



WFWOComments, FW1 <wfwocomments@fws.gov>

HCP plan and DEIS economic evaluation review - Same letter with matrix re-formatted

1 message

Charles Draper <cdd111jr@gmail.com>

Thu, Jan 1, 2015 at 1:25 AM

To: WFWOComments@fws.gov, scott.anderson@noaa.gov, tim_romanski@fws.gov, Margaret Freeman <fmmargaret@qwestoffice.net>, "cdd111@nwlink.com" <cdd111@nwlink.com>

Dear Mr. Romanski

I discovered the letter sent earlier, some how had the matrix formatted in such a way that it may be difficult to read. For clarity, the attached letter re-formats the matrix allowing the reader to view the matrix without having to move a boundary box. The contents of the letter remains the same.

Charles Draper

Salmon Bay Marina

President

Association of Independent Moorages (AIM)



2014HCP31-rqstEstend+ExempShpCnl.doc

167K



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*Via Email (WFWOComments@fws.gov, Tim_Romanski@fws.gov)
Facsimile (360.753.9405), and U.S. Mail*

December 31, 2014

Tim Romanski
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Lacey, Washington 98503
Tim Romanski, U.S. Fish and Wildlife Service tim_romanski@fws.gov

Scott Anderson
NOAA Fisheries
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Re: WDNR Aquatic Lands HCP DEIS -

Dear Mr. Romanski

I have had the opportunity to review a letter sent to your office from Eglick, Kiker and Whited PLLC. dated December 31, 2014 concerning the HCP.

In reviewing their document, it reflected many of my same concerns and therefore I will not reiterate the same. I will include two sections within this letter.

1. The first is to review the DEIS (Draft Environmental Impact Statement) economic impact quantification in dollars and jobs.
2. The second will be to explore portions of the ALHCP. Due to time constraints, only a portion of the Aquatic lands Habitat Conservation Plan "Draft" (ALHCP) has been reviewed and critiqued for the purpose of this letter for consideration.

I was directed to specific portions of the Draft DEIS by Mr. Toba of the DNR because I had asked for the actual economic impact that will be estimated as a result of the implementation of the HCP. I was told that Sections 3.13, 4.13 and 5.3.8 related directly to the economics of the HCP implementation. The DEIS accompanied the Aquatic Lands Habitat Conservation Plan on Social and economic environment.

It is imperative to note that the Lake Washington Ship Canal is a unique fresh water ship canal under Federal Government Jurisdiction and any plan should treat the Ship Canal as unique. If the intent is to protect endangered species established by the Federal Government then the guidelines established

by the federal government should be followed and not added to. In some instances, the Federal Government has already studied and recognized specific species within the Ship Canal and have determined they do not require additional scrutiny. Further the Lake Washington Federal Ship Canal is an artificial freshwater ship canal enlarged from a waterway. It is not a harbor and was defined in 1894 by congress with its extents established by the River and Harbors acts, including appurtenances from Puget Sound to Point Webster in Lake Washington, which have been platted and secured to the United States Government, both in Warrantee deed of June 23, 1900 and by Washington State legislature in February 1, 1901.

1. Now to review the sections indicated by the DNR concerning the DEIS.

3.13 Social and Economic Environment has subsections relating to overall State owned lands. The descriptions of 3.13.2.1 make assumptions that:

- A. "The available data address differences in costs of materials used in marina areas; it is likely that the relative differences of costs in freshwater areas are similar."

In actuality Fresh water structures are different than Salt Water Structures. Wood piling placed into freshwater structures below the waterline can last hundreds of years because of the lack of air to dry rot pile below the waterline and lack of wood boring animals that would compromise the strength of the Pile or structures. The life expectancy of Freshwater structures far exceeds those in Salt water.

- B. "... The material and installation costs of these alternative materials are typically greater than those of treated wood (Table3-4). If the service life of the material is taken into account, however, the resulting annualized material and installation costs of two alternative materials – molded fiberglass and galvanized steel grating – are equal to or less than the annualized cost of treated wood".

This too is in error for treated pile and structures located below the Water line in fresh water. If the structures are already there, no further structures will be needed except to replace fasteners, therefore the cost of replacing a piling and submerged wood is a total economic loss to any business if it does not need to be replaced.

- C. "The annualized costs of other surface materials may be up to six times the annualized cost of pressure-treated wood."

This does not take into consideration that the cost to rebuilding the docks in order to support steel grating, or to pay for additional cleanup for spills or releases into the water that may occur as a result of through grating access to the water. Having a solid deck will far out way the grated deck material in environmental cleanup costs. As marina operators, we are familiar how important containment is even with BMP's. The hazards around the water are greater and therefore require greater care and containment potentials.

3.13.2.2 Revenue, Jobs and Income

The estimate of 96 percent of use authorizations are in western Counties of Washington State, however this section says little what revenue, jobs or income is generated in all areas. The one area it does briefly talk about is in Recreation.

Recreation:

"A recent study estimated that recreational boating contributes approximately \$343 million per year to Washington's economy supporting 1900 jobs."

This information should be updated. If you talk to Mr. Hebert of Hebert research, and to AWB (Association of Washington Businesses) you will discover that the economic effect of boating in Washington State is \$4billion dollars and not \$343 million/ year. In addition the economic effect of recreational moorages in Seattle for boats 28' to 60' is \$1Billion Dollars. This does not include the commercial ships and fishing fleet.

While the income to the marinas is significantly less than \$1billion dollars, without the “boat garages” furnished by those marinas, the boats will not be in the water and the thousands of laborers who maintain the boats, sell the boating products, supply the fuel and make the sales as well as provide teaching of mariner skills, would be out of jobs. In addition, many of the slips that are leased are from port facilities who contribute only \$1/ year for hundreds of acres on what the state of Washington Claims as their land. This is contrary to what private sector pays to the State of Washington for permit fees, ranging in the tens of thousands of dollars/ submerged acre.

3.13.2.3 Ecosystem Services

Again this is supposed to be an evaluation of economic information, however there is no information as to the cost of the “ecosystem services”, present or future for any of the plans.

4.13 Social and economic Environment:

“This subsection describes the direct and indirect effects of the three alternatives on costs associated with using state-owned aquatic lands, revenue, jobs and income...”

The intent of the section is great, however the resulting output does not have any substantiation of what can be expected.

“Because the types and location s of future use authorizations cannot be accurately predicted, the types and locations of existing use authorizations are assumed to be representative of the types and locations of future use authorizations for this analysis. The primary features of the proposed alternatives that may influence the costs associated with uses of state-owned aquatic lands (and, thus, potentially to influence revenue, jobs and income in the affected industries) are the implementation of practices and programs that may increase the costs associated with using state-owned aquatic lands.”

Basically the environmental impact says that it will cost more than current and result in less jobs if the HCP is placed into affect!

The economic impact must be quantified for the user (permit tee) of the “DNR” land and for the State.

These far reaching ideas that are being proposed in the HCP will drive marinas out of business because they will not be able to comply and will not be willing to place their assets into a non-profitable venture that has a high liability and high potential to fail.

5.3.8 Social and Economic Environment

This section has a review of 3.13 and 4.13, both of which basically had no quantitative information or costs or projections and this section is the same. It only says that there will be an economic effect!

So in summation of the economic and environmental costs of the DEIS is:

The HCP is going to have a high economic cost to DNR permit holders, but the DEIS states it has no idea what the economic effect or cost of the HCP implementation will be. It appears however, the State of Washington is willing to put businesses out of business in the Lake Washington Ship Canal because it wants to make a contract with the Federal Government to control habitats on non-endangered fish species that surpasses the requirements of the Federal Government.

2. ALHCP

For the benefit of comments, this analysis is specifically for the Lake Washington Ship Canal due to its significantly different characteristics than any other body of submerged lands in the State of Washington. The reason for the change in character of the Ship Canal in particular is that it is wholly artificial and reconstructed by the Federal government by an Act of Congress in 1894 from the River and Harbors Act, including changes in water elevation, Water Flowage Rights, and releases from damage given to the Federal Government (not to the State of Washington) for damages that may occur to adjacent property owners.

Page 3-56) Table 3.23 Okanogan Ecoregion includes: Knig county, Kitsap county, Island county?	King county, Kitsap County and Island county should not be in Okanogan Ecoregion.
Chapter 5. The Operating Conservation Program Paragraph 2: “The intent of this planning effort is to contribute – on broad geographic scales – to the persistence and recovery of 29 covered species and to improve overall health and function of aquatic ecosystems.”	The number of 29 species are Larger than established by the Federal Governments. The total Number of species should Not exceed the Federal Governments direction.
DNR Mission: For managing state-owned aquatic lands and focuses on ensuring the sustainability of the resources managed, balancing economic and ecological benefits	Some lands that the State of Washington is assuming is under their ownership is in fact owned by the Federal Government. Those lands should be exempt including the ROW (Right of Way) for the Lake Washington Federal Ship Canal from Puget Sound to Webster point in Lake Washington.
5.1 (Pg 5-2) Under Program Goals	Goals have excluded the “Economic” portion of the balancing act that was a required part of the DNR Mission.
	Chapter 4 section 3 has several potential duplications and does not appear to consider existing bio-adjustments resulting from aquatic organisms that have adapted to counter the perceived DNR hazard form Creosote piles. See Report from Canada.

<p>Pg-5-3) Objectives:</p> <ul style="list-style-type: none"> *Avoid or minimize impacts to water and sediment quality. *Avoid or minimize alteration of natural habitat – forming processes, such as wave and current energy and sediment transport *Avoid or minimize alterations to and loss of physical habitat features (such as connectivity and substrate composition) and biological communities (such as native submerged aquatic vegetation and prey resources) that support the covered species. *Avoid or minimize disturbance and displacement of, or harm to, species covered under the habitat conservation plan. *Avoid or minimize permanent and temporary loss of habitat. 	<p>None of these objectives can be attained within the Lake Washington Ship Canal, especially Within the original portion of the Salmon Bay Waterway.</p> <ol style="list-style-type: none"> 1. The Sediment quality has been compromised from original dredging, and changing the water body from salt water into fresh water, and deeding the flowage rights to the Federal Government who controls the elevation of the flooded lands. 2. The Federal Government through Warrantee deed transferred on June 23, 1900. The Federal Government has acquired control over all the lands and waters upon, along, over and through the lands and waters within the ship canal right of way, allowing for dredging, changing flow, volume ,including substrate surface caused by dredging.etc. The state cannot control what happens to the waters or lands within the right of way. As a result, it should not attempt to require users of the land to conform to a plan that itself has little control over. 3. The habitat for fish transfer between Fresh Water and Salt Water is a transitory one created by changing the Black River. The substrate for Salmon Bay has totally eliminated the “Tide Flats” that would be void of water at low Tide”. 4. The native submerged aquatic vegetation have been totally eliminated within Salmon Bay because it was altered by Congress and by King County and the State of Washington Legislature.
<p>Pg 5-4) Goal 3 improve and restore habitat quality to compensate for unavoidable effects of covered activities.... Described as programmatic measures in Chapter 5, Section 2.3</p>	<p>In reviewing Section 5.2.3 “Programmatic measures”. Indicate that the measures include some HCP activities as well as non HCP measures.</p>

	<p>Those measures that are not HCP Should not be included within the body of this document because the proposed government Contract between Washington State DNR and Federal Government is strictly for the HCP.</p>
<p>Pg5-4) The operating conservation program of the habitat conservation plan:</p>	<p>Operating conservation program is missing a very important part of the initial intent for creating the HCP. The economic portion has been overlooked. This economic portion is necessary as was stated in the intro from Peter Goldmark, Commissioner of Public Lands, for “encouraging public use and access, fostering water dependent uses...”</p>
<p>Pg5-6) Monitoring and adaptive management:</p>	<p>*The text states “ The measures and standards presented in this chapter are based on best available science and are assumed to be capable of improving habitat and habitat conditions for covered species.” – This statement is in error in that it has not covered already tested and confirmed status of creosote piles that have been in service for over 5 years, has no effect on surrounding waters. Further the text’s assumption is eliminated by saying “...there is often significant uncertainty associated with the response of habitat and species to the proposed measures.” *No economic evaluation has been made to address if it is even reasonable for tenant / permit tee to even try and comply with the unknown . Generally biologists are not economists nor are the aware of out of pocket costs before a project has begun. If they were aware, then they would be an economist and not a biologist. A cursory view of the onerous requirements without a sense of what the costs will be, will results in property owners throwing up their hands, thereby eliminating the</p>

