

**HCCC ILF Program – Interagency Review Team Meeting in Bremerton
Final Meeting Minutes
December 12, 2011**

Attendees: Brad Murphy, Ecology; Joe Brock, Corps; Richard Brocksmith, HCCC; Nancy Brennan-Dubbs, USFWS; Gail Terzi, Corps; Roma Call, PGST; Patty Charnas, Kitsap Co; LaJane Schopfer, Mason Co; Stacie Hoskins, Jefferson Co; Randy Lumper, Skokomish Tribe; Christina Merten, Ecology; Linda Storm, EPA; David Hirsh, NMFS; Kristine Reeves, Patty Murray’s office, Mendy Droke, Jay Inslee’s office; Steve Todd, Suquamish Tribe, Doris Small, WDFW; Cynthia Rossi, PNPTC (Jamestown).

Chris Townsend, PSP--on the phone until 11:15am.

Note taker: Scott Olmsted, ESA

INTRODUCTIONS

Christina is leaving her position with Ecology, Brad Murphy will be taking over as Co-chair.

It was suggested that a couple items be added to the agenda: (1.) IRT comment timeline now that the draft instrument has been submitted and (2.) need to confirm that the distribution list is correct.

REVIEW AND APPROVAL OF MEETING MINUTES AND ACTION ITEMS

The IRT reviewed the meeting minutes that were sent out last week. Everyone got the meeting minutes, but not everyone has reviewed them. Action items were added to the minutes this time and a table was generated to track action items that have been assigned to IRT members or the sponsor. **ACTION ITEM: Send comments on November 14th meeting notes to the sponsor by January 3rd (now January 6th). We will approve them January 12th.**

HCCC is offering to host on their website a document repository for ease of access by the IRT and public. A suggestion was made to post them to the Corps’ FTP website, but that cannot occur because the Corps can no longer set up FTP sites. Documents such as the final prospectus, draft instrument, meeting minutes, etc. would be posted. Only the “final” version of documents should be posted to minimize confusion people may encounter with multiple versions posted to a site. Older versions of documents should be replaced with newer versions, when approved by the IRT. **ACTION ITEM: Begin repository of documents on HCCC website.**

On November 8th, a complete draft instrument was submitted to the co-chairs and received a determination of completeness on December 1st. Hardcopies of the instrument were sent out to all IRT members, which were the same version (almost) as the electronic copy that was emailed to the IRT previously. One variation: part of Appendix D-credit/debits, has been partially updated as it is a work in progress among IRT members. A subsection (Appendix D, Section D.2), updated on November 19th, was emailed to the IRT on November 28th. A suggestion was made by the IRT to place the date the file was created/updated on the electronic file. The IRT should be reviewing and commenting on the November

8th version of the draft instrument and the newest version of interim nearshore tool. A request was made to not send out new iterations of the draft instrument, until it is agreed upon by the co-chairs/IRT. The completeness determination was based on the November 8th version of the draft instrument.

Timeline to provide comments on the draft instrument—preliminary comments for the whole document are typically due in 35 days, which would be January 5th. The Sponsor and IRT realize the review period would occur over the holidays. The sponsor offered a 60 day review time period. And it was discussed that the 35-day timeline is not the only time to comment by the IRT; it is for preliminary comments, with additional opportunities on all aspects of the document in the coming months. Corps and Ecology (co-chairs) need to give an update/status review to the sponsor after 35 days. Within 90 days, the co-chairs need to tell the sponsor if they're ready to move to a final instrument. Within these 90 days, the IRT and sponsor discuss big issues. If the IRT needs more time to comment, then the co-chairs will review the time extension request and make a determination if additional time is in the public interest and is warranted. It is hoped that consensus is found during IRT meetings as the IRT reviews draft instrument sections. Large issues will likely require more time to review and discuss. All IRTs have reached consensus in the past (for mitigation banks and ILF Programs to date); however, there are more tribal and local entities on this ILF IRT than in the past. Typically, the co-chairs get all the comments from the IRT on the draft instrument, negotiate with the sponsor, who incorporates and/or addresses these comments, the sponsor revises the document, and then the final version of the document is sent out for a final round of comments. If there is no consensus then the DE makes the final decision on how the ILF program should operate. The federal rule has preference for consensus based decisions (the rule states that the IRT will strive to make decisions via consensus). If there are tribal issues, then government to government meetings may need to occur. There needs to be consensus for the program to work. Since there has always been consensus, the IRT has not had to work through the dispute resolution process, which is also laid out in the federal rule. The sponsor believed it would be helpful to have additional meetings to go through difficult portions of the instrument as a team before a final comment timeline is established. Comments should be based on the November 8th version of the draft instrument, not revisions made at IRT meetings. New/revised/updated sections can be reviewed and commented on if there is agreement by the IRT to do so (trying to avoid confusion and implement version control). The meeting minutes will capture what is discussed and decided on at the IRT meetings and can serve as reference.

