

Hydraulic Code Implementation Citizen Advisory Group (HCICAG)

DRAFT - Meeting Notes - DRAFT

September 8, 2016

10:00 p.m. – 3:00 p.m.

Natural Resources Building, Director’s Conference Room 537, 1111 Washington St SE, Olympia, WA 98501

These meeting notes are intended to convey highlights from the meeting, including information and perspectives shared and discussed. Decisions made during the meeting are included.

This document is not a word-for-word transcription of the meeting. We have tried to capture the main topics and issues discussed and highlight some of the main questions, comments and action items raised by group members during the meeting.

Members: Please verify and correct any comments attributed to you so that we can accurately capture the issues or points made during the meeting.

Attendees

Name	Affiliation
HCICAG Members	
Shannon Moore	Moore Fish Company (Commercial Fishers)
Jim Shellooe	Association of General Contractors of Washington
Brandon Roozen	Western Washington Agricultural Association
Steve Whitehouse	Building Industry Association of Washington
William Thomas	Washington Prospectors Mining Association
Lisa Willis	Port of Longview
Bill Thomas	Washington Prospectors Mining Association
Amy Carey	Sound Action
Kim McDonald	Fish not Gold
Kimbald Sundberg	Lead Entities, San Juan County (WRIA 2) Lead Entity
Stephan Dillon	Hancock Forest Management, Inc.
WDFW Staff	
Randi Thurston	Protection Division Manager, Habitat Program
Dan Doty	Environmental Planner, Habitat Program
Teresa Scott	Facilitator, Habitat Program
Theresa Mitchell	Environmental Planner, Habitat Program

Welcome/ Agenda Review

Randi Thurston welcomed everyone and reviewed the agenda.

Old Business

Approval of April 20, 2016 Meeting Notes.

Dan Doty asked if the group had reviewed the draft meeting notes from April 20, 2016 (Revised June 29, 2016 to include Lisa Willis's comments) and if there were any comments or changes. The minutes were approved. Shannon Moore said that he was unable to attend the last meeting and would like to provide some specific input/comment to the listening session report. He will send those comments to Randi.

Update on Forage Fish Occupancy Standards.

Dan provided an update on the status of efforts to revise forage fish occupancy standards. He noted that he is setting up a meeting in October with our state and federal regulatory partners to review and discuss WDFW's forage fish occupancy standard recommendations and the regulatory path forward.

Amy Carey asked about where we had landed on the recommendations and the timeline for implementing the changes. Randi explained that we are planning on recommending an expansion to the surf smelt occupancy standards and are planning to keep the current occupancy standard for sand lance. The timeline for this process will depend on the results of our discussions with our regulatory partners.

Shannon Moore asked about how the recommended changes will affect contractor's ability to do work in these areas and mitigation options. Randi noted that these changes will affect project timing work windows and that the contractors have requested that we consider flexible mitigation options for projects that may impact smelt spawning beds.

Overview of New Program Business

HPA Program Listening Session Report and Planned Program Improvements: [HPA Program Listening Session Report](#)

Teresa Scott reviewed the report from the 2016 HPA Listening Sessions and discussed some of the planned HPA program improvements based on the feedback received from our stakeholders.

There was some general discussion about the HPA program improvements and some specific questions about efforts to create standard operating procedures for biologists to improve consistency when processing applications for frequent or high-risk hydraulic projects. Kim McDonald asked about the SOP's, what is being developed, and if the stakeholders will be involved in development of these SOP's. Randi listed the SOPs under development and noted that these SOPs are being developed internally and are intended for internal staff use. Kim and others asked if we would share these SOPs when finalized. Randi said that we could share these when finalized and that we could discuss them at the next HCICAG meeting.

- **Action Item: Send SOPs to HCICAG when they have been approved and finalized. Discuss at next meeting.**

Formal Attorney General Opinion ([AGO 2016 No. 6](#))

Teresa Scott reviewed the Attorney General's opinion (AGO 2016 No. 6 - Jun 3 2016) confirming that regulatory authority of the Department of Fish and Wildlife to require hydraulic project approval is not

limited to activities conducted at or below the ordinary high water line.

