

Hydraulic Code Implementation Citizen Advisory Group (HCICAG)

Draft April 20, 2016 Meeting Notes (Revised June 29, 2016 to include Lisa Willis's comments)

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.

Meeting Date/Time

April 20, 2016
10:00 a.m. – 3:00 p.m.

Location:

Washington Department of Fish and Wildlife, Region 4 Headquarters, Large Conference Room,
16018 Mill Creek Boulevard, Mill Creek, WA 98012

Attendees

Name	Affiliation
HCICAG Members	
Jim Shellooe	Association of General Contractors of Washington
Brandon Roozen	Western Washington Agricultural Association
Steve Whitehouse	Building Industry Association of Washington
William Thomas	Washington Prospectors Mining Association
Lisa Willis	Port of Longview
Heather Trim	Futurewise
Amy Carey	Sound Action
Kim MacDonald	Fish not Gold
Kimbal Sundberg	Lead Entities, San Juan County (WRIA 2) Lead Entity
Stephan Dillon	Hancock Forest Management, Inc.
Bill Rehe	Private Citizen
WDFW Staff	
Randi Thurston	Protection Division Manager, Habitat Program
Teresa Scott	Manager, Habitat Program

Welcome

Randi Thurston welcomed everyone and reviewed the agenda.

Old Business

Approval of Meeting Notes

Meeting notes from Oct 1 and Jan 14 meetings were approved provided the WDFW and WSDOT Fish Passage Program PowerPoint slides are added to the January 14 notes.

Overview of New Program Business

Randi Thurston provided updates on the following items:

- HPA Listening Sessions are continuing through May 18th. Draft report with agency response should be available for the next meeting.
- The AGO clarifying the Hydraulic code jurisdiction is still pending.
- The counties/cities have not filed litigation. The department is meeting with representatives from counties/cities to discuss their issues and to develop an MOA.
- Bruce Beatty, amended his petition for judicial review of a 2011 PCHB decision and transferred the venue in this matter to Thurston County Superior Court. There were two parts to Mr. Beattie's original 2011 petition: the conditions PCHB upheld on a mineral prospecting dredging permit and a rule challenge. WDFW and Mr. Beattie agreed to a bifurcated rule challenge from the review of the PCHB's decision and the challenge of the mitigation policy. On January 15, 2015, the Court of Appeals issued an opinion on the PCHB decision. The proposed amended petition raises three claims, adds two appellants, deletes the PCHB as a respondent, and eliminates the background facts and causes of the action addressed by the appellant decision. The three claims are (1) petition for review of WAC 220-110-206, adopted in 2008; (2) petition for review of WAC 220-660-300, adopted in 2014; and (3) request for attorney fees.
- The legislative update in the April 2016 Habitat News.
 - Funds were provided to the Fish Passage Barrier Removal Board to complete the inventory of barriers and to scope barrier correction projects in the focus watersheds.
 - The Hydraulic Project Approval (HPA) Program saw legislation that sought to limit WDFW HPA jurisdiction to "at or below" the ordinary high water line. This bill died on the Senate floor after recreational anglers, commercial fishers, tribes and environmental organizations shared their opposition.
 - Director Unsworth and staff worked very hard to eliminate a proposed \$1.0 M budget cut to Habitat Program's GMA/SMA technical assistance and nearshore technical assistance.
- Jeff Davis, Assistant Director and Tim Quinn, Habitat Program Chief Scientist, briefed the Fish and Wildlife Commission Habitat Committee on the advisory group's recommendations for changes to the forage fish maps. The committee is concerned about economic impacts to marine contractors so they requested we set-up a meeting to talk with them. The meeting is scheduled for April 22nd.

Overview of HPA Program Listening Session Comment

Teresa Scott presented an overview of comments received to date from stakeholders and Tribes. See attached presentation.

HPA Program Listening Session

Each advisory group member provided input on the HPA Program including.