At previous meetings, a tight ILF approval timeline seemed imperative to keep up with the Navy EHW2 project. While the Navy timeline is important, the sponsor and IRT members realize that having a properly operating program with enough detail is more important. It is a balance of the Navy's timeline and providing a rigorous program. The Navy has not submitted a JARPA application yet, but has consulted with the Services for ESA. The Navy may have to reinitiate consultation with the Services since they have not proposed specific mitigation in sufficient detail for the EHW project or the Corps would have to condition their permit requiring the Navy to have ESA concurrence with mitigation (ILF or other). The permitting folks at Ecology are completely decoupled from the IRT process, as are most of the regulators/project managers at EPA and the Corps. HCCC nor the Navy have decoupled the ILF

program authorization from the Navy's project and timeline (Navy wants to use the ILF program), but HCCC is focused on getting the program figured out and having it operate properly first.

There will be a few IRT meetings to work through the instrument, and with the holidays, the draft instrument comment deadline should be softened, rather than having a firm date of January 5th, when everything would conventionally be due (which is a 35 day comment period). There seemed to be more preference for a rolling deadline of comments, section by section, with the first, preliminary set of comments due January 3rd. **ACTION ITEM: Comments on Appendices D and E (along with 11/14 meeting minutes) are due to the sponsor by January 3rd (subsequently extended to 6th). (In a subsequent email Gail also mentioned that preliminary comments on the Basic Agreement should be provided by January 6th. ACTION ITEM: A request was made to provide to the IRT the draft instrument sections that will be reviewed and discussed at the next meeting.** To clarify, review and approval of the basic agreement and technical appendices happens on the same timeline. Much of the basic agreement has been reviewed and changes were incorporated at the last IRT meeting. This revised version of the basic agreement will undergo one more review at a later time. The IRT needs to be sure the basic agreement synchs up with the appendices since they relate to each other. The meeting minutes will reflect decisions and changes the IRT makes to the draft instrument and items/issues that are unresolved (parking lot items/topics).

BREAK

REVIEW AND DISCUSSION OF TECHNICAL APPENDICIES

Appendices A, B, and C were going to be reviewed at this meeting; however, only a small section of Appendix A was discussed so IRT could focus on Appendices D and E. Section A.2., Program Start Up and Phasing: Regarding the last paragraph of section A.2 which has bullets concerning how the program is being phased---Bullet 4 only addresses HCCC member organization as being consulted, but in another section of the draft instrument it is stated that all levels of government will be consulted. **ACTION ITEM: The text will need to be consistent and changes will need to be made to Section A.2.**

To clarify, advance credits do not relate to development potential, they have to do with permitting history in an area. **ACTION ITEM: Modify first bullet in Section A.2.** There are a lot of comments from the IRT about these start up/phasing bullets, which will need to be addressed. It was agreed that the IRT would need to circle back to Appendix A, particularly A.2.

Appendix B (definitions) is fairly straight forward and so is Appendix C (mitigation sequencing); there are IRT comments on these two appendices. The IRT decided to focus on Appendices D and E at this meeting, and go back to others appendices if there is time. This is not the last chance to comment on these appendices. IRT members want to be sure all comments are addressed.