	<p>burden altogether. *The State needs to develop real numbers as to how much it will cost and then give proof that those real numbers are not just pie in the sky. Just the bioassay of properties will be in the thousands and possibly tens of thousands of dollars.</p>
<p>Pg5-6)Application of the operating conservation program to use authorizations of state owned aquatic lands: the process. ...“Standards Section 5.2.2) and programmatic measures (Section 5.2.3) for state-owned aquatic lands will be applied to use authorizations for all activities, including those not covered by the habitat conservation plan.... “ ... Documentation defining the requirements for the site and written justification of the inclusion or omission of measures will be stored in a habitat conservation plan database.”</p>	<p>Anything that is not included within the habitat conservation plan should not be included within a habitat conservation plan database.</p>
<p>Pg5-6) Washington DNR will not authorize a use of state-owned aquatic lands unless the operating conservation program requirements are included within the applicants' authorizing document.</p>	<p>This non-authorization should be Eliminated. Some lands that the state is claiming joint control of (such as the Lake Washington Ship Canal). The supreme Court of the State of Washington has said they cannot lease any land beyond the outer harbor line (Article 15 of the State Constitution), however the State Supreme court has said they may permit those lands to be used. The permit is (in theory) a joint occupation with the Federal Government in that many of the rights the state originally claimed at statehood through the equal footings were changed by act of Congress by deeding most of the rights away from the state to the Federal Government. If the Conservation program requirements are mandated to be part of any state authorized use, they may be in violation with the Federal Statutes and federal control by deed. The State may own but have limited authority to control and therefore should not limit itself to not being able to establish permits without the Conservation program caveat tied to it.</p>

<p>Pg5-6 and Pg5-7) New Proposed Uses and Existing uses are being dictated by Biologists.</p>	<p>Using Biologists to evaluate with sole discretion for a economic reasonableness standard is like using a hammer when pliers are needed. A non-independent biologist who has been told what to do by their boss and has nothing to do with economics will not give a objective view nor will they attempt to arrive at any solutions that are economically viable.</p>
<p>Pg 5-7) Existing Uses – covers impacts on species and habitats covered by the habitat conservation plan. (Excludes economic water oriented businesses. And relies on biologist to control the economic standards of Washington State.)</p> <p>Reauthorizations that fail to meet the commitments made in this Habitat conservation plan will not be authorized.</p>	<p>* Note that the plan exceeds the requirements of more species than currently named by the Fed. *The plan does not reflect the economic impacts for any particular geographical area such as the Lake Washington Ship Canal. It should delineate the particular geographical regions as to localized Economic impact. *The economic impact for recreational marinas in Seattle is over One Billion Dollars. While the State DNR may be willing to loose some of its permit fees for the sake of a biologist’s opinion, a greater effect will be realized in the tax basis at 9%+ on a Billion dollars and congressional intent of Congress if the Marinas go away. Other industries like shipping and fishing will also recognize significant Economic losses in the billions of dollars. (The report does not touch on those effects.) The wording “ will not be authorized” should be stricken.</p>
<p>Pg 5-8) Anticipated future renewals of Washington DNR use authorizations:</p>	<ul style="list-style-type: none"> The chart dated 2012, works on the assumption that dnr permittees/ leaseholders will be renewing their leases/permits. What is the economic effect to the State when they do not renew? No one else can lease the lands within the Ship Canal because if they are leased by someone else the other party will be blocking access to the

	<p>adjacent property owner which is in violation of the Federal Law that created the Ship Canal.</p>
<p>Pg 5-9) Implementation Schedule for Structural requirements for existing uses.</p> <ol style="list-style-type: none"> 1. Age of facility and life expectancy of structures and materials 2. Priority of environmental impacts 3. Maximum of 20 years to comply 4. Impacts of covered species 	<p>With the assumption that a tenant/permittee stays a tenant/permittee,</p> <ul style="list-style-type: none"> • Who determines the life expectancy of a facility? In the ship canal, submerged piling will last hundreds of years. • The DNR is implying that specific Structural changes will make a significant difference in the Habitat of endangered species within the Ship Canal. So far research has not shown that the prescriptions being recommended by the DNR do not correspond with the research performed by the Federal government and other institutions. Before requiring an implementation schedule the “best available science” handle must be established. So far, the State has not been using the “best available science and it has been basing decisions on poor assumptions that Salt water structures are equal to fresh water structures. It is a proven fact that submerged fresh water wood structures last almost indefinitely due to the fact no air can cause dry rot. The result is that submerged piling are as good and harder then the day they were installed provided they have not been damaged by an outside agency.
<p>Given time, a more complete critique can be completed.</p>	

In my previous letter to you dated December 4, 2014, I included additional facts concerning correction of the "best available science" that was being touted within the ALHCP.

Many of the changes and construction modifications within the HCP are based on shadow affect of structures over water and that smolts tended to swim on the edge of the shadow and predators tended to swim beneath the shadows.

Some of the major costs to conform to the HCP relate to how structures are built and what effects there are with fish.

Scientists have not yet figured out if the smolt swim next to the shadows to hide from predators by swimming into the shadows or if they swim next to shadows because they are afraid of the shadows, of even if that is where their food may be found.

In the report titled "Movement and Habitat Use of Chinook Salmon Smolts and Two Predatory Fishes in Lake Washington and the Lake Washington Ship Canal 2004-2005 Acoustic Tracking Studies" the following description was made:

- Holding Chinook salmon smolts also avoided moving directly beneath structures, but often resided near structure edges (within 2 m) for prolonged periods (up to 2 hours). Structures may provide a source of cover from predation, but may also increase predation risk. These interactions require further study.

Making economic decisions based on science's lack of understanding will not produce betterment for the citizens of Washington State.

I respectfully request that the HCP within the Lake Washington Ship Canal not be implemented.

Sincerely

Charles Draper III
Salmon Bay Marina
President Association of Independent Moorages (AIM)



WFWOComments, FW1 <wfwocomments@fws.gov>

Fwd: AWO Comments on DNR Habitat Conservation Plan

1 message

Romanski, Tim <tim_romanski@fws.gov>

Fri, Jan 2, 2015 at 8:37 AM

To: FW1 WFWOComments <wfwocomments@fws.gov>, LouEllyn Jones <louellyn_jones@fws.gov>

Tim Romanski
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----- Forwarded message -----

From: **Charlie Costanzo** <ccostanzo@vesselalliance.com>

Date: Wed, Dec 31, 2014 at 4:21 PM

Subject: AWO Comments on DNR Habitat Conservation Plan

To: "tim_romanski@fws.gov" <tim_romanski@fws.gov>, "lalena.amiotte@dnr.wa.gov" <lalena.amiotte@dnr.wa.gov>, "scott.anderson@noaa.gov" <scott.anderson@noaa.gov>
Cc: Lynn Muench <lmuench@vesselalliance.com>

Mr. Romanski –

Attached please find AWO's Comments on the proposed Habitat Conservation Plan.

Thank you very much for the opportunity to comment.

- Charlie

Charles P. Costanzo

Vice President – Pacific Region

The American Waterways Operators The logo for The American Waterways Operators (AWO) consists of three stylized, overlapping circles in shades of blue and grey.

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 **AWO DNR HCP Comments 12-31-14.pdf**
111K



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December 31, 2014

VIA Email

Mr. Tim Romanski
U.S. Fish and Wildlife Service
Washington Fish and Wildlife Office 510
Desmond Drive SE, Suite 102
Lacey, WA 98503-1263

Re: Proposed Aquatic Lands Habitat
Conservation Plan (HCP)

Dear Mr. Romanski:

The American Waterways Operators is the national trade association for the U.S. tugboat, towboat and barge industry. The industry safely and efficiently moves over 800 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources such as coal and petroleum, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of more than 4,000 tugboats and towboats engaged in barge towing, ship escort, marine construction and harbor services throughout the nation, including many that operate in the state of Washington.

Sixteen AWO member companies are headquartered in Washington, and many more operate tugboats, towboats, and barges on Washington waters. The towing industry provides the means to transport agricultural commodities out of southern Washington on the Columbia River and is integral in the oil, gas, mining, timber products, and fishing trades between Washington and Alaska. These vessels help to move tens of millions of tons of freight every year on Washington waterways, reducing congestion on the state's highways and railroads while producing fewer pollutants than trucks and trains. In addition, harbor and ship assist tugboats perform shipdocking, tanker escort, and fueling services in Washington's harbors and ports and help to ensure our position as a critical trade gateway to Asia and the Pacific Rim.

On December 1, 2014, shortly after AWO learned of the existence of the proposed HCP, AWO wrote to the Washington Department of Natural Resources (DNR) to request an extension of the December 4, 2014 comment period deadline to fully ascertain the impact of the HCP on AWO-member operations. The responsible agencies denied AWO's request for

an extension. Also, on December 1, 2014, AWO asked for a list of aquatic lands leaseholders who were provided notice of the HCP. DNR refused to provide the list adding that: *“those members of the American Waterway Operators that have an aquatic land lease from DNR were mailed a postcard in early September announcing the availability of the draft HCP and EIS for review.”*

Since that time, AWO has determined that several members do indeed hold aquatic lands leases but did not receive the postcard. Even so, a postcard notice for such a complex and far-reaching plan is grossly inadequate to provide protection for the property rights of aquatic lands leaseholders. AWO offers to participate in and strongly recommends a constructive and collaborative dialogue between impacted stakeholders and the USFWS to ensure that the HCP provides sufficient protection to impacted towing vessel operators and the Washington marine environment. Critical stakeholders were not appropriately engaged or provided timely notice of the HCP and its potential impacts to their businesses. The proposed HCP is complex and far-reaching. AWO is limited in its ability to provide substantive comments because of the inefficient notification period along with the ineffective outreach to impacted citizens. AWO echoes the comments and concerns voiced by the Washington Public Ports Association, the Northwest Marine Trade Association, and the Puget Sound Shipbuilders Association.

AWO and other stakeholders had less than a month to determine whether and to what extent our members would be affected by the proposed HCP. This is hardly enough time for associations, businesses, and individuals to study the document, assess potential impacts, and provide substantive feedback to the responsible agencies to allow sound policy decisions to be made. AWO strongly requests that the USFWS re-notice the HCP along with a vigorous outreach to stakeholders.

Please feel free to contact me should you have any questions.

Sincerely,



Charles P. Costanzo

Cc: Lalena Amiotte, DNR
Scott Anderson, NOAA Fisheries



WFWOComments, FW1 <wfwocomments@fws.gov>

Fwd: HCP Comments

1 message

Romanski, Tim <tim_romanski@fws.gov>

Fri, Jan 2, 2015 at 8:38 AM

To: FW1 WFWOComments <wfwocomments@fws.gov>, LouEllyn Jones <louellyn_jones@fws.gov>

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From: **Doug Dixon** <DougD@pacificfishermen.com>

Date: Wed, Dec 31, 2014 at 3:32 PM

Subject: HCP Comments

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In addition to our attached comments of December 4, 2014 we offer the following into the record:

The EIS is inadequate and will be disputed regarding the effects on business, and resulting quality of life, in the

State of Washington..

The significant impacts on both maritime and non-maritime businesses in the State of Washington, its people and the US economy, as Canada will become the port of choice, must be included in the EIS.

The economic impact of the HCP on existing small and medium size maritime service businesses was not analyzed with respect to costs of maintaining and expanding operations to service maritime based customers.

Many of these customers have a choice. If services cannot be obtained in general or at competitive prices, they will seek needed services out of state.

There will maritime service business that will have to close down.

More importantly, the negative economic/trickle-down effect on non-maritime businesses that support these maritime service businesses and their customers will be significant.

