



# Mitigation That Works

## GMAP Report

May 26, 2009

### Topics

- Follow-up from October 2008 GMAP
- Wetland Banking Rule and Program status
- Wetland Mitigation Compliance Program status
- Mitigation That Works Forum Recommendations status



# Mitigation That Works Goals & Objectives

## **Two major goals**

- 100% success rate for mitigation projects.
- Improved predictability and efficiency for permit applicants.

## **Objectives**

- Establish and sustain a credible wetland banking program.
- Ensure 100% of mitigation projects are assessed for compliance with permits.
- Establish watershed characterization as a standard approach to mitigation.
- Develop new mitigation tools to improve environmental outcomes and increase permit predictability.
- Expand training, outreach, and technical assistance.

## **What are we doing to reach our goals and objectives?**

- Adopting mitigation banking rule.
- Continuing focus on compliance.
- Significant partnering with state and federal agencies, such as the Puget Sound Partnership, EPA, and the Corps.
- Implementing Forum's Recommendations Report.
- Providing technical assistance and grant funds to local governments for watershed characterizations.

## **These actions support Ecology strategies by**

- Increasing our accountability, flexibility, and transparency.
- Protecting our resources.
- Improving coordination among governments.



# Follow Up to the October 2008 GMAP

Action	Update
<p><b>No Net Loss:</b> Continue to make progress to get better at measuring no net loss over time. Need staff buy-in to start showing big picture change over time.</p>	<p>The SEA program is fully engaged and is partnering with NOAA to create a “wetlands trends” strategy. We have created a workgroup (consisting of staff from SEA, IT, and NOAA) and all members are in agreement on the steps necessary to move forward.</p> <p>SEA has a grant request in to EPA to fund this effort. The objective is to work with NOAA to identify the best data sources and methods to map and monitor trends in wetland gains and losses in western Washington, using multi-temporal, multi-scale and multi-source remote sensing and geospatial data.</p> <p>If the strategy proves successful, a phase two could be implemented for eastern Washington, to create a statewide coverage.</p>
<p><b>Wetland Banking:</b> Develop a strategy to engage tribes and environmental groups in the direction we are moving with banking.</p>	<p>As part of the banking rule process, we formally notified tribes and utilized the Army Corps of Engineers 106 consultation process. The rule includes specific language addressing banks that are located on tribal lands.</p> <p>In addition, we have created a strategy to be included in all work plans developed under Ecology’s Mitigation that Works Initiative. The strategy includes steps for both formal and peer-to-peer engagement.</p>
<p><b>Compliance:</b> How are we using lessons learned to help with our decisions. Can we build language into permits in case mitigation projects fail?</p>	<p>We are close to finishing work on revising boilerplate 401 water quality permit conditions that address various aspects of implementation and monitoring and maintenance. The language has recently been submitted to the assistant attorney general for 3 final legal review. See slides 8 – 10.</p>



# Status of the Wetland Banking Program

The following performance measures were established to gauge whether we are improving the predictability and efficiency of certifying banks:

1. Anticipated Banking Rule Adoption - July 31, 2009
  1. CR-102 filed March 3, 2009
  2. Public comment period ended April 23, 2009
  3. Rule process – about 80% complete

