

RCW 77.95.185 Local fish passage barrier removal—Compensatory mitigation preference—Mitigation framework for off-site and out-of-kind barriers—In lieu fee program. (1) The department of transportation, the department of ecology, and the department of fish and wildlife must use their existing authorities and guidance to provide a preference for the removal of existing fish passage barriers owned by cities and counties as compensatory mitigation for environmental impacts of transportation projects where appropriate.

(2) (a) The department of transportation, the department of ecology, and the department of fish and wildlife must consult with other relevant entities to develop a framework for encouraging off-site and out-of-kind local fish passage barrier mitigation that provides results that are consistent with habitat protection priorities and are ecologically preferable to on-site mitigation.

(b) The implementation of this framework must:

(i) Not delay transportation project delivery;

(ii) Not be additive to the amount or cost of mitigation required under existing regulations;

(iii) Not preclude on-site or off-site and in-kind mitigation when that is the most ecologically appropriate means to address project impacts;

(iv) Not alter the mitigation sequencing principles of first avoidance and then minimization of impacts before compensatory mitigation;

(v) Provide for a mechanism that identifies whether environmental impacts from projects are appropriate for local fish passage barrier mitigation;

(vi) Provide a mechanism for affected parties, including tribes, to determine when and how to use off-site and out-of-kind mitigation to address fish passage barriers in particular watersheds;

(vii) Consult the statewide fish passage barrier removal strategy developed by the fish passage barrier removal board created in RCW 77.95.160 and information provided by affected tribes, salmon recovery regional organizations, and local entities to identify specific priority locations where removal of local barriers would provide a net resource gain; and

(viii) Consistent with existing mitigation regulations and guidelines, provide a preference, where appropriate, for investment in local fish passage barrier removal where greater environmental benefit can be achieved with off-site and out-of-kind mitigation.

(c) In addition to the framework developed in (b) of this subsection, the department of transportation, the department of ecology, and the department of fish and wildlife must develop and implement an umbrella statewide in lieu fee program or other formal means to provide a streamlined mechanism to undertake priority local fish passage barrier corrections throughout the watersheds of the state as a preferred means of compensatory mitigation where appropriate for state transportation that is consistent with the principles in (a) and (b) of this subsection.

(3) Nothing in this section is intended to create or expand the state's obligation for fish passage barrier correction according to existing law or court ruling. Nothing in this section is intended to decrease funding or otherwise impede the state's efforts to meet its obligation for fish passage barrier correction according to existing law or court ruling. [2015 3rd sp.s. c 17 s 10.]

Effective date—2015 3rd sp.s. c 17: See note following RCW 47.85.005.