

IRT MEETING MINUTES – HCCC ILF Mitigation Program
Port Orchard, WA, Public Works Building
March 7, 2012

Attendees: Brad Murphy (Ecology), Gail Terzi (Corps), Kathleen Barnhart (Kitsap County), Cynthia Rossi (PNPTC-Jamestown), Cyrilla Cook (WDNR), Linda Storm (EPA), LaJane Schopfer (Mason County), Donna Frostholm (Jefferson County), Roma Call (PGST), Steve Todd (Suquamish Tribe), Richard Brocksmith (HCCC), Nancy Brennan-Dubbs (USFWS), David Hirsh (NMFS), Randy Lumper (Skokomish Tribe), Margaret Clancy (ESA), Tom Johnson (PNPTC), Doris Small (WDFW).

Notetaker: Scott Olmsted (ESA)

List of topics to be covered today related to comments on Appendices E, H and I:

1. Difficult to replace habitats;
2. Steps to selecting sites;
3. Out of service area (scale question);
4. Scale questions;
5. Why, how, who prioritizes sites;
6. What level of detail is sufficient in the instrument;
7. Advance credits-calculation and number;
8. Goals of ILF program; and
9. Preservation criteria and constraints.

February Notes-5 Clarifications

1. Bank credits-Clarification between how banks and ILF programs handle excess credits—In the ILF program, once advance credits are fulfilled (sold to permittee, mitigation implemented, and performance measures met), they become regular or “fulfilled” credits. If the site generates additional credits beyond that, they are termed “excess” credits. It is the “excess” credits that can be sold to debit projects in a particular service area which result in a shorter lag time between when a debit project occurs and when functions are restored.
 - Comment provided by Corps at the May IRT meeting: If a mitigation project exceeds the advance credits and fulfills all the debits accrued within a service area, then any credits generated above and beyond those fulfilled credits would be considered “excess” and could be sold. The analogy being made to banking: at this point in an ILF mitigation site (once all the debits have been fulfilled at the mitigation site) ILF and banking stand on equal footing. In other words, banking does not necessarily come before ILF in the hierarchy because the temporal loss usually associated with ILF is no longer valid.
2. Endangered Species Act (ESA) consultation— King County’s Instrument did not address how USFWS would be involved with the process, so USFWS is currently working to revise this section and HCCC will use the revised King County instrument as a template; USFWS management is

currently reviewing changes to this section. There is no specific timeframe for when USFWS will get revisions back to the Corps. This particular section would be included as an exhibit in a future version of the HCCC instrument, so additions of and revisions to it could be made with an exchange of letters, rather than resigning the instrument.

3. IRT informal debit review—debit projects will not go before the IRT for “formal” review. However, the IRT is still interested in the use of the interim marine approach and associated debit project review. The Corps’ management indicated this is not the role of the IRT and Corps staff do not have adequate time to undertake additional coordination. That said, the Corps is OK with having the IRT review debit projects, not in a formal decision-making capacity, but in an advisory role to make sure the IRT is comfortable with the interim nearshore tool as it relates to the debit project. This review process will be most applicable to large scale/complex debit projects; in other words not all types of projects will get IRT review at the debit stage. This informal IRT debit project review process will occur while the interim tool is in use (3-year sunset date of the interim tool or when the robust marine/nearshore tool becomes available, whichever is sooner). **ACTION: A discussion of this will be included in the instrument.**
4. Difficult- to-replace habitat types—EPA would like some sort of policy in the instrument that addresses how the sponsor addresses projects that impact difficult-to-replace habitat types. The down-side of not allowing the ILF program to mitigate loss of difficult-to-replace habitat types is that the permittee would be responsible for replacing these habitats on their own with lower likelihood of success and less oversight than would likely occur if HCCC were involved. The federal rule indicates the following are difficult to replace of habitat types: bogs, fens, springs, streams, and Atlantic white cedar swamps, and forested wetlands are mentioned as difficult-to-replace in the preamble to the federal rule.

The federal rule does not prohibit impacts to difficult-to-replace habitat types. The sponsor will incorporate new language into the draft instrument so the IRT can see how this would be addressed differently than other areas. **ACTION: The sponsor will clarify how the difficult to replace habitat types and critical resources will be addressed in the instrument, and acknowledge that in-kind preservation may be a high priority for difficult to replace habitat types consistent with federal rules.** Sponsor will not necessarily charge more for impacts to difficult to replace habitats, but this issue is captured through range of Risk Factor values applied in the credit-debit calculation (this is true of both the nearshore and freshwater tools), where risk would be expected to be maximized.

