

Fish Passage and Screening Rules: RCW Chapter 77.57

Fish & Wildlife Commission, 10/27/23

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Presentation Overview

1. Welcome & Overview
2. Rule Process & Authorities
3. Actions Outside of Authority
4. Draft Proposal:
Recommendations Under
Current Authority
5. General Discussion
6. Next Steps

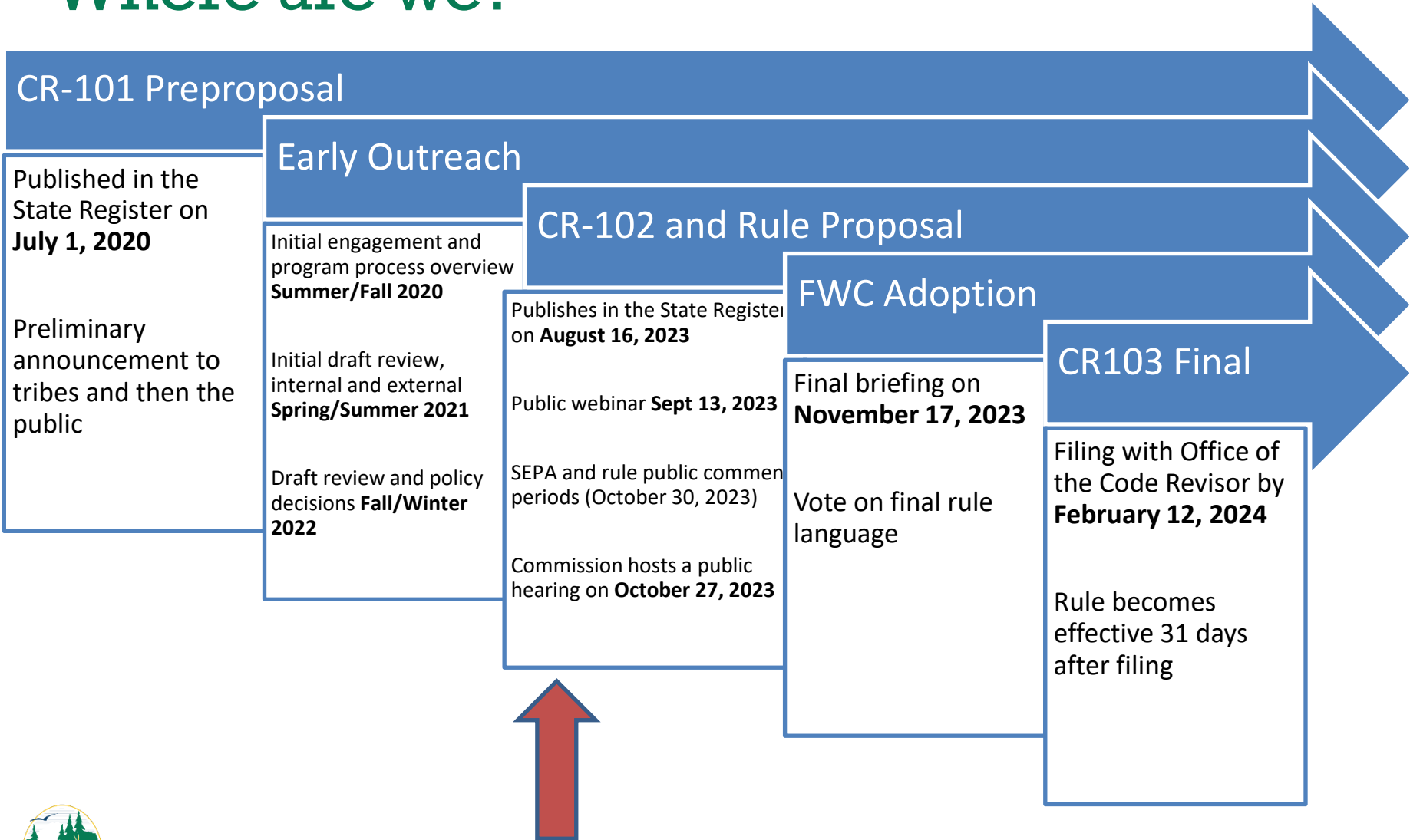


Welcome & Introduction to Rule Making

- Orca Task Force: Recommendation #3
- Legislative Direction
 - ESHB 1109 (2019) – Operating budget
- Inclusion of Climate Adapted Water Crossings
 - Co-management agreement in 2019



Rule Making Steps: Where are we?



Regulatory Authority

Statutory foundation for rule proposal:

Statute	RCW Title
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 77.57.060	Director may modify inadequate fishways and protective devices.
RCW 77.57.070	Diversion of water—Screen, bypass required.

