

Hydraulic Project Approvals

Hannah Faulkner

Regulatory Services Section Manager
Protection Division
Habitat Program



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Hydraulic Authority

First Hydraulic Act in 1943

HPA statutes: Chapter 77.55 RCW

HPA rules: Chapter 220-660 WAC



Any person, organization, or government agency wishing to conduct a hydraulic project must do so under the terms of a permit issued by WDFW for the protection of fish life



What is a hydraulic project?

Construction or performance of work that will **use, divert, obstruct, or change the natural flow or bed** of any of the salt or freshwaters of the state.



What is a bed?

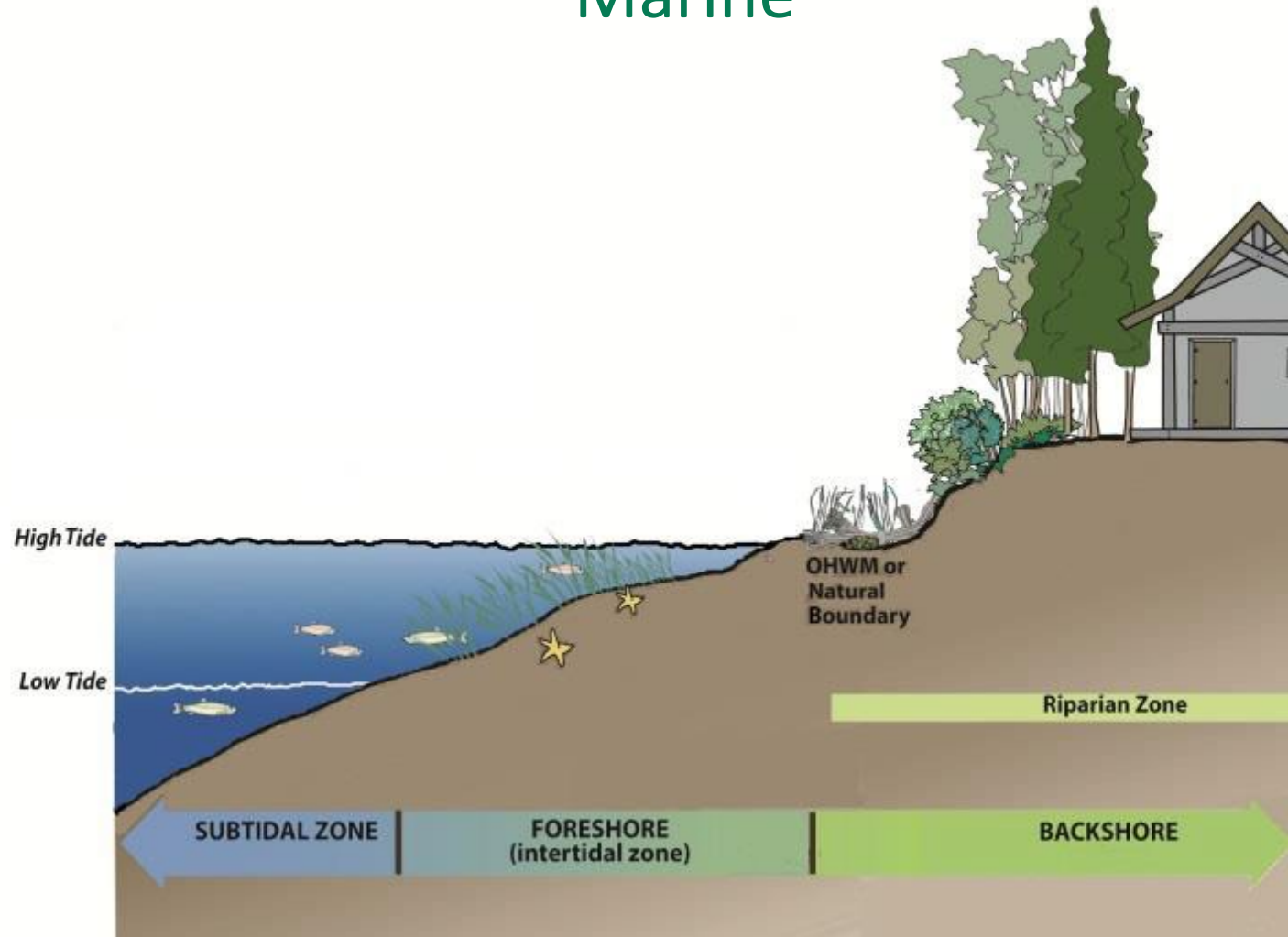
Land below the ordinary high water line (OHWL) of state waters.

Does not include artificial watercourses except where they exist in a natural watercourse that has been altered by humans

