



Regional Road Maintenance ESA Program Guidelines Newsletter

WOTUS Repeal and Recodification

Inside this issue:

Committee Update	2
Stormwater and National-wide Permits	3
BMP Feature	4-5
ESA Species Updates	6
Training Information	7
Regional Forum Members	8
Contacts & Acronyms	9

On October 22, 2019, a final rule was published repealing the 2015 Clean Water Rule: Definition of "Waters of the United States" (2015 Rule), which amended portions of the Code of Federal Regulations (CFR), and to restore the regulatory text that existed prior to the 2015 Rule. The agencies (EPA and Department of the Army) will implement the pre-2015 Rule regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

The four primary reasons the agencies repealed the 2015 Rule are outline here: <https://www.epa.gov/wotus-rule/definition-waters-united-states-recodification-pre-existing-rules>

The Final Rule can be found here: https://www.epa.gov/sites/production/files/2019-09/documents/wotus_rin-2040-af74_final_frn_prepub2.pdf

CWA Section 401 Proposed Rulemaking

Comments were due October 21, 2019 for EPA's proposed rulemaking to provide updates and clarifications to the procedural requirements for Water Quality Certifications under CWA Section 401. CWA section 401 is a direct grant of authority to states (and tribes that have been approved for "treatment as a state" status) to review for compliance with appropriate federal, state, and tribal water quality requirements any proposed activity that requires a federal license or permit and may result in a discharge to waters of the United States. This proposal is intended to increase the predictability and timeliness of section 401 certification by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures.

See the Federal Register: <https://www.federalregister.gov/documents/2019/08/22/2019-17555/updating-regulations-on-water-quality-certification>

Upcoming Events and

Hot Topics:

In-Water or Field BMP Trainings will be offered (see page 7):

- March 31st
- April 1st

Negotiating Team and Committee Update

Committees are the working component of the Regional Forum. The Regional Forum identifies key decision points and assigns committees to research or report on them. The Forum establishes timelines and provides guidance to committees.

Committee meetings are open to any Regional Forum member and all Regional Forum members are encouraged to participate and/or monitor these meetings. The following is a description of the negotiating team and the committee's accomplishments and functions since the last newsletter:

- Negotiating Team

No update

- Program Review and Approval

The next biennial report to NMFS is due at the end of 2020.

- Training

Regional Road Maintenance Program Quarterly Meetings will continue to provide for coordination on planning for upcoming training opportunities. Training courses will also be announced through Highway and Local Programs LTAP distribution list.

See page 7 for training information.

- Part 3 Framework

No New Part 3 Applications have been submitted for approval.

- Biological Review

See Negotiating Team.

- Stormwater

See page 3 for stormwater updates.

- Implementation

No update.

- Scientific Research

BMP research continues at training sites. BMP research of BMPs used in the training program continues as classes are developed and presented.

- Permit

No update

- Integrated Vegetation Management (IVM)

No update.

- Report

Reports are due April 15. Please send them to Gregor Myhr at myhrg@wsdot.wa.gov and Janine Johanson at janine.johanson@kingcounty.gov.



Recent TMDL Litigation

In 1995, Ecology was sued for not addressing the 1,600 pollution impaired waterbodies on the CWA 303(d) list. Under a 1998 settlement agreement, Ecology had to develop water cleanup plans (also called Total Maximum Daily Loads (TMDL)) for this backlog of impaired waterbody segments in Washington by 2013.

The goals outlined in the 1998 settlement agreement were not met by 2013. The Northwest Environmental Advocates (NWEA) recently filed a motion in US District Court to complete that work. Additionally, NWEA filed a separate lawsuit to get the EPA to set a timetable for completing water cleanup plans for the current backlog of impaired waterbody segments (now about 4,000) on the 303(d) list.