APPENDIX D

ACTION ITEM: Section D, in the prologue, page 24, marine shore aquatic habitats should be replaced with “marine shore aquatic processes”, or something to reflect its broader nature. ACTION ITEM: Instead of freshwater wetlands and streams, need to state “waters of the US and state” to be more encompassing. The instrument language should strive to be consistent with the terminology from federal rule (i.e. established vs created, values vs services).

Regarding the risk factor in the interim nearshore credit/debit tool, mitigation banks have letters of credit in addition to long term funds that ensure functional lift in perpetuity; there is worry by IRT members that the multipliers used in the this tool are the only way to address the sustainability of habitat functions and associated risk. In addition to these multipliers, the ILF has financial assurances: contingency fund, land cost fee, long-term endowment, etc. With the ILF, one does not know what the mitigation projects will be in the future (i.e. eelgrass mitigation compared to removing creosote piling), so the risk factor is applied on the impact end of the equation. The risk factor is envisioned to account for difficulty in replacing the ecological functions, among many other things, as discussed by the IRT.

ACTION ITEM: The IRT would like examples provided showing how the interim method would be applied. This action item is repeated below, but only appears in action item table once.

ILFs will be more expensive than permittee-responsible mitigation, but the permittee is absolved of responsibility. Mom and pop operations may be priced out, if not carefully considered. The IRT questioned what the incentive is for small projects to use the ILF; the programs may be geared more for bigger impact projects, at least initially.

Comments for Ecology’s operational draft of the freshwater credit/debit tool are due in January, so, the freshwater tool is about final. A final may be ready by March. Freshwater tool comments are being requested for the version of the tool sent to Ecology’s WET list. Tom Hruby at Ecology is accepting all comments. **ACTION ITEM: HCCC will incorporate new versions of the freshwater tool as appropriate.**

The last paragraph of Section D.1, “case-by-case basis” was included to assess stream and other waters of the US. **ACTION ITEM: Clarify in the text that streams, etc are included in case-by-case basis in Section D.1.** There is an assessment tool for streams that EPA/USFWS will be releasing in the near future; should consider this method for the HCCC ILF, though it is based on Rosgen typology and eastern U.S. streams and may need quite a bit of work to be relevant for west coast systems. Past decisions were to assess this in a later phase of ILF development, and incorporate into current Instrument on case-by-case basis.

ACTION ITEM: On page 26, “permitting agencies...” is in conflict with 4e of the basic agreement, regarding when fees will be collected and when permits are issued; this needs to be consistent; follow up with Gail and Brad. The Corps said that permits are usually issued first based on ILF credits being available and appropriate for the impacts and then credits are purchased, though there was also some discussion about variation in sequence (i.e. chicken and egg question). The applicant needs to first confirm that they can use the ILF program for mitigation, then get a permit, then purchase credits. It is the Corps’ PMs that make the decision whether the ILF can be used for mitigation. Applicants will need

to submit an ILF use plan, similar to the bank use plan now required; the applicant is responsible for filling this out. The IRT sees the mitigation plans that the ILF sponsor is going to implement to address the credits that have been sold, but not necessarily the impact project details (impact project is reviewed/approved by regulatory agencies). The IRT would like to be sure that the mitigation is adequate before the permit is issued by the Corps, but that is not typical. The Corps will condition a permit that uses ILF as mitigation so that work cannot begin until proof of credit purchase has been provided. Ecology requires that credit purchases be registered at the county register's office. Large purchasers may purchase credits in advance (i.e., DOT); essentially, these credits are reserved.

Projects requiring a standard individual permit from the Corps that are proposing use of the ILF program for their compensatory mitigation requirements require a joint Corps/Ecology public notice; for NWP projects, other agencies and tribes are notified by the Corps. WDFW has a 45 day permit issuance time period for HPAs after they get a complete permit application, thus they cannot wait to verify if permittee has purchased credits from the ILF.

(The following paragraph was provided by Gail subsequent to the December meeting to clarify the IRT discussion). ILF cannot typically be used over existing banks unless there is an ILF mitigation site in the ground that is producing credits beyond what needs to be fulfilled for advance credits and then ILF and Banks are on an even par. Banks and ILFs, according to the federal rule, are higher in the preference hierarchy than permittee-responsible mitigation. However, the hierarchy needs to be based on what makes the most ecological sense and at times this may be on-site and in-kind permittee –responsible mitigation.

