

Memorandum

Date: November 2, 2011
To: File
From: Carol Piening
Subject: Notes from 10/31/2011 Meeting on WDFW HPA Rule Revisions

Organization representatives present:

Stephen Bernath, Washington Department of Ecology
Van Collins, Association of General Contractors
Robert RC Cunningham, Northwest Treasure Supply
Johan Hellman, Washington Public Ports Association
Doug Hooks, Washington Forest Protection Association
Tim Hyatt, Skagit River Cooperative
Gayle Kreitman, National Oceanic and Atmospheric Administration - Fisheries
Michal Rechner, Department of Natural Resources
Gary Rowe/Josh Weiss, Washington Association of Counties
Ken Schlatter, Washington State Department of Transportation
John Stuhmiller, Washington Farm Bureau
Bill Thomas, Washington Prospectors Mining Association
Jim Weber, Northwest Indian Fisheries Commission
Lance Winecka, Regional Fish Enhancement Groups
Bruce Wishart, People for Puget Sound

Interested others present:

Robert Brenner, Port of Tacoma
Carl Chastain, Pacific Coast Salmon Coalition
Jeremy Graham, MCPW
Christine Martinez, Washington State Department of Transportation
Dave Molenaar, NOAA Fisheries/WDFW
Gregor Myhr, Washington State Department of Transportation
Irene Sato, Snohomish County Public Works
Clarissa Stenstrom, Snohomish County Public Works
Rob Wenman, Pierce County SWM

Agenda Items:

Topic	Status
Purpose of Meeting	Discussed – see below
Ground Rules	Agreed to
-030 Procedures – Hydraulic Project Approvals	Discussed – see below
-032 Applicability	Discussed – see below
-036 General Requirements	Postponed
-211 Streamlined Review	WDFW will omit from “focused” revisions
-010 Purpose	Discussed – see below
-020 Definitions	Added to agenda items for a future meeting

Follow-ups:

WDFW will:

- Provide a “focused” rulemaking list.
(See “*current rule – draft rule comparison 2011-11-03.xlsx*”, sent via email from Jeff Davis on November 3, 2011.)
- Provide a version of the draft rule that shows existing rule language and statutory language clearly.
(See “*compilation for advisors 2011-11-03 final.doc* for a “color-coded” version . WDFW will create a redline/strikeout version in the future.)
- Provide information about the numbers of permits for different types of projects.
(See Attachment A.)
- Provide a format for comments.
(See Attachment B. WDFW’s preferred method to receive comments is by email to hydraulichcp@dfw.wa.gov.)
- Provide a way for advisors to see each others’ comments.
(Comments and other project documentation will be posted at or linked to http://wdfw.wa.gov/licensing/hpa/hcp/public_involvement.html)
- Provide a better description of “complete plans and specifications.”
- Provide an example of a “simplified” application.
- Look into alternatives to face-to-face meetings.

Organization Representatives and Interested Others will:

- Provide written comments.

The meeting was facilitated by Alan Bogner of the Governor's Office of Regulatory Assistance. He proposed a set of "ground rules," which the group agreed to after a brief discussion. (See Attachment C.)

Lisa Veneroso, Assistant Director for the Habitat Program, expressed her thanks to all for taking the time to help WDFW improve the HPA program. The HPA rule revisions will also be the core of the Hydraulic Project Approval Habitat Conservation Plan.

Jeff Davis, Protection Division Manager, gave an overview of the process and timeline. WDFW is in the process of "condensing" the proposed rule revisions to concentrate on the changes that are most necessary to protect fish life and to minimize economic impacts on project proponents.

WDFW has proposed a schedule for these meetings, but will be flexible about how time is allotted to each topic.

What is the goal of these meetings?

The problem statement for this series of meetings is: "How can we best balance the needs of fish with the needs of people?"

Additional clarification: the goal of the HPA program remains the protection of fish life. In these meetings, WDFW would like to hear ideas of how to minimize the time it takes to get a permit and the costs of applying standards that are protective of fish life, as well as how to make sure we are incorporating best available science and are consistent with other environmental laws.

What is the relationship between rule revisions and the HCP?