The IRT identified the following difficult-to replace-habitat types for Hood Canal: For freshwater systems: mature forested wetlands, peat, channel migration zones (high and maybe medium), slope wetlands, seeps, bio/geo/chemical=e.g., groundwater discharge from a wetland to a stream that needs cold water to support salmonids, certain wetland types (e.g., floodplain wetlands or headwater wetlands—based on geographic buckets).

For marine systems: tidally influence freshwater wetlands (PSNERP), eelgrass, kelp, forage fish spawning beaches, herring spawning areas, distributary channel (tidal wetlands and channels—including low and high marsh and forested), subtidal.

5. 3 year work window for mitigation projects was clarified in the notes and in the instrument by the sponsor, using federal rule language.

February meeting minutes are in track changes; **ACTION: send the minutes back out to the IRT for review to get them finalized.**

Parking Lot Topics to be Discussed in Webinar and with Individual IRT Members before April:

1. Interim nearshore approach
2. Phasing/Appendix A

Discussion of Reviewed Materials:

Appendix H and I -

The sponsor has compiled IRT comments (and addressed them) except for USFWS, Suquamish, and EPA comments, which were received shortly before the meeting. There is also a “clean” version for the IRT to review at the meeting for reference.

In addition to the ILF program, HCCC has been working on an Integrated Watershed Management Plan (IWMP). HCCC has engaged in a community discussion about what habitats are ecologically/financially important for Hood Canal; eight components were identified: forest ecosystem, rivers and streams, riparian areas, estuaries, beaches, salmon, shellfish (bivalve), and bottom fish.

HCCC has conducted a thorough viability assessment (spatial assessment and developing metrics) for these habitat types. An example-forest habitat: need to maintain forest quality, cover, and connectivity and also understand that forestry is occurring. Find a balance: increase wild and diverse forests, maintain area and productivity of managed timberlands in lieu of converting them to residential areas, maintain forest cover in residential lands.

IWMP will address large-scale conservation goals by looking at that Hood Canal system as a whole. These goals overlap with the ILF program goals (with limited exceptions, including forage fish themselves (not their habitat), and isolated wetlands and lakes). So, the work being conducted as part of the IWMP is applicable to and can be used in the ILF program.

What’s missing?-- the IWMP does not assess lakes and ponds that aren’t part of the river/stream systems of Hood Canal. Will the ILF program address these resources? Yes. The freshwater tool would help to do this. **(PARKING LOT) maybe lakes and ponds should be addressed specifically by the IWMP?**

Regarding other habitat types in the IWMP--Estuaries-specific attributes are being tracked (PSNERP change analysis), have been mapped, but aren't readily mapped at the scale necessary for ILF, yet. Riparian areas-lots of remote and site specific attributes of multi-year trends, but an assessment/mapping of this information is not ready yet. **ACTION: Sponsor will send the IWMP draft goals to the IRT.** There was a recommendation by a few members of the IRT to integrate more IWMP information into the ILF Compensation Planning Framework (CPF). The IWMP is conducted at landscape and specific basin scales, rather than the WRIA scale, so this could be difficult to easily transfer/translate information to the ILF CPF. The EPA/Ecology grant that HCCC received to conduct the IWMP will be used for the IWMP and ILF program, including additional mapping and developing a list of roster sites, which the IRT can/should be involved with. **ACTION: In the ILF instrument, IWMP goals should be integrated.**

How much watershed detail is necessary in the CPF for this ILF? — The sponsor cannot bring everything over from the IWMP, yet. HCCC has provided less detail than King County's CPF given the amount of info they already had at the service area scale, but the instrument can still move forward with what we do have. Information on watershed resources, priority areas, and preservation areas can be added. Some of this background watershed information can be taken from SMP updates and other documents. As of now, the instrument references other plans that document watershed conditions, but this does not provide the details needed in the instrument. **ACTION: Sponsor to provide more information on the freshwater systems in each WRIA, including wetland conditions if available, locations and types of threats, and needs. The IRT would like better maps of resources at risk, where mitigation actions would take place in the WRIs and at finer scales. For the marine environment: provide marine/nearshore information on baseline conditions from existing documents, assessments (e.g., Kitsap nearshore assessment, PSNERP Strategic Needs) and identified priority areas.**

The interim approach will use—"in kind, in proximity" as the practice/procedure for selecting receiving sites. This approach is broadly worded and the IRT would like more detail for the marine/nearshore environment (see discussion below).

The sponsor (and past IRT conversations) is advocating a tiered approach to finding mitigation sites where you look for the best matching sites as close to the impact site and move out geographically to find a mitigation site that is feasible, practicable and sustainable. ILF does not describe the tiered approach well enough; the language needs to be more specific and mechanistic as opposed to aspirational. This tiered approach would apply to both the freshwater service areas and the marine areas.