Some work above the OHWL can affect state waters and require an HPA



Ordinary High Water Line Marine





Typical types of hydraulic projects



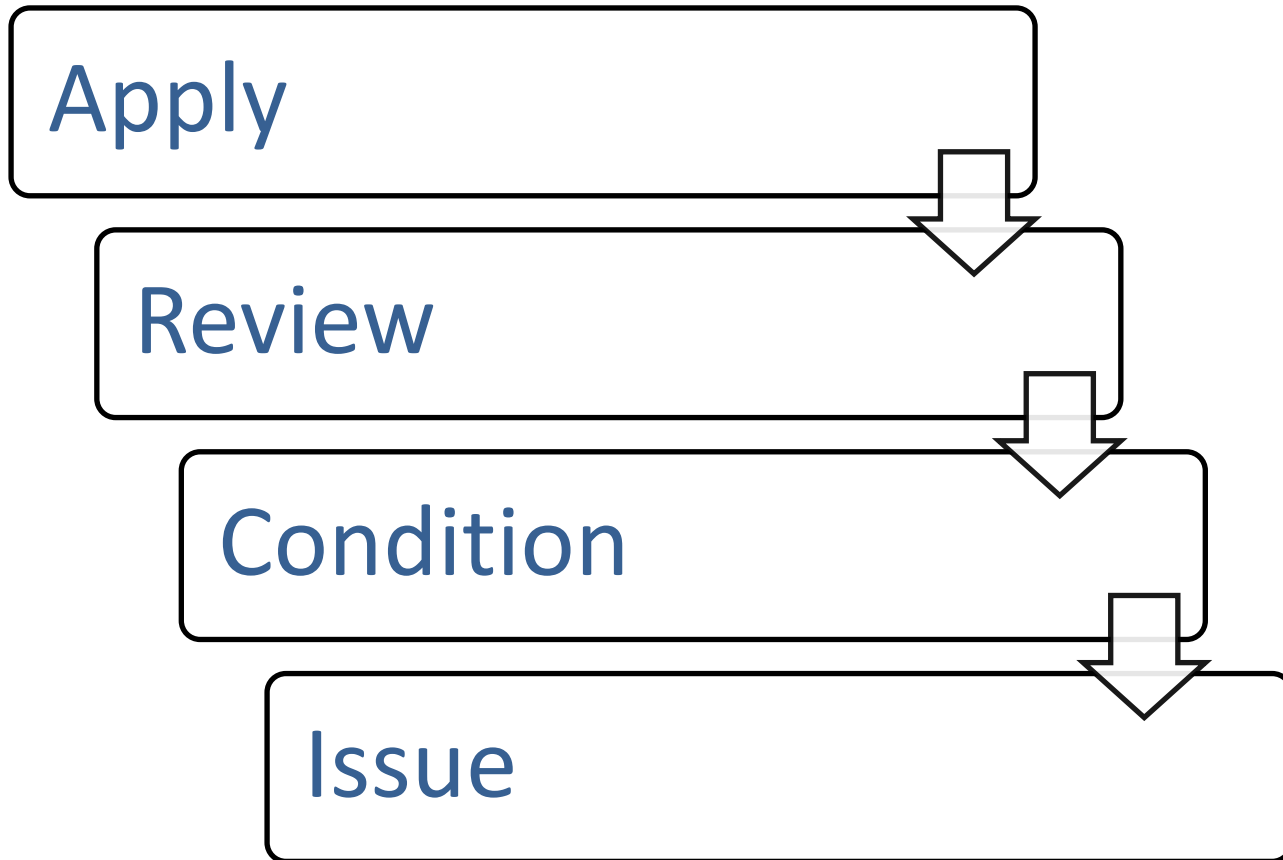


Purpose: Protection of Fish Life

"Fish life" means all fish species, including but not limited to food fish, shellfish, game fish and other non-classified fish species and all stages of development of those species.



Application Process



Applicant or Agent

Before applying

- Talk with a biologist
- Get technical assistance
 - **Pre-application**
- Prepare a complete application



Applicant or Agent

Before applying

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- Get technical assistance
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- Prepare a complete application

Apply for an HPA

- **APPS**
- JARPA
- *Emergency*



HPA Processing Unit

Application Review

- Statutory completeness

Customer service

- Applicants/Agents
- Biologists
- Application process
- APPS assistance



Project review

- Review application material
- Conduct site visit
- Determine baseline conditions

Habitat Biologist



Habitat Biologist

Project review

- Review application material
- Conduct site visit
- Determine baseline conditions

Evaluate impact

- Avoid, minimize, and rectify impacts
- Compensate for remaining impacts
- Technical and custom provisions



Habitat Biologist

PROVISIONS

1. TIMING PROVISIONS:

Work may begin immediately and shall be completed by February 1, 2010 provided,

a. Work below the ordinary high water line shall not occur from March 1 through June 14 of any year for the protection of migrating juvenile salmonids.

b. Due to the year round spawning period of surf smelt in this portion of Puget Sound, work below the ordinary high water line during any period of any year may be acceptable if a WDFW representative confirms a lack of spawn during a site inspection. Arrangements for a site inspection shall be made with the Area Habitat Biologist listed below. Work shall commence within 48 hours of notification by WDFW and shall be completed within seven days of project commencement.

NOTIFICATION REQUIREMENTS:

2. The Area Habitat Biologist (AHB) listed below shall receive written notification (FAX: 360.876.1894 or e-mail: mitchtcm@dfw.wa.gov) from the person to whom this Hydraulic Project Approval (HPA) is issued (permittee) or the agent/contractor no less than three working days prior to the start of construction activities. The notification shall include the permittee's name, project location, starting date for work, and the control number for this HPA.

3. If at any time, as a result of project activities, fish are observed in distress, a fish kill occurs, or water quality problems develop (including equipment leaks or spills), immediate notification shall be made to the Washington Military Department's Emergency Management Division at 1-800-258-5990, and to the Area Habitat Biologist listed below. Work shall not resume until approved by the Area Habitat Biologist.

APPROVED PLANS:



Habitat Biologist

Issue permit

- **Written**
 - Standard
 - Expedited
- **Verbal**
 - Emergency
- **Pamphlet**
 - Mineral prospecting
 - Aquatic



Licenses & Permits

Fishing and shellfishing licenses

Hunting licenses

Construction and environmental permits

Parking and access passes

License plates

License dealers

Commercial licensing

Roadkill salvage permit

Habitat Recovery Pilot Program

The Habitat Recovery Pilot Program (HRPP) is designed to streamline the local and state environmental permitting process for habitat recovery projects that benefit freshwater, estuarine, or marine fish, or their habitats. This four-year pilot program (ending June 30, 2025) was created under [House Bill 1382](#) and codified in [RCW 77.55.480](#). The program's intent is to promote and implement habitat restoration as quickly and efficiently as possible, to further bolster the natural resources and natural resource economy of Washington.

Before applying to the program, project proponents are encouraged to contact HRPP staff via email (HRPP@dfw.wa.gov) or a local [habitat biologist](#) for guidance.

Resources

- [Supplemental application form](#)
- [Instructions on applying via APPS for an HPA under the HRPP](#)

Contact

Gina Piazza, HRPP Coordinator
HRPP@dfw.wa.gov

Environmental permit streamlining

+

HRPP compared to Fish Habitat Enhancement Projects

+

Program qualification requirements

+

Application process

+

Review process

+



HPA Website

wdfw.wa.gov/licenses/environmental/hpa

Licenses & Permits

Fishing and shellfishing licenses

Hunting licenses

Construction and environmental permits

Parking and access passes

License plates

License dealers

Commercial licensing

Roadkill salvage permit

About Hydraulic Project Approvals (HPAs)

[Washington law](#) requires people planning hydraulic projects in or near state waters to get a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW). This includes most marine and fresh waters. An HPA ensures that construction is done in a manner that protects fish and their aquatic habitats.

What is a hydraulic project?

