



Washington's Hydraulic Project Approval Program Hydraulic Code Implementation Citizen Advisory Group Agenda

Thursday, March 14, 2019
10:00 am - 2:30 pm

Olympia Center, Room 100
222 Columbia St. NW
Olympia WA, 98501

Google Maps: <https://goo.gl/maps/2AXtmtbuMdt>

Protection Division Manager: Randi Thurston

Facilitator: Neil Aaland

Staff: Dan Doty, Teresa
Scott, and Pat
Chapman

1.	10:00 am	Welcome and Introductions Old Business <ul style="list-style-type: none">Review agenda	Neil
2.	10:15 am	HCICAG Roles, responsibilities and moving forward <ul style="list-style-type: none">Welcome from Margen CarlsonWhy are people here?Purpose of the CAG (DFW)Focus Areas for 2019 (DFW, all)	Margen Carlson, Randi Thurston, all
3.	11:30 am	HPA Program/Implementation Overview <ul style="list-style-type: none">Information on numbers of permits, timeliness, Appeals, enforcement	Pat Chapman, others
4.	12:00 noon	Lunch (Lunch will be provided)	
5.	12:30 pm	New Application System	Kim Marshall
6.	1:30 pm	Compliance information <ul style="list-style-type: none">Discuss numbers requested by CAG at last meeting	Teresa Scott
7.	2:00 pm	Roundtable <ul style="list-style-type: none">Items of interest brought by CAG members	
8.	2:30pm	Adjourn	

Notes: Meeting materials will be posted on WDFW's Hydraulic Code Implementation Citizen Advisory Group website: <http://wdfw.wa.gov/about/advisory/hcicag/>

Updates for the Hydraulic Code Implementation Citizen Advisory Group

March 2019

Suction Dredging Rulemaking

WDFW filed the CR-102 on February 20th. Written comments can be submitted on or before 5:00 pm on April 8, 2019. The Fish and Wildlife Commission will hear public testimony at their April 5-6 meeting. See email dated February 25th. To learn more out the rulemaking, go to our [webpage](#).

Legislation – Hydraulic Code Related

Only two bills that affect the HPA Program are still alive. [2SHB 1579](#) which Implements the recommendations of the southern resident killer whale (SRKW) task force related to increasing chinook abundance passed out of the House of Representatives and has moved to the Senate. This is the only live Southern Resident Killer Whale bill that affects the HPA Program. Another bill, [ESSB 5322](#) that originally only changed the Department of Ecology’s statutory authority, was amended to include an amendment to the HPA authority. The bill, if passed, will require proof of compliance with the Federal Clean Water Act as part of a complete HPA application for mineral prospecting or mining using a motorized or gravity siphon equipment. This bill has passed out of the Senate and has moved to the House of Representatives. See emails dated February 8th and February 25th for information about the status of bills that affect other programs in WDFW.

Current Litigation

Cascadia Wildlands v. WDFW – On September 14, 2018, Thurston County Superior Court ruled that WDFW has the discretion to allow methods of prospecting and mining, including suction dredge mining, to proceed under the Gold and Fish Pamphlet and that WDFW substantially complied with the APA rulemaking requirements in enacting the mining rule. The petitioner has appealed the Superior Court ruling to the Court of Appeals.

Protect Zangle Cove v. WDFW – On December 11, 2018, Thurston County Superior Court issued a written order, based on the plain and unambiguous language of RCW 77.115.010(2), dismissing Petitioners’ claims and rendering any other pending motions (PNA’s motion to dismiss itself from the pleadings) as moot. The Court concluded that WDFW does not have the authority to regulate commercial aquaculture. The petitioner has appealed the Superior Court ruling to the Court of Appeals.

Sound Action v. WDFW and Neiders – On August 24, 2018, the Pollution Control Hearing Board affirmed the Hydraulic Project Approval, issued to Karl Neiders by WDFW. The Board concluded that Sound Action failed to prove that the dock project will have impacts above the existing condition. Sound Action has appealed the Pollution Control Hearings Board Decision to King County Superior Court.

Shoreline Armoring Implementation Strategy Update

Grant opportunity: The Washington Department of Fish and Wildlife’s Estuary and Salmon Restoration Program has released its [2019 RFP for Local Shore Friendly Programs](#). Read this [blog post](#) to learn about how it came about.

FY18 National Estuary Program Draft Funding Recommendation - The Strategic Initiative Leads have released their [draft funding recommendations](#) for the FY18 National Estuary Program Geographic Funds. The Habitat Strategic Initiative Advisory Team (SIAT) recommended funding a suite of shoreline armoring-related Near Term Actions that address priorities identified in the [Shoreline Armoring Implementation Strategy](#).

Puget Sound Federal Task Force Shoreline Workgroup Funded - The Near Term Action (NTA) submitted by Dan Doty, WDFW, on behalf the Puget Sound Federal Task Force Shoreline Workgroup was selected for FY2018 Puget Sound National Estuary Program funding. This NTA implements part of the workgroup’s final recommendations that are intended to remove federal permitting barriers for soft shore alternatives. The NTA will help to fund WDFW and Ecology to participate in a federal/state/local Multi-Agency Review Team to expedite permitting of appropriate soft shore approaches on the marine shoreline.

New Products Funded by the Marine and Nearshore Grant Program

- Benefit Cost Analysis of Shore Friendly Practices in Island County
- Island County Shore Friendly Video
- Puget Sound Sand Lance Habitat Characterization and Mapping
- Incentives to encourage soft-shore protection

Other News

HPA “Standard Operating Procedures” (Quick Start Guidance for Biologists) – Updates

A panel of habitat biologists are currently reviewing and updating the six “Standard Operating Procedures”. These procedures were developed to guide and assist habitat biologists when processing HPA applications. The following procedures are being revised and reformatted to serve as quick start guidance for biologists:

- Stream Crossings
- Marine Overwater Structures
- Marine Bank Protection
- Freshwater Bank Protection
- Freshwater Overwater Structure
- Suction Dredging

Additional guidance will be developed for other common project types once revisions for these have been completed.