ACTION: Detail how the tiered approach for selecting mitigation sites will be implemented for freshwater and marine/nearshore systems

- a. **Detail the process and thinking on how sites will be selected/how adequate compensation will determine sites for impacts in a specific service area; i.e., may need to "decouple" mitigation (HCCC could be responsible for providing some mitigation on site-- in some cases (if there are critical functions that need to be mitigated on site and**

the site is a sustainable/practicable location). Better outline the steps involved in this process.

ACTION: avoid aspirational language (e.g., we'll try) when discussing how the program will be operated, state that "we will" and outline how it will be accomplished.

Scale—all scale language has been moved into Appendix I.

Avoid and minimize language added to the lead-in of Appendix H

ACTION: define what "exhaust" means as related to the text added in the lead-in of Appendix H. Also, add "This process needs to be documented in the ILF use plan."

ACTION: At the lead-in of this section-add "in each service area"

King County's steps outlined in section H3 have been moved to earlier in the appendix.

ACTION: move steps 1-4 to Appendix C.

ACTION: Change the following in steps 1-4:

Step 1 — project manager...add "review and approval" –done at meeting

Step 2 — change the first couple words to "Permitting agencies" --mitigation sequencing verification is in Appendix A-clarify this text. Also, some local agencies have their own mitigation sequencing, so add "state and tribal" to capture them. Also, steps 7, 8, 9 of the IWMP look at sequencing.

Step 3 — remove

Step 4 — use active language, sponsor needs to be a part of the impact assessment so that they know how many debits are caused by the project, how many credits will be bought, and if they agree to accept the project.

ACTOIN: Step 5 - remove "in advance".

ACTION: change Step 6- the program sponsor will not make this decision on their own, but will consult with the IRT.

For Step A - text changed for clarity. **ACTION: Add tiered approach language. State explicitly.**

Need to mitigate based on what particular functions are limited in the service area, not just which functions are impacted by a particular project.

For Step B - no comments from the IRT.

Step 7 - the selection process is beyond the regulatory PMs at this point; the applicant and then the sponsor will need to determine if the functions impacted are critical, before consulting IRT.

Step 8 - some responsibility language added and some deleted

ACTION: H1- list of documents: provide an overview of what these documents are saying and then provide specifics.

ACTION: In H1- need to discuss the criteria for what types of documents will be considered. Clarify that they must be scientifically vetted, accepted literature.

ACTION: Provide links for/to documents that are referenced, if possible.

ACTION: Section H.4.1 - last small paragraph regarding the use of private lands for mitigation; remove it. Done by sponsor at meeting.

ACTION: Terminology-ecological functions- definition of function needs to include process and structure.

Appendix I (number of service areas) -

Marine service areas — Suquamish Tribe proposed 6 of them: Hood Canal hook, west side of south and central canal, combine east sides of south and central, Dabob bay and Quilcene bay, north side of hood canal to Tala point, and east side of hood canal up to Foulweather, including Port Gamble Bay.

Suquamish reasons for the 6 service areas include ecological and geomorphic differences, e.g., larger estuaries on west side, wave energies, bathymetry, and drift cells , and different development patterns and intensities, e.g., HWY 101 is on the west side, rural development is on the east side, are reflected in these proposed service areas.

Language in the federal rule requires sponsor to identify the types of threats that have, are, will occur and based on that, how the ILF program service areas address those threats. If multiple service areas are not used for the marine environment, is there rigor in the ILF that will protect the ecosystem process and structures, and functions?

Are there feasible mitigation opportunities within these proposed service areas? Need to consider whether resources within the service areas have been significantly damaged. Battelle has documented that restoration practitioners do not want to sink resources into areas that have already been damaged at the landscape scale; both landscape and site scale must be considered. PSNERP logic is that areas that have moderate ecosystem damage can still be recovered. Instrument should build in the PSNERP logic into the Battelle logic.

Would multiple service areas force the program to be more disciplined? Would the program only go after easy-to-accomplish/cheap mitigation projects when a one service area approach is used? Also, would certain areas be ignored for potential mitigation because some areas do not have any easy-to-accomplish mitigation projects available? Or, is there any difference at all in the outcomes of these different approaches if they all followed the tiered hierarchy being discussed?

Could let the process dictate where mitigation occurs. Start with the large (one) service area and then overlay smaller service areas using the goals of in kind/in proximity, but this allows the sponsor to

always have the option of going outside of these smaller services areas if mitigation is not feasible within them. As an alternative, you could have 6 primary service areas and then one larger service area (the entire HC watershed).

