

Hydraulic Code Implementation Citizen Advisory Group Meeting

Meeting Notes for Thursday, September 28, 2017

Date: Thursday, September 28, 2017 10:00 am - 3:00 pm

Location: Large Conference Room WDFW Region 4 Office Mill Creek 16018 Mill Creek Boulevard Mill Creek, WA 98012

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		
Stephan Dillon, P.E.	Hancock Forest Management, Inc.	X
Kim McDonald	Fish Not Gold	X
Shannon Moore	Moore Fish Company (Commercial Fishers)	X
Norman Peck	Kittitas Audubon Society	X
Shane Phillips	Civil Engineers/Shoreline Property Owners	X
Brandon Roozen	Western Washington Agriculture Association	X
Kimbal Sundberg	Lead Entities – San Juan Island Lead Entity	X
Jan Himebaugh (for Stephen Whitehouse)	Building Industry Association of Washington	X
Lisa Willis	Port of Longview	X
Amy Carey	Sound Action	Via Webex*
Jim Shellooe	Association of General Contractors	Via Webex*
WDFW Staff		
Margen Carlson	Habitat Program Deputy Assistant Director	Via Video Conf.
Dan Doty	Environmental Planner, Habitat Program	X
Teresa Scott	Policy Coordinator, Habitat Program	X
Lisa Wood	SEPA Responsible Official and HPA Appeals Coordinator, Habitat Program	Via Video Conf.

* Our apologies to Amy and Jim who tried to attend the meeting via Webex. We were unable to establish a WEBex connection due to technical difficulties with the phone system.

Introductions, Old Business and General Updates

Dan welcomed everyone.

Teresa Scott reviewed the agenda and changes to the schedule. As a warmup to the meeting, members were asked to identify the main thing they hope to get out of the meeting (considering the agenda we have). That list was:

- Learn the outcomes from 2017 legislation and plans to proceed with HPA legislation for 2018
- Learn the content, or what's different in the legislation.
- Understand outreach implemented in 2017 (particularly, "why senate majority members were not consulted about the legislation")
- Learn about the current status of the Atlantic salmon debacle and how the HPA program features in permitting for repairs and future siting.
- Learn about the Sultan River emergency rule changes and why they were necessary.
- Understand more about the relationship between HPA and water quality regulation done by Ecology.

Habitat Program Updates and Discussion – Margen Carlson, Habitat Program Deputy Assistant Director

Margen presented an overview of 2017 HPA proposed legislation, covering the outreach mechanisms the agency employed, concerns expressed by legislators, and direction for the coming session. Margen asked members for comments about the HPA program. One member suggested that WDFW not characterize builders as "not caring about fish" when the opposite is true. The point was that builders care about fish AND are concerned about the extent of WDFW's authority under HPA. Another member expressed concern that WDFW does not have an HPA presence in the San Juan Islands, and that more of an effort should be made to work with local government officials when discussing proposed legislation. A third member expressed concern about the "fish enhancement project" part of the proposed bill, which expands the list of entities who can sponsor a project for simplified HPA processing. The emphasis of the comment is on the accountability of the sponsor for ensuring a project delivers the expected outcomes; this kind of change should await the outcome of the Culvert Case. Another member suggested that WDFW put forth a more comprehensive look at all regulated communities in a global overhaul of the HPA program. The main concern is the regulation of small scale mineral prospectors. Margen closed this topic by saying that WDFW expected to reconvene the "legislative stakeholder group" to re-start the conversation about HPA legislation.

Margen's second topic was rulemaking. Members seemed to understand the message Margen conveyed about addressing only urgent needs in rulemaking right now. One commenter asked how the rule change for authorized work times on the Sultan River fits with federal ESA. The comments about global overhaul and awaiting the Culvert Case outcome were re-emphasized.

Following Margen's presentation, members wanted to know how WDFW distinguishes between advisory groups like the HCICAG and "stakeholder" groups used to review proposed legislation. One big difference is that HCICAG is focused primarily on implementation of laws and rules and is established with the intent to provide advice over the long term. The stakeholder group in question is intended to provide advice on a specific set of proposals, is more short-term in intended duration, and considers issues beyond on-the-ground implementation of the HPA program (including other broad issues affecting the Habitat Program). This was a helpful conversation for both WDFW and members.