Pacific Fishermen Shipyard and PFI Marine Electric

Doug Dixon, General Manager

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Check us out on Facebook



Check us out on YouTube

From: Doug Dixon

Sent: Thursday, December 04, 2014 11:43 PM

To: 'alena.amiotte@dnr.wa.gov'; 'scott.anderson@noaa.gov'; tim_romanski@fws.gov

Cc: Larry Ward; Steve Sewell (steve.sewell@commerce.wa.gov)

Subject: HCP Comments

Our Comments attached. They are not complete. We were not given adequate notice or time to complete them.

Pacific Fishermen Shipyard and PFI Marine Electric

Doug Dixon, General Manager

(206) 718-0253

5351 24th Ave NW

Seattle, WA 98107

www.pacificfishermen.com



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Pacific Fishermen, Inc.

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Seattle, WA 98107
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December 4, 2014

Pacific Fishermen Shipyard and Electric occupies a property on the north side of the Lake Washington Ship Canal close to the Government Locks. This property has continuously been a shipyard since 1872. Our company has owned the property since 1946.

The following are our comments regarding the Draft Aquatic Lands Habitat Conservation Plan of August 2014 by the Department of Natural Resources.

COMPLEX AND MULTIPLE ELEMENT STRUCTURES

[5.2.1- 1]

1. Requires 8 meter buffers between vessels and aquatic vegetation.

Shipyards work of the largest vessels their property will allow. This means there is no extra water for buffer zones. We have 2.5 land acres with additional owned tidelands. The only place that aquatic plants grow is in our least traveled water which is our two marine railways. DNR needs to reword this paragraph so that they do not destroy water dependant uses. Does this apply to all aquatic plants like milfoil?

[5.2.1 – 2]

2. Grounding of boats and the need for dredging must be avoided though the use of naturally deep water.

We operate a shipyard. The wording in this section assumes that DNR will prevent shipyards from dredging to ensure vessels can access our docks in water deep enough to prevent grounding. DNR saying that it will not allow dredging between the inner and outer harbor lines is an existential threat to our company's existence as that will ultimately obstruct vessel access to our shipyard.

The Department needs to do an actual economic study of the results of preventing vessels from reaching our shipyards due to the State preventing dredging. These vessels will have their work done in Canada. This would reduce business in our shipyards limiting our capacity to invest in and maintain our business infrastructure to operate our facilities in an ecologically sound manner.

GRATING: [5-11.4] AND SHADING

- A. Grating is not a functional material most places in a shipyard due to the load capacity required of our piers and docks. The grating requirement for working cargo and shipyard docks is not practical and must be specifically addressed in the wording on implementation. This is beyond what is in the Hydraulic permit standards and makes no sense.
- B. The quantity of predation in the Ship Canal is sensitive to water temperature increasing with higher temperatures. This would indicate that shading would be a good thing in this particular

environment. High summer temperatures in the Ship Canal are a function of a shallow 30 foot deep channel sill between Lake Washington and the Lake Washington Ship Canal preventing deep cold water from entering the Canal. This is a product of an Army Corps Project to provide a fresh water moorage for the Navy in the early 1900s.

ARTIFICIAL LIGHTING: [5-20]

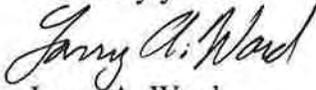
- A. This is another regulation that is already covered by other agencies. DHRs wording on implementation conflicts with OSHA rules for lighting in Shipyards and Cargo Docks. It is questionable to apply this regulation as written to urban areas which are never totally dark.

TREATED WOOD: [5-29] AND PILING

- A. We have not installed creosoted piles since it was outlawed. Existing piles are repaired by cutting the top off near the low water line and stubbing steel pipe on top as a repair. There are no studies of creosote piling that show PAH leaching is a problem in piles 3 or more years old. We therefore repair our piles to reduce the environmental impact of replacing them. There is no reason to remove existing wood piles that are still usable. The PAH study of New York Harbor shows that treated wood piles are significantly less than 1% as a source of PAHs in the harbor water. Pile ties are replaced with steel wide flanged beams and the stringer timbers above that and the planking is all untreated. We remove existing treated wood as we find it during normal annual dock repairs. This will not work for every business because our deck planking wears out due to mechanical damage due to heavy equipment on our docks.

We sincerely hope that you take our questions and comments as an opportunity to explore ways to save both endangered species and the economic engine in which we play a small part.

Sincerely yours



Larry A. Ward

Facilities Manager



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP/EIS - Comments of BP West Coast Products

1 message

Sim, Pete J <Pete.Sim@bp.com>

Wed, Dec 31, 2014 at 4:36 PM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

Cc: "lalena.amiotte@dnr.wa.gov" <lalena.amiotte@dnr.wa.gov>

The BP Cherry Point Refinery is submitting the attached comment letter outlining our concerns related to the HCP.

Thank you.

Pete Sim

Senior Environmental Engineer
BP Cherry Point Refinery
4519 Grandview Road
Blaine, WA 98230

Office: (360) 371-1598

Cell: (360) 319-4087

**Comment Letter on DNR HCP.pdf**

425K



BP Cherry Point Refinery
4519 Grandview Road
Blaine, Washington 98230
Telephone 360-371-1500

December 31, 2014

VIA ELECTRONIC MAIL SUBMISSION: WFWOComments@fws.gov

Mr. Tim Romanski
U.S. Fish and Wildlife Service
510 Desmond Drive SE, Suite 102
Lacey, WA 98503

Mr. Scott Anderson
NOAA Fisheries
510 Desmond Drive SE, Suite 103
Lacey, WA 98503

Re: WDNR Aquatic Lands HCP/EIS - Comments of BP West Coast Products

Dear Mr. Romanski and Mr. Anderson:

BP West Coast Products (“BP”) is a member of the Western States Petroleum Association (“WSPA”), which filed timely comments on the proposed Washington State Department of Natural Resources (“DNR”) Aquatic Lands Habitat Conservation Plan (“HCP”) and associated Environmental Impact Statement (“EIS”) proposed by the National Marine Fisheries Service and U.S. Fish and Wildlife Service (together, the “Services”). BP incorporates WSPA’s comments by reference and makes the following additional comments, summarized here and described in greater detail below:

- (1) The HCP should exclude large refinery terminals like BP’s Cherry Point Marine Terminal or, in the alternative, exempt such facilities from conservation measures that would increase oil spill and other environmental risks by, for example, eliminating existing primary and secondary spill containment surfaces in favor of 100% grating.
- (2) The HCP should exclude all facilities and activities for which DNR has no potential for vicarious “take” liability. This includes all activities that have undergone “formal” or “informal” consultation under Section 7 of the Endangered Species Act (“ESA”), as well as existing overwater structures because such structures continue to exist regardless of DNR leasing decisions. Including such activities when DNR faces no liability for “take” is unjustifiable and arbitrary.
- (3) DNR lacks the authority to unilaterally amend existing leases to impose significant new mid-lease conditions of the sort contemplated in the HCP and the Services may not issue permits to DNR in reliance on such unilateral amendments. Neither the ESA nor an HCP

creates new regulatory authority in DNR to impose additional lease requirements. Even in approving new construction, alterations and improvements, DNR must balance the public benefits of such actions and may not unduly condition approval on the lessee's implementation of sweeping and onerous new measures that involve more than would be necessary to avoid a prohibited "take" under ESA section 9.

- (4) Finally, the draft HCP does not meet the requirements of the Service's issuance criteria. In particular, DNR must identify the take for which it requests a permit with specificity and the Services must in turn find that DNR's commitments under the HCP will minimize, mitigate and monitor the impacts of such take "to the maximum extent practicable." Because these details are unaddressed or left entirely to DNR's future discretion, the Services cannot make the requisite findings to issue permits. Moreover, the public cannot intuit the environmental consequences of covered activities or mitigation measures as required by the National Environmental Policy Act ("NEPA").

Although the Services' comment period ended on December 4, 2014, BP understands that the U.S. Fish and Wildlife Service has invited comments through the end of this month and we are providing these comments to the Services, with a copy to DNR, on the basis of that invitation.

DETAILED COMMENTS

A. The HCP Should Exclude Large Refinery Terminals.

The HCP should not attempt to cover large refinery terminals like BP's Cherry Point Marine Terminal. These facilities are already subject to comprehensive safety requirements and environmental protections. The HCP's conservation measures, to the extent they are discernable, are redundant with or, worse, undermine existing core safety measures and environmental protections.

Under the HCP, DNR "habitat stewardship specialists" would require all marine terminals to have unobstructed grating over 100 percent of their surface area and provide at least 60 percent functional open space. HCP at 5-11. This measure provides questionable benefits where docks are so far above the water that they shade any one location for very small amounts of time each day. At BP's Cherry Point dock, application of this strict standard would require replacement of existing dock surfaces engineered to support vehicles and heavy equipment like cranes with grating which, at the specifications provided, may not support those critical operational and maintenance activities. Moreover, the existing dock surface and associated concrete runoff curb would be removed, eliminating critical primary and secondary spill containment systems. The HCP does not contemplate the important safety and environmentally protective role of solid dock surfaces. While DNR and the Services might argue that DNR's habitat stewardship specialists might recognize these facts and waive the HCP's requirements, reliance on possible staff waivers (and, presumably, the imposition of off-site mitigation) in order to maintain existing safety

standards and environmental protections rather than implementing measures with questionable benefits is arbitrary and irrational.

Other HCP measures are similarly unnecessary or poorly adopted to conditions at a refinery dock. For example, the HCP would impose a no-wake advisory and prohibit skirting which, at terminals like BP's Cherry Point Marine Terminal, may interfere with mandatory oil spill containment equipment. *Compare* HCP at 5-11, 5-12 with WAC 173-180-221 (requirement to pre-boom all oil transfers). The Cherry Point dock is equipped with a permanently deployed containment boom designed to recover spills from the lee side of a vessel moored at the dock. The HCP must be clarified to ensure that "skirting" does not include oil spill containment boom. In addition, the HCP's boat ramp measures appear designed for non-tidal areas where waves and debris are not an issue. *See* HCP at 5-13 (requiring non-elevated ramps to be "level with the beach slope). Finally, the HCP would also impose discharge guidelines developed by DNR for marinas on large terminals like BP's Cherry Point Marine Terminal. HCP at 5-12 (requiring terminals to follow DNR's 1998 *Resource Manual for Pollution Prevention in Marinas*). Among other illogical applications, this would require BP to tarp acres of dock before undertaking critical maintenance activities necessary to prevent corrosion and maintain the integrity and safety of dock facilities

It is clear that the HCP's conservation measures were not written with large refinery terminals in mind. These facilities are subject to comprehensive safety requirements and environmental protections. It is redundant, impracticable and unwise to impose a new layer of commitments which, in some circumstances, may reduce critical environmental protections or increase safety concerns. The HCP should exclude large refineries from its purview for these reasons or, at a minimum, should exempt such terminals from the requirements identified above.

B. The HCP Should Exclude Activities and Structures for which DNR has No "Take" Liability in the First Instance.

DNR states that it is entering into an HCP to ensure that its authorization and management of activities on state-owned aquatic lands is undertaken "without risk of violating the [ESA] or resulting in an unlawful *take* of threatened and endangered species." HCP at 1-2 (footnote omitted; emphasis in original). DNR's proposed HCP is overbroad for these purposes because it includes activities for which DNR has no risk of liability for unlawful take.

Under the theory of vicarious liability, DNR faces potential liability for the activities of its lessees when it allows or authorizes "acts that exact a taking" which "but for the permitting process, could not take place." *Strahan v. Coxe*, 127 F.3d 155, 163 (1st Cir. 1997) (explaining further that "a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA."). For governmental liability to ultimately exist, the lessee's activity must actually result in an unlawful take. *Palila v. Hawaii Dep't of Land and Natural Resources*, 639 F.2d 495, 497 (9th Cir. 1981) (to prove a violation of the ESA, "it must be shown that the alleged activity had some prohibited impact on an endangered species").