Project Review Form Guidance – The Compensatory Mitigation Review Panel finished updating the guidance for completing the Project Review Form. The document received some basic format updates to make the guidance more readable, but **three major updates** were made:

- A Project Review Form should be completed for all HPAs, including emergency HPAs.
- Language was modified to clarify which species to record.

- Compensatory mitigation that is offered by the applicant, with or without assistance from the HB, should be included on the form as required mitigation to properly track compensatory mitigation requirements.

Public affairs will replace the old version on the Advisory Group's website with the new version.

Funding Received to Support [Climate-Resilient Culvert Design](#) - WDFW and UW Climate Impacts Group received a grant from the NW Climate Adaptation Science Center to further work on climate adapted culverts. This grant will enable WDFW and UW Scientists to develop an interactive website using the most current science. It will also allow scientists to explore different ways to present the information to engineers, landscape architects, restoration ecologists, and others involved in the design of culverts and stream restoration projects in Washington State.

Summary of HPAs Issued in 2018

Pat Chapman

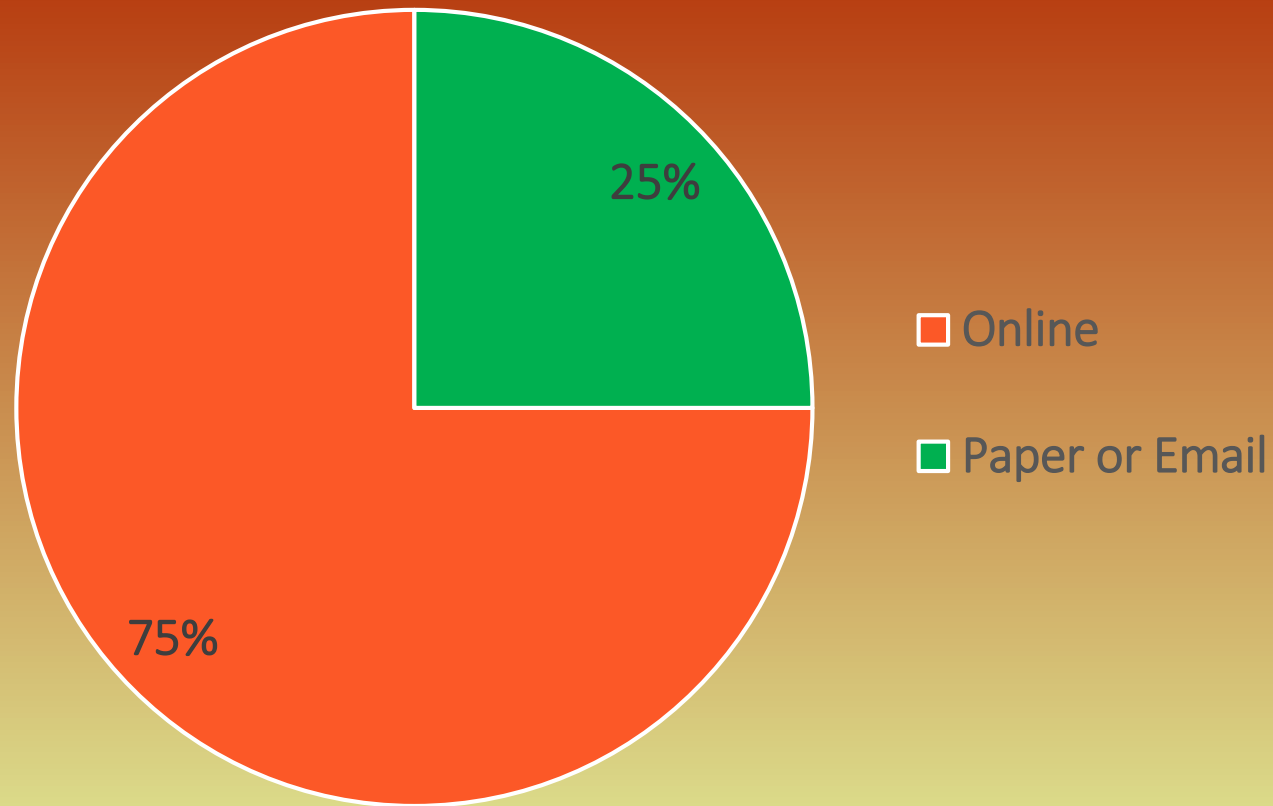
Regulatory Services Coordinator



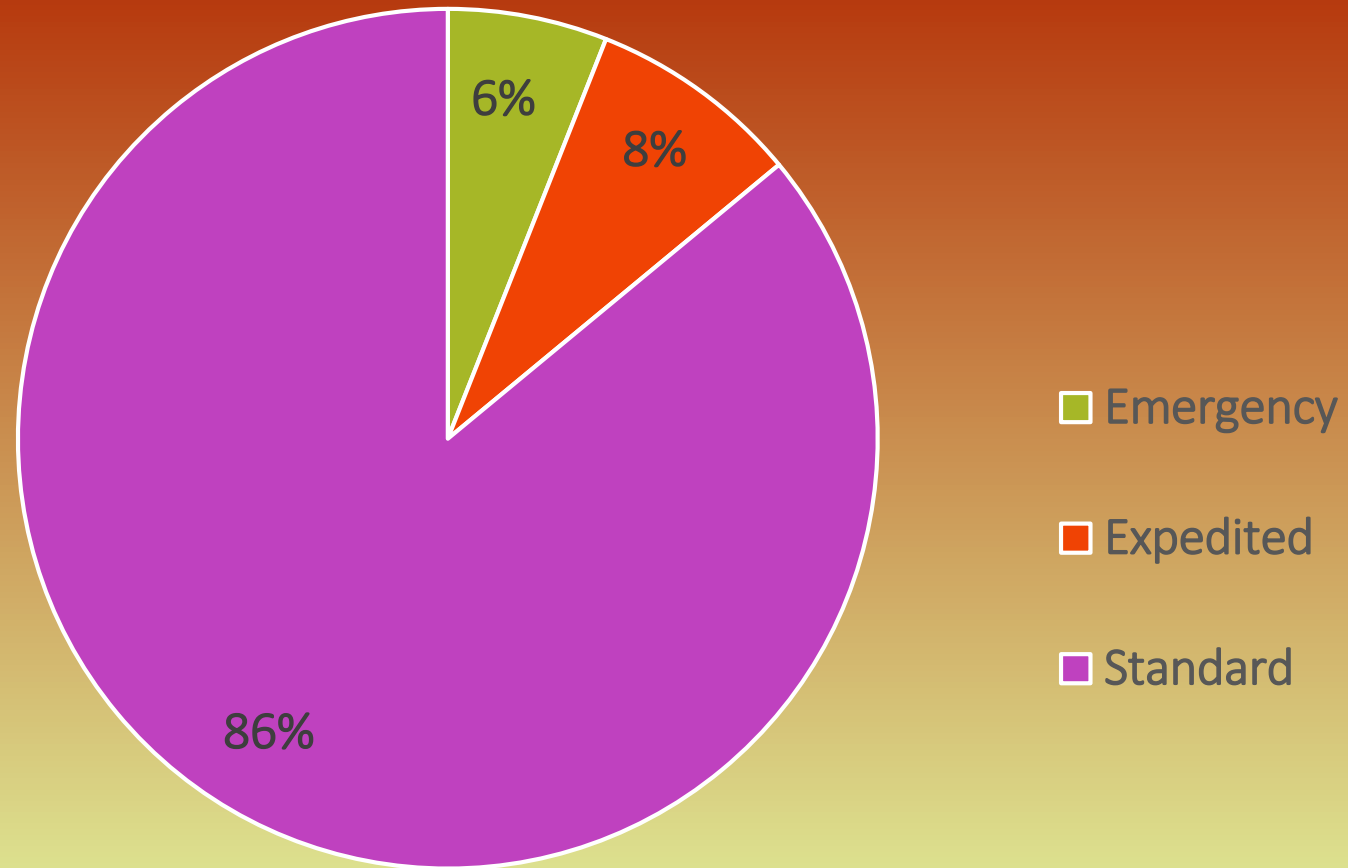
2018 HPAs

- 2,263 HPAs Issued
 - 2,104 Original HPAs
 - 159 Major Modifications
 - 253 Minor Modifications
- 4 Denials Issued
 - Culvert installation (minor mod.)
 - Mineral prospecting
- 47 HPAs issued to applicants w/o email addresses
- 156 applications withdrawn prior to HPA issuance
- 63 applications closed due to inactivity