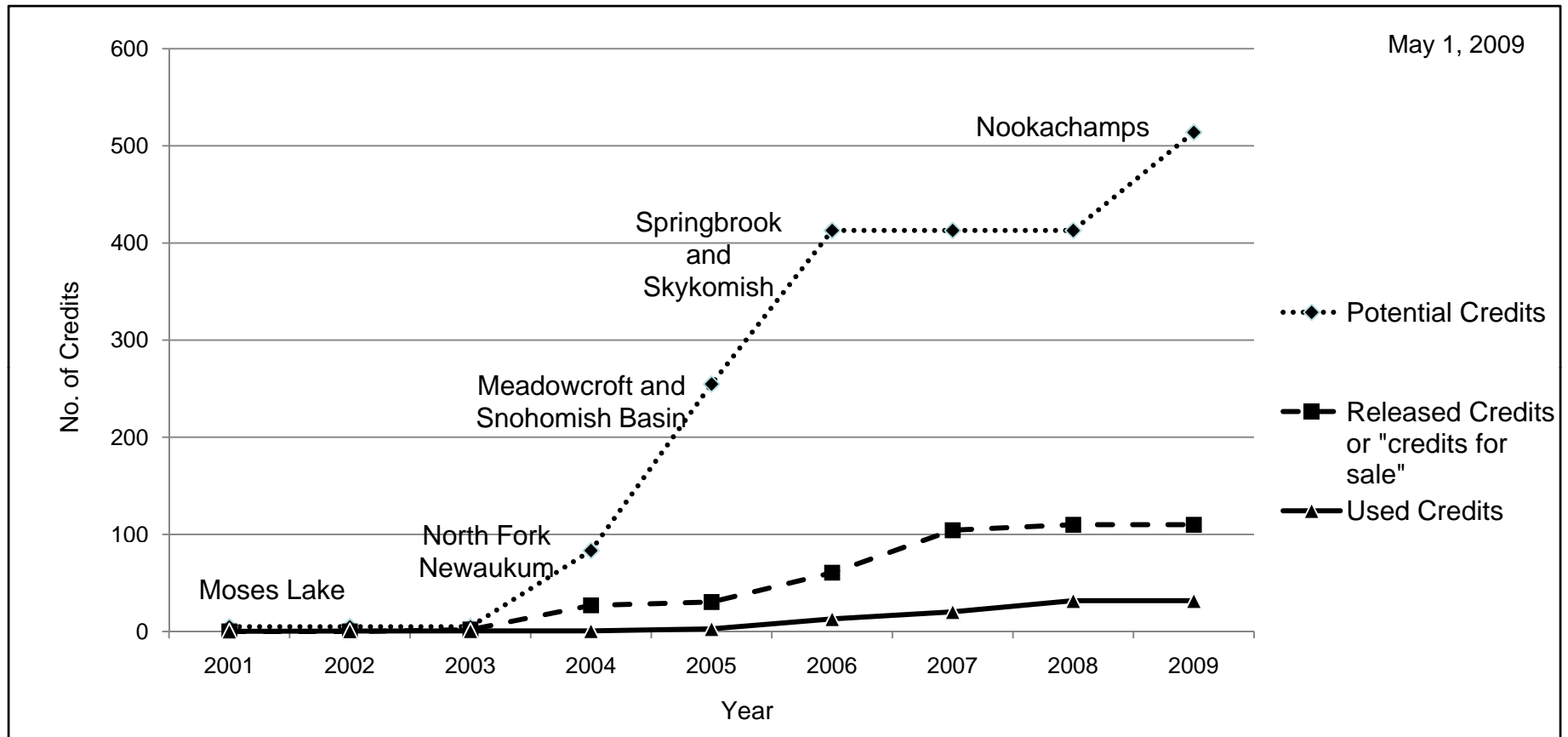
2. Proposal to change performance measure:

*Old language* – Reduce number of months it takes to certify a new wetland bank from 24 months to 17 months.

*Suggested new language* – X% of Ecology document reviews during the certification period completed within 30 days, with the exception of the Mitigation Banking Instrument, which will be completed within 90 days.

