Department of Fish and Wildlife Legislative Response Hydraulic Project Approval (HPA) Fees, Types, Cost Analysis, and Forecasted Revenue

SHB 1128 Legislative Response

- WDFW Staff Support:
  - Greg Hueckel-Habitat Program A.D.
  - Pat Chapman-Regulatory Services Coordinator
  - Bill Joplin-Licensing Program Mgr.
  - Frank Hawley-Licensing Budget Mgr.
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Overview

Hydraulic Project Approval Legislative Directive

This document is the Department of Fish and Wildlife (WDFW) response to SHB 1128: Section 307 (27) of the 2007 – 2009 Washington State operating budget requires WDFW to develop a fee schedule for the Hydraulic Project Approval (HPA) program by December 1, 2008.

> "…$1,190,000 of the general fund—state appropriation for fiscal year 2008 are provided solely to replace state wildlife account funds for the hydraulic project permitting program, including the development of a permit fee schedule for the hydraulic project approval program to make the program self supporting. Fees may be based on factors relating to the complexity of the permit issuance. The fees received by the department must be deposited into the state wildlife account and shall be expended exclusively for the purposes of the hydraulic project permitting program. By December 1, 2008, the department shall provide a permit fee schedule for the hydraulic project approval program to the office of financial management and the appropriate committees of the legislature."

The recommended fee schedule is forecasted to generate approximately $4.5 million in revenue each fiscal year, which is expected to offset approximately the same amount in expenses the Department incurs each fiscal year. Chapter 77.55 RCW, which authorizes the Department to issue HPAs for hydraulic projects, does not allow the Department to impose fees for any aspect of the HPA program. The Legislature has never granted the Department authority to charge fees for HPAs.

A 2002 task force report to the legislature provided multiple arguments against instituting fees for HPAs, including:

- HPAs sometimes are duplicative with other permits; applicants should not have to pay for HPAs when other permits cover similar elements.
- HPA fees reward inefficiencies, WDFW should implement cost-saving procedures to make program efficient.
- Levying fees could discourage habitat improvement projects.
- Fees may increase regulatory overlap.

Conversely, the 2002 task force argued that establishing a HPA fee structure would stop subsidizing the costs for "...reviewing and regulating construction projects that impact or harm fish life." The report references four additional points for establishing HPA fees:

- Fees could instill accountability and improve services offered.
- Fees create a funding source for protecting fish and their habitats.
- Fees would foster program improvements that would help protect our state's quality of life.
- Most natural resources permitting programs in state and local government are fee based.

While the task force could not reach consensus on whether fees should be charged for HPAs, they did reach the following condensed conclusions on some parameters that must be considered if fees are adopted.

- Any fees collected should be dedicated to the HPA Program.
- Before any fees are collected the Department needs to demonstrate improvements in the HPA Program.
- Implement a mechanism for periodic review of the HPA Program and an annual report should be produced to report the fees collected.
- Any fees structure should consider the complexity of each type of HPA.
- The Department needs to increase staff accessibility and consultation to applicants prior to applying and paying for HPAs.
- Fees should be equitable and structured to recover the Department's expenses.