There are concerns about splitting the service areas down the middle of the Canal, since fish and other resources and habitat issues do not follow this artificial division line. Juvenile salmon are found on both sides of the Canal no matter which side their natal streams are located: ride freshwater plumes to the middle or other side of the Canal. Suquamish clarified that they agree the county lines are artificial, but the proposal for dividing east and west sides is to account for the physical (e.g., sediment dynamics) and ecological differences. They didn't think this division was as important in the Hook because it is narrower and more similar in bathymetry, geomorphology, ecology, and development patterns on both north and south sides of the Hook.

Does the process for selecting mitigation sites differ depending on the number of service areas? Need a tiered approach so that not just the low hanging fruit are selected and mitigation only occurs in some areas? With a multiple service area approach, if mitigation projects need to move outside of the service area, the IRT would review the proposal. This may be a workload issue.

Counties may have political problems with mitigation moving outside of their jurisdiction with a one service area approach because it could affect the distribution of tax money. They may also have regulatory problems with that, though HCCC is working with them on enabling this type of activity if appropriate.

The Skokomish tribe will likely have issues with breaking the service area up into the 6 units, as they are proposed by the Suquamish.

Certain habitat types cannot be transplanted around the Canal-e.g., eelgrass beds may not become established in certain areas, some amphibians may require a specific habitat type, so this cannot be transferred far around the canal. Where impacting projects and mitigation projects occur will be tracked in the ledger so the IRT can see if a particular county/area is becoming deficient in particular functions/habitat type. The program is subject to live audit.

Complexity in the program could be a drawback. Mason County (and others) is concerned that projects with small impacts (mom/pop projects) will be priced out of using the ILF program. The Program will try to cater to these types of projects in the future, but initially the Program needs to be conservative and based on full cost accounting.

The three service area proposals: 1) one service area with multiple nested assessment units using mechanistic language about a tiered approach; 2) 3-4 primary service areas (or more) and a service area that includes all of Hood Canal. 3) Dividing Hood Canal into 6 service areas. Or different versions of these three proposals.

Local jurisdictions opinion of which service area approach: Jefferson County prefers 3 service areas approach; Kitsap County prefers one service area and then look for mitigation using the tiered approach; Mason County does not have preference for either approach at this time.

Hood Canal is managed as one system by the HCCC, so the sponsor has a preference for a one-service area approach.

The dissolved oxygen problem in Hood Canal can be more effectively addressed using the one service area approach.

It was noted that the Program won't be locked into whichever approach is selected as we could/should adjust over time if the selected approach isn't working.

The mechanistic language of Appendix H is ensuring that mitigation is in-kind and in-proximity to the impact project to the extent practicable and feasible and appropriate. With the one service area approach, with 3-4 assessment units, a mechanistic site selection process driven by the needs and goals of each assessment unit would be implemented. This would address Jefferson County's concern that most mitigation should stay within or near their jurisdiction.

EPA is okay with the mechanistic approach if it is clearly laid out.

USFWS is uncomfortable with just one service area, but if the process is written up properly they can buy-off on it.

ACTION: Recognizing things can be changed, workload/capacity constraints, and that the two approaches will probably have the same end result-the Sponsor will move ahead with a one service area approach and 3 to 4 nested assessment units, mechanistic language detailing mitigation site selection, and will work to identify roster sites. Need to discuss differences between service areas and need to provide priority needs and goals for each service area (as described above). Sponsor will write up one service area with needs and goals within the assessment units.

The service areas, which are located in the appendices portion of the instrument, can be changed after the instrument is certified with an exchange of letters; changes to the basic agreement require resigning the instrument. Service areas are not addressed in basic agreement.

There will be multiple roster sites in each service area.

Ecology presented information outlining how many potential acres of impact and mitigation would occur with a given number of advance credits, based on the different level of wetland functions impacted and mitigated for. Even though there are a large number of acre points/credits proposed in freshwater service areas (135 total in 3 areas), the amount of damage allowed to occur and be mitigated is quite small. **ACTION: This information will be written up and handed out at the April IRT meeting.**

ACTION: The sponsor will send out a doodle poll for a webinar that will cover the interim tool and several examples.

ACTION: Appendix A—the Suquamish tribe is the only IRT member concerned about phasing and scope in Appendix A. The sponsor will meet with them to discuss.

ACTION: The sponsor will provide the IRT a track changes and clean copy version of the final draft instrument by March 30th, then the IRT/legal will have a full month to review.

ACTION: All orange and red flag issues that IRT members have should be sent to the sponsor ASAP, but no later than March 21.

The revised service area discussion will come out March 30th.

Next meeting: April 9th in Tacoma—Center for Urban Waters (some possible topics to address: roster sites, instrument review will be primary).

Future meetings: May 2nd and June 5th.

Preservation and associated criteria: EPA-preservation is preferred in combination with other types of mitigation as stated in the federal rule. **ACTION: be sure to list the five preservation criteria needed to justify the use of preservation, and to ensure HCCC language is as strong as the federal rule.**