WHAT	WHO	WHEN	STATUS
Public comment period	Y. Holder L. Driscoll	Mar. 3 – Apr. 23, 2009	Complete
Revise rule language	Y. Holder L. Driscoll	July 2009	Currently reviewing comments received.
CR-103 (rule adoption) filed	Y. Holder	July 2009	Reports are in process. 4

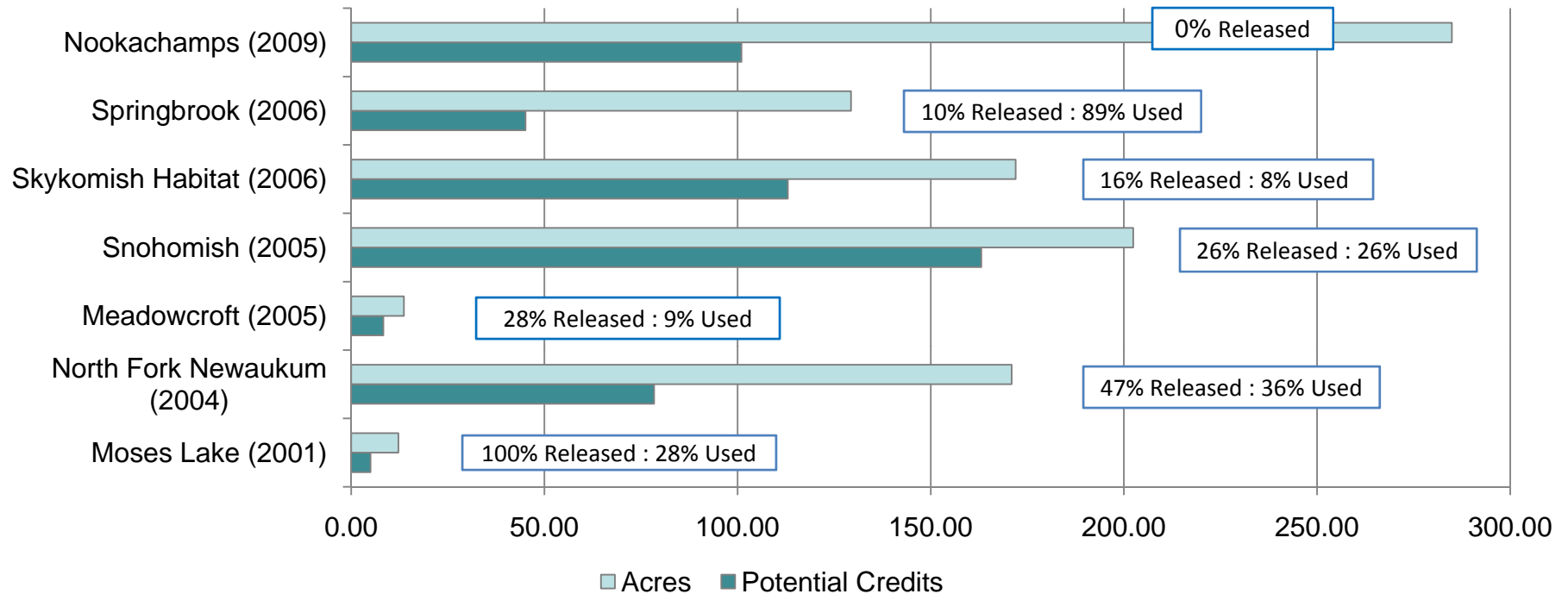
# Status of Credits for Ecology Approved Wetland Banks



- **Potential credits** = The total amount of credits the bank is worth once it meets all of its performance standards and reaches full ecological maturation.
- **Released credits (or credits for sale)** = As a bank attains ecological benchmarks (performance standards), Ecology approves, or “releases”, that associated portion of credits for sale.
- **Used credits** = Credits that have been bought by an applicant to mitigate for a wetland impact or proposed impact.



