

HPA Citizens Advisory Group – Meeting Notes

Date: September 20, 2018

Place: Natural Resources Building, Olympia, Washington

Summary: Follow-up actions

Item	Follow-up
CAG members to review list of topics from March 2018 and flag those to discuss in a work plan	Send priorities to Neil for compilation

Attendance: Attendance sheet is attached to these meeting notes.

Welcome/Introductions/Agenda Review: Randi Thurston opened the meeting. Introductions were made around the table. No members of the public were present. She introduced Neil Aaland, the new facilitator for the group.

Neil said he was able to talk on the phone with most members of the work group. He wanted to get a sense of their perspectives on the work group. In response to a question, Randi explained there is another ad-hoc work group comprised of agencies to discuss HPA implementation. They are separate because WDFW did not want their issues to overwhelm this group.

Neil provided a short powerpoint. This was in response to comments he heard that it would be useful to step back and answer some basic questions. The powerpoint presentation provided information on the initial creation of the workgroup, and some specific questions he had for the group to discuss.

The work group discussed who the group is making a recommendation to. Randi said they believe it's to the Senior Management Team (SMT) for the Habitat Program. Jeff Davis is the executive manager who oversees the SMT. Kim asked what happens after their discussion; Randi said after the SMT meeting WDFW will get back to the group with the results of that discussion.

Additional comments and questions on this topic:

- The group needs clarity on where recommendations are going
- This group needs more information, including formal guidance documents
- Group needs to understand the structure for bringing recommendations
- Teresa noted they are limited with tools, they've used website – but she is hearing people don't think they're getting information
- Amy asked about using a drop box link for information; they will look into that
- Kim mentioned that when she has asked for information she is usually directed to file a Public Disclosure Request, which often results in a long response time. It seems appropriate if information would be helpful to CAG, a PDR should not be required.
- Need to understand the timeframe on when the work group will hear back from WDFW after a recommendation is made; that will be discussed with each item
- Need to understand the timeframe on when the work group will hear back from WDFW after a recommendation is made; that will be discussed with each item
- Regarding work plans, Amy doesn't think they have had time to focus on the rules themselves; she'd like to go section by section and discuss [Kim agreed]
 - Stephan does not want to look at every detail
- Shannon would like to see work on permit compliance, perhaps a report on how that is working
 - Teresa thinks WDFW needs help with the topic of compliance
- Send out the March 2018 topic list for review, but don't get too wedded to that

- Kimbal noted we'll need to pay attention to recommendations from Orca task force that may have implications for HPA; that is due out in November
- Randi noted that agency request legislation must be approved by the Commission
 - She also noted that the vision for this group was it would focus on implementation
- Lisa thinks the group should comment if they see a gap

HPA Suction Dredging Rulemaking

Pat Chapman reviewed a powerpoint presentation on the history of prospecting rules. [the powerpoint presentation will be posted on the CAG website]

Scott Brown showed several videos showing how suction dredges work. There is some inspection by WDFW biologists. His association monitors activities on the association's claims and will kick people off the claims if they are not adhering to the rules.

Pat showed a second powerpoint presentation on impacts and best management practices (BMPs) [the presentation will be posted on the CAG website.] Comments and questions from the group included:

- Dredges have to be separated by 200 feet from the next dredger
- Lisa asked if miners are looking for cobbles or fines
 - Scott said looking at the base of faster moving sections, and in response to a question he noted the plumes dissipate fairly quickly
- Pat said there are specific protection measures required about dewatering
 - Has anyone reviewed hydrocarbon emissions from engines? [WDFW does not measure that]
- What about water quality issues such as suspended solids and turbidity? [Ecology has authority over water quality issues]
- Why isn't a 404 permit required? [Pat said a court opinion says the Corps does not have authority]
- Pat explained that the process right now is you get a copy of the Gold and Fish pamphlet, and if the water is open someone can dredge – no additional written permit is required

Teresa discussed direction from the Fish and Wildlife Commission and the Rulemaking process. She noted the hydraulics code cannot be used to regulate other laws. In April, the FWC directed DFW to change the rules related to suction dredging. She reviewed a proposed timeline and noted that they may have to extend this timeline.