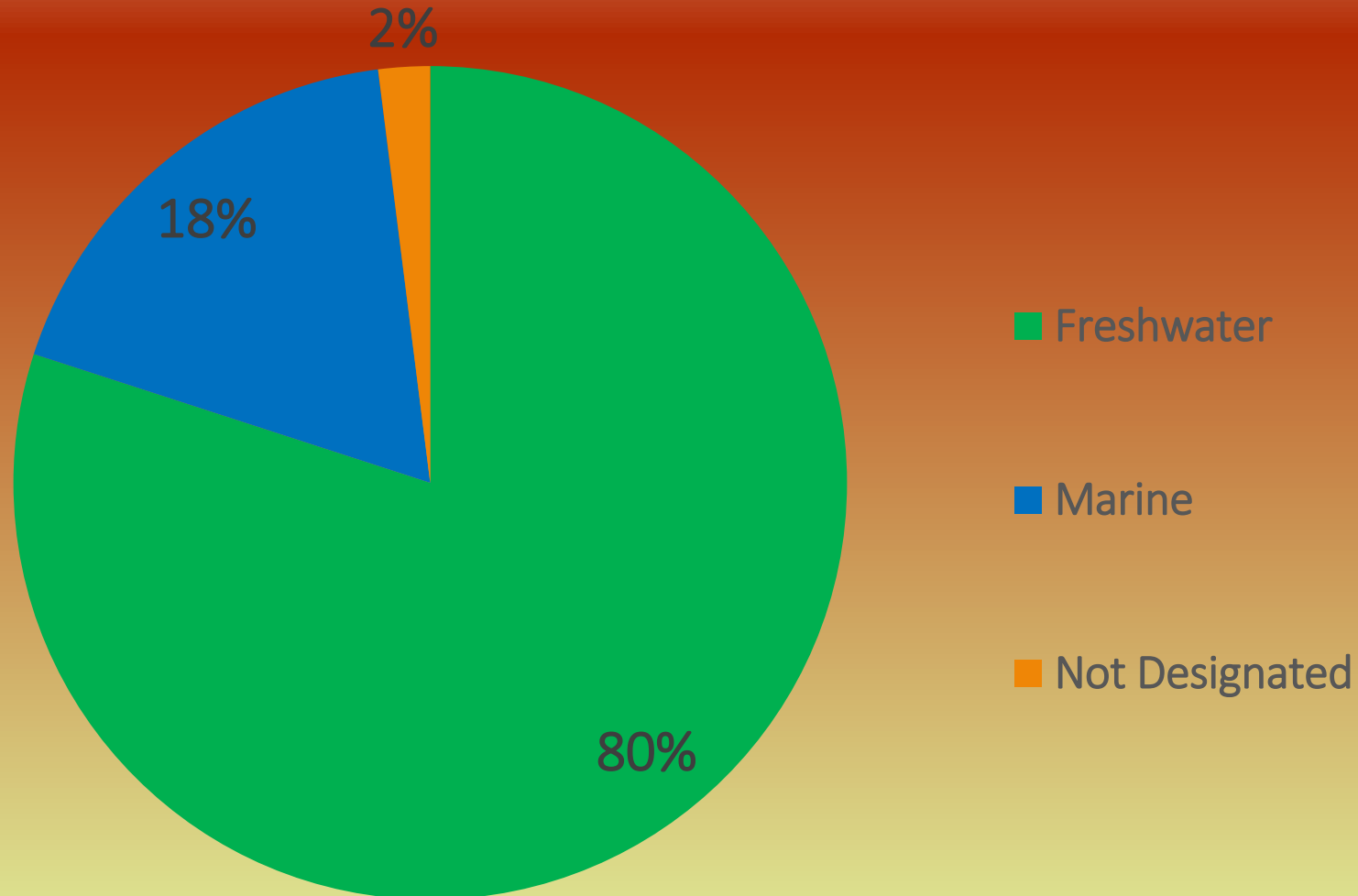
Application Method



