

Wetland Compensatory Mitigation Ratios, Montana Regulatory Program

| A | Compensatory Mitigation Type | B |
|--------------------|---|------------------|
| 1:1 | Restoration (Re-establishment) ¹ | 1.5:1 |
| 1.5:1 ⁺ | Restoration (Rehabilitation) ¹ | 2:1 ⁺ |
| 1:1 | Creation (Establishment) | 2:1 |
| 3:1 ⁺ | Enhancement ² | 4:1 ⁺ |
| 4:1 ⁺ | Preservation (Protection) ³ | 4:1 ⁺ |
| 5:1 | Upland Buffer ⁴ | 5:1 |

Column A: Compensatory wetland mitigation site established and viable prior to project impact. Mitigation is in-kind per the chart below.

Column B: Compensatory wetland mitigation site not established prior to project impact (including pre-credits from a bank/reserve and in-lieu fee mitigation), or the compensatory mitigation wetland is out-of-kind per the above matrix. The Corps may, on a case-by-case basis, determine that a proposed out-of-kind mitigation wetland has greater value in a given watershed than the impacted wetland, and apply Column A ratios.

| | | Cowardin Class | | | |
|-----------|--------------|----------------|-------------|----------|-------------|
| | | Emergent | Shrub/scrub | Forested | Aquatic Bed |
| HGM Class | Riverine | | | | |
| | Slope | | | | |
| | Depressional | | | | |
| | Lacustrine | | | | |
| | Fringe | | | | |

Note: “+” on the ratio chart indicates the Corps will consider a range of ratios for this type of compensatory mitigation. Listed ratios are the most favorable available for a given mitigation type. See explanations below for criteria used to determine if the lowest ratio applies.

Explanation of Superscripts

1. *Restoration: Re-establishment* refers to re-establishing a wetland where one formerly existed. Pre-disturbance hydrology, vegetation and wetland functions are re-established as practicable.

Restoration: Rehabilitation refers to restoring functions to a degraded wetland that still meets '87 Manual criteria. To achieve the lowest ratio the project must include restoration (not enhancement) of hydrologic function. Projects that simply involve a change in management will receive no less than a 5:1 ratio (example: remove cattle). Management change must be permanent to qualify as mitigation.

2. *Enhancement* credit will be granted if the proponent can demonstrate a functional lift using an approved functional assessment methodology. This requires establishment of a baseline assessment score and a performance standard consisting of a projected score. Be aware that overall functional lift may result from functional gains exceeding functional losses from a given enhancement project. Acceptability of the trade-off is a case-by-case determination.

Enhancement is only acceptable as mitigation if the Corps agrees (in consultation with the Interagency Wetland Group, an In-Lieu Fee Committee or Mitigation Banking Review Team, etc) the proposed enhancement is ecologically valuable in a given watershed. Ratio determination will be based on Best Professional Judgment.

3. *Preservation* is acceptable when:

- a. It meets the criteria established in the 1995 Interagency Banking Guidance (Regionally important wetland under demonstrable threat); or
- b. It is a minor component of an overall mitigation strategy; or
- c. It is the only practicable method to mitigate impacts for a given project. Efforts to find acceptable mitigation sites must be documented.

The lowest ratio will be assigned in case 3a. above.

4. *Upland buffer* refers to a required water quality buffer unless other functions are specified for a given site. Fifty (50) feet is the maximum width eligible for credit for sites with a modest slope (5% or less) with herbaceous cover. A buffer of up to 100' on sites with steeper slopes and natural shrub/tree cover may be allowed. Credit generated by upland buffers can comprise no more than 25% of the total credit for a given mitigation project.

The Corps must determine a buffer in excess of 50' is necessary to protect a given aquatic site from known or likely impacts (ex: subdivision, road, farmed slope) before credit is provided for the additional width.

The buffer must be protected by the same legal mechanism required for the associated wetland to be eligible for credit.

The above ratios apply to compensatory wetland mitigation projects that rely on acreage as the accounting unit. A Corps-approved functional assessment methodology can also be used to track project impacts and compute credits at compensatory mitigation sites. If functional assessment is used, impact sites and compensatory mitigation sites must be evaluated with the same methodology. Until functional assessment becomes routine, keep two sets of "books" if possible, one utilizing functional assessment and one utilizing acreage/ratios. This is for comparison only. Once we commit to functional assessment for a given project, we will not switch to acreage accounting.

Ditch Wetlands

Based on a Ninth Circuit Court of Appeals ruling in *Headwaters, Inc v. Talent Irrigation District*, we consider irrigation and drainage ditches that are capable of conveying waters to jurisdictional waters of the United States to be tributaries of those waters. As such, the ditches are regulated under Section 404 of the Clean Water Act (33 CFR 328.3(a)(5)). This only applies to ditches that drain into a water of the United States, and which have an ordinary high water mark and/or a continuum of wetlands along the channel.

For these regulated ditches and canals supporting wetlands, the following mitigation policy applies:

1. Relocation of regulated ditches and canals that support wetlands will be considered self-mitigating at a 1:1 ratio if the new channel is dimensionally similar in cross-section and profile, and in the same type of substrate. Replacement channels with significant deviation in the listed parameters will require compensatory mitigation at the standard ratios.
2. On a case-by-case basis, standard ratios may apply if the ditch or canal is not maintained and has developed a high functioning wetland community.
3. If the ditch or canal is filled in or placed in a pipe for other than a typical road crossing or similar access, standard mitigation ratios apply. Wetlands adjacent to the filled channel will be included as impacts if supporting hydrology is removed.

Streams that have been channelized or otherwise made to resemble a ditch are still regarded as streams for determining mitigation requirements.