

# Hydraulic Code Implementation Citizen Advisory Group (HCICAG)

## Meeting Notes

April 7, 2015

### Committee Members:

Name	Affiliation
Shannon Moore	Moore Fish Company (Commercial Fishers)
Bill Rehe	Port of Tacoma
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
Heather Trim	Futurewise
Amy Carey	Sound Action
Kim MacDonald	Fish not Gold
Kimbal Sundberg	Lead Entities
<b>Not Present:</b>	
Stephen Dillon	Forestry

### WDFW Staff Present:

- Margen Carlson, Deputy Assistant Director, Habitat Program
- Randi Thurston, Protection Division Manager, Habitat Program
- Dan Doty, Environmental Planner, Habitat Program
- Melinda Posner, Facilitator, Wildlife Program
- Tim Quinn, Chief Scientist, Habitat Program Science Division

### Welcome, Introductions and Agenda Review

Margen Carlson welcomed everyone and thanked them for making commitment. She introduced Randi who shared the agenda for the day. Randi introduced facilitator Melinda Posner, who asked members to introduce themselves, identifying name, organization, interest, and what they hoped to get out of being part of this group.

### Member's Statements of Interest.

Each member of the board was given an opportunity to discuss their perspectives on the hydraulic code and what they and the organization they represent hoped to get out of being part of this group. Members shared the following in response:

- Help establish a framework for consistency in issuing HPAs
- Encourage fair application of rules
- Ensure integrity of the process
- Reasonable and consistent provisions and reasonable mitigation requirements
- Encourage practical and logical implementation of rules

- (Ensure that conditions of HPA are reasonable and consistent)
- Help find a balance between fish life/commerce/ports
- Protect fish life from cumulative impacts
- Forage fish issue and protection is of particular interest
- Concerned about inconsistency in application of regulations between agencies
- Encourage integration, coordination and communication with other regulatory agencies and programs
- Ensure that personal rights are not violated in the process
- Make this a good working plan for miners
- (Wants a clear set of reasonable rules)
- (Help improve consistency in issuance of HPAs)
- Lack of science to back up provisions – wants to make sure decisions are supported with good science
- (Promote improvements in the process)
- Promote shoreline protection and health
- Promote bulkhead removal incentive programs
- (Ensure the protection of shorelines and nearshore habitats)
- Encourage strong rules, appropriate implementation of rules
- Monitoring and compliance for permitted activities
- Ensure enforcement of HPA permit violations
- Want to be able to provide input on the timing windows and the new rules
- Concerns about impacts of docks and bulkheads
- (Forage fish protection is a high priority)
- Help farmers and agencies find alternatives to protect fish and water quality
- Encourage habitat biologists and applicants consider alternatives (such as soft bank protection) in the permitting process
- Wants to support the agency, be a friendly watchdog to encourage appropriate implementation of rules

## **General Comments and Questions about the HCI Citizen Advisory and Agency Advisory Groups**

Status of the Agency Advisory Group and how will the two groups interact? The Agency Advisory Group is still being formed; membership not final but expect to include other state and federal agencies (though federal appears to be a challenge to get commitment), as well as Washington Association of Counties, Association of Washington Cities, Public Utility Districts, Recreation and Conservation Office, Washington State Conservation Commission, Natural Resource Conservation Service, and Puget Sound Partnership,

1. Tribes have been invited to participate on the Agency Advisory Group but may prefer Government-to-Government
2. Will Tribes go directly to the Fish and Wildlife Commission? WDFW hasn't heard back from Tribes yet.
3. Suggestion that communication with Lummi Tribe go through Tribal Chair
4. Is Puget Sound Partnership engaged? The Partnership has been invited to the Agency Advisory Group

5. Are the HPA Program mission and goals included in Washington Administrative Code (WAC) and are they accessible to the Committee? The mission and goals of the HPA Program are not in WAC; most are reflected in policy. Staff can provide policies relative to the Program to the group, and/or members can review the current rule language as most of the policies are included in the rules.
6. Where is “no net loss” reflected in the HPA Program Mission and Goals? No net loss is not directly expressed in the agency mission and goals; it is, however, it is defined (Chapter 220-660-080(030)(107) and included in the Hydraulic Code rules (Chapter 220-660-080(3)(c)). The topic of “no net loss” was added to the “marina” as a future discussion item.