No unlawful take exists -- and therefore DNR has no potential liability -- when a lessee undertakes federally permitted activities which have undergone “informal” or “formal” review by the Services under ESA Section 7. 15 U.S.C. §1536(a). A consultation under Section 7 is concluded “informally” when the Services concur that the permitted activity is “not likely to adversely affect” ESA-listed species because, among other things, the activity is *not expected to take listed species*. When take is likely, the agencies undertake “formal” consultation and issue a biological opinion and incidental take statement which exempts all analyzed activities from the ESA’s take prohibition. 15 U.S.C. §1536(o). In short, all federally permitted activities must be approved by the Services either informally (when no take is expected) or formally (authorizing expected take), and consequently no unlawful take arises from federally permitted activities.

Similarly, the approved *use* of an overwater structure may cause take, but the continued existence of a structure is not a take and such structures should not be covered by the HCP. The Services undoubtedly wish that DNR would require certain structures to be removed or modified to advance habitat restoration opportunities, but a failure to advance restoration is not the equivalent of a take that results in DNR’s liability. *See* 50 C.F.R. §§ 17.3, 222.102 (defining “harm,” a component of “take,” to include significant habitat modification or degradation only when it “actually kills or injures fish or wildlife”). Moreover, DNR’s approval of a lease for an existing structure is not an act that exacts a taking because the structure already exists as part of baseline conditions, is not created by DNR’s approval of a lease, and may remain even if DNR fails to renew a lease.¹ *Cf. Strahan*, 127 F. 3d at 163 (finding governmental liability when, “but for the permitting process,” a take could not occur).

Consistent with DNR’s stated purpose in entering into the HCP to avoid the risk of “unlawful take,” the HCP should not include activities or structures for which DNR faces no liability for take. Imposing new and onerous conditions on such activities and structures cannot be justified as needed for DNR’s protection against take liability and is therefore arbitrary. For these reasons, the HCP should be revised to remove from its coverage all existing structures and federally permitted activities.

C. The Services Cannot Rely on Mid-Lease Conditioning Because DNR Lacks Such Authority.

DNR states its intent to impose HCP-related conditions in response to requests for mid-lease authorizations and suggests that, after some unspecified period of time, it may require lessees to

¹ DNR leases typically include a removal provision which allows DNR to take an affirmative action to require removal but does not automatically mandate that removal occur. Because DNR’s failure to execute a new lease does not require removal of existing structures, its action of renewing a lease also cannot be viewed as resulting in the structure’s continued existence.

implement additional measures not currently required by their leases. *See* HCP at 5-7 (for existing uses, new authorizations “must meet the commitments” of the HCP) and 5-9 (DNR will establish a time frame within which “contractual users of state-owned aquatic lands must bring their facilities into compliance” with the HCP). Unless a lease specifically provides for it, however, general principles of contract law prohibit DNR from unilaterally amending existing leases to impose significant new mid-lease conditions of the sort contemplated in the HCP. Neither the ESA nor an HCP creates new regulatory authority in DNR to impose new lease requirements unilaterally.

Moreover, in approving activities or requested modifications to an existing lease, DNR must balance the public benefits of such actions² and may not condition approval on the lessee’s implementation of sweeping and onerous new measures that may not be necessary to avoid taking listed species in the first instance. It is contrary to the public benefit to hold lessees to the high conservation standard of ESA Section 10 when lessees might opt instead to simply avoid actions that cause take and thus eliminate the risks the HCP purports to address. At a minimum, when approving actions and requested lease modifications, DNR must give lessees the opportunity to implement take avoidance actions prior to imposing conservation requirements under ESA Section 10.

D. The HCP Does Not Meet Service Issuance Criteria or NEPA’s Requirements.

The draft HCP does not meet the requirements of the Services’ issuance criteria. In particular, DNR must identify the take for which it requests a permit with specificity and the Services must in turn find that DNR’s commitments under the HCP will minimize, mitigate and monitor the impacts of such take “to the maximum extent practicable.” 16 U.S.C. §1539(a)(2)(B)(ii). Because these details are either unaddressed or left entirely to DNR’s future discretion, and there are no standards or criteria for the type or extent of mitigation that might be imposed, the Services cannot make the requisite findings to issue permits. There is simply no way for the Services to confirm that DNR will exercise its discretion in a manner that addresses purported take. Put simply, the HCP sets up an arbitrary implementation scheme to address unknown concerns. This construct fails to satisfy the high standards required by ESA Section 10.

Similarly, as noted in WSPA’s HCP comments, these same flaws prevent affected parties and the general public from meaningfully evaluating the environmental consequences of covered activities or mitigation measures as required by the National Environmental Policy Act (“NEPA”). While BP has a good relationship with DNR program staff and believes they have good intentions, BP literally cannot discern how the conservation measures in Section 5.2.1 of

² DNR is obligated to manage public lands to “provide a balance of public benefits to all citizens of the state.” RCW 79.105.030. The benefits that DNR must balance include “encouraging direct public use and access” and “fostering water-dependent uses” in addition to “ensuring environmental protection,” and DNR is instructed to recognize that generating revenue consistent with the required balancing is itself a public benefit.

Tim Romanski
Scott Anderson
December 31, 2014
Page 6

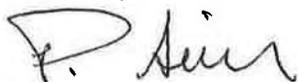
the draft HCP might be applied to its Cherry Point facility, or not, and what mitigation measures might be imposed by program staff. The EIS provided with the HCP is not valid to the extent it is unable to disclose the impacts of the HCP due to a lack of information on the scope of conservation measures and mitigation that will be required.

The ESA and NEPA both require greater specificity, explanation and transparency than are currently provided by the draft HCP and associated EIS. The HCP in particular must be revised to describe the specific take it purports to address and to remove the unfettered discretion provided to DNR's program staff to impose or waive conservation measures and require mitigation of unknown types and quantities for the thousands of activities that would fall under the purview of this HCP. The Services cannot issue permits to DNR and the public cannot meaningfully comment on the HCP or EIS as currently drafted.

E. Conclusion

BP objects to the HCP in its current form on the substantive and procedural grounds outlined above. BP requests that the Services work with DNR to rectify the HCP's flaws and vulnerabilities before re-releasing it for a second period of public review. BP would welcome the opportunity to work with the Services and DNR, along with other industry representatives, to better address state-owned aquatic lands and the potential effects of authorized activities on protected species consistent with the ESA, NEPA and DNR's regulatory authority.

Sincerely,



Pete Sim
Senior Environmental Engineer
BP Cherry Point Refinery

cc: Lalena Amiotte, DNR Aquatic Lands HCP Team Lead (lalena.amiotte@dnr.wa.gov)



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR AQUATIC LANDS HCP DEIS

1 message

Vessel Safety Check <vesselexam@hotmail.com>

Fri, Nov 28, 2014 at 10:04 AM

To: "wfwocomments@fws.gov" <wfwocomments@fws.gov>

Dear Fish & Wildlife,

Please consider the following comments regarding the implementation of the proposed DNR HCP:

1. The proposed HCP for overwater and inwater structures does not coordinate with the first two of DNR's management guidelines of public lands (i.e., encouraging direct public use and access and fostering water-dependent uses) and instead conflicts with the guidelines by discouraging use by boaters, limiting public access across the intertidal/shallow subtidal zone, and reducing the size, configuration, and number of existing inwater structures.
2. The proposed HCP relies on a long-term, continuous reduction in floating and overwater structures to achieve habitat benefits. Because the majority of in-/over-water structures exist to support vessels, the only practical way this goal can be reached is to reduce the number of vessels to the extent that the structures are no longer used.
3. Unlike other HCPs that address modifications of a specific action (e.g., harvesting timber, growing shellfish), the proposed HCP section pertaining to overwater and inwater structures focuses on the cessation of activities by removal of structures (e.g. no floats between the shoreline and -7 ft MLLW, no sidewalls on boathouses, no boat ramps in potential forage fish spawning areas) to achieve habitat benefits.
4. Unlike the existing environmental review process, the proposed HCP attributes harm to aquatic habitat from all structures equally, independent of size, depth, location, function, and habitat value. It also assumes any structure within its lease authority causes "harm" whether the structure is permanent or seasonal, and whether the habitat is used by any protected species, either constantly or intermittently. The existing review process evaluates projects based on specific attributes, including size, location, habitat type and value, etc..
5. The proposed HCP would result in regulations and review that are duplicative of existing regulations and reviews. For example, under section 7 of the Endangered Species Act (ESA), in-water activities in navigable waters must be evaluated in a Biological Assessment for potential harm to ESA-listed species and habitats that may be caused by the action's construction, operation, maintenance, and/or removal, within a short-term (i.e., construction) and long-term (i.e., operations) duration. In a written document called a Biological Opinion, the federal Services (i.e., National Marine Fisheries Service and U.S. Fish and Wildlife Service) specify the protective actions that a project proponent must accept to avoid or minimize harm to listed species and their habitats, taking into account the species and habitats at the site and the activity proposed. DNR acknowledges that this federal review and authorization will not change if the proposed HCP is adopted. The proposed HCP allows DNR to insert itself into a regulatory process that already evaluates environmental health in greater detail, with more expertise.
6. DNR also notes that "a habitat conservation plan addresses avoidance, minimization, and compensation for take associated with an ongoing program of operation; the approved habitat conservation plan must address long-term monitoring and contributions to the recovery of listed species." While this information is technically correct, it currently applies to each in-water action that occurs in navigable waters (whether on DNR land or not). For example, renovation of a recreational marina would require the same conservation analysis, which may include long-term monitoring and contributions to species recovery. The proposed HCP would duplicate (on a state-wide basis) the same conservation and monitoring actions that each individual project is required to undertake.
7. DNR uses the following statement as justification of the need for an HCP. "An aquatic HCP will also ensure that activities authorized by DNR, such as leasing for marinas and aquaculture, can continue while avoiding and minimizing impacts to endangered species." The statement implies that an aquatic lease, in and of itself, could be harmful or beneficial to sensitive, threatened, and endangered species—presumably because no other regulations or rules adequately protect the species and habitat that may be found on "their" aquatic lands. In reality, existing local, state, and federal laws already tightly regulate activities—including the installation and

use of structures—that occur on the shoreline, over the water, and in the water, regardless of land ownership or leasing authority. Today, regulated activities include construction (including methods, materials, equipment used, and timing) and operation of: marinas, ship terminals, docks, floats, ramps, piers, pipelines, breakwaters, piling, mooring buoys, and outfalls; water intakes and discharges; surface and storm water quality and quantity, and sewage discharges. The existing habitat and species protections are specific to both the proposed activity and the proposed location, so that valuable or sensitive habitat is protected or resorted to the degree proportional to the impact, rather than the blanket approach to protections that is proposed in the HCP (e.g., no floats in waters shallower than -7 ft MLLW, 60 percent grated decking, no side walls on boat houses). The proposed HCP would give DNR the authority to mandate uniform habitat “protections” without consideration of the necessity or value of those protections on a location-specific or activity-specific basis. In addition, DNR asserts that without the proposed HCP, project reviews by other state and federal authorities would fail to consider the bigger picture of cumulative impacts from multiple separate activities along a shoreline. DNR’s assertion ignores the responsibility under ESA section 7 that cumulative adverse effects be considered by federal agencies during ESA reviews.

8. Under the ESA section 7, impacts are evaluated by comparison of proposed conditions to existing conditions, not pristine conditions. Under existing regulations, habitat compensation for proposed impacts is limited to 1) preserving existing habitat conditions, 2) avoiding or minimizing additional harm to species and habitat, and 3) addressing ongoing species/habitat injury of a permitted action. DNR’s approach in the proposed HCP is to recover and restore habitat to un-impacted pre-development condition through blanket prescriptions, a goal which greatly exceeds existing federal and state habitat management goals and regulations.
9. What is the impetus for DNR to provide protections under the HCP to non-federally-listed species? What Best Available Science and state mandate are being used to justify protection of state-listed species? State-listed species are currently managed by wildlife experts within the Washington Department of Fish and Wildlife on all state lands and waters; provided WDNR with additional management authority would increase costs to the public and project proponents, conflict with existing programs, and duplicate effort with no benefits to either wildlife or the public.
10. From what Best Available Science source does DNR base its desire to regulate graywater discharge from boats? Even the most stringent federal reviews of habitat impacts and water quality do not include graywater from boats as a significant impairment to marine waters—possibly because quantities and concentrations are too small to measure. What is the purpose of having unique water quality management limits to WDNR-leased waters separate from all other waters of the state? The Washington Department of Ecology currently manages all discharges into waters of the state. Sewage and bilge water discharges are already prohibited by state and federal regulations.

