WAC 220-660-080 Mitigation requirements for hydraulic projects. (1) **Description:** The department defines mitigation as sequentially avoiding impacts, minimizing and rectifying unavoidable impacts, and compensating for remaining impacts. This mitigation must achieve no net loss.

(2) **Fish life concerns:** Work conducted in or near water can negatively impact fish life. Best management practices such as proper design and siting, construction timing, isolating the work area, sediment and erosion control, water-quality management, and revegetation can avoid, minimize, and rectify many of these impacts. These best management practices are reflected in the technical provisions. However, remaining impacts may require compensation to offset the loss of fish life and habitat that supports fish life.

(3) **Mitigation requirements:**

(a) The department must determine if the project actions proposed will mitigate for the project impacts to fish life and the habitat that supports fish life based on available information.

(b) A person must pay for any surveys, studies, or reports required by the department to determine if the hydraulic project mitigates impacts to fish life and the habitat that supports fish life. When required, the department will provide a written explanation of why the information is required and what standards or protocols the applicant must follow.

(c) All work subject to this chapter must achieve no net loss through a sequence of mitigation actions. However, the department may not impose permit conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(d) Mitigation includes all of the action steps in the mitigation sequence.

(e) Compensatory mitigation is not required for hydraulic projects if other actions in the mitigation sequence are taken that avoid or offset impacts to fish life.

(f) The department may require advance mitigation if an experimental mitigation technique is being performed. If required, the advance mitigation should be fully functional prior to the project impacts.

(g) All maintenance work must comply with the applicable common technical provisions and project-specific and site-specific technical provisions. Maintenance work that rehabilitates and replaces a structure must also comply with the applicable common technical design provisions and project-specific and site-specific technical provisions.

(h) Replacement of any portion of any structure must comply with the requirements in this chapter governing materials that may be used.

(4) **Compensatory mitigation:**

(a) The department may determine that compensatory mitigation actions are needed to offset impacts remaining after other actions in the mitigation sequence are completed.

(b) When compensatory mitigation is needed to offset impacts, the department prefers compensatory mitigation actions that restore impacted habitat types and functions on-site or immediately adjacent to the impact site. If mitigation actions on or near the project site cannot mitigate the project impacts, then the department prefers compensatory mitigation actions at another location benefit the same fish life populations, habitat types and functions as those impacted by the project. However, the department must give due consideration to any compensatory mitigation proposal that improves the overall habitat

functions in the watershed for the affected fish life populations at the project site.

(c) At the request of the project proponent, the department must accommodate the mitigation needs of the infrastructure or noninfrastructure development, including proposals or portions of proposals that are explored or developed in RCW 90.74.040. However, the department will not approve compensatory mitigation that does not provide equal or better habitat functions, value and quantity by habitat type.

(d) The department will evaluate mitigation credits and debits on a scientifically valid measure of habitat function, value, and quantity by habitat type. Compensatory mitigation must also compensate for temporal losses, uncertainty of performance, loss of habitat quantity by habitat type, and differences in habitat functions and value.

(e) The department will consider the use of credits from an approved programmatic option such as a state or federal certified fish conservation bank, a joint 404/401 mitigation and fish conservation bank, or in-lieu fee program as a form of compensation only after the standard mitigation sequencing has been applied at the impact site. These credits should benefit the same fish life populations as those impacted by the hydraulic project.

(f) For calculating compensatory mitigation requirements under this chapter, the environmental baseline is habitat conditions at the time the HPA application is submitted. However, this baseline does not apply to hydraulic projects constructed illegally. Structures that predate the hydraulic code or structures that were previously authorized under past versions of the hydraulic code are deemed legal structures.

(g) The department will evaluate impacts caused by a hydraulic project by comparing the condition of the habitat before project construction or the performance of work to the anticipated condition of the habitat after project completion.

(h) Maintenance on a legally constructed structure does not require compensatory mitigation unless:

(i) The maintenance work causes a new loss of habitat function, value, or quantity by habitat type that is not associated with the original construction of the structure; or

(ii) The maintenance work does not comply with subsection (3)(g) in this section.

(i) Removal of a human-made or engineered structure does not require compensatory mitigation. However, the department may require bank resloping, revegetation, and other job site stabilization measures after structure removal.

(j) The department may require monitoring to determine the extent and severity of impacts and the effectiveness of the compensation projects. The department may require a monitoring and contingency plan to ensure the compensatory mitigation meets the performance goals and objectives specified in the HPA. This plan may be part of a larger mitigation plan.

(5) **Mitigation plans:**

(a) The department may require a mitigation plan for projects with ongoing, complex, and experimental mitigation actions.

(b) The department must notify a person in writing if a mitigation plan is required and specify what the plan must include if a mitigation plan was not submitted with the application.

(c) When reviewing a mitigation plan under RCW 77.55.021, the department must, at the request of the applicant, follow the guidance

contained in RCW 90.74.005 through 90.74.030. Pursuant to RCW 90.74.020, a mitigation plan must do the following:

(i) Guarantee long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential habitat functions and values defined in the mitigation plan;

(ii) Provide long-term monitoring of any created, restored, or enhanced mitigation site; and

(iii) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(d) When making a permit decision, the department must consider, pursuant to RCW 90.74.020, whether the mitigation plan provides equal or greater habitat functions, value, and quantity by habitat type compared to the existing conditions. This consideration must be based upon the following factors:

(i) The relative value of the mitigation for the target fish life, in terms of the habitat functions, value, and quantity by habitat type;

(ii) The compatibility of the proposal with broader resource management and habitat management objectives and plans, such as existing resource management plans, species recovery plans and associated habitat restoration strategies, watershed plans, critical areas ordinances, the forestry riparian easement program, the riparian open space program, the family forest fish passage program, and shoreline master programs;

(iii) The ability of the mitigation to address scarce habitat functions or types within a watershed;

(iv) The benefits of the proposal to the broader watershed landscape, including the benefits of connecting various habitat units and reducing fish life-limiting habitats;

(v) The benefits of implementing advance compensatory mitigation before the project's anticipated impacts occur; and

(vi) The significance of any negative impacts to nontarget fish life.

(e) A mitigation plan may be approved through a memorandum of agreement between a person and the department.

(f) The department will require a memorandum of agreement between an applicant and the department if mitigation actions, including monitoring, exceed the five-year statutory time limitation of the HPA.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.04.020, 77.55.021, 77.55.091, 77.55.181, 77.12.047, and 34.05.328. WSR 26-15-073 (Order 26-13), s 220-660-080, filed 7/15/26, effective 8/15/26. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 15-02-029 (Order 14-353), § 220-660-080, filed 12/30/14, effective 7/1/15.]