

Hood Canal Coordinating Council (HCCC)
ILF Program IRT Meeting Minutes
01/12/2012; Port Orchard, WA

BOLD TEXT=ACTION ITEMS

Attendees: Brad Murphy, Ecology; Richard Brocksmith, HCCC; Nancy Brennan-Dubbs, USFWS; Gail Terzi, Corps; Roma Call, PGST; Patty Charnas, Kitsap Co; Donna Frosthalm, Jefferson Co; Randy Lumper, Skokomish Tribe; Linda Storm, EPA; David Hirsh, NMFS; Steve Todd, Suquamish Tribe, Doris Small, WDFW; Cynthia Rossi, PNP (Jamestown); Margaret Clancy, ESA; Kathleen Barnhart, Kitsap County.

Notetaker: Scott Olmsted, ESA.

Meeting minutes, with IRT comments in track changes, from the Nov. 14th and December 12th meeting were reviewed. **The sponsor needs to incorporate Suquamish Tribe comments into the minutes. These revised notes will be sent out with comments in track changes by the sponsor so that the IRT can review them**, in addition to the December and January meeting minutes, so that all three can be finalized at the February meeting. Only finalized meeting minutes will be placed on the sponsor's website.

There was discussion regarding the need for roster sites to allow the ILF program to mitigate for ESA-listed species (e.g., marbled murrelet, salmonids). HCCC has an Ecology grant that will enable them to generate a list of roster sites. For more detail-this topic was discussed during the December meeting.

New meeting minutes protocol-the IRT will have two weeks to review and send in comments. Minutes, with comments inserted, will be reviewed at the following meeting and finalized.

The March meeting will be dedicated to discussing the instrument's Compensation Planning Framework. Ecology will also explore the option of having Tom Hruby provide an overview of the freshwater wetland credit-debit tool at the February meeting. The February meeting would start ~1 hr early for those who wish to hear Tom's overview.

Comments on Appendix D-

Preliminary comments have been received on the instrument and are posted on the HCCC website. The sponsor has compiled them by section for review at this meeting--Appendices D, E, and D.2 will be discussed today. If comments were similar, they were combined. Compiled comments were emailed to the IRT before the meeting for review.

There were reoccurring comments for this section; primarily, keeping mitigation onsite and in-kind. However, the ILF program operates under a watershed approach which typically means the type of

mitigation and the location of the mitigation should be ecologically appropriate—not necessarily onsite/in-kind.

The following captures the discussion of the reoccurring themes found in the IRT Appendix D comments:

- In-kind/onsite mitigation was the preferred mitigation paradigm, but now a watershed approach is the preferred approach (the mitigation should make ecological sense), as specified in the Federal Rule. Small impacts have generally not been successfully mitigated onsite. The ILF program is able to combine mitigation for several small impacting projects and hopefully provide more sustainable and appropriate mitigation for the watershed. The Federal Rule states that applicants can consider onsite/in-kind mitigation, but should use a watershed approach for offsite/out-of-kind mitigation. If offsite/out-of-kind mitigation is chosen, its use needs to be justified; the ILF program and its compensation planning framework (CPF) provides guidance/information for how decisions concerning on-site and in-kind will be made.
- The ILF program should acknowledge that certain types of aquatic systems are very difficult to replace and some systems may need to be mitigated onsite or in close proximity, or may not even be mitigable. It will be case- specific when determining how certain functions can be effectively mitigated. **The IRT will come up with a list of habitat types/systems that need to go to the IRT for case-by-case review (e.g., Cat 1 wetlands).** (Note provided by Gail in February: “This review cannot supplant the regular review of regulatory agencies with jurisdiction. At the February meeting, the IRT clarified this was about setting sideboards for important/unique habitats, not supplanting permit review, and would be discussed further in March.) This can occur at the March meeting (the IRT should review the language on this topic in the Federal Rule and determine which habitat types/resources should be on this list). Also, it was mentioned that Sacramento District (Corps) has certified an eelgrass bank and some good information may come from researching this. These difficult-to-mitigate-for habitat types/systems are taken into account in the “risk factor” used in the interim marine tool (as well as the freshwater tool). That said, the sponsor will use the interim marine tool to focus on providing in-kind/onsite mitigation if appropriate (recognizing it will not be appropriate or possible everywhere and may instead be out-of-kind/offsite if necessary as guided by the Final Instrument), until more robust marine credit/debit tool is available. The interim marine tool is trying to be conservative to ensure that sufficient and appropriate mitigation is provided for the difficult to replace habitat types.
- The IRT will be reviewing all mitigation plans; however, they will not usually be involved with reviewing the debit side of the transaction; the decision about debits is the responsibility of the permitting agencies. There was a proposal to have the IRT review the debit side of the process for large/complex debit projects using the interim marine approach, but no decision was made on whether the IRT should do so. The sponsor proposed to the IRT that projects occurring during this interim phase that have marine impacts will initially be reviewed by the IRT on both the debit and credit sides of the process before the sponsor accepts a fee, at least until there is comfort/trust/familiarity with how the credit-debit tool is being applied. Tribes get to review all