Overwater structures p. 5-10

“All overwater structures will be required to implement the following conservation measures for all authorizations:

3. At the time of application or reauthorization, applicants and lessees shall assess water drainage and runoff patterns and shall develop and implement a plan to alter or treat them, as necessary, to reduce direct inputs of contaminants and nutrients into state waters.” *Which contaminants and nutrients? Who determines? How would a marina or private dock treat rainwater runoff? Ecology already manages water quality from stormwater and surface water runoff. DNR management would be duplicative and over-reaching.*
4. Unless the aquatic vegetation present at a site can be accurately delineated using existing information, proponents of new activities will be required to conduct a vegetation survey to determine the location and species of aquatic vegetation on a proposed leasehold.” *Aquatic vegetation, vegetation surveys, and protective buffers are already managed by WDFW. Vegetation surveys are already required by WDFW under the same standards as those WDNR proposes to adopt.*

Complex and multiple element structures p. 5-11

“All marinas, shipyards, and terminals will be required to implement the following conservation measures for all authorizations:

...Alternatively, the buffer may be established through prop-wash modeling to identify appropriate buffers that will avoid scouring of the substrate and impacts to aquatic vegetation (if it occurs on or adjacent to the site). The modeling must be conducted and certified by an engineer experienced in assessing these impacts. The results of the modeling should provide Washington DNR with recommended siting buffers and depths and other proposed actions to avoid impacts from the types of motorized watercraft that will be using the facility.” *Propeller wash studies are expensive and questionable—what Best Available Science shows that scour is 1) an issue, and 2) not addressed by the Services under ESA section 7? Most marinas are already armored to protect the basin slopes, so propeller scour effects on aquatic vegetation would not be an issue. Aquatic vegetation is currently managed by WDFW and USACE, so why does WDNR need to insert duplicative authority? Propeller scour analysis of vegetation might be appropriate for a new moorage area, but not for renewal of a lease within an established moorage. Aquatic vegetation is already managed and protected by the federal Services (through the USACE permit process) and WDFW (through the HPA process). Scour studies would not add protection, but would add considerable expense to marinas—especially because WDNR defines a marina as any moorage with 10 or more vessels, regardless of vessel size.*



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Regional Forum <regionalroadesaforum@hotmail.com>

Wed, Dec 3, 2014 at 4:15 PM

To: "WFWOComments@fws.gov" <wfwocomments@fws.gov>

Hello,

Here are our comments to the draft environmental impact statement incidental take permit (ITP) under Section 10 of the Endangered Species Act for implementation of the Washington Department of Natural Resources Aquatic Lands Conservation Plan (August 2014). We have also attached the word version. We believe that the No Action Alternative is the only listed alternative that will comply with the Endangered Species Act (ESA) and the Administrative Procedures Act.

The ESA Section 10(a)(1)(B) may permit any taking otherwise prohibited by Section 9 if the taking is incidental to and not the purpose of carrying out of an otherwise lawful activity. The ESA states "GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to— (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States." Both the NMFS and USFWS have processes to also include threatened species for incidental take permits.

We believe the WDNR Draft HCP combines listed species and non-listed species within their proposal which would expand both the Federal ESA Act and DNR's authority as granted by the legislature.

On page ES-1, it is stated that "DNR's objectives in developing the Aquatic Lands HCP and seeking the ITPs are four-fold." On ES-1 it further states:

- To ensure that the HCP conservation measures are consistent with the State's authorities and responsibilities defined under Washington Administrative Code (WAC) 332-30-100
- To minimize risks to the State's lease holders in their use of state-owned aquatic lands
- To minimize the State's legal liability under the ESA
- To manage habitat in a way that reduces risks of species extinction by contributing to the survival and recovery of listed species that use state-owned aquatic lands

We'd like to address these one-by-one.

- **To ensure that the HCP conservation measures are consistent with the State's authorities and responsibilities defined under Washington Administrative Code (WAC) 332-30-100**

Comments:

A. DNR's authority does not include elevating state listed species to federal listed species status.

B. DNR's authority does not allow them to delegate their responsibilities developed in the RCW and WAC codes. It appears that the adaptive management process developed for this HCP delegates responsibilities to others outside of DNR.

C. DNR indicates that they do not have the employees or the funding to implement the HCP, but by agreeing to the voluntary HCP program would require funding for 50 years for programs that are not defined and are open-ended. We believe this is not consistent with the budget process for Washington State, and we are not aware how the HCP program would be funded. Municipalities have no resources

to put forward.

D. The DEIS and the Aquatic Lands Habitat Conservation Plan (draft August 2014) indicates that the proposed alternative two and three would remove state-owned aquatic lands from use authorizations which would include limits or restrictions on water-dependent uses - which is not consistent with RCW 79.105.

- **To minimize risks to the State's lease holders in their use of state-owned aquatic lands:**

Comments:

A. The Aquatic Lands Habitat Conservation Plan refers to receiving an Incidental Take Permit from USFWS and NMFS and refers to providing protection for lease holders, but clarifies within the document that the lease holders are not a part of the Incidental Take Permit.

B. State's lease holders when performing actions will need to comply with consultations with USFWS and NMFS for ESA compliance as well as with federal, state, and local permit agencies.

- **To minimize the State's legal liability under the ESA**

Comments

A. The comparison of the three alternatives indicates that the preferred alternative "alternative two – the proposed action" has no clear improvement over alternative one – the "no action" alternative. As stated, in Note 1 on page ES-9, Table ES-2, "Comparison of the Effects of the Alternatives" - Under all alternatives, including Alternative 1, No-action, uses authorized by Washington DNR on state-owned aquatic lands would be subject to permitting and regulatory oversight from numerous Federal, state, and local agencies. To varying degrees, potential adverse effects would be avoided or reduced through the implementation of measures required by other agencies with permitting authority.

- **To manage habitat in a way that reduces risks of species extinction by contributing to the survival and recovery of listed species that use state-owned aquatic lands**

Comments

A. The DNR HCP expands the management of habitat well beyond the authorities within the ESA by including areas within Washington State that have aquatic resources but do not contain listed species.

B. The DNR HCP expands the management of habitat to include studies, research, mapping, and other adaptive management processes for species that are not federally listed species and in locations that do not contain any federally listed species. These processes go well beyond the limits set in the ESA.

The following comments and concerns pertain to both the draft Environmental Impact Statement as well as the draft Aquatic Lands Habitat Conservation Plan:

1. Table 1-2 on page 1-15 indicates that the public scoping and NEPA review process occurred in October and November of 2006. This draft EIS has been prepared in consideration of the issues raised 8 years ago in the public scoping process. After reviewing the Aquatic Lands Habitat Conservation Plan, August 2014 draft (HCP), it appears that the Washington State Department of Natural Resources is entering into a habitat conservation plan that on the surface appears to be related to a few activities that are covered on leased land. The wordage throughout the document talks about the HCP program and coverage which leads us to believe that the entire HCP process is only related to those activities. For example, on Table 1.9 – Activities Covered by This Plan – it lists activity categories of only aquaculture, log booming and storage, and overwater structures. ***But after continuing to read through***

the document, we are concerned that the Washington State Department of Natural Resources intends to apply the HCP processes and procedures to all authorizations for both new and existing uses, and that they “will apply to all uses on State owned aquatic lands, including not only the activities that are covered under the HCP, but also activities that are not.” (Chapter 5, pg HCP 5-20). We believe that combining the goals and objectives of DNR’s management of State owned lands into a federal Endangered Species Act HCP expands DNR’s role beyond the statutes that empower them without going through rule-making.

2. The administrative procedures of issuing a lease, license or permit at the State level doesn’t appear to fit the definition of the Endangered Species Act for take. The actions and uses of the lease-holder may result in take that would require a consultation with USFWS and NMFS as stated throughout the document, for example in Chapter 1, 1.2.5 on page HCP1-9, it states ***“Where there is a federal nexus, the proposed action subject to Section 7 of the Endangered Species Act and a federal consultation is required to ensure that the proposed action does not jeopardize listed species or adversely modify critical habitat. This HCP does not replace this means of ESA compliance or relieve entities of the duty to consult under Section 7.”***

The consultation will be needed by those that are performing the action that would commit a take. The term “take” means ***to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*** In Chapter 1, 1.1.1, HCP1-2, it states ***“An aquatic HCP will also ensure that activities authorized by DNR, such as leasing for marinas and aquaculture, can continue while avoiding and minimizing impacts to endangered species. By committing to the conservation strategies in the aquatic HCP, DNR and entities that lease state-owned aquatic lands will receive federal assurances of compliance with the ESA.”*** This contradicts what was stated in Chapter 1, 1.2.5 on page HCP1-9, where it states ***“This HCP does not replace this means of ESA compliance or relieve entities of the duty to consult under Section 7.”***

3. On page ES-2, Table ES-1, Note 1 states “For all species in this table, all populations in Washington State are proposed for ITP coverage, regardless of listing status. Table 1-1 provides information about the listing status of and critical habitat designations for individual populations.” We do not believe that NMFS and USFWS can issue an incidental take limit on species that are not listed as a protected status under ESA, threatened or endangered species.

4. On page ES-3, it states that DNR is proposing specific activities for which take authorization would be provided. The activities authorized and managed are for aquaculture of shellfish, placement of overwater structures, log booming and storage. If an HCP program is needed for leases, the HCP program should indicate the processes and procedures that relate to the actions of these three types of uses and not expand state wide to all state-owned aquatic lands, much of which do not have threatened or endangered species.

5. Table ES-2, Comparison of the Effects of the Alternatives. The note at the bottom of the table states **“Under all alternatives, including Alternative 1, No-action, uses authorized by Washington DNR on state-owned aquatic lands would be subject to permitting and regulatory oversight from numerous Federal, state, and local agencies. To varying degrees, potential adverse effects would be avoided or reduced through the implementation of measures required by other agencies with permitting authority.”** We agree that all alternatives would be avoided through the regulatory oversight of the other permitting authorities, but we disagree with the comments that to “varying degrees the adverse effects would be avoided or reduced” because any activity that would require a federal permit would require consultation with USFWS and NMFS and would meet the ESA before the activities would be permitted.

6. The table comparison of the effects of the alternatives, the alternative “No-action” would meet the Endangered Species Act requirements for any uses that would trigger federal permits. The preferred alternative, Alternative 2, does not provide assurances that the alternative would provide improvement over Alternative 1. For example, the phrase **“may lead** to greater protection.” “May lead” and other similar phrases (as underlined below) are assumptions and not assurances as to the nature of an outcome, and thus do not provide assurances. This makes Alternative 1 the best at meeting the ESA requirements.

Resource Area – (Underlined words are for highlighting the assumptions)

1. Ownership and Use Alternative 2 states:

- “protection may lead to greater protection”
- “Program could reduce amount of area available”
- “the amount of area encumbered by derelict structures would likely decrease”
- “would be assured with a 50 year commitment,” (but without funding).
- *de facto* conservation areas would be established through DNR’s commitment to the HCP,” (but without funding).

2. Substrates and Erosional Processes

“In both freshwater and marine areas, the implementation would be expected to decrease”

- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “The results would likely be less than Alternative 1.”
- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”

3. Water Resources

- “In both freshwater and marine areas, the implementation would be expected to decrease the risk of water and sediment quality degradation or at least to increase the risk at a rate slower than Alternative 1.”
- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “The results would likely be less than Alternative 1.”
- “Private recreational docks would be required to comply with the HCP conservation issues. The water and sediment quality would likely be less than under Alternative 1.”
- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”

4. Noise

- “Alternative 2 would not be expected to result in substantial changes in noise levels compared to Alternative 1.”

