

**HCCC ILF Program – Interagency Review Team Meeting in Tacoma  
Final Meeting Minutes  
November 14, 2011**

**Attendees:** Gail Terzi (COE), Christina Merten (ECY), LaJane Schopfer (Mason Co), Patty Charnas (Kitsap Co), Steve Todd (Suquamish Tribe), Richard Brocksmith (HCCC), Cyrilla Cook (WADNR), Chris Townsend (PSP), Roma Call (PGST), Stacie Hoskins (Jefferson Co), Doris Small (WDFW), David Hirsch (NMFS), Cynthia Rossi (PNPTC), Joe Brock (COE), Kristine Reeves (U.S. Senator Patty Murray's Office)

**Note taker:** Heidi Huber (HCCC) and Richard Brocksmith

**Reviewed meeting minutes from October 13th meeting, general comments:**

Steve Todd- How much of a project needs to be implemented, does something need to be started in the 3 year timeframe?

Gail: Project needs to be implemented to some degree, something physical needs to happen on the ground within 3 growing seasons. District engineer can delay that start time for a valid reason.

Steve- Geoduck damage and how that is integrated into ILF or kept independent? It wasn't clear in the meeting notes. We want to avoid double mitigating.

Gail: Will be very case specific, this program could be used as a tool to mitigate shellfish impacts. There are very unique impacts associated with shellfish. Could potentially decouple some of the impacts and have to do some mitigation onsite and buy credits from the in lieu fee program?

–Someone asked: How does ILF incorporate natural resources damages?

Gail: there is nothing that prohibits it from being used

Cyrilla: Geoduck damages are very unique, compensating for monetary value due to non-harvest, needs to be examined on site by site basis. This program may not be able to take on what is already authorized in statute and treaty rights.

Gail: but it could supplement it, if appropriate, ILF could cover this.

Someone noted: ILF has been used for NRDA (Natural Resources Damage Assessment) sites. Example - old paper mill sites? NRDA trustees would have to determine if money went to ILF.

-SRFB and other state and federal recovery funds would be off limits because it is a grant program, if grant moneys ran out could be topped off with ILF moneys, as noted in federal register. This grant prohibition pertains to federal grant monies only, not state or local grants.

Richard: These are pretty meaty topics and slightly off agenda. Let's plan for a more in depth discussion outside of this meeting on these, as appropriate.

Gail: YES, we could pull in the NRDA folks.

**ACTION ITEM: Final October meeting minutes will be sent out to the group, with changes that include Roma's and Patty's clarifications.**

**Status of Draft Instrument:**

Last meeting we received good direction on where we should be taking the program. Since then have written and completed a draft instrument. Submitted (on Nov. 8) the entire set of documents to Corps and ecology, and this group. Followed King County model as much as possible.

Two main pieces- basic agreement, technical appendices with exhibits.

Corps and Ecology will do a completeness review. Once this is done we will continue to add specificity as agreed to by the IRT. Will identify what are the most critical sub watersheds, roster sites, what actions will need to be taken at those sites, etc.

Program is currently 187 pages.

Roma- can you talk about the Navy's project, their schedule?

Richard-The Navy is creating a nearshore assessment tool (discussed during meeting last week in Keyport). The Explosives Handling Wharf is moving through review process and negotiations with the Corps and Ecology, still has to go through Ecology and Coastal Zone Consistency and DFW. Still plowing through permit process. They expect to have permits in April. Navy is required to identify where they

are going to do mitigation, and as of now, ILF is the preferred approach, but is not applicable or available currently.

The Draft EIS and supplemental EIS list 3 mitigation options:

1. ILF Mitigation Program
2. Dabob Bay Conservation
3. Dosewallips / Shine Tidelands Parks Restoration.

We have been talking with Navy about how we are connected. They are on a fast pace but we are trying to stay connected on the same time frame as much as possible. The timelines still align well. They will get permit which will identify ILF as plan A for mitigation. If not timely they would go permittee-responsible mitigation. There is also some discussion about putting some flexibility in the permit, in that it would note ILF as preferred approach but also authorize options 2 or 3 if ILF isn't authorized by Fall 2012. We would then have to reduce our 3 years of lag time to 2.5 years, maximum. This approach could provide a few months of leeway if it is needed. Local tribes, governments, regional, state gov, want ILF to be successful. We want to keep connected with the Navy.

