

# Hydraulic Code Implementation Citizen Advisory Group Meeting

## Meeting Notes for March 16, 2016

10:00 p.m. – 3:00 p.m.

Natural Resources Building, Director's Conference Room 537, 1111 Washington St SE, Olympia, WA 98501

These meeting notes are intended to convey highlights from the meeting, including information and perspectives shared and discussed. Decisions made during the meeting are included.

This document is not a word-for-word transcription of the meeting. We have tried to capture the main topics and issues discussed and highlight some of the main questions, comments and action items raised by group members during the meeting.

**Members:** Please verify and correct any comments attributed to you so that we can accurately capture the issues or points made during the meeting.

### Attendees

Name	Affiliation	
<b>HCICAG Members</b>		
Stephan Dillon, P.E.	Hancock Forest Management, Inc.	
Kim McDonald	Fish Not Gold	
Shannon Moore	Moore Fish Company (Commercial Fishers)	
Norman Peck	Kittitas Audubon Society	Phone
Shane Phillips	Civil Engineers/Shoreline Property Owners	
Brandon Roozen	Western Washington Agriculture Association	
Jim Shellooe, P.E.	Association of General Contractors	
Kimbal Sundberg	Lead Entities – San Juan Island Lead Entity	
Stephen Whitehouse	Building Industry Association of Washington	
Lisa Willis	Port of Longview	Phone
Chuck Wilson	Washington Prospectors Mining Association	
<b>WDFW Staff</b>		
Randi Thurston	Protection Division Manager, Habitat Program	
Dan Doty	Environmental Planner, Habitat Program	
Teresa Scott	Policy Coordinator, Habitat Program	
Liz Bockstiegel	Fish and Wildlife Biologist, Habitat Program	
Mike Schwinn	Fish and Wildlife Biologist, Habitat Program	
Tom Jameson	Fish Passage and Screening Division Manager, Habitat Program	

## Welcome/ Introductions and Agenda Review

Randi Thurston welcomed and thanked everyone for their participation on this group.

Everyone introduced themselves and the group welcome the three new HCICAG members, Norm Peck, Shane Phillips and Chuck Wilson.

Teresa Scott reviewed the agenda and changes to the schedule.

## Old Business and Updates

### **Approval of December 14, 2016 meeting notes.**

Dan Doty asked if anyone had any changes or comments on the draft meeting notes from the December 14, 2016 meeting. There were no additional comments or changes. The meeting notes were approved.

### **Status on Forage Fish Occupancy Standards**

Dan provided a summary and update on the status of efforts to revise forage fish occupancy standards.

- Randi Thurston presented recommendations to the Fish and Wildlife Commission in February 2017.
- WDFW issued a Determination of Non-significance DNS for the proposed changes under the State Environmental Policy Act (SEPA). See DNS 17-008: SURF SMELT SPAWNING BEACH OCCUPANCY STANDARD MODIFICATION, (<http://wdfw.wa.gov/licensing/sepa/2017/17008dns.pdf> )
- Dan noted that review and comments to the DNS are due on March 20.

### **HPA Program Activities Report**

Teresa Scott said that preparing for the 2017 legislature, working on SOPs, continuing the update of WDFW mitigation policy, which is in the pilot stage, and strategic planning for the HPA program have been our main activities. Reports on SOPs and status of the legislature are coming right up. The Division has also been working on issues pertaining to litigation, and is now preparing for an upcoming round of rulemaking, which we will also discuss later today.

### **Status of proposed HPA Legislation.**

Jeff Davis, Assistant Director for the Habitat Program, provided an update to the group on proposed HPA legislation and summarized the various issues and options under consideration by legislative representatives and stakeholders. There was general discussion and Jeff answered questions.

***Action Item for members:*** Send any specific comments, suggestions on the latest draft legislation to Randi to convey to Jeff Davis.