Revised rules will form the basis for the "conservation measures" in the HCP. With both the HCP and the rule revisions, WDFW is in the process of focusing efforts on the most-needed changes.

The public, tribes, and stakeholders will have opportunities to give input on the HCP.

Having an HCP in place will benefit project proponents by streamlining the federal review process for projects that incorporate the HCP's conservation measures.

Pat Chapman gave an overview of draft 220-110-030, Procedures – hydraulic project approvals. The intention is to clarify how we receive applications, recognizing the limitations of our tracking system and the ongoing discussion of fees for HPAs.

Items for WDFW to consider:

220-110-030 Procedures – hydraulic project approvals

- “Simplified HPA” concept needs more work. Jeff provided a conceptual outline: Project types and criteria will be posted on the web. If your project matches those criteria, you fill out a “simplified HPA form” that says you’ll do it that way; WDFW may make a site visit to make sure the simplified approach is appropriate. If you don’t want to do the project as specified in the “simplified” form, you would use the standard JARPA process.
- Consider establishing “workgroups” for specific topics.
- Allowing minor modifications and work outside of fish windows is a concern if it impacts fish.
- 220-110-030 (10) says that the department may not process an application that has been incomplete for more than two years. Some applicants may need more flexibility than this.
- Define compensatory mitigation requirements carefully. Some participants encouraged WDFW to limit requirements for compensatory mitigation (and associated monitoring and reports), for instance, not for existing conditions or maintenance. Other participants pointed out the need for compensatory mitigation to protect fish life, and the need for monitoring and reporting to know whether it is working.
- Organize -030 to list streamlined permits with others instead of after the other permit types.
- If rules for streamlined permits for fish enhancement projects are no longer being developed, then strike -030 (30) fish habitat enhancement HPAs section.
- Make it clearer what forms are required when: JARPA, simplified form, etc.
- Consider specific acknowledgement that DNR acts as the landowner on state lands.
- Will all activities require landowner signature? For some activities (like mineral prospecting on USFS lands) it is difficult to identify an individual to sign.
- Which projects (or components of large projects) need an HPA? This still needs work.
- Local governments have a process for “pre-application review.” A similar process may be useful with HPAs. WDFW must also recognize that preapplication review alone is not sufficient; public input is important and may bring to light additional information.
- The Memorandum of Understanding between WDFW and WSDOT on routine maintenance has a description of a “complete application” that might be useful.
- It’s a statutory requirement that HPA applications include complete plans and specifications for the proper protection of fish life.
- “Complete plans and specifications” may need to vary by activity type.
- Consider a policy of contacting applicants as soon as WDFW discovers a deficiency in an application.

- Bring regulatory language in 220-110-030 (13) and (14) in line with Ecology’s NPDES authority.
- Make sure that allowing the applicant to delay the start of emergency work for a short time doesn’t inadvertently set up a requirement for review before that work can be done.
- Format of some sections could be clearer.
- Make sure notification requirements are appropriate to the scale of the project.
- Consider density of mooring buoys, especially for simplified HPAs.

220-110-032 Applicability, modification of hydraulic project approval requirements

- Economics and safety are a consideration for applicants when doing repairs, maintenance, rehabilitation, or replacement of a structure. All these terms need to be defined better.

220-110-036 General requirements for the issuance of all hydraulic project approvals

Discussion on this topic was postponed until November 4, 2011.

220-110-010 Purpose

- Purpose lists protection of fish life, consistency, predictability, and coordination with other governments. As a group, advisors find all of these elements important.

Definitions/clarifications needed:

- “authorized agent”
- “changing conditions” (220-110-030 (27))
- “compensatory mitigation”
- “county legislative authority designee”
- “design life”
- “dredging” (as a technique for mineral prospecting) versus “dredging” (as a means of maintaining deep water channels or removing aquatic vegetation)
- “low risk” criteria (220-110-030 (32))
- “minor modifications” (220-110-030 (10))
- “no net loss of fish life”
- “performance standards”
- “repair,” “rehabilitate,” “replace”, and “maintain.” (220-110-030, 220-110-032)
- “simplified permits”
- “vicinity” (220-110-030 (19))

Items for ongoing discussion:

- RCW, rule, policy, procedures, and guidance all have their uses, their advantages and their disadvantages. When thinking about rule revisions, also think about needs for

consistency, for flexibility, and to have the ability to adapt HPA requirements as new information becomes available.