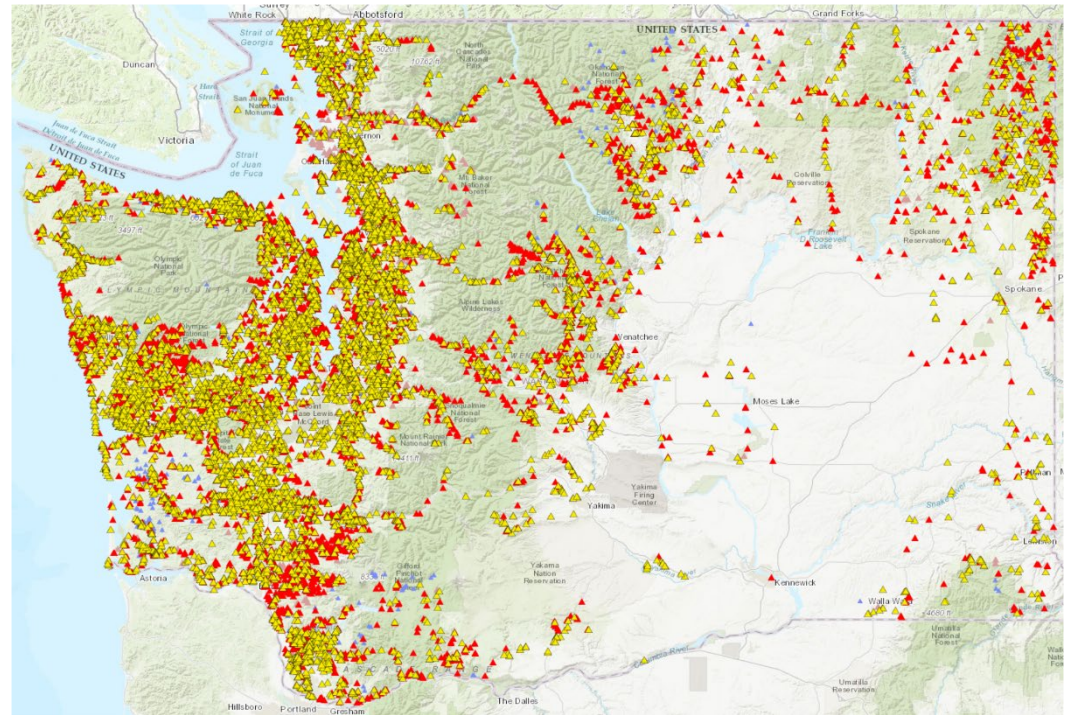


Actions Outside of Rule Making

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

Two areas that are not addressed within rule:

