

## Nontidal Wetland and Stream Mitigation Bank/In-Lieu Fee Credit Release Schedule for Maryland

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The following Interagency Review Team (IRT) Standard Credit Release Schedule Example shown below in Table 1 is generally considered reasonable by the IRT. However, further analysis may be required for unique sites or situations. The optional IRT Accelerated Release Example shown below in Table 1 allows more credits to be released after approval of construction completion and monitoring reports and may be approved by the Corps and MDE, in consultation with the IRT, based on a high degree of confidence and high likelihood of success for a specific proposal.

Table 1. Credit release for nontidal wetland, stream and fish barrier removal<sup>1</sup> projects.

Milestone	Interagency Review Team (IRT) Standard Release Example		IRT Accelerated Release Example (“Managed-Risk” Projects)	
	Credit Received	Cumulative	Credit Received	Cumulative
Initial Credit Release <sup>2</sup>	15%	15%	20%	20%
Construction Credit Release	Up to 15%	30%	Up to 20%	40%
1 <sup>st</sup> Monitoring Report (Yr 2)	Up to 20%	50%	Up to 20%	60%
2 <sup>nd</sup> Monitoring Report (Yr 3) <sup>3</sup>	Up to 10%	60%	Monitoring report submittal required with no associated credit release	
3 <sup>rd</sup> Monitoring Report (Yr 5)	Up to 10%	70%	Up to 20%	80%
4 <sup>th</sup> Monitoring Report (Yr 7)	Up to 10%	80%	Monitoring report submittal required with no associated credit release	
5 <sup>th</sup> Monitoring Report (Yr 10)	20%	100%	20%	100%

A credit release schedule is a risk management tool to ensure achievement of mitigation bank objectives and is tied to performance-based milestones. A credit release schedule with a greater

<sup>1</sup> Fish barrier removal projects may have an alternate credit release schedule determined on a case-by-case basis.

<sup>2</sup> Up to 100% release of preservation credit.

<sup>3</sup> For mitigation projects proposing use of the IRT Accelerated Credit Release schedule, monitoring reports will still be required in Years 3 and 7.

number of interim credit releases will be required when the IRT does not have a high degree of confidence in successful performance of a mitigation bank site based on a variety of factors and when the sponsor wants financial assurances released back as performance-based milestones are achieved. The document, “Credit Release Schedule General Considerations and Regulatory Guidance Letter 19-01”, dated December 2, 2020, identifies factors considered by the IRT when determining the appropriate credit release schedule. Mitigation banking instruments proposing credit release schedules aligned with “managed-risk” projects or RGL 19-01 must address/discuss these factors on a project-specific basis for the IRT’s evaluation and consideration in determining the appropriate credit release schedule. In all cases, a significant share of the projected total credits is only available for release after full achievement of ecological performance standards.

“Managed-risk” mitigation projects have a high likelihood of success and reasonably foreseeable outcomes. Site selection and design appropriate to the chosen site (including soil management) must be acceptable to the IRT. The applicant must adjust the design to meet IRT concerns and requests. The applicant must have successful experience with that type of work, even if in another state. For a stream design to be considered a managed-risk project, it should include a 2D hydraulic model verifying stability for flows up to the 100-year for both channel and floodplain. This model should be run or verified by a third-party engineer (not the bank sponsor or stream restoration designer). Stream projects should be located based on ecological considerations including, but not limited to, watersheds with low impervious surface (<10%) and having no or little planned development. Target species and the strategy for creating associated habitat should be identified and detailed in the mitigation plan. Surrounding land use (e.g., agriculture) or invasive species are also considered in determining whether an alternative credit release schedule is appropriate. Examples of managed-risk stream and wetland mitigation may include removing fills and structures to daylight streams or filling/plugging ditches or removal of existing drainage tile to restore wetland hydrology, respectively.

The “IRT Accelerated Release Example” represents the maximum credit release currently being considered by the IRT. The Corps and MDE have discretion, after consulting with the IRT, to determine the appropriate credit release schedule for a particular bank or in-lieu fee site. The Corps and MDE, in consultation with the IRT, will consider the aspects of the mitigation bank or ILF site on a case-by-case basis when determining the appropriate credit release schedule. The site must be considered lower risk by the IRT. Other factors may be considered when determining credit release (e.g., encroachment concerns, anticipated development time for proposed aquatic resources, proposed release/reduction of financial assurances, etc.).