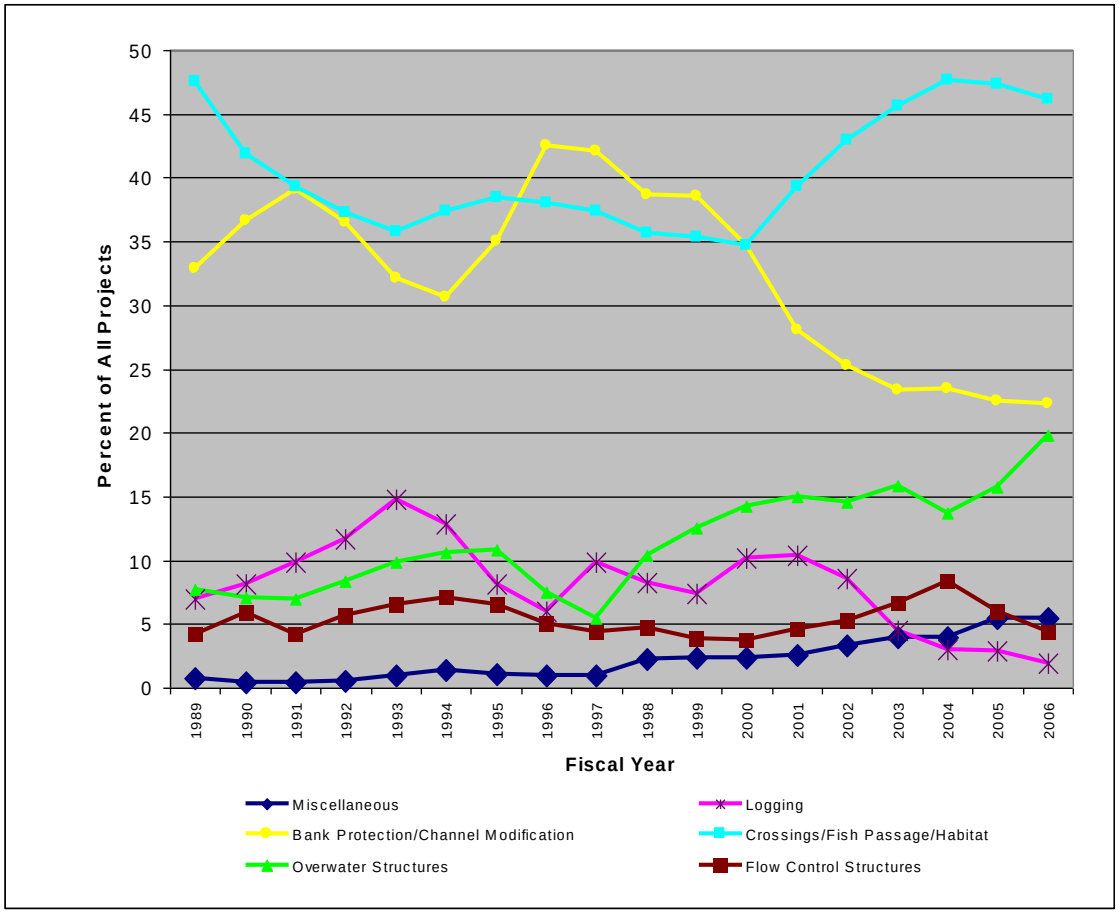
To develop a fee schedule meeting the requirements of SHB 1128 WDFW analyzed HPA program data collected over 20 years. Following development of a draft of this document, WDFW convened a meeting of key stakeholders that would be impacted by fees for HPAs and solicited comments from them. We revised the fee schedule in response to some of those comments.

The outline below provides a comprehensive review of the HPA fee schedule, activities involved to recover expenses for issuing HPAs, and the forecasted revenue from HPAs:

1.) **Common HPA Projects and Customer Base:** Describes the customers and the types of HPA projects by businesses and governments.
2.) **Quantity of HPAs Issued Annually:** Defines the number of HPAs the Department is forecasting to issue each fiscal year.
3.) **Types of HPAs Issued:** WDFW recommends five different types of HPAs that the public can purchase or modify, as necessary.
4.) **Department Costs for Issuing and Managing HPAs:** Provides the Department's Administrative and Technical costs for issuing all HPAs.
5.) **Recommended HPA Fee Schedule:** Describes a fee schedule for each HPA type, and a fee schedule that allows the Department to recover costs for issuing permits.
6.) **Forecasted Revenue vs. Program Costs:** Presents the forecasted revenue for all HPAs types, along with the forecasted expenses to issue and manage HPAs.

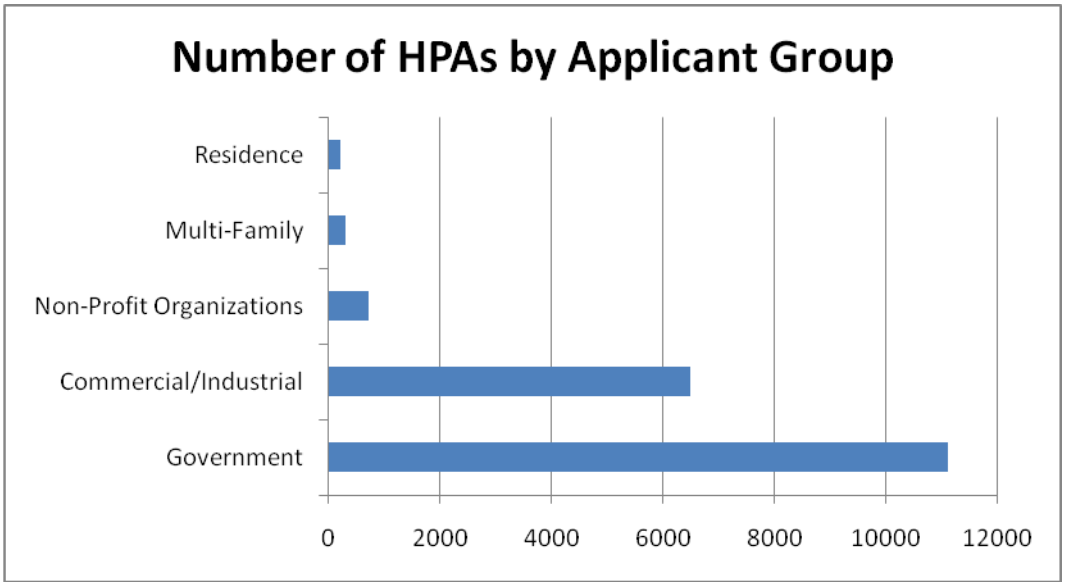
1. Common HPA Projects and Customer base

