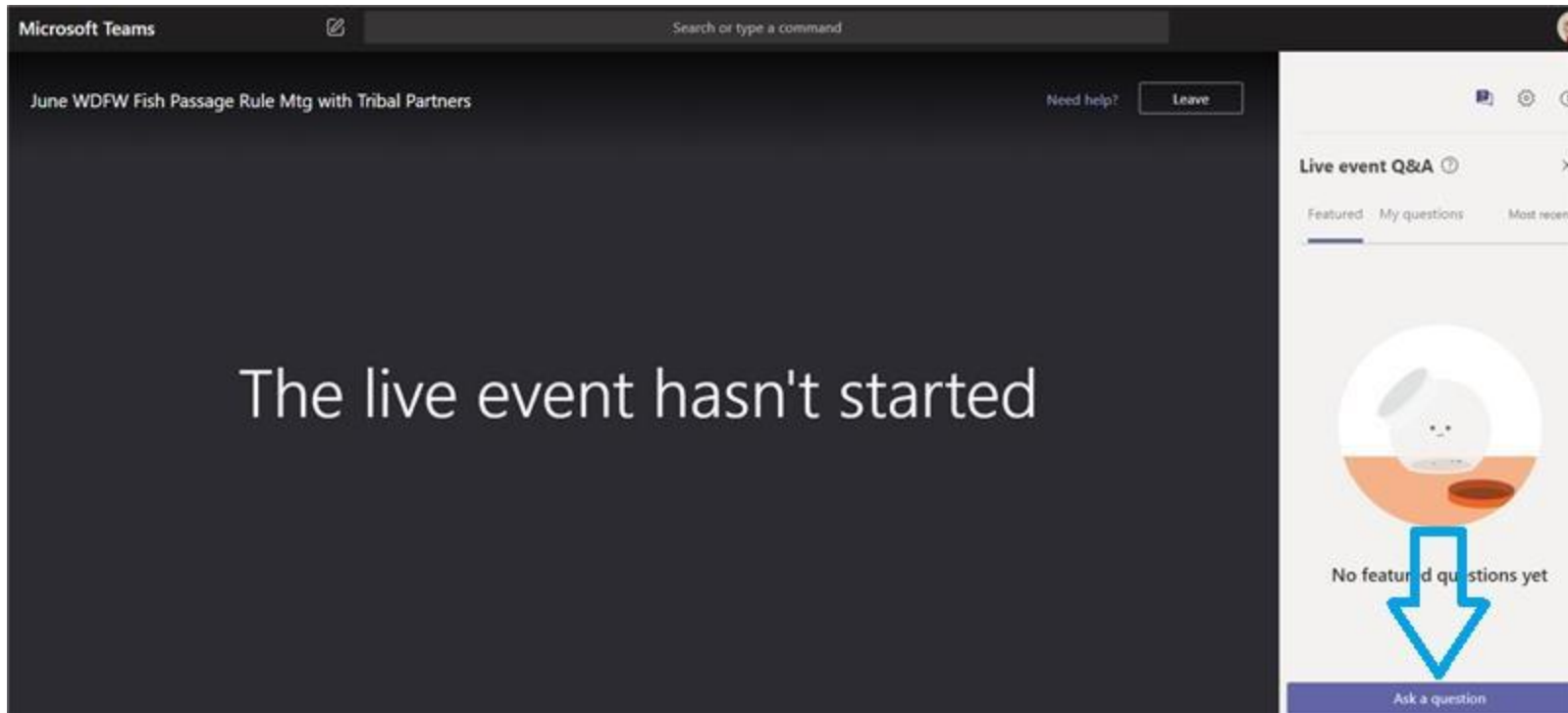


Fish Passage Rulemaking Policy Workshop



How to ask questions during workshop



- Teams Live Events allows attendees to ask questions:
- Our moderators will review and publish your questions.
 - The facilitator will refer your questions to the correct presenter.

If you have additional questions or feedback, please email: FishPassageRules@dfw.wa.gov.