On page 25, item 4, should there be two principles (in kind/close proximity) similar to interim marine/nearshore approach included for freshwater environments? It was decided that they should not, since freshwater mitigation is now conducted using a watershed approach when it used to be only conducted onsite, in-kind. For the marine environment, a smaller scale may be more important, certainly in the interim. The King County ILF looks at a sub-basin scale for potential mitigation sites and then expands out if needed, though there is variation depending on sub-basin conditions; case-by-case. It is hard to prescribe scale sideboards with an ILF program. There was a suggestion that the location of impacts/mitigation be tracked within and between service areas, potentially using RIBITS. **ACTION ITEM: On page 25, number 6; need some examples of risk factors.**

A question was raised: Can onsite mitigation be part of the ILF program? Potentially, if it meets the requirements of the compensatory planning framework and if it becomes a roster site; it would be subject to everything outlined in the instrument. If a 3rd party has already implemented some onsite mitigation, the sponsor could take over the project, but the sponsor would have to determine how much they would charge for credits given they did not implement the entire mitigation project. In addition, an applicant could perform some onsite mitigation and pay the ILF for offsite mitigation to take care of their mitigation requirements. It is the regulatory PM that handles this decision. The IRT would get involved for out-of-service area requests and can be involved as much as they would like with approving mitigation projects, as opposed to approving use of the ILF, which is done by the regulatory

PM. Some “mitigation” does happen onsite, for example, ESA concurrence requires certain projects (i.e., infrastructure) to minimize impacts through construction techniques, alternate designs, and with mitigation (also known as impact reduction measures) (this type of mitigation is for minimization purposes, not compensatory mitigation). Another example of onsite mitigation would be stormwater treatment. **ACTION ITEM: In the instrument, the sponsor needs to be sure that they are explicit in saying that the program is considered only after minimization and avoidance (mitigation sequencing) has occurred.** Nowadays, in most urban and suburban watersheds there is no such thing as a minimally impacting project that would not require any compensatory mitigation when cumulative impacts are considered; the interim tool may help address this. Cultural needs should be addressed, separately.

The IRT reviewed the new version of Section D.2 sent on November 28th. The new version is based on comments from the last meeting. The principals of the interim tool did not change, other than minor improvements/clarifications in language provided by IRT at last meeting. Definitions for habitat classes were added. Degree of impact (from the impacting project) was considered, and ranges were added to provide for variation, all things recommended at the last IRT meeting. The IRT discussed what went into formulating the degree of impact factor and the associated ranges, as well as the risk factor. Is the degree of impact regarding temporal loss (short vs long term) or type of impact (construction impacts vs the placement of a structure)? **ACTION ITEM: There was a need to clarify the bullet about “reversible vs irreversible development”, and that it was meant to be about temporary construction impacts.** Instead of the proposed interim approach, the ILF program could use a habitat equivalency assessment (HEA) method. This method may be geared toward particular species, life stages, and economic factors, but can be used to assess habitat quality, associated functions, and account for temporal lag pre- and post project. NOAA has used this for assessment of juvenile Chinook in conservation banks; Blue Heron Slough conservation bank to determine the number of fish credits this bank would generate. It is important to know the quality of habitat and how it is being impacted. HEA can be used for mitigation sites too to determine potential lift of habitat functions. Definitions used as part of the interim tool may need to be explained also. The ranges used for these factors may need to be expanded too. Temporal lag is incorporated into the risk factor (bullet 4) and is averaged, meaning that it does not matter when a permittee uses the program relative to when an ILF mitigation project is implemented. **ACTION ITEM: The IRT would like case studies/examples to be provided that use the interim tool. These examples will be provided in a separate document, not incorporated into the instrument. This is a repeat action item and so is not repeated in table below.**