Gail- in order for the Corps to issue an individual permit we have to have mitigation plan up front and approve a final mitigation plan before we issue the permit. The Corps cannot defer mitigation to a later date; we must have a permittee-responsible mitigation plan or an approved ILF program. The latter option seems like it could present challenges.

Christina Merten- Ecology is working with different teams for permits now, not necessarily Ecology staff on the IRT

Joe- The Navy wants to use ILF if available. Mitigation has to be determined before the permit is issued, but we can modify permits afterwards. Could start with option 2 (Dabob) but change to option 1 (ILF). At the time the permit is issued ILF would have to be authorized.

Gail- If Navy doesn't want to keep it a permittee responsibility they could turn over to sponsor when ILF is up and running, becomes sponsor responsibility, permit would have to be modified.

Patty- The impacts of the Navy project are associated with Kitsap County. I am encouraged to see that there are some creative discussions moving this forward.

Gail and Christina- we have the draft instrument and hope to do a completeness review in the next 30 days. Draft has been emailed out to this group. It doesn't officially go to IRT until completeness review. 35 days for comments upon completeness. The credit/debit tool is one of the biggest concerns/missing components.

### **Basic Agreement:**

Gail- This contains the legally binding language. It is the contract between the parties that sign the instrument (Corps, Ecology, sponsor, possibly other members of the IRT). The difference between the basic agreement and appendices is how they are dealt with for revisions and modifications. If there are changes to the basic agreement the document has to be resigned by all parties. Appendices can be revised/modified through an exchange of letters in consultation with the IRT. It is a much more flexible process that doesn't require resigning.

Patty Charnas- To clarify, the agreement is between Corps, Ecology, and the sponsor. Other IRT signatures aren't legally binding? Christina- Some IRT members may sign as thumbs up, others as a more binding contract (party).

Patty- Kitsap County wants to be a party to fully utilize ILF, so would the drafted language change?

Gail - We would add you in as a party.

Christina - Because counties aren't currently included as parties, specific county regulations were left out.

Gail- Counties aren't required to sign on as a party. There are 4 different ways you can support the ILF Program as a member of the IRT:

1. Sign on as party,
2. sign as member of IRT ,
3. write a letter of support,
4. Not sign, while remaining on the IRT

Christina- Ecology would like to know if you intend to be a silent party for communication purposes. That way we aren't soliciting responses if none are coming.

Patty- brought up the role of the county in HCCC compared to participation in the IRT. Being a member of IRT doesn't preclude that other level of participation?

Gail- No, given the difference in policy folks on HCCC Board and technical staff on IRT. Conflict of interest issues- If the IRT had an issue, can the board of directors unduly influence the IRT chair? If there was an issue people should excuse themselves. We should seek consensus and buy in from the IRT on this issue and make sure everyone is comfortable with this approach and that board members of HCCC are willing to discuss excusing themselves if indeed there is a potential or perceived conflict of interest.

Steve Todd- last sentence on intro "this HCCC ILF Program may also be used as a remedy to mitigate unauthorized activities.....", what does this mean?

Gail -it can be a tool to mitigate for violations.

David- This is an important provision for us.

Cyrilla- what would the process be if the unauthorized activity needs to be removed? Does it need to be more clear that the unauthorized activity should continue?

Joe- we authorize projects, then mitigation is determined. Usually that is the remedy but we also do settlement agreements. Remedy language could use a little more detail.

Gail- It doesn't preclude the violation from being removed, even if removed damage could still exist and they could pay into ILF. Paying into ILF isn't the only way to deal with unauthorized activities.