Sponsors may also request credit release schedules consistent with the Corps’ Regulatory Guidance Letter (RGL) #19-01. To be considered under this optional RGL 19-01 credit release schedule, the sponsor must agree to keep full replacement financial assurances in place until the bank has achieved ecological performance standards necessary for final credit release. The sponsor must address/discuss site-specific criteria and requirements outlined in the “Credit Release Schedule Considerations and Regulatory Guidance Letter 19-01” document. In general, the IRT would need to determine that the site had an exceptionally high chance of success (a

“slam-dunk”) and the sponsor would need to have extensive experience and demonstrated success in this specific type of work.

### Credit Release Requirements

Credit releases are dependent upon successful completion of appropriate construction and performance milestones for the bank. Upon submittal of credit release request by the bank sponsor with all appropriate documentation, and subsequent written approval by the Corps and MDE, in consultation with the other members of the IRT, credits may be released for transfer to a third party as described below. Alternative credit release schedules may be required by the Corps and MDE, in consultation with the IRT after considering the specific characteristics of the mitigation bank and past performance of the sponsor. The actual number of credits released shall be determined, in writing by the Corps and MDE, in consultation with the other IRT agencies, based upon as-built conditions, baseline condition and ecological lift, extent of waters and wetlands delineated on the site, attainment of the performance standards, funding of the long-term management endowment fund, and compliance with the requirements of the mitigation banking instrument (MBI) and any associated authorization. No credit transfer shall occur until the applicable credit release has occurred. The following requirements must be met for credit release for a ten-year monitoring period:

#### Initial Credit Release:

- a) Up to 15% of the total anticipated wetland and stream credits (excluding credits derived from preservation);
- b) Up to 100% of preservation credits
- c) Approval of MBI, including final mitigation plan;
- d) Securing the property interests necessary for the entire bank limits (e.g., fee simple acquisition, acquisition of a mitigation easement, or otherwise securing appropriate property interest);
- e) Submittal of a copy of the approved and recorded site protection instrument that protects the bank in perpetuity, including the plat graphic and property description;
- f) Establishment and full funding of the construction financial assurance;
- g) Establishment and full funding of the short-term performance (monitoring and maintenance) and short-term catastrophic events financial assurances;
- h) Approval of the long-term management plan;
- i) Execution of approved long-term management fund agreement;
- j) Federal and state approvals to conduct work in waters and wetlands for construction of the mitigation bank;
- k) Submittal of a construction schedule that shows that all physical and biological improvements associated with the construction shall be initiated no later than the end of the first full growing season following initial debiting from the bank;
- l) All the above documents and all associated exhibits submitted electronically to the Corps and MDE and uploaded to RIBITS;
- m) Submittal of shape files, KML/KMZ files of the bank limits and geographic service area;
- n) Any other requirements set by the Corps and/or MDE are met.
- o) No long-term management funding is required.

Construction (as-built) Credit Release 2:

- a) Up to an additional 15% (30% cumulative) of the total as-built wetland credits and stream credits upon successful completion of all required physical and biological wetland and stream work in accordance with the approved MBI and mitigation plan;
- b) Submittal of as-built drawing and construction completion report documenting all physical and biological improvements were completed pursuant to the approved MBI and mitigation plan no later than the first full growing season following initial debiting from the bank;
- c) Written approval of the as-built condition by the Corps and MDE, in consultation with the IRT;
- d) 30% of the total long-term management and long-term catastrophic events endowment principal has been funded;
- e) Credit release 1 has occurred.

Credit Release 3 (Year 2):

- a) Up to 20% (50% cumulative) of the total as-built wetland and stream credits;
- b) Submittal of 1<sup>st</sup> monitoring report;
- c) All Year 2 performance standards have been attained and monitoring report accepted;
- d) 55% of the total long-term management and catastrophic events endowment principal has been funded;
- e) Submittal of all required administrative reporting (ledger, transactions, and financial);
- f) Credit release 2 has occurred;
- g) A minimum of two years of monitoring has been conducted (two full growing seasons have occurred) since site construction/planting was completed.

