yet advanced to the pilot demonstration stage, initiate their use on a small scale to allow corrective action if un-anticipated adverse impacts occur;

(e) Timing discharge to avoid spawning or migration seasons and other biologically critical time periods;
(f) Avoiding the destruction of remnant natural sites within areas already affected by development.


§ 230.76 Actions affecting human use.

Minimization of adverse effects on human use potential may be achieved by:

(a) Selecting discharge sites and following discharge procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the aquatic site (e.g. viewscapes), particularly with respect to water quality;
(b) Selecting disposal sites which are not valuable as natural aquatic areas;
(c) Timing the discharge to avoid the seasons or periods when human recreational activity associated with the aquatic site is most important;
(d) Following discharge procedures which avoid or minimize the disturbance of aesthetic features of an aquatic site or ecosystem;
(e) Selecting sites that will not be detrimental or increase incompatible human activity, or require the need for frequent dredge or fill maintenance activity in remote fish and wildlife areas;
(f) Locating the disposal site outside of the vicinity of a public water supply intake.

§ 230.77 Other actions.

(a) In the case of fills, controlling runoff and other discharges from activities to be conducted on the fill;
(b) In the case of dams, designing water releases to accommodate the needs of fish and wildlife;
(c) In dredging projects funded by Federal agencies other than the Corps of Engineers, maintain desired water quality of the return discharge through agreement with the Federal funding authority on scientifically defensible pollutant concentration levels in addition to any applicable water quality standards;
(d) When a significant ecological change in the aquatic environment is proposed by the discharge of dredged or fill material, the permitting authority should consider the ecosystem that will be lost as well as the environmental benefits of the new system.

Subpart I—Planning To Shorten Permit Processing Time

§ 230.80 Advanced identification of disposal areas.

(a) Consistent with these Guidelines, EPA and the permitting authority, on their own initiative or at the request of any other party and after consultation with any affected State that is not the permitting authority, may identify sites which will be considered as:

1. Possible future disposal sites, including existing disposal sites and non-sensitive areas; or
2. Areas generally unsuitable for disposal site specification;

(b) The identification of any area as a possible future disposal site should not be deemed to constitute a permit for the discharge of dredged or fill material within such area or a specification of a disposal site. The identification of areas that generally will not be available for disposal site specification should not be deemed as prohibiting applications for permits to discharge dredged or fill material in such areas. Either type of identification constitutes information to facilitate individual or General permit application and processing.

(c) An appropriate public notice of the proposed identification of such areas shall be issued;

(d) To provide the basis for advanced identification of disposal areas, and areas unsuitable for disposal, EPA and the permitting authority shall consider the likelihood that use of the area in question for dredged or fill material disposal will comply with these Guidelines. To facilitate this analysis, EPA and the permitting authority should review available water resources management data including data available from the public, other Federal and State agencies, and information from approved Coastal Zone Management programs and River Basin Plans;
(e) The permitting authority should maintain a public record of the identified areas and a written statement of the basis for identification.

Subpart J—Compensatory Mitigation for Losses of Aquatic Resources

Source: 73 FR 19687, Apr. 10, 2008, unless otherwise noted.

§ 230.91 Purpose and general considerations.

(a) Purpose. (1) The purpose of this subpart is to establish standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks, and in-lieu fee mitigation to offset unavoidable impacts to waters of the United States authorized through the issuance of permits by the U.S. Army Corps of Engineers (Corps) pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344). This subpart implements section 314(b) of the 2004 National Defense Authorization Act (Pub. L. 108–136), which directs that the standards and criteria shall, to the maximum extent practicable, maximize available credits and opportunities for mitigation, provide for regional variations in wetland conditions, functions, and values, and apply equivalent standards and criteria to each type of compensatory mitigation. This subpart is intended to further clarify mitigation requirements established under the Corps and EPA regulations at 33 CFR part 320 and this part, respectively.

(2) This subpart has been jointly developed by the Secretary of the Army, acting through the Chief of Engineers, and the Administrator of the Environmental Protection Agency. From time to time guidance on interpreting and implementing this subpart may be prepared jointly by EPA and the Corps at the national or regional level. No modifications to the basic application, meaning, or intent of this subpart will be made without further joint rule-making by the Secretary of the Army, acting through the Chief of Engineers and the Administrator of the Environmental Protection Agency, pursuant to the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) Applicability. This subpart does not alter the circumstances under which compensatory mitigation is required or the definition of “waters of the United States,” which is provided at §230.3(s). Use of resources as compensatory mitigation that are not otherwise subject to regulation under section 404 of the Clean Water Act does not in and of itself make them subject to such regulation.

(c) Sequencing. (1) Nothing in this section affects the requirement that all DA permits subject to section 404 of the Clean Water Act comply with applicable provisions of this part.

(2) Pursuant to these requirements, the district engineer will issue an individual section 404 permit only upon a determination that the proposed discharge complies with applicable provisions of 40 CFR part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines.

(3) Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines. During the 404(b)(1) Guidelines compliance analysis, the district engineer may determine that a DA permit for the proposed activity cannot be issued because of the lack of appropriate and practicable compensatory mitigation options.

(d) Accounting for regional variations. Where appropriate, district engineers shall account for regional characteristics of aquatic resource types, functions and services when determining performance standards and monitoring requirements for compensatory mitigation projects.

(e) Relationship to other guidance documents. (1) This subpart applies instead