- What sorts of activities are “low risk/low complexity” and therefore potentially appropriate for a simplified HPA?
- The relationship between “repair, maintenance, rehabilitation, and replacement,” and compensatory mitigation needs more discussion. Some people expressed concerns that simple actions would either trigger mitigation, or encourage keeping run-down structures in place to avoid mitigation; other people expressed concerns that if “repair” is defined too broadly, extensive reconstruction would be characterized as repair, and not trigger mitigation when it should.
- The relationship between emergency work and compensatory mitigation needs more discussion.
- How can WDFW both ensure the protection of fish life, and minimize regulatory duplication?

Marina/Parking Lot

- How will the HCP be funded once it is adopted?
- Consider accepting electronic signatures.
- Consider formalizing the pre-application process.
- Statutory issues with 220-110-030 (27), changed conditions.
- Simplified HPAs.

Attachment A: Frequencies of HPA project types

Data from WDFW's Hydraulic Permit Management System database, August 2011

Category	Years of data	Net total	Projects/yr¹	Frequency score²
bank protection	2.5	1330	532	3
barge landing	5	75	15	2
beaver dam	2.5	121	48.4	2
boat access - lift, ramp	5	576	115.2	3
boat hoist	5	22	4.4	1
buoy	2.5	193	77.2	2
conduit	2.5	180	72	2
dam	2.5	94	37.6	2
dikes and levees	5	62	12.4	2
dredging	5	756	151.2	3
fish enhancement	2.5	393	157.2	3
fish ladder, channel	5	212	42.4	2
fish screen	5	133	26.6	2
forest practice - logging	2.5	305	122	3
intakes	2.5	187	74.8	2
large woody material	2.5	666	266.4	3
marinas	5	61	12.2	2
mineral prospecting	2.5	912	364.8	3
outfalls	2.5	202	80.8	2
overwater structures	2.5	1433	573.2	3
piling non structural	5	17	3.4	1
reef	5	11	2.2	1
scientific instrument	5	433	86.6	2
tide gate	5	31	6.2	1
water crossing - bridge	2.5	783	313.2	3
water crossing - culvert	2.5	2043	817.2	3
water crossing - ford	2.5	80	32	2
weir - channel mod	5	108	21.6	2
weir - fish passage	5	60	12	2

¹ Data taken from WDFW's Hydraulic Permit Management System database in August 2011. For some project types, the database double-counts projects (as "new" and "replacement"), so this table reports "Net totals" as a more accurate estimate of the number of unique construction projects. Projects per year is "Net Total" divided by the number of years of data that were pulled from HPMS (either 2.5 or 5 years.)

² How frequently does WDFW issue permits for this activity (order of magnitude)? 3 = very common permit type (100+ per year); 2 = somewhat common (10 - 99 per year); 1 = infrequent (1 - 10 per year); 0 = rare (less than 1 per year)

An example:

Name of Commenter/ Organization: WSDOT	
Version that you're commenting on: Draft for Advisors 2011-10-11	
Date of these comments: November 1, 2011	
Section citation	Comment
220-110-030 (5)(b), (c), and (d)	Define or give examples of the phrase 'change the natural flow'.
220-110-030 (19)	Support keeping this new language. This new language allows modifications to the plans of the project and to the work timing without requiring the reissuance of the permit.

Attachment C: **WDFW HPA/HCP Meeting Ground Rules**

1. Respect each other and us.
 - No personal attacks.
 - Avoid taking “cheap shots”, name calling, and otherwise disrespectful behavior.
 - Separate the people from the problems we seek to solve.
 - Avoid characterizing the motives of others.
 - Acknowledge and try to understand others' perspective.
2. One person talks at a time.
3. Stay focused on subject at hand; off subject issues go into the Marina!
4. Come to table with solutions, not just problems.
5. Don't just say, “I don't like it.” Instead, how about, “I don't like it and here's why.”
6. Share airtime.
 - Keep comments short (<30 seconds).
 - Everyone participates.
 - Limit side conversations.
7. Observers just observe; break out session to confer with colleagues.
8. Start on time; end on time!