

15A NCAC 02R .0402 RATE SCHEDULE - STREAM AND WETLAND RATES FOR THE NC DIVISION OF MITIGATION SERVICES

(a) For the purposes of this Rule:

- (1) "cost" or "costs" shall mean the NC Division of Mitigation Services In-Lieu Fee Mitigation Program's costs associated with stream or wetland projects in a given rate area, as described in this Rule; and
- (2) "credit" or "credits" shall mean the number of credits of stream or wetland compensatory mitigation that have been:
 - (A) requested by the applicant; and
 - (B) specified in the approved certifications issued by the Department and in the permits or authorizations issued by the United States Army Corps of Engineers pursuant to 33 U.S.C. Section 1344.

(b) The in-lieu fee shall be calculated by multiplying the rate, as established in this Rule, by the total number of credits.

(c) The Program shall calculate and publish general statewide stream and wetland payment rates and premium stream and wetland rates for watersheds as identified in Paragraph (d) of this Rule. Rates shall be published on the Division's website (<https://deq.nc.gov/about/divisions/mitigation-services>).

(d) Payment rates shall be developed for stream, freshwater wetland, and coastal wetland credits:

- (1) Streams shall consist of classified surface waters other than wetlands as defined in 15A NCAC 02B .0202.
- (2) Freshwater wetlands shall consist of Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) and shall include riparian and non-riparian wetlands.
- (3) Coastal wetlands shall consist of Class SWL wetlands as defined in 15A NCAC 07H .0205.

(e) Premium Watershed Rate. The Program shall apply premium watershed rates for the following areas:

- (1) Any 8-digit cataloging unit (as defined by the United States Geological Survey), mitigation service area, or smaller watershed where costs are 33 percent greater than the general statewide rate shall have a surcharge equal to the difference between the general statewide rate and the actual cost of mitigation in that mitigation service area.
- (2) The initial coastal wetland rate shall be five hundred sixty thousand dollars (\$560,000) per credit.

(f) Rate Adjustment Frequency. Initial rates shall be effective as of the readoption effective date of this Rule. They shall be calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be published on the Program's website two weeks prior to the effective date. The rate shall be adjusted within two business days if the Program suspends acceptance of payments at the current rate.

(g) Payment rates for streams and wetlands shall be determined for a rate area using the following equation and presented in per-credit values:

$$ActualCostRate = 1.43 \frac{ActualProjectCosts_{PresentDay}}{ActualCredits_{PresentDay}}$$

Where:

- (1) "Actual Project Costs_{PresentDay}" means the sum of all full delivery project and mitigation bank credit purchase costs, adjusted for inflation, as described in this Paragraph. Only the costs of full delivery and mitigation bank credit purchase projects that were contracted within the last three years, including completed projects, terminated projects, and projects in process, shall be included in the calculation of Actual Project Costs. At the time the rate is calculated, all contracts and expenditures shall be adjusted to present-day values using the annual composite USACE Civil Works Construction Cost Index, incorporated by reference including subsequent amendments and editions. A copy of this document may be obtained at no cost at http://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_1110-2-1304.pdf. If the USACE Civil Works Construction Cost Index is not available, the adjustment to present-day values shall be calculated using the average annual composite USACE Civil Works Construction Cost values from the previous three years;
- (2) "Project costs" means the total costs associated with development of stream or wetland compensatory mitigation projects including identification, land acquisition, project design, project construction, monitoring, maintenance, and long-term stewardship;

- (3) The "cost for projects in process" means the sum of expenditures of project contracts to date, contracted cost to complete existing contracts, and the projected cost of future contracts needed to complete those projects required to fulfill Program obligations in the rate area;
- (4) "Actual Credits_{PresentDay}" means the total number of credits from Actual Project Costs_{PresentDay} at the time of calculation. If the Actual Credits_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be proportionally adjusted.

*History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;
Eff. August 1, 1998;
Amended Eff. July 18, 2008; April 1, 2003;
Readopted Eff. March 1, 2018.*