

Memorandum

November 21, 2011

To: File

From: Carol Piening

Subject: Notes from 11/18/2011 Meeting on WDFW HPA Rule Revisions

Organization representatives present:

Stephen Bernath, Washington Department of Ecology
Robert RC Cunningham, Northwest Treasure Supply
Johan Hellman, Washington Public Ports Association
Gayle Kreitman, NOAA Fisheries
Annette Pearson, Pierce County for Gary Rowe, Washington State Association of Counties
Ken Schlatter, Washington State Department of Transportation
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
Michael Grilliot, Washington Department of Natural Resources
Dave Molenaar, NOAA Fisheries
Lisa Willis, Port of Vancouver (by telephone)

WDFW staff present:

Pat Chapman
Kelly Craig
Carol Piening
Randi Thurston

Agenda Items:

Topic	Status
Bulkheads and bank protection (WAC 220-110-055)	Presentation, questions, and policy discussion
Docks (WAC 220-110-065)	Presentation, questions, and policy discussion
Buoys (WAC 220-110-063)	Presentation, questions, and policy discussion

Follow-ups:

WDFW will:

- Research HPA permitting authority with respect to cumulative impacts, especially of bank protection structures, docks, and mooring buoys.
- Research whether Americans With Disabilities Act (ADA) requirements could affect HPA requirements for residential docks.

Agenda Topic Discussions

Process: For each topic, WDFW staff provided a brief overview. Clarifying questions and discussion were interspersed with each other.

220-110-055 Bulkheads and bank protection

Carol Piening presented an overview of proposed rules for bulkheads and bank protection. In contrast to the current rule, which has separate sections for fresh and marine waters, this draft puts all bank stabilization requirements in one section, and organizes them from most general to most specific. Requirements that apply to many different kinds of hydraulic projects are in 220-110-037, general construction provisions. The draft states a preference for soft armoring over hard armoring. It does not address cumulative impacts of bank protection.

Clarifications:

- 220-110-055 (1) (a) (iv) should read “structures,” instead of “improvements or structures.”
- The list in 220-110-055 (1) (a) was drawn from the Integrated Streambank Protection Guidelines (ISPG).

Participants raised the following points:

- Much of discussion brought up the underlying question of how much detail belongs in rule versus guidelines, and the related questions of flexibility versus consistency.
- Because some of the requirements proposed cannot be achieved in all circumstances, WDFW should consider adding “where practicable” to many of these requirements.
- Because “practicable” includes a cost consideration, WDFW should consider adding “where feasible” to many of these requirements.
- Consider costs to the resources, on site and within the reach, as well as costs to the project proponent.
- 220-110-055 (5) (h) requires replacing intertidal vascular plants. Doug Myers of People for Puget Sound, USFWS, and the Nisqually Tribe have experience and may be sources of specifics.
- Specific examples of language that may be too prescriptive or not applicable to all projects:

- 220-110-055 (3) (h), needs to be reworded to make intent clearer, both in terms of what WDFW is trying to protect, and in terms of how a proponent would be expected to verify that a design meets a 100-year flow.
 - 220-110-055 (2) (a) (iv), “sufficient to prevent undermining.”
 - 220-110-055 (3) (j) (vii) “be supported by piles.”
 - 220-110-055 (2) (a) (i), establishing permanent benchmarks.
 - 220-110-055 (3) (j) (ii); ISPG says groins (engineered log jams) can be used for mitigation.
- Consider including more detail in environment-specific sections, instead of in general sections, even if that makes the rule more repetitious.
 - Consider finer divisions than just fresh versus marine waters; conditions on the outer coast are significantly different from those in Puget Sound, and in small streams when compared to major rivers.
 - DNR is interested in the location of bank stabilization structures with respect to state-owned aquatic land.
 - Consider whether Ecology’s shoreline management act guidelines provide an appropriate approach for “sequencing” and demonstrating the need for a structure.
 - Consider how the level of complexity in the rule affects proponents’ ability to implement the rules:
 - If they are complicated, it can be expensive just to understand them, let alone implement them correctly.
 - If they are detailed, they provide more precision for everyone.
 - Consider whether there are certain locations where WDFW will not approve bulkheads, for example, along feeder bluffs or in critical habitat.
 - Consider the requirements in RCW 77.55.141, marine beach front protective bulkheads or rockwalls.