Corps permits anyway (including NWP), so they can see if the applicant proposes to purchase ILF credits and comment on this. When there are many ILF programs operating, the IRT will not be able to review the debit side of every process to determine if the ILF program is appropriate mitigation for the impacting project. The IRT is responsible for reviewing mitigation projects potentially to be undertaken by the ILF program and determining if the appropriate numbers and types of credits are being sold. (Note that Gail provided the following input in February: “This whole concept is so outside the box of how an ILF Program works. I have given this a lot of thought since the meeting and this would not be acceptable for many reasons including: Debit projects wishing to use the ILF Program need to be reviewed by the appropriate regulatory agencies with jurisdiction over the impacts, inclusive of tribal coordination processes already set up with the Corps. By bringing debit projects to the IRT we are inserting an additional step into a process that already exists. This extra process within an ILF Program cannot be supported with the limited resources we currently have. That is not the role or responsibility of the IRT. Permit reviewers will have ample opportunity to comment on the impacting project, the credits the applicant is proposing to purchase from the ILF program, along with the rationale for how those credits provide adequate mitigation. Because the Corps has very specific timelines for reviewing and processing permits, adding a step that these projects come before the IRT cannot be legally defended. That said, there is nothing that stops the sponsor from working with an applicant to make sure the ILF Use Plan has accurate information for permit reviewers, inclusive of the proposed credits to be purchased and the rationale. The ILF Use Plan also requires an analysis of on-site mitigation alternatives and why on-site mitigation is not ecologically preferable to using the ILF Program.”

- Mitigation banks are able to require additional credits when an impact project is located further from the mitigation site; however, this may not be possible with an ILF program, unless roster sites are known. A sponsor could do this with an ILF program if they have “extra credits” (once they have fulfilled their advance credits). Some sponsors want to sell “extra credits” rather than receiving new advance credits. ILF programs need to be competitive in the market place which is difficult because ILF’s must have full-cost accounting which can lead to higher credit prices (as compared with bank credits prices). The Catch 22-with an ILF program is that the location and type of mitigation is not known at the time the debiting project occurs, yet the sponsor must account for the risk factor and temporal lag when deciding how many credits are required. If the risk factors are set too high the credit prices will be too high, pricing ILF program out of reach for most projects effectively maintaining the status-quo of permittee-responsible mitigation which tend to have less oversight and compliance. In traditional permittee-responsible mitigation, the permitting agencies determine risk on a project by project basis and it is not always applied consistently.
- Once the permittee has purchased credits from the sponsor, their entire mitigation responsibility has been transferred to the sponsor, and they are ‘off the hook.’ If the mitigation projects fails or needs corrective action it is the sponsor’s responsibility .

