigation - The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Condition - The relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.

Enhancement - 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.

Establishment (creation) - 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.

Functions - The physical, chemical, and biological processes that occur in ecosystems.

Impact - Adverse effect.

In-kind - A resource of a similar structural and functional type to the impacted resource.

In-lieu fee program - 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. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

Mitigation bank - 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. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.

Out-of-kind - A resource of a different structural and functional type from the impacted resource.

Permittee-responsible mitigation - An aquatic resource restoration, establishment, 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.

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

Preservation - 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.

Re-establishment - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-

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establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Reference aquatic resource- reference aquatic resources are a set of aquatic resources that represent the full range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. A reference site may be an aquatic resource site within the same watershed, a site up- or downstream along the same river or stream reach or within the same wetland complex, or multiple, within-watershed reference sites, possibly as part of a reference network. A reference site should be similar to the targeted mitigation site condition and generally represent least-disturbed conditions.

Rehabilitation- The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration - The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.

Temporal loss - The time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site. Higher compensation ratios may be required to compensate for temporal loss. When the compensatory mitigation project is initiated prior to, or concurrent with, the permitted impacts, the district engineer may determine that compensation for temporal loss is not necessary, unless the resource has a long development time.

Watershed - A land area that drains to a common waterway, such as a stream, lake, estuary, wetland, or ultimately the ocean.

6.0 Responsibilities.

Regulatory Project Managers (PMs): For any actions where the PM determines Permittee-responsible compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources, or in review and approval of a mitigation bank or in lieu fee program, he/she must follow the procedures provided herein to select appropriate performance standards. PMs must also complete the uniform performance standard worksheet and include it in the administrative record.

7.0 Procedures.

Historically, the South Pacific Division (SPD) Regulatory Program has lacked a standardized procedure or guidance for determining compensatory mitigation performance standards as required for processing of Department of the Army (DA) permits under Section 404 of the Clean

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Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act. In addition, the 2008 mitigation rule (33 C.F.R. Part 332) does not provide a detailed procedure for determining performance standards. To address this long-standing need, a multi-district Project Delivery Team (PDT) was formed to develop a regional procedure for determining and documenting compensatory mitigation performance standards, as well as accompanying guidance for Regulatory project managers. The purpose of this, regional procedure is to increase consistency between project managers, offices, and districts in determining compensatory mitigation performance standards, to incorporate current scientific understanding of mitigation concepts, and to require documentation of these key decisions, thereby reducing uncertainty on behalf of the regulated community regarding compensatory mitigation requirements. In addition, this procedure incorporates recommendations of various outside reports/studies calling for expansion of performance standards beyond the traditionally flora-based standards.

7.1 A PM receives a complete permit application, or a specific mitigation bank or in lieu fee program proposal, including a statement describing how compensatory mitigation is going to be developed and/or impacts to waters of the United States are to be compensated for (hereinafter referred to as a “compensatory mitigation proposal”). Alternatively permit applicants may include a statement explaining why compensatory mitigation should not be required for the proposed impacts. Permit applicants may provide a conceptual mitigation plan as part of the permit application. The PM should ascertain if other agencies plan to require compensatory mitigation for impacts to aquatic resources, wildlife habitat, and/or specific special status biota. In those situations, consideration may be given to the development of a unified mitigation plan with integrated performance standards.

7.2 Upon evaluation of the permit application, a PM may determine compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources, and shall review the compensatory mitigation proposal or plan, if provided (or request a proposal or plan for review, if none was provided). If the compensatory mitigation proposal or plan does not contain sufficient information to determine appropriate performance standards, or the proposed mitigation is not appropriate, the PM will request a revised compensatory mitigation proposal or plan (such plan being conceptual, detailed or draft, as appropriate, for general permits (GP), and draft for standard individual permits). An acceptable mitigation plan must identify both the proposed mitigation site(s) and the corresponding reference site(s), if applicable, as well as proposed performance standards.