5. Vegetation

- “In both freshwater and marine areas, the implementation would be expected to decrease the risk of adverse effects on aquatic vegetation or at least to increase the risk at a rate slower than Alternative 1.”
- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “The results would likely be less than Alternative 1.”
- “Private recreational docks would be required to comply with the HCP conservation issues. The effect on vegetation would likely be less than under Alternative 1.”
- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”

6. Wetlands and Riparian Areas

- “In both freshwater and marine areas, the implementation would be expected to decrease the risk of adverse effects on erosional processes, water quality, and vegetation or at least to increase the risk at a rate slower than Alternative 1.”
- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “The results would likely be less than Alternative 1.”
- “As a result, the amount of area over which derelict structures and private recreational docks affect wetlands and riparian areas would likely be less than under Alternative 1.”

- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”
-

7. Fish, Aquatic Invertebrates, and Associated Habitats

- “In both freshwater and marine areas, the implementation would be expected to decrease the risk of adverse effects on erosional processes, water quality, and the physical habitat features and biological communities that support covered species, or at least to increase the risk at a rate slower than under Alternative 1.”
- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “Effects on fish, invertebrates, and aquatic habitat would likely be less than Alternative 1.”
- “Private recreational docks would be required to comply with the HCP conservation issues. The water and sediment quality would likely be less than under Alternative 1.”
- “Implementation of the HCP would be expected to reduce the risk of adverse effects on species proposed for ITP coverage compared to Alternative 1.”
- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”

8. Wildlife and Wildlife Habitat

- “In both freshwater and marine areas, the implementation would be expected to decrease the risk of adverse effects on forage and prey species as well as on habitat integrity and accessibility (including effects related to light, noise, and disturbance), or at least to increase the risk at a rate slower than under Alternative 1, thereby reducing the potential for adverse effects on wildlife and wildlife habitat.”
- Derelict structures removal would be assured for a 50 year duration of the ITP (but without funding). “Effects on fish, invertebrates, and aquatic habitat would likely be less than Alternative 1.”
- “As a result, the amount of area over which derelict structures and private recreational docks affect wildlife and wildlife habitat would likely be less than under Alternative 1.”
- “Implementation of monitoring protocols and schedules would increase the likelihood that problems resulting from uses of state-owned aquatic lands would be identified and corrected in a timely manner compared to Alternative 1.”

9. Recreation

- “If structures that are not attached to shore (e.g., rafts, floats, mooring buoys) are moved away from shore, persons who use human-powered means (e.g., rowboats, kayaks) to travel between moored motor vessels and shore may encounter increased physical challenges, compared to Alternative 1.”

10. Visual Resources

- “Some of the measures that would be required at shellfish aquaculture facilities may reduce the visual evidence of human activity in such areas, compared to Alternative 1.”
- “Implementing the HCP Operating Conservation Program could reduce the amount of area available for some types of use authorizations in shallow waters in marine and freshwater areas, causing some facilities and structures to be placed farther offshore, potentially reducing their visibility to viewers on shore.”

11. Cultural Resources

- “Through the implementation of the HCP Operating Conservation Program, the number of cultural sites damaged or destroyed by ground-disturbing activities would likely be lower than under Alternative 1.”
- “Some elements of the program—for example, the requirement to remove derelict structures—could result in an increased risk of adverse effects on cultural resources, compared to Alternative 1.”

12. Social and Economic Environment

- “Implementation of these measures may result in increased operational costs for industries and individuals associated with these uses compared to Alternative 1.”
- “Holders of existing authorizations could face increased materials and installation costs, compared to Alternative 1, to comply with the requirements of the HCP Operating Conservation Program. However, the life-cycle costs of materials that would be consistent with the Aquatic Lands HCP requirements for light transmission and protection of water and sediment quality would likely be similar to the replacement costs anticipated under Alternative 1.”

13. Environmental Justice

- “Compared to Alternative 1, increased upfront materials and installation costs and operational costs could disproportionately adversely affect low-income populations in Pacific, Grays Harbor, and Mason counties. Similarly, increased operational costs associated with HCP compliance for recreational and commercial facilities in Clark, Cowlitz, Mason, and Whatcom counties could be borne disproportionately by low-income populations.”

CHAPTER 5

1. HCP 5-1: DNR states that Chapter 5 lays out the agency’s operating conservation program, the aim of which is to avoid, minimize and compensate for impacts on covered species that result from authorized activities.

Comments:

Combining DNR’s HCP program to other DNR programs and property areas not listed in the HCP incidental take permit is an expansion of DNR’s State authority and an expansion of the federal HCP process.

The HCP process incorporates DNR’s operating conservation program goals and objectives in such a way that it ties their entire program to the HCP process for any existing or future uses.

2. DNR established the goals and objectives of the aquatic lands HCP, then developed strategies consisting of standards, conservation measures, programmatic strategies, and management practices. All of these are listed as components of the aquatic lands HCP. In 5.2, page HCP 5-4, DNR lays out how the operating conservation plan has four components, which appears to be the four “strategies” being placed as these components. They define this as the operating conservation program of the aquatic lands habitat conservation plan (HCP 5-4). On page HCP 5-5, figure 5.2, illustrates the application of the operation conservation program of the HCP, which shows that new or existing uses on State owned aquatic lands will have to comply with the standards and programmatic strategies for both covered activities and non-covered activities. It also indicates that the compliance monitoring, effectiveness monitoring, and adaptive management components of the HCP will be applied to covered activities, as well as non-covered activities.

Comment:

To require non-covered activities to adhere to the standards and programmatic strategies, compliance monitoring, effectiveness monitoring, and adaptive management (which is the

ESA/HCP program) to uses that do not contain ESA listed species or not related to the activity approved for incidental take is inconsistent with federal guidelines for development of an HCP by using the HCP process to require activities that are not included in the HCP.

3. On HCP 5-6, application of the operating conservation program, to utilize authorization of State owned aquatic lands, will be applied to use authorizations for activities including those not covered by the HCP. It further states that Washington DNR will not authorize the use of State owned aquatic land unless the operating conservation program requirements are included within the applicant's authorizing document. Each document authorizing use must comply with the terms of the incidental take permit issued to Washington DNR. In the section **New Proposed Uses**, biologists will be required to develop reports detailing conservation measures of the HCP standard requirements, any area determined to be insufficient biological surveys, timeframe for improvements and areas of concern. DNR agency staff will provide final review, recommend specific conservation measures, standards, programmatic measures, and approve or deny the applicant's proposal. It further states "New proposals that fail to meet the commitments made in this habitat conservation plan and in the incidental take permit will not be authorized."

Comment:

The Incidental Take Permit and the HCP is only for the activities that were evaluated by the services, for the species that would be affected by that activity. By including activities that are not listed but use the same standards and indicate that they are required as part of the HCP program is inconsistent with DNR's State statute limitations and expands DNR's authority into other areas of aquatic resources that are managed by other State agencies, as well as federal agencies.

4. In the section **Existing Uses**, pg HCP 5-7, DNR will require the same types of reports and approval or denial as stated in **New Proposed Uses**. DNR will use industry expectations for materials used and assessment of current conditions. DNR will assess each new authorization for consistency with the commitments of the HCP. Re-authorizations that fail to meet the commitments made in the HCP will not be authorized. In the second bullet that states, standard requirements for use of State owned aquatic lands.

Comment:

This expands the HCP to any activity that has a use on State owned aquatic lands. Re-authorization as stated throughout the document is not limited to leases, but is expanded to any authorizations of any use including those that are not included in the HCP.

5. HCP 5-9, **Implementation Schedule for Structural Requirements for Existing Uses**. In this section, it indicates that DNR will establish time frames that users must bring to their facilities in order to be in compliance with the terms of the Incidental Take Permit.

Comment:

Users are not included in the Incidental Take Permit.

We believe that the entire document should separate out those areas that are related to the ESA threatened and endangered species as the HCP and those areas that are related to state regulations and DNR's goals and expectations should be in a separate document and go through rule-making.

Thank you

Regional Road Maintenance Forum Permit Sub-Committee



Aquatic Lands HCP Response Final.docx

39K



WFWOComments, FW1 <wfwocomments@fws.gov>

Aquatic Lands Habitat Conservation Plan - Comment

1 message

Larry Crockett <larry@portofpt.com>

Thu, Dec 4, 2014 at 11:31 AM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

Cc: Sue Nelson <snelson@portofpt.com>

The draft plan will have a very significant economic impact on our maritime economy – support of which is a primary mission for DNR. In looking through the the draft plan the "economic impact statement" does not readily appear. I have to assume one was done. If a detailed economic impact statement was not done – then the draft plan is not done.

Modifying marina structures and the like are extremely expensive and many marina operators will not be able to bear the cost. The data on these potential costs and impacts is readily available - so there is no reason not to have this as part of your plan.

Also – was Department of Commerce asked for their opinion of the plan?

Larry Crockett
Executive Director
Port of Port Townsend
(360) 385-0656



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP EIS

1 message

Laura Gurley <LGurley@pndengineers.com>

Thu, Dec 4, 2014 at 5:45 PM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

Cc: Bridget Moran <bridget_moran@fws.gov>, Scott Anderson - NOAA Federal <scott.anderson@noaa.gov>, "PALAZZI, DAVID (DNR)" <DAVID.PALAZZI@dnr.wa.gov>, Lalena Amiotte <lalena.amiotte@dnr.wa.gov>, "Romanski, Tim" <tim_romanski@fws.gov>

Hello, Tim,

Attached are our comments to the HCP. Thank you for the opportunity to submit these. I look forward to the next steps.

Sincerely,

Laura Gurley | Environmental Scientist

P|N|D Engineers, Inc.

1736 Fourth Avenue S, Suite A, Seattle, WA 98134

p. 206.624.1387 f. 206.624.1388

lgurley@pndengineers.com | www.pndengineers.com

If you are not the intended recipient, please notify the sender immediately and delete this e-mail from your system.

From: Romanski, Tim [mailto:tim_romanski@fws.gov]

Sent: Friday, November 14, 2014 9:55 AM

To: Laura Gurley

Cc: Bridget Moran; Scott Anderson - NOAA Federal; PALAZZI, DAVID (DNR); Lalena Amiotte

Subject: Re: WDNR Aquatic Lands HCP EIS

Laura,

Thank you for your interest in commenting on the WDNR Aquatics Lands draft HCP/EIS. We received your request for an extension of the comment period.

Since this proposal resulted in a DEIS under National Environmental Policy Act (NEPA), we used the maximum comment period available under NEPA of 90 days, beginning September 5, 2014 and ending December 4, 2014. The Services worked diligently to publish the draft HCP/EIS for public comment so the 90-day period would end prior to the Christmas/New Year holiday, maximizing time for public review and comment.

At this time we do not see a need to extend the public comment period. The Services will be advertising a 30-day comment period on the final HCP/EIS, as well. Thank you for your interest in the WDNR draft HCP/EIS, we look forward to receiving your comments.

Tim Romanski

Fish and Wildlife Biologist

U.S. Fish and Wildlife Service

Washington Fish and Wildlife Office

Branch Manager of Conservation and Hydropower Planning

510 Desmond Drive SE, Lacey, WA 98503

360.753.5823 (phone) 360.753.9518 (fax)

On Fri, Nov 14, 2014 at 9:01 AM, WFWOComments, FW1 <wfwocomments@fws.gov> wrote:

----- Forwarded message -----

From: **Laura Gurley** <LGurley@pndengineers.com>

Date: Tue, Nov 11, 2014 at 9:39 AM

Subject: WDNR Aquatic Lands HCP EIS

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

Hello, Mr. Romanski and Mr. Anderson,

Thank you for the opportunity to comment on these documents and this program. As a consulting firm that provides permitting services, including assistance with DNR leases and easements, we are in the midst of a thorough review of the materials in order to submit comments. However, we are now realizing how much there is to review. In light of this, as well as the upcoming Thanksgiving holiday, I am requesting that the FWS extend the comment period until after the December holiday season. Considering the materials took 12 years to develop, it seems reasonable to allow for more than 90 days to review and comment.

Thank you for your consideration of this extension request.

Sincerely,

Laura Gurley | Environmental Scientist

P|N|D Engineers, Inc.