The following is the discussion regarding Appendix D comments as noted in the track changes document (R# refers to the comment bubble numbering in the document):

First four bullets (on the IRT track changes copy) will be taken in-full to expand the program scope. Comment R5-was talked about this morning, there will be caveats. R6-reviewed by IRT and approved by DE. R7 and R8-talked about this morning. R9-regarding the freshwater credit-debit tool, the IRT is not ready use it even with the peer review completed. Ecology is close to finalizing the document based on a full peer review. The peer review did not result in major substantive changes. , There were some relatively minor technical changes/policy changes. The IRT thought it may be useful to have Tom Hruby come explain how the tool works and an example ledger would be helpful. The freshwater tool could be included as an appendix in the instrument. The sponsor is reluctant to fully revisit the freshwater tool and take up a lot of IRT meeting time because the freshwater tool has already been approved by regulatory agencies. It was developed for King County because they wanted something more quantitative for debits and credits. The freshwater tool is semi-quantitative with “buckets” of credits that can be kept track of in the ILF program to make sure functions aren’t moving out of particular basins unless approved by the IRT to meet watershed needs. The freshwater tool is based on the State’s wetland rating system. There are trainings to educate people on how to use it. The IRT wants to know if there are critical pieces that may need changes; Ecology’s perspective is that major changes are not necessary. The freshwater tool devalues enhancement. There are not a lot of impacting projects in freshwater wetlands around the Hood Canal. R10-r17: deal with temporal lag and the risk factor—the IRT wanted more detail, but much of these determinations will be done by the regulatory agencies on the debit side of the process. The IRT needs to know the types of impacts that are going into the equation (to determine debits) for the IRT to determine the appropriate number of credits required. The sponsor will work with applicants, especially in the initial phase of the ILF program, to confirm the impacts/debits were calculated correctly, to develop an ILF program use plan that provides justification and rationale for ILF use. The sponsor will work with the applicant and IRT to make sure the credits offset the debits.

The IRT wants to be led through examples using the freshwater tool and ledgers. The sponsor did not provide numbers in the ledgers (King County did) because there are no suitable permit data available for Hood Canal and because there are no roster sites. **Brad and maybe Tom H. will explain the factors/criteria that went into developing the freshwater tool at the next meeting and will present examples.** This discussion will be presented before the next meeting for approximately 45 min-1hr. **R-10 and R-11 comments will be added, but not the second part of R-11 (not with consultation with regulatory agencies).** **R18-the sponsor will contact DNR about this. R19-22; Gail’s comments will be added for R-22. The sponsor will provide more scenarios as examples.** Do not eliminate all possibilities, such as stream and wetland combined with stream mitigation.

There was a question about whether onsite mitigation could occur through the ILF program. That could be a possibility but may not make sense for some sites. For example, the sponsor does not want to be constrained by onsite mitigation (e.g., at Bangor for the Navy project) where there are logistic/access issues. A permittee may not want to be responsible for the onsite portion of a mitigation project (that is

done in combination with off-site/ILF program mitigation)...would the sponsor be responsible? The IRT would need case specific review.

The co chair pointed out that the mitigation hierarchy in the Federal Rule can be overridden by ecological considerations.

R24-25-deals with conflicts between the basic agreement and appendices. The instrument needs to reflect what is in the basic agreement: a permit can be issued with special conditions; the permittee needs proof of credit purchase before they can begin work in waters of the U.S. R26-how/when does case-by-case IRT review happen?-the members of the IRT in their individual roles representing their governments (but not as the IRT) get involved with debit review (working with regulatory PMs). The only instance where the IRT is formally engaged in debit review (with the limited, temporary exception described above for interim nearshore) is when a debit project wishes to use the ILF as mitigation and the project is outside the established Service Area for the ILF, and the IRT determines if the ILF would be an appropriate vehicle for that project.

At the end of section D1—regarding other tools that may be used if the sponsor or IRT do not like the freshwater credit/debit tool—the sponsor needs to provide clarification about what other tools might be used and under what circumstances.

R-27-In the King County instrument, buffer impacts were being linked with King County CAO, so they provided more detail in this section. **The sponsor will include more detail for this section in the HCCC ILF instrument (think about nexuses to local regulations and talk about other resources (e.g., lake shorelines, etc).** The Corps looks at all impacts (including buffer impacts) when aquatic resources are being impacted.