A hydraulic project is construction or other work activities conducted in or near state waters that will "use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state." ([RCW 77.55.011\(11\)](#))

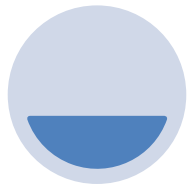
The state's Hydraulic Code Rules ([Chapter 220-660 WAC](#)) identify projects and activities that require an individual HPA. These include, but are not limited to:

- Aquatic plant removal and control (outside of [Aquatic Plants and Fish pamphlet rules](#))
- Beaver dam removal or modification
- Boat ramps and launches (new, repair, modification, and replacement)
- Culverts and bridges (new, repair, modification, and replacement)
- Docks, piers, ramps, floats, boathouses, and buoys (new, repair, modification, and replacement)
- Dredging and sand/gravel removal
- Log placement, repositioning, or removal
- Motorized and gravity siphon aquatic mining (beginning June 11, 2020) and small-scale mineral prospecting outside of [Gold and Fish pamphlet rules](#)
- Outfall and tide gate structures (new, repair, modification, and replacement)
- Pond construction (new, repair, and modification)
- Stream bank protection, bulkheads (new, repair, modification, and replacement)
- Stream channel relocation and realignment
- Utility crossings and test boring
- Water diversions and intakes (new, repair, modification, and replacement)



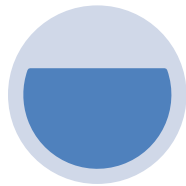
QUESTIONS?

HPA ONLINE PERMITTING SYSTEM REPLACEMENT PROJECT



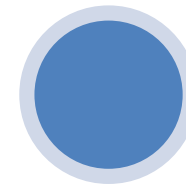
Matt Curtis

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Matthew.Curtis@dfw.wa.gov



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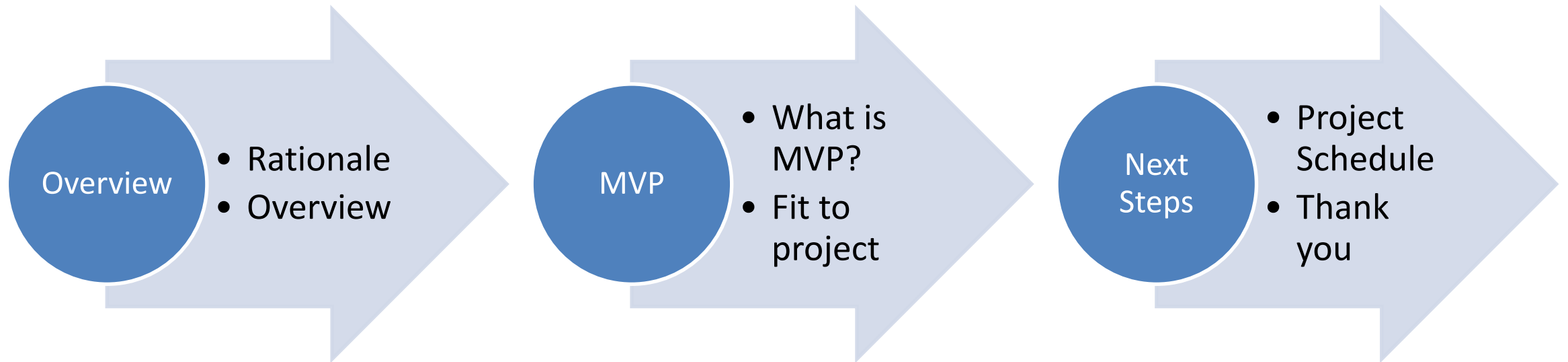


**Deirdre
Bissonnette**

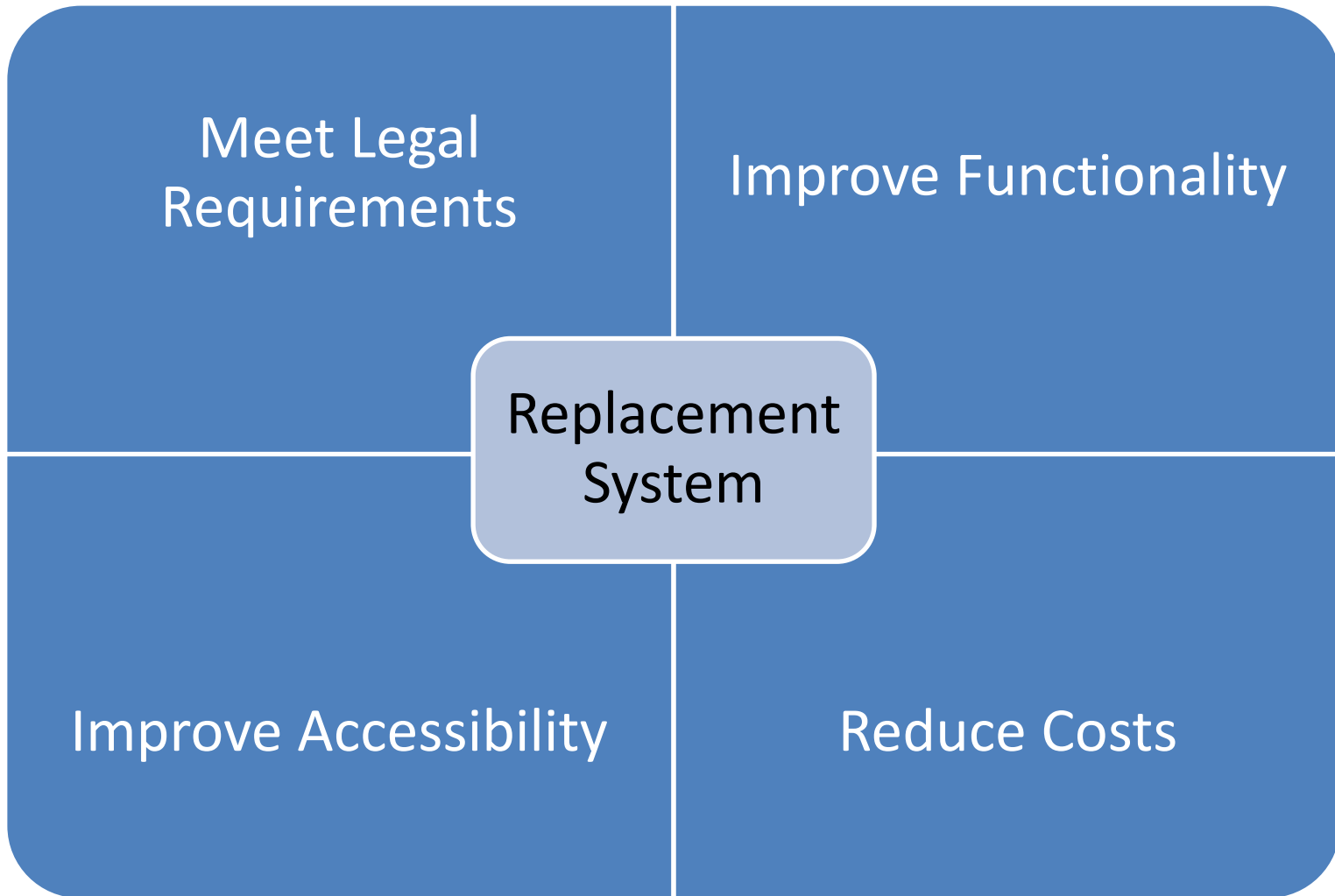
Project Manager
Deirdre.Bissonnette@dfw.wa.gov