A. Common HPA Projects: Water crossings and bank protection are the two most common project types in all WDFW regions aside from Region 5 (Southwest) where water crossings are the most common project type, followed by logging and then bank protection. Logging is also the third most common project type in Regions 1 (Eastern) and Region 6 (Coastal). Over water structure and piling projects are common project types in Regions 1, 2 (North Central), 4 (North Puget Sound), and 6. These Regions have large, developed lakes and reservoirs, and Regions 4 and 6 have extensive marine shorelines. Channel and habitat modification, fish passage correction, and flow control structure projects are consistently prevalent in all six Regions.



Number of HPAs Issued by Project Classification, 1989-2006

B. HPA Customer Base: State and Local governments or agencies submit the most HPA applications (see figure below). The top two government entities requesting HPAs are Washington Department of Natural Resources, and the Washington State Department of Transportation with over 5,300 applications in nearly 10 years. However, the number one applicant of HPAs falls in Commercial/Industrial group, that being Weyerhaeuser Timber Company, which has obtained nearly 3,100 HPAs for the same period. Weyerhaeuser Timber Company is responsible for 48% of the applications in the Commercial/Industry followed by Crown Pacific with 8%.

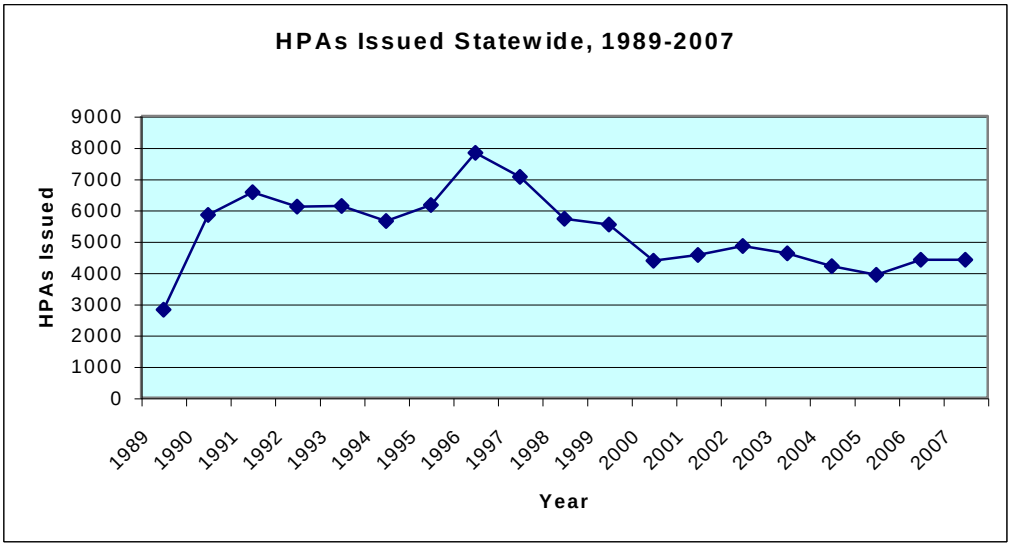


Number of HPAs by Applicant Group, 1989-2008

2. Quantity of HPAs Issued Annually

The number of individual HPAs issued in any given year is NOT a constant and has been on a declining trend, largely due to issuing more programmatic-type HPAs and issuing HPAs for longer time periods (up to 5 years). WDFW has no control over the number of applications for HPAs it may receive over a year. Consequently, a revenue target based on a specific fee structure and schedule may or may not be met in any given year.

