

Interagency Review Team - Roles and Responsibilities Agreement

The objective of this document is to clarify roles and responsibilities for the mitigation bank Interagency Review Team (IRT) so the process of bank establishment and operation is well-coordinated between agencies, predictable for sponsors, and results in banks that are consistent with each agency's policies.

Guiding Principles

1. Mitigation banks are valuable tools for compensating for unavoidable adverse impacts to natural resources. Whether a sponsor seeks credits for wetlands/waters or wetlands/waters and Endangered Species Act (ESA) species, a coordinated bank establishment process will be most efficient for all parties.
2. The participation of each agency is important to achieve outcomes consistent with each agency's requirements and mission, and the contributions of staff with different expertise will improve the ecological success of the mitigation bank program.
3. The IRT will maintain a climate of collaboration and mutual respect for each agency's differing perspectives and authorities. Members will seek to resolve differences, elevate issues to managers as necessary, and present solutions to bank sponsors only after they have been vetted with the other agencies.
4. The mitigation bank establishment process should be administered for efficiency and predictability to optimize the use of agencies' and the bankers' limited resources. If any agency cannot conform to the timelines found in 33 CFR Parts 325 and 332 and OAR 141-085-0725, they will notify the rest of the IRT and the sponsor as early as possible of necessary time extensions.
5. To foster long-term success of the banking program, constructive relationships should be created and maintained between the IRT and the banking community. All IRT members will strive to provide clear and consistent expectations and timely customer service to the banking community, as well as provide feedback from the banking community back to the IRT to improve the program.

Roles and Responsibilities of Co-chair Agencies

1. The Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers, Portland District (Corps), are the co-chairs of the IRT for wetland and stream banks. The U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) may also act as co-chairs for banks that recognize credits under the ESA.
2. The co-chair agencies provide leadership and management of the banking program and maintain final authority for approval of banking instruments and credit accounting, while giving full consideration to comments provided by the IRT advisory agencies. In areas where the regulations of the co-chair agencies are in conflict, staff of the co-chair agencies should, if necessary, elevate concerns to their respective managers for resolution.
3. The co-chair agencies seek to create consensus and a collaborative environment among the IRT members. The Corps is responsible for coordinating among the Federal agencies. DSL is responsible for coordinating among State agencies.

4. In the event that addressing an IRT agency's concern will exceed the timelines in the Federal and State rules, the co-chair agencies share the responsibility to communicate this to the sponsor and provide an estimated timeframe for resolution.
5. The co-chair agencies are responsible for administering the mitigation bank process consistent with their respective statutory and regulatory requirements, including document completeness reviews and record keeping. When multiple credit types are recognized, the bank Instrument agreement between the parties will identify how credit ledgers will be managed by the sponsor and each agency to prevent "double dipping".
6. Co-chair agencies will collaborate and share the administrative responsibilities of the annual mitigation banker meeting, scheduling meetings and site visits, setting agendas, facilitating meetings and preparing notes of meetings and site visits.
7. The co-chair agencies will alternate responsibility for taking notes at policy-oriented IRT meetings. The note taker will get IRT input on draft notes, finalize and send the notes out to the IRT. The notes will include action items, the person responsible and a due date for completing the task. Final notes will be posted on the Regulatory In-Lieu Fee and Banking Information Tracking System (RIBITS) for IRT members' view only.
8. The co-chair agencies will collaborate to minimize duplication of agency efforts and provide consistent, compatible direction to bank sponsors.
9. The co-chairs will coordinate on all mitigation bank business relevant to their agencies before communicating a joint position to sponsors.
10. When a bank has performance shortcomings, the co-chairs will strive to meet jointly with the sponsor to discuss resolution or remediation.
11. The co-chair agencies will strive to provide sponsors with written reviews of monitoring reports and credit release letters within 60 days of submittal.

Roles and Responsibilities of the IRT Member Agencies

1. IRT members who are not acting as co-chairs are advisory to the co-chair agencies throughout the development and management of mitigation banks.
2. IRT members may take the opportunity to review the prospectus, draft and final banking instruments, instrument amendments, remedial plans, monitoring reports, and participate in site tours and inspections. IRT members may provide written or verbal comments to the co-chairs that are relevant to their agency mission and expertise.
3. IRT members will strive to stay abreast of their respective agency policies, elevate emerging issues to managers as necessary, be prepared for meetings, and provide their comments according to established timelines.