- 1) What is WDFW doing well?
- 2) What should WDFW be doing better?
- 3) What should WDFW do when values and attitudes collide?
- 4) Specific ideas and proposals for improving WDFW's implementation of the HPA program?

The following comments were received:

- Beach “soft armoring” – are there any soft shore projects that are older. Our projects where soft armoring was required have failed. So why are they required everywhere?
- Vashon contractor has dozens of soft shore projects underway.
- Want more streamlined FHEP project types.
- Public Works Directors should be able to declare emergencies.
- WDFW has to give concurrence on some forest practices but it's DNR who has enforcement authority.
- Post SOPs and policies online once they are finished. This will help applicants understand what's required.
- How are SOPs different from the HPA Manual? Post the HPA Manual online.
- APPS internal communications don't work; need to have an email link on the APPS page to email the APPS staff prior to assignment to the HB.
- APPS replacement: should consider an integrated “Turbotax” system that steps applicant through state, federal, and local application information. One-stop permitting portal.
- Name APPS is misleading.
- Consistency (forest practice HPAs) from biologist to biologist, between DNR and DFW agencies, and region to region.
- Attitudes and values – should be on same page even when staff changes.
- APPS invoicing system is needed or “account” that remembers payment information from one user so it carrying forward to all applications.
- Transparency – publish guidance, SOPs, (agency policies).
- Consistency of training between staff.
- OHW water mark – verification using Ecology? Some way to get consistency between agencies.
- Work windows – consistency with NMFS, Oregon.

- Want longer work window – especially for complex projects.
- Fish mitigation bank. NMFS OK with this but WDFW is resistant. Banking mitigation credits to offset future needs or can sell.
- Guidance versus policy – use of the guidance should be clearer – needs more flexibility.
- How can permittees question/challenge required mitigation.
- Better explain impacts and the mitigation needs.
- Mitigation for deep-water dredging a concern.
- APPS signatures more programmatic – use JARPA signature page for APPS. An entity should be able to designate an agent once for all of their applications.
- Flexibility about fish removal provisions for maintenance projects when (we know that) fish aren't present.
- Armoring provisions applied consistently and appropriately – soft armoring not right for every project.
- Good partnership with WDFW. Good local understanding of ditch maintenance work.
- Training & hiring protocols for people & relationship skills.
- Most important to salmon recovery stakeholders is that WDFW protect fish.
- Look to WDFW to protect, want WDFW to have resources to do that.
- WDFW partnership on salmon recovery issues is appreciated (now get more WDFW involvement in San Juan Islands)
- Do better: regulate hard armoring (Estuarine, Coastal and Shelf UW science paper); have more data on effects of armoring.
- Need to figure out how to better protect natural shorelines.
- Educate – help people understand the impacts of work
- Improve statutes: enforcement (citation & stop-work authority), especially for non-permitted. [Counties have stop-work authority; WDFW can seize equipment]
- Important for strong coordination between habitat bios and enforcement; training for enforcement officers. [check leg bill 3-4 years ago]
- HPA program should go away or be completely re-tooled. Majority of 77.55 exempts everything.
- Inconsistency between biologists
- Provisions not consistent with impacts

