

Streamlined Fish Habitat Enhancement Process (FHEP)
Interim Guidance
December 28, 2017

The streamlined Fish Habitat Enhancement Process (FHEP) is authorized under RCW 77.55.181. The purpose of this legislation is to streamline the permit process for a sub-set of fish habitat enhancement projects. To be eligible for this process, the project must:

1. **Be for elimination of human-made or caused fish passage barriers; restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or placement of large woody material or other instream structures that benefit naturally reproducing fish stocks.**

This is only a small sub-set of projects that benefit fish habitat. However, this is the sub-set of projects identified by the legislature for eligibility.

2. **Be approved (i.e. sponsored, endorsed) by one of ten means as specified in RCW 77.55.181(1)(c).**

A fish habitat enhancement project must be approved in one of the following ways:

- i. *By the department pursuant to chapter 77.95 or 77.100 RCW;*
- ii. *By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;*
- iii. *By the department as a department-sponsored fish habitat enhancement or restoration project;*
- iv. *Through the review and approval process for the jobs for the environment program;¹*
- v. *Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;²*
- vi. *Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration;*
- vii. *Through the department of transportation's environmental retrofit program as a stand-alone fish passage barrier correction project;*
- viii. *Through a local, state, or federally approved fish barrier removal grant program designed to assist local governments in implementing stand-alone fish passage barrier corrections;*
- ix. *By a city or county for a stand-alone fish passage barrier correction project funded by the city or county;*

¹ The Jobs for The Environment Program has been discontinued, so this option is not available.

² The agreement between NRCS and USFWS never materialized. Conservation District-sponsored projects may be considered for WDFW sponsorship as directed in the May 11, 2015 memo from Assistant Director Jeff Davis.

- x. *Through the approval process established for forest practices hydraulic projects in chapter 76.09 RCW;*³
- xi. *Through other formal review and approval processes established by the legislature.*

Department-sponsored projects are those that are designed in accordance with WDFW Aquatic Habitat Guidelines, or that provide equal or better fish protection through WDFW approved alternative design. See below for guidance on securing WDFW approval (i.e., acceptance for HPA under the FHEP), as well as WDFW approval (i.e., sponsorship) under RCW 77.55.181(1)(c).

3. Be in the freshwater or estuarine environment;

For purposes of the FHEP, estuary is defined as “where distributary channels are visible at mean low water.”

4. Be solely for fish habitat enhancement;

Projects involving placement of large woody material, bioengineering, or barrier removal that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals, which may not use the FHEP process. The sole purpose of the project must be for fish habitat enhancement.

5. Be a complete project for purposes of project review;

Multi-phase projects may be acceptable, but the whole project must be addressed as one package. Projects may not be piecemealed.

6. Be of a size and scale such that they do not raise concerns regarding public health and safety; and

7. Have no significant adverse environmental impacts that cannot be mitigated through a Hydraulic Project Approval (HPA).

The 15-day comment period immediately following application receipt is to determine whether the FHEP designation is appropriate or not. Statute requires WDFW to base that determination on adverse impacts, such as public health, safety, and other environmental issues, including significant impacts to wildlife, of the project that cannot be mitigated through the conditioning of an HPA. Since HPA authority is limited to fish life, mitigation for non-fish issues must be addressed through a venue other than the HPA; therefore, such projects are not appropriate for FHEP.

A project that is rejected for processing under the FHEP may be an excellent fish habitat enhancement project. However, if a project does not meet the criteria identified above, it cannot qualify for the FHEP and an HPA for it must be processed under RCW 77.55.021. A summary of the criteria for project acceptance or rejection is in Attachment 1. Additionally, projects that do not qualify for the FHEP may be suitable for the streamlined permitting process under RCW 90.58.147 (Substantial Development Permit-Exemption for projects to improve fish or wildlife habitat or fish passage), described below.

The FHEP bypasses the State Environmental Policy Act (SEPA) and waives local government

³ Under RCW 77.55.351 WDFW no longer issues Forest Practice HPAs, so this option is not available.
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permits and fees. Therefore, if WDFW receives an application for FHEP, WDFW is responsible to review the project from a broader perspective than solely for the enhancement or protection of fish life. WDFW staff should review the project following the guidance given by the SEPA checklist and determine whether it would likely qualify for a Determination of Non-Significance (DNS) (i.e., not likely to have a significant adverse environmental impact). WDFW staff with questions regarding the consideration of factors in the SEPA checklist should contact the WDFW SEPA Coordinator for additional guidance.

The following procedures provide guidance and necessary steps to:

1. Seek approval for the FHEP.
2. Seek approval for WDFW sponsorship of a FHEP.
3. Pursue an alternative process if the project is not eligible under the FHEP.