Agenda

1. Welcome, Introduction, & Background
2. Agenda overview
 - Process for today
 - Process for Rule Development
3. Policy Analysis: Recommendations under Current Authority
4. Policy Analysis: Recommendations outside of Rulemaking
5. General Discussion
6. Next Steps



What started rulemaking

Orca Task Force: Recommendation #3

- Lack of prey species caused by barriers
- Task Force recommended WDFW be directed to adopt rules fully implementing RCW 77.57 (Fishways, Flow, and Screening)

Legislative Direction

- ESHB 1109 (2019) – Operating budget

Climate Adapted Water Crossings

- Co-management agreement in 2019





Main Goals

The goal for rulemaking is to codify current standards used by WDFW for:

- Instream structures;
- Screening and diversions; and
- Climate adapted water crossing structures.

Additionally, rulemaking will also address compliance issues for instream structures and screening.





Process for Rule Development

General Process for creating rules

Three Rulemaking Phases:

- Cr-101: announces that the agency is undertaking rulemaking; published July 1, 2020 in state register.
- CR-102: when the state files the proposed rule language and publishes in the state register; this is what the formal public hearings will be focused on.
- CR-103: the final rule filing; rules are in effect 30 days after this is published in the state register.



Development of this rulemaking

1. Introductory workshops to discuss direction and get feedback
 - Workshops between June 23 and July 29, 2020
 - Informal follow-up discussions with stakeholders and partners
2. Currently: Policy workshops to review proposed draft rule language
 - APA process – SEPA review and Cost/Benefit Analysis
3. File the CR-102





Policy Analysis: Recommendations Under Current Authority

Overview

The Habitat Program reviewed the Revised Code of Washington (RCW) 43.05 and 77.57 to implement rules surrounding fish passage improvement work.

- Codifying current, effective standards is a primary goal of this effort; provisions in Washington Administrative Code (WAC) 220-660 were mirrored in draft language.

Statutes for considerations:

Statute	RCW Title
RCW 43.05	Technical Assistance Programs
RCW 77.57.010	Fish guards required on diversion devices—Penalties, remedies for failure.
RCW 77.57.030	Fishways required in dams, obstructions—Penalties, remedies for failure.
RCW 77.57.040	Director may modify inadequate fishways and fish guards.
RCW 77.57.050	If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.
RCW 77.57.060	Director may modify inadequate fishways and protective devices.
RCW 77.57.070	Diversion of water—Screen, bypass required.



Different Authorities

RCW 77.55	RCW 77.57
<ul style="list-style-type: none">• Construction projects in state waters• WAC 220-660<ul style="list-style-type: none">✓ Hydraulic Code Rules✓ Applies to new projects	<ul style="list-style-type: none">• Fishways, flow, and screening• No existing WAC<ul style="list-style-type: none">✓ Current rulemaking effort✓ Applies to existing and new structures



Fish Screens

Key points of rules relating to fish screens and water diversions:

- All diversions must be adequately screened on lake, river, or stream
- A diversion structure must not hinder upstream and downstream passage of adult and juvenile fish
- If no water right exists, DFW will notify the Dept of Ecology
- Standards for water diversions and intakes:
 - WAC 220-660-250



Fishways

Key points of rules relating to fishways:

- New definitions for “fishway” and “climate adapted water crossing”
- All fish passage improvement and water crossing structures must not hinder the upstream and downstream passage of adult and juvenile fish.
- Standards for water crossings:
 - WAC 220-660-190
 - WAC 220-660-200



Fishways (cont'd)

Climate Adapted Water Crossings:

- Considerations for new and replacement culverts
 - Calculating bankfull width and 100-year peak flow
- Existing passable culverts are grandfathered in until replacement is needed



Compliance Actions

- Technical assistance:
 - steps for achieving voluntary compliance
- If unsuccessful, then steps for enforcement include:
 - 30-day notice to comply
 - Civil action/tort claim
 - Public Nuisance
 - Closure/replacement by DFW
 - Liens





Recommendations: Actions outside of rulemaking

Actions outside of rulemaking

For compliance measures, some actions would require statutory change.

- Civil penalties are outside of authority.

WDFW recognizes that addressing fish passage presents a complex network of issues that extend beyond this rulemaking effort.

1. Prioritization
2. Funding





Questions

Questions for Discussion



- What circumstances might trigger more severe compliance actions?
- What are preferred long-term options to fishway when deemed impractical?





Next Steps



Questions?

To provide feedback:

fishpassagerules@dfw.Wa.Gov

website:

<https://wdfw.Wa.Gov/species-habitats/habitat-recovery/fish-passage/rule-making>