There was general discussion about the decision. Kimbal Sundberg had some questions and comments regarding feeder bluffs and the need to show direct links and effects of armoring to the processes. Stephen Whitehouse commented that he has issues with the decision and thinks there needs to be a brighter line on where WDFW's HPA authority/jurisdiction should apply above the OHWL.

9th Circuit Court of Appeal Decision [Court of Appeals Case 13-35474](#)

Randi Thurston provided an overview of the 9th Circuit Court of appeals decision that upholds the 2013 decision that Washington state must repair road culverts that are blocking salmon from spawning.

EPA Grant Funding

Randi Thurston informed the group that the HPA program has receive some EPA grant funding for a 2 year pilot project for HPA compliance. The grant provides funding for one full time compliance inspector and ½ FTE for an Enforcement officer to review HPAs projects and to assess permit compliance and unpermitted projects. The pilot project will focus on Hood Canal.

Presentation: Puget Sound Nearshore Ecosystem Restoration Project

Puget Sound Nearshore Ecosystem Restoration Project

Theresa Mitchell, WDFW Restoration Division, provided an overview of the Puget Sound Nearshore Ecosystem Restoration Projects (PSNERP) program, a multi-agency program whose goal is to protect and restore natural processes that create and maintain Puget Sound nearshore ecosystems and protect and restore ecosystem functions and structures that support biological resources that human's value.

Teresa's presentation is attached.

Below are links to the PSNERP site and other PSNERP technical publications.

- **The Puget Sound Nearshore Ecosystem Restoration Project**
<http://www.pugetsoundnearshore.org/>
- **Change Analysis** info (summary page and links to full publication, geodata):
http://pugetsoundnearshore.org/change_analysis.html
- **Strategies Report** and maps: <http://pugetsoundnearshore.org/strategies.html>
- **Peer-reviewed technical publications:** http://pugetsoundnearshore.org/technical_reports.html
- **Drift Cell Summary Sheets:** <http://www.psnerp.ekosystem.us/Map.aspx?mlayer=projects>

Stakeholder Issues/Concerns

Advisory Group Members were asked to identify any issues or areas of concern for discussion.

- Kim McDonald informed the group about two public workshops in September that will be held by WA State Senators Honeyford and Kaiser. The purpose of these workshops is to get input on an economic analysis of proposed major water infrastructure and fisheries habitat restoration investments in the state.
- Kimbal Sundberg had some questions about FEMA.
- Lisa Willis had some questions about the WDFW's jurisdiction above OHWL and how the department was going to determine when an HPA would be needed. Randi told the group that she is working on a document to provide more clarity for the biologists on what projects may require an HPA.
- Shannon Moore had some comments and questions about dredging of streams, ditches and artificial water courses where the spoils go.

- Kimbal Sundberg and other HCICAG members had some questions about the upcoming legislative session and would like to be alerted about proposed bills that may affect the HPA program. Teresa Scott noted that the WA Legislative Web Site (<http://leg.wa.gov/Pages/default.aspx>) has various tools that you can set up to alert you of legislation using keywords. We will also try to update the advisory group members of proposed legislation via email communications.

Feedback on the Proposed Changes to Chapter 77.55 RCW (Draft)

Randi provided an overview of the proposed changes to Chapter 77.55 RCW and each advisory group member was asked to provide more input on the proposed changes. She noted that feedback from the advisory group will be shared with the HPA Legislation Stakeholder Group. The Stakeholder Group will be asked to consider the feedback at the next meeting on October 26.

There was a lot of discussion on the proposed changes and we did not capture all of the issues discussed. We recommend members send their comments/suggestions to their stakeholder group representative or to Randi directly before the stakeholder meeting on October 26.

- Committee members discussed the relative merits of compliance provisions.
- Committee members are supportive of gaining stop-work authority and made suggestions for making the stop-work authority more clear.
- Some members are very concerned about the prospect of WDFW implementing our civil authority, and want more assurance that the statute would be implemented in a fair and equitable manner that protects the rights of private property owners.
- Members discussed the disposition of increased fees and funds collected through penalties. Members want to ensure that non-compliant activities and impacts are remediated or mitigated, and that there are authority and funds to do that. There is concern that even with the updated compliance statute, there is no requirement to “make it right,” either through collection of mitigation fees or making state monies available for mitigation of illegal activities.
- The overall question from committee members was “what does the customer get in exchange for the higher fees.”