Approval Procedures for the FHEP

1. WDFW receives a complete, written application, including the Application for Fish Habitat Enhancement Projects, the Joint Aquatic Resources Permit Application (JARPA), project plans and documentation that the project has been approved under one of the processes listed in number 2, above. The applicant should concurrently submit application materials to the local government. A 15-day comment period starts the day WDFW receives the application.
2. The Habitat Biologist (HB) reviews the application for applicability to FHEP:
 - a. Does the project meet criteria for project type?
 - b. Does the size and scale of the project raise concerns about public health and safety?
 - c. Does the project have an eligible sponsor?
 - d. Is the project located in the freshwater or estuarine environment?
 - e. Does the project have impacts to wildlife, habitat, fish, the built environment or local citizens that would result in a SEPA threshold determination other than a DNS?
3. The HB will then notify the local government by email through APPS. Local government contact information can be obtained from the WDFW SEPA Coordinator. All comments need to be received from the local government within 15 days of application receipt. The deadline for local government comment will be noted on the email notification.
4. If the HB believes the project is eligible for FHEP, the HB will consult with the RHPM to confirm that the project is eligible. The RHPM will confirm the decision in APPS by completing the assigned work item in the application record.
5. If no comments or objections are received, or if comments received identify impacts that can be fully mitigated through conditioning of the HPA, and the RHPM agrees that the project qualifies, the project is approved for the FHEP.
6. If comments or objections identify significant adverse impacts that cannot be mitigated through conditioning of the HPA, the project does not meet the criteria required for the FHEP. The HB will confirm this finding with the RHPM and reject the application. The HB notifies the applicant, local government, and applicable regional staff. A rejection letter is sent from APPS and the application status is updated accordingly. The applicant may reapply for approval of the project under other review and approval processes.
7. If the project is approved for the FHEP, the HPA must be issued prior to the end of the 45-day process time, unless the application is placed on hold.

A flow chart that summarizes FHEP procedures is provided as Attachment 2.

Procedures for WDFW to Approve (i.e., Sponsor) a FHEP under RCW 77.55.181(1)(c)

1. An applicant approaches WDFW with a project proposal and plans, and a request for sponsorship.
2. The HB reviews the request. If the project is one that warrants WDFW sponsorship, the HB forwards the plans to the regional environmental engineer for review.

If the HB determines it is not a good fish enhancement project and has been unable to persuade the applicant to improve the project, the HB recommends rejecting the request for WDFW sponsorship. The HB passes that recommendation to the RHPM.

3. Following HB approval, the regional environmental engineer reviews the request. If the engineer approves the design as meeting or exceeding the design criteria in WDFW's Aquatic Habitat Guidelines, the engineer forwards the request to the RHPM.

If the regional environmental engineer does not approve the design, the engineer notifies the applicant of recommendations that may improve it. If the applicant rejects design changes, the engineer recommends rejecting the request and notifies the RHPM.

4. The RHPM reviews the recommendations of the HB and the regional environmental engineers and provides a letter of sponsorship or a letter of rejection to the Habitat Program Deputy Assistant Director for signature.
5. The Deputy Assistant Director reviews the staff recommendations and either signs the letter, modifies and signs the letter, or sends it back to staff for reconsideration.
6. The support staff sends the signed sponsorship or rejection letter to the project proponent with a copy to applicable regional staff (including the RHPM). The letter informs the proponent of approval by WDFW for sponsorship and instructs them on the FHEP, or of rejection and why.
7. Following approval of sponsorship, the applicant may submit a complete application to WDFW and the local government for processing. This starts the clock and the FHEP described above under **Approval Procedures for the FHEP** is followed.

A template letter for approval of WDFW sponsorship is provided in the "C:\My Documents\hpa_letters\Templates" folder.

Alternative Process if Project is Not Eligible Under the FHEP

A project can be a good fish habitat enhancement project and still not meet the criteria for the FHEP. If a project falls into this category, the HPA would typically be processed under RCW 77.55.021, and SEPA compliance would be required. However, there is an alternative to the FHEP which exempts qualifying projects from Shoreline Management Act substantial development permit requirements. Under RCW 90.58.147 (Substantial development permit-Exemption for projects to improve fish or wildlife habitat or fish passage), the local jurisdiction can waive their permit review and approval process and fees. RCW 90.58.147 states:

1. *A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:*
 - a. *The project has been approved by the department of fish and wildlife;*
 - b. *The project has received hydraulic project approval by the department of fish*

and wildlife pursuant to chapter 77.55 RCW; and

- c. The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.*

- 2. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.290 are determined to be consistent with local shoreline master programs. (NOTE: RCW 77.55.290 was re-codified as RCW 77.55.181 in 2005.)*

WDFW approval under RCW 90.58.147(1)(a) is not equivalent to WDFW approval (i.e., sponsorship) under RCW 77.55.181(1)(c). It is a completely separate process.

To obtain WDFW approval under RCW 90.58.147(1)(a):

1. An applicant approaches WDFW staff with a request for WDFW approval under RCW 90.58.147.
2. The HB reviews the proposed project to determine whether it improves fish or wildlife habitat, or fish passage. If the HB is satisfied with the design of the project, or has been able to work with the applicant to improve it, recommend WDFW approval. If the HB determines otherwise, recommend against WDFW approval.
3. The HB provides the RHPM with a project description and the reasons why it should or should not receive WDFW approval under RCW 90.58.147(1)(a).
4. The RHPM provides a letter of approval or rejection to the Habitat Program Assistant Director for signature.
5. The Assistant Director reviews the staff recommendations and either signs the letter, modifies and signs the letter, or sends it back to staff for reconsideration.
6. The support staff sends the signed approval or rejection letter to the project proponent with a copy to applicable regional staff (including the RHPM).
7. Following approval of the proposed project under RCW 90.58.147, the applicant must obtain a HPA, if the project is a hydraulic project, under the standard application process. Additionally, the applicant must submit a request for exemption from the substantial development permit to the local government under RCW 90.58.147 with their HPA.

A template letter for approval under RCW 90.58.147 is provided in the “C:\My Documents\hpa_letters\Templates” folder.

Attachments:

1. Summary of interim acceptance and rejection criteria
2. Fish Habitat Enhancement Process flow chart