- Notice (to USFS) unreasonable
- WDFW not met 2009 commitments to mineral prospectors. There is a lack of trust.
- Habitat should use press releases to announce meetings, rule changes.
- Concessions: policy groups when developing G&F rules.
- Current denials based on future (passage) conditions, not current conditions.
- Better training for biologists on G&F; “assigned” biologist for G&F.
- Better outreach to clubs/individuals about HPA purposes & ways to be less impactful.
- Ways to respectfully challenge and work through issues. Two-way street.
- Training for consistency.
- Looking for innovative solutions; more positive methods (more carrot, less stick); incentives for “green” projects.
- Consistency: consistent protocols between biologists (measurements)
- Permitting limits restoration projects; maybe programmatic permitting for certain types of projects. Like Corps SPIFs.
- No one is here representing homeowners.
- Difficult for homeowners to understand permitting, need for HPA, “repair” v. “replacement”
- More incentives including lower fees for projects that help fish.
- No protocol for after-the-fact permits – ways to correct impacts, make it right; OK if after- fact permits more costly.
- Need SOPs for biologists/enforcement officers dealing with violations – compliance, enforcement.
- Civil enforcement – helping with compliance; build in process considerations.
- Protocols protect both WDFW and citizens when compliance issues.
- More monitoring: biological impacts; effectiveness of permits provisions.
- Fees: would loss of fees result in delays in permits?
- Many small local governments don’t have biologists, rely heavily on WDFW biologists. Loss of WDFW biologists disproportionately burdensome to small jurisdictions.
- Need violation hotline for all jurisdictions; help reporting party figure out how to make meaningful reports.
- Currently WDFW hotline numbers don’t appear relevant to HPA violations.

- Campaign to help people understand what to report and where to report it; what's a violation.
- Multi-jurisdiction: e.g., pollution reporting (Ecology) and coordinating across agencies as well as across programs within WDFW.
- License structures when they get HPAs, so enforcement/compliance officer can scan to determine whether project is permitted. Like bridges or boats are licensed. Would need "grandfathering."
- WDFW and public able to look at maps for permitted projects. Ability to access permit info based on "license," plaque, or GPS.
- Free/easy restoration permits for marine, freshwater, lakes, all.
- APPS system should automatically send reminders to WDFW and owners that permit renewal and/or permits for ongoing maintenance are required/due.
- Primary concern is protection of habitat; not happening in marine areas/Salish Sea.
- Problem that no HPA application is denied.
- Over-reliance on idea of compensatory mitigation; needs to be more avoidance and minimization.
- A lot of compensatory mitigation is inappropriate and insufficient to mitigate for the impacts.
- Need stop work order authority. Need admin process around appeals, etc.
- 2-year limitation of criminal authority; gap in enforcement with non-permitted projects.
- There's no end-of-project sign-off/notice of completion.
- Need better understanding about where over-reliance on mitigation is occurring.
- Salmon freshwater habitat has better protection than other species of fish (esp. marine fish)?
- Has diversification been/is it being evaluated; have AHBs specialized to project type and/or ecosystem (freshwater only, marine only type specialization); fostering expertise rather than general knowledge.
- Need better evaluation of the success of HPAs in protecting freshwater and marine habitat.
- WDFW needs a good budget in order to protect and to measure protection.
- Has WDFW done GAP analysis on budget shortfalls in terms of activities needing more funding?
- WDFW should find ways to use already-established programs and protocols (other agencies, e.g., DNR FPP) to improve/simplify permitting.
- Important that conditions/provisions are followed up on and followed.

- WDFW should notify USFS.
- Monitoring conditions important.
- Need GIS system with public access.
- \$150 is not enough; application fee should have no exceptions.
- As WDFW develops SOPs and changes, need to be aware that there are changes in technology that are not covered under current definitions.
- Need more monitoring.
- If going to have “no net loss” then need to understand cumulative effects.
- WDFW needs to be able to notify other permitting authorities, and needs to ensure other permits/SEPA are obtained/achieved.
- WDFW can’t tell applicants they are required to get other permits. Can’t require notice of intent.
- Work window flexibility and length of the work window; permits don’t show what flexibility is available.
- Bankfull width difficult to measure – add more consistency to this metric.
- Permit modification/extension: might be better for environment to extend permit in the current season rather than start work again next season.
- Need permit/info about extension flexibility.
- Work windows and provisions should be more flexible when no protected species are present or there are blockages downstream.
- Standards and work windows should be different for “less important” species.
- These listening sessions are definitely a positive step for WDFW.
- JARPA signature page should be allowed to valid for HPA signature – property owners not have to sign multiple signature documents.
- Consider allowing digital signatures.

Wrap –up

- A survey monkey will be sent out to determine the next meeting date which will be in late June or July.