Christina-I don't know if additional language would help or confuse this. It is hard to capture everything.

Chris- ILF is in no way regulatory. The regulatory agencies need to make the call how ILF will be used.

David-Corps would like to use ESA to leverage violators, but it isn't a strong tool for a remedy. We can't tell someone to remove the violation. Adding a mitigation option is a relief valve.

Cyrilla- Would it make more sense to say "Mitigate the impacts of the authorized"?

**ACTION ITEM: Review "unauthorized activity" section to see if any additional clarifications should be added.**

Includes a buffers section, important for counties. Upland Buffer only impacts would likely be handled separately since there isn't a federal or state nexus. If the impact includes a wetland or other aquatic resource AND its buffer, then the Corps and Ecology require compensation for the aquatic resource and its buffer. Sponsor, county, tribes need to discuss. This would get worked out in Inter-Local Agreements that build upon the federal ILF program.

**ACTION ITEM: Continue to explore and flesh out the "localization" of mitigation.**

Gail- What is the Integrated Watershed Management Plan?

Richard- Watershed perspective on what is needed to conserve ecological resources and services in Hood Canal. Conservation priorities include 5 big habitats (beaches, rivers/streams, forests, estuaries, riparian), and 3 biota (salmon, bottom fish, shellfish). It focuses on watershed characterization, goals setting, and actions that reduce pressures on the conservation priorities. It is the local version of the PSP Action Agenda built on the same strategic planning process. HCCC hopes to have a draft by the end of the year.

Christina- The IWMP isn't a final document, should it be referenced in your goals? Does it need to be defined more?

Gail- Is it used in the reference materials?

Richard- Yes, in the technical appendices. As an example, the indicator work is used to help create the nearshore assessment framework. Pieces of the IWMP are spread throughout various planning level documents.

**ACTION ITEM: Better relay IWMP to IRT, and explore appropriateness of a draft document being referenced in the ILF goal statements.**

Gail- # 4, is this the credit debit tool for the marine environment? This is different than King County so I assumed it was marine.

Richard – no, it is not focused on marine it is more broadly for salt and freshwater. This piece helps lay out some common understanding of what an ecologically appropriate site selection process is. The IRT clarified this in track changes.

Doris- What level would the project be at? Would it be beyond conceptual to draft design? What is the mechanism to bring projects to that level?

Richard- you don't have to have roster sites in your instrument. You propose actions at sites through the IRT, then spend more time and effort on that proposal, IRT reviews again. Built in to IRT review process, and funded by fees. Though not required, we do want to develop roster sites over time (this spring and summer?) and incorporate into appendices with more concrete conceptual ideas.

Doris- I'd like to see mechanisms to bring money to projects to draft development level.

Gail- a chunk of money is assigned (admin costs) to develop plans, doing recon, etc. This is taken care of with a specific pot of money. The accounting portion references these separate pots of money. The detail is in the appendices. Roster sites are not required to be a part of the instrument. Roster sites help with section seven consultation. If you have no idea where you want mitigation (roster sites), how do you get through ESA consultation?

Richard - We will examine the ESA process, hopefully building on significant work from King County, and explore development of roster list this spring and summer.

Patty- #7, do we need to clarify that this also includes shoreline? Richard- Hood Canal is a watershed, including its marine shorelines.

Cyrilla- #7 needs "or marine area" added to the text to clarify. The IRT clarified this in track changes.

Steve- #8, "net resource gain", how can we reliably measure this? This language is too strong and goes beyond the federal rule. If we can't show this gain over time is our program failing?

Richard- I'm wondering why I chose this language rather than no net loss as mentioned in previous lines. The group softened language, using track changes, with "strive to produce a net resource gain".

#### **Interagency Review Team:**

Richard- added PSP

Christina- Lower Elwha Klallam Tribe requested to be added. The group added this in track changes.

Cynthia- Clarified her role in this process. PNPTC is a natural resource agency for the two tribes, in this capacity I am representing the Jamestown S'Klallam Tribe.

