

Exhibit 20: Using the MRP to Meet ESA Section 7 Requirements

The following guidelines were established in a series of meetings with staff from the King County MRP, the US Army Corps of Engineers (Corps) and the US Fish and Wildlife Service and National Marine Fisheries Service (collectively, “the Services”). The guidelines below provide a basic approach to using the MRP to satisfy the needs of a permittee for implementing Impact Reduction Measures, Conservation Measures or Reasonable and Prudent Alternatives/Measures (i.e., mitigation needs) associated with impacts to Endangered Species Act (ESA) listed species and/or critical habitat.

Each use of the MRP for ESA Section 7 needs will occur on a case-by-case basis to ensure use of the MRP results in the best possible mitigation for impacts with the greatest benefits to affected species. Use of the MRP may not be appropriate in all cases.

Considerations regarding use of the MRP as a Conservation Measure to meet ESA Section 7 Consultation requirements:

Background information:

- Some impact projects buying MRP credits may require informal or formal consultation with the Services for ESA listed species and/or critical habitat.
- Generally, the Section 7 Consultation for impact projects requires upfront knowledge of how impacts will be mitigated (via Impact Reduction Measures, Conservation Measures or Reasonable and Prudent Alternatives/Measures).
- When an applicant buys MRP credits to meet their mitigation need, the MRP may not know how credit fees will be used (i.e., the type, location and timing of the resulting mitigation project may be unknown).
- It is anticipated that the majority of the MRP Receiving Sites (Mitigation Sites) that may affect but not likely to adversely affect listed species and/or critical habitat will utilize the 2008 Fish Passage & Restoration Programmatic Consultation for expedited ESA Section 7 Consultation. Some mitigation projects may have to go through the regular Section 7 Consultation process.
- MRP is required to track type, location, and timing of impacts and mitigation.
- More than 60% of potential MRP receiving sites (the Roster) are within 200ft of rivers and streams known to be used by steelhead or chinook; nearly 90% of Roster sites are within 200ft of a stream. Projects at these sites would advance recovery of species and critical habitat.

When deciding to use MRP to mitigate for impacts to listed species/critical habitat, the Services' staff should consider the following:

IF...

- A proposed project will impact a listed species and/or critical habitat, and
- Onsite opportunities to address impacts are unavailable, unsuitable, or insufficient, and
- All the applicable regulatory agencies and affected tribes have reviewed all potential mitigation options and determined the use of the MRP may be appropriate,

THEN...

The applicant, MRP, and regulatory agencies will follow this process:

1. Applicant contacts MRP to provide details about the proposed impact project. At minimum, such details would be similar or identical to info in Biological Evaluation or Assessment, including, at minimum:
 - a. Location, size, and type of impact
 - b. Species and habitat affected
 - c. Proposed onsite conservation measures or impact reduction measures, i.e. mitigation, (if any)
 - d. Timing and duration of impact (e.g., temporary, permanent)
2. The MRP manager will review proposed impacts and potential mitigation sites (i.e., the Roster) and consult with King County ecologists about the ability to meet the mitigation need at an existing Roster site or at other sites where mitigation could occur.
3. The MRP will provide the applicant with a response regarding the potential for use of the program to meet the applicant's mitigation need. This response could take several forms:
 - a. If MRP has what it considers to be one or more appropriate mitigation receiving sites with a readily available mitigation projects, the MRP manager will provide site/project details to the applicant, including:
 - i. Location of project site(s)
 - ii. Basic attributes of the existing or proposed project(s)
 - iii. How the projects will address recovery of listed species/critical habitat
 - iv. Timeline for implementation
 - b. If the MRP has one or more mitigation receiving site/projects that *may* meet mitigation needs, the MRP manager will provide the applicant with information about the range of potential projects with as many details as possible related to how the potential sites/projects will address recovery of listed species, and when such projects would be likely to occur.
 - c. If there are no projects or if there is a high level of uncertainty about potential mitigation projects, the MRP Manager will provide the applicant with this information as well as information about pending acquisitions or other relevant details about potential future mitigation sites/projects in the service area.

4. Applicant and Services will discuss use of MRP as a Conservation Measure in light of info provided by MRP in step 3 above.
 - a. This can be disclosed in the Biological Evaluation or Assessment for the impacting project as well as submission of an “MRP Use Plan” (analogous to a Mitigation Bank Use Plan).
 - b. As appropriate, the MRP manager will work directly with the Services to determine information needs about MRP receiving sites for Section 7 Consultation for specific impacting projects.