220-110-065 Docks (piers, ramps, and floats) and pilings

Kelly Craig presented an overview of proposed rules for docks. In contrast to existing rules, fresh and saltwater requirements have been combined into this section. General requirements in 220-110-036 and -037 also apply. The rules cover design, location, and construction materials. They try to minimize the size of docks. Specific habitat issues include fish migration, shading aquatic vegetation, shadow impacts on fish behavior, grounding, toxics leaching from pilings, habitat displacement. This section deals only with residential structures, not commercial terminals or marinas.

Clarifications:

- Similar to other structures that have been discussed, the mitigation sequence (avoid impacts first, then minimize, then mitigate) applies to docks.
- Different fish have different habitat needs. For example, bass like shade; grated docks would not provide good bass habitat. Bass are predators of salmon; in water bodies where there are salmonids and bass, WDFW will write permits that favor salmonids over bass.

Participants raised the following points:

- DNR staff is assessing this section to see if it is consistent with the Aquatic Resources HCP. Most of the requirements are similar; two differences are that DNR includes room for vessel operation in siting a structure so that it will not affect aquatic vegetation and DNR does not want vessels to ground, either at docks or at buoys.
- Stating that this section covers only residential docks would relieve a lot of confusion.
- Provide assurances that these standards have been reviewed by structural engineers.
- These structural standards may not result in sturdy enough docks in all environments; consider the environmental damage that wrecked docks can cause. On the other hand, building a dock that is sturdy enough to withstand the conditions in the largest water bodies/harsh conditions would be overdesigned in protected embayments or smaller rivers.
- These structural standards may not meet ADA requirements; WDFW can work with individuals when an exception is necessary.
- Corps permit standards may not be protective enough.
- Consider further restrictions on the use of treated wood; copper harms fish; steel or concrete piles last longer.
- Including grating in a dock does not necessarily make it self-mitigating.
- Consider allowing applicants to propose equally-protective alternatives.
- 220-110-065 (1) (a) (i) should be worded to make it clear that “avoidance” must come before “minimization.”
- As with shoreline protection, consider not allowing new structures to protect habitat.
- Consider setting thresholds; once exceeded, do not permit more structures in that area/reach.

220-110-063 Buoys

Kelly Craig presented an overview of proposed rules for buoys. Existing rules do not have provisions for buoys, so this draft is all new language. WDFW prefers embedded anchors. Design standards are meant to minimize damage to the bed by dragging, scouring, or grounding.

Clarifications:

- WDFW will research HPA permitting authority with respect to cumulative impacts from many buoys in one area.

Participants raised the following points:

- Concentrations of buoys is a big issue, particularly when it results in closing shellfish beds to harvest.
- If WDFW considers limiting the number of buoys allowed in a given area, consider similar limitations for other kinds of structures.
- Remove “the bed” from WAC 220-110-063 (3) (b); buoys are not allowed to ground.
- Consider adding a requirement for minimum water depth for buoys, so that neither the buoy nor a moored vessel will ground.
- This draft does not specify differences for commercial, private, or navigational buoys; consider covering all of them.

General discussion

- Consistency among agencies – both for structural requirements and for whether or not a project will be allowed – is important.
- The limits to biologists’ “discretion” need to be spelled out more clearly. At Ecology, the rules are a baseline; site-specific conditions may call for greater stringency.
- Consider specifying mitigation requirements in rule.
- Requiring “proof” that a bulkhead is necessary may be difficult; geo-technical reports often recommend bulkheads based on risk-averseness rather than site-based need.
- Consider favoring buoys over docks, as being less impacting to fish life.
- Making sure that private property rights are respected, and that homeowners understand requirements, is important.
- “They” say that extinction will happen either quickly or slowly; it is up to us to reverse the trend rather than just slow the decline.

Marina/Parking Lot

No “marina” issues were identified at this meeting.