



REPORT FROM 2016 HPA LISTENING SESSIONS

HPA Program reaches out

In the fall of 2015, the Washington Department of Fish and Wildlife (WDFW) embarked on a state-wide initiative called "Washington's Wild Future" to gain feedback from citizens about how the agency can more effectively protect fish and wildlife and provide opportunities for commercial and recreational use of these natural resources. WDFW Habitat Program built on this effort by engaging Hydraulic Project Approval (HPA) stakeholders and tribal representatives in discussions about what's working and not working with the HPA Program.

Through these discussions, the Habitat Program wants to strengthen relationships with our HPA clients by helping applicants build projects that protect fish life.

During the spring of 2016, the Habitat Program held twenty-seven HPA Listening Sessions. We had great participation with 157 people attending meetings and twenty-one providing email or written comments. We heard feedback from the environmental, tribal, small-scale mineral prospecting and business communities, as well as utilities, ports, and local and state governments.

We asked participants to tell us what the HPA Program does well and what we could do better. We challenged participants to offer specific solutions to their concerns. We also asked how the revised rules are working for them (updated HPA rules, Washington Administrative Code chapter 220-660, went into effect on July 1, 2015).

Participants appreciated the opportunity to discuss their views with Habitat Program staff. We heard majority opinions on several issues, but also gained insights into a broad range of perspectives. These sessions helped WDFW take a major step to strengthen our relationships with tribes and stakeholders, increase public support for the HPA Program, and ensure our services meet the needs of the public.

Where do HPA Program listening session participants stand?

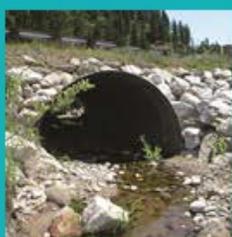
Participants agreed on many topics

FISH AND SHELLFISH PROTECTION - Most participants said fish and shellfish protection is important. In general, they recognize the importance of protecting fish habitat to achieve de-listing under the federal Endangered Species Act, and to support healthy and harvestable fish populations.

HABITAT PROGRAM STAFF - Many stakeholders said the habitat biologists and HPA processing staff at headquarters are great to work with. They were described as professional, responsive and solution-oriented.

AQUATIC PROTECTION PERMITTING SYSTEM "APPS:" Representatives of ports, local and state government said they prefer the online permit system "APPS" over the previous system. They especially like the application tracking feature.

IMPROVED TRANSPARENCY AND CONSISTENCY - Participants support WDFW's continued improvement to statewide transparency and consistency, particularly regarding mitigation. They said mitigation should be consistent, predictable, and correctly scaled



to the impact. They'd like biologists to provide written justification for permit decisions including an explanation of any compensatory mitigation requirement and how it was calculated.

INCREASED SCIENCE - Participants said more research and documentation is needed to establish a better scientific foundation for creating adequate laws, regulations, policies and practices for fish protection. They identified some data gaps and the information needed to fill those gaps.

INCREASED LAW ENFORCEMENT - We heard support from conservation groups, tribes and contractors for the HPA Program's Compliance Assurance Program. These groups recognize that violators undermine fish and shellfish protection efforts, reduce recreational and commercial opportunities, and negatively impact local economies and natural resource industries.

MORE OPPORTUNITIES FOR PUBLIC ENGAGEMENT - Most people urged WDFW to create more opportunities for partnerships both inside and outside the permit process. They want WDFW staff to meet more frequently with them to better understand their needs. Port, local and state government representatives want to collaborate on cross-training so HBs and their staffs can better understand what each other's needs and constraints are. In addition, they want WDFW to provide more technical training to them.

Opinions differed on some topics

VALUE OF THE HPA PROGRAM - Although there is broad support for protecting fish, there are different views on whether the HPA Program is needed to accomplish this. Some port and local government participants said the HPA Program is unnecessary because other local, state and federal laws also protect fish life. Other participants said the Program is important because the HPA is the only permit specifically for the protection of all fish, shellfish and their habitat. Tribes emphasized that it is the only state regulatory program that protects their treaty right.

JURISDICTION - We heard a range of views on the geographic extent of WDFW's jurisdiction. WDFW received an Opinion from Attorney General Robert W. Ferguson on June 3, 2016, which was after the conclusion of the listening sessions for 2016.

PERMIT STREAMLINING - The use of General ("programmatic" or "maintenance") and model HPAs to streamline permits for infrastructure maintenance and other low-risk routine work drew a range of comments, from full support to strong opposition. In support are those who recognize the value of reducing staff time on low-risk work; in opposition are those who think that the activities covered have a high risk of impacting fish because there is no on-site project review.

STATE ENVIRONMENTAL POLICY ACT - Opinions are also divided on whether proof of compliance with the State Environmental Policy Act (SEPA) should continue to be required for an HPA.