7.3 The PM will complete the SPD uniform performance standards worksheet (attachment 12505.2) using the applicant’s compensatory mitigation proposal or plan and the SPD Uniform Performance Standards Table (attachment 12505.1). A separate worksheet shall be used for each mitigation site and its corresponding reference site; however, multiple mitigation sites of one habitat type (Cowardin system) may be lumped together using one worksheet. For guidance on completing the worksheet, see attachments 12505.3 (examples) and 12505.4 (training presentation).

7.3.1 The PM will enter basic project information (name, DA No., date) and information about the mitigation site and corresponding reference site (Cowardin type, geographic coordinates).

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7.3.2 The PM will enter the objective(s) of the mitigation project, taking into consideration the watershed approach described at 33 CFR 332.3(c). Objectives may include improvement of habitat conservation/biodiversity, water storage/flow attenuation, water quality, and/or specific aquatic resource functions (e.g., rates of nutrient processing).

7.3.3 The PM will indicate the mitigation type (re-establishment, establishment, rehabilitation, or enhancement). If enhancement is selected, the PM will indicate the function(s) to be increased by completing box three of the SPD uniform performance standards worksheet.

7.3.4 The PM will enter the primary type(s) of site treatment. These include introduction of plant materials, invasive species control, hydrological manipulation, and topographic/substrate manipulation.

7.3.5 The PM will indicate the applicable aquatic resource type (riverine, depressional wetland, tidal wetland, slope wetland).

7.3.6 The PM will select all applicable performance standard categories (hydrologic, physical, fauna, flora, water quality (ecological)). While some performance standard categories may not be applicable to all aquatic resource types and/or mitigation types, in general, project managers should strongly consider selecting all categories (except for water quality which should be selected when specific water quality concerns are present), with the exception of cases where the mitigation type is to be enhancement, as enhancement by definition only increases one or a few functions. For re-establishment, establishment, and rehabilitation, selection of all performance standard categories will ensure that functional lift is measured across the full range of functions.

7.3.7 Using selections from steps 7.3.2 through 7.3.4, the PM shall insert applicable performance standards and targets from the SPD Uniform Performance Standards Table (attachment 12505.1) into the subsequent worksheet rows (H-1 through W-4, etc.). The PM may add additional table sheets if more performance standards than can fit onto the two-page worksheet are necessary. The PM may deviate from the performance standards and targets contained in the SPD Uniform Performance Standards Table (attachment 12505.1); however, alternative performance standards must be both measurable and enforceable. If in doubt, a project manager should consult his/her supervisor, a senior project manager, or any member of the uniform performance standards PDT.

7.4 The PM will notify the applicant of the performance standards determination. If the performance standards are different than those proposed by the applicant, the applicant may either (a) agree to the Corps' performance standards and submit a revised, draft mitigation plan for the Corps' review and approval; or (b) submit alternative, proposed performance standards for evaluation by the PM. Once the PM has made a final determination on the performance standards to be required, the PM will prepare a final worksheet.

7.5 Once final performance standards have been determined, the PM will then review and comment on the adequacy of the mitigation plan in accordance with 33 C.F.R. 332.4(c) and any subsequent mitigation and monitoring guidelines.

7.6 The final worksheet must be included in the final mitigation plan, and/or as an attachment to and by special condition in the permit/verification letter (the preference is for the worksheet to be included in both).

8.0 Records and Measurements.

8.1 All documents listed above will be filed in the corresponding project files in accordance with [ES-QMS140, Records Management](#).

Type	Description	Responsible Office	Location	Record Media	Retention	Disposition
R	Uniform Performance Standard Worksheet	Regulatory Divisions within SPD Districts/Field Offices	Project file folders in filing cabinets Regulatory Divisions within SPD Districts; Electronic Checklists in ORM Database	P/E	7 years	Send to records holding

8.2 The Final Performance Standards Worksheet shall be included in the administrative record.

8.3 The SPD Regulatory Program Manager and District Regulatory Division management shall periodically inspect project files to ensure compliance with this guidance.

9.0 Attachments.

[12505.1-SPD Uniform Performance Standards Table](#)

[12505.2- SPD Uniform Performance Standards Worksheet](#)

[12505.3-SPD UPS Examples](#)

[12505.4-SPD Mitigation UPS Training Presentation](#)

10.0 Flow Chart.

