

FWC – Fish Committee Co-Manager Hatchery Policy SEPA Determination & Comments June 16, 2023

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Outline of Presentation

- SEPA / Co-Manager Hatchery Policy Timeline
- Determination of Non-significance (DNS)
- SEPA Comments
- Summary of Commenters' Concerns
- HGMPs – Federal Review Process
- Phased SEPA and Environmental Review



SEPA & Policy Decision Timeline

- **May 1, 2023:** Determination of Non-significance (DNS)
- **May 1 – May 26, 2023:** Public comment period
- **May 26 – August, 2023:** Response to comments document developed
- **June 16, 2023:** Fish Committee's initial discussion of the DNS and overview of public and Co-Manager comments
- **August 10-12, 2023:** FWC Briefing – Detailed discussion of comments and policy
- **Sept 28-30, 2023:** FWC Policy Decision



SEPA Determination of Non-significance (DNS)

Threshold for determination: Is this nonproject action (policy) “likely to have a probable significant adverse environmental impact”? (WAC 197-11-330(1)(b))

- WAC 197-11-782: “Probable” means likely or reasonably likely to occur, as in “a reasonable probability of more than a moderate effect on the quality of the environment” (see WAC 197-11-794).
- WAC 197-11-794: “Significant” as used in SEPA means a reasonable likelihood of *more than a moderate adverse* impact on environmental quality. (emphasis added).

WDFW concluded that the draft Co-Manager Hatchery policy, as a nonproject that governs the development of a series of connected actions (the HGMPs or HMPs) did not have a reasonable likelihood of more than a moderate adverse impact on environmental quality. Therefore, the action received a DNS.



SEPA Comments

Joint letter from Tribal Co-Managers (Tulalip Tribes, Lummi Nation, Upper Skagit Indian Tribe, and Squaxin Island Tribe)

Public Comments

- 13 comments – total 90 pages of information
 - 8 comments from individuals (2 comments unsigned)
 - Supports the DNS: 2
 - Opposed to the DNS: 4
 - Ambiguous or non-responsive: 2
 - 5 comments from organizations (all opposed to the DNS)
 - Lower Columbia Fish Recovery Board
 - Wild Salmon Center
 - Trout Unlimited/Wild Steelheaders United)
 - Coalition (The Conservation Angler, Washington Wildlife First, Kettle Range Association, Orca Conservancy, Wild Fish Conservancy, Wild Orca, Northwest Animal Rights Network)
 - The Conservation Angler / Wild Fish Conservancy



Summary – Concerns about the Co-Manager Hatchery Policy *

- Represents a shift from conservation and recovery to hatchery production and treaty rights
 - Conservation and recovery must be considered the highest priority
- Emphasizes hatchery benefits without acknowledgement of the risks to natural-origin populations
 - Minimizes scientific evidence concerning hatchery risks to natural-origin populations
- Does not align hatchery programs with state and federal adopted recovery and rebuilding plans
- No coordination with stakeholders – no transparent decision-making process
- DNS is unlawful
- Phased review is inappropriate
 - WDFW can't be trusted to complete the process
 - Evading environmental review
- Federal review process (NEPA/Section 7) is insufficient and not a replacement for SEPA
- Constrains the use of best available science
- Doesn't consider climate change
- Purpose statement is misleading or factually incorrect
- WDFW has not "acquired the essential data to analyze consequences."

* Statements made by commenters . . . not an exhaustive list



HGMP - Federal ESA Review Process is Not Inadequate

- Federal process consists of NEPA and ESA (Section 7) consultation
- Section 7 is focused on "*Jeopardize the continued existence of*"
 - "*Jeopardize the continued existence of* means to engage in an action that **reasonably** would be expected, directly or indirectly, to reduce appreciably the **likelihood** of both the survival and recovery of a listed species in the wild by reducing the reproduction, **numbers**, or distribution of that species." (50 CFR Part 402.02; emphasis added)
- SEPA
 - SEPA WAC 197-11-444(d)(i): Environmental impact = "Habitat for and numbers or diversity of species of plants, fish, or other wildlife"
 - Threshold: Proposal is likely to have a **reasonable likelihood** of more than a moderate adverse impact on habitat for and **numbers** or diversity of species of plants, fish, or other wildlife



HGMP - Federal ESA Review Process is Not Inadequate

- Federal process consists of NEPA and ESA (Section 7) consultation
- NEPA
 - Environmental Assessment (EA)
 - Determines if environmental effects are significant
 - Public review process
 - Prepare a Finding of No Significant Impact (FONSI) or develop an EIS
- Section 4(d) Limit 6: Federal agencies (NOAA, USFWS) issue Evaluation and Recommended Determinations – concerns take
- Section 7: Federal agencies (NOAA, USFWS) issue Biological Opinions
- NEPA + ESA review is extensive, often 100s of pages
- NEPA environmental analyses can be adopted by SEPA (WAC 197-11-610)



Prior Phased SEPA's and Subsequent Environmental Reviews

- C-3619 – Not phased
 - Hatchery Action Implementation Plans (HAIPs) – Regional hatchery reform implementation plans required SEPA as per the C-3619 revised DNS
 - HGMPs were completed. HAIPs were not completed. Fish Program prioritized the development and submission of HGMPs
- C-3624 – Phased.
 - SEPA on Technical Procedures Document (TPD)
 - Development of TPD on hold until completion of the Co-Manager Hatchery Policy process
 - HGMPs continue to be developed
- Co-Manager Hatchery Policy – Phased
 - Commitment to conduct SEPA on HGMPs or HMP
- WDFW is not using Phased SEPA as a method to evade or exempt environmental review of HGMPs
- WDFW is prioritizing the federal process (NEPA/ESA consultation) as the primary environment review of HGMPs



Development of Hatchery Plans - Process

Policy	ESA Consultation	HGMP Status	Hatchery Plan Development	Environmental Review	172 Programs Statewide
Co-Manager	Required	Submitted	HGMP written and submitted	Federal ¹ & SEPA	121 (70%)
C-3624	Required	Submitted	HGMP written and submitted	Federal & SEPA ²	
Co-Manager	Required	Not submitted	HGMP developed using Principle 4	Federal & SEPA	0 (0%)
C-3624	Required	Not submitted	HGMP developed using Guideline 4	Federal & SEPA ²	
Co-Manager	Not Required	Not Required	Hatchery Plan developed using Principle 4	SEPA	51 (30%)
C-3624	Not Required	Not Required	Hatchery Plan developed using Guideline 4	SEPA ²	

Co-Manager Policy: Hatchery Program Plans
C-3624: Hatchery Management Plans

¹ Federal = Section 7 consultation and NEPA

² SEPA conducted on Technical Procedures Document





Questions and Discussion