Since 1997, the average number of HPAs issued has declined by nearly 44%. However, the number of HPAs issued in 2007 was close to the average for 2001-2006 (4,411 issued in 2006; average 2001-2006 was 4,426). Between 2005 and 2007 WDFW issued an average of 4,250 HPAs per year.



Number of HPAs Issued Statewide, 1987-2007

The number of programmatic-type HPAs from WDFW anticipated for completion each fiscal year is approximately 660. About 10,200 pamphlet HPAs (Gold & Fish, Aquatic Plants & Fish) have been distributed annually. The Department estimates that about 1,700 of these pamphlets are actually used as HPAs. The remainder are distributed at trade shows and other events to attendees that never use them as authorization to conduct the hydraulic projects they authorize. Because a fee will be charged for all pamphlets under this proposal, we anticipate that the number of pamphlets issued will decline to the number actually used for HPAs.

Average Number of HPAs Issued, 2005 – 2007

HPA Type	Average Number of HPAs Issued from 2005 - 2007
Pamphlet	1,700
Minor	357
Medium	2,856
Major	357
Programmatic	680
Annual HPAs Forecasted	5,950

The Department used these estimates to develop a fee schedule, forecast revenue and calculate expenses for this analysis. Additional description of the HPA types is provided in Section 3.

3. Type of HPAs Issued

The types of HPAs have been categorized based on their complexity and the amount of technical and administrative work necessary to process the application and issue the HPA.

Pamphlet HPAs are preprinted HPAs that permit specific activities as authorized by statute. Pamphlet HPAs incorporate rules adopted by the Department. Applications are not required for pamphlet HPAs.

Many HPAs are issued for more than a single season, and standard HPAs may be issued for up to five years. Standard HPAs fall into four types according to the complexity of the project they are authorizing: Minor, for projects that are non-complex and are usually completed in less than 1.5 years; Medium, for projects of moderate complexity that are usually completed within two years; Major, for projects that are resource intensive and may last five years or more; and Programmatic, for multiple projects over a wide geographic area or for low-risk projects that are conducted repeatedly over the life of the HPA, and which may last up to five years. In addition, any standard HPA that has not expired may be modified, if necessary, to adapt to changed project conditions or construction requirements.

The table below provides the different attributes that define each type of HPA along with a summary of work activities and time for issuing each HPA:

HPA Types and Description

Description	Pamphlet	Minor	Medium	Major	Programmatic
% of All HPAs Issued	29%	6%	48%	6%	11%
Average Review Time by WDFW	None	2.5 hours	5 hours	50-70 hours	5-10 hours
# of WDFW Site Visits	None	≤ 1	≥ 1	multiple	multiple
WDFW Discussions with Applicant	minimal	few/none	several	multiple	multiple
Complexity	low	low	moderate	high	moderate
Typical Work Activities Authorized	small scale prospecting and mining; aquatic plant control	re-vegetation; bridge painting; installation or removal of booms	culvert installation in fish-bearing waters; bank protection; conduit installation using a trench	new marinas, jetties, or dikes; extensive transportation projects; dams	statewide culvert maintenance; installation of scientific instruments

4. Department Costs for Issuing HPAs

A. Recovering Administrative HPA Processing Costs

$95.00 Application Fee: The Department recommends an application fee of $95.00 to recover expenses for the collection and management of HPA revenue, merchant processing expenses from credit and debit card charges, and costs for receipting, fulfilling, and automating the HPA application process. Collectively, the Department is forecasting general administrative expenses at approximately $566,797. The $95 application fee has been determined by dividing the 5,950 applications into the estimated $566,797 administrative expenses.

The application fee would be applied to the estimated 4,250 new HPAs received each year. Pamphlets (1,700 annually) have been priced to recover the administrative and publication costs for issuing them.

HPAs Administrative and Fee Collection Costs Used to Develop Application Fee

	Work Activity	FTEs	Hours	Expenses		
				$ Each Application	Fiscal Year	Biennium
Administrative Processing Costs for 5,950 HPAs	Administering Applications	2.39	3728.4	$ 41.09	$244,508	$ 489,017
	Information Services	2	3120	$ 25.85	$153,813	$ 307,626
	Customer Service Calls	0.07	102.4	$ 1.13	$ 6,723	$ 13,447
	Correspondence	0.05	83.3	$ 0.92	$ 5,469	$ 10,939
	Subtotal	4.5	7034.1	$ 68.99	$410,514	$ 821,028
Fee Collection Costs for 5,950 HPAs	Reconciling and Cash Management	0.30	471.7	$ 4.51	$ 26,805	$ 53,610
	Refunds	0.04	60	$ 0.88	$ 5,230	$ 10,460
	Credit Card Banking Fees	0	0	$ 13.03	$ 77,504	$ 155,008
	Fulfilling Applications	0.3	468	$ 7.86	$ 46,744	$ 93,487
	Subtotal	0.6	999.7	$ 26.27	$156,283	$ 312,565
	Totals	5.2	8033.8	$ 95.26	$566,797	$1,133,594

