Permitting Factsheet #1

HYDRAULIC PROJECT APPROVAL
Washington State Department of Fish & Wildlife

Introduction

All fish have habitat needs related to water quality, quantity, and to the other physical and biological features of the stream or body of water in which they live. For example, salmon and steelhead spawn and live for a time in a stream before going to the ocean. They require an ample supply of clean, cool, well-oxygenated water. Adults need clean gravel in which to spawn and juvenile fish require in-stream cover such as tree parts, boulders, or over-hanging banks to hide from predators. Vegetated stream banks shade the water from the warming effects of the sun. Insects drop off overhanging vegetation and provide food.

Construction activity in or near the water has the potential to kill fish directly. More importantly, this activity can also alter the habitat that fish require for a long time after the construction work is complete. Direct damage or loss of habitat results in a direct loss of fish production. Direct killing of fish is usually a one-time loss. Damaged habitat, however, can continue to cause lost production of fish for as long as the habitat remains altered. Major construction projects individually have a large potential for damage, but more habitat is lost from the cumulative effects of many smaller projects, each with a minimal level of impact.

The Law

All construction projects in State waters are governed by RCW 77.55. Known as the “Hydraulic Code”, any person or government agency must first obtain an approval from the Washington Department of Fish and Wildlife (WDFW) before commencing work. Approval is given in the form of a Hydraulic Project Approval or “HPA”. A “hydraulic project” is the performance of any work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state. So, before installing a flood gate, dredging, or removing a beaver dam in a jurisdictional watercourse, a HPA must be obtained. Failure to obtain a HPA before engaging in any work within or above state waters, including drainage maintenance activities, is a gross misdemeanor. Every
person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. Additionally, WDFW may levy civil penalties of up to one hundred dollars per day for violation of the Hydraulic Code. It is also a gross misdemeanor to violate any requirements or conditions of a Hydraulic Project Approval.

When is an HPA needed?

The law requires that any person, organization, or government agency wishing to conduct any construction activity that will use, divert, obstruct, or change the bed or flow of state waters must do so under the terms of a permit (called the Hydraulic Project Approval-HPA) issued by the Washington State Department of Fish and Wildlife. State waters include all marine waters and fresh waters of the state, except those watercourses that are entirely artificial, such as irrigation ditches, canals, and storm water run-off devices. The major types of activities in freshwater requiring an HPA include, but are not limited to: stream bank protection; construction or repair of bridges, piers, and docks; pile driving; channel change or realignment; conduit (pipeline) crossing; culvert installation; dredging; gravel removal; pond construction; placement of outfall structures; log, log jam, or debris removal; installation or maintenance of water diversions; and mineral prospecting. It is important to emphasize that the above are only examples of major types of activities requiring a HPA and that any construction activity that uses, diverts, changes, or obstructs the bed or flow of state waters requires a HPA. Approval of a permit is valid for a period of up to five years from the date of issuance.

How do I apply for a HPA?

The form to apply for a HPA is called a Joint Aquatic Resource Permit Application (JARPA). A JARPA consolidates seven permit application forms for federal, state, and local permits and is used to apply for a HPA and also for Water Quality Certifications or Modifications from the Department of Ecology, Aquatic Resource Use Authorizations from the Department of Natural Resources, and Army Corps of Engineers permits. The form can be found at http://www.ecy.wa.gov/biblio/ ecy07015.html. Copies of the JARPA form must be submitted to all participating agencies that require a permit for your project, including the Department of Fish and Wildlife. There is no charge for the HPA. A similar JARPA for work on the Lummi Indian Reservation is also available.

A complete written application for a permit may be submitted in person or by mail and must contain the following:

1. General plans for the overall project.
2. Complete plans and specifications of the proposed work within the ordinary high water line in freshwater.
3. Complete plans and specifications for the proper protection of fish life.
4. Notice of compliance with any applicable requirements of the State Environmental Policy Act or other applicable laws.

Prior to JARPA review, State Environmental Policy Act (SEPA) compliance must be completed, usually by the Whatcom County SEPA official. SEPA is a Washington State policy that requires state and local agencies to consider the likely environmental consequences of a proposal before approving or denying the proposal. A “SEPA Checklist” can be obtained from Whatcom County Planning and Development Services. This checklist serves as a means to address all environmental issues associated with your project. Within 30 days of receiving your Checklist, the Whatcom County SEPA official will make one of three determinations:

1. DNS - A Determination of Non-significance means the project is unlikely to have a significant adverse environmental impact.
2. MDNS - A Mitigated Determination of Non-significance means the project may have some adverse impacts but that those impacts are mitigated for in the project proposal.
3. EIS - In cases where the risk of adverse environmental impacts are high, an EIS determination will be made, meaning the applicant must complete an Environmental Impact Statement for their project.

Drainage maintenance on modified natural watercourses will require a HPA
4. **EXEMPTION** - Some project proposals may receive a SEPA Exemption for small construction maintenance projects. Dredging projects of any size are not SEPA exempt.

The Washington State Department of Fish & Wildlife will grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the State Environmental Policy Act (SEPA). Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned.

• Fish distress and water quality - When water is present, Best Management Practices (BMPs) must be implemented to minimize immediate impacts to fish and to prevent the downstream release of sediment-laden water.
• BMP Factsheets #s 6-17 describe numerous BMPs necessary to protect fish and other natural resources.
• Habitat Improvement Projects designed to offset or “mitigate” for the negative impacts from work within the watercourse will likely be required and should be included in any permit application.

A pre-application or post-application site visit with a WDFW Habitat Biologist is usually arranged to review a proposed project. Drainage Improvement Districts in Whatcom County should have 5-year HPAs addressing all of their potential maintenance projects.

Note: Diking District #1 is located partially on the Lummi Indian Reservation and is subject to tribal laws for activities that occur on Reservation lands. The Lummi Nation Water Resources manager (360 384-2212) should be contacted regarding permitting requirements.

**HPA Conditions for Drainage Maintenance Projects**

Drainage maintenance projects must include measures designed to minimize negative impacts to natural resources. Some common conditions necessary for drainage maintenance work include:

• Work Window - the time period when the fewest fish are present and the streamflows are lowest. Unless otherwise noted, the work window is August 1 to September 30.

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