- Prioritization
- Funding





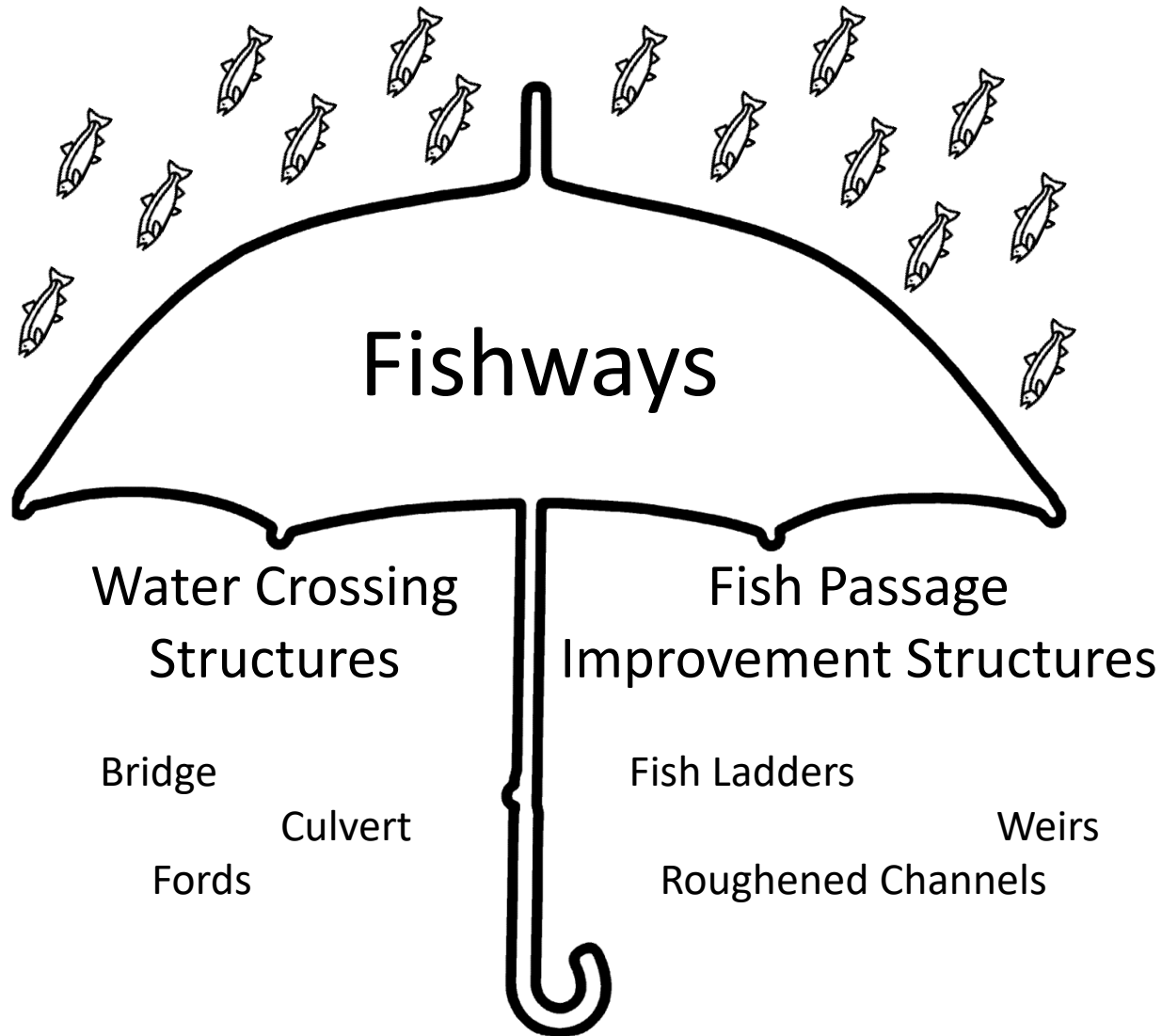
Fish Passage and Screening Draft Rule Proposal

Rule Proposal: Outline

1. Introduction & Instructions
2. Definitions
3. Rule Applicability
4. Standards for Fishways and Water Diversions
 - A. Water crossings
 - i. Climate Adapted Water Crossings
 - B. Fish Passage Improvement structures
 - C. Water Diversions
5. Compliance
6. Informal and Formal Appeals Process



Rule Proposal: Definitions



Rule Proposal: Applicability

Applicability of Rule Authority

1. Performance Standards

- A. Protecting all fish species at all life stages for water diversions and fishways.

2. Projects

- A. New and existing structures on lake, stream, or river.

3. Exemptions

- A. Man-made agricultural drainage facilities installed before May 20, 2003, repair/replacement is also exempt.
- B. Diversions installed before June 11, 1947 in system with only game fish.



Rule Proposal: Standards

Water Crossing Structures:

1. Fish Life Concerns:

Language for climate change design is added in this section.

2. Standards:

- No behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions
- Must consider 100-year peak flow and future bankfull width projections. If less than 5%, no additional consideration is required.
- Use of Water Crossing Design Guidelines
- Fish passage inventory and assessment guidance used to initiate passability assessment.



Rule Proposal: Standards

Water Crossing Structures:

3. Existing Structures:

- The “exemption” clause.
 - If water crossings exist and are legally installed before rule adoption, they aren’t required to upgrade to climate change requirements, so long as they function as originally intended.



Rule Proposal: Standards

Fishway Standards:

1. Fish Passage Improvement Structures:

A. Fish Life Concerns

- These structures are not preferred
- Permitted when an artificial barrier cannot be removed.

B. Standards:

- Sediment, flow, surface drop
- Adequate flow for expected fish species
- Can't be used to get around natural barriers, unless rare circumstances prevail.