FLEXIBLE MITIGATION OPTIONS - Contractors, ports, and state and local government representatives want more flexibility to mitigate project impacts. Tribes and environmental groups are concerned that increased flexibility will result in under-mitigated impacts to fish life.

APPLICATION FEES - Some local government representatives are concerned about



increased fees, while port and utility representatives said a sliding-scale fee increase based on project complexity would be acceptable.

APPEALS - Representatives of ports, local governments and contractors want appealing third-parties to demonstrate legal standing and pay fees or post bonds before their appeal is accepted. This change to the appeal process is not supported by environmental groups.

RELATIVE WEIGHT OF SCIENCE & COMMUNITY PREFERENCES - Some participants believe science alone should drive fish protection laws and regulations. Others believe factors such as cost/benefit to landowners and businesses must also be considered.

What's next for the HPA Program?

WDFW will continue to solicit tribal and stakeholder input while using these findings to improve current operations and address future needs. Work will include:

HPA PROGRAM IMPROVEMENTS - Habitat Program managers reviewed suggestions to identify practical, cost-effective changes that can be implemented without additional funding or changes to state law or regulations. These include:

CREATING STANDARD OPERATING PROCEDURES to improve consistency when processing applications for frequent or high-risk hydraulic projects.

SHARING CONCERNS WITH AGENCIES OR APPLICANTS before sending final comment letters.

DOCUMENTING RATIONALE for permit decisions in writing including why compensatory mitigation is required and how the required amount of mitigation was determined.

IMPROVED COLLABORATION with other agencies and tribes especially on larger or high-risk projects.

ENCOURAGING WDFW HABITAT BIOLOGISTS TO CONSULT WITH WDFW ENGINEERS on applications for water crossings and other high-risk projects.

DEVELOPING GUIDANCE to help habitat biologists and applicants determine when an HPA is required for work above the ordinary high water line.

ENCOURAGING THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TO RECONVENE THE MULTI-STATE AGENCY WORK GROUP to complete work window timing for the Lower Columbia River.

INCREASED INTERACTION AND CROSS-TRAINING WITH TRIBES AND STAKEHOLDERS outside the permit process to improve working relationships at the regional level.

RULE CHANGES - State government representatives and small-scale mineral prospectors requested changes to the Hydraulic Code rules in Washington Administrative Code chapter 200-660. WDFW will consider these requests during the next rule-making process.

DEVELOPMENT OF PROPOSALS TO INCREASE FUNDING - The law that authorized the HPA application fee will expire June 30, 2017. In addition, many of the great ideas we heard will require additional resources. WDFW is currently identifying funding options to ensure the HPA Program can meet its legal responsibilities and public expectations in coming years.



Suggestions that require additional resources include:

- Increase technical assistance
- Increase enforcement
- Additional monitoring for compliance and effectiveness
- New science (white paper updates and studies)
- New map tools to track permits
- Additional training for local governments and contractors
- A new contractor certification program

DEVELOPMENT OF PROPOSALS TO CHANGE STATE LAW - WDFW heard broad support for these statutory changes that we will propose to the 2017 Legislature:

- Expand the entities eligible to sponsor fish habitat enhancement projects and the types of activities authorized
- Repeal the single-family residential bulkhead statute
- Give WDFW stop-work authority as part of the civil compliance pathway
- Increase the civil penalty from \$100 per day to something more in line with the penalties levied by other state natural resource agencies
- Incentivize pre-application consultation using an updated HPA fee structure

What do HPA biologists do?

HPA biologists serve as the primary public, local government and tribal contacts for HPA permitting and to provide technical information about species and the habitats upon which they depend. Within the bounds of our statutory authority, WDFW HPA biologists:

ISSUE ABOUT 2,500 HPA PERMITS EACH YEAR that authorize projects to move forward in a manner that protects fish.

PROVIDE TECHNICAL SUPPORT TO LOCAL GOVERNMENTS participating in Growth Management Act planning, updating Shoreline Management Plans and Critical Area Ordinances, and applying PHS information to regulatory activities.

WORK COOPERATIVELY WITH LAND OWNERS to promote habitat protection and restoration.

DESIGN AND IMPLEMENT HABITAT RESTORATION PROJECTS with tribal, federal, state, and local partners.

PROVIDE TECHNICAL ASSISTANCE TO CITIZENS on habitat protection and restoration.

SUPPORT LEAD ENTITIES AND REGIONAL FISH ENHANCEMENT GROUPS through regional habitat recovery forums and projects.

FOSTER COOPERATIVE RELATIONSHIPS with local, state, and federal agencies to ensure that fish and wildlife habitat needs are considered in decision-making processes.

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Notes from 2016 Listening Sessions are available from the WDFW HPA website at <http://wdfw.wa.gov/licensing/hpa/>



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