Recent article:

<https://www.seattletimes.com/seattle->

[news/environment/does-the-slow-paced-clean-up-of-polluted-state-waterways-violate-federal-law/](https://www.seattletimes.com/seattle-news/environment/does-the-slow-paced-clean-up-of-polluted-state-waterways-violate-federal-law/)

Link to NWEA webpage:

<https://www.northwestenvironmentaladvocates.org/nweblog/2019/09/26/washington-water-pollution/>



WSDOT 2019 Fish Passage Performance Report and Video

Since 1991, the Washington State Department of Transportation has worked with the Washington Department of Fish and Wildlife on a comprehensive program to eliminate fish passage barriers along the 7,052 miles of Washington State highways. Statewide there are 3,855 fish bearing highway crossings and 2,052 are fish passage barriers, including 2,027 culverts. 1,523 of these barriers block a significant amount of upstream habitat (> 200 meters).

As of June 3, 2019, WSDOT has corrected 66 injunction barrier culverts, opening 316 miles of blocked salmon and steelhead habitat. This represents 26% of the 1,233 miles blocked prior to correction.

To date, WSDOT has completed 345 fish passage barrier corrections, allowing access to approximately 1,155 miles of potential upstream habitat for fish. Sixteen fish passage projects were completed in 2018, correcting 15 barriers and opening up 104.73 miles of potential upstream habitat. One of these is a previous correction that had reverted to a barrier. Ten of the 15 barriers corrected are Federal Court Injunction barrier culverts.

Eight fish passage barrier corrections are planned for completion in 2019. Seven of the eight are injunction barrier corrections. Seven of the barrier corrections are stand-alone projects. These projects will open up approximately 20.04 miles of potential fish habitat.

The 2019 WSDOT Fish Passage Performance Report is available on-line in pdf format:

<https://www.wsdot.wa.gov/sites/default/files/2018/08/09/Env-StrRest-FishPassageAnnualReport.pdf>.

WSDOT Fish Passage Design Video:

<https://www.youtube.com/watch?v=u7HT6oMqAco>

BMP Feature: Maintenance Challenge Becomes an Opportunity

The SR 529 Steamboat Slough Mitigation project constructed a 12-acre estuarine wetland mitigation site within WSDOT right-of-way. Located in the City of Marysville between southbound SR 529 and I-5, the project will mitigate impacts associated with the upcoming I-5/Marine View Drive (MVD) to SR 528, and other future WSDOT projects in the estuary (Figure 1). Typically WSDOT projects would purchase wetland bank credits for mitigation, however, there are currently no approved mitigation banks or in-lieu fee programs available for estuarine impacts in this watershed, so on-site mitigation was the next option.

The future wetland mitigation site is currently separated from Steamboat Slough by a failing dike. This maintenance challenge became an opportunity for

the project to create on-site mitigation. The failing dike would have been extremely costly to repair and would require significant floodplain impacts to bring to current USACE standards. If WSDOT had allowed the dike to simply fail without the mitigation site plan, re-grading to remove fill materials, and specifically designing and creating tidal channels, the un-controlled dike failure may have caused the project site to only partially flood and to become overwhelmed by invasive plant species, similar to other areas in the Estuary with neglected dikes. The project team, including WSDOT's Area 3 maintenance staff, harnessed their collective ingenuity to avoid additional floodplain impacts, provide mitigation for an important project, and turn this failing dike into a community benefit.

