

**FINAL IRT MEETING MINUTES – HCCC ILF Mitigation Program**  
**CENTER FOR URBAN WATERS, TACOMA, WA**  
**APRIL 9, 2012**

**Attendees:** Brad Murphy (Ecology), Gail Terzi (Corps), Kathleen Barnhart (Kitsap County), Thom Johnson (PNPTC-Jamestown), Cyrilla Cook (WDNR), Linda Storm (EPA), LaJane Schopfer (Mason County), Donna Frostholm (Jefferson County), Roma Call (PGST), Steve Todd (Suquamish Tribe), Richard Brocksmitth (HCCC), Randy Lumper (Skokomish Tribe), David Hirsh (NMFS), Doris Small (WDFW)

**Note Taker:** Scott Olmsted (ESA)

Since the last meeting and the March 30<sup>th</sup> Instrument submittal, HCCC has worked with the Corps, Ecology and Suquamish Tribe on Appendix H (the mitigation site selection steps methodology). The sponsor has also updated the interim nearshore approach during this time, as well as difficult-to-replace policies.

New agenda:

- Discuss Appendix H and the step-wise approach to site selection.
- Discuss one marine service area with 5 AMUs and the freshwater service areas.
  - Appendix H and I were significantly revised by Richard and ESA for the March 30 submittal.
- Appendix D-Discuss the interim nearshore method and concerns of the overly conservative nature of the interim method.
- Difficult-to-replace habitats.

Approve draft meeting minutes:

Suquamish Tribe sent comments on the February and March draft meeting minutes (these comments were covered at this meeting); USFWS sent word-smithing edits for just one topic in the February notes. USFWS is currently reviewing a tiered approach to ESA consultation at high levels of management. Once a decision is made on how consultation will be handled, it can be incorporated into the instrument.

Appendix A.2—second bullet—the program will initially focus on providing credits for projects that have a federal nexus; projects that do not have a federal nexus can still use the program and the IRT would have the opportunity to review of ledgers and mitigation plan performance standards to ensure that mitigation for these non-federal nexus impacting projects is held to the same standard as federal nexus impacting projects. Additionally, the ILF Use Plan will allow the IRT to review these projects.

Appendix A.2—third bullet—before credits are sold, the sponsor will work with the three local jurisdictions to determine how to document mitigation sequencing and have the same level of rigor for

projects that do not have a federal nexus as those that do. Credit sales would be tracked in the ledgers allowing for IRT review and assessment to ensure impacts are adequately addressed. HCCC is working with local jurisdictions to allow use of the ILF program via local codes.

The IRT approved February meeting minutes, and the sponsor will publish them on the website.

**ACTION: the sponsor will send the March meeting minutes back out to the IRT along with the April minutes; the IRT should comment on both sets of notes before the next meeting.**

There was some concern that the action item matrix did not provide enough detail regarding where and what changes/revisions were made to the final draft instrument. HCCC offered to work with any IRT member to help determine how action items from past meetings were addressed.

#### Appendix H

The appendix was reordered during redrafting, but the content remains largely the same, except for the site selection process.

H.1—mitigation site selection steps—the Corps took the first shot at rewriting the steps involved with selecting a receiving site; these revisions were adopted into the final draft. The Suquamish Tribe also provided input regarding how they thought the site selection process should work; HCCC added some track changes edits to the final instrument to incorporate Corp, Ecology, and Suquamish Tribe input. These revisions were handed out at the meeting, and are summarized below:

The previous draft of the instrument contained several initial bulleted steps for impact assessment that were moved to a previous appendix for the final draft.

Step 1. Suquamish Tribe has concern with only one marine service area that is grouped into 5 AMUs. The benefit of this approach is that if impacts occur in a different AMU than where the mitigation is proposed, the sponsor does not have to go through a lengthy IRT review process for out of service area mitigation, and there will be less paperwork to create and approve. At the same time, a mechanistic approach to mitigation site selection should result in the same outcomes as 5 service areas.

Step 2. Determine needs (provide additional information and conduct additional research than what is provided in Appendix I). Suquamish Tribe would like the sponsor to look at the needs of the drift cell rather than at a coarser AMU scale. This has been incorporated into the new draft.

Step 3. The program determines if functions are critical to the AMU/sub-basin; this is where the IRT comes into play in providing technical input and review. The Suquamish Tribe has concern about which habitats are considered critical; the program will be better able to determine this as more mitigation is conducted and as additional research, associated with mitigation planning and the IWMP, is conducted. Note that, subsequent to this April IRT meeting, this concern was addressed by incorporating IRT review in determining critical ecological functions.