Credit Release 4 (Year 3):

- a) Up to 10% (60% cumulative) of the total as-built wetland and stream credits;
- b) Submittal of 2<sup>nd</sup> monitoring report;
- c) All Year 3 performance standards have been attained and monitoring report accepted;
- d) 70% of the total long-term management and catastrophic events endowment principal has been funded;
- e) Submittal of all required administrative reporting (ledger, transactions, and financial);
- f) Credit release 3 has occurred;
- g) A minimum of three years of monitoring has been conducted (three full growing seasons have occurred) since site construction/planting was completed.

Credit Release 5 (Year 5):

- a) Up to 10% (70% cumulative) of the total as-built wetland and stream credits;
- b) Submittal of 3<sup>rd</sup> monitoring report, including delineation of aquatic resources;
- c) All Year 5 performance standards have been attained and monitoring report accepted;

- d) Aquatic resource delineation, as verified by the Corps and MDE, is consistent with the approved mitigation plan and contains at least as much wetland acreage and waterway linear feet as required in the mitigation plan;
- e) 100% of the total long-term management and catastrophic events endowment principal has been funded;
- f) Submittal of all required administrative reporting (ledger, transactions, and financial);
- g) Credit Release 4 has occurred;
- h) A minimum of five years of monitoring has been conducted (five full growing seasons have occurred) since site construction/planting was completed.

Credit Release 6 (Year 7):

- a) Up to 10% (80% cumulative) of the total as-built wetland and stream credits;
- b) Submittal of 4<sup>th</sup> monitoring report;
- c) All Year 7 performance standards have been attained and monitoring report accepted;
- d) Submittal of all required administrative reporting (ledger, transactions, and financial);
- e) Credit release 5 has occurred;
- f) A minimum of seven years of monitoring has been conducted (seven full growing seasons have occurred) since site construction/planting was completed.

Final Credit Release (Year 10):

- a) Remaining 20% (100% cumulative) of the total as-built wetland and stream credits;
- b) Submittal of 5<sup>th</sup> monitoring report, including delineation of aquatic resources;
- c) All final performance standards have been attained and monitoring report accepted;
- d) Aquatic resource delineation, as verified by the Corps and MDE, is consistent with the approved mitigation plan and contains at least as much wetland acreage and waterway linear feet as required in the mitigation plan;
- e) All required remedial actions and adaptive management are completed, with any remediation<sup>4</sup> having occurred a minimum of 2 years ago (two full growing seasons);
- f) Any additional performance standards required as a result of required adaptive management or remedial actions have been attained;
- g) Submittal of all required administrative reporting (ledger, transactions, and financial);
- h) Full funding of short-term interim monitoring and maintenance and short-term catastrophic events financial assurance to assure performance until bank closure;
- i) Credit release 6 has occurred;
- j) A minimum of ten years of monitoring has been conducted (ten full growing seasons have occurred) since site construction/planting was completed.

When funding the long-term management endowment fund is proposed incrementally over time with credit release, the endowment agreement must include a provision that disbursements will not be made from the endowment fund any earlier than three years after the endowment amount

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<sup>4</sup> IRT may waive this requirement if we determine the remediation to be minor and will not affect the long-term sustainability of the site

has been 100% funded. The sponsor is fully responsible for funding 100% of the annual long-term management and maintenance actions until the long-term management fund has been fully funded for no less than three years.

Monitoring for full achievement of performance-based milestones and final performance standards is for a minimum of five years. If after completion of the 5<sup>th</sup> year of monitoring, the mitigation bank site has achieved all final performance standards for two consecutive years and has substantially met all performance-based milestones each monitoring year, the sponsor may request early credit release prior to the final year of monitoring. The sponsor must provide documentation demonstrating that the site has achieved all final performance standards for two consecutive years and has substantially met all performance-based milestones each monitoring year as well as that remediation measures (e.g., invasive species management, replanting, controlling encroachments, etc.), if required, shall not have occurred during the last two full growing seasons prior to requesting early credit release to ensure the site is self-sustaining. The IRT will review the documentation and conduct a mitigation site visit to determine acceptability of the release of remaining credits. The eligibility of a bank for early release and the extent of any early credit release will be determined by the Corps and MDE, in consultation with the IRT, on a case-by-case basis.