BREAK

Habitats used in the interim nearshore assessment tool were taken from the nearshore functional assessment tool for consistency. IRT has concerns that certain types of systems may not be captured by these habitat categories, for example, tidal wetlands. However, this would be covered by the principals used for the interim tool=>mitigation in-kind. **ACTION ITEM: The IRT would like to see more detail on these habitats/break them into subcategories, i.e., subtidal with geoduck or without. The IRT will send Richard recommendations. The IRT would like to further consider special characteristics/uniqueness value at a geographical/spatial scale to be factored in (valuation of the**

habitat within the watershed, range 1 to 5). For example, if it's the only habitat in the area. However, the risk factor may cover this. Risk factors are based on how difficult it is to replace that specific habitat. The IRT wants to be sure that the permittee has purchased an appropriate number of credits from the sponsor to offset impacts, especially since there would be no mitigation design at this point in the process, and the IRT wants to be sure that the program is operating properly. Regulatory PMs will be trained on how debit/credits are determined. The applicant will work with the sponsor to determine the appropriate number of credits, and justifications will be outlined in an ILF use plan. Plus, the IRT will be involved in determining how well sites are performing and whether additional credits should be released to the sponsor. Some IRT members would like an auditing system, to track which projects applied to the program, or did not apply to the program, and which were accepted. It was noted this is already included in the Instrument. IRT will not release credits unless projects are working, which is better than permittee-responsible project that are currently being implemented. The ILF use plan will provide regulatory PMs with the background/justification they need to determine if the ILF program is appropriate mitigation for impacts and if enough credits have been purchased to do so. Since the interim approach will likely only be used for 12-18 months, the ILF use plan and details in the Instrument should be sufficient to ease these concerns.

The IRT noted that the restoration and creation ratios were very similar in Table 2. The sponsor noted that not much nearshore creation takes place, and that little is expected as part of this ILF program, at least initially. These ratios were taken from mitigation banking documents, but caution should be used since banks do not have a temporal lag. Also, this is factored in on the debit side of the calculations for the ILF program, so direct comparisons to mitigation ratios needs to be carefully considered. **Action Item: Examples provided at the next meeting will be used to explore these topics.**

The freshwater credit/debit tool shows enhancement does not get much value. The tool undervalues enhancement; therefore, there needs to be a bigger range for the restoration and creation categories. The IRT noted that preservation used to have higher ratios, but now preservation is viewed from a watershed perspective; not only taking into account the threat to a site, but also how protection of the site affects the functions of habitat near the preserved site, resulting in smaller ratios, if appropriate. The IRT should remember that Table 1 also factors in multipliers to the preservation calculation, in addition to Table 2.

APPENDIX E

The sponsor contacted Corps to estimate permit load from federal permits, but was discouraged given stated need to submit FOIA and perceived difficulty. The sponsor then worked with Kitsap Co initially to get an idea of permit load as it relates to advance credits. There is about some overlap of local permits with state and federal permits (i.e., jurisdictional wetland impacts), yet there isn't a good enough overlap to use this method for determining future need for clean water act. There is not overlap for upland buffer only impacts and upland grading, which are not regulated by the feds/state. We also don't have wetland functional assessments for those permits, so the sponsor found it difficult to

estimate future need for freshwater wetlands. Corps staff noted the database existed and FOIA shouldn't be a problem.

The draft instrument currently chose 15 advance credits for each wetland functional bucket for each freshwater service area, similar to King Co. This decision was based on several conditions, most importantly that there were few if any wetland receiving and impact sites in Hood Canal that have been analyzed with the wetland tool, and thus is difficult to estimate number of credits (as opposed to acres).

ACTION ITEM: The sponsor will work with the Corps and locals if needed to determine what actual permit loads have been over the past several years (2005-2008 and 2008-2011).

And the instrument provides examples of what the max and min allowable area of impact would be for the specified number of advance credits requested—the IRT had concerns with this. **ACTION ITEM: Work with co-chairs to update Tables 4 and 5 and their narrative to show assumptions about how these were calculated. Another alternative would be to remove these tables since they aren't needed.** After running the freshwater tool, King Co reduced the number of advance credits they requested, found restoration generated more credits, and that 3-4 mitigation sites per watershed were required to resupply the advance credit pool. The number of advance credits requested is based on need, development history, size of service area, permit load. The IRT thought that it may not be appropriate for the service areas to request the same number of advance credits because development varies by geographic area. The sponsor can always request more advance credits from the IRT. King County already had roster sites to ground truth to see how many advance credits they could generate; the HCCC ILF does not.

