

## §480-Z. Compensation

The department may establish a program providing for compensation of unavoidable losses to an area listed in subsection 7 due to a proposed activity. Compensation must include the restoration, enhancement, creation or preservation of an area or areas that have functions or values similar to the area impacted by the activity, unless otherwise approved by the department. Preservation may include protection of uplands adjacent to an area. [PL 2007, c. 527, §1 (AMD).]

The department may require that compensation include the design, implementation and maintenance of a compensation project or, in lieu of such a project, may allow the applicant to purchase credits from a mitigation bank or to pay a compensation fee. If compensation is required, the completion and maintenance of a project, purchase of credits or payment of a compensation fee must be a condition of the permit. [PL 1997, c. 101, §1 (NEW); PL 1997, c. 101, §2 (AFF).]

The department shall identify an appropriate project, or determine the amount of credits or compensation fee, based upon the compensation that would be necessary to restore, enhance, create or preserve areas with functions or values similar to the areas impacted by the activity. However, the department may allow the applicant to conduct a project of equivalent value, or allow the purchase of credits or payment of a compensation fee of equivalent value, to be used for the purpose of restoring, enhancing, creating or preserving other functions or values of the area that are environmentally preferable to the functions and values impacted by the activity, as determined by the department. The loss of functions or values of one type of area may not be compensated for by the restoration, enhancement, creation or preservation of another type of area. For example, the loss of functions or values of a coastal wetland may not be compensated for by the restoration, enhancement, creation or preservation of freshwater wetland functions or values. [PL 2007, c. 527, §1 (AMD).]

A project undertaken pursuant to this section must be approved by the department. The department shall base its approval of a wetlands compensation project on the wetland management priorities identified by the department for the watershed or biophysical region in which the project is located. The department shall base its approval of a compensation project concerning an area listed in subsection 7, paragraph C, D, E or F on the management priorities identified by the department for the type of habitat. The department may not approve a compensation project for unavoidable losses to an area until the applicant has complied with all other applicable provisions of this article and all applicable rules adopted by the department pursuant to this article. For purposes of this section, "biophysical region" means a region with shared characteristics of climate, geology, soils and natural vegetation. [PL 2019, c. 581, §1 (AMD).]

**1. Location of project.** A compensation project must be located on or adjacent to the project site, unless otherwise approved by the department. A compensation project must be located in the same watershed as the area affected by the activity unless the department determines, based on regional hydrological or ecological priorities, that there is a scientific justification for locating the compensation project outside of the same watershed. [PL 2007, c. 527, §1 (AMD).]

**2. Approval of mitigation bank.** A mitigation bank from which any credits are purchased must be approved by the department consistent with all applicable federal rules and regulations. [PL 1997, c. 101, §1 (NEW); PL 1997, c. 101, §2 (AFF).]

**3. Compensation fee program.** The department may develop a compensation fee program for the areas listed in subsection 7 in consultation with state and federal resource agencies, including, but not limited to, the Department of Agriculture, Conservation and Forestry, the Department of Inland Fisheries and Wildlife, the United States Army Corps of Engineers, the United States Fish and Wildlife Service and the United States Environmental Protection Agency.

A. The program may include the following:

- (1) Identification of wetland management priorities on a watershed or biophysical region basis;
  - (1-A) Identification of management priorities for the areas listed in subsection 7, paragraphs C, D, E and F;
- (2) Identification of the types of losses eligible for compensation under this subsection;
- (3) Standards for compensation fee projects;
- (4) Calculation of compensation fees based on the functions and values of the affected areas and the cost of compensation, taking into account the potential higher cost of compensation when a project is implemented at a later date; and
- (5) Methods to evaluate the long-term effectiveness of compensation fee projects implemented under this subsection in meeting the management priorities identified pursuant to subparagraphs (1) and (1-A). [PL 2019, c. 581, §2 (AMD).]

B. Any compensation fee may be paid into a compensation fund established by the department as provided in subparagraph (1) or to an organization authorized by the department as provided in subparagraph (2). A compensation project funded in whole or in part from compensation fees must be approved by the department.

(1) The department may establish compensation funds for the purpose of receiving compensation fees, grants and other related income. A compensation fund must be a fund dedicated to payment of costs and related expenses of restoration, enhancement, preservation and creation projects. The department may make payments from the fund consistent with the purpose of the fund. Income received under this subsection must be deposited with the State Treasurer to the credit of the compensation fund and may be invested as provided by law. Interest on these investments must be credited to the compensation fund.

(2) The department may enter into an enforceable, written agreement with a public, quasi-public or municipal organization or a private, nonprofit organization for the protection of natural areas. Such an organization must demonstrate the ability to receive compensation fees, administer a compensation fund and ensure that compensation projects are implemented consistent with local, regional or state management priorities. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report as requested by the department. If the authorized agency is a state agency other than the department, the agency shall establish a fund meeting the requirements specified in subparagraph (1). If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the department may revoke the organization's authority to conduct activities in accordance with this subsection. [PL 2007, c. 527, §1 (AMD).]

Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A.

[PL 2019, c. 581, §2 (AMD).]

**4. Relationship to other provisions.** The purchase of credits from a mitigation bank or the payment of a compensation fee in no way relieves the applicant of the requirement to comply with any other provision of this article, including, but not limited to, the requirement to avoid or minimize effects on wetlands and water quality to the greatest extent practicable under section 480-X.

[PL 1997, c. 101, §1 (NEW); PL 1997, c. 101, §2 (AFF).]

**5. Report; evaluation.**

[PL 2003, c. 245, §9 (RP).]

**6. Repeal.**

[PL 2003, c. 245, §9 (RP).]

**7. Areas.** As used in this section, "area" includes:

- A. Freshwater wetlands; [PL 2007, c. 527, §1 (NEW).]
- B. Coastal wetlands; [PL 2007, c. 527, §1 (NEW).]
- C. Significant vernal pool habitat; [PL 2007, c. 527, §1 (NEW).]
- D. High and moderate value waterfowl and wading bird habitat, including nesting and feeding areas; [PL 2019, c. 581, §3 (AMD).]
- E. Shorebird nesting, feeding and staging areas; and [PL 2019, c. 581, §3 (AMD).]
- F. Rivers, streams and brooks. [PL 2019, c. 581, §4 (NEW).]  
[PL 2019, c. 581, §§3, 4 (AMD).]

#### SECTION HISTORY

PL 1997, c. 101, §1 (NEW). PL 1997, c. 101, §2 (AFF). PL 2001, c. 232, §17 (AMD). PL 2003, c. 245, §§8,9 (AMD). PL 2005, c. 592, §§3,4 (AMD). PL 2007, c. 527, §1 (AMD). PL 2011, c. 655, Pt. JJ, §31 (AMD). PL 2011, c. 655, Pt. JJ, §41 (AFF). PL 2011, c. 657, Pt. W, §5 (REV). PL 2019, c. 581, §§1-4 (AMD).

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