and enhancement efforts within a mitigation bank, and to quantify the amount of available credits. The range of functions to be assessed will depend upon the assessment methodology identified in the banking instrument. The same methodology should be used to assess both credits and debits. If an appropriate functional assessment methodology is impractical to employ, credits and debits can be based on simple indices (e.g. acres) of various classes of wetlands and/or other aquatic resources (e.g., Cowardin et al, 1979, as modified for National Wetland Inventory mapping conventions). Regardless of the method employed, credits should be based on the difference between site conditions under the with- and without-bank scenarios.

The bank sponsor should be responsible for assessing the development of the bank and submitting appropriate documentation of such assessments to the authorizing agency(ies) and members of the MBRT for review. Alternatively, functional assessments may be conducted by a team representing involved resource and regulatory agencies and other appropriate parties.

Bank sponsors will establish and maintain an accounting system (i.e., ledger) which documents the activity of all mitigation bank accounts. Each time an approved debit/credit transaction occurs at a given bank, the bank sponsor will submit a statement to each member agency of the MBRT. The bank sponsor will also generate an annual ledger report for all mitigation bank accounts for similar distribution.

Credits may be sold to third parties. The cost of mitigation credits to a third party is determined by the bank sponsor.

8. Party Responsible for Bank Success

The bank sponsor is responsible for assuring the success of the restoration, creation, enhancement and preservation activities at the mitigation bank. This responsibility must be clearly documented in the banking instrument and in any authorization approving the use of the bank as compensatory mitigation. Where authorization under Section 10/404 and/or FSA is necessary to establish the bank, the DA permit or NRCS plan should be conditioned accordingly to ensure that provisions of the banking instrument are enforceable. In circumstances where establishment of a bank does not require such authorization, adequate mechanisms (i.e., legal and financial assurances) need to be in place to ensure that

provisions of the banking instrument are enforceable.

E. Long-Term Management, Monitoring and Remediation

1. Bank Operational Life

The operational life of a bank refers to the period during which the terms and conditions of the banking instrument are applicable, and signatories of the instrument are responsible for carrying out its provisions. With the exception of arrangements for the long-term management and protection in perpetuity of the bank, the operational life of a mitigation bank terminates at the point when (1) compensatory mitigation credits have been exhausted or banking activity is voluntarily terminated with written notice by the bank sponsor provided to the Corps or NRCS and other members of the MBRT, and (2) it has been determined that the debited bank is functionally mature and/or self-sustaining to the degree specified in the banking instrument.

2. Long-Term Management and Protection

Mitigation banks should be protected in perpetuity with appropriate real estate arrangements. In exceptional circumstances, real estate arrangements may be approved which dictate finite protection for a bank. However, in no case should finite protection extend for a lesser time than the duration of project impacts for which the bank is being used to provide compensation.

All banks must be protected by legal instruments which effectively prevent harmful activities (i.e., incompatible uses ³) that would jeopardize their continued conservation purpose. Acceptable instruments are deed restrictions, conservation easements or other enforceable legal mechanisms.

Banking instruments should identify the entity responsible for the management of the bank beyond its operational life as a means to assure the conservation purpose of the bank. The bank sponsor is responsible for securing adequate funds for the operation and maintenance of the bank during its operational life, as well as for management of the bank beyond its operational life, as necessary. Where needed, the acquisition and protection of water rights should be secured by the bank sponsor and documented in the banking instrument.

3. Monitoring Requirements

The bank sponsor is responsible for monitoring the mitigation bank in accordance with monitoring provisions identified in the banking instrument to determine the level of success and identify problems requiring remedial action. Monitoring provisions need to be set forth in the banking instrument and based on scientifically sound performance standards prescribed for the bank. Monitoring should be conducted at time intervals appropriate for the particular project type and until such time that the authorizing agency(ies), in consultation with the MBRT, are confident that success is being achieved (i.e., performance standards are attained). Annual monitoring reports should be submitted to the authorizing agency(ies) and members of the MBRT.

4. Remedial Action

The banking instrument should stipulate the procedures for identifying and implementing remedial measures at a bank, or any portion thereof. Remedial measures should be based on information contained in the monitoring reports (i.e., the attainment of prescribed performance standards), as well as site inspections. The need for remediation will be determined by the authorizing agency(ies) in consultation with the MBRT and bank sponsor.

5. Financial Assurances

The bank sponsor is responsible for securing sufficient funds to cover contingency actions in the event of bank default or failure. Accordingly, banks posing a greater risk of failure and where credits have been debited, should have comparatively higher financial sureties in place, than those where the likelihood of success is more certain. In addition, the bank sponsor is responsible for securing adequate funding to monitor and maintain the bank throughout its operational life, as well as beyond the operational life if not self-sustaining. Total funding requirements should reflect realistic cost estimates for monitoring, long-term maintenance, contingency and remedial actions.

Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, or other approved instruments. Such assurances may be phased-out or reduced, once it has been demonstrated that the bank is functionally mature and/or self-

³For example, certain silvicultural practices (e.g. clear cutting and/or harvests on short-term rotations) may be incompatible with the objectives of a mitigation bank. In contrast, silvicultural practices such as long-term rotations, selective cutting, maintenance of vegetation diversity, and undisturbed buffers are more likely to be considered a compatible use.