Specific comments received from Jim Shelooe (10/6/16 email)

- 1.) *There is some concern with indexing fees to inflation. Rather than automatic increases, base the fees on factors like the anticipated levels of development and associated levels of permitting and enforcement required, the state of the economy, and the continued development of the scientific basis used for determining appropriate protective measures and controls.*
- 2.) *Once again, set date to “sunset” this; just as now, it is worthwhile to revisit the law in the future (say every 5-7 years) to reflect changes, with assessment of effectiveness and improved understanding of the environmental/scientific factors.*
- 3.) *With the recent Attorney General’s opinion, there needs to be a clarification of jurisdiction between the multiple agencies that govern areas above the OHWL. Also for streamlining, where possible, it would simplify matters if general permits were more accessible.*
- 4.) *Regarding the increases in fees, it would be good to have some assurances that, with the increased funding, permit reviewers and compliance inspectors will be well-trained and consistent with their interpretations of requirements. Also, it seems that project cost is not always the fairest basis for assessing fees; environmental resource impacts should also be considered. Projects having a major impact on fish and habitat should pay the highest fees because they will need the most attention from WDFW.*
- 5.) *I would concur with hiring more enforcement inspectors, but their effort should be focused on violators, not those permittees making earnest efforts to comply.*

Action Item: Members please send your comments/suggestions to their HPA Legislation Stakeholder Group representative (see attached list) or to Randi directly before the stakeholder meeting on October 26.

Meeting Wrap – up

Agenda topics for the next meeting

Please send your request for discussion topics to Randi.

Some possible topics are:

- Update on the status of forage fish occupancy recommendations and discussions with the regulatory stakeholders
- Review of HCICAG charter and administrative issues (e.g., how to replace members or add new members)
- Update on listening session follow up
- Review of the legislative process and tools made available by the legislature for the public to track issues and bills.

Date and location for next meeting.

Dan will send out a meeting request regarding the group's availability for December 14 or 15 or sometime in early January.

Hydraulic Code Implementation Citizen Advisory Group (HCICAG) Charter

Final – July 7, 2015

Introduction

In 2015, with rule changes adopted for the Hydraulic Project Approval program, the Washington Department of Fish and Wildlife (WDFW) Commission recommended the formation of two committees to advise agency staff on hydraulic code issues and implementation: one committee of stakeholders representing industry and regulated entities, identified as the Hydraulic Code Implementation Citizen Advisory Group, and one committee of agency and other quasi-government entities.

This charter establishes the roles and responsibilities for the Hydraulic Code Implementation the Citizen Advisory Group (HCICAG).

Mission of HCICAG

The Hydraulic Code Implementation Citizen Advisory Group provides recommendations to the Washington Department of Fish and Wildlife on the administration of the Hydraulic Code Rules (Chapter 220-660 WAC).

HCICAG Membership

HCICAG members represent a range of stakeholders who are impacted by or have an interest in issues related to the hydraulic code and HPA Program. Members were selected through an open process requiring letters of interest and review and selection by Department staff, with the following considerations:

- Members represent a group or organization affected or impacted, by and/or interested hydraulic code implementation issues;
- Are committed to sharing information and bringing to the group feedback from their respective organizations/constituents; and
- Are interested and committed to working collaboratively; and
- Understand and are comfortable in the role of serving in an advisory capacity.

HCICAG Role & Responsibilities

In addition, the advisory group is expected to:

- Provide recommendations to the Department on the Hydraulic Code regulations and the policies and procedures related to implementation of the hydraulic code.
- Communicate stakeholder opinions, attitudes, and needs to the agency.
- Identify areas of concern and recommend change.
- Understand their group's roles and responsibilities.

- Keep up-to-date on issues and regulations affecting their focus areas.
- Attend public workshops or forums established by the Department.
- Keep the Department advised of current trends and developments.
- Provide advice regarding enforcement and regulatory compliance issues.
- Assist the Department in developing communication strategies and communicating with members of the public regarding the issues that come before the advisory group.
- Be respectful and carefully consider the views of others.
- Attend advisory group meetings or advise the Department of absences. Requests to have an alternate attend should be coordinated with the Department in advance, and may not always be accommodated.

Department Roles & Responsibilities

The role of WDFW staff relative to the HCICAG is to facilitate effective input in hydraulic code implementation issues. The HCICAG is supported by staff from the WDFW HPA program.