Patty- the lack of HCCC in this list is because they are a program sponsor?

Richard- We aren't a government and we weren't invited.

Gail- sponsors aren't present at some meetings

Doris- what about the Forest Service?

Gail- I don't think we've ever invited them, maybe we would for this one.

**ACTION ITEM: Christina will check to see if she has already communicated with the Forest Service.**

Steve- Can we again clarify the difference between the basic agreement and the appendices and what triggers a resigning? For example, if we use Interim approach until marine nearshore credit tool is developed, would that be a big enough change to require a resigning?

Gail- I would see it more as a change to the appendices and therefore not require resigning of instrument.

#### **Basic Terms of Agreement:**

Cyrilla- I. Transfer of Permit Mitigation Responsibility..... I would like to see "compensatory" on 2nd line

David- if we unnecessarily narrow to compensatory (bottom of the sequencing barrel) we could be constraining the use of ILF higher in the hierarchy of mitigation. It wouldn't be frequent occurrence but just saying compensation limits us.

Cyrilla- Needs to be clear for stakeholders

See page nine language, IV. IRT added in "compensatory" in track changes.

Gail- I.A., Should tribal authorities be mentioned in beginning paragraph? Do tribes want to be involved or do they have their own review process?

Richard- the intent was to be flexible enough to incorporate tribal authorities so they can participate in the review process and/or utilization of the program on their lands. There have been no policy decisions from the tribes on this, other than they support the use of the program, want to be involved in implementation, and must maintain existing authorities.

**ACTION ITEM: Richard will discuss inclusion of tribal authorities further with them.**

Gail- Will expand, modify Inter-local Agreements as needed. Need to explore how they are relevant to the ILF Program.

Other governments can use the program but we would have no oversight if there isn't a nexus. ILAs need to be in the spirit of the intent of the program, would be good to have them in one place for reference.

Roma- Should SMP and local regulations be included here?

Cyrilla- Does the Federal section need CZM? Yes, group added in track changes.

Gail -You could include a footnote stating - there are blank governments with regulations that may apply, etc.

Chris- Limit to state and federal programs.

Gail and Steve- **ACTION ITEM: Incorporate a footnote or additional references saying other tribal or local laws and regulations may apply to this program.**

### **Funding Provisions:**

Cyrilla Pg 6 line 22-24, - land fees will be used for acquisition of lands or conservation easements.....  
Need to show broader toolbox than just acquisition of land. Land isn't always acquired to do mitigation.  
Group broadened language in track changes to meet intent of program.

Patty C. line 18-20 - need to be clearer on "recent"

Richard- we looked at recent comparables for counties and land use 2004-20011, recognizing major changes in land market forces around 2008. Needs to reference the appendix and the process. The appendix will be updated as the market changes.

Christina- You don't mention appendix F in the paragraph C. Richard made the change in track changes.

Richard- changed the language line 24 of lands "and or land interests".

Gail - Line 23 we need to describe natural lands. Richard deleted natural in track change.

Steve- Does the IRT have a review of the allocation of percentages for each account?

Gail - by design the IRT gets to review this.

Section D- Accounts -some include percentages, not referenced in the basic agreement because it could and may change over time. Richard thought the program admin is capped at 8%, so that is what is proposed. HCCC also proposed long term maintenance and management 8%, contingency 15%.

Everything else goes into the other bin for project development and implementation.

Gail- Nationwide the percents are all over the place for admin and admin fees can be high

Patty- Land fee account contains 100 percent?

Richard- Land fees are held separately in different accounts, just for purchase/reimbursement of the lands associated with mitigation.

Steve and Gail - Might need more than 8% for admin.

Gail- I have some questions about Financial Assurances, land fee account. Some moneys appear to be pooled compared to separated by service area in other accounts

Richard- The intent is to keep moneys separate by service area. Our policy intent is that they are separate, and I think that is the intent of the rules. **ACTION ITEM: Richard will clarify the language re: keeping monies separate between service areas.**

Stacie - Should you remove the US bank reference in case it changes? **ACTION ITEM: Richard will investigate the flexibility provided by the federal register.**

Roma- is monitoring included in admin?