Kim said she is here on behalf of a number of organizations that have looked at this issue. She mentioned Oregon requires additional reviews in their state. Her issues are not with miners, but with WDFW. Need to look at good ideas from Oregon and Idaho.

Neil asked Scott to review the letter from his attorney; he thinks it stands for itself and doesn't have any additional thoughts.

General Discussion:

- Kimbal supports the memo written by Kim McDonald.
- Amy asked why the Department does not think they can regulate for turbidity; if they can't they should seek ability to do so [DFW staff said that is part of what is regulated under state water quality regulations, which are administered by Department of Ecology]
- Teresa explained that California has adopted rules for suction dredging, those are on hold during temporary ban; they are looking at developing a water quality permitting system. The ideas from

Kim's memo have already been posed to the FWC, and they have not changed their direction to WDFW staff

- Norm mentioned that Whatcom Creek looked very bad years ago till the stream bed grade was restored; he is concerned that doesn't happen with suction dredging. Also, he thinks the department needs to work with Ecology on the water quality aspects of the HPA rules. He concurs with part of the proposal in the memo, but doesn't support asking for separate water quality authority
- Shannon wonders how many out of stateres are coming in to dredge; thinks there are some places where we should not allow it at all. Should non-residents be charged a fee? Standard in my industry. How do we track that impact on our natural resources? His industry has Limited-Entry. Clarification: There are some sections of streams that should never be disturbed. He'll use Saar Creek, a transboundary system located close to the Canadian line as an example. Presently, the rules allow dredging right after the wild Coho salmon have spawned, No conditions, and no permits? His industry has been restricted to no harvest of Lower mainland Coho Salmon due to weak stock issues for over 20 years. A Bilateral Agreement with Canada through the Pacific Salmon Commission is tasked with rebuilding these stocks through fisheries Conservation. But who's protecting the spawning and rearing habitats??
- Shannon recommends that WDFW and the Area Bios review suction dredging timing in all WRIAs, with regard to spawning salmon and incubation timing.
- Shane thinks it makes sense to have a permit required; also thinks it should be considered whether specific streams should be opened or closed
- Jim and Stephan wonder why a specific permit is not required
- Lisa wonders if specific permits would actually truly benefit; there is enforcement now. She also noted that nationwide permit 44 address mining, and that's where you need to go – DFW is not the place to go
- Kimbal wanted to make sure that Kim's memo was not asking DFW to do the work of Ecology and not asking to usurp authority of other agencies
 - Kim said she wants the group to advise FWC to weigh in and do something about these concerns
- Teresa said they have a narrow focus in this rule making; she is curious about Amy's thought that if another agency is not exercising their authority, then can another agency like WDFW use it?
- Amy thinks that even if the FWC gave certain direction to staff, the CAG has obligation to provide their perspectives
- Norm thinks the scope of rulemaking should be broadened, additional limitations be placed

Kimbal suggested some changes to the recommendations in Kim's memo. The CAG discussed for a while and developed this statement:

"In the rule making process, steps are taken to:

- 1. Address compliance with water quality under RCW 90.48, and*
- 2. Ensure WDFW compliance with the federal Endangered Species Act.*

The Hydraulic Code Citizen Advisory Group has additional concerns that the rule making does not adequately address protection of fish life and fish habitat. The HCICAG intends to provide additional recommendations as rule making proceeds."

The CAG voted 7 to 2 in favor of this statement and asked that it be forwarded through Jeff Davis to the FWC.

After the Fact Permits – Proposal from Stephen Whitehouse

This was tabled due to lack of time and Stephen's absence due to illness.

Roundtable

Implementation and compliance should be on the next agenda. Kim hopes some background work can be done on enforcement actions. Additional topics might include:

- Kimbal noted that the Southern Resident Killer Whale task force should have its recommendations out, and the CAG should review them. One top recommendation is likely to be to direct WDFW to fully apply HPAs to all actions. The draft report is out on Sept. 25 and there will be a comment period
- Norm previously provided a copy of a hyporheic document, and he'd like to learn more and have an educational briefing for the CAG

WDFW staff will update the roster with Neil's information and get that out to the CAG next week.

The meeting adjourned at 3:00 pm.

Next meeting: November 29, 2018 – Natural Resources Building, Olympia, WA

DRAFT