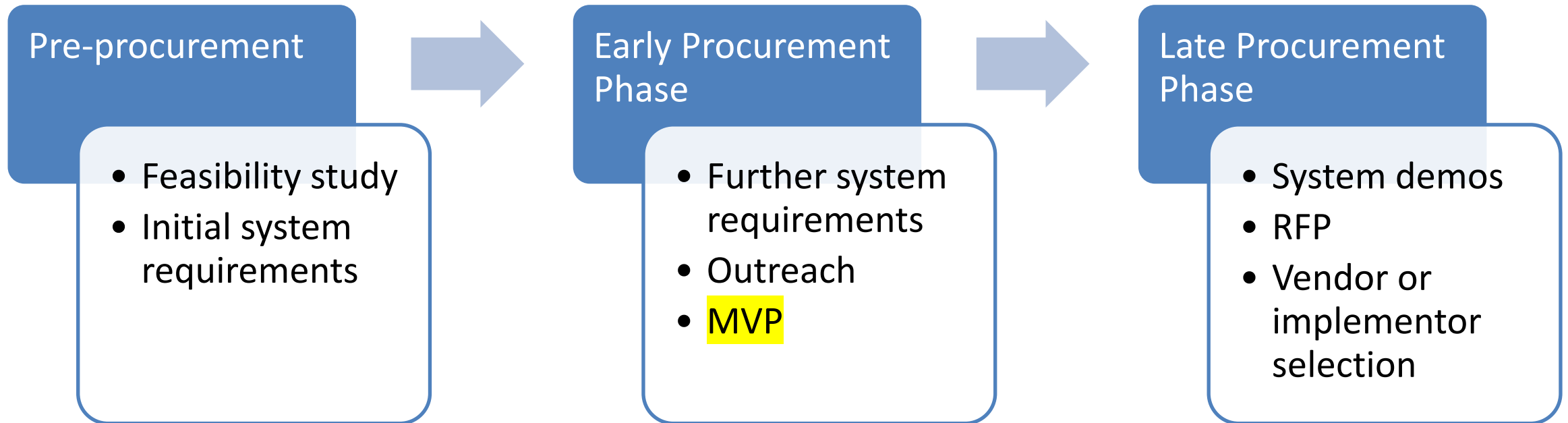
Presentation Agenda



Project Overview - Rationale



Getting To and Through Procurement



Minimum Viable Product - MVP

Nice to Have

Future Proof

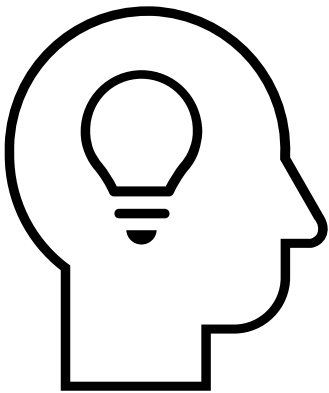
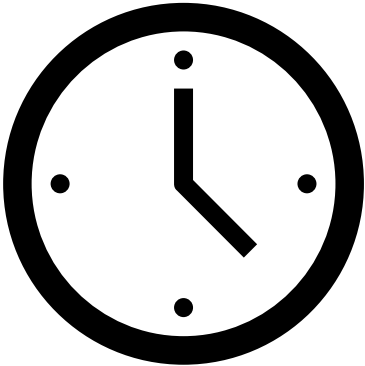
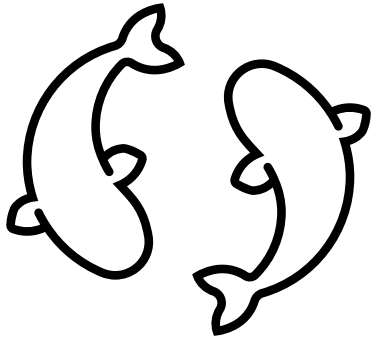
MVP



Project Overview - Schedule



Project Overview – THANK YOU



Staying Connected

Reach Out



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matthew.curtis@dfw.wa.gov



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Deirdre Bissonette
HPA Online Permitting System Replacement Project Manager
deirdre.bissonette@dfw.wa.gov



HPA Compliance Program

Division Manager- Kelly Still

Compliance Inspectors – Dave Kloempken, Dan Hawkins, Jon McFarland, Jason Schrauth, Taylor Pearson



Importance of Compliance

Having protective hydraulic code rules and developing effective permit processes are both important for protecting the fish resources but, by themselves, they do not ensure either compliance with the regulations or protection of resources. An effective *compliance program* can ensure that permit requirements are implemented (during construction or later) and violations unrelated to permits are identified and corrected.

HPA Program Implementation, Compliance, Effectiveness monitoring



2006- [HPA Review Audit: Pilot Region 6](#)



2010- [Fish Passage- Compliance, implementation, effectiveness study](#)



2012 - [HPA Compliance Monitoring](#)



2013- [Implementation and Effectiveness Monitoring of Hydraulic Projects \(year 1\)](#)
(culverts, Marine Shorelines)

2013-2017- [Year 5 Report \(2013-2017\)](#)



2018- [Hydraulic Code Compliance Assurance Program Pilot](#)



2019- [HPA Hood Canal Compliance Pilot - Marine Shorelines](#)



History

History:

Achieving
HPA
Compliance

Voluntary Compliance

Criminal Authority: Enforcement Program

RCW 77.15.300 Unlawful hydraulic project activities – Penalty

(1) A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and:

- (a) Fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work; or
- (b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor.