Richard- No. Two different types of monitoring in the program. Establishment period- tracking to see if you are meeting your performance measures, if not then the sponsor needs to do adaptive management. Once we've met performance measures, a site transfers into long term maintenance and

monitoring. 1<sup>st</sup> phase, establishment, monies come from the project account. 2<sup>nd</sup> phase, LTMM, monies come from the long term account. Program “monitoring” (reporting, ledgers) could loosely be defined as a third type, but it is funded by the administrative account.

Cyrilla- will 10% cover admin for monitoring and other admin? This seems low.

### **Nearshore Marine Credit Pricing Table:**

Looks at mitigation costs for the nearshore service area. Mitigation fees include contingency, long term management, admin, and individual mitigation project accounts. Lands fees are calculated separately.

Gail- What they charge for a credit can/should change/fluctuate

Chris- contingency looks small. If you have an initial public user, start with higher rate and adjust down if needed over time to ensure capacity exists to meet requirements.

Roma-if money is left over is there flexibility to use it in other areas?

Gail- Yes it can be rolled over (ex: contingency rolled into the long term management endowment)

Gail- how did you end up with the long term management percentage?

Richard – We made a decision based on review of other programs and our own experience. We’d agree it may need to be higher, especially initially, but we also need to balance so mom and pop can utilize the program.

Steve- contingency seems low also. Admin also seems low

**ACTION ITEM: Reconsider increasing % holdouts for administration, LTMM, and possibly contingency.**

Doris-site survey, design, permitting- I envision this already being completed, the person using the money sets aside this money for development of other future projects. The group discussed how money would flow from fees to pay for design.

### **Lunch Break**

Interest gets directed to contingency account or long term management account.

D1. Land Fee Account is the only one that has a percentage associated with it in the Basic Agreement portion of the Instrument, and that is because it is 100% always of the land fees.

### **Section E – Ability to Direct Funds**

Steve-how much review power would the IRT have in redirecting funds?

Christina - Corps and ecology have signed on as parties so it is their responsibility to redirect funds as necessary. IRT would be polled for places/projects to redirect funds.

### **Section F - Financial Assurances**

Richard – We document many financial assurances here, with the exception of a mechanism to have the HCCC raise funds independently. King County does note the ability/requirement to talk to their County Council or Dep’t of Natural Resources as backup financial assurance if program funds run short. HCCC doesn’t have a way to raise funds (through taxing, etc.).

Gail- Land Fee account may be used for financial assurances. Contingency funds can be used for financial assurances anywhere in the program. Long term management fund should get an endowment set up as you go along, could be used as backup but would have to be refunded (through future credits).

Richard - Should add language to describe all options described above, and did using track changes.

Gail - How does HCCC get their money?

Richard- Contractual or soft moneys, no discretionary funds, mostly for salmon recovery and some for dissolved oxygen.

Cyrilla- LWD jams have large liability, how do we deal with non profits that don’t have insurance?

Richard - HCCC has identified a few legal topics we need to address, such as risks associated with construction, contracting policies, etc.

Richard reviewed King County financial assurances, reviewed our proposal. Is this sufficient to cover the risk that is out there that are supposed to be covered by financial assurances?

**ACTION ITEM: Need to explore this further, with a specific focus on asking HCCC member governments what their capacity is for providing an agreement to assess their ability to underwrite the program through financial assurances.**

**Operation of the HCCC ILF Program:**

Gail - Acknowledged improvement from King County's language in first paragraph. Thanks!

Steve - Performance standards, where are they listed?

Gail - They are very specific for each site, they will be in the IRT approved mitigation plan. They are tied to specific credit release schedules for each site.

Cyrilla- section A "watershed focused mitigation" what is the service area? Is it a subset of Hood Canal?