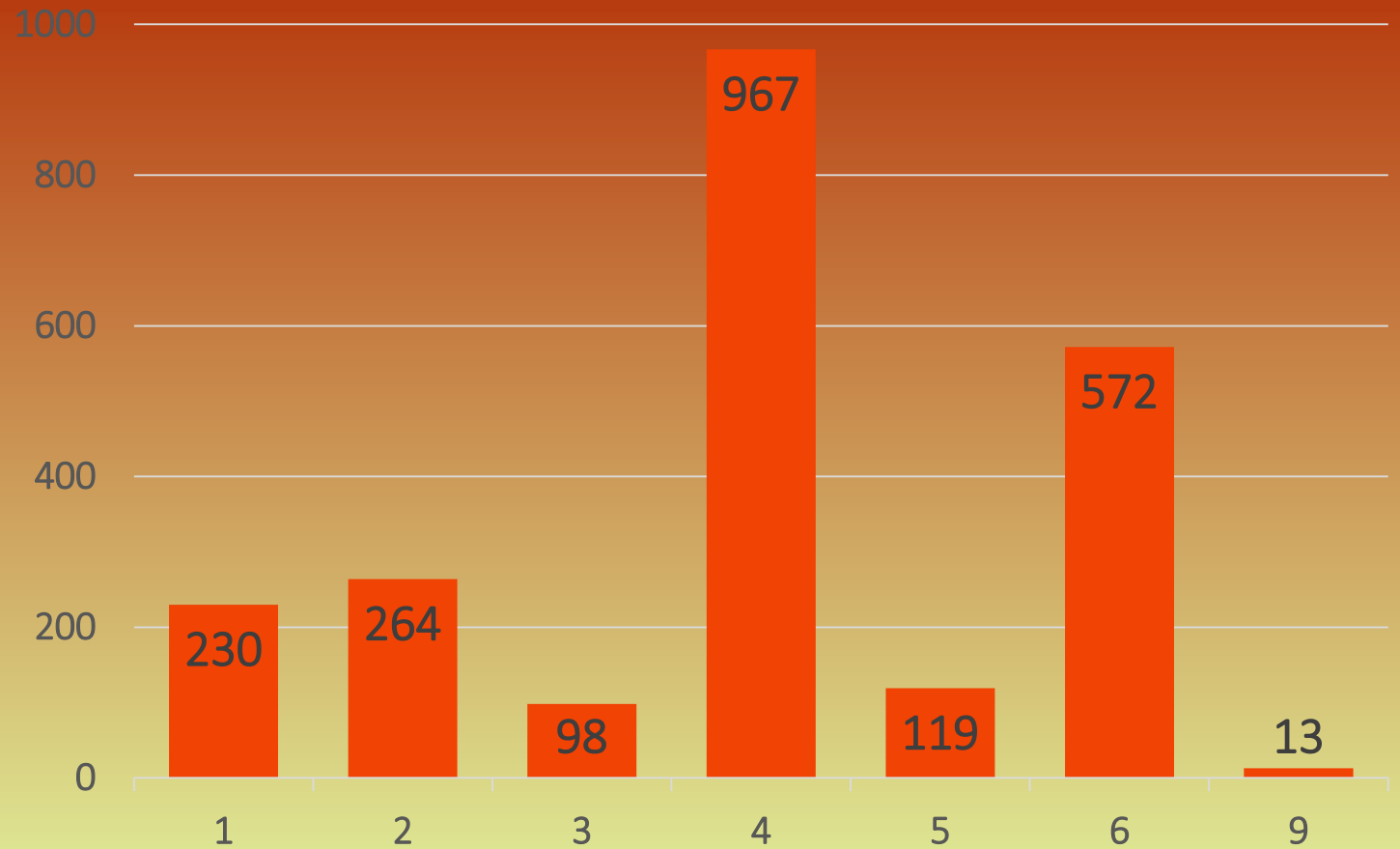
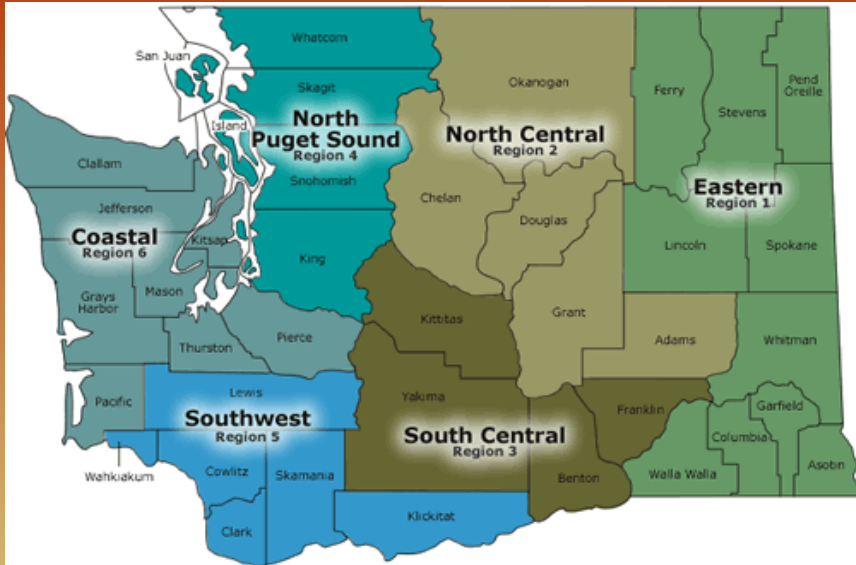
HPA Types