4. To ensure consistent communication with bank sponsors, all IRT communication with bank sponsors should be made through the respective state or federal co-chair agency, unless requested otherwise by a co-chair.

IRT Meeting Management

1. The purposes of the IRT meetings are to:
 - a. allow the sponsor(s) an opportunity to describe their project to IRT members;
 - b. discuss concerns and issues that IRT members may have with a specific project or process;
 - c. discuss mitigation process and policy issues for consistency for all types of compensatory mitigation;
 - d. evaluate both projects and processes to improve the banking program; and
 - e. inform IRT staff as necessary so they can engage their managers in associated decisions.
2. The co-chair agencies will manage IRT meetings by preparing agendas, providing complete documents 2 weeks prior to meetings, facilitating productive and focused discussions, and preparing and distributing meeting notes.
3. In most cases IRT meetings are not considered public meetings. Bank sponsors, their consultants, guest speakers, or other spectators or advisors may be invited as necessary to explain projects or provide expertise relevant to IRT discussions. Any invitees will be approved by the co-chairs. Invitees do not participate in the decision making process.
4. If issues arise that are germane to only one or two agencies, it may be appropriate to schedule separate meetings with only those agencies to discuss and resolve the issues.

Dispute Resolution

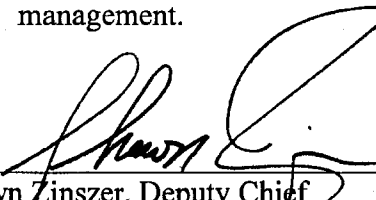
1. When IRT members are in disagreement and the issue can not be resolved in a timely manner at the staff level, the IRT members should elevate the issue and inform his/her manager of the timeline required for resolution.
2. As soon as a substantive difference between agency perspectives emerges, both of the potentially aggrieved agency staff representatives should fill out the following analysis template as a starting point for further IRT discussion or elevation. The analysis should be two pages or less.
 - a. Statement of problem;
 - b. Background info.;
 - c. Assumptions;
 - d. Current situation;
 - e. Factors bearing on issue(s);
 - f. Options – Identify & Discuss Pros & Cons;
 - g. Policies, Compliances;
 - h. Recommendation.

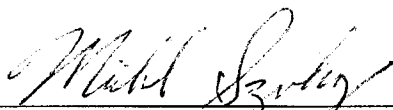
Timeline target is one week to get it to the IRT, have an IRT conference call the following week to pick an option to resolve or elevate to managers. If the issue is elevated to managers, the managers will have two weeks to advise staff which track to take.


3. If an IRT agency disputes the Corps' approval of a final instrument, that agency shall follow the dispute resolution process found in 33 CFR §332.8(e).
4. When a bank sponsor raises an issue directly to management that issue should be vetted through the IRT for consistency. The agency contacted will refer the issue to the IRT for discussion and resolution in a timely manner.
5. Each agency retains their separate authorities, responsibilities, and procedures for appeals of agency decisions originating from a bank sponsor, applicant or any other party aggrieved by a bank-related permit.

AGREEMENT:

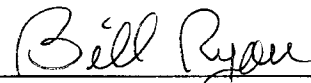
We agree to these principles and procedures for effective mitigation/conservation bank program management.

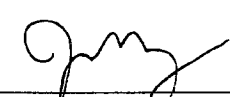
 10/16/12
Shawn Zinszer, Deputy Chief
U.S. Army Corps of Engineers, Portland District

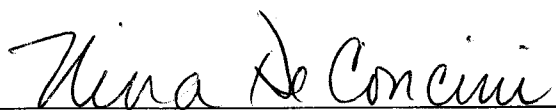
 11/02/12
Michael Szerlog, Unit Manager
U.S. Environmental Protection Agency, Region 10

 1/16/13
Jon Germond, Habitat Resources Program Manager
Oregon Department of Fish and Wildlife

Kim Kratz, Oregon State Habitat Director
National Marine Fisheries Service

 10/30/12
Bill Ryan, Assistant Director
Oregon Department of State Lands
Wetlands and Waterways Conservation Division

 2/28/12
for Paul Henson, State Supervisor
U.S. Fish and Wildlife Service

 2/8/11
Nina DeConcini, Northwest Region Administrator
Oregon Department of Environmental Quality