In another conversation, a member expressed concern about expanding the number of projects qualifying for the simplified application process because shortened timelines don't allow for local government review of projects for public health and safety.

Legislation and HPA Rulemaking Discussion – Teresa Scott

Teresa provided an overview of the rulemaking process in Washington.

Members engaged in a conversation about the level of detail needed for prescriptions in rules: Some favored technical criteria be presented in detail; others prefer to have the outcomes be explicit but means to achieve the outcomes to be more diverse than is currently the case. Other comments included:

- Current prescriptions stifle the ingenuity of permittees and prevent the use of new technologies (possibly referring to sediment removal and/or fish passage and screening criteria).
- Technical criteria should be incorporated into rules by reference (not directly included in rule).
- There needs to be transparency with respect to the guidance and technical criteria for permit requirements – although we are working toward this as an agency, we have not succeeded in all our efforts
 - Agency policies affecting permitting (mitigation; fish passage) are not available online;
 - The new Standard Operating Procedures aren't available online to the public;
 - Need access to the peer-reviewed literature WDFW uses as foundation for permit provisions (should be providing “charts, facts, and tables”).
- Concern that “guidance” and technical criteria that are not included as rules can be changed without notice (references recent Port of Kalama Shoreline Hearings Board ruling).
- One member expressed concern about the rules being too prescriptive and noted that some of the technical requirements in the rules are based on old science and obsolete technical information. Strict adherence to the rules stifles ingenuity and limits the use of new technology and innovative approaches that could result in better outcomes for fish.
- One member wants to be able to prepare an acceptable application without talking to a habitat biologist, based on criteria in rules that are unequivocal.
- FERC agreements are not being honored when the time comes for the license-required project to receive an HPA permit. Permitting biologists are arguing about the need for the project.
- WDFW should be providing more technical support – using peer-reviewed science to support our permitting decisions.
- Is it possible to set up an “Option 3” whereby applicants can propose their solution and we review for consistency with the level of protection needed based on the project type and location (similar to toxics cleanup laws and rules)?

Members are understandably confused about how WDFW will engage the CAG's attention and input for agency rulemaking. Members expected to hear how WDFW is approaching the development and prioritization of rulemaking proposals and to be asked to provide input as WDFW was assembling the final package of rule proposals.

Presentation: Sultan River Mining and HPAs - Brendan Brokes, Region 4 Habitat Program Manager

Brendan provided an update to the group on Sultan River mining and the process for addressing and reissuing HPAs in the area. He gave a comprehensive report and showed photos on the reasons for the change in work timing on the Sultan River and showing the current state of the river and salmon utilization in the newly-re-opened reach. Members asked a number of questions and received answers to most. One member came with a list of questions, including how many small scale mineral prospectors frequent the Sultan, how many of those use suction dredges, how many work outside the (new) work windows, what are the fishing regulations for these areas of the Sultan, how much (or what is the frequency of) enforcement activity is targeted at the Sultan, and whether WDFW is monitoring the effects of suction dredging downstream from the changed reach.

Presentation: Atlantic Salmon Spill into the Salish Sea - Brendan Brokes – Region 4 Habitat Program Manager

Brendan provided a briefing on the Atlantic Salmon Spill into the Salish Sea and WDFW's role in the response and its regulatory role. Brendan shared a timeline of the Cooke net pen issue and events leading up to, and subsequent to, the failure of the Cypress Island net pen and escape of Atlantic salmon. Brendan also had photos of the scene to share with members. Comments and questions included a concern that nontreaty commercial fishers were not afforded an opportunity to harvest and profit from the surplus Atlantic salmon, although sport and tribal fishers did benefit. A concern was also expressed about needing better control over commercial fish buyers, such as requiring that Atlantic salmon be purchased. Many members expressed their concern over the environmental impacts of the "spill" of Atlantics. One member suggested that one bad event doesn't mean the entire industry should be condemned, and recommended more rigorous compliance inspections. A discussion of improved management practices ensued, helping Brendan to segue to his report on next steps. This discussion allowed the group to share the diversity of opinions on the use of saltwater net pens to raise exotic seafood in Puget Sound.

Compliance pilot overview and Round Robin

There was not enough time to provide the overview of the compliance program. We will discuss this topic at a subsequent meeting

Comments presented in the above sections include "round robin" comments received hurriedly at the end of the meeting. Members are OK with meeting in November-December for a preview of proposed rule changes.