

HPA Citizens Advisory Group – Meeting Notes

Date: May 14, 2020

Time: 10 am to 12 pm

WebEx/telephone conference call meeting

Summary: Follow-up actions

Item	Follow-up
Meet Chris Conklin	Invite to next meeting

Attendance:

Ted Burns	Jim Shellooe
Shane Phillips	Kimbal Sundberg
Kim McDonald	Tony Warfield
Norm Peck	Steve West
Jennie Rotsten	Amy Carey
Steve Whitehouse	Ashlee Delaney

Staff: Neil Aaland (Facilitator), Pat Chapman, Theresa Nation

Welcome/Introductions/Agenda Review: Neil Aaland, Facilitator, opened the meeting. Randi is not available today, nor is Chris Conklin. The agenda was reviewed.

Administrative Items

- Neil introduced Theresa Nation, new staff person taking over for Teresa Scott. She started in early March. She will be working on rulemaking and other duties including compliance implementation.
- Pat Chapman reviewed the new compliance positions. The Governor was prepared to sign this budget addition but then exercised a line item veto after the Covid-19 expenses began increasing. The funding for the positions is gone, but they are still hiring a division manager, subject to a potential hiring freeze. The position announcement period has just closed. The intent is to move forward with civil compliance rules. This person will also work on procedures, forms, and other items to establish the civil compliance program.

New Habitat Program Deputy Director Chris Conklin: In his absence, Theresa Nation offered some comments on his background. Chris has worked his way up in WDFW. He was a tribal biologist on forest practices, then went to DNR in forest practices, and finally went to WDFW as a regional biologist. Theresa worked with him there. He then moved into WDFW management and is now the Assistant Deputy Director for Habitat Programs. We will invite him to a future meeting.

Technical Assistance Web Page: Pat Chapman led this discussion. Group members had a presentation on this at the previous meeting. They were asked to review the information and come prepared to discuss additional items needed. State law requires WDFW to provide technical assistance. Comments and questions included:

- Are there any documents on best practices for motorized mining that could be posted? [He is open to ideas and will let Randi know about this suggestion]
- There are sample drawings for projects, e.g. marine softshore bulkhead removal detail; these drawings will need to be updated to include the requirement to provide benchmark compass headings

- Tony Warfield said the Port of Tacoma invests a lot in engineered drawings and wants to be able to use those for submittal; he wants to be sure their items do not get kicked back for lack of some information [Pat will discuss with Randi]
- Norm noted that as-built drawings should have information identifying precisely where things were placed [Tony does not want them kicked back at an earlier point in the process]

Communication plans for rule changes

Plans were sent out with the agenda for members to review them in advance.

1579: Theresa led this discussion. She reviewed the background of the rule, which implements some recommendations of the Southern Resident Orca Task Force related to increasing chinook abundance. June 12 is the effective date of the rule. She reviewed the task list and the schedule. Questions and comments included:

- Who are the key stakeholders receiving the email mentioned in the task list? [Pat thinks it is people who have commented on the rule]
- What did Randi mean about the delay in implementing the rule? [This relates to delaying until the civil compliance division is operational; the timeline is now uncertain]
- Amy is concerned that rules are effective but there will be no enforcement [Pat said rules only address civil authority and DFW still has criminal enforcement; this is not as effective as civil but provides a backstop]
- Kimbal suggested the website explain that the rules ARE in effect; do not go public with the notion that staff cannot use this authority yet [Pat assumes they would not want to say whether they have staff or not]
- Theresa noted that in criminal enforcement, the approach differs between non-permitted violations and violations of existing permits. She has been out on enforcement visits, and the uniformed officers command authority with their presence
- Kim McDonald noted 1261 has an enforcement hierarchy and wonders how DFW will use this hierarchy without civil compliance being available

1261: Pat summarized this rule. It bans the use of motorized and gravity siphon aquatic mining equipment in all areas designed as critical habitat and waters with Ecology designated use for salmonid spawning, rearing, and migration. The motorized or gravity siphon will be regulated under the Clean Water Act through the Department of Ecology. Ecology will be enforcing this; the law is effective June 11.

He reviewed the communication objectives; they will be communicating with stakeholders. Most communication will be from Ecology. The Gold and Fish pamphlet will be revised. After June 11 DFW will start the rulemaking process.

Comments and questions included:

- Kim McDonald has some organizations that WDFW should contact; she will provide those
- How many current HPAs are out that allow motorized mining? [Pat is not sure but estimates several hundred; maybe over 400]
 - Pat says DFW believes they cannot rescind an HPA that was validly issued, but they can no longer use motorized methods. Kim McDonald also asked why those permits could not be modified under the statutory authority that allows HPAs to be amended to protect fish life. She also pointed out that language in each HPA allows for amendments.
 - Someone suggested DFW could notify Ecology if newly illegal methods are being used

- Kim McDonald said their legal counsel does not agree that permits can not be amended nor rescinded. There have been in contacts with AG Bob Ferguson; different guidance may come from AGO
- If WDFW receives a notice that a violation has occurred after June 11 they would pass the information on to Ecology as an NPDES violation

Roundtable: Norm suggested providing a link to Ecology's NPDES page on the DFW website.

The meeting adjourned at 11:40 am.

Next meeting: Thursday, September 24, 2020