B. Technical HPA Costs

The Department has analyzed all of the duties that the Regional and Headquarters staff are engaged in relating to HPA planning and regulation, and other technical activities. Technical activities include watershed planning, salmon recovery, landscape planning, water allocations, and state and National Environmental Policy Act reviews. The table below summarizes the positions, FTEs, and related expenses specifically for issuing and maintaining HPAs, and do not include costs related to other Program activities.

Expenses Related to Issuing HPAs and Maintaining the HPA Program

Habitat Positions	FTEs or Activity Hours	Technical Review Expenses			Staffing and Costs Notes
		Annual or Hourly	Fiscal Year	Biennium	
Area Habitat Biologist	23.78	$56,620	$1,795,413	$3,590,827	Area Habitat Biologists completing site visits and training for all HPAs
Field supervisor	3.24	$64,361	$278,038	$556,075	Field Supervisors assist with issuance of HPAs.
Forests & Fish Biologist	3.78	$64,187	$323,503	$647,005	Costs of biologists specializing in forest or fish habitat issue
Regional Program Manager	2.46	$108,375	$266,602	$533,204	Regional Habitat Manager and Olympia staff field questions on HPA.
Environmental Engineers	4	$115,482	$461,926	$923,852	Environmental Engineers provide technical analysis and address technical questions.
Supervision, policy support	2.75	$96,694	$265,908	$531,817	Management Policy based on weighted average.
WDFW Enforcement	3.25	$3,150	$409,440	$818,880	Considers 2.5% of an Enforcement officer's time, and their admin. overhead.
Administrative Appeals	6 hearings	$3,125	$18,750	$37,500	Considers Administrative Law Judge hearing 6 appeals each year.
Legal Support	1,202 hrs	$105.29	$126,563	$253,125	Considers approximately 1,200 hours each in legal consultation with AGO on Hydraulic permits.
Total Costs		$573,820	$3,946,143	$7,892,285	

5. Recommended HPA Fee Schedule

The Department is recommending the following fee schedule to recover the approximate $560,000 in administrative expenses, and $3,946,143 in technical expenses each year. The table below provides a description of each HPA type and the appropriate fees that may apply to each.

HPA Fee Categories

Application: Applied to HPAs to recover administrative and fee collection costs.

New Permit: Applied to new HPA projects, based on their complexity.

Modification: Applied to reissued HPAs in which applicant alters a previously approved project to such an extent that a new HPA must be issued with provision changes. The Department is forecasting minimal HPA modifications with implementation of a fee schedule.

Recommended HPA Fee Schedule

HPA Types	HPA Fees			HPA Type Descriptions
	Application	New Permit	Modification	
Pamphlet	None	$95	None	Pamphlet HPAs are programmatic-type HPAs that include specific conditions that must be followed, plus provide technical information for protecting habitat. The conditions set in the pamphlet are adopted as rule.
Minor	$95	$230	$92	These are low-risk projects, single season, and involve few or no discussions between the applicant and WDFW and typically require one or no field visits. Average application review time is approximately 2.5 hours per HPA.
Medium	$95	$460	$184	These are projects of moderate complexity, and involve several discussions between the applicant and WDFW and at least one field visit. Any project that is not a minor or a major project falls into this category. Average application review time is approximately 5 hours per HPA
Major	$95	$6,030	$184	These projects are typically complex, often are multi-jurisdictional, and involve extensive discussions between the applicant and WDFW. They usually require multiple meetings and field visits, and have the potential for significant impacts to fish life. Average application review time ranges from several weeks to several years.
Programmatic	$95	$600	$184	These are typically for routine, low impact activities, but because they are for broad geographic areas, they take more time to process than an individual HPA. It is a short-term, up- front, but time-intensive effort, for long-term permit streamlining.