Responsibilities include:

- Clearly define the advisory group's role.
- Provide the Department's mission and goals statement.
- Provide timely opportunities for advisors to counsel the agency on policy and provide timely communication on emerging issues.
- Schedule meetings in consultation with advisors and provide meeting places.
- Provide background materials, presentations, decision "maps" and other briefing materials on science, programs, administration and related issues.
- Facilitate meetings and conference calls as needed.
- Develop productive agendas that clearly outline the desired outcomes of each meeting.
- Develop agendas, materials and work products for advisory group review.
- Distribute materials in advance of advisory group meetings.
- Develop and distribute advisory group meeting notes that summarize the key discussion items and recommendations.
- Be respectful of the views of others, including Department staff and advisory group members.
- Communicate the advisory group recommendations, comments, views and perspectives to agency leadership prior to decision making.
- Provide feedback regarding how the Department uses advisory group's input.
- Capture recommendations, viewpoints and opinions by advisory group members including divergent or dissenting views. Abstention is okay.
- Solicit case studies, examples, lessons learned and other information from the group, relevant to agenda topics or other work of the group.
- Identify agency programs, initiatives and processes in progress that are relevant to the group's area of interest and scope.

- Respond to advisors' requests for information including presentations about specific topics.

Operating Guidelines

The following guidelines are recommended for productive discussion and forward progress.

- Advisory group members are expected to attend all advisory group meetings. At their discretion, members may identify and brief an alternate to participate and/or take notes at the meeting. Members will notify Randi Thurston if unable to attend and indicate whether someone will come in their place.
- Advisory group members will review information prior to meetings and come prepared to discuss materials that have been distributed.
- The advisory group shall not communicate its positions and opinions about the advisory group to entities outside the Department without notifying Department staff.
- The advisory group should not meet as a formal group with outside entities unless it has prior approval from Department staff. Nothing prevents an individual advisor from expressing their views as a private citizen.
- Members absent for more than two meetings in a 12-month period may be asked to end their terms and identify a permanent alternate member.
- Advisory group members are responsible for their own travel and meal expenses unless otherwise previously provided.
- Members are expected to serve for no more than three years, but may be reappointed at the Department's discretion.

Meeting Discussion Guidelines

Advisory group members are expected to conduct themselves in a professional manner and be respectful of others. The following discussion guidelines are recommended to facilitate productive meetings and advisory group interactions:

- All members are expected and encouraged to participate
- All members have the chance to be heard; no member should dominate
- Raise your hand to indicate desire to speak
- Share all pertinent information
- Keep an open mind
- Actively listen
- Treat others with respect
- Stay focused on the meeting objectives
- Refrain from side discussions when others are talking
- Ask for clarification when needed
- Recognize the role of the facilitator
- Use the "marina" to document topics for further discussion at a later date.

Meeting Frequency and Location

The advisory committee will meet quarterly, generally from 10 a.m. to 3 p.m. on weekdays. Meeting locations will alternate, as much as possible, between Olympia and North Sound, including locations in Tacoma, Seattle and/or Mill Creek. In-person participation is preferred; however, a conference line will be provided for inclement weather, illness and other unpredictable events.

Public Comment

The purpose of advisory group meetings is primarily for group discussion of participants. This may be supplemented and enhanced with input from members of the public and other interested parties. Advisory group meetings are open to the public and an opportunity for public input will be provided at each meeting. Members of the public will be recognized at the beginning of each HCICAG meeting, and time will be provided at the end of each discussion item for public comment, as time allows. If necessary, time limits may be imposed to allow members enough time for advisory group discussion.

Decision-Making

The HCICAG is not a decision-making body or voting group. Members are expected to “advise” staff about their views on hydraulic code implementation. Consensus of the group is not required, nor will it be specifically sought; however, staff will seek to understand common as well as divergent views, and consider all advisory group input before making and implementing decisions about the hydraulic code.

Advisory Group Roster, Agendas and Meeting Notices

An advisory group roster, identifying members’ names and organizations, in addition to WDFW staff contacts, will be posted on the agency website, along with agendas and meeting notes at <http://wdfw.wa.gov/about/advisory/hcicag/>

Department Staff Contact Information

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