The federal rule requires that within 3 full growing seasons that initial physical and biological improvements must be completed—this needs clarification; EPA would like this defined. This may be dependent on the site/type of project. The sponsor interprets this to mean: land is protected by a site protection instrument, a mitigation plan is approved by the IRT, and the vast majority of the project is completed. For projects involving preservation, this will be different, more concise and shorter. In addition, there are other checks & balances—the sponsor will run out of advance credits if initial improvements are not made within the timeframe.

Step 4. Determine the impacts, needs of the AMU/sub-basin, reviews available receiving sites, develops a mitigation plan and spending agreement.

Step 5. Submit information/details from Step 4 to the Corps/Ecology for approval with IRT consultation.

Suquamish Tribe concerns—what are critically important habitats/functions? These need to be determined because this makes a big difference if mitigation will occur within the drift cell/AMU or if it can go elsewhere. King County does not have to deal with this issue since they have the Credit Allocation Team (CAT), which is an internal team of resource experts. For HCCC, the IRT will serve in the same capacity as the CAT. **Action: incorporate IRT review in determining critical ecological functions.**

EPA would like to go through this revised section and be able to comment on it.

Critical functions—these need to be replaced in-proximity; if that's not possible, and regulatory agencies don't amend their programs to begin to deny permits impacting critical functions, the Program may choose not to sell credits for the impact.

Regarding the last sentence of the revised H.1 section—this was added to note that sometimes it is more important to step back and look at the needs of the service area, and the inherent trade-offs they often require, rather than implementing mitigation in-kind/in-proximity. It should also be understood that mitigation site selection is more than just ecosystem science; other social and political factors/priorities sometimes need to be considered. **ACTION: this discussion will be moved by the sponsor to another section (the last two paragraphs) so that it does not get confused as a part of Step 5.**

Navy has been working on development of a robust marine/nearshore credit/debit tool; this was the genesis of the interim tool. However, the Navy's tool will not be available for the final instrument. Development of the Navy's tool is behind schedule given their focus on EHW2.

H.2—the sponsor added information regarding reference documents.

H3.1—the Corps has comments—the text states that if there is a restrictive covenant on the mitigation property, HCCC will need to have legal standing and should be a beneficiary—is this a conflict of interest? Sponsor believes it should be a case by case assessment and that the legal review will provide additional insight as to whether the language should be adjusted.

**ACTION: The IRT can submit additional comments on the final draft instrument if they have them.**

H2.1— Suquamish Tribe thought that under “Other relevant factors...” that certain bulleted items should be emphasized more than others; e.g., development trends, land use changes, relative location of impact/mitigation sites.

PGST—concerned that Appendix H does not directly address inkind/out of kind mitigation. **ACTION: the sponsor will incorporate inkind/out of kind into the 5 steps-add to Step 3a.** This can be easily addressed for impacts to critical habitat or functions, but if the impacts are not to critical habitats, then what? As an agreed upon policy, the ILF will conduct inkind mitigation for the first 3 years of the program where practical/feasible/most beneficial. In addition to this being a policy of the program, potential mitigation trade-offs can be tracked in the ledger. It should be noted that onsite/inkind mitigation is not always successful and was an abandoned mitigation policy. Sections D.1 and D.2. also cover inkind/out of kind mitigation.

#### Appendix I-

Marine service areas—a lot of information was added for the final draft, including: IWMP goals, subarea goals, a more detailed prioritization strategy, resource maps and data.

Suquamish Tribe — “During the initial phase” –will this be changed when the Navy’s robust tool becomes available? HCCC—the program does not want to be constrained with necessarily having to implement inkind/onsite mitigation when there are instances of other functions being more beneficial to the AMU/subbasin. The “tool” will not dictate if the mitigation needs to occur onsite/inkind, it just allows comparisons across functions more systematically. Instead, this should be determined (after the initial 3 years of the program) as new information becomes available, a broader and more common understanding of how Hood Canal works is developed, and as Hood Canal/roster site assessments are conducted.

Forage fish are not a specific IWMP goal, but covered under the eelgrass and beaches goals.

**ACTION: add a paragraph after the IWMP goals about lakes, forage fish, and other ILF goals.**

**ACTION: The paragraph before the IWMP goals-the ILF will also help achieve IWMP goals, add this. Also, add the IWMP to the reference section and add a website link.**

Freshwater service areas—there are three service areas. Additional information was provided in the final draft; pulled in IWMP remote sensing data and watershed characterization data that was then characterized with text.