Gail – typically not going to mitigate for nearshore/marine impacts outside of the nearshore/marine area.

Richard- we have four service areas, marine nearshore, WRIA 15, 16/14b, and 17 watersheds that drain to Hood Canal

Cyrilla? - Lines 23/24 I'd like to see it explicit that corps and ecology only go outside the service area with discussion from IRT. Richard adjusted the language in track changes.

Cyrilla – It isn't clear that "watershed focus" includes nearshore.

Richard - That is explained throughout document and in appendices.

Gail-Read the appendices and if you still feel this needs to be addressed we will discuss.

Steve – Where do we discuss the Program Scope, such as pilot vs phased approach?

Gail – Needs to be raised and resolved during the 90 day review period.

**Advanced Credit Allocation to sponsor:**

Gail - Should be based on practical knowledge of demand for these types of permits. We will discuss at next IRT meeting.

Gail - You get money in the program by selling credits. A mitigation site can fulfill more credits than expected, that can create "profit". Example: dike removal on an estuary could create a huge lift and generate more credits.

**Proposal to Review Interim Approach at December meeting. Yes (and beyond)**

Steve - Section E, line 19. Is this subject to a public notice?

Gail- it depends on the permit. For a nationwide permit- no, for an individual permit - yes. Using ILF doesn't automatically kick them into public notice.

Cyrilla - there is more than one agency that's a permitting authority, will they talk to each other to discuss credits? Can HCCC require a pre agency meeting?

Gail- that would be a lot of work, it is up to the applicant to provide an "ILF use plan" that explains why ILF is adequate mitigation for the impact.

Doris - herring spawning on eelgrass is hard to replace.

Gail- you can decouple impacts.

Cyrilla- avoidance needs to be a priority. How do we replace loss of eelgrass? Do we go to higher value resource/habitat?

Gail – One could also deny the permit.

Cyrilla – Language seems too subjective?

Richard – IRT can come up with approach to address relative value of habitat functions, etc.

Patty – what does the last sentence mean? If permittee buys credits and project never happens....

Stacie - Permitting is a large concern for us. Helpful to create a picture of what is happening now.

Gail - How do we streamline the permitting process for ILF, how do we make sure everyone is ok with this moving forward?

Gail - When sponsor is ready to spend money we get to look at that. We can live audit this program. Are they collecting enough, targeting their costs correctly?

**Sections G, H, I:** No comments

**Section J-Z:**

Steve - Change "may" to "shall" in first sentence. Richard made this change in track changes.

Cyrella - K. What happens if it doesn't have enough credits?

Gail - IRT would do a site visit and determine if the site is worth pumping more money into, or is it the wrong site. The original applicant is off the hook, sponsor is now responsible.

L, M, N - very site specific

P - Gail: If there's an act of god the sponsor isn't responsible - Corps wanted language to clarify this statement to explain what a "natural catastrophic event" would entail.

Patty - What about geological hazards- if we restore a shoreline bank and it slides?

Christine - is the slide caused by the implementation of the site or it happened regardless? Corps and Ecology determines site by site whether it is considered force majeure.

Gail- what about sea level rise?

Steve - under examples see "flood greater than 100 year"

Christina - Sponsor can choose to not walk away from this if it is actually beneficial for the site.

Gail - this paragraph is non-negotiable with our office.

**Remaining Sections of Basic Agreement:**

Roma - pg 16, AA- tribal governments are not included in the first sentence. Why?

Richard - I've been told Tribal governments can't own mitigation lands. The group discussed difference between tribal trust lands vs fee simple land, and implications for ownership.

**ACTION ITEM: Explore feasibility of tribal ownership of mitigation sites. Gail - We can look at Lummi bank and other programs for examples. Roma- I will talk to PGST counsel.** NW Indian Fish Commission is willing to hold easements.

Joe Brock - Government agency lands can be a problem with the site protection. **ACTION ITEM: Joe will send comments on this issue and recommended language.**

Gail - We prefer conservation easements compared to restrictive covenants. Certain areas may not be conducive to that.