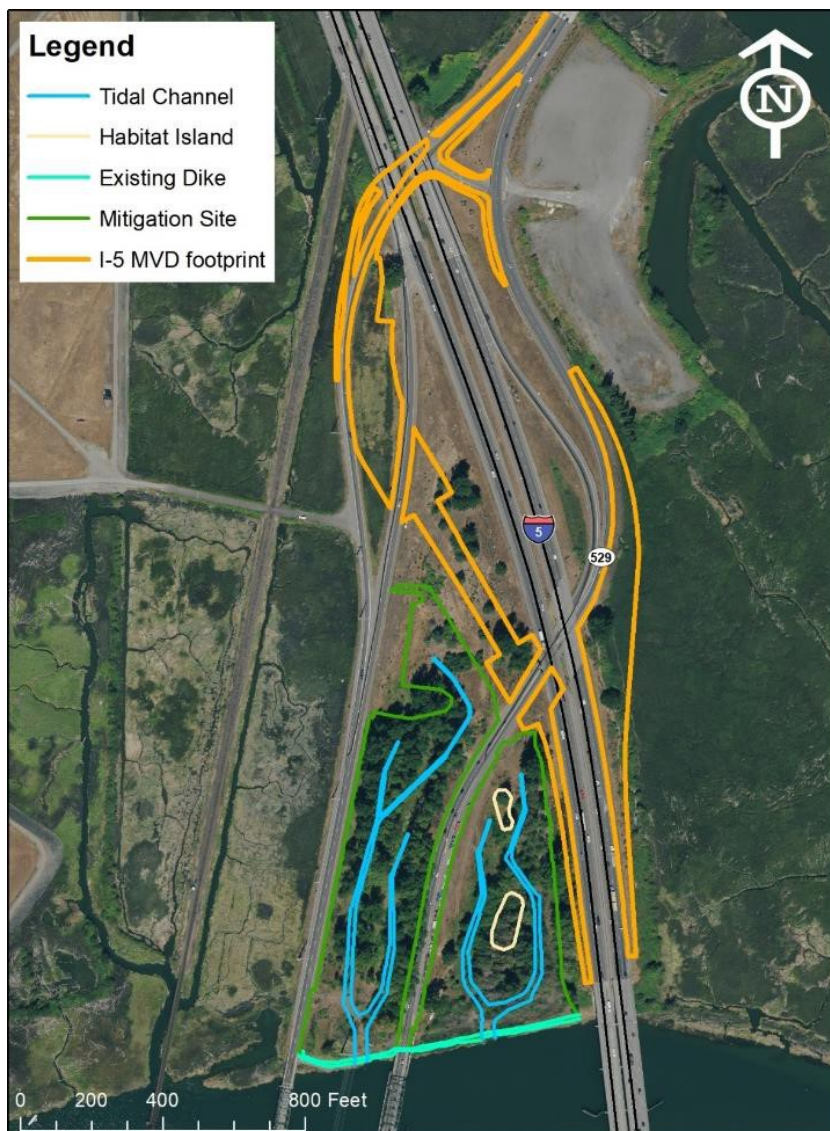


Figure 1: Future interchange project footprint and mitigation site project features.



Figure 2: Retention of one hundred trees which will be repurposed as large woody material, providing habitat complexity for aquatic species

BMP Feature: Maintenance Challenge Becomes an Opportunity

The Steamboat site is constrained by the adjacent road prisms of northbound and southbound SR 529 and I-5. Designing a site that would provide as much mitigation as possible to support WSDOT projects while maximizing the ecological benefits required creativity from many disciplines. WSDOT worked with the Tulalip Tribes, WDFW, Ecology and USACE to develop the site and mitigation proposal. WSDOT received regulatory approval for reduced buffers by retrofitting SR 529 in the project area to treat stormwater entering the site, and providing enhanced planting areas on the SR 529 road prism. In the end, the site will create 12 acres of new estuary and upland buffer, 4 acres of which will generate credits for mitigation.

Although tree removal was necessary to build the wetland, WSDOT found several ways to use the trees as part of the estuarine habitat. The project designed "islands" to retain a small portion of trees to provide supplemental habitat. To increase longevity, taller trees with roots extending into the grading areas will be retained as snags to provide important habitat and long-term nutrients to the site. Of the trees that needed to be removed, one hundred trees will be repurposed as large woody material, providing habitat complexity for aquatic species and keeping materials on site. (Figure 2).