## **Hydraulic Code Implementation Citizen Advisory Group (HCICAG)**

### **Draft Charter – Committee Discussion**

Melinda reviewed the draft charter, highlighting several areas for committee discussion. The following summarizes the group’s recommended changes to the charter:

#### ***Meeting Location***

1. Consider alternating locations north and south – Tacoma, Seattle and Mill Creek are good options
2. Provide conference line as option if face-to-face participation is not possible
3. Encourage carpooling among members (Port of Tacoma offered 15-person vanpool if convenient)

#### ***Meeting Frequency***

1. The group will meet four times a year, at quarterly intervals
2. Generally, meetings will be held from 10 a.m. to 3 p.m., but this could be modified depending on agenda and meeting location (10 a.m. is the absolute earliest for a meeting held in Olympia)

#### ***Alternates***

1. At their discretion, each member will identify and coordinate an alternate if they are absent from a scheduled advisory group meeting, and will be responsible for briefing them
2. If members are unable to attend a meeting, they will notify Randi Thurston in advance, and let her know if anyone will attend in their place
3. It is acceptable to have someone come and take notes on behalf of an absent member
4. Members expect to have quarterly meetings scheduled in advance so they can plan ahead

#### ***Public Comment***

1. State on agenda as standard information that public comment will be accepted during the meeting, and that the CAG will ask at the beginning of the meeting for those members of the public that want to speak to identify themselves and their interest in speaking to the group
2. Public comment will be taken after each agenda item, with appropriate time limits set if there are time constraints. 10 minutes total and 2 minutes per person were suggested as guidelines

#### ***Roster and Membership on Public Website***

1. Agency will develop a roster for distribution to members only, that includes name, organization, email and optional phone

2. The agency will post all members names and organizations on the public website, along with meeting agendas and notes
3. If the agency receives emails from the public, that are directed to a specific member, agency staff will forward on to the member for response

### ***Department Responsibilities***

1. What happens to the input provided from the group? Recommend clear identification of issues, decisions, and recommendations, and clear path for decision-making, and response as to how input has been addressed
2. Who are the decision-makers? Specific decision makers will depend on the issue and type of decision that need to be made. Jeff Davis, Assistant Director, Habitat Program; Margen Carlson, Deputy Assistant Director, Habitat Program; and the Fish and Wildlife Commission are the key decision-makers for most issues related to the HPA Program.
3. Will the Commission see the group's feedback? The Commission will see the group's feedback on issues that are elevated for Commission review. In those cases, there will be the meeting notes, as well as any additional information prepared by staff about the issue.
4. Capture input and recommendations from the group in the meeting notes
5. Identify agreement and divergent opinions
6. Bullet 5: Revise to say: Provide background materials, presentations, decision "maps" and other briefing materials on science, programs, administration and related issues.
7. Bullet 8: Revise to say: Develop agendas, materials and work products for advisory group review.
8. Bullet 12: Revise to say: Communicate the advisor's recommendations, comments, views and perspectives to agency leadership prior to decision making.
9. 9. Add a new bullet to say: Capture recommendations, viewpoints and opinions by advisory members including divergent or dissenting views. Add a new bullet to say: Solicit case studies, examples, lessons learned and other information from the group, relevant to agenda topics or other work of the group.
10. Add a new bullet to say: Identify agency programs, initiatives and processes in progress that are relevant to the group's area of interest and scope.
11. Add a new bullet to say: Respond to advisors' requests for information including presentations about specific topics.

