

**Hydraulic Code Implementation Citizens Advisory Group (HCICAG) – Meeting Notes**

**Date: December 16, 2021**

**Time: 1:00 pm to 3:30 pm**

**Online/telephone conference call meeting**

**Attendance:**

Amy Carey	Jennie Rotsten
Josie Cummings	Kimbal Sundberg
Norm Peck	Steve West

**Staff:** Theresa Nation, Josh Peters, Kelly Still

**Welcome/Introductions/Agenda Review:** Theresa Nation opened the meeting. Protection Division staff members Josh Peters and Kelly Still were introduced. HCICAG members introduced themselves. The agenda was reviewed.

Note: The order of the agenda was modified during the meeting to allow Josh to be present for the SSB 5273 implementation discussion.

**Habitat Recovery Pilot Program**

Josh Peters presented information on the Habitat Recovery Pilot Program created by E2SHB 1382 during the 2021 legislative session and what WDFW is doing to implement it. Comments and questions included:

- Will local government requirements/provisions be included in an HPA? [Depends, but improbable. Some local government requirements may happen to coincide with the protection of fish and fish habitat, which is where WDFW’s jurisdiction lies under RCW 77.55.]
- What sorts of projects qualify for HRPP? Do fish passage projects qualify? [The HRPP has a larger list of eligible projects than the existing Fish Habitat Enhancement Project (FHEP) list, including marine projects. Fish passage projects will probably continue to be permitted under FHEP as previously but should also be eligible through the HRPP.]
- Are scope and scale the same as FHEP? [Individual projects will still be evaluated for scale, but with the Multi-agency Permitting (MAP) Team participating in the HRPP process and no specific project scope limit in the new law, it will probably be easier for a larger project to be accepted than through the FHEP process.]

**Aquatic Protection Permitting System (APPS) Updates**

Kelly shared highlights of recent updates to APPS, the online HPA permitting system. WDFW was able check some items off of the APPS wish list. Most were completed by June 2021. Most were administrative improvements.

- Project review form: This is where Habitat Biologists document their decision-making for a permit. It is no longer a separate document that gets uploaded to the documents section. It has been integrated into APPS system and must be completed before a permit is issued. Two separate reports are generated by APPS: a project review report and a mitigation review report.
- Future changes: the HRPP will trigger some changes, mainly in the application form.

## Miscellaneous Updates

- Ted Burns has announced his retirement from the CAG. Jim Shellooe also retired earlier this year. Theresa may approach the Association of General Contractors of WA to see if they would like to name an alternate for the remainder of Jim's term.
- The Habitat Protection Division is in the process of filling four positions: Oil Spill Team Section Manager (Andy's former position), HRPP Coordinator (new position), HPA Statewide Coordinator (Kelly's former position) and HPA Intake Unit Supervisor (redefined existing position).
- CAG Future: The HCICAG will continue to meet and discuss matters related to the Hydraulic Code. Regularly scheduled meetings will be reduced from quarterly to twice annually. Additional ad hoc meetings will be called as needed to discuss timely issues. This approach is intended to make the best use of everyone's time by allowing more flexibility to meet on specific issues of importance. At some point, recruitment for new members will have to be conducted. The HCICAG should have 9-12 members, but with Ted and Jim's departures, it is now down to eight. In the meantime, Theresa will check with the Associated General Contractors of Washington to see if they would like to name an alternate for Jim's position.

## Roundtable

Kimbal - WRIA 2 just updated their salmon recovery plan. It prioritizes juvenile salmon and forage fish use of shoreline. Just completed a 10-year armoring study in San Juan Co. The study found that approximately two miles of new armoring had been added and almost 80% was done without permits since 2021. Tina Whitman was the lead investigator. The report follows up on a 2010 study that duplicates the methodology from that study. It will be published in 2022.

## SSB 5273 (re: shoreline armoring replacement) Implementation Discussion

Theresa gave a short introduction to SSB 5273, which was passed by the 2021 legislature and went into effect July 25, 2021. It is codified in RCW 77.55.231. It requires a site assessment and alternatives analysis report for replacement of residential marine shoreline stabilization or armoring. The discussion was structured around points of consideration that were sent out prior to the meeting.

- Applying economic feasibility to project review
  - Amy- What is the difference in the use of "feasibility" between new and replacement armoring? Where does WDFW see this as a contradiction? The current rule talks about technical feasibility for new. The order of alternatives is what is new in terms current rules for new vs. the RCW for replacement.
  - Amy- Staff are not following the existing rules for new bulkheads that require a report. HPAs are being issued without the report. There have also been permits issued without a report for replacement bulkheads since the new law went into effect.
  - Norm- There would be a benefit to defining what has to be considered regarding economics. Want to avoid having the economic consideration become a loophole for justifying in-kind replacement of hard armoring. Engineers frequently do cost-benefit analysis. Ecology has been battling with the economics piece for Model Toxics Control Act (MTCA) cleanups for years.
- Site assessment and alternatives analysis report

- Kimbal- What happens when someone wants to replace a structure that was installed without permits? Shouldn't reauthorize something that was done previously without any analysis in the first place. Those sites should be treated like new structures. [There are some statutes of limitations that apply to code violations, so there are limits to what can be done about past violations. With the new statute, every replacement project must provide a report showing that armoring is the only feasible option, which basically raises it to the same standard as for new.]
- Kimbal- Recommend including a review of past permitting in the site reports.
- Josie- Might want to check into the legality of reviewing permit history and focus more on identifying the least impacting option for a site.
- Norm- Suggest a reverse Resource Damage Assessment (RDA) when evaluating cost feasibility. That process could evaluate future and ongoing impacts due to the presence of the structure.
- Is railroad riprap covered by the new statute? [No. Railroads are governed by federal laws.]
- Jenny- Reports are already required by many jurisdictions that can be used for the new HPA requirement (e.g., Kitsap, Island, and Jefferson counties and Bainbridge Island). This is particularly true for local permitting of new construction.
- Josie- Agree with Jenny. The new statute has not changed much in terms of overall permitting requirements, especially for partial replacements of more than 50%.
- Amy- Is the new statute being implemented yet? [Yes.]
- Ideas on how to handle the report requirement for expedited and emergency HPA applications
- Norm- Allow just interim emergency actions until a final action can be assessed and chosen.
- Kimbal- Include a timeline requirement of one year maximum for a temporary fix. He has seen an "emergency" culvert that was a salmon blockage that took over a decade to rectify.
  - Jenny- Habitat Biologists usually document why something is an emergency or expedited situation. If WDFW issues an expedited permit, then the local government will usually do an after-the-fact permit that includes review for all the standard requirements. Sealevel Bulkhead Builders tries to get everything up to county standards before applying for an expedited HPA (when necessary) because of that after-the-fact review process. They have had some projects successfully permitted under the new law.
- Other thoughts
  - Norm- Regulations are enforceable and guidance is not. Be sure to put enough into regulation so that things can be enforced that need to be.

**The meeting adjourned at 3:20 pm.**

**Next meeting: TBD**