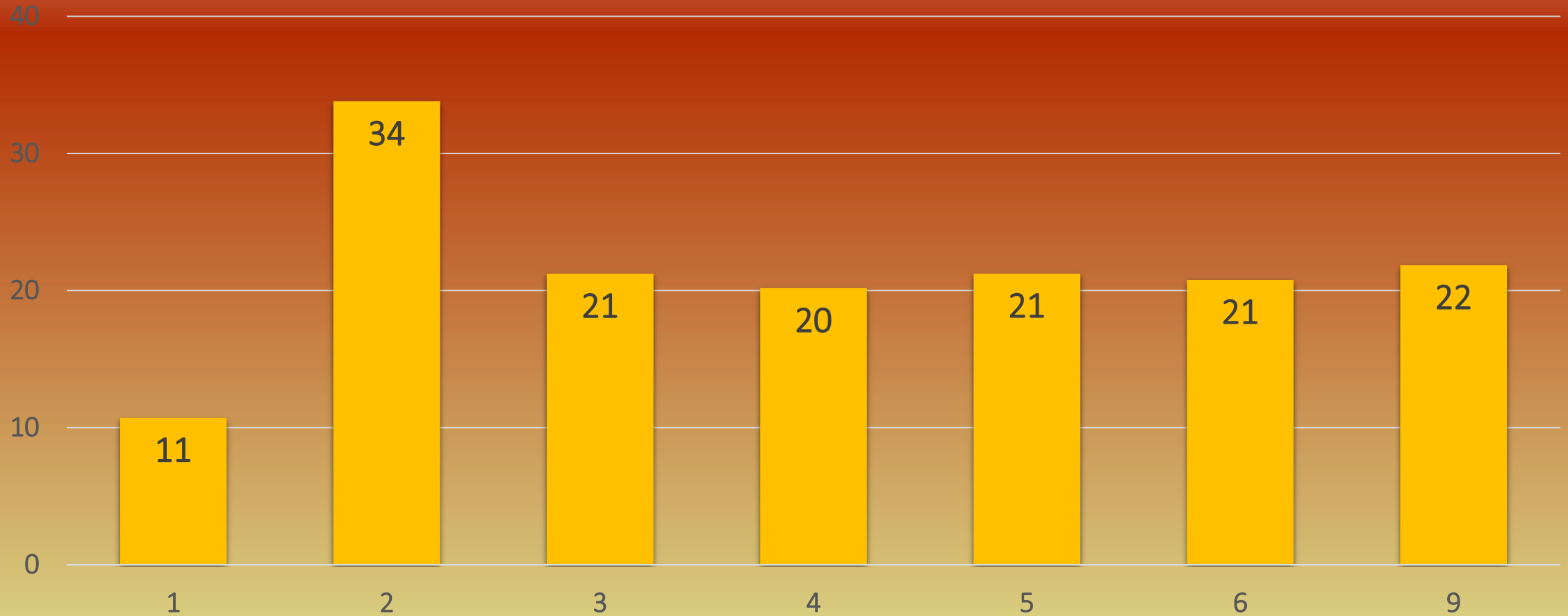
Project Environment



HPAs Issued by Region

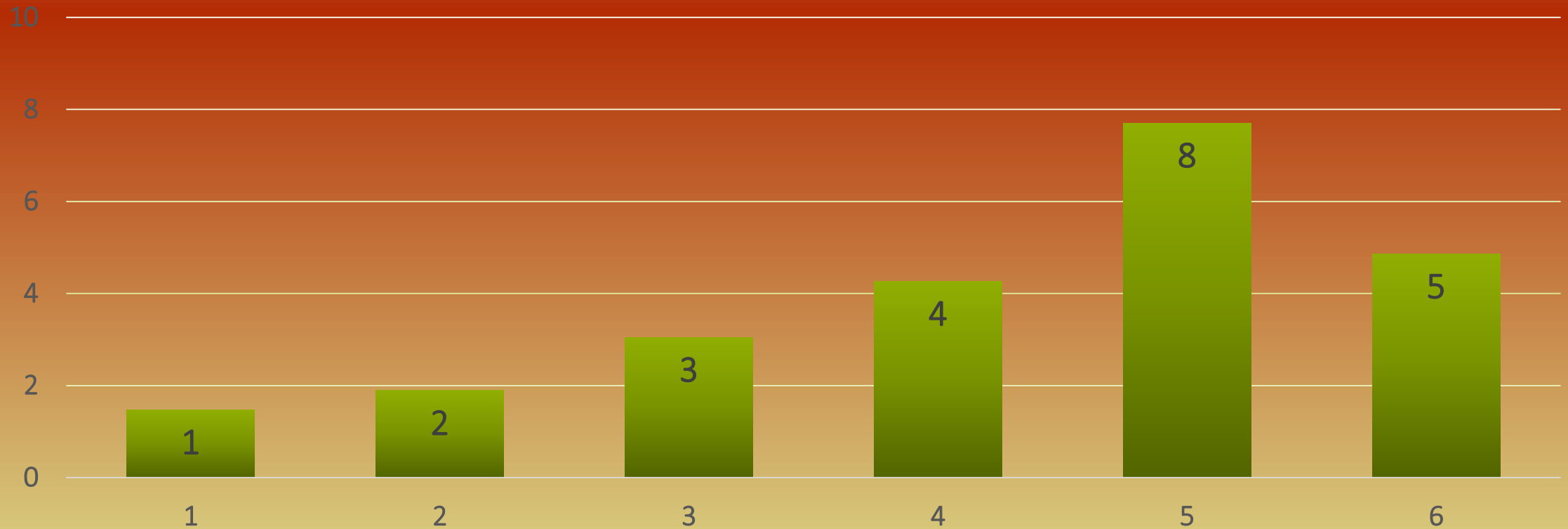


Average Process Days for Standard HPAs By Region



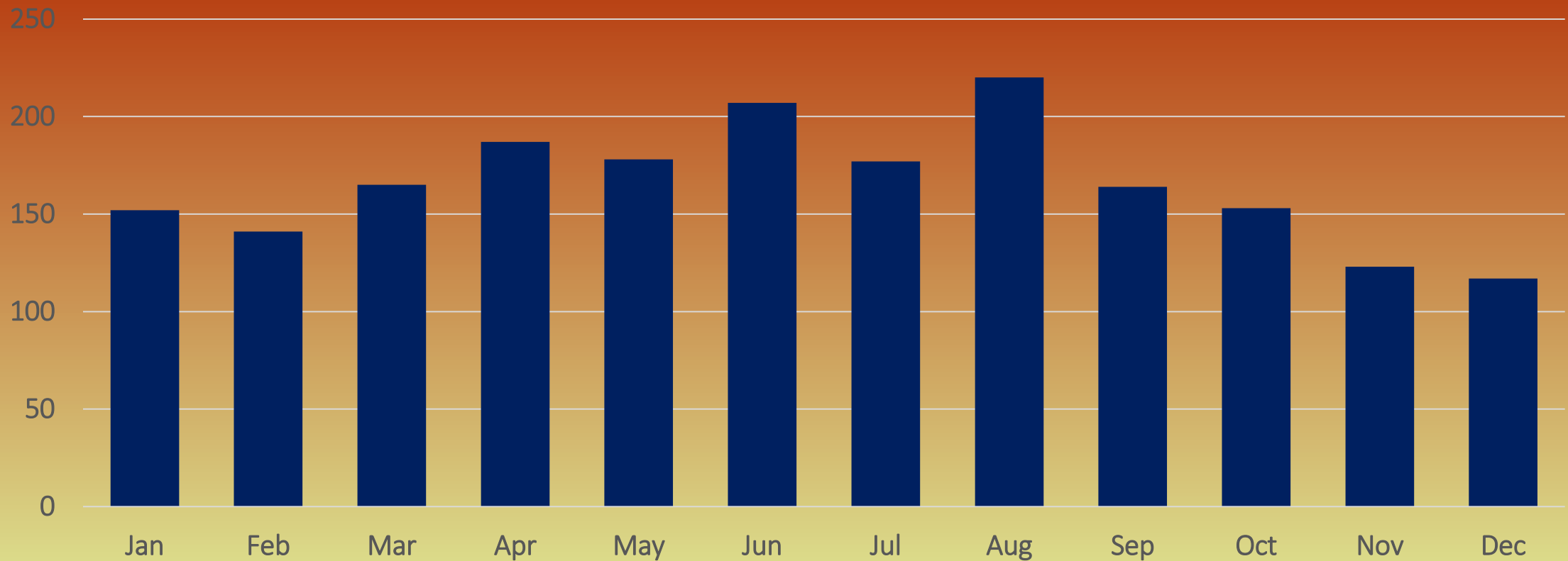
Statewide Average = 21 Days

Average Process Days for Expedited HPAs By Region

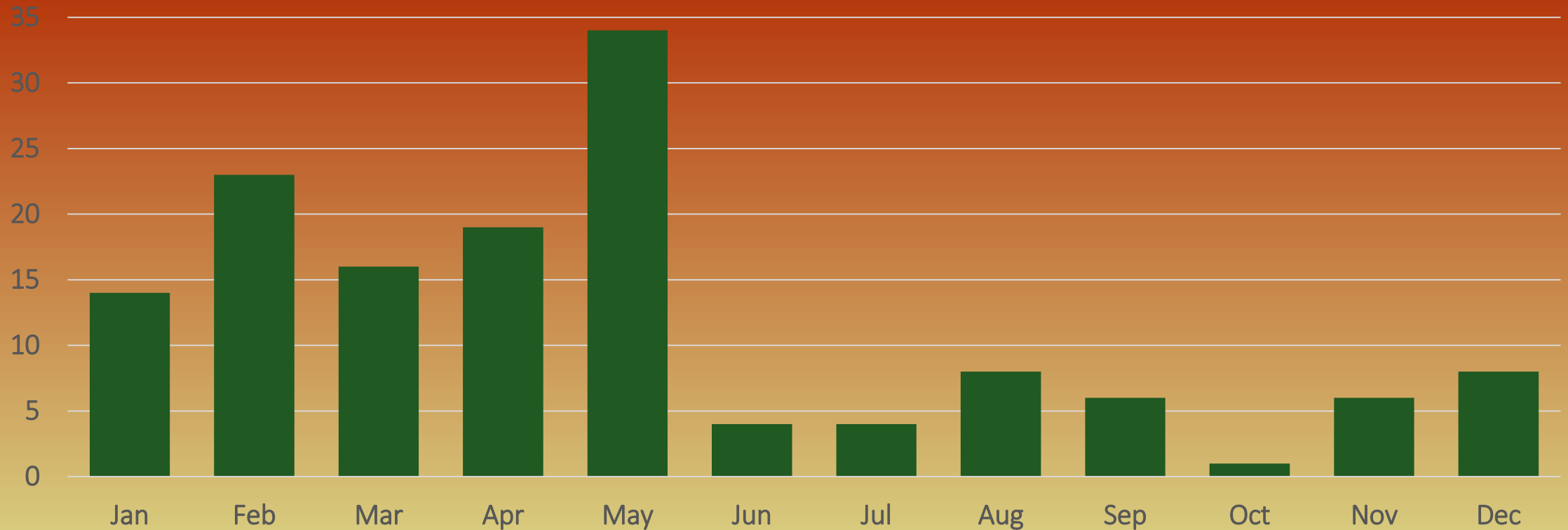


Statewide Average = 4 Days

