

**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE
HABITAT PROGRAM**

March 29, 2017

TO: Regional Habitat Program Managers
Assistant Regional Program Managers
Habitat Biologists
Protection Division Staff
Fish Passage Division Staff
Science Division Staff

FROM: Margen Carlson, Deputy Assistant Director
Randi Thurston, Protection Division Manager

SUBJECT: **INTERIM GUIDANCE REGARDING THE ACCEPTANCE OF
CONSERVATION BANKS AND IN-LIEU FEE PROGRAMS AS
COMPENSATORY MITIGATION**

Applicants should take all appropriate and practicable measures to avoid and minimize adverse effects to fish resources, in that order, before compensating for remaining impacts. Although the department prefers in-kind/on-site mitigation actions, we cannot limit compensatory mitigation options to areas on or near the project site, or to habitat types of the same type as those on the project site. In addition, there are not always practicable mitigation options on-site. In this case we must review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay. See [Chapter 90.74 RCW](#) “Aquatic Resources Mitigation” for additional information.

There are three ways applicants can provide compensatory mitigation: conservation and joint mitigation/conservation banks, in-lieu fee programs, and permittee-responsible mitigation. Most compensatory mitigation is done by the permittee who typically performs the mitigation before or concurrent with construction of the project. The permittee is ultimately responsible for implementation and success of the mitigation. However we may also authorize the use of credits from conservation banks; joint mitigation/conservation banks; and in-lieu fee (ILF) programs that are approved by the U.S. Army Corps of Engineers (Corps) or the Corps and Washington State Department of Ecology when other compensatory mitigations options are not practicable. See [WAC 220-660-080\(4\)\(e\)](#) “Mitigation requirements for hydraulic projects” for additional information.

Currently there are only [three approved ILF programs](#) and [sixteen approved mitigation or joint mitigation/conservation banks](#) and some of these are not appropriate to compensate for impacts to fish life. This had resulted in habitat biologists authorizing the use of non-approved ILF

programs and banks when approved ILF programs and banks are not available. Effective immediately, the Regional Habitat Program and Protection Division Manager must review and authorize the use of non-approved ILF program or bank before the biologist accepts this mitigation and issues an HPA. This additional review is needed to determine if a non-approved ILF program or bank can be accepted as mitigation under [WAC 220-660-070](#) “Changes to hydraulic project approval technical provisions” because their use is not expressly authorized in [WAC 22-660-080](#) “Mitigation requirements for hydraulic projects”.

If you have any questions, please contact Randi Thurston. Thank you