Christina - End sentence change program to "mitigation site". First line add all real property "to be included in the Program". Richard did this in track changes.

**ACTION ITEM: Request Tribal input on first paragraph on page 19 re: tribal nexus. Richard will also explore in conversations with Tribes.**

Roma - if the tribe wanted to use ILF could they?

Richard - you could choose the program like any permittee, however need to discuss the land issue more in depth.

Roma - Does the existing language exclude a tribe from using the ILF if it wanted to? Need to talk to our attorneys

Richard - So you are asking.....Does the "Nor provide....." language curtail the tribe's ability to implement environmental aspects of treaty rights mitigation?

**ACTION ITEM: Richard to clarify language to ensure flexibility for tribal treaty right use if they wish.**

Christina - What If something is proposed out of the service area and pulls in other U and A's

Christina - paragraph 6 I. Effect of agreement- last sentence.... What about tribal waters, waters of Washington state? If tribal waters is added here, it needs to be added elsewhere.

**ACTION ITEMS: Christina will check if it is waters of the State, or waters of the state of Washington. Tribes please check the terminology for tribal waters.**

**Review of Interim Nearshore Approach:**

Richard - Worked with ESA Adolphson, nearshore group to develop. We want a rigorous assessment/model, that process is ongoing. We had a meeting last week. Science side is going to do some more work and report out in early 2012. Summer will be site assessments to use for calibration of

the model. Don't want to rush the model, so we have an interim approach for the nearshore, for the next year or so until the model is approved by the co-chairs in consultation with the IRT. We don't expect a sudden nearshore mitigation rush, so this is probably just for the Navy's first project or two and possibly a couple of smaller projects to learn from.

Steve - How rigorous does this need to be for a large project, such as EHW2?

Richard – The IRT will collectively answer that, but for now we have erred on the conservative side in our approach to assessing damages.

Richard - Walked through the document, starting with Principles.

Cyrilla - Need better scientific phrasing than higher importance. The IRT adjusted the language to “ high value habitat with similar function” on first bullet.

Cyrilla - Second bullet add ....but that can still be sustainable. Was adjusted in track changes.

Steve - temporal lag, ecological vs non. Is this taken into account?

Richard - Needs to be better incorporated. We are looking for your suggestions.

Gail - is this fair for folks that are last in the door? Richard-Everyone is charged a little bit, ie there isn't a variable consideration for when they come in the door.

Cyrilla - last bullet add construction, monitoring, and long term management etc. Was done in track changes.

Doris- do you intend for the interim approach to sunset in a year?

Richard –It will sunset when the more robust nearshore assessment and credit/debit tools are approved, in a year or possibly two. We have several cost schedules that will be updated periodically as well.

#### **Table 1.**

Doris - have you given thought to direct and permanent impact vs indirect or construction type impact? Going to be different regarding what type of debit will be assigned.

Doris - Risk/time factor column need to account for direct and indirect.

Christina - recommends using a range for the risk/time factor column to encompass whether there is eelgrass there, etc. Range gives both ends flexibility, room for negotiation depending on certain factors (species use).

Richard - ranges were in at some point, but will be reincorporated.

Cyrilla- Question for David Hirsh. Marbled murrelet feeding areas, are there certain ESA habitats that need to be treated separately because they are so rare? (Discussion at January meeting explored this question. Damage assessed on case by case basis, and mitigation must be associated with/offset damage.)

Gail- that would be hard. That typically gets dealt with through ESA consultation. If they are willing to use this program to address that the ILF use plan would have to address that.

#### **Table 2.**

Conversion factor gleaned from Virginia aquatic resources trust fund.

Doris - restoration and creation have the same number. Restoration should be prioritized. Should be up to a certain amount.

Steve - I would have thought creation would have a higher conversion. Success is lower.

Gail - enhancement should be higher than restoration.

Cyrilla - want to see the science to back this up

Gail - why would you reduce enhancement?