6. HPA Forecasted Revenue vs. Program Costs

The table below summarizes the Department's revenue projection from HPAs. The projections are based on historical averages of HPAs issued or modified from 2005 to 2007. The revenue projections are compared against estimated technical and administrative expenses. Based on projected expenses and timeframe to establish this new activity, the Department will need 6 months of funding, or approximately $2.7 million in FY10, for the following HPA fee startup costs:

- Establish administrative procedures, staffing, and training.
- Establish technical procedures, staffing, and training.
- Outreach and education program to stakeholders.
- Software and hardware to implement online application, credit, and debit card processing.

Funding will be used to support half of the Technical and Administrative staff as the HPA fee assessment and collection program is developed. Cash generated by HPA fees will support the HPA program operations and activities.

HPA-Forecasted Revenue vs. Program Expenses

Description		HPA Types				
		Pamphlet	Minor	Medium	Major	Programmatic
Fees	New HPAs	$ 95	$ 230	$ 460	$ 6,030	$ 600
	Modification	N/A	$ 92	$ 184	$ 184	$ 184
	Application	N/A	$ 95	$ 95	$ 95	$ 95
Forecasted HPAs	Annual	1,700	357	2,856	357	680
Forecasted HPA Revenue (FY)	Annual	$ 161,500	$ 82,110	$ 1,313,760	$2,152,710	$ 408,000
	Application	N/A	$ 33,915	$ 271,320	$ 33,915	$ 64,600

Summary of Revenue vs. Program Expenses		FY	Biennium
Forecasted Expenses:	Technical	$3,946,143	$ 7,892,285
	Administrative	$ 566,797	$ 1,133,594
	Subtotal	**$4,512,940**	**$ 9,025,879**
Forecasted Revenue		$4,521,830	$ 9,043,660
Estimated over/under:		**$8,891**	**$ 17,781**

Appendix

1. Stakeholders Invited to Comment on Draft HPA Fee Proposal

Greg Christensen, Resources Coalition
Richard Doenges, Washington Department of Natural Resources
Eric Johnson, Washington Public Ports Association
Chris McCabe, Association of Washington Business
Bill Robinson, The Nature Conservancy
Kristin Sawin, Weyerhaeuser Company
John Stuhmiller, Washington Farm Bureau
Gordon White, Washington Department of Ecology
Bruce Wishart, People for Puget Sound
Joe Witczak, Washington Department of Transportation

2. Details of Applicant Groups

HPAs Issued to Applicants, 1989-2008

Type of Applicant	Applicant	Number of HPAs Issued
Commercial or Industrial	Weyerhaeuser Company	3091
	ITT Rayonier Timberlands Operating Company	835
	Crown Pacific Limited Partnership	535
	Campbell Group The	505
	Boise Cascade Corporation	424
	Plum Creek Timberlands Lp	329
	Longview Fibre Company	322
	Simpson Timber Company	274
	Hanson Natural Gas Resources Co	180
Government	WDNR	2966
	WDOT	2467
	WDFW	1369
	King County Public Works Department	825
	Wash St Parks & Recreation Commission	753
	Snohomish County Public Works Department	724
	King County DOT	705
	USDA Forest Service	591
	Skagit County Public Works Department	549
Multiple Family Use	Mosby, Wayne	47
	Prewitt, Barbara	33
	Hess, Betty	32
	Gilbreath, Linda	31
	Parker, Joe	26
	Brakus, William	24
	Johnson, Jack	23
	Hess, Ivan	22
	Alcott, James	20
Private Non-Profit Agency	Nooksack Salmon Enhancement Association	125
	Hood Canal Salmon Enhancement Group	85
	Skagit Fisheries Enhancement Group	76
	Wild Olympic Salmon	49
	Mid Puget Sound Fisheries Enhancement Group	41
	South Puget Sound Salmon Enhancement Group	41
	Washington Trout	39
	Lower Columbia Fish Enhancement Group	35
	Fish First	34

HPAs Issued to Applicants, 1989-2008

Type of Applicant	Applicant	Number of HPAs Issued
Public Non-Profit Agency	Drainage Improvement District #8	31
	Jefferson County Conservation District	30
	Clallam County Conservation District	29
	Drain District #21	25
	Alderwood Water District	22
	Waitsburg-Coppei Flood Control District	15
	Drain Improve District #8	14
	Mount Vernon Drainage District #21	14
	Stillaguamish Flood Control District	13
Single Family Residence	Mosby, Wayne	47
	Beebe, Lloyd	30
	Edwards, S	28
	Lebon, Geoff	22
	Gates, William	19
	Smith, David	19
	Dorough, David	18
	Keen, Kemp	18
	Rupp, Douglas	18