# Relationship of Acres to Credits for Ecology Approved Wetland Banks

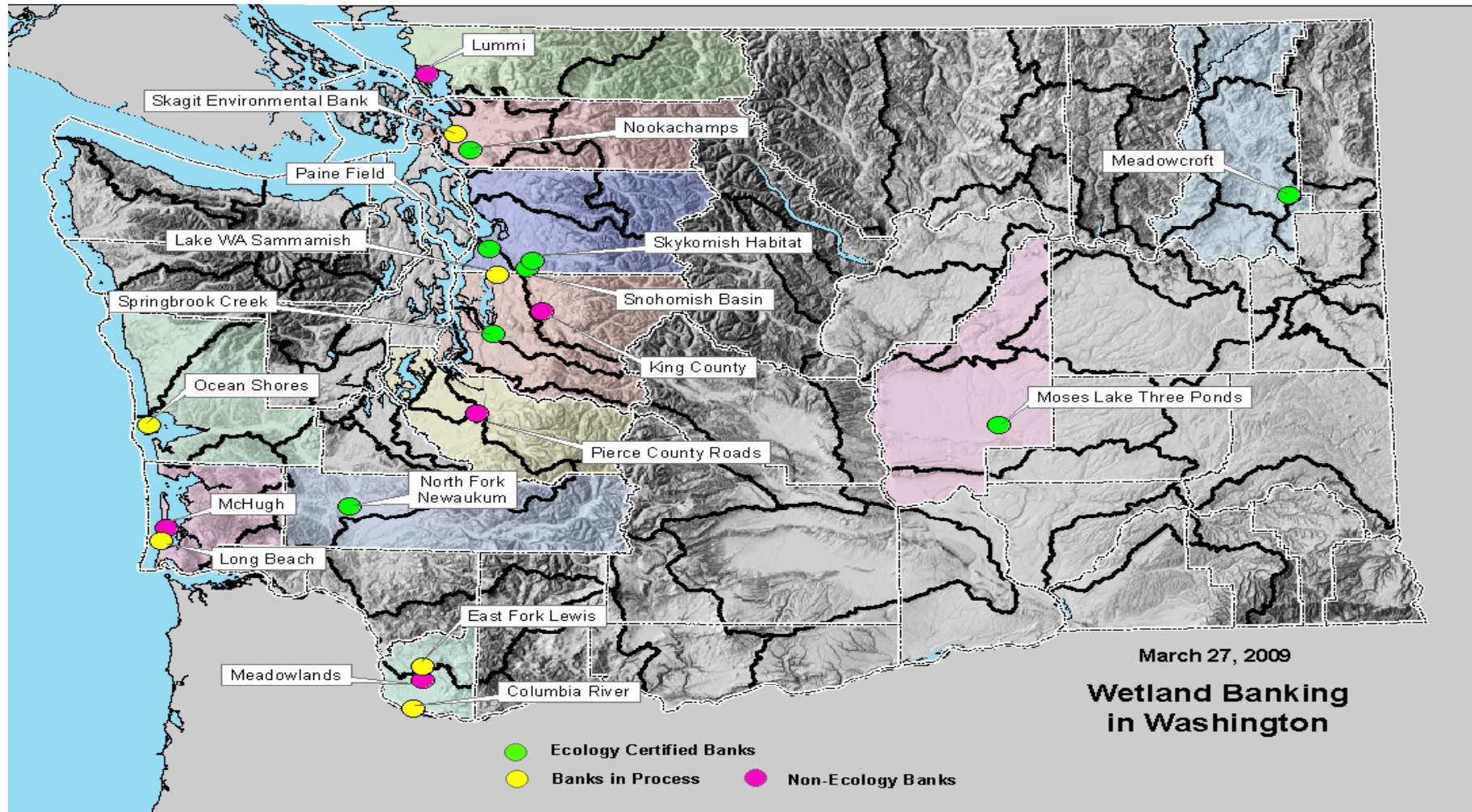


Each bank generates a unique amount of credits due to site specific conditions, regardless of the acreage. For example, a bank may have a lot of upland acreage but not a lot of high-functioning wetland acreage. Thus, banks are compared and tracked based on the number of credits they are worth, not the number of acres they encompass.

The ratio of acres per credit currently ranges from 1.2 – 2.9, with an average of 1.9. **Total potential credits = 514.**

**Total acreage = 1045 acres** for all 8 Ecology approved banks (due to complexity of crediting system, Paine Field not shown).

# Wetland Banks in Washington



Changes since the October 2008 GMAP:

- Nookachamps Wetland Mitigation Bank certified March 2009.
- Zarecor bank withdrawn.
- Ocean Shores bank in process.