1736 Fourth Avenue S, Suite A, Seattle, WA 98134

p. 206.624.1387 f. 206.624.1388

lgurley@pndengineers.com | www.pndengineers.com

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 **DNR HCP Comments_12-04-14.pdf**
104K



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Nigel Barron <nigel@csrmarine.com>

Thu, Dec 4, 2014 at 12:55 PM

Reply-To: Nigel Barron <nigel@csrmarine.com>

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

I am quite surprised at the proposal to alter anchoring requirements for buoys. I think some form of economic impact study should be conducted before this is implemented. A concrete anchor is cheaper, less harmful to the environment, and ultimately provides habitat.

Regards,

Nigel Barron

CSR MARINE - FULL SERVICE BOATYARDS

Seattle - Des Moines

4701 Shilshole Ave NW, Seattle, WA 98107

Phone: (206) 632-2001



WFWOCComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Todd Shipp <toddshipp@altafp.com>

Fri, Dec 5, 2014 at 12:01 AM

To: "WFWOCComments@fws.gov" <WFWOCComments@fws.gov>

To whom it may concern,

I strongly urge consideration for the allowance of log storage and towing in the waters of the greater Puget Sound area. Alta Forest Products operates three sawmills in Western WA, which provide family wage jobs to over 300 employees in WA. We at Alta heavily rely on the transportation of nearly a third of our overall log supply via water transportation in the form of barging and log rafting from Northern Washington, Canada and South East Alaska. If restrictive regulations were to be imposed on log rafting and storage, it would have a massive financial impact on our business and the communities in which we operate our facilities. Restricting log storage and rafting could effectively make procuring raw materials from distant markets uneconomical and directly lead to possible curtailments or overall closure of our facilities. At the very least it would add literally thousands of trucks to the already overcrowded highways in Washington state. I strongly urge you to consider the impacts to our organization and other forest products organizations that will be impacted by the proposed regulations.

Regards,

Todd Shipp
Procurement Manager
Alta Forest Products



WFWOComments, FW1 <wfwocomments@fws.gov>

Comments on proposed DNR Habitat Conservation Plan

1 message

Shannon Kinsella <skinsella@reidmiddleton.com>

Fri, Dec 12, 2014 at 3:53 PM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

I would like to comment on the proposed draft Habitat Conservation Plan proposed by DNR. I am a licensed professional engineer in the State of Washington. I have degrees in civil engineering and oceanography from the University of Washington. For the past 25 years I have focused on the planning, permitting, and design of coastal and waterfront projects in Puget Sound and throughout Washington including overwater and inwater structures and shoreline restoration projects. I understand the necessity of assuring that there is not a take of endangered species to comply with federal laws and fully agree and support the goal of improving the overall health and function of State-Owned aquatic lands.

However, I believe the draft HCP as written is too broad and full of statements and requirements that are either not feasible from a technical and public safety standpoint and statements that will be unsupported and therefore unenforceable by a lack of funding and staffing availability within DNR.

For example from a technical standpoint, the requirement that overwater pier structures have 100% unobstructed grating could be interpreted that there is no allowance for the structural elements that are required for the pier to support required safety and operational loads and providing 100% grating with 60% openings for heavy loaded piers is difficult due to lack of available products and the need for extensive substructure on the pier to support the grating. Forcing generic requirements for all structures such as 50% openings in floats greater than five feet in width does not allow for technical engineering requirements such as the high level of floatation that is required to support existing covered moorage facilities. Reducing the amount of floatation on these type of systems will result in more frequent sinking of marinas due to snow loads on structures with the resulting negative environmental impact of sinking boats and oils spills similar to what happened in the snow storms that sunk the Port Orchard and Edmonds marinas in 1996.

Given the bathymetry (underground topography) of Puget Sound, availability of deep water within protected areas is not very common and is highly variable by location, requiring all existing and proposed structures to be in deep water without any allowances for site specific variation, will result in much larger and significant offshore protection structures which will increase the overall amount of structures required to relocate or develop any new inwater facility.

I support the comments made by the Northwest Marine Trade Association and Washington Public Ports in regards to the HCP.

I request that the agency reject the proposed HCP and work with DNR and the interested parties to craft a more technically sound, enforceable, and supported conservation plan that meets the goal of protection of listed endangered species and improved habitat and ecological function and is based on sound technical and feasible measures that do not place significant unreasonable burdens on waterfront owners, and that can be supported and enforced by the dedicated level of funding and staffing available at DNR for the period of time that the HCP is in place.

Shannon Kinsella

Shannon Kinsella, PE

LEED AP

Director, Waterfront Engineering

Reid Middleton

Engineers | Planners | Surveyors

728 134th Street SW | Suite 200 | Everett, WA 98204

425-741-5012 | Cell: 206-713-4854 | Office: 425-741-3800 | Fax: 425-741-3900

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WFWOComments, FW1 <wfwocomments@fws.gov>

Inquiry re Extended Comment Period on WADNR Draft Habitat Conservation Plan Draft EIS

3 messages

Jane Kiker <kiker@ekwlaw.com>

Tue, Dec 16, 2014 at 10:09 AM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>, "Tim.Romanski@fws.gov"

<Tim.Romanski@fws.gov>

Cc: Fred Schmidt <schmidt@ekwlaw.com>

Dear Mr. Romanski:

This office represents A. DeWitt Jensen, owner of Spencer's Landing Marina on Lopez Island, San Juan County. We respectfully request that you confirm by reply e mail that U.S. Fish and Wildlife Service has agreed to accept public written comments until December 31, 2014, on the above Draft HCP/Draft EIS?

Thank you very much,

Jane Kiker

Jane S. Kiker

Eglick Kiker Whited PLLC

(206) 441-1069x3 (t)

(206) 441-1089 (f)

kiker@ekwlaw.com

Jane Kiker <kiker@ekwlaw.com>

Tue, Dec 16, 2014 at 10:28 AM

To: "tim_romanski@fws.gov" <tim_romanski@fws.gov>, "WFWOComments@fws.gov"

<WFWOComments@fws.gov>

Cc: Fred Schmidt <schmidt@ekwlaw.com>

Dear Mr. Romanski:

This office represents A. DeWitt Jensen, owner of Spencer's Landing Marina on Lopez Island, San Juan County. We respectfully request that you confirm by reply e mail that U.S. Fish and Wildlife Service has agreed to accept public written comments until December 31, 2014, on the above Draft HCP/Draft EIS.

Thank you very much.

Jane Kiker

Jane S. Kiker

Eglick Kiker Whited PLLC

(206) 441-1069x3 (t)

(206) 441-1089 (f)

kiker@ekwlaw.com

WFWOCComments, FW1 <fwocomments@fws.gov>
To: Tim Romanski <tim_romanski@fws.gov>

Tue, Dec 16, 2014 at 1:35 PM

Hi Tim. Do you want to reply to this?

[Quoted text hidden]



WFWOComments, FW1 <wfwocomments@fws.gov>

(no subject)

2 messages

Ben Braden <ben@sailnorthwest.com>

Thu, Dec 18, 2014 at 12:36 PM

Reply-To: ben@sailnorthwest.com

To: WFWOComments@fws.gov

Please reconsider implementing these new rule changes, if below is even half true the DNR is destroying historical buildings and marinas, moorages and a way of life, the building blocks of our great state.

I ask you, how many waterfront owning, marina leasing, active boaters (both commercial and recreational) are involved in the DNR and with these rules in particular? I'm guessing not many. An example of a poor DNR rule is when our marina was required to put in grating to let light through the docks when we replaced them. Before we changed docks the shaded waters under them sheltered thousands of fish, no there are none, but the light gets through....

Ben Braden

Broker Sail Northwest

ben@sailnorthwest.com

206.286.1004 or find us at sailnorthwest.com

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- We urge you to provide more public comment time. This document took the DNR the better part of 12 years to do, and the public is being given a mere 90 days to respond – that is not acceptable;
- This document goes way beyond protecting endangered and threatened species – we understand it calls for the protection of 29 species, more than half of which *aren't* threatened or endangered.
- The construction standards and requirements in this document will have a devastating financial impact on all leaseholders looking to improve, expand, or repair boathouses, breakwaters, or

overwater structures.

We believe the storage, privacy, and investment of existing boathouses could be destroyed by these requirements.

Sidewalls and barriers would be prohibited under any circumstances, major deeper water relocation would be required, and expensive standards would be mandated even for the simplest maintenance, repair, or replacement.

There is no cost-benefit analysis being provided for any of these expensive requirements.

There is a 7-foot depth requirement that is arbitrary

We believe the DNR may be exceeding its legal authority by attempting to apply these requirements to existing projects and lease renewals even though the HCP has never been formally adopted!

It is our understanding that there are ESA protection mechanisms within *current* regulatory structures and that the DNR is significantly exceeding the “do no harm” standard of underlying regulations with more stringent and costly proposed HCP regulations.

We urge that this HCP be significantly revised, so that reasonable alternatives can be provided to help responsible, safe, and law-abiding clubs and marina operators to meet ESA compliance.

WFWOCComments, FW1 <fwocomments@fws.gov>
To: lalena.amiotte@dnr.wa.gov

Fri, Dec 19, 2014 at 1:40 PM

[Quoted text hidden]



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Dick Wagner <dick@cwb.org>

Wed, Dec 24, 2014 at 12:10 PM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

My comments:

I have been living and working on Lake Union for more than 50 years. There was no sewer around the lake until 1967. The lake's chemistry has changed a lot since then, but still is polluted. Public awareness of the lake's pollution has generated programs to remove waste afloat and on the silt. If volunteers do what they can, believe me, we can't wait to have a crystal clear lake.

Most of the pollution is biological from water and waste sewer overflows, leaking boat septic systems and animal (pets) waste. Other contamination sources are legacies from former industrial sites such as Gas Works Park. These are locked up in the bottom sediments.

I suggest all street ends around the lake have storm water tanks that will collect water and storm waste and then release it to the master sewage system at West Point.

As the lake gets cleaner, it will become an important park with a focus on the natural organisms such as fish, turtles, worms, clams, snails, ducks and other birds, river otters and indigenous plants, bees and butterflies. The renaissance will make the lake a great place for fun and science.

Dick Wagner

Founding Director

The Center for Wooden Boats

206-382-2628 Ext. 28

www.cwb.org



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP EIS

2 messages

Laura Gurley <LGurley@pndengineers.com>

Tue, Nov 11, 2014 at 9:39 AM

To: "WFWOComments@fws.gov" <WFWOComments@fws.gov>

Hello, Mr. Romanski and Mr. Anderson,

Thank you for the opportunity to comment on these documents and this program. As a consulting firm that provides permitting services, including assistance with DNR leases and easements, we are in the midst of a thorough review of the materials in order to submit comments. However, we are now realizing how much there is to review. In light of this, as well as the upcoming Thanksgiving holiday, I am requesting that the FWS extend the comment period until after the December holiday season. Considering the materials took 12 years to develop, it seems reasonable to allow for more than 90 days to review and comment.

Thank you for your consideration of this extension request.

Sincerely,

Laura Gurley | Environmental Scientist

P|N|D Engineers, Inc.

1736 Fourth Avenue S, Suite A, Seattle, WA 98134

p. 206.624.1387 f. 206.624.1388

lgurley@pndengineers.com | www.pndengineers.com

If you are not the intended recipient, please notify the sender immediately and delete this e-mail from your system.

WFWOComments, FW1 <wfwocomments@fws.gov>

Fri, Nov 14, 2014 at 9:01 AM

To: Tim Romanski <tim_romanski@fws.gov>

[Quoted text hidden]



WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Doug Miller <doug@milltechmarine.com>

Fri, Nov 28, 2014 at 1:57 PM

To: WFWOComments@fws.gov

Cc: lalena.amiotte@dnr.wa.gov, scott.anderson@noaa.gov, tim.romanski@fws.gov, steve.gittings@noaa.gov

I am contacting you to comment on the proposed new Aquatic Lands Habitat Conservation Plan.

Before commenting, I would like to provide some background on why I am interested in commenting and why I believe this plan, in its current state will cause more harm than good.