Section D.2-

The question was raised whether the IRT wanted to use the interim marine tool or revert to case-by-case review in-lieu of the marine credit/debit tool. There were many IRT comments requesting more detail on the interim tool most of which are being investigated by the team developing the actual nearshore tool for the Navy. The sponsor and IRT would like to incorporate some of the Navy's work for consistency, and would like to have parallels between the two tools (interim and marine credit/debit). The interim tool is designed to be simple, but conservative in how damages are assessed. Because of concerns about the interim tool, the IRT would like a sunset date for the use of the interim tool. The sunset date should be associated with checking-in on mitigation projects. **Three years was suggested as a reasonable date.** There was also a recognition that the program is essentially audited each year and course corrections could be made annually. The discussion ended with general agreement to continue to develop a simple but conservative interim approach. The sponsor committed to involving the IRT in review of the debit process and sale during the interim phase.

The Skokomish Tribal representative expressed concerns about the history of mitigation in Hood Canal and tribal input. The core has worked with tribes on site specific mitigation, but has not addressed the

cumulative impacts of development over all in Hood Canal. Also something that will need to be considered on a side track to this process is how development projects in Hood Canal affect the ability of the Tribe to **exercise** their Treaty right which is guaranteed to them through the “Boldt” decision. This is one reason the Skokomish Tribe wants to be involved at the debit side of the ILFP, to ensure that individual projects do not impede the ability of the Tribe to exercise their treaty rights. The Skokomish Tribe is aware the permitting/regulatory agencies will still maintain jurisdiction over their areas. However just because the Tribe does not have regulatory authority does not mean that the Tribe will not have recommendations as to the type of projects that are appropriate within their Usual and Accustomed areas, and the associated mitigation said projects will generate. **Gail will talk to Corps legal about ensuring tribes are allowed their review opportunity when commenting on proposed mitigation.**

Comment C-NA. Comment E-come back to this. Comments F & G-not limited to Navy projects. **Add details on assessing cumulative impacts**---the Corps will be looking more closely at these in the near future. Comment H-yes. Comment I-already discussed.

Section 2-

Comments A & B-already talked about these. Co-chairs like a tiered approach regarding in-kind/onsite mitigation—look for mitigation sites close to the impacting project and move out until there is mitigation project that is appropriate. HCCC has grant money to create an inventory of roster sites. In banking, applicants may be penalized (have to buy more credits) for impacts located further from the mitigation bank, but that would be difficult if not impossible for ILF because we typically wouldn’t know the receiving site yet. The reason for the “penalty” is to adhere to the fundamental ecological principle of not moving functions out-of-basin/watershed. This “penalty” provides an incentive to work within an appropriate ecological scale. The sponsor may also look within similar “process” scales for mitigation projects that may be located further from the impact location. Need to think about ecological integrity; **see Appendix H by March meeting to see if it is covered; this section can be revised if it is not covered.**

Comment G-regarding resource harvest management areas, certain resources should potentially be mitigated onsite/in-kind. This may happen anyway depending on the ecological scale the IRT is working within. This may be a U&A issue. Mitigation for impacts to fisheries may be beneficial to the entire Hood Canal, but not mitigation for impacts to shellfish beds.

Back to the discussion of un-mitigateable resources regarding in-kind/onsite. This will be discussed at the March meeting. Regulatory agencies are not supposed to issue a permit for impacts if there is no acceptable mitigation, but few permits are denied. Permittees may not be able to afford to mitigate for impacts to these resources. If discussion of impacts to these resources is included in the ILF instrument, it may help send a message that impacts to important resources should not be allowed; that could improve local CAOs and Comp planning and help eliminate those impacts via local regulations.

The sponsor has attempted to align the interim marine tool with marine credit/debit tool. The sponsor included the same habitat classes and subclasses. The sponsor will add more detail to the interim

marine tool than currently provided; **add detail about habitat classes and sub-classes.** Sponsor is reluctant to make the interim tool too complex because the information is not available (and thus introduces error) to allow for fine resolution associating risk factors with specific habitat classes/subclasses, thus the sponsor has provided ranges of risk factor values. Ranges also take into account the variability in types of impacts. There needs to be a way to apply the risk factor value in a consistent manner; the IRT is concerned that applicants will not be able to do this. The sponsor will be involved in some way to help applicants determine the number of debits associated with marine impacts. **This can be discussed at the March meeting.** This has not been operationalized. The sponsor's work to train and educate applicants or be directly involved in applying the tool could be part of the administrative costs of the ILF program. King County is doing QA/QC with all projects they are accepting, and HCCC anticipates the same.