Richard - Our rationale for lowering the numbers was based on the output, given that Table 1 and Table 2 both drive it.

Cyrilla - why do we need the second table?

Richard - Impact table, vs mitigation strategy table

**ACTION ITEM: Incorporate comments above into new draft interim approach (Section D.2 of Appendices) and redistribute for next meeting's discussion.**

**Hypothetical Example using SEIS:**

Patty - no methodology for SEIS, hypothetical example isn't good.

Gail - how do you restore or create sub-tidal?

Richard - You remove fill, take out creosote. Is that considered restoration?

Lots of discussion needs to happen still on which habitat classes, conversion factors

Cyrilla - I would ask that the navy example gets purged until further discussion.

Richard - this is a public document, so it is a bit late for that.

Stacie - Important to say that this program will be changing, amounts aren't final until purchased.

**ACTION ITEM: Review language in different sections of instrument to clarify that fees are subject to adjustment.**

**Discussed Possible future meeting dates and topics:**

- December 6<sup>th</sup> or 12<sup>th</sup>
- January 12<sup>th</sup>

The group agreed to meet on January 12<sup>th</sup>, a December date is still undecided. **Richard** will send out a doodle poll to determine the best date for December. **Patty** will find a location for the December meeting, likely Port Orchard or Bremerton. **Richard** will send a note before the next meeting listing which appendices will be discussed so they can review prior. Group would like to discuss programmatic items like credit/debit tool, advanced credits, and action items.

- **The track changes document (Basic Agreement) will be sent to the group in the future.**
- **Hard copies provided by HCCC soon. Documents will be posted on the HCCC Website**
- **Gail is hoping to get a completeness determination within the next 2-3 weeks.**

| #  | Action Item  | Who                  | Response    |
|----|--|----------------------|-------------|
| 1  | Final October meeting minutes will be sent out to the group, with changes that include Roma's and Patty's clarifications.    | Richard              | Done        |
| 2  | Review "unauthorized activity" section to see if any additional clarifications should be added.                              | David, Gail, Cyrilla |             |
| 3  | Continue to explore and flesh out the "localization" of mitigation.  | HCCC                 | Longer-term |
| 4  | Better relay IWMP to IRT, and explore appropriateness of a draft document being referenced in the ILF goal statements.       | Richard              |             |
| 5  | Christina will check to see if she has already communicated with the Forest Service.   | Christina            |             |
| 6  | Discuss inclusion of tribal authorities further with them.   | Richard, Tribes      |             |
| 7  | Incorporate a footnote or additional references saying other tribal or local laws and regulations may apply to this program. | Richard/ Tribes      |             |
| 8  | Clarify the language re: keeping monies separate between service areas.  | Richard              |             |
| 9  | Investigate the flexibility provided by the federal register to remove US Bank language.                                     | Richard              |             |
| 10 | Reconsider increasing % holdouts for administration, LTMM, and possibly contingency.   | Richard and IRT      |             |

|    |   |                   |   |
|----|---|-------------------|---|
| 11 | Review financial assurance needs with HCCC Board.   | HCCC              |   |
| 12 | Explore feasibility of tribal ownership of mitigation sites.  | Tribes, Gail      |   |
| 13 | Joe will send comments on site protection and recommended language.   | Joe               |   |
| 14 | Request Tribal input on first paragraph on page 19 re: tribal nexus   | Richard, Tribes   |   |
| 15 | Richard/Tribes to clarify language to ensure flexibility for tribal treaty right use if they wish.  | Richard, Tribes   |   |
| 16 | Christina will check if it is waters of the State, or waters of the state of Washington. Tribes please check the terminology for tribal waters. | Christina, Tribes |   |
| 17 | Update and redistribute new interim nearshore mitigation approach, Section D.2  | Richard           | Done – May still need a couple comments from above incorporated |
| 18 | Review language in different sections of instrument to clarify that fees are subject to adjustment.   | Richard           |   |