



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
POST OFFICE BOX 4970
JACKSONVILLE, FLORIDA 32232-0019

March 10, 2020

CESAJ-RD

Guidance for the Establishment of Service Areas for Mitigation Bank and In-Lieu-Fee Programs in the Jacksonville District

1. The standards associated with the establishment of a federally approved mitigation bank (MB) or in-lieu fee (ILF) program are defined within Department of the Army 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. All MB/ILF programs must comply with the standards in these regulations if they are to be used to provide compensatory mitigation for activities authorized by issued Department of the Army permits.
2. Considerations for the establishment of a service area for MB/ILF programs is provided in the Rule at 33 CFR 332.8(d)(6)(ii)(A). The process for evaluating those considerations, and making a final determination with regards to a proposed service area falls to the U.S. Army, Corps of Engineers (Corps), in consultation with the other members of the Interagency Review Team (IRT). This guidance is intended to assist proponents of MB/ILF programs in understanding what the IRT is looking for with regards to an appropriately sized service area.
3. As defined in the Rule, *Service Area* means the geographic area within which impacts can be mitigated at a specific MB or ILF program, as designated in its instrument. *Watershed* is a general term meaning a land area that drains to a common waterway, such as a stream, lake, estuary, wetland, or ultimately the ocean. *Watershed Approach* means an analytical process for making compensatory mitigation decisions that support the sustainability or improvement of aquatic resources in a watershed. It involves consideration of watershed needs, and how locations and types of compensatory mitigation projects address those needs.
4. A service area is generally described as the watershed, ecoregion, physiographic province, and/or other geographic area within which the MB/ILF program is authorized to provide compensatory mitigation required by Department of the Army permits. 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.

5. The Corps, Jacksonville District, Regulatory Division, supports the use of a watershed approach as it applies to the establishment of MB/ILF programs. The watershed approach should consider information provided by the project sponsor or available from other sources. The ultimate goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources within watersheds through strategic selection of compensatory mitigation sites.
6. In determining an appropriate service area, several tools are utilized. These include, but are not limited to, Hydrologic Unit Codes (HUC) as defined by the U.S. Geological Survey (USGS) and the U.S. Environmental Protection Agency (EPA) Level IV ecoregions. Level I ecoregions are very broad while Level IV ecoregions provide a more specific description of the ecoregions nested within the higher level regions.
7. As noted in the preamble to the Rule, the final rule retains a preference for in-kind compensatory mitigation. This preference may inherently limit service areas in some cases (e.g. compensatory mitigation projects providing compensation for marine or coastal watershed resources may have limited service areas due to the specificity of the compensation being provided) while boundaries based purely on geographical or political constraints may also play a part in the overall determination of a service area.
8. The basic steps to follow when determining an appropriately sized service area are as follows:
 - a. Begin with the 8-digit HUC within which the Bank/ILF site is located as the base for the geographical expanse of the service area. This is identified as the Base Service Area (BSA).
 - b. Overlay the Level IV ecoregion. This helps to generally determine the extent of ecological systems found at the MB/ILF site.
 - c. With the information provided by the steps above, use the 10 or 12-digits HUC areas, both internal and external to the parent 8-digit HUC, to more appropriately provide a service area within which the authorized loss of aquatic resource function and services can be effectively replaced. This effort may involve the removal of smaller HUC units from the larger BSA.

9. In those cases where the MB/ILF site encompasses portions of two or more HUC 8 units, the service area determination will follow the same process noted in paragraph 8 but will also include a closer review of the environmental circumstances associated with the areas of the MB/ILF within each of the HUC 8 units. Generally, depending upon the percentage of the site lying within each of the HUC 8 units, where the site lies within the larger HUC 8 unit, the proposed activities to be undertaken within these sections, and any other factor which may impact the ability of that portion of the site to provide environmental lift to the parent HUC 8 unit, the acceptable extent of the proposed service area will be limited to an area comprised of one or more HUC 12 units.
10. While it will not be considered to be a driving force, the economic viability of the project may be considered when determining the size of the service area. In such cases where the economic viability of a project is being used to justify the inclusion of a portion of the proposed service area, it is incumbent upon the project proponent to provide rationale for inclusion of areas outside of the area determined using the steps provided in paragraph 6.
11. When submitting a service area map, it is recommended that the pertinent HUC units, ecoregions and other proposed boundaries are clearly shown and a text box is included with inclusionary and exclusionary language. The purpose of the text box is to summarize types of aquatic resource impacts for which utilization of credits from the MB/ILF program would be appropriate and which types of aquatic resource impacts for which the use of credits would not be appropriate.



SHAWN H. ZINSER
Chief, Regulatory Division