



**US Army Corps  
of Engineers**



## **Alaska Statewide Interagency Review Team (SIRT) for Compensatory Mitigation Roles and Responsibilities Agreement August 2013**

### **Introduction**

The Clean Water Act (CWA) is the primary federal law in the United States governing water pollution. CWA Section 404 establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The Section 404(b)(1) Guidelines adopted in 1980 by the U.S. Environmental Protection Agency (EPA) state that: “[N]o discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. Subpart H identifies such possible steps.” [40 CFR § 230.10(d)]. Subpart H identifies 40 categories of possible steps to mitigate (i.e., avoid, minimize, and compensate) for adverse impacts. [40 CFR §§ 230.70-.77].

Mitigation within the Section 404 permitting program is a sequence of actions that must be followed to minimize impacts to aquatic resources. The 1990 Memorandum of Agreement between the U.S. Army Corps of Engineers (Corps) and EPA formalized the three-part process known as the mitigation sequence for proposed discharges of dredge or fill materials into waters of the United States. The sequence is to first avoid, then minimize, and finally to compensate for adverse impacts to aquatic resources.

In 2008, EPA and the Corps jointly adopted new regulations entitled *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule* (2008 Mitigation Final Rule). [73 Fed. Reg. 19594 (April 10, 2008)]. The 2008 Final Mitigation Rule established new standards to promote no net loss of wetlands by improving wetland restoration and protection policies, increasing the effective use of wetland mitigation banks and strengthening the requirements for the use of in-lieu fee (ILF) mitigation. These new compensatory mitigation standards emphasize best available science, promote innovation and focus on results. The 2008 Mitigation Final Rule follows the recommendations of the National Research Council report entitled *Compensating for Wetland Losses Under the Clean Water Act*, by establishing equivalent and effective standards for all forms of compensatory mitigation projects under the CWA.

### **Interagency Review Team**

As defined in the 2008 Mitigation Final Rule, *Interagency Review Team* (IRT) means an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the Corps district engineer on, the establishment and management of mitigation banks and ILF programs.

The IRT also advises the district engineer in assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to mitigation bank and ILF instruments. [33 CFR § 332.8(b)(3) and 40 CFR § 230.98(b)(3)]. The district engineer retains final authority for approval of the instrument in cases where the mitigation bank or ILF program

is used to satisfy compensatory mitigation requirements of Corps permits. [33 CFR § 332.8(b)(4) and 40 CFR § 230.98(b)(4)].

The Alaska District's practice has been to convene Individual IRTs to review each proposed mitigation bank and ILF mitigation program. Individual IRT members assist in the development of the mitigation banking or ILF program instruments and provide input to the Corps regarding whether proposed mitigation banks and ILF programs should be approved. Decisions regarding the approval of mitigation bank and ILF program instruments are made by the Corps pursuant to the 2008 Mitigation Final Rule.

### **Purpose of an Alaska Statewide IRT (SIRT)**

The purpose of the SIRT is to address compensatory mitigation issues of broad or statewide applicability (e.g., implementation of a watershed approach, credit calculation and the use of functional assessments), in order to provide consistency between the Individual IRTs. The SIRT may also serve as a forum to discuss consistency for compensatory mitigation required under independent state and federal authorities (e.g., for impacts to Endangered Species Act (ESA) species or to Section 4(f) resources under the Department of Transportation Act of 1966) and appropriate consideration of the May 13, 1994 Joint EPA-Corps Memorandum, *Statements on the Mitigation Sequence and No Net Loss of Wetlands in Alaska*.

### **Goals of the SIRT**

1. Seek overall improvement in the success of compensatory mitigation by recommending processes and guidelines that are scientifically defensible, efficient to implement, and address issues of statewide applicability in order to provide consistency among the Individual IRTs.
2. Facilitate the efficiency and effectiveness of mitigation bank and ILF instruments and their development using consistent processes and procedures.
3. Reduce the burden on and provide predictability for bank/ILF sponsors, IRT members, and permit applicants.
4. Increase the consistency of how compensatory mitigation is performed, not only between individual banks and ILF programs, but potentially between various mitigation categories based on resource (e.g., stream versus marine) or project (e.g., airports versus oil infrastructure) type.