# Status of the Wetland Compliance Permitting Program

## We are meeting or exceeding performance measures:

- Review 75% of sites within 18 months of receiving completed plans.
  - Reviewed 100% of projects with completed plans.
  - We were able to follow-up and request completed plans and perform site visits on additional sites.
- Verify status of all projects within 2 years of permit issuance.
  - We have determined status on 100% of permits issued (136 projects) from January 2004 through April 2007.
  - We have determined status on another 55 projects permitted since April 2007.

## Taking action on lessons learned: building language into permits in case of mitigation failure

1. New set of permit conditions receiving legal review.
2. Conditions apply to all phases: construction, monitoring, maintenance, and long-term protection.
3. Example of new language:
 

*“If the Applicant has not met all conditions and performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.”*

WHAT	WHO	WHEN	STATUS
Send follow-up letters after each site visit. Perform follow-up inspections on sites that show early signs of not succeeding.	Dana Mock and Compliance Team	On-going	Follow-up occurs on all site visits.
Refine permit conditions based on lessons learned from follow-ups.	Teri Granger, 401 and wetlands subcommittees, Attorney General's Office	On-going	Updated 401 Water Quality Certification conditions. Conditions receiving legal review. Many updated conditions being incorporated into permits. 8



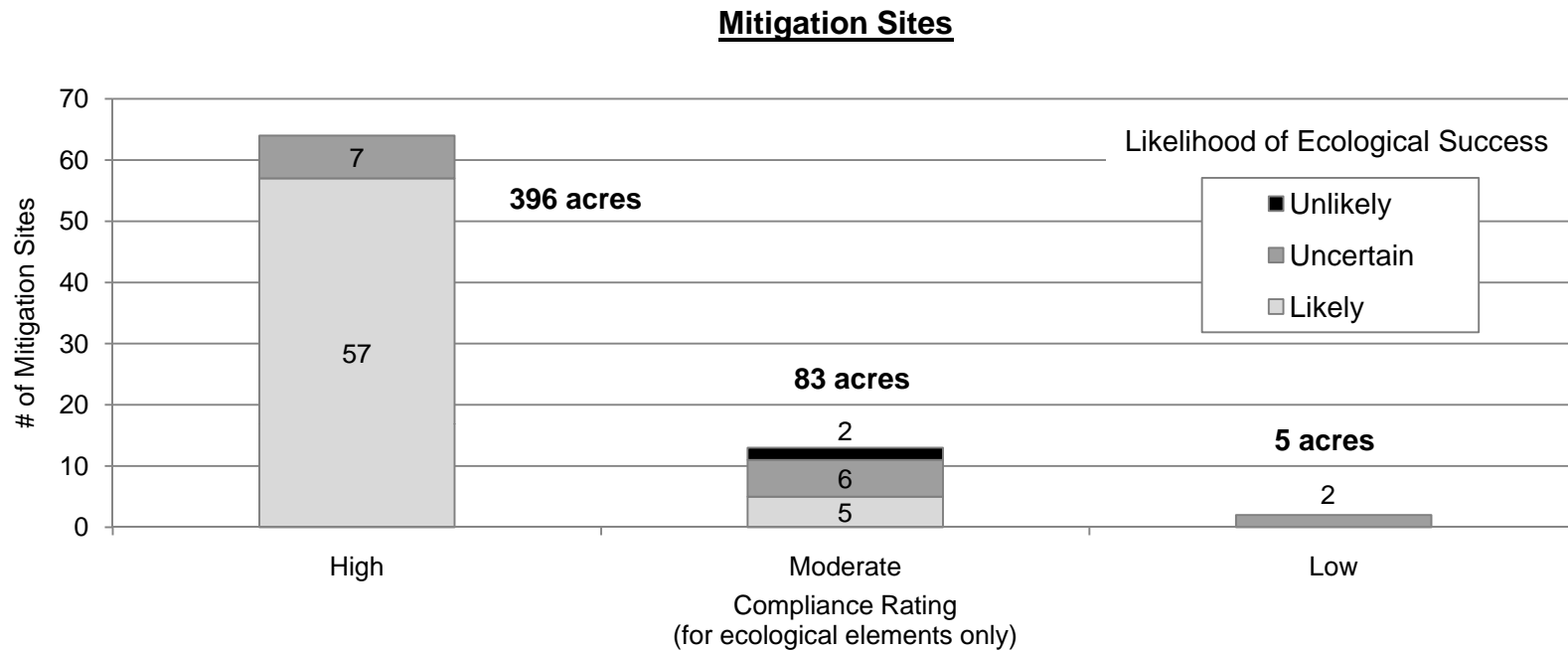
# Moving Beyond “50% Success”