## Report: HPA Standard Operating Procedures (Elizabeth Bockstiegel, Biologist Habitat Program)

Elizabeth Bockstiegel gave a presentation on the process and components used in the development of Standard Operating Procedures (SOPs) for six common Hydraulic Project Types. These SOPs were developed to provide internal guidance to biologists and assistance to regional habitat biologists during application review. Six SOPs were finalized in February 2017. These SOPs were included in the HCICAG March 16 meeting handouts (<http://wdfw.wa.gov/about/advisory/hcicag/>).

- Freshwater Overwater Structures

- Freshwater Bank Protection
- Marine Overwater Structures
- Marine Bank Protection
- Stream Crossings
- Mineral Prospecting

Next Steps. Biologists will provide feedback to Liz about the usefulness of the SOPs, make comments or provide edits, and also suggest SOPs for additional project types.

There was some discussion about sharing these SOPs on our website and a request to make them available to project applicants. Several members wanted to know if we were soliciting feedback and comments on the individual SOPs.

***Action item for members:*** Forward any thoughts or suggestions for clarifying steps in SOPs to Randi.

### Round Robin (Member issues and concerns; stakeholder group reports; announcements)

Advisory Group Members were asked to identify any issues or areas of concern. We asked each member of the group for some brief comments on key issues or topics that they (or the group that they represent) have with regards to the HPA program.

Round robin topics and concerns are summarized below. Many members commented about the negative impacts and economic harm from invasive species and the continuing uncertainty about HPA jurisdiction limits. General topics mentioned include:

- **Invasive species**
  - How to talk to the regulated community about actions they can take to minimize risk of invasive species infestation
  - Clarify and close the loopholes on authority for regulating for protection against invasive species
  - How does WDFW and Ecology respond to reports from citizens about aquatic invasive species infestations?
- **HPA Jurisdiction above OHWL**
  - AG Opinion made it worse
  - Need better alignment among regulatory agencies on jurisdiction - better consistency.
  - What are the studies that support fish life protection above OHWL?
  - Overlapping regulatory requirements among agencies with different authorities
  - Overreach of WDFW to regulate stormwater projects
  - What are the steps WDFW will take to collaborate with Ecology, local, and federal agencies on overlapping jurisdiction
  - Uncertainty about jurisdiction hurts the contracting community - uncertainty regarding the design standards that would be applied to projects.
- Federal funding deficits will have long-term and far-reaching impacts on the ability to continue to improve conditions for salmon in Washington. Will lose a lot of skilled and experienced people from salmon recovery work.
- **HPA permitting**
  - WDFW should issue after-the-fact permits to people whose mistake in not obtaining a permit was not intentional.

- Application of work windows needs to maintain flexibility, especially toward the end of construction (and end of work window). Rushing to finish before the end of the work window can affect project cost and worker safety. Need flexibility and alternatives in special situations.
- Why are marine area work windows always changing?
- Want the guidance WDFW provides to habitat biologists to be available to the public.
- HPA permit requirements need to be based on science and experience.
- **Water quality issues**
  - Effects of degraded water quality or aquatic environmental conditions on the health of wild fish.
  - Lack of rigorous Canadian water quality regulation hurts salmon [and other animals] in Salish Sea and ocean areas.
  - Degraded water quality causes fish diseases.
  - Other aquatic invasive species besides zebra mussels are already impacting fish (Sultan River)
  - Ability to harvest depends on the health of wild fish populations, so fixing water quality problems is important for continued fish harvest
  - There are disconnects between Ecology 401 permitting and fish protection. Doesn't make sense that water quality standards for fish protection would be less stringent than Ecology 401 standards.
  - Ecology is overcompensating for deficits in federal regulation of water quality
- **Fish passage**
  - Upper watershed private forest land passage barriers are fixed, but barriers remain in lower reaches. How can we know whether fish would even use the upper reaches without passage?
  - Fixing fish passage barriers is critical to restoring the health of wild fish populations upon which harvest is dependent.
  - How can we know what the design requirements will be, especially on design-build projects?
  - Uncertainty about jurisdiction
  - Uncertain about DFW expectations (regarding design)
  - Need to fix the problem of liability for private property owners who want to fix fish passage barriers on their property - right now, liability issues are disincentives to performing this work. Need to work on incentives for private property owners to fish barriers.
  - What are the process, priorities, and timelines for fish barrier correction? [Received a presentation by Tom Jameson about fish barrier removal later in the day.]
  - Habitat, Hatcheries and Salmon recovery - How does fish planting affect wild fish populations?