Degree of impact factor-

The degree of impact factor needs to consider full spectrum of direct and indirect impacts. **The IRT wants more detail on this factor:**-temporary, permanent, cumulative, temporal, direct, indirect impacts need to be considered. Activities that a permittee can adjust/change should be included within the impact factor and activities the permittee cannot change should be included in the risk factor. **Sponsor will write sideboards for the degree of impact factor showing what the key considerations would be for determining the appropriate factor within the overall range.** For example, the degree of impact to a pre-successional alder riparian community would be different than an impact to a mature conifer forest in the riparian class. Degree of impact scale: 1.0=non factor (indirect impact), 2.0=obliteration of environment (direct impact). **The sponsor should look at how DOT defines direct/indirect impacts in their document, and add to the glossary.** Corps does require mitigation for indirect impacts. The sponsor does not need to provide specific line items/degree of impact values in the interim marine tool of how indirect impacts are incorporated into the degree of impact factor, but needs to be explicit about indirect impacts being considered in choosing the degree of impact factor. **The IRT would like examples of how direct/indirect impacts are considered when the sponsor provides more examples that use the interim marine tool. The degree of impact factor should start higher than 1.0, probably 1.2, so that it isn't a non-factor.**

Risk factors—

Eelgrass should have the biggest numerical value. **Need to add temporal lag more explicitly in criteria. The IRT would like different risk factors for the subclasses. Similar to the degree of impact factor, the sponsor should provide a list of considerations when determining the risk factor. Do this for each class. Do this for direct and indirect impacts-add considerations.** Also, consider a threshold: if indirect impacts are more extensive than direct impacts then it bumps up the risk factor value. **The sponsor should provide example of bulkhead project, among others.**

Temporal loss questions-

The sponsor is committed to installing receiving projects ASAP, and the federal rule requires all mitigation to substantially begin within 3 years of the impact. Consideration also exists for how long it takes a mitigation site to reach maturation. The time lag for both is included in the risk factor range. **This needs to be explained in the text.** The sponsor cannot be punitive for temporal lag until mitigation goes in; if you have extra credits (the sponsor has fulfilled advance credits) then the sponsor could require the permittee to buy more (or less) credits. If extra credits are not available, the sponsor needs to apply temporal lag across a three year time frame.

Conversion factor-

Assigned at the debiting side of the process. Conversion factors are scaled from the freshwater wetland mitigation tool. **The IRT would like restoration to be broken down to re-establishment and rehabilitation. Increase creation ratios further above restoration. Use “establishment” followed by creation in parentheses.** Preservation range looks low, but this is not a ratio, other multipliers (degree of impact/risk factor) have already increased credit values that are then multiplied by the conversion factor. There is a range of values for the conversion factor because these activities can be done together, resulting in a synergy effect and requiring lower values in the range (e.g., restoration done in combination with preservation).

There was a quick review of how to cost credits for permittees using the nearshore/marine cost schedule in the exhibits. There was recognition of the tension in keeping costs appropriate to the level of impacts but not completely pricing permittees out of the market, forcing them to do their own mitigation at the risk of higher failure rates.

Next steps-

Next meeting February 7th in Tacoma (Center for Urban Waters), start at 9:30, get there at 9am for freshwater credit/debit discussion. Over the next two months the IRT needs to review the instrument—in two sections. **For the next meeting, read Appendices F, G, J-V. The sponsor is not asking for comments, but would like IRT members to create a list of questions/comments** (these can be submitted ahead of the meeting if there is a preference for this) that will be discussed at the IRT meeting. **For the March meeting, read and comment on Appendices H and I, in the same process outlined for February meeting above.** At the March meeting, ecological concept will be discussed. **All formal comments on big ticket items should be submitted by the end of March.** Within 90 days of submittal of the final draft instrument, the Corps needs to let the sponsor know the status of the review. Then a final instrument is submitted and the Co-chairs issue intent to sign notice. Then the dispute resolution process would begin, if necessary, within 15 days.