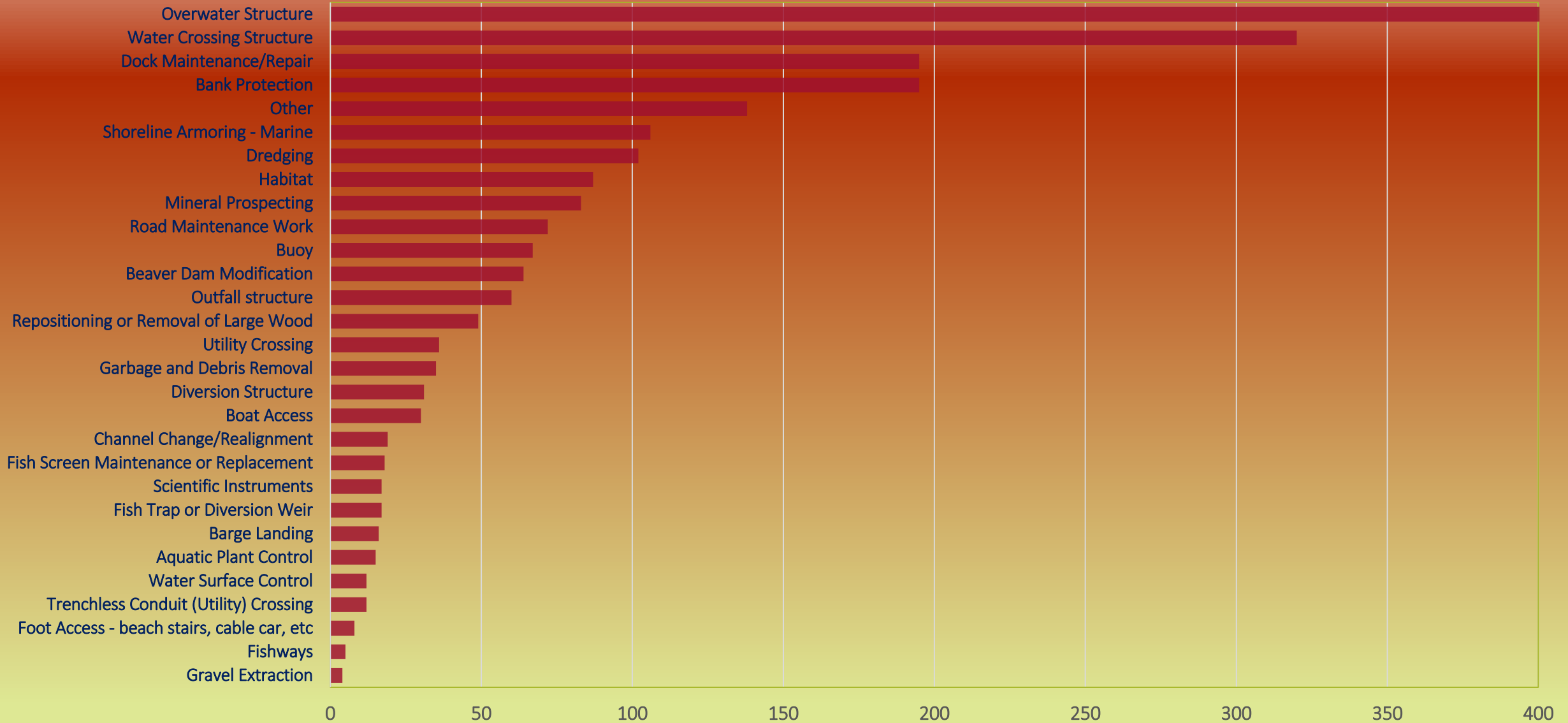
Accepted Date for Standard & Expedited HPAs



Accepted Date for Emergency HPAs



Project Types



Customer Survey Results

Grade Rating:

Prompt and Timely WDFW staff:

Poor Below Average Average Above Average Excellent

Courteous and helpful WDFW staff:

Poor Below Average Average Above Average Excellent

Permit conditions understandable and/or clearly explained:

Poor Below Average Average Above Average Excellent

Overall service rating:

Poor Below Average Average Above Average Excellent

Comments/How could WDFW improve?

Take care of and hang onto good employees.

County:

King

City:

WDFW biologist who assisted you:

I would like to submit my contact information as part of this survey.