**WDFW Action Item:** *We will review these comments and determine how to best respond to those that are relevant to implementation of the HPA.*

**Presentation: Fish Passage Removal Board** (Tom Jameson, Fish Passage and Screening Division Manager)

Tom Jameson, Fish Passage Division Manager, gave a presentation and discussion on fish passage background and issues and an overview of the Fish Barrier Removal Board.

- For more information on the board see: <http://wdfw.wa.gov/about/advisory/fbrb/> .
- Tom provided handouts listing 2017-2019 Fish Passage Projects and funding proposals that can be found at:  
[http://wdfw.wa.gov/about/advisory/fbrb/fbrb\\_17-19\\_project\\_details.pdf](http://wdfw.wa.gov/about/advisory/fbrb/fbrb_17-19_project_details.pdf)  
[http://wdfw.wa.gov/about/advisory/fbrb/documents/2017-2019\\_funding\\_proposal\\_for\\_web.pdf](http://wdfw.wa.gov/about/advisory/fbrb/documents/2017-2019_funding_proposal_for_web.pdf)

## Committee Charter Update: HCICAG Charter Reaffirmation, Handbook Update, Roles, and Responsibilities

The agenda item on the group's charter and roles/responsibilities was limited to just a few minutes. Teresa Scott led a brief recap of the mission of the group and review of the decision making level of the group. A few edits to the group charter were proposed by WDFW in order to clarify committee member roles and responsibilities.

***WDFW / Member Action Item:*** *Proposed changes to the charter will be circulated to the committee for comments. Please [provide comments to Teresa](#) before the next meeting.*

## Meeting Wrap – up

To close the day, Randi suggested that the next meeting agenda would be focused on the start of another round of HPA rulemaking. We will be tying up the loose ends from 2014 having to do with sediment removal, based primarily on comments and recommendations received from the sediment removal subcommittee. Other rule changes will depend on any policy changes that come out of the 2017 legislative session - we won't know what those will be until it's over.

### **Preliminary Agenda topics for the next meeting**

- Updates on any HPA rule and policy changes resulting from the 2017 legislative session. Staff will provide an update on the status of legislation and an overview of any changes (if any) directed by the legislature.
- Ideas for HPA rule changes and clarifications. We want to hear from you members and the constituencies you represent about clarifications you recommend that help improve permitting for both WDFW and HPA customers. WDFW anticipates this discussion will take most of the meeting time.
- Recommendations from the sediment removal subcommittee. Pat Chapman and Brandon Roozen will provide an update on sediment removal subcommittee and an overview of the consensus recommendations from that group.
- Invasive Species, HPAs and WDFW – Because we are anticipating spending most of the next meeting on rulemaking discussions, WDFW will set up a presentation for the fall meeting.

### **Summary of Action Items and Next steps:**

- People wishing to convey comments on HPA bill elements that might still be active this legislative session should get those comments to [Jeff Davis](#).
- Members can send comments on the SOPs to Randi (please copy Dan and Teresa).
- Proposed changes to the committee charter will be distributed for member comments before the next CAG meeting.
- We will review comments from the round robin and determine how to best respond to those that are relevant to implementation of the HPA.
- WDFW will continue to investigate ways to improve customer access to guidance materials for HPA applicants. Note that the Advisory Committee section of the WDFW web site has been edited to incorporate comments that members provided. Also know that some proposed changes are not allowed within the administrative structure of this section of the web site.
- Members wishing for an opportunity to go out in the field with HPA staff should contact Randi.

- WDFW staff will continue to report about progress of SOP implementation and other process improvements the agency is making to HPA permitting.

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