

**NR 350 Compensatory Mitigation Rule Revision
Response to Wetland Study Council Comments
8/25/2020**

<u>Section</u>	<u>Comment</u>	<u>Changes Made</u>
NR 350.003 (20)	Clarify Interagency Review Team (IRT) membership, role and authority for mitigation projects	Definition shortened and note rewritten to explain which agencies may be members, their role in the project development and review process, and the USACE's final authority to make decisions.
NR 350.004 (2)	Interest in clarifying the scope of secondary impacts	No new language proposed
NR 350.004 (2)	Provide factors behind the DNR's discretion in requiring a mitigation option that would better serve natural resource goals. Add "reconnecting natural hydrology" as a factor.	Specific wetland functional goals added as examples. These follow the functional values listed in NR 103 – retaining flood water, improving water quality, improving hydrology, restoring wildlife habitat, or more closely matching the impacted wetland type.
NR 350.006 (6)	DNR to clarify that enhancement of degraded wetland vegetation, not native vegetation, may receive credit.	Change made.
NR 350.006 (9)	add language regarding marsh habitats and the use of water control structures	Added language regarding ecological suitability, self-sustaining design, and maintenance and monitoring plans to ensure success on mitigation projects that include area of shallow or deep marsh. Possible note in the rule clarifying active management for engineering structures – lay out which would require planning for LTM
NR 350.007 (6) (e) or (6) (g) (3)	Encourage opportunities to look for/improve hydrologic connections.	Language added to 6.e. that mitigation site plans must include a description of hydrology sources and processes, including inputs, outputs, and alterations
NR 350.009 (3) (g)	Clarify the standard monitoring timeframes and conditions when modifications required. Provide a reference or link to state and federal regulatory standards if needed.	Language added that monitoring will be required for no fewer than 5 years for herbaceous, no fewer than 7 years for shrub, and no fewer than 10 years for wooded wetland communities. This follows the 2013 Corps/DNR Guidelines and current practice.
NR 350.009 (3) (i)	DNR has very open-ended discretion on corrective action requirements based on results of monitoring report. Clarify that performance standards are established by approved plan.	"as required in the mitigation bank instrument" added at the end of the statement.
NR 350.010	Explain IRT concurrence process and standards. What is DNR's	IRT authority explained in note in definitions section. No changes made to this section. Mitigation sponsors

**NR 350 Compensatory Mitigation Rule Revision
Response to Wetland Study Council Comments
8/25/2020**

	discretion in IRT. Help bank sponsors better understand process and return on investment analysis.	know or must know that the 2008 federal mitigation rule and all USACE St. Paul District Guidance documents apply to mitigation bank sites in Wisconsin.
NR 350.012	How does monitoring and financial assurance for permittee-responsible projects compare to banking and ILF? Can text be clarified?	s. 12.3 states that the same financial assurances that apply to bank sites also apply to permittee-responsible sites. s. 12.4.b added to describe the monitoring period for these sites. This language matches language in s.9.3.g.
General	To what extent does ILF compete with private mitigation banks? Review rule to ensure that DNR ILF Program is not undercutting private mitigation bank investment or business.	While the mitigation hierarchy as stated in the 2008 federal mitigation rule and the 2013 Wisconsin mitigation guidelines does not bind the agencies to choose mitigation bank credits over ILF program credits, in practice the agencies do prefer that permittees purchase mitigation bank credits whenever they are available in the same service area as the impacts because this results in no or less temporal loss of wetland function. The revised NR 350 language is consistent with the current hierarchy and practice.