DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
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August 10, 2022

Regulatory Division
Mitigation Programs Team

PUBLIC NOTICE

SUBJECT: The U.S. Army Corps of Engineers (Corps) Jacksonville District Mitigation Programs Team is soliciting comments regarding the development of a proximity factor tool. The proximity factor tool could be used to determine the amount of compensatory mitigation required to offset unavoidable impacts to waters of the United States in areas outside the impact 8-digit Hydrologic Unit Code (HUC), ecoregion, or approved mitigation bank and in-lieu fee service areas, etc.

PROXIMITY FACTOR BACKGROUND: If the district engineer determines that compensatory mitigation is necessary to offset unavoidable impacts to aquatic resources, the amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions (33 C.F.R. 332.3(f)(1)). The district engineer must require a mitigation ratio greater than one-to-one where necessary to account for the distance between the affected aquatic resource and the compensation site (33 C.F.R. 332.3(f)(2)).

PROXIMITY FACTOR APPLICABILITY AND RATIONALE: The Corps Jacksonville District recognizes that the relevance of a compensatory mitigation project is diminished as the locations of the compensatory mitigation project site and impact site become further removed. Diminishing relevance expresses the relationship of the location of the compensatory mitigation project site and its relationship to the impact site. We also need to evaluate the relative importance of the suite of functions provided by the impacted aquatic resources and those at the compensatory mitigation project site.

The standards associated with the establishment and use of federally approved compensatory mitigation options are defined within Department of the Army (DA) regulations. The pertinent regulations are found in the Code of Federal Regulations (CFR) at 33 CFR Part 332. The regulations were published in the April 10, 2008, Federal Register, under the title of Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, herein referred to as the Rule. The Rule identifies general compensatory mitigation requirements at 33 CFR 332.3. The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to waters of the United States authorized by DA permits. The district engineer must determine the compensatory mitigation to be required in a DA permit, based on what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity. When evaluating compensatory mitigation options, the district engineer will consider what would be environmentally preferable. In making this determination, the district engineer must assess the likelihood

for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project. When considering options for successfully providing the required compensatory mitigation, the district engineer shall consider the type and location options in the order presented in 33 CFR 332.3(b)(2) through (b)(6). This section is commonly referred to as the mitigation preference hierarchy.

The Corps proposes that a proximity factor could be used to determine the amount of compensatory mitigation required based on the location of the compensation site relative to the impact site and their significance within the watershed. Variables in determining this factor include:

- The 8-digit HUCs relative to the impact and compensation sites.
- In-kind versus out-of-kind compensation.
- EPA Level IV Ecoregions.
- Mitigation bank and In-lieu Fee (ILF) program service areas.

PROPOSED PROXIMTY FACTOR TABLE:

The proposed proximity factor below contains values as an example of how it could be applied to a scenario where the permittee responsible mitigation (PRM) site is located two (2) 8-digit HUCs away from the impact site and in a different EPA Ecoregion.

Proximity Factor Calculation Table	**Variables**
If the impact site is outside of a mitigation bank/ILF service area, but within same 8-digit HUC as the mitigation bank/ILF service area boundary, enter 1.25.	0
If the impact site is outside of a mitigation bank/ILF service area and one 8-digit HUC away from the mitigation bank/ILF service area boundary, enter 1.5. If the impact site is one 8-digit HUC away from the proposed PRM site, enter 1.5.	1.5
For each additional 8-digit HUC away add 0.25.	0.25
Is the mitigation in-kind replacement of impacted WOTUS (Yes enter 0, No enter 0.75).	0
Is the mitigation located within the same EPA Level IV Ecoregion (Yes enter 0, No enter 0.25).	0.25
Proximity Factor	2

PROXIMITY FACTOR GUIDANCE: The following guidance is applicable to utilization of the proximity factor:

- Use of the proximity factor for DA permits will only be considered at the discretion of the Corps on a case-base-case basis.
- The Corps reserves the right to evaluate adjustments to proximity factor variables to ensure the mitigation adequately offsets the functions and services lost at the impact site. For example, a watershed approach to compensatory mitigation considers the habitat requirements of important species, habitat loss or conversion trends, sources of watershed impairment, and current development trends, as well as the requirements of other regulatory and non-regulatory programs that affect the watershed (33 CFR 332.3(c)(2)(i)).
- The proximity factor variables should be added to determine the proximity factor.
- The resulting proximity factor is multiplied by number of credits required by a functional assessment (e.g., Uniform Mitigation Assessment Method) to determine the total number of credits necessary for compensatory mitigation.
- The distance from the impact site to the PRM site would be assessed based on the number of 8-digit HUC units the sites are separated by.
- If the impacts occur outside of an ILF program service area, the number of 8-digit HUCs away is determined by counting from the impact site to the ILF program service area boundary.
- If impacts occur outside a mitigation bank service area, the number of 8-digit HUCs away is determined by counting from the impact site to the mitigation bank's service area boundary.
- Compensatory mitigation should be performed within the same 6-digit HUC. Proposals outside of the 6-digit HUC would need to be coordinated with and approved by the Corps on a case-by-case basis.
- Use of the proximity factor for coastal impacts would need to be evaluated by the Corps on a case-by-case basis. According to 33 CFR 332.3(b)(1), when compensating for impacts to marine resources, the location of the compensatory mitigation site should be chosen to replace lost functions and services within the same marine ecological system (e.g., reef complex, littoral drift cell). Compensation for impacts to aquatic resources in coastal watersheds (watersheds that include a tidal water body) should also be located in a coastal watershed where practicable.
- Use of approved mitigation banks or ILF programs with existing specialized service areas (e.g., secondary service areas, existing multipliers, etc.) would need to be coordinated with and approved by the Corps on a case-by-case basis.
- The proximity factor does not supersede the terms and conditions of an approved MBI or ILF Program Instrument.

COMMENTS: Please provide comments within 30 days of the date of this letter. Comments should be sent to saj-rd-mitigationteam@usace.army.mil. If you have any questions regarding this public notice, please contact Steven Currie at 904-402-2975, (steven.j.currie@usace.army.mil) or Vivian Gerena at 904-699-3711, (vivian.gerena@usace.army.mil).