History of Policy 5212: Habitat and Enforcement

Habitat Biologist



Fish and Wildlife Officer

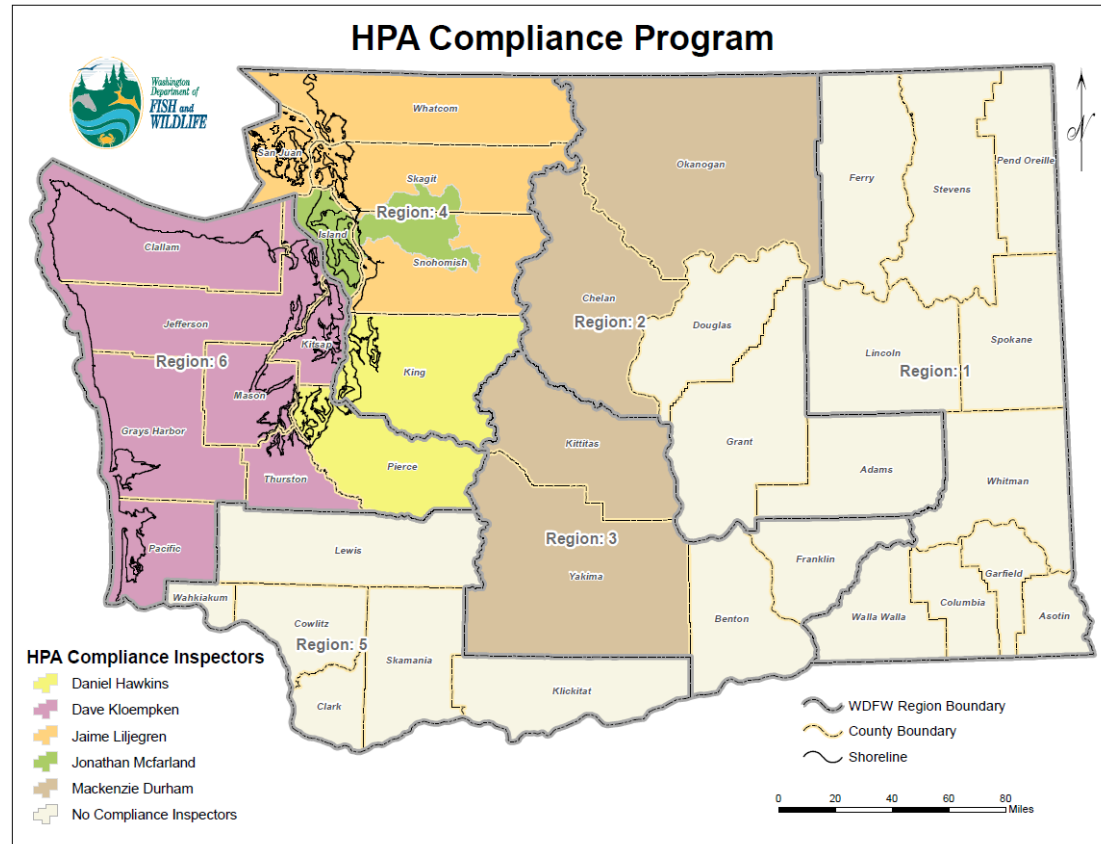
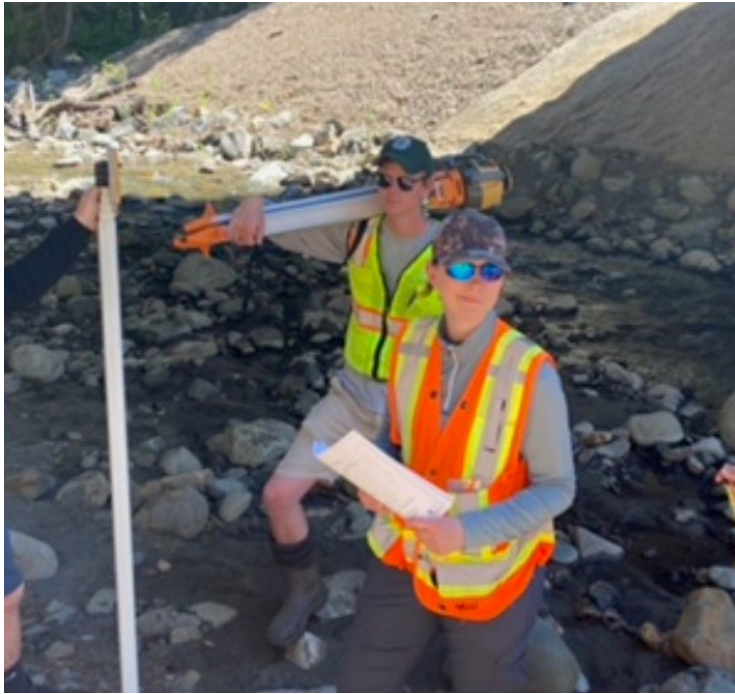


New capacity and authority
for HPA compliance





Civil Administrative
Enforcement Authority +
Compliance Division



Compliance Inspector Coverage Area

Internal map: Habitat biologists and Compliance Inspectors

New funding 2023 = 2 additional CI positions + Supervisor

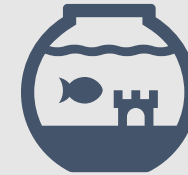
HPA Program Objectives



Implementation monitoring

Feedback to Protection Division, Regions

process in development



Compliance Monitoring

Permitted projects (pre, during and post-project inspections)

Communicate and collaborate with FWO regarding approach to unpermitted violations.

FWO- leads criminal

Inspector- leads civil

What is the Difference between Civil and Criminal Enforcement?

Legal Standard

- No difference – Both civil and criminal liability is strict

Burden of Proof

- Civil - A preponderance of the evidence
- Criminal - Beyond a reasonable doubt

Results

- Civil
 - Monetary penalty paid to the state
 - Injunctive relief
 - Additional actions required to improve the environment
- Criminal
 - Monetary fine paid to the county
 - Restitution
 - Incarceration



What are Civil Administrative Enforcement Actions?

Civil administrative enforcement actions are non-judicial enforcement actions taken by WDFW under its own authority.

RCW 77.55.410-77.55.470

WAC 220-660-480

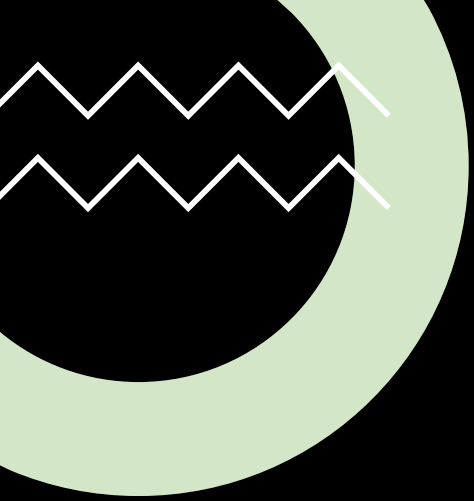
These actions do not involve a judicial court process.





What is the Compliance Inspector's Role?

- Inspect permitted projects during and post-construction
- Provide technical assistance proactively to prevent violations
- Assist Fish and Wildlife Officers – investigate unpermitted projects, lead civil enforcement for unpermitted projects
- Provide technical assistance and issue correction requests to gain voluntary compliance of violations
- Draft formal civil enforcement actions for management authorization
- Follow-up to ensure compliance with civil enforcement actions issued



Inspector Approach

- Treat each person contacted with courtesy and respect.
- Treat each potential violation in a consistent and fair manner.
- Use site visits as opportunities to educate project proponents.
- Take enforcement action on violations of the law, rules and/or HPA provisions, beginning with the lowest level necessary to achieve compliance. Voluntary compliance is the most desired outcome.



