



HPA Rule Update Briefing and Public Hearing

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Overview

- **Process** with public, tribes, local, state and federal government agencies.
- How proposed rules **improve fish protection**.
- **Concerns** with proposed rules and staff response.

Rule Update

Process

Rule Update Process

- First draft rules in 2011.
- Stakeholder advisory group formed 2011.
 - 18 representatives from forest, farm, and construction industries, tribes, mineral prospectors, environmental community, ports, local, state, and federal agencies.
- Second draft rules in 2012 result of input from advisory group.
- Third and fourth draft rules in 2013.
- Seven statewide public meetings in fall 2013.
- Over 60 meetings with individual entities and small groups.

Rule Update Process

- Responded to comments to two versions of the proposed rules and DPEIS.
- Content of CR 102 (pre-filing) distributed May 29, 2014.
- CR 102 filed July 16, 2014; available for comment through Aug 15.
- Developed and distributed amendments to CR 102 based on agreement with stakeholders and tribes.
- Draft rule packages received AAG staff review and comments.

Improved Fish Protection

Project design improvements
Science-based work windows
Water quality

Project Design Improvements

- 
- Water crossings
 - Overwater structures
 - Bank protection structures

Water Crossings – then and now

1994

Emphasis is on adult salmon passage and reducing the risk of crossing failure.

Only 2 design methods both with significant drawbacks for fish and stream health.

Withstand 100-year flood
Prevent flooding
Avoid construction impacts.

Principles

Culverts

Bridges

2014

Emphasis on all-species passage and the protection of habitat by unconstrained stream processes.

More methods that directly address the passage of all species and stream health (stream simulation).

Avoid impacts to channel functions.
Allow for meander migration.
Provide clearance for debris.

Overwater Structures – then and now

1994

Emphasis on protecting important saltwater habitats.

Minimize shading of shallow saltwater areas used by juvenile salmon.

Principles

Design

2014

Emphasis on protecting important freshwater and saltwater habitats.

Minimize shading of freshwater and shallow saltwater areas.

Bank Protection – then and now

1994

Emphasis on limiting the amount of bank protection.

Use large rock to protect property.

Principles

Design

2014

Emphasis on determining the cause of erosion and the risk to property to access if bank protection is needed.

Use alternatives to protect property from erosion so natural, habitat-forming processes can occur.

Science Based Work Windows

- Protects freshwater spawning and incubation periods for priority fish species.
- Work times in saltwater areas are adjusted to protect juvenile salmon.
- Work times for herring spawning beds and rockfish nursery and settlement areas are identified.

Water Quality

- Wood treated with oil-based compounds no longer approved.
- Wood treated with copper compounds is limited.
- Erosion and sediment control and pollution prevention BMPs.
- BMPs to prevent the introduction of aquatic invasive species.

Other Improved Fish Protection Categories

Reduce Harm to Habitat

- Riparian vegetation protection
- Reduced impacts from dredging
- Improved beaver dam removal or modification
- Aquatic vegetation protection

Reduce Harm to Fish Life

- Work area dewatering protections
- Protection from noise

and staff response

Concerns

Primary Concerns

- Jurisdiction
- Permit Streamlining
- Project Costs
- Mitigation Costs and Requirements
- Staff discretion implementing rules
- Rule making process

Jurisdiction

Concerns

- 1) Expands authority to projects conducted landward of OHWL.

Staff Response

- 1) Authority not limited to OHWL.
- 2) Hydraulic project defined in statute as one that will use, divert, obstruct, or change the bed and/or natural flow of waters of the state.
- 3) If authority limit was OHWL, would reduce protection of fish life.

Permit Streamlining

Concerns

- 1) General permits and model HPAs are issued without site visits or site specific impact analysis, reducing fish protection.
- 2) Uncertain which projects would be eligible for model HPAs.

Staff Response

- 1) General HPAs issued for low risk projects
 - ~2000 projects of the HPAs.
 - Includes specific, programmatic provisions for range of project types.
- 2) Model HPAs streamline permitting for 'green' projects
 - Provides incentives for more fish-friendly projects.