Customer Survey Results

Region	Prompt and Timely	Courteous and Helpful	Conditions Understandable	Overall Service
1	4.8	4.9	4.5	4.8
2	4.8	4.9	4.8	4.8
3	4.2	4.7	4.4	4.3
4	4.8	4.8	4.8	4.8
5	4.8	4.8	4.6	4.8
6	4.9	4.9	4.8	4.9
9	4.0	4.5	4.5	4.5
Grand Total	4.8	4.9	4.8	4.8

399 Survey Results Returned/2,263 HPAs Issued = 17.6% Return

Appeals

Status (# of appeals)	Whose HPA?	Project Type (# of appeals)	Resolution
Accepted (12)	Third Party	Marine overwater structure (8)	Appeal closed because permittee modified HPA (2)
			Minor clarifications/updates; HPA otherwise upheld (5) *
			HPA revoked for multiple reasons
		Marine bank protection (1)	Minor clarifications/updates; HPA otherwise upheld
	Third Party	Marine overwater structure (2)	Appeal closed because permittee modified HPA
			Minor clarifications/updates; HPA otherwise upheld *
Third Party	Freshwater overwater structure (1)	Minor clarifications/updates; HPA otherwise upheld	
Rejected or No Action (2)	Third Party	Freshwater bank protection (1)	Parties resolved issues before appeal could proceed
	Own	Log jam removal (1)	Appeal rejected because it was filed late

* Three of these appeals filed by same appellant to appeal modified HPA for the same project

Statewide HPA-Related Enforcement Activity June 2016 - November 2018

Hydraulic Code Implementation Citizen Advisory Group version
March 14, 2019

Following is data on Fish and Wildlife Enforcement Officer Activity relating to Hydraulic Project Approvals for the period from June 2016 through November 2018. Table A provides data on the overall number of contacts made and warnings given by Fish and Wildlife Enforcement Officers (FWO) on HPA permitted and HPA nonpermitted project issues. HPA-related contacts totaled 2,097 by FWO in Washington during these 30 months, with an average of 55 nonpermitted HPA contacts and 15 permitted HPA contacts per month during this period.

Officers open follow-up investigations, called “incidents,” when a contact (or verbal warning) given to a person about a particular activity does not resolve an observed problem. Of the 2,097 contacts made on HPA-related issues during this period, only 366 resulted in some form of incident.

**Table A WDFW Enforcement Officer Contacts from CODY and Resulting Incidents
June 2016 through November 2018**

Period and Type	Sum of Contacts	Sum of Verbal Warnings	Average Contacts per month	Incidents Resulting from Contacts
6/2016-12/2016	446	36	64	87
HPA NONPERMITTED	340	30	49	75
HPA PERMITTED	106	6	15	12
2017	909	63	76	140
HPA NONPERMITTED	714	50	60	127
HPA PERMITTED	195	13	16	13
1/2018-11/2018	742	47	67	139
HPA NONPERMITTED	596	38	54	131
HPA PERMITTED	146	9	13	8
Grand Total (30 months)	2,097	146	70	366
Total HPA Nonpermitted	1650	118	55	333
Total HPA permitted	447	28	15	33

Table B shows more detail for referrals during the 6/2016 through 11/2018 period. Of 366 separate incidents, 34 of those resulted in referrals, of which 18 incidents involved referrals to county prosecutors. Most incidents involved a single referral action or “violation,” however some incidents involved multiple violations. Of 34 incidents involving referrals, 18 had violations referred to county prosecuting attorneys.

Table B Number of Referrals by Year and HPA Type - 6/2016 through 11/2018

Period and Type	Number of Incidents	Incidents Involving Referrals	Incidents Involving Referrals to Prosecutors	Violations Referred to Other Agencies
6/2016-12/2016	87	6	5	1
HPA NONPERMITTED	75	6	5	1
HPA PERMITTED	12	0	0	0
2017	140	18	8	10
HPA NONPERMITTED	127	16	7	9
HPA PERMITTED	13	2	1	1
1/2018-11/2018	139	10	5	5
HPA NONPERMITTED	131	9	4	5
HPA PERMITTED	8	1	1	0
Grand Total (30 months)	366	34	18	16
Total HPA Nonpermitted	333	31	16	15
Total HPA permitted	33	3	2	1

Table C provides a breakdown by county of HPA-related contacts by FWO.

Table C FWO Contacts by County and HPA Type - 6/2016 through 11/2018

County	June-December 2016		Jan.-December 2017		Jan.-November 2018		Grand Total
	Non-permitted	Permitted	Non-permitted	Permitted	Non-permitted	Permitted	
Asotin			8		6	14	28
Benton	1						1
Chelan		5	33	33	26	17	114
Clallam	3		6	16	11		36
Clark	6		43	2	12		63
Columbia			6	1	9		16
Cowlitz	6		8	3	19		36
Douglas					2		2
Ferry	5	7	4	2	3		21
Franklin					2		2
Garfield							
Grant	6		5		1		12
Grays Harbor	11		18	33	5		67
Island			13				13
Jefferson				7	9		16
King	15	5	55	10	24		109
Kitsap	5		12		8	10	35
Kittitas	8	4	73	9	80	22	196

County	June-December 2016		Jan.-December 2017		Jan.-November 2018		Grand Total
	Non-permitted	Permitted	Non-permitted	Permitted	Non-permitted	Permitted	
Klickitat	6		1	1	7		15
Lewis	17		37	4	43	5	106
Lincoln					5		5
Mason	31		40	12	31	3	117
Okanogan	15	15	41		13	1	85
Pacific	5	6	16		4	18	49
Pend Oreille	7	4	14	19	27	18	89
Pierce	67	7	34	5	40	5	158
San Juan				7		4	11
Skagit	20	13	50	2	35	1	121
Skamania			10		13		23
Snohomish	52	1	38	12	40		143
Spokane	20		24	2	30	2	78
Stevens	4	25	16	8	7	7	67
Thurston	9	7	46	1	37	2	102
“Wa”	3						3
Wahkiakum			7			7	14
Walla Walla			15		5	1	21
Whatcom	1		17	6	11	1	36
Whitman			9		3		12
Yakima	15	7	15		28	8	73
(no county)	2						2
Grand Total	340	106	714	195	596	146	2,097

For Further Information

For questions and further information contact:

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Habitat Program, Protection Division
360-902-2713 or teresa.scott@dfw.wa.gov .