### **Objectives of the SIRT**

1. Identify and recommend to agency managers for decision tools and training which contribute to the purpose and goals of the SIRT, including:
  - a. Development of training and outreach materials on compensatory mitigation for Individual IRT members, bank/ILF sponsors, and the public.
  - b. Development of science and regulatory tools, such as functional assessment and debit- credit calculation methodologies.
  - c. Development of useful and meaningful tools to track the success of compensatory mitigation projects.
  - d. Development of document templates for: prospectuses, bank instruments, ILF program instruments, mitigation work plans, compensation planning frameworks, the addition of new ILF project sites, and other items as may be necessary.

2. Recommend statewide guidelines for bank and ILF instrument components (e.g., real estate instruments, financial assurances, and ecological performance measures), taking into account ecological and geographic differences.
3. Provide recommendations to agency managers for decision consistent with this agreement and the 2008 Mitigation Rule.

### **Guiding Principles of the SIRT**

1. Mitigation banks and ILF programs are valuable tools for compensating for unavoidable impacts to aquatic resources. A consistent and predictable bank/ILF establishment process, with room for flexibility, will be most efficient and benefit all parties.
2. The participation of agencies with roles in CWA Section 404 permitting/review or with independent statutory authority to require compensatory mitigation is important to achieve outcomes consistent with each agency's requirements and mission. The contributions of staff with different expertise will improve the ecological success of compensatory mitigation.
3. The SIRT will maintain a climate of collaboration and mutual respect for each agency's differing perspectives and authorities. SIRT member agencies will interpret their own regulations or guidance pertaining to compensatory mitigation.

### **SIRT Organization and Meeting Management**

1. The Corps will lead the SIRT; seek to create consensus and a collaborative environment among the SIRT members, and give full consideration to input provided by the member agencies.
2. The Corps has the administrative responsibilities of scheduling meetings, setting agendas, facilitating meetings, and preparing notes from meetings.
3. The Corps has responsibility for taking notes at SIRT meetings.
4. The Corps will solicit SIRT input on draft notes, finalize and send the notes out to the SIRT. The notes will include action items, the person responsible and a due date for completing the task.
5. Final notes will be posted on the Regulatory In-Lieu Fee and Banking Information Tracking System ("RIBITS") for SIRT members' view only.
6. The SIRT will meet approximately every seven weeks at a time or location of mutual consent.
7. Participation in the meetings will generally be with one representative from each agency.
8. From time to time, greater agency participation may be desired or warranted and will be specifically planned into the meeting agenda. This participation may include agency management (e.g., subject matter experts, first SIRT meeting, key milestones, or major decisions).
9. SIRT representatives will coordinate with their internal agency command chains as necessary to articulate agency positions.
10. SIRT meetings are not public meetings. Bank/ILF sponsors, their consultants, guest speakers, or other spectators or advisors may be invited as necessary to explain new processes, templates, or provide expertise relevant to SIRT discussions. Any invitees must be approved by the Corps prior to attending the meeting.

### **Identification of SIRT Issues**

1. SIRT meetings will involve discussion of compensatory mitigation issues of broad applicability (e.g., application of a “watershed approach”) that are not specific to a single Individual IRT, mitigation bank, or ILF program. The SIRT may consider issues that arise from a single Individual IRT if those issues have broader applicability.
2. SIRT member agencies may at any time propose issues for discussion at upcoming meetings to the Corps.
3. Non-SIRT members (e.g., non-member agencies, bank/ILF sponsors, members of the public) may propose issues for discussion by the SIRT. All such proposals will go through a SIRT member agency to the Corps.