Prioritizing Compliance Inspections

Must also consider permittee's compliance history, scope and scale of project type, unexpected weather events, timing of the work, life history stages of fish life present, potential consequences of non-compliance

Guidance developed Nov. 5, 2021: [Guidance for Prioritizing HPA Compliance Inspections 20211105.pdf](#)

- Determine project risk
- Determine Ecological risk

Determine the Priority

<i>Project Risk</i>	Priority		
High	1	1	2
Medium	1	2	3
Low	2	3	3
<i>Ecological Risk</i>	High	Medium	Low

- Apply professional judgement

Must also consider permittee's compliance history, scope and scale of project type, unexpected weather events, timing of the work, life history stages of fish life present, potential consequences of non-compliance

Variables informing Civil enforcement response

Scope of authority (Proportional response)- ensuring the corrective action is proportional to the unpermitted work and impact to fish life from the unpermitted violation.

- **Impact to fish life and fish habitat**

- **Minor harm to fish life:** means a direct or indirect act that creates the likelihood of injury to fish life by disrupting normal behavior patterns, which includes but are not limited to spawning, rearing and/or migration behaviors or habitats. The act does not result in mortality of fish life or more than short-term degradation of fish habitat.
- **More than minor harm to fish life:** means direct or indirect act that results in injury to fish life, mortality of individual fish, or disruption of normal behavior patterns, which includes but is not limited to spawning, rearing and/or migration behaviors or habitats. The act results in more than short-term degradation of fish habitat.
- **Significant harm to fish life:** means a direct or indirect act that results in the injury or mortality of multiple fishes, which includes but is not limited to fish life or life histories; spawning, rearing, or migration behaviors or habitats; and/or loss of productivity. The act may result in short or long-term degradation of fish habitat.

- **What, How and when the hydraulic violation was constructed**

If hydraulic violation is considered illegal or not

Defined as hydraulic work the department would not authorize because fish life cannot be properly protected

Civil Administrative Enforcement Actions

RCW 77.55.410

“Project Proponent”- means a person who has applied for a hydraulic project approval, a person identified as an authorized agent on an application for a hydraulic project approval, a person who has obtained a hydraulic project approval, or a person who undertakes a hydraulic project without a hydraulic project approval.

Technical Assistance – written, verbal
e.g. Inspection Report or HPA requirement letter

Correction Request

Informal, minor harm to fish life



Notice to Comply

Formal, actions to prevent, repair or compensate for damage causing more than minor harm



Stop Work Order

immediate action is necessary to prevent continuing or to avoid more than minor harm to fish life



