

CORPS OF ENGINEERS MITIGATION RULE OVERVIEW U.S. CORAL REEF TASK FORCE

George P. Young, P.E.

Chief, Regulatory Branch

Honolulu District

November 5, 2009



®

US Army Corps of Engineers
BUILDING STRONG®



Regulatory Mission

- Protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions



Basic Permit Process

- Public notice/disclosure
- Input from resource agencies, stakeholders, & public
- Public interest consideration
- Decision
 - ▶ Mitigation is part of permit decision



Special Aquatic Sites

- Possess special ecological characteristics
 - ▶ Productivity
 - ▶ Habitat Protection
 - ▶ Wildlife Habitat
 - ▶ Other easily disrupted functions
- Preferentially considered as aquatic resources of highest environmental value



Mitigation Sequence

- Avoid
- Minimize
- Compensate
 - ▶ Ensure maximum practicable avoidance, followed by minimization
 - ▶ Only then do we consider appropriate compensation for unavoidable losses



2008 Joint Corps-EPA Mitigation Rule

- Clarifies existing requirements
- Consolidate prior policies & guidance
- Goals
 - ▶ Greater consistency
 - ▶ Predictability
 - ▶ Improved ecological success



General Mitigation Objectives

- Mitigation must offset impacts
- Must be practicable
- Commensurate with amount and type of impacts
- Must address temporal losses
- Corps will consider mitigation options that would be ecologically preferable
 - ▶ Likelihood for ecological success
 - ▶ Sustainable



Soft Preference Hierarchy

- Mitigation bank credits
- In-lieu fee credits
- Permittee-responsible under watershed approach
- Permittee-responsible on-site/in-kind
- Permittee-responsible off-site



Ecological Performance Standards

- Mandatory component of mitigation plan
- Must relate to mitigation objectives
- Must be objective and verifiable
- Must be based on best available science that can be measured or assessed in a practicable manner



In-Lieu Fee Programs

- Mitigation entity's program requires prior approval by Corps before credits can be issued
 - ▶ Interagency Review Team oversight
 - ▶ Public review
- Mitigation provider may be government agency or non-profit conservation organization
- Fees received prior to implementing mitigation project(s)
- Mitigation may be undertaken across multiple sites



General In-Lieu Fee Requirements

- Sponsor required to develop compensation planning framework in advance of approval
- Structured financial accounting required
- Funds may be used for mitigation projects only
- Sponsor develops credit costs and assessment methodology for ecological credits
- Credit releases based on performance-based milestones



WHERE ARE WE NOW?

- ACTIVE CLOSE COORDINATION W/ RESOURCE & INFRASTRUCTURE AGENCIES TO ENSURE AVOIDANCE, MINIMIZATION, & COMPENSATION ON A PROJECT-SPECIFIC BASIS.
- MITIGATION INTERAGENCY REVIEW TEAM (IRT)
 - ▶ Hawaii
 - ▶ Guam, CNMI, American Samoa
- CONTINUED COORDINATION W/ PACIFIC INTERAGENCY MITIGATION WORKING GROUP
- LEVERAGE COLLABORATION W/ CORPS' WATERSHED PLANNING STUDY PROGRAMS TO DEVELOP TOOLS & PRACTICES TO COMPENSATE FOR IMPACTS TO MARINE SYSTEMS



Pressing Needs

- Scientific tools urgently needed to empower the regulatory program to maintain our nation's coral reef aquatic resources:
 - ▶ Standard Functional Assessment (bioassessment) methodology(ies)
 - Needed to adequately characterize the structural and functional components of affected coral reef systems
 - ▷ Used for baseline and post project functional assessments of CR colonies within both development and mitigation areas
 - ▷ Needed to avoid, minimize, and compensate
 - ▶ Appropriate and practicable compensatory mitigation options to offset unavoidable losses to coral reef functions

