

# Hydraulic Code Implementation Citizen Advisory Group (HCICAG)

## Meeting Notes

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
<b>HCICAG Members</b>	
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
Kimbal Sundberg	Lead Entities, San Juan County (WRIA 2) Lead Entity
Stephan Dillon	Hancock Forest Management, Inc.
<b>WDFW Staff</b>	
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.

#### **9<sup>th</sup> Circuit Court of Appeal Decision** [Court of Appeals Case 13-35474](#)

Randi Thurston provided an overview of the 9<sup>th</sup> 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](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](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 Shellooe (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.