I am a recreational boater, the owner of the commercial marine electronics business in Puget Sound and a very active scuba diver with over 800 dives completed in Puget Sound.

As a diver, I am a level 5 (highest level) REEF surveyor and have completed over 300 surveys of fish and invertebrate species in Puget Sound. I have also been a member of REEF's Advanced Assessment Team which has conducted annual team surveys in the San Juan Islands and the Olympic Coast National Marine Sanctuary (under the auspices of NOAA). Believe me when I say I am passionate about preserving marine life and ensuring that habitat is preserved or even created for all underwater species including those listed under Chapter 4 of your proposed plan.

However, under Chapter 5 of your plan, you propose removing rock breakwaters. This action would in fact, do exactly the opposite of what you are trying to do – that is protect aquatic species.

For example, the breakwater in front of Point Hudson Marina in Port Townsend is home to numerous fish and invertebrate species. Data on the over 100 surveys conducted at Point Hudson Jetty can be found here: <http://www.reef.org/db/reports/geo/PAC/27010105/1993-01-01/2014-11-28/1/chart/common>.

The rock structures, built to protect the marina, begin above the waterline and extend to depth of about 60 FSW. Literally every square foot of rock in this breakwater is either covered with life or home to fish that live in the crevices between each rock. In fact, this site has more species diversity than any other site in the Pacific Northwest that I have surveyed. For example, this rocky area is home to eight species of rockfish from juveniles to adult. There is a new Canary Rockfish (one of the EPA species) nursery that has just been found just below the end of the jetty. It has been amazing to watch the recovery of rockfish species at this site over the years since recreational rockfish fishing was closed.

Your plan calls for removing breakwaters such as this one. But doing this will destroy critical habitat and have the exact opposite effect of protecting species. In comparison, areas near the breakwater that do not have the artificial rock structure are relatively barren.

In fact if you survey artificial rocky structures throughout Puget Sound, you will find these sites have more species abundance and diversity than anywhere else. These sites include fishing reefs such as Alki Fish Reef, Blake Island Fish Reef, KVI Towers and Edmonds Underwater Park. We should be creating more of these types of areas. Not removing them.

Piling removal is also another action that is having a negative impact on species. For example, the old oil dock at Edmonds used to be a fine dive site and home to many species of fish and invertebrates. It was removed in 2008 to "protect the environment." Yes, creosote pilings are not great but nature has adapted and these old pilings are typically covered in life and provide protection for fish. Now the former site of the Edmonds oil dock is a wasteland. There are no more fish. Virtually all of the invertebrates species are gone. Have we really helped the species we are trying to protect? I don't think so.

I would be happy to take any member of your scientific team on escorted dives to see for yourself what you are planning on destroying.

I would also like to comment on this plan as a boater and a local business owner that exists to serve the recreational, commercial and military boating industry. Many of the changes you are proposing in this plan would essentially put marinas in Puget Sound out of business. This is because all marinas must lease land from the DNR and as these leases are renewed, the marina would need to comply with the new rules. These rules would require some marinas to literally be moved out into deeper water, or would require virtually all marinas to replace all docks, ramps and covers. The cost of these changes would of course be beyond what is feasible for these organizations and therefore most, if not all, would be forced to close. Even modern marinas such as Elliott Bay Marina would need to spend millions to be compliant. That is not viable. In the end, without safe marinas, we have no place for recreational, commercial or fishing boats. Without boats we have no boating industry which is worth hundreds of millions of dollars to Washington state. Maybe the new regulations would make sense for new marinas but to impose these rules on existing marinas will have a major negative impact. For example, if these marinas were able to comply, what would happen to all the existing materials? Where would these be old docks, breakwaters, covers and piling be disposed? Won't this create a bigger environmental problem then leaving existing structures in place?

Again having dived under many marina docks, I would challenge the assumption that covered docks have a negative impact on marine life. Most covered docks in the area have a vast ecosystem living under them including numerous juvenile fish species. These fish are not there because there is nowhere else to go. They chose these areas to live, feed and seek protection. The covered docks are actually beneficial to marine life.

Again, I would be happy to take any member of your scientific team on escorted dives to see for yourself what lives under our marina docks.

To finish, I would like to propose some positive actions that you can take to help protect sensitive species and their habitat.

1. The most important thing you can do is keep our water clean. Addressing issues with runoff, waste and sewage, preventing fuel spills, adding more pumpouts may help keep the environment safe for our marine life.
2. Next, we need more habitat for marine life not remove habitat. Add more artificial structures for marine life to live. Every artificial marine structure I have surveyed has more marine life than the surrounding area. These structures not only provide protected areas for marine life to thrive, they attract scuba divers and even provide great places for fisherman to fish. Amazingly this one action can be beneficial for three communities: provide more protection for marine life, provide recreational areas for scuba diving and provide more areas for recreational fishing.
3. The third area that needs to be addressed is fish management. Washington State DFW's action to close recreational rockfish fishing was a great step. I see the results of that action every time I dive. Areas that used to have no rockfish, now in many cases have thriving rockfish schools. It is truly amazing to see the impact especially for a species that takes in some cases decades to mature. Hopefully rockfish will have recovered enough some day that recreational rockfish fishing can be restored in some way. Other areas that are open to rockfish fishing, including the NOAA Olympic Coast National Marine Sanctuary, are not doing so well. We now see fewer rockfish in the wild areas near Cape Flattery than we do in Puget Sound. Lingcod fishing management also seems to be working. While by no means abundant, lingcod seem to be doing ok even though there is a short fishing season. However, I think we can do more. Poorly controlled commercial and especially tribal fishing in Puget Sound may be causing real harm to our marine life. For example, geoduck fishing has a disastrous effect on habitat. Have any of your scientists done before and after fishing research on geoduck beds? Geoducks grow in sensitive areas typically with eel grass in areas that is home to numerous fish species (perch, flatfish, sculpins, juvenile salmon, sand lance etc.) as well as invertebrates (such as crab, shrimp, sea cucumbers, octopus etc.). These ecosystems are amazing to see. So much life that is often at the bottom of the food chain that sustains life for the rest of Puget Sound. Yet, one geoduck fisherman, on one day can destroy all of this for a large area. With the hydraulic blasting that takes place to catch one geoduck numerous other nearby species are literally blown away. In addition, sand, mud and debris is spread over a very large area which then settles on existing life and habitat often resulting in the destruction of both. Imagine, then a whole group of fisherman doing this repeatedly day after day for multiple geoducks. Coming back to an area that has been fished by geoduck fisherman is truly one of the saddest things I have seen while diving in Puget Sound. Mud and silt settles on everything and

areas that once were thriving with fish and invertebrates are now barren. A good example of this is at Bainbridge Reef.

I hope you will consider my comments as you move forward with your plan. I agree with your goals to protect aquatic habitat but I believe the plan as it stands will have a major negative impact on species and habitat and doesn't actually deal with many of the issues that negatively impact marine life. Again, I would be happy to provide more information, scientific data or photos or even host dives to support my statements above.

Respectfully

Doug Miller

Doug Miller

[Milltech Marine Inc.](#)

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December 31, 2014

Scott E. Anderson
National Marine Fisheries Service
510 Desmond Drive SE
Lacey WA 98503

Tim Romanski
U.S. Fish and Wildlife Service
Washington Fish and Wildlife Office
510 Desmond Drive SE
Lacey WA 98503

Dear Mr. Anderson and Mr. Romanski:

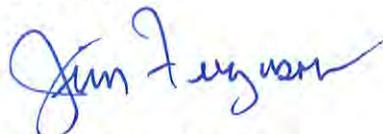
Thank you for the opportunity to comment on the Aquatic Lands Habitat Conservation Plan (Draft). Ferguson Terminal Company owns and operates a 5-acre marine terminal in Ballard on the Lake Washington Ship Canal.

The plan is comprehensive and extremely difficult for property owners and their customers on the Lake Washington Ship Canal. The requirement to require 7 feet of clearance from the propeller to the substrate to prevent scouring is not reasonable. Any reduction in clearance would be a major change for the marine industry. This change would result in the loss of thousands of jobs, not only for the property owners and their customers, but also would affect the hundreds of support companies in the Ballard – Interbay area. The seafood industry alone would suffer a major setback. The owners of the fishing and processor fleets would be forced to leave Seattle and move to other ports. It would encourage the fishing/processor fleet to stay in Alaska for repairs and service at the loss of income to the Seattle area.

If this regulation goes into law, the State of Washington/Seattle Shoreline Management Plan will need to be amended to allow non-maritime use within the 200-foot shoreline zone currently restricted for marine use only.

In addition I would like to endorse the December 3, 2014 letter from Stephane Jones Stebbins, Port of Seattle.

Sincerely,



Jim Ferguson, President
Ferguson Terminal Company

AMIOTTE, LALENA (DNR)

From: Bainbridge News Wire <gary@baindf.org>
Sent: Wednesday, December 03, 2014 1:54 PM
To: AMIOTTE, LALENA (DNR)
Cc: Don & Gale Spencer
Subject: Comment on Aquatic Lands Habitat Conservation Plan

We object to the Aquatic Lands Habitat Conservation Plan on two bases

1. this EIS outline measures to protect 29 species overall, only 14 of which are listed. In other words, more than half the species covered by this Draft EIS are *not* listed as threatened or endangered. The regulations should only address that needs of threatened or endangered.
2. The Conservation plan is designed to force restoration on leaseholders instead of the more appropriate standard of "No Net Loss" used by the DOE

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WFWOComments, FW1 <wfwocomments@fws.gov>

WDNR Aquatic Lands HCP DEIS

1 message

Regional Forum <regionalroadesaforum@hotmail.com>

Wed, Dec 10, 2014 at 3:26 PM

To: "wfwocomments@fws.gov" <wfwocomments@fws.gov>

We are concerned that the way this HCP is developed that it does not meet the requirements set forth in the Endangered Species Act HCP approval process as defined below, as written within the draft EIS and the draft Aquatic Lands HCP Plan.

“The secretary will issue the permit if the Services determine that the take would be incidental; the applicant will, **to the maximum extent practicable, minimize and mitigate the impacts of the take (based on implementation of an HCP); the applicant ensures that it has sufficient funding** to implement the HCP; the take will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and any additional measures required by the Secretary(ies) will be met. (pg ES-3)”

“As a condition of receiving an ITP, an applicant must prepare and submit an HCP to the Services for approval. The HCP must contain the mandatory elements of ESA section 10(a)(2) (A) and must specify the following:

- What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances (pg 1-8 draft EIS) (Pg 2-9 draft Aquatic Lands HCP Plan)”

COMMENT

The draft Aquatic Lands HCP Plan identifies three areas for coverage under an Incidental Take Permit for NMFS and USFWS. The Incidental Take Permit would not be all of the use authorizations by WDFW, but only for the three types listed in the HCP. The other DNR use authorizations that are not covered under the Incidental Take Permit, according to the HCP draft plan, would require the plan to be used to mitigate unavoidable impacts throughout the entire State of Washington’s aquatic lands.

The approval of an Incidental Take Permit for the draft Aquatic Lands HCP Plan will reduce or eliminate current funding available because it restricts or eliminates the use of available funds for any mitigation activities. The funding sources currently available under Alternative 1 do not have these limitations or restrictions because they are not considered mitigation for the action of approval of the Aquatic Lands HCP Plan. By limiting or eliminating the funding sources that by statute and federal law cannot be used to provide mitigation, the approval of the HCP would, in effect, have a devastating effect upon not only salmon species, but all endangered and threatened species currently listed. An example of this is the current funding sources for salmon habitat restoration projects, which cannot be used to include mitigation. Since the HCP includes all uses as a mitigation site, which would include all of the elements required in Alternatives 2 or 3, approval of this HCP would not only eliminate or drastically reduce funding, it may also jeopardize the survival and

recovery of species in the wild.

We believe that by eliminating funding, effecting the ability to do salmon restoration as well as other restoration projects would not meet the criteria required for USFWS or NMFS to issue an Incidental Take according to the criteria listed in the draft EIS and the Endangered Species Act.

Thank you.

Regional Forum Permit Sub-Committee