List of Common Terms Associated with the 404 Assumption Process and Implementation
Last Updated: October 15, 2020
Modified from Florida Assumption Package

- "Act" or "CWA" means the Clean Water Act (also known as the Federal Water Pollution Control Act or FWPCA) Pub. L. 92–500, as amended by Pub. L. 95–217, 33 U.S.C. 1251, *et seq.*

- "Activity" for the purposes of the State Clean Water Act Section 404[1] Program only, means "discharge of dredged material" and/or "discharge of fill material" as those terms are defined in 40 CFR § 232.2 (see Appendix B).

- "Adaptive Management" means the development of a management strategy that anticipates unforeseen challenges in implementing compensatory mitigation projects and provides for actions to address those challenges.

- "Adjacent Wetlands" mean wetlands that (G, p. 22307): 1) 'abut' a paragraph (a)(1) through (3) water; 2) are inundated by flooding from paragraph (a)(1) through (3) water in a typical year; Water Categories (a)(1) The territorial seas and traditional navigable waters (a)(2) Tributaries of such waters (a)(3) Certain lakes, pond and impoundments of jurisdictional waters (a)(4) Wetlands adjacent to A(as) (1)-(a)(3) waters

- "Administratively complete" means an application that contains all the items required by regulations.

- "Adverse Effect" means an impact to a wetland designated use that is either prohibited or requires maintenance.

- "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of wetlands and other surface waters from permitted activities. BMPs include methods, measures, practices, or design and performance standards which facilitate compliance with a permit or regulation, and prevent violation of state water quality standards. Examples include, but are not limited to, placement of turbidity curtains or silt fence, stabilizing slopes, limiting work to appropriate weather and light conditions, and clearly marking work and staging areas in the field.

- "Compensatory Mitigation" means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

- "Compensatory Mitigation Project" means compensatory mitigation implemented by the permittee as a requirement of a permit (i.e., permittee-responsible mitigation), or by a mitigation bank or in-lieu fee program.

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[1] This is Clean Water Act Section 404. For the purpose of simplicity, this section of the document uses only the 3 numbered section, i.e., 404, to refer to the sections of the Clean Water Act.

- "Condition," as it is used in this document, means the relative ability of an aquatic resource to support and maintain a community of organisms having a species composition, diversity, and functional organization comparable to reference aquatic resources in the region.

- "Contaminant" means a chemical or biological substance in a form that can be incorporated into, onto or be ingested by and that harms aquatic organisms, consumers of aquatic organisms, or users of the aquatic environment, and includes but is not limited to the substances on the 307(a)(1) list of toxic pollutants.

- "Functions," as used in this document, means the physical, chemical, and biological processes that occur in ecosystems.

- "Historic Resource," "Historic Property," or "Cultural Resource" means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archeological value, and folklife resources. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archeological value, or any part thereof, relating to the history, government and culture of the state.

- "Impact" or "Adverse Impact", as those terms relate to compensatory mitigation review, means adverse effect.

- In-kind" means a resource of a similar structural and functional type to the impacted resource.

- "In-lieu fee program" means a program involving the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for 404 permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu fee program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.

- "Interagency Review Team" (IRT) means an interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation for, and advises the Corps district engineer on, the establishment and management of a mitigation bank or an in-lieu fee program.

- "Landscape Perspective" is used to identify the types and locations of mitigation projects that will benefit the watershed and offset losses of aquatic resource functions and services caused by activities authorized by Section 404 permits.

- "Off-site," for purposes of mitigation, means an area that is neither located on the same parcel of land as the impact site, or on a parcel of land contiguous to the parcel containing the impact site.

- "On-site," for purposes of mitigation, means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site.

- "Ordinary High Water Mark," for purposes of identifying retained waters, means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

- "Out-of-kind" means a resource of a different structural and functional type from the impacted resource.

- "Performance Standards" are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

- "Permittee-responsible Mitigation" means an aquatic resource restoration, creation, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

- "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials not covered by the Atomic Energy Act, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

- "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics considering overall project purposes.

- "Practicable Alternative" means other choices available and capable of being carried out after taking into consideration cost, existing technology, and logistics considering overall project purposes. These may require an area not owned by the applicant which could reasonably have been obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

- "Project" means all activities which the applicant plans to undertake pursuant to the entire scope of the project and includes all avoidance, minimization, and mitigation measures proposed by the applicant. The project activities may include those off the physical project site or undertaken after the duration of the current permit.

- "Project Area" or "Project Site" means that portion of the state-assumed waters where specific dredging or filling activities are permitted and consist of a bottom surface area, any overlying volume of water, and any mixing zones. In the case of wetlands on which surface water is not present, the project area consists of the wetland surface area.

- "Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (see "Restoration")

- "Reference Aquatic Resources" or "Reference site" are a set of aquatic resources that represent the full range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.

- "Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function but does not result in a gain in aquatic resource area. (see "Restoration")

- "Restoration," for the purposes of the State 404 Program, means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

- "Retained Waters" are those waters of the United States in which the Corps retains responsibility for permitting for the discharge of dredged or fill material upon approval of a State's section 404 permit program by the EPA Administrator undersection 404(h).

- "Riparian Areas" are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

- "Service Area" means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

- "Services" mean the benefits that human populations receive from functions that occur in ecosystems.

- "Sponsor" means any public or private entity responsible for establishing, and in most circumstances, operating a mitigation bank or in-lieu fee program.

- "State-assumed Waters" or "Assumed Waters" are those waters of the United States in which the Corps suspends the issuance of section 404 permits upon approval of a State's section 404 permit program by the [EPA] Administrator under section 404(h). (40 CFR §232.2)

- "Technically Complete" means a permit application where each application item is adequate to allow the Agency to determine if the proposed project complies with applicable regulations.

- "Temporal Loss" or "Time Lag" is the time that passes between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site.

- "Tribe" means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

- "Waters of the United States" are defined as those waters federally regulated under the Clean Water Act. The federal regulations describing these waters are at 33 CFR 328.3 and 40 CFR Part 120. (85 Federal Register 77, pg. 22250 – 22342)[2]

- "Watershed Approach" means an analytical process for making 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. The watershed approach may involve consideration of landscape scale, historic and potential aquatic resource conditions, past and projected aquatic resource impacts in the watershed, and terrestrial connections between aquatic resources when determining mitigation requirements for Section 404 permits.

- "Watershed Plan" means a plan developed by federal, tribal, state, and/or local government agencies or appropriate non-governmental organizations, in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, creation, enhancement, and preservation. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans.

[2] The federal regulations defining Waters of the United States are currently in litigation.