Bridge Costs

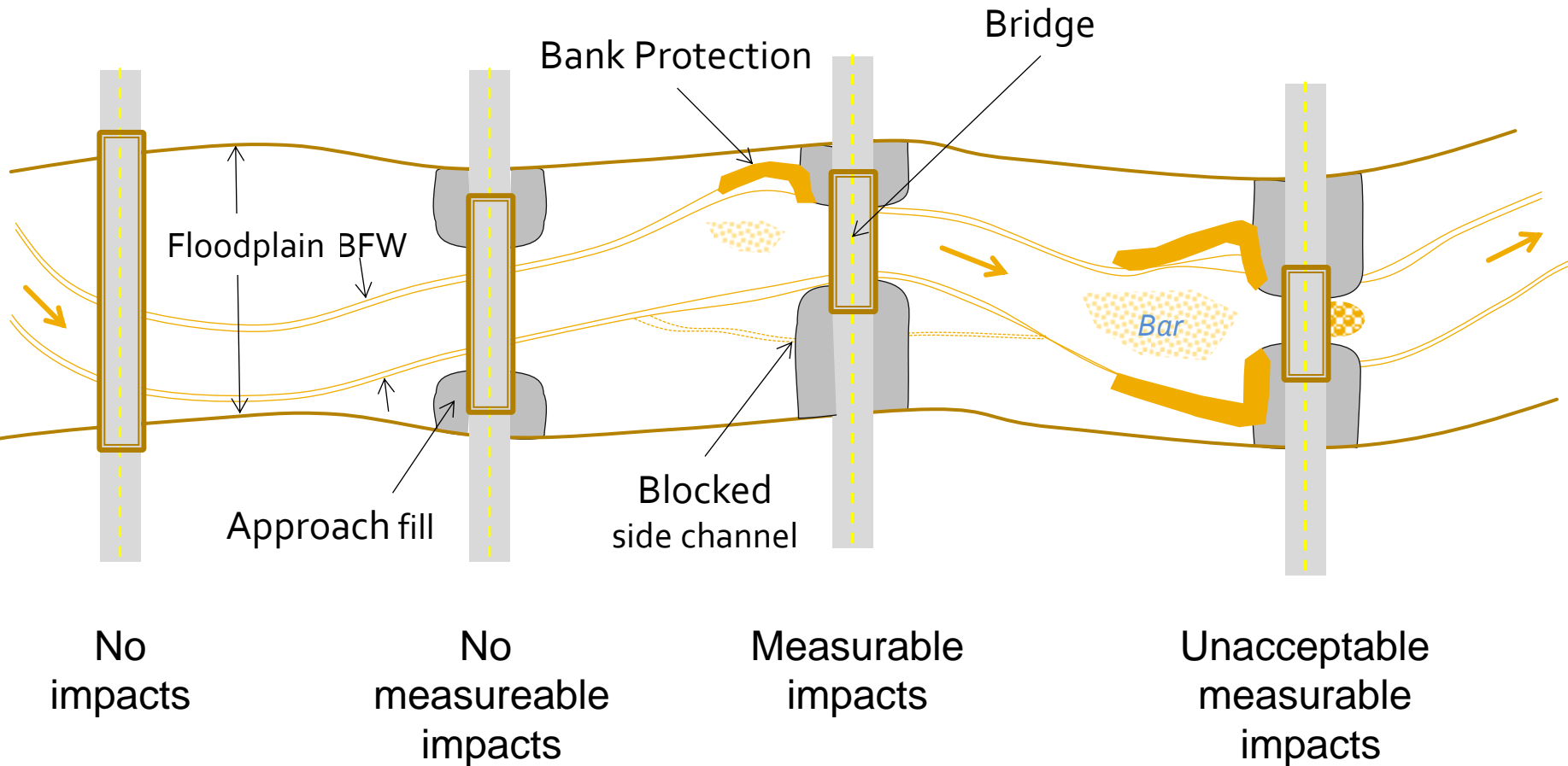
Concerns

- 1) Full span bridge will be required over floodplains.
- 2) Velocity criteria results in more compensatory mitigation.
- 3) Impacts on channel migration zone are incorporated into project impact assessment.