Ecology’s watershed characterization: Habitat assessment is coming out later this month and will be incorporated.

**ACTION: a comment from DNR-a disclaimer needs to be added to the instrument that the GIS maps are coarse scale maps and should be used to help make decisions, along with other available data**

(e.g., the maps may show that the shoreline is degraded, but they may not show that forage fish still use this degraded shoreline, thus the need for additional research). The sponsor will take all of these information sources to look at range of options, tradeoffs, and weigh mitigation decisions.

**ACTION: include as a reference the State of the Watershed document once it becomes publicly available.**

Do the counties have a geographic database available that shows where impacts/mitigation are occurring? Island County has a map; WDFW is working on a database but it isn't ready yet. HCCC will maintain one as well.

Last paragraph in I.1.3—HCCC will not use the EPA/Ecology grant (i.e. public monies) to design roster site mitigation, but will ID which functions are impacted/could be mitigated. Actual mitigation designs will be financed through credit sales. Also, it should be noted that it is not the role of the IRT to vet receiving sites until a site selection rationale and conceptual plans are submitted. **ACTION: these two points should be clear in the text.**

#### Appendix D, section D.2

D.2—the conversion factors (degree of impact and risk factor) are overly conservative; they are beyond what is currently expected; however, this may be nearer the real needs for mitigation. Should there be special/different conversion factors for really big projects vs small projects? There is concern about duplication of factors (e.g. risk on both the debit and credit sides) and affects of multiplying 3 different factors (e.g. area times degree of impact times risk factor).

Permittee mitigation typically does not involve full costs accounting. This interim tool provides good costs accounting/a reality check.

DNR-maybe commercial vs residential projects should have different conversion factors—this is currently built into the intensity, type of habitat, quality of habitat, etc that is included in the interim tool.

Lots of changes have been made based on EPA comments. HCCC has dropped the bottom and top of the factor ranges to provide more flexibility for smaller impacts while reducing mitigation sticker shock/divergence from the status quo; see handout.

WDFW—regarding residential vs commercial projects; for residential projects, WDFW does not require mitigation for subtidal non-vegetated impacts. The interim tool does cover this.

Ecology typically assesses risk based on the type of mitigation (freshwater mitigation); HCCC wants to place risk on the permittees side of the equation as well for the marine/nearshore environment (e.g. it can be difficult to replace certain habitat types due to limited area/availability). Assign risk to the permittee.

The IRT believes that the sponsor needs to lower the upper end of the range to make credit prices more reasonable, and came to consensus on using the Sponsor's proposal dated 4.8.2012. **ACTION: use new degree of impact and risk factors from 4.8.2012.**

Credit costs need to be sufficient to support HCCC administrative costs for mitigation projects, but the sponsor has concerns that smaller activity type costs (e.g. planting) provide too little fees to administer, monitor, and steward in perpetuity. The sponsor suggested HCCC may need to set some sort of base fee for smaller projects to meet full-cost accounting requirements.

WDNR—does not want to see credit costs reduced much since a developer can build more with offsite mitigation (higher profits), even if onsite mitigation is cheaper. There is money to be made by not conducting onsite mitigation.

There is already a framework for mitigating freshwater wetlands; we are creating one for the marine environment. Permittees still need to minimize and avoid.

IRT-Do not reduce the conversion factors further; initially the Navy and local jurisdictions, and commercial projects may be the only ones that can participate in the program. The sponsor and IRT can reduce ratios and prices later, if appropriate.

The sponsor provided a draft text for difficult to replace habitat types that is not included in the final draft instrument.

**ACTION: the sponsor will send electronic copies of the revised Appendix H, difficult to replace text, and D.2 worksheet to the IRT.**

**ACTION: Comments on the final draft instrument are due April 30<sup>th</sup>.**

**ACTION: if the IRT has any red flags, notify the co-chairs and sponsor at the earliest opportunity.**

At the May 2<sup>nd</sup> IRT meeting (at TAGRO), outstanding issues will be reviewed, if any.

June 5 IRT meeting is at the Kitsap Co Public Works building in Port Orchard.

IRT members can sign the instrument as a party, as a member, not sign it but provide a letter of recommendation, or do nothing.

**ACTION: Corps co-chair will send out guidance on what these different signing options mean.**