Sponsor will take all tribe comments related to tribal authorities discussed in previous meetings and in the Basic Agreement discussion and incorporate them.

Comments always accepted. Government-to-government meetings are always allowed. The IRT will also be able to look at the *final* draft of the instrument, which also goes to Corps legal. **A doodle pool will be sent out by the sponsor to determine a date for the March meeting.**

#	Action Item	Who	Response
1	The sponsor needs to incorporate Suquamish Tribe comments into the minutes. These revised notes will be sent out with comments in track changes by the sponsor so that the IRT can review them	HCCC	Done
2	The IRT will come up with a list of habitat types/systems that need to go to the IRT for case-by-case review (e.g., Cat 1 wetlands).	IRT	March
3	The IRT wants to be led through examples using the freshwater tool and ledgers.	Ecology and HCCC	
4	Brad and maybe Tom H. will explain the factors/criteria that went into developing the freshwater tool at the next meeting and will present examples.	Brad and Tom Hruby	
5	R-10 and R-11 comments will be added, but not the second part of R-11 (not with consultation with regulatory agencies).	HCCC	
6	R17-the sponsor will contact DNR about this.	HCCC	
7	R19-22; Gail's comments will be added for R-22. The sponsor will provide more scenarios as examples.	HCCC	
8	R-27-In the King County instrument, buffer impacts were being linked with King County CAO, so they provided more detail in this section. The sponsor will include more detail for this section in the HCCC ILF instrument (think about nexuses to local regulations and talk about other resources (e.g., lake shorelines, etc)).	HCCC	
Section D-2:			
9	Because of concerns about the interim tool, the IRT would like a sunset date for the use of the interim tool. Three years was suggested as a reasonable date.	HCCC	
10	Gail will talk to Corps legal about giving tribes more authority when commenting on proposed mitigation.	Gail	
11	Add details on assessing cumulative impacts	HCCC	

	Section 2:		
12	Need to think about ecological integrity; see Appendix H by March meeting to see if it is covered; this section can be revised if it is not covered.	HCCC	
13	The sponsor will add more detail to the interim marine tool than currently provided; add detail about habitat classes and sub-classes.	HCCC	
14	The sponsor will be involved in some way to help applicants determine the number of debits associated with marine impacts. This can be discussed at the March meeting.	HCCC	
	Degree of Impact Factor:		
15	The degree of impact factor needs to consider full spectrum of direct and indirect impacts. The IRT wants more detail on this factor: -temporary, permanent, cumulative, temporal, direct, indirect impacts need to be considered.	HCCC	
16	Sponsor will write sideboards for the degree of impact factor showing what the key considerations would be for determining the appropriate factor within the overall range.	HCCC	
17	The sponsor should look at how DOT defines direct/indirect impacts in their document, and add to the glossary.	HCCC	
18	The IRT would like examples of how direct/indirect impacts are considered when the sponsor provides more examples that use the interim marine tool.	HCCC	
19	The degree of impact factor should start higher than 1.0, probably 1.2, so that it isn't a non-factor.	HCCC	
	Risk Factors:		
20	Need to add temporal lag more explicitly in criteria. The IRT would like different risk factors for the subclasses.	HCCC	
21	Similar to the degree of impact factor, the sponsor should provide a list of considerations when determining the risk factor. Do this for each class. Do this for direct and indirect impacts-add considerations.	HCCC	
22	The sponsor should provide example of bulkhead project, among others.	HCCC	
23	The time lag for both is included in the risk factor range. This needs to be explained in the text.	HCCC	

	Conversion Factor:		
24	The IRT would like restoration to be broken down to re-establishment and rehabilitation. Increase creation values further above restoration. Use “establishment” followed by creation in parentheses.	HCCC	
	Next Steps:		
25	For the next meeting, read Appendices F, G, J-V. The sponsor is not asking for comments, but would like IRT members to create a list of questions/comments	IRT	
26	For the March meeting, read and comment on Appendices H and I.	IRT	
27	All formal comments on big ticket items should be submitted by the end of March.	IRT	
28	A doodle pool will be sent out by the sponsor to determine a date for the March meeting.	HCCC	Done