### **Dispute Resolution**

1. SIRT representatives will seek to internally resolve differences and elevate issues to managers only when necessary. Timely resolution of issues may require elevation. The SIRT may choose not to take action on issues where consensus cannot be reached.
2. In the case of substantive differences among agency perspectives, the SIRT representatives of all agencies engaged in the dispute should fill out the following analysis template as a starting point for further SIRT discussion or elevation. The analysis should be two pages or less and contain the following sections:
  - a) Statement of problem;
  - b) Current situation and background information;
  - c) Assumptions;
  - d) Factors bearing on issue(s), including existing policies;
  - e) Options – Identify & Discuss Pros & Cons; and
  - f) Recommendation.
3. The analysis will be distributed to the SIRT with the agenda and materials for the next scheduled meeting. The meeting agenda will include discussion to pick an option to resolve or elevate to managers.
4. If the issue is elevated to managers, the SIRT representatives of each agency will submit a written statement of agency position for distribution to the SIRT for the following scheduled meeting.
5. Should an implementation issue remain unresolved, federal SIRT member agencies may elevate the issue for coordination and resolution by utilizing the elevation of policy procedures established in their respective CWA Section 404(q) Memorandum of Agreement.

### **Applicability of Document**

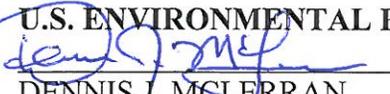
1. This agreement is effective upon the date it is signed by the Corps District Commander and at least one other agency.
2. Any party may withdraw from this agreement upon thirty (30) days written notice to the points of contact at the other agencies.
3. This agreement should be reviewed by SIRT members annually to consider modifications or amendments.
4. This agreement recognizes that each agency acts in its independent capacity and therefore no agency is considered to be the officer, agent or employee of the other coordinating agencies.
5. This agreement does not limit or effect in any way the authority or legal responsibilities of signatory agencies.

6. All responsibilities described in this agreement are contingent on the availability and allocation of funding by each Agency. As required by the Anti-deficiency Act, 31 U.S.C. §§ 1341 and 1342, all commitments made by the EPA, Corps, U.S. Fish and Wildlife Service (USFWS), National Marine Fishery Service (NMFS), and National Resources Conservation Service (NRCS) in this agreement are subject to the availability of appropriated funds. Nothing in this agreement, in and of itself, obligates signatory agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with Agency budget priorities. Any transaction involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
7. This agreement does not create any right or benefit, substantive or procedural, enforceable by law or in equity, by persons who are not party to this agreement, against the signatory agencies, their officers or employees, or any other person. This agreement does not apply to any person outside of the signatory agencies.

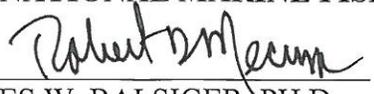
**SIGNATORY FEDERAL AGENCIES:**

**DEPARTMENT OF THE ARMY**

By:  Date: 8/23/13  
 COLONEL CHRISTOPHER D. LESTOCHI  
 DISTRICT COMMANDER, ALASKA DISTRICT

**U.S. ENVIRONMENTAL PROTECTION AGENCY** By:  Date: 8/25/13  
 DENNIS J. MCLERRAN  
 REGIONAL ADMINISTRATOR, REGION 10

**U.S. FISH AND WILDLIFE SERVICE**  
 By:  Date: 8/29/13  
 GEOFFREY L. HASKETT  
 REGIONAL DIRECTOR, ALASKA REGION

**U.S. NATIONAL MARINE FISHERY SERVICE**  
 By:  Date: 9/5/13  
 JAMES W. BALSIGER, PH.D.  
 REGIONAL ADMINISTRATOR, ALASKA REGION

*for*

**U.S. NATURAL RESOURCES CONSERVATION SERVICE**

By: Robert N. Jones Date: 11/06/2013  
ROBERT N. JONES  
STATE CONSERVATIONIST

**SIGNATORY STATE AGENCIES:**

**ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

By: Larry Hartig Date: Sept. 29<sup>th</sup> 2013  
LARRY HARTIG  
COMMISSIONER

**ALASKA DEPARTMENT OF NATURAL RESOURCES**

By: Joe Balash Date: 9/30/13  
JOE BALASH  
COMMISSIONER

**ALASKA DEPARTMENT OF FISH AND GAME**

By: Cora Campbell Date: 11/4/2013  
CORA CAMPBELL  
COMMISSIONER