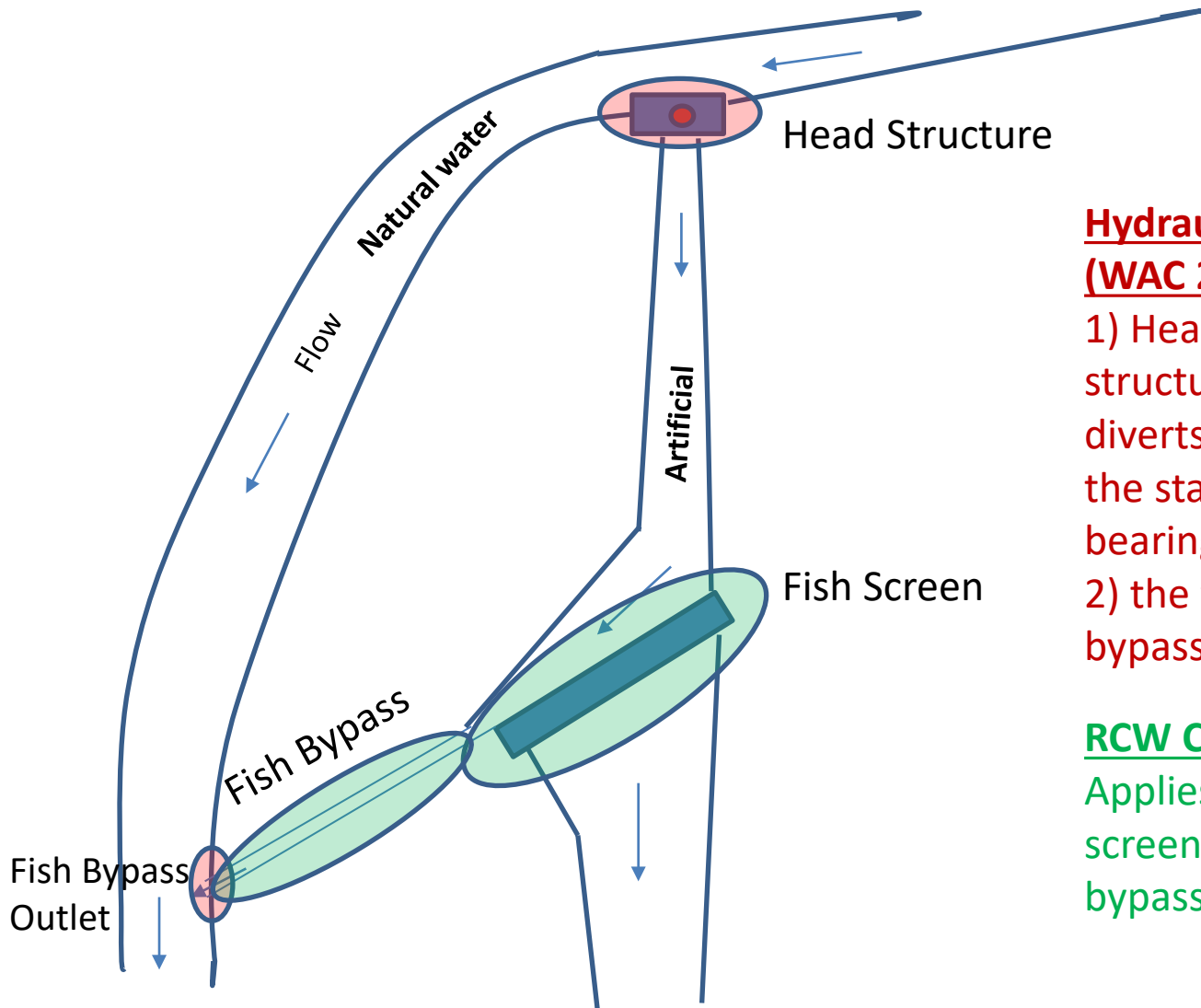


Rule Proposal: Standards

Water Diversion Standards:

1. Fish Life Concerns
2. Standards
 - A. Protection of Fish Life
 - Appropriate design at diversion and intake locations
 - B. Effective Screening
 - No apparent damage or accumulation of debris
3. Alignment with WAC 220-660-250





**Hydraulic code
(WAC 220-660):**

- 1) Head structure that diverts waters of the state (fish bearing) and
- 2) the fish bypass outlet.

RCW Chapter 77.57:

Applies to the fish screen and fish bypass.



Rule Proposal: Compliance

1. Voluntary Assistance:

- Steps for achieving voluntary compliance, such as HPA permit or agreement.

2. Technical Assistance:

- Support voluntary compliance with information, assistance, and site visits.
 - Correction Request or Notice to Comply can be issued during site visit if there's more than minor harm to fish or the owner has previous violations of RCW Chapters 77.55 or 77.57.