### ***Other***

1. Consider adding agency mission and goals in the charter.

## **Overview of HPA Program – Presentation by Randi Thurston**

Randi shared an overview of the HPA Program and program improvements currently in the works. Randi answered questions from the group. Members had the following questions and comments, including the identification of topics that they would like to talk or hear more about in the future:

1. Have there been any legal challenges to the new rule? Do you anticipate any legal challenges that will delay the July 1 date for new rules to go into effect?
2. Does the jurisdiction for the HPA rules apply to only within 3 miles offshore?
3. What is the authority for requiring HPAs for certain activities that don't appear to have impacts (e.g. installing pipes on piers)?

4. How does the agency address issuing HPAs for projects in the “gray area,” where authority is uncertain?
5. Are permits tracked and are legal and policy decisions tracked?
6. Can you share the existing policies, legal opinions and policy decisions? Are they available to the public? Critical for providing transparency about criteria and decision making, and allows tracking back to policy, rules, and law when issues arise.
7. Is there a summary of legal opinions that have been made about decisions in the gray areas?
8. It would be great to have a mapping tool in APPs to show where permits are being issued/denied etc.
9. How is a project permit tracked from application, pre and post project, compliance and monitoring and enforcement? Is there a standard process for this? How are the post project compliance visits prioritized?
10. Are any of the engineers on staff trained hydrogeologists? Do they just review or do they stamp plans?
11. What are the minimum education credentials/qualifications for Habitat Biologists?
12. The historic data sets and information (e.g. HPMS) are valuable. Is there a way for advisory group members and the public to access this?
13. Will guidance documents be shared publically and with the group?
14. Several members want to make sure that WDFW can communicate the science behind the provisions.
15. Are HPAs consistent between regions?

## **Forage Fish Science with potential policy implications – Discussion lead by Tim Quinn.**

Tim Quinn presented results from a recent study *“Informing Spatio-temporal Correlation in Surf Smelt Egg Detection to Improve HPA Protection of Forage Fish Spawning Beaches”* by Timothy Quinn, Kirk Krueger, Ilai Keren. (The paper and figures were provided as a handout in the member packet, and are included as an attachment to the meeting notes).

Below is a summary of comments and questions that were raised and answered in the discussion.

- How long does it take for an egg to hatch? (2-4 weeks)
- How is fish life defined legally?
- What about potential use? How is the agency handling the situations when the habitat looks optimal but there has not been any documentation of spawning activity?
- Why Camano Island? Are you doing this in other areas?
- Does Camano Island data/findings relate to other areas of Puget Sound?
- Is this study going to be expanded to include other areas in Puget Sound?
- Can we develop a habitat characteristic/beach model that explains forage fish spawning?
- Several members expressed concern about how this information is going to be used and suggested that this information not be extrapolated to other areas of Puget Sound without being validated and corroborated after the results of studies in other areas are completed.
- Transparency - make sure to respect and consider property owners rights and issues when setting provisions and making decisions related to this work.
- WDFW and habitat biologists should work closely with project applicants to find win/win solutions.

- Are these studies being coordinated with monitoring efforts on DNR Aquatic Reserves and can citizen scientists help?

## **Next Meeting Date**

The next meeting is scheduled for: **Tuesday, July 7, 2015**

Time: 1000-1500

Location: Tacoma TBD (Randi will coordinate with Bill Rehe, Port of Tacoma, about meeting room)

## **Possible Agenda Topics for the next meeting**

Below are topics suggested for the next meeting:

- Presentation on the results of WDFW HPA Compliance and Effectiveness Monitoring Studies
- Review of the New Rules and Challenges with implementation
- Fish culverts and water crossings
- Gray Areas? How will department address under the new rules

## **Action Items:**

- Meeting Notes: WDFW will compile and send out draft in next week
- Charter: WDFW will revise the Committee Charter based on the discussion and send out for review
- Meeting Evaluation: Members will provide Randi with general comments and an their evaluation on how the meeting went and if it met their expectations
- Group Roster: WDFW will send a roster with email addresses (all members) and phone numbers (for those who indicated this was OK) to the committee members
- HPA Policies and Procedures: Are there HPA and other policies and procedures that can be shared with the group?