Notice of Penalty

Notice of Intent to Disapprove HPA Application

**Habitat
Biologist**



Compliance Inspector



Fish & Wildlife Officer

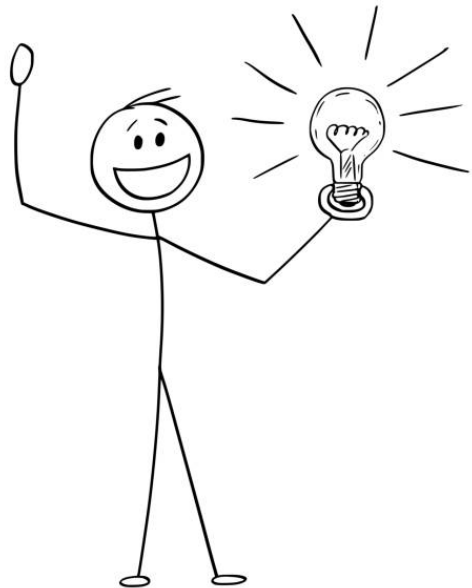


HPA Roles and Responsibilities

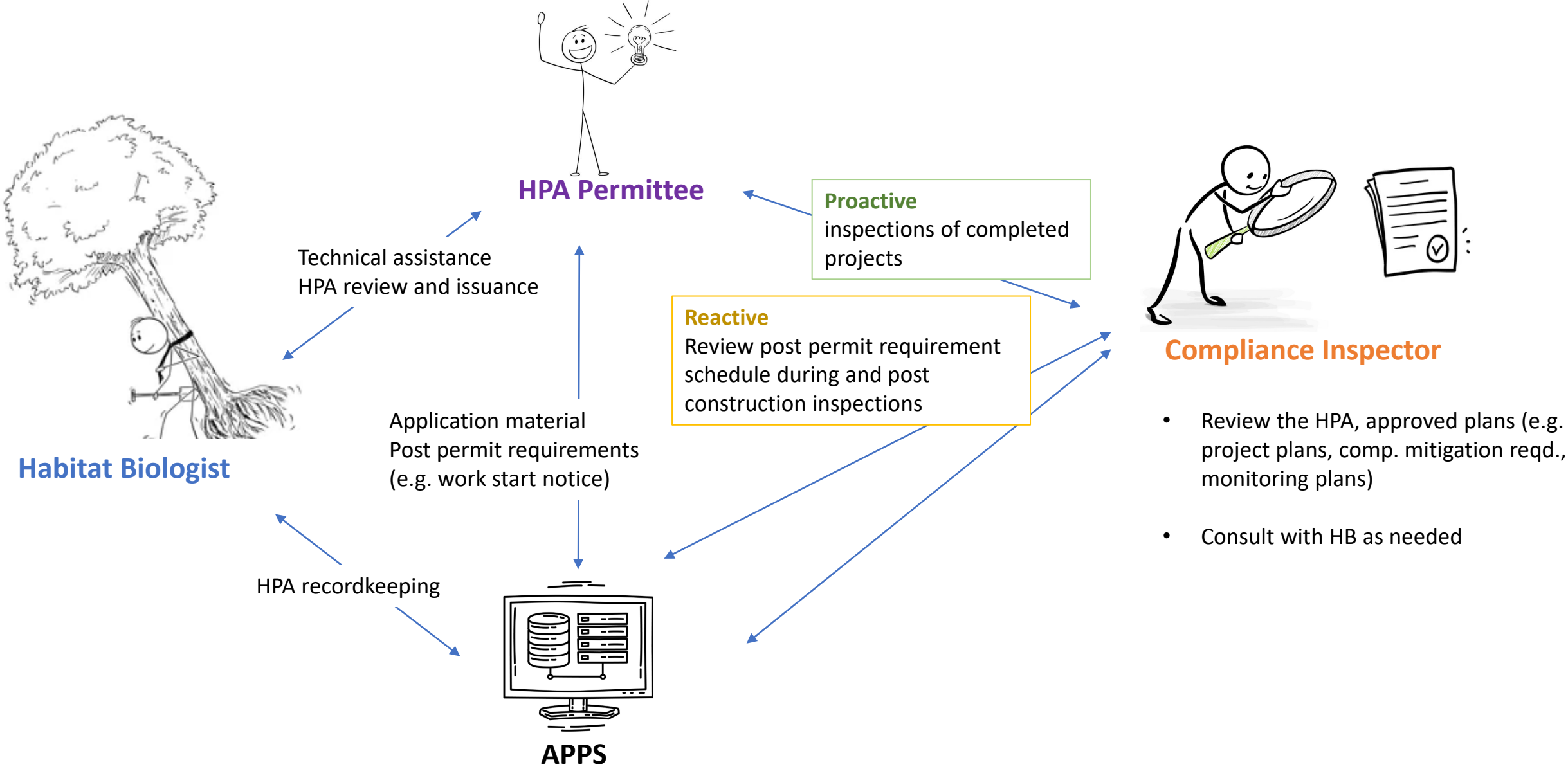
Community and partners



Landowner/ HPA Permittee

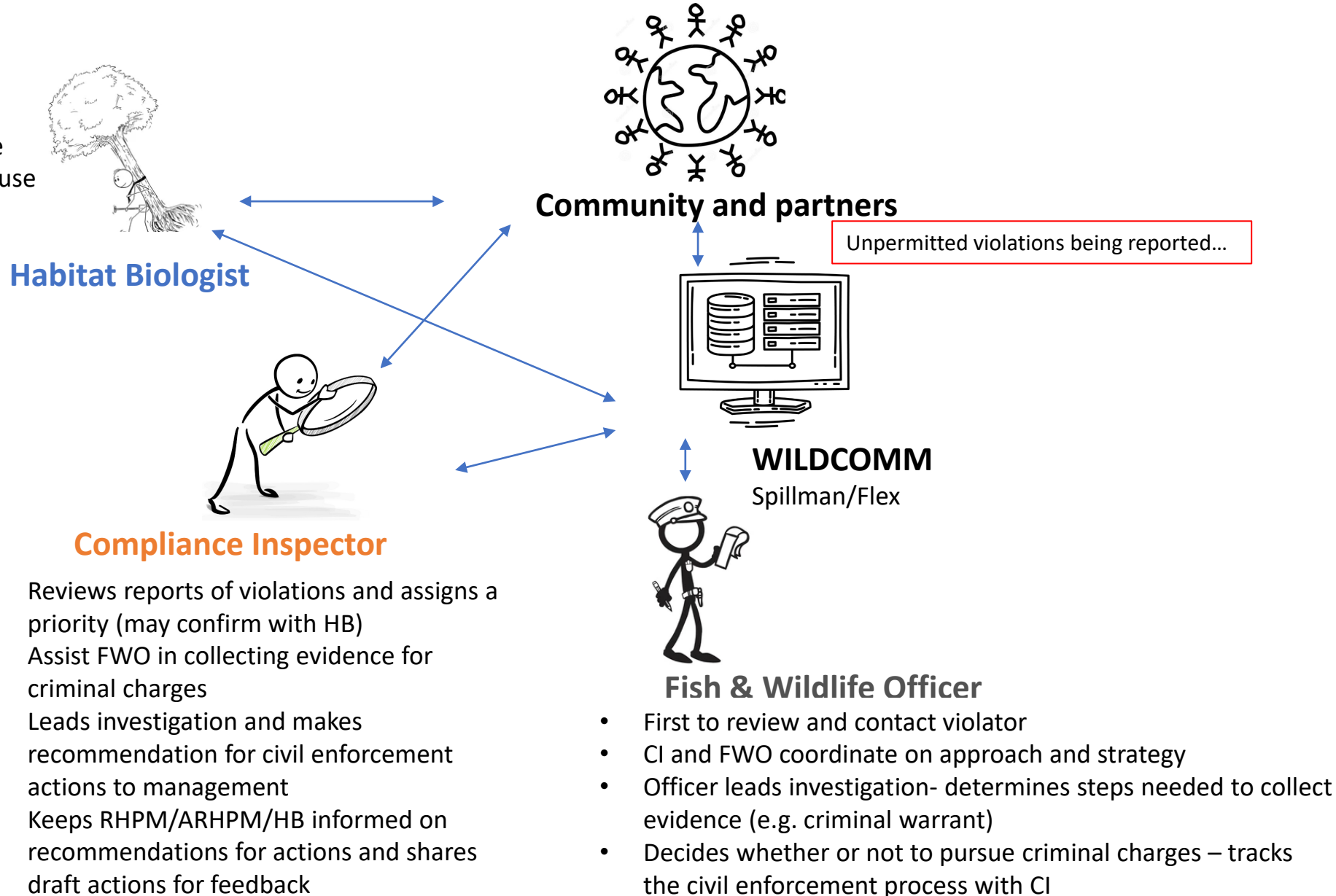


Permitted Projects HB + CI



Unpermitted Violations HB + CI + FWO

- Watershed knowledge
- Local habitat and fish use
- Relationships
- Issue permits





Compliance Division
Program Improvements

Program Goals

Implement program guidance and monitor effectiveness, adapt

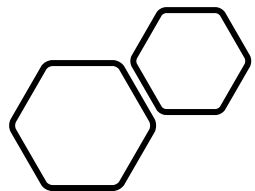
- Implement existing inspection prioritization guidance, adjust prioritization guidance as we learn more
 - Strengthen collaboration
- Improve data analytic capacity
- Evaluate focus (permitted vs. unpermitted) and track wins/challenges

Streamline existing operations

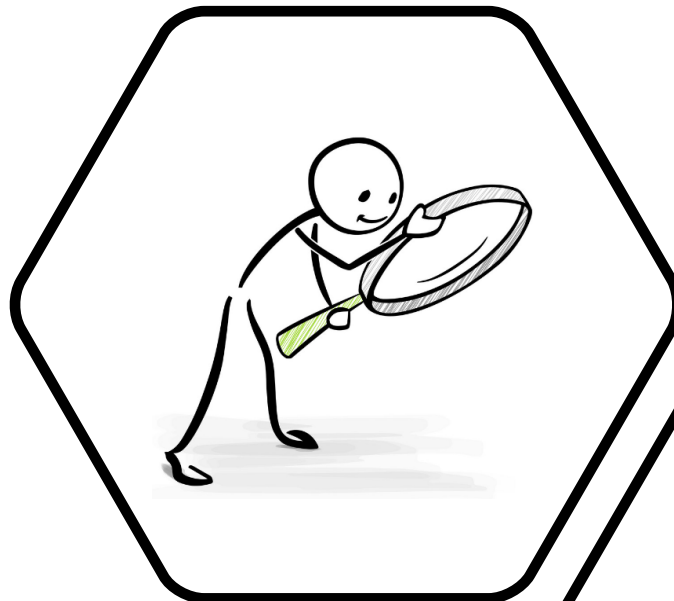
- Create a standard business workflow and develop a database central reporting repository- accessible for monitoring (HB, CI and enforcement)
- Develop and update existing guidance for HB + CI + FWO communication/collaboration
- Improve process for planning and scheduling inspections – spatial
- Tracking and monitoring tools- caseload management
- Automate internal review steps for authorizing manager