Staff Response

- 1) Full span bridge not required over floodplain.
- 2) Velocity criteria will be assessed to determine if the design may have habitat impacts.
- 3) Bridges must allow for channel migration to minimize need for future scour protection.

Bridges should be designed to have no measureable impacts to fishlife. They do not have to span the floodplain.



Seven of 8 recently permitted bridges pass the proposed WAC provisions

Stream	Road	Owner	Year	Complies w/ V.5 WACs
Snoqualmie R	Tolt Hill Rd	King Co.	2009	Yes
Sauk R	Sauk Prairie Rd.	Snohomish Co.	2006	Yes
NF Snoqualmie	N. Fork Rd.	King Co.	2007	Yes
May Ck	419 th #572	Snohomish Co.	2010	Yes
Garrard Ck	Forrest Rd	Greys Harbor Co.	2011	Yes
Mormon Ditch	Hampton Rd #261	Whatcom Co.	2009	Yes
Xtrib. Elk R	Schmidt Rd	Greys Harbor Co.	2008	Yes*
Tahuya R	Belfiar Tahuya Rd	Mason Co.	2010	No - too short
		*incomplete information but likely complies		

Culvert Costs

Concerns

- 1) Uncertainty with process and requirements for alternative designs; will be more difficult to be approved.
- 2) “stream simulation” and full-span bridges should be the only acceptable design standards.

Staff Response

- 1) Will develop procedure to provide clarity on process and approval criteria; requires DFW environmental engineering approval.
- 2) Alternative designs also protect fish life and may provide cost savings to the applicant; may require monitoring and reporting of performance, and adaptive management.

Mitigation Costs

Concerns

- 1) Maintenance requires altering the structure to comply with new standards and/or trigger compensatory mitigation.
- 2) Sediment removal and large woody debris trigger compensatory mitigation.

Staff Response

- 1) Routine maintenance and repair work will not trigger compensatory mitigation. Maintenance work that requires rehabilitation or replacement must comply with proposed rule standards.
- 2) Compensatory mitigation may be required depending on impact to fish habitat.

Compensatory Mitigation

Concerns

- 1) Rules do not require adequate mitigation to achieve no-net-loss of fish habitat from cumulative impacts.
- 2) Project impacts should be measured using pre-project site conditions.

Staff Response

- 1) Current authority does not include assessment of cumulative impacts.
- 2) Baseline is defined as impacts from current project, not pre-project conditions.

Rule Implementation

Concern

Uncertain how the rules will be implemented on-the-ground post-adoption.

Staff Response

- WDFW will develop rule procedures for staff to assist in consistent and accurate implementation of the rules.
- WDFW will engage with industry, tribes, environmental community, local governments, and state agencies to implement the rules.
 - Provide training
 - Work together at project site to clarify rule intent and secure common understanding
 - If necessary, bring rule update to the Commission based on adaptive management with stakeholders and tribes.

Rule Making Process

Concern

- Revise comment period for CR-102, SBEIS, SPEIS and scientific documents for a minimum of 60 days.

Staff Response

- Four years working with stakeholders, CR 102 is fifth version, two draft PEIS.
- 30 days or more additional comment period for those relatively new to the hydraulic code will not be adequate.
- Staff will work with these stakeholders over the next year or more to clarify rule intent, provide training, and work to revise pertinent rule sections if needed.

Considerations for rule adoption

- Large rule package with significant fish protection improvements.
- In total, six years of effort to strike a balance with improved fish protection and construction practices.
- If rules are updated, WDFW will work with regulated community, environmental community and tribes to successfully implement.
- May need to refine rules in two or more years based on adaptive nature of implementation.

The End