3. Hydraulic Project Type Examples

HPA Type	Hydraulic Project Description
Pamphlet	• Small scale mineral prospecting • Aquatic plant control
Minor	• Revegetation • Any work conducted solely with the use of hand or hand-held tools • Aerial conduit installation, removal, or repair • Conduit installation using boring • Dredging less than 50 cubic yards of bed material, exclusive of saltwater habitats of special concern • Bridge or culvert removal or placement in non-fish bearing waters • Bridge painting • Bank protection of less than 100 linear feet using bio-engineering techniques which may incorporate less than 50 cubic yards of rock, but no concrete or other man-made materials • Remote site incubator placement or removal • Single-family residential dock or non-grounding float removal, replacement, or maintenance within the existing footprint • Repair or maintenance of boat ramps or launches not to exceed 25% of the existing footprint, or to result in an increase in the vertical height of the existing ramp or launch • Removal or replacement of 18 or fewer pilings • Felling and yarding activities associated with an approved forest practice application • Maintenance or repair of single-family residential bulkheads, not to exceed 25% of the total length of the existing bulkhead, or to result in additional waterward encroachment • Temporary or permanent stream gauges installation or removal that does not include instream construction work • Installation or removal of livestock watering areas for farms of 10 acres or less • Installation or removal of pumps for diversions of one cubic foot per second or less • Installation or removal of booms • Temporary ford installation, use, and removal • Installation or removal of anchoring or mooring buoys, exclusive of saltwater habitats of special concern • Installation, removal, or maintenance of navigation aids
Medium	• Bridge or culvert installation or removal in fish-bearing waters • Mechanical aquatic plant control not addressed by the Aquatic Plants and Fish pamphlet • Most shoreline modification or bank protection projects • Conduit installation or removal using trenching • Mineral prospecting not addressed by the Gold and Fish pamphlet • Dredging more than 50 but less than 500 cubic yards of bed material freshwater or more than 2,000 cubic yards in marine waters • Bridge or culvert removal or placement in fish bearing waters • Single-family residential dock or non-grounding float removal, replacement, or maintenance outside of an existing footprint • Repair or maintenance of boat ramps or launches that exceeds 25% of the existing footprint, or that results in an increase in the vertical height of the existing ramp or launch

HPA Type	Hydraulic Project Description
	• Removal or replacement of more than 18 pilings • Maintenance or repair of single-family residential bulkheads exceeding 25% of the total length of the existing bulkhead, or that results in additional waterward encroachment • Temporary or permanent stream gauges installation or removal that includes instream construction work • Installation or removal of livestock watering areas for farms of more than10 acres • Installation or removal of pumps for diversions of more than one cubic foot per second • Permanent ford installation, use, and removal • Installation or removal of anchoring or mooring buoys in saltwater habitats of special concern
Major	• Transportation projects of statewide significance • New marinas, jetties, or dikes • Channel realignment in fish-bearing waters • Gravel removal or dredging of more than 2,000 cubic yards of bed material in marine waters or 500 cubic yards in fresh waters • Cross-state or cross-jurisdictional conduit line crossings, including stormwater and sewer outfalls • Dams not under jurisdiction of the Federal Energy Regulatory Commission • Fish passage barrier removal with replacement or retrofit using such methods as baffles or log controls for passage through or over a structure • Fish screening devices for diversion of more than one cubic foot per second • New over-water structures, or the repair or replacement of more than 25% of an existing over-water structure, not including over-water structures for single-family residences • Filling of fish-accessible wetlands or fish-bearing waters
Programmatic	• Projects in which work is conducted at multiple specific sites and these are listed by site in the HPA • Projects that are routine, low-impact activities, are conducted on a recurring basis over a wide geographic area and for which the HPA does not list specific sites. o Ground/surface water monitoring o Fish retention screen and dam maintenance o Fish traps o Selective riparian vegetation pruning o Beaver dam removal or modification o Large woody material removal or relocation from bridges o Bridge and ferry terminal maintenance o Channelized stream maintenance and debris/sediment removal o Culvert maintenance o Fishway facility maintenance o Marine and freshwater sediment test boring o Culvert replacement in non-fish bearing streams o Ferry terminal pile replacement o Stream gage installation o Creosoted wood removal from marine beaches o Derelict vessel removal o Derelict creosote piling removal o Replacement of relocation of aids to navigation

4. Stakeholder Comment Letters on Draft HPA Fee Proposal

Washington State
Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

November 20, 2008

Mr. Greg Hueckel,
Assistant Director of the Habitat Program
Washington State Department of Fish and Wildlife
600 Capitol Way N.
Olympia, WA 98501-1091