Targeted external outreach and education: Tribes, local govt, state agencies

Internal feedback to Protection Division/Regional managers to improve HPAs



Spillman/Flex



- All unpermitted violations in one database
 - Data will inform type of unpermitted violations
- Both CI and FWO's access to dispatched calls- improved coordination on strategy
 - CI can assist with labeling prioritization
 - CI can screen and assist with eliminating non- HPA violations or TA opportunities
- Improved communication
- Will inform how to update policy 5212



HPA Compliance Database



ArcGIS®
Survey123

- Permitted projects and reports of unpermitted violations geospatially displayed
- CI will enter inspection notes in the form in the field
- Database for civil enforcement authority actions – HB access for status, or information about investigation/site
- Improved data analytics
- Access to all (HB, ARHPM, RHPM)

Compliance Examples

Civil Compliance Enforcement Response Meter



You followed the rules, didn't impact fish but forgot the HPA



Let's talk



Remove the unpermitted work



Questions

Green Cove Creek Culvert

Upstream



Upstream



Upstream



Upstream



Upstream



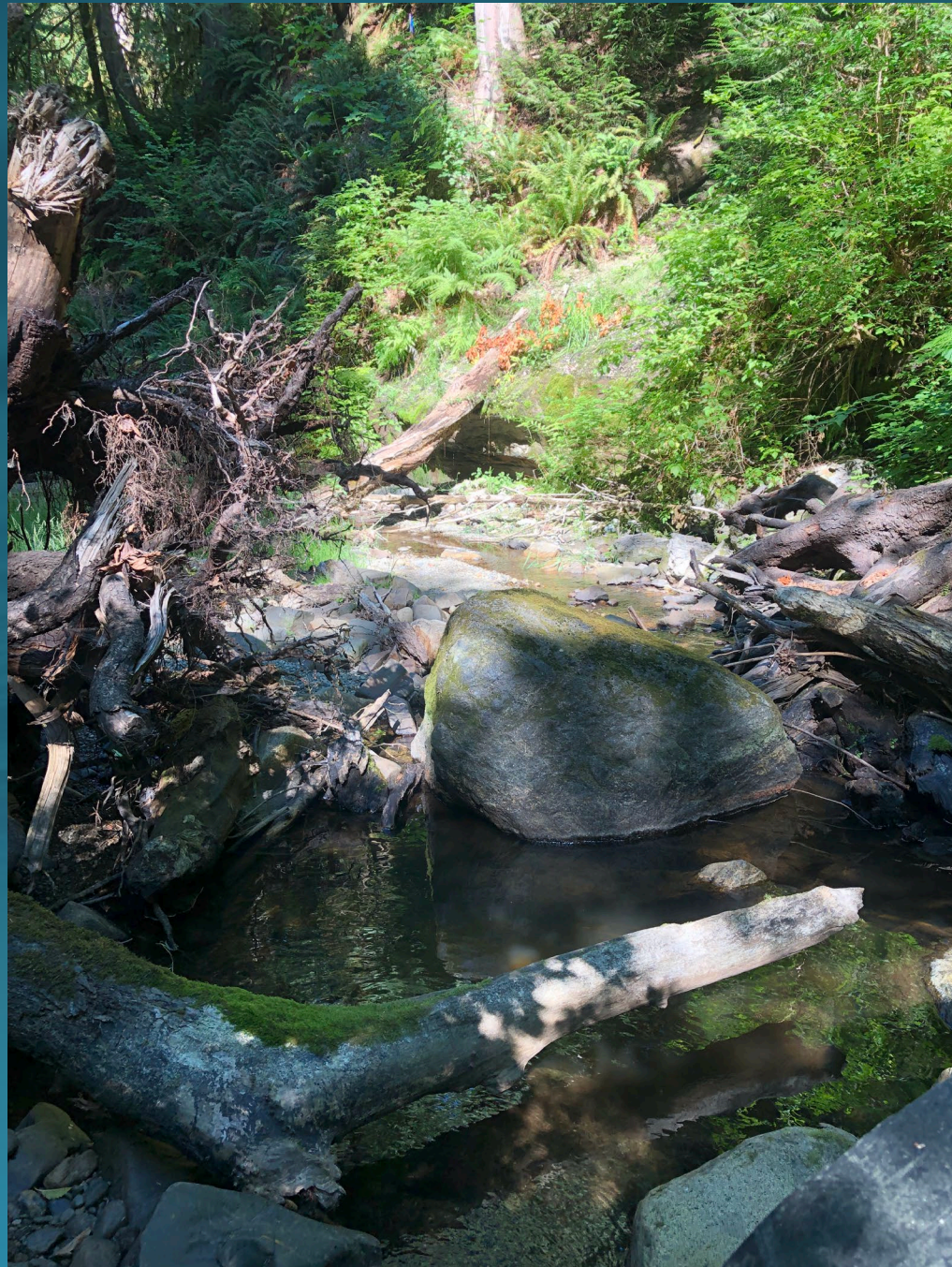
Downstream



Downstream



Downstream



Timeline

Year	Event
Early 19070s	60-inch and 18-inch culverts installed
2019	WDFW determines that the culvert is a complete fish barrier due to holes in the bottom of the culvert
2021	County inspection reveals culvert roof is collapsing
Nov. 2021	Culvert is sliplined after WDFW issues an expedited HPA. HPA includes a contract agreement obligating Thurston County to install a permanent repair and restore fish passage by Sept. 15, 2024
Jan. 2022	Culvert backs up during a 25-year storm. Upstream water depth reaches a maximum of 17 feet and backwatering reaches several hundred feet upstream. This event erases upstream channel characteristics such as the ordinary high water mark and LWM.
Nov. 2022	WDFW issues a Fish Habitat Enhancement Project steamlined HPA for a bridge
Summer 2024	Bridge construction commences