Rule Proposal: Compliance

3. Compliance Inspections:

- Can issue a correction request or notice to comply if there's harm to fish or a prior violation.
- Prioritize inspections based on fish resources and quality and quantity of fish habitat

4. Compliance Pathways:

- Correction Request
- Notice to Comply
- Additional Remedies:
 - Initiate additional civil or criminal enforcement action in circumstances where a structure owner or owner has failed to comply with a notice to comply

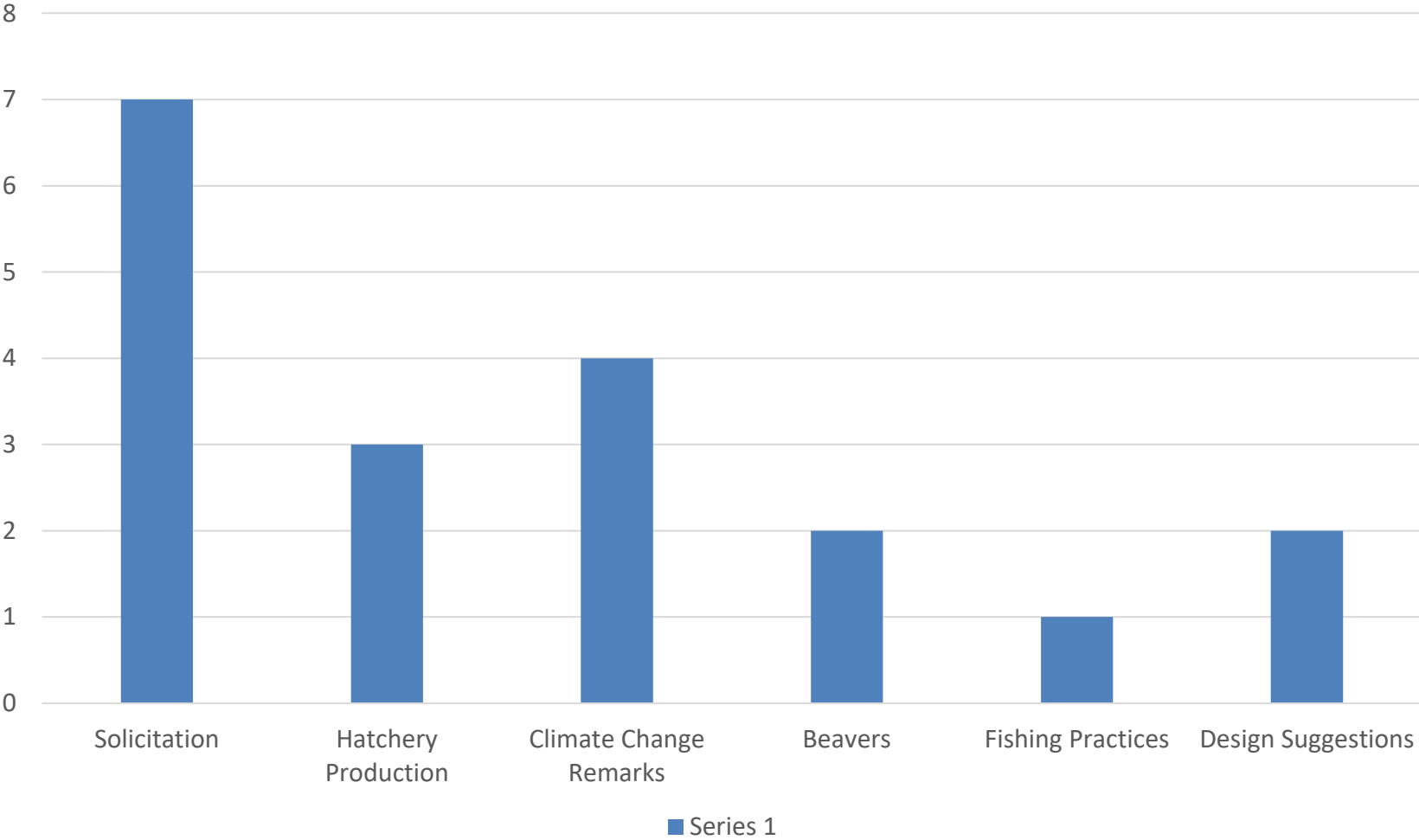


Rule Proposal: Appeals

1. Informal & Formal Appeals
 - Can appeal a notice to comply. Able to try resolution with WDFW before filing appeals.
 - Time frame:
 - 30 days from date of notice to comply receipt.



Responses Received as of 10/20/23



Questions?

Contact your Communications Manager
for help and review of your PowerPoint.



How to Comment

Due: October 30, 2023

Online: <https://publicinput.com/X7702#0>

Email: FishPassage101@PublicInput.com

Mail:

Washington Dept. of Fish and Wildlife

Attn: Gabrielle Stilwater

P.O. Box 43200

Olympia, WA 98504-3200

Voice Message: 855-925-2801, project code 4535

Fax: (360) 902-2946

Attn: Gabrielle Stilwater

Project Website: For additional project information, please visit:

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

