



# Aquatic Resources Mitigation Framework

## *Developing a new approach to mitigating for wetland and stream impacts*

**Stakeholder input is vital to the success of transitioning to a new approach for replacing lost wetland and waterway functions.**

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Aquatic resources provide a wealth of ecological services to Oregonians that are important to our quality of life: clean and healthy streams, diverse and abundant fish and wildlife, and floodwater storage. The State of Oregon and the federal government regulate, through their respective permit programs, filling and removing material from wetlands and waterways so that these functions and values are not permanently lost.

Permittees may be required to mitigate, or replace, lost aquatic resources due to unavoidable impacts. However, current mitigation requirements are based on acreage ratios that have little to do with the functions and values provided by the aquatic resource that is being impacted.

In 2008, the federal government adopted a new mitigation rule: Compensatory Mitigation for Losses of Aquatic Resources. The rule encourages compensatory mitigation in a watershed context, and promotes the use of function or condition assessments to determine appropriate mitigation for unavoidable impacts to aquatic resources.

Over the past several years, federal and state regulatory agencies have been developing a framework to meet the goals in the Final Compensatory Mitigation Rule, and to modify Oregon's compensatory mitigation program to incorporate the focus on function and value replacement for wetlands and streams on a watershed basis.

### **Coordinating Federal and State Programs**

In Oregon, the U.S. Army Corps of Engineers (Corps) and Department of State Lands (DSL) jointly regulate aquatic resources. The agencies are coordinating efforts with the U.S. Environmental Protection Agency and other partners to transition from an acreage-based to a function-based compensatory mitigation framework.

### **The agencies are committed to function-based mitigation because:**

- This method helps ensure function and value replacement
- Information from assessment tools that are science-based will help improve ecological outcomes of mitigation
- Coordinating mitigation standards will improve regulatory transparency and provide consistency between Corps and DSL permit programs
- Transitioning to function-based mitigation will better comply with the federal Final Rule and state Removal-Fill Law





### **Key elements of developing the new approach include:**

- Ensuring consistent coverage for all aquatic resources
- Establishing accounting structures to improve functional replacement for impacts
- Focusing on opportunities to achieve broader watershed goals
- Developing tools to evaluate functions and values of streams
- Engaging key groups – regulatory and natural resource agencies, technical experts, mitigation bankers, consultants, conservation and agricultural interests, and permittees – in the framework design and implementation strategy

### **Five phases of developing the new framework are in process:**

1. Identifying issues to address in the new framework (complete)
2. Developing draft policy options that are predictable and transparent
3. Completing pilot testing of protocols and procedures
4. Conducting rulemaking, including public hearings
5. Issuing federal notice and adopting state administrative rules (anticipated February 2019)

### **Transition for Mitigation Banks**

Mitigation banks are large-scale wetland and/or stream restoration projects approved under a detailed agreement to sell credits within a certain area. While transitioning credits will be optional for existing bank sponsors, and applicants could continue to purchase mitigation credits from these banks using current procedures, any new banks or phases initiated after the new framework becomes effective will be approved under the new policies.

### **Wetland Mitigation**

Though Oregon has a relatively mature wetland mitigation process in place, compensatory mitigation under the acreage-based system is likely not replacing lost functions and values. In a function-based approach the impacts of wetland loss will be lessened by more appropriate replacement. A working assumption is that the Oregon Rapid Wetland Assessment Protocol (ORWAP) will be the primary functional assessment method used to assess wetland mitigation requirements.

### **Stream Mitigation**

Currently, compensatory mitigation for impacts to streams in Oregon is not routinely required. A key objective in the new approach is to clarify stream mitigation standards to better achieve the goals of federal and state law.

Because stream mitigation is not as mature as wetland mitigation, key challenges are being addressed to develop an effective stream mitigation program:

- Developing a site-level assessment tool that is science-based, yields credible results, is relatively easy to use, and is repeatable across all stream types
- Developing stream mitigation program elements that lead to the restoration of stream functions and values – either by permittees or by third-party mitigation providers (mitigation bank and in-lieu-fee program sponsors)
- Developing stream mitigation policies that parallel the wetland mitigation program and that can be consistently applied

### **Framework Development**

Funding to support development of the new approach comes in part from the Environmental Protection Agency's Wetland Program Development Grants. Staff from DSL, the Corps' Portland District, and the EPA Region 10 comprise the project's technical team.