The sponsor noted that nearshore credits were estimated on future permit loads associated with Navy foreseeable developments, estimating about 10 credits for marine nearshore development and 40 credits for riparian. The IRT is concerned that the number of advance credits for the nearshore only reflects Navy projects (Navy projects over the next 3 years with 10 acres of impact, plus potential acres of buffer impacts). Nearshore credits (as opposed to freshwater credits) are more analogous to: one acre = one credit. The 50 requested advance credits incorporates the number of advance credits for Navy projects, but would also allow for a small number of other potential private/public sector projects. Since advance credits are now calculated close to one acre=one credit with the interim method, there will need to be a conversion of these advance credits once the functional assessment tool is approved, creating some future accounting mismatches. The number of advance credits requested can be altered with an exchange of letters. No action items were identified for the nearshore section.

IMPORTANT DATES:

January 3rd (now January 6th) comments due on Appendix D and E and the November meeting minutes.

January 12th - next IRT meeting, Bremerton or Tacoma?

February 7th- subsequent IRT meeting. Location TBD, but likely Bremerton or Tacoma.

#	Action Item	Who	Response
1	Send comments on November 14 th meeting notes to the sponsor by January 3 rd (now January 6 th). We will approve them January 12 th .	IRT	
2	Begin repository of documents on HCCC website.	HCCC	
3	Comments on Appendices D and E (along with 11/14 meeting minutes) are due to the sponsor by January 3 rd .	IRT	
4	A request was made to provide to the IRT the draft instrument sections that will be reviewed and discussed at the next meeting.	HCCC and co-chairs	
5	The text will need to be consistent and changes will need to be made to Section A.2.	HCCC	
6	Modify first bullet in Section A.2.	HCCC	
7	Section D, in the prologue, page 24, marine shore aquatic habitats should be replaced with "marine shore aquatic processes", or something to reflect its broader nature.	HCCC	
8	Instead of freshwater wetlands and streams, need to state "waters of the US and state" to be more encompassing. The instrument language should strive to be consistent with the terminology from federal rule (i.e. established vs created, values vs services).	HCCC	
9	The IRT would like examples provided showing how the interim method would be applied.	HCCC	
10	HCCC will incorporate new versions of freshwater tool as appropriate.	HCCC	
11	Clarify in the text that streams, etc are included in case-by-case basis in Section D.1.	HCCC	
12	On page 26, "permitting agencies..." is in conflict with 4e of the basic agreement, regarding when fees will be collected and when permits are issued; this needs to be consistent; follow up with Gail and Brad.	HCCC and co-chairs	
13	On page 25, number 6; need some examples of risk factors.	HCCC	
14	In the instrument, the sponsor needs to be sure that they are explicit in saying that the program is considered only after minimization and avoidance (mitigation sequencing) has occurred.	HCCC	Done
15	There was a need to clarify the bullet about "reversible vs irreversible development", and that it was meant to be about temporary	HCCC	

	construction impacts.		
16	The IRT would like to see more detail on these habitats/break them into subcategories, i.e., subtidal with geoduck or without. The IRT will send Richard recommendations. The IRT would like to further consider special characteristics/uniqueness value at a geographical/spatial scale to be factored in (valuation of the habitat within the watershed, range 1 to 5).	IRT and HCCC	
17	Examples provided at the next meeting for Appendix D.2 will be used to explore these topics.	HCCC	
18	The sponsor will work with the Corps and locals if needed to determine what actual permit loads have been over the past several years (2005-2008 and 2008-2011).	HCCC and Joe	
19	Work with co-chairs to update Tables 4 and 5 and their narrative to show assumptions about how these were calculated. Another alternative would be to remove these tables since they aren't needed.	HCCC and co-chairs	