**Still too early to tell, but... a lot has changed since the 2002 Mitigation Study.**

- New mitigation guidance (2006)
  - Better performance standards
  - Larger ratios for enhancement
  - Better guidance on site selection
- Trainings on reviewing and designing mitigation plans since 2006
- Agency follow-up (via the compliance program)
  - Regional wetland specialists approve mitigation plans and visit sites post-permit to see what works and what doesn't work
  - Site visits increase staff base expertise which is applied to future mitigation projects
- Clearer, more enforceable permit conditions

WHAT	WHO	WHEN	STATUS
Review monitoring reports and visit sites at least two more times during the whole monitoring period. Prioritize projects that are uncertain or unlikely to succeed.	Dana Mock	On-going	We are starting to get monitoring reports for sites visited in 2006 and 2007. A few sites are getting close to the end of their 5-year monitoring period.
Provide training to local governments, consultants, and agency staff on site selection, plan review, and design of compensatory mitigation projects.	Dana Mock Patricia Johnson	On-going	Five trainings provided in 2008. One training provided this year on April 30 in Olympia and one scheduled for June 23 in Moses Lake. <sup>9</sup>

# Translating Compliance into Ecological Success



**Predictions assume that follow-up and adaptive management will continue throughout monitoring periods.**

**Notes:**

1. 79 sites total: 68 sites received traditional post-construction visits between mid-2006 and April 2009, 11 sites used already approved options such as banks.
2. 78% of all sites are predicted likely to succeed, 92% of those are in high compliance.
3. 14% are projects that used bank or advance mitigation credits or in-lieu fee, all of which are in the high compliance category because of their unique approval processes. The in-lieu fee is categorized as uncertain to succeed because the mitigation project has yet to be built.
4. 22% of all sites are unlikely or uncertain to succeed. We are focusing compliance efforts on these projects, working with the applicants and using adaptive management to improve likelihood of success.



# Mitigation that Works Forum Recommendations

*The Forum's Report was published in December 2008.*

*All materials are available on Ecology's new Mitigation That Works home page at <http://www.ecy.wa.gov/mitigation>*

*Progress update meeting with the Forum scheduled for July 2, 2009.*

Report highlights include:

- Create avoidance and minimization guidance.
- Publish clear guidance on how to use a watershed approach to inform mitigation site selection decisions.
- Compile and expand watershed characterization information.
- Improve the wetland banking system.
- Support development of a Puget Sound in-lieu fee program.
- Support local governments in establishing policies, regulations, and processes for using the full suite of mitigation tools.



# Mitigation that Works Emerging Opportunities

- Watershed characterizations for Puget Sound – broad scale
  - \$1.4 million funding received from EPA
  - Joint effort of Ecology, Puget Sound Partnership, EPA
- Puget Sound in-lieu fee program development
  - Legislature provided \$4.4 million to support effort
  - Joint effort of Puget Sound Partnership, Ecology, Army Corps and other key players
- Developing guidance for: mitigation site selection, advance mitigation, in-lieu fee
- Providing trainings or materials on the variety of mitigation tools and guidance
- Wetlands trends mapping