Dear Mr. Hueckel:

Re: Proposed Fee Schedule for the Hydraulic Project Approval (HPA) Program

Thank you for notifying WSDOT about a potential permit fee schedule for the hydraulic project approval program. WSDOT staff has reviewed the *Department of Fish and Wildlife Legislative Response Hydraulic Project Approval Fees, Types, Cost Analysis and Forecasted Revenue Report, October 2008* (Report). Per your request, WSDOT has forwarded proposed technical edits to the Report. In addition, we have the following concerns about the proposed fee schedule:

1. WSDOT currently funds staff positions at Washington State Department of Fish and Wildlife to obtain HPA permits for our projects. In the 2007-2009 Biennium, WSDOT spent approximately $650,000 on this program. Based on the number of HPAs we typically receive, we estimate that WSDOT would spend a similar amount under the proposed permit fee schedule. We do not support paying permit fees in addition to funding WDFW staff positions.

2. The Report shows that the majority of HPA permit applications in the last 20 years are from state agencies. Imposing fees for obtaining HPA permits would result in multiple transfers of funds between state agencies, resulting in added administrative costs and inefficiencies.

3. The Report proposes a rate of $93.00 for each additional hour of work outside of what is included in the annual fee for each permit. Both of our agencies have strongly promoted early and frequent project coordination. WSDOT is concerned that an additional hourly fee would create a disincentive to early and frequent project coordination, especially for smaller projects and maintenance activities that have limited operating budgets.

Thank you for requesting our input on the Report and the proposed permit fee schedule. I look forward to working with your agency in the future to address the concerns noted above.

If you have any questions, please feel free to contact Christina Martinez at (36) 705-7448 or me at (360) 705-7480.

Sincerely,

Megan White, P.E., Director
Environmental Services Office

MW:dla

November 20, 2008

WDFW Habitat

Greg Hueckel
Peter Birch
Pat Chapman
Marc Daily

600 Capitol Way N.
Olympia, WA 98501-1091

Subject: HPA Fee Report to the Legislature. Specifically for Mineral Prospecting.

In reviewing the proposed schedule, I have concerns that the Department is overlooking a very significant consideration in connection with charging fees for the Gold & Fish (G&F) pamphlet: the degree to which its fee proposals will discourage permitted activities, resulting in less than forecast revenues and imposing collateral damage upon economically-depressed rural communities that rely upon such activities for incremental revenues (as well as direct State tax losses).

The Department estimates over 10,000 pamphlets (G&F and Aquatic) have been distributed annually. The Department speculates that about 1,700 of these pamphlets are, and will be, actually used for HPAs in connection with small scale prospecting and mining, such that the total number of pamphlets issued will decline to 1,700 annually. Thus the Department forecasts $221,000 in annual revenue from a $130 annual pamphlet fee.

While it is not separately set forth in the Department's forecasts, it is estimated that in 2008 alone, there were some 300 mineral prospecting applications for HPAs, outside pamphlet usage. The Department proposes a $700.00 for such written HPAs, with an annual renewal cost of $420.00. Thus the Department appears to be relying upon forecast revenue of an additional $210,000.00 per year for written HPAs associated with small scale mining and prospecting.

The Department's forecasts take no account of the fact that much small-scale mining and prospecting is discretionary in nature, and will be profoundly discouraged by the large fees proposed by the Department. Failure to account for any change in citizen behavior as a result of the fee initiative is irrational, and also fails to abide by the Legislature's directive to plan for making the program self-supporting, as it undermines the revenue forecasts upon which the Department is relying.

As a practical matter, the whole idea of a pamphlet-based approach is to identify activities whose impact is sufficiently insignificant that no specific regulatory effort need be expended upon them beyond preparation of the pamphlet. In this context, the Department appears to be improperly assessing non-existent costs for pamphlet-covered activities upon those conducting such activities. (We understand that a federal grant [may have] partially covered the

costs of preparing the current pamphlet, again suggesting that there is no basis for recovering fictitious costs not actually borne by the State.)

Finally, since the proposed fees promise to be devastating to small-scale mining in the State, and the small businesses that support such mining, we believe that the Department is required to perform a Small Business Impact Statement (SEBIS) pursuant to chapter 19.85 RCW prior to implementing this fee schedule.

Sincerely,

Greg Christensen

4256 Hoff Rd
Bellingham, WA 98225