

Handout @ 9/9/08 G MNR mtg



STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

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September 9, 2008

The Honorable Julia Patterson
Chair Metropolitan King County Council
516 Third Avenue, Room 1200
Seattle, Washington 98104

Dear Chair Patterson:

SUBJECT: King County Council LWD Proposed Motion 2007-0622

The King County Council has passed the subject motion directing the Water and Land Resources Division to develop procedural and design standards addressing public safety when placing large woody debris (LWD) in the waterways of King County. As the state regulatory agency reviewing and conditioning any hydraulic project that may divert, obstruct or change the flow of state waters, WDFW has the following comments regarding the placement of LWD in streams and rivers.

Washington Department of Fish and Wildlife Regulatory Authority

RCW 77.55.021 states that "...any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department (WDFW) in the form of a permit as to the adequacy of the means proposed for the protection of fish life." Additionally, a "Hydraulic Project" is defined as the "... construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state." RCW 77.55.011(7). The installation, removal, and repositioning of LWD within the waters of the state is considered a hydraulic project and requires a Hydraulic Project Approval (HPA).

Section (3)(a) of the same RCW states "*Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned.*" However, WDFW accepts that public safety measures that also serve to protect fish life may become conditions in a HPA. It should be noted that WAC 220-110-150 which sets the rules for the removal or repositioning of LWD states in section (1) "*Large woody material removal from watercourses shall only be approved where necessary to address safety considerations ...*" It is on this basis these regulations WDFW can and will work with King County to address public safety and the management of LWD.

Where there is an immediate threat to persons or property and an emergency has been declared by WDFW or the county legislative authority, WDFW issues emergency HPAs upon request for the removal or repositioning of obstructions such as LWD in the stream (RCW 77.55.021(8)). WAC 220-110-150(1) recognizes that during emergencies, WDFW may need to authorize the removal or repositioning of LWD to protect persons or property.

Some fish habitat enhancement projects that meet criteria in RCW 77.55.181 may include the placement of LWD. Under this statute, WDFW and local governments allow a fifteen day period to receive comments regarding environmental impacts from the project. Those comments may request that concerns for public safety be considered. Furthermore, a *“project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety...”* (RCW 77.55.181(1)).

When it is determined that a hydraulic project will result in detrimental impacts to fish life, WDFW may require the placement of LWD to mitigate for those impacts. RCW 77.55.261 states *“... the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant.”* Once again those comments may request that concerns for public safety be considered.

RCW 77.55.021 Section (2)(d) states that a complete application for an HPA must contain *“Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.”* Question 12 in the SEPA checklist (the form used to submit proposed projects for review) requires applicants to address impacts to recreation. Under Chapter 43.21C RCW, the SEPA lead agency responsible for review of the checklist can determine whether the project adequately addresses impacts to recreation, and the public can comment on the lead agency’s determination.

In summary, although the Hydraulic Code clearly directs the WDFW to only condition an HPA for the protection of fish life, there are several opportunities for public comment regarding public safety, and in non-emergency situations, where consistent with the protection of fish life, WDFW may include provisions in the HPA to address public safety.

Local Jurisdictional Authority:

The Growth Management Act (GMA) directs local governments, through its critical areas ordinance, to show that “special consideration” has been given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

“Conservation or protection measures necessary to preserve or enhance anadromous fisheries include measures that protect habitat important for all life stages of anadromous fish, . . . Special consideration should be given to habitat protection measures based on the best available science relevant to . . . instream structural diversity. . .” (WAC 365-195-925(3)).

‘Instream structural diversity’ among other things includes LWD.

The King County Shoreline Management (KCC Title 25) also includes standards designed to protect salmonids and salmonid habitat. KCC 25.28.020 (A) designates and subsequently protects, "A shoreline area that provides food, water or cover and protection for any rare, endangered or diminishing species."

Habitat Value of LWD

For thousands of years large woody debris has been an integral part of aquatic habitat, and it has been an important component in the life cycle of salmon and other fish. Early European settlers actively cleared massive logjams to facilitate navigation and drainage of viable agriculture land. Not until the later part of the last century when the debris clearing had extended up to the headwaters did biologists recognize the functions and values of LWD to the ecology and survival of fish. Since then extensive research has documented the intricate and complex role large wood plays in the entire ecosystem. A brief summary of these ecological functions based on extensive research is provided on page 12 of a White Paper titled "Ecological Issues in Floodplains and Riparian Corridors" published by the Center for Streamside Studies in May, 2001 and available on the WDFW web site (<http://wdfw.wa.gov/hab/ahg/floodrip.htm>).

With the understanding that LWD plays an invaluable role in productive fish habitat, many projects designed to restore or enhance fish habitat include the installation of LWD. The placement of LWD in rivers and streams is listed as a critical factor in every Salmon Recovery Plan in King County and throughout the Puget Sound and northwest region. The use of LWD as an enhancement tool is included in the "Adaptive Management of ESA-Listed Salmon and Steelhead Recovery Guidance" developed by the National Ocean and Atmosphere Administration (NOAA). Without extensive use of LWD, it will be difficult or impossible to achieve long-term goals for recovering Puget Sound Chinook salmon and Puget Sound steelhead, both of which are listed as "Threatened" under the Endangered Species Act. It should be noted that King County has 639 miles of fish-bearing streams, and that more than \$51 million has been spent on 63 salmon recovery projects in the county since 1999. Clearly, King County plays an important role in the recovery of these listed fish species.

Proposed Procedural and Design Standards and Recommendations

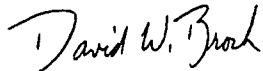
The "Report Addressing Public Safety in Placement of Large Wood in King County Waterway," March 2008, provides a thorough review of the issues and concerns regarding placement of LWD. Section IV of the report lists six points to be addressed during the development of design standards. These points emphasize ways to address the potential impacts to recreation. WDFW believes King County must also include options that promote the protection and enhancement of fish habitat and the recovery of Puget Sound Chinook and Puget Sound steelhead.

Section V of the Report lists five recommendations King County departments should take to address the concerns for public safety that may result from placement of LWD. WDFW recognizes these as appropriate steps for the County. WDFW will offer technical assistance to King County to achieve these recommendations if requested. It is understood that the overall objective is to develop various strategies to locate and design habitat structures using LWD that maximize the benefits and minimize risks to public safety.

Conclusion

WDFW staff looks forward to working with the County as a stakeholder in the management of public resources. Within its jurisdictional authority and technical expertise, WDFW will cooperate with King County, recreational interest groups, fish recovery groups, and the public in the development of processes and procedures that integrate public safety and hydraulic projects involving the installation of LWD.

Sincerely,



David W. Brock
Regional Habitat Program Manager

cc: Nancy Faegenburg, Program and Project Manager
King County Water and Land Resources Division
Peter Birch, Deputy Assistant Director, WDFW
Stewart Reinbold, Assistant Regional Habitat Program Manager, WDFW