Overall Benefits to the Environment

Estuaries are among the most highly productive ecosystems, providing high fish and wildlife density and species richness, breeding habitat, and important fish and wildlife seasonal ranges and movement corridors. The Snohomish River Estuary, a network of Sloughs and wetlands where the Snohomish River meets Possession Sound, has historically been a crucial habitat for juvenile and migrating adult salmon. Development has reduced that habitat to just 17 percent of what it once was, contributing to the decline of salmon in Puget Sound. The new estuarine wetlands and 3,500 linear feet of new tidal channels will provide an important benefit through helping to restore habitat for numerous plant life and wildlife, including salmon (Figure 3). The habitat provided by estuarine wetlands are particularly crucial for Chinook salmon, an endangered species, and the primary food source for our endangered Southern Resident Killer Whale.

Project Website: <https://www.wsdot.wa.gov/projects/sr529/steamboat-slough/home>

Dike breaching video: <https://wsdotblog.blogspot.com/2019/10/steamboat-slough-now-flows-in-12-acres.html>





Figure 3: Creation of the new tidal channels which provide: hydrologic connection to Steamboat Slough, salt water conveyance through the mitigation site, accessibility for aquatic and marine species, and habitat for fish including salmonids.





ESA Species Updates

This section highlights ESA species updates:

1. On November 26, 2019 USFW proposed to delist **Bradshaw's lomatium** (*Lomatium bradshawii*), a plant in the carrot family found in western Oregon and sw Washington (CFR Vol 84 No 228 [65067-65080](#)). USFW will accept comments until January 27, 2020.
2. On October 30, 2019 USFW announced a draft Recovery Plan for the **streaked horned lark** (*Eremophila alpestris strigata*), a small songbird listed as threatened in Washington and Oregon (FR v 84 No 2010, 58170-58171). The USFW is taking comments on the [draft Recovery Plan](#) until December 30, 2019. 
3. On October 7, 2019 USFW proposed to remove **water howellia** (*Howellia aquatilis*) from the list of endangered and threatened plants (FR V84 No194, 53380-53397). The plant is found in transitory wetlands or potholes in the Pacific Northwest. Comments on the proposed rule are due by December 6, 2019.
4. On March 15, 2019 USFWS proposed to delist and remove the ESA protections for the **gray wolf** (*Canis Lupus*) in the lower 48 states (FR 50 CFR Part 17 V. 84, 9648-9687). The Northern Rocky Mountain Distinct Population Segment (DPS) of gray wolves in eastern Washington was previously delisted (finalized in 2011), but wolves in part of Eastern Washington and all of Western Washington are currently listed as endangered.
5. On December 13, 2018, NMFS issued a draft [Recovery Plan](#) for the distinct population segment (DPS) of **Puget Sound steelhead** (*Onchorhynchus mykiss*), listed in 2007. A 2016 status review indicated most DPS steelhead continued to show downward trends in estimated abundance. The NMFS review team concluded the DPS was at very low viability, as were all three of its constituent Major Population Groups, and many of its 32 Demographically Independent Populations.
6. **Pygmy rabbits** will continue to be classified as an endangered species based on a report to the state Fish and Wildlife Commission that they face ongoing risks in central Washington's sagebrush habitat.
7. On April 12, 2018 USFWS proposed listing the **Island marble butterfly** (*Euchloe ausonides insularus*) as endangered under the Endangered Species Act (ESA) (50 CFR Part 17 p 15900-15936). They also proposed to designate critical habitat. USFWS will receive comments until June 11, 2018 and make a final decision 

in April 2019 (approximate date). Occupied butterfly habitat is only found on San Juan Island, and does not intersect with state or federal highways.

8. The USFWS completed a five-year review of the **Canada lynx** (*Lynx canadensis*), a feline carnivore listed as threatened under the ESA. The review concluded that the lynx may no longer need protection under the ESA and can be considered for delisting. The delisting process would include the USFWS proposing to delist the species in the Federal Register. That process would take a minimum of a year from first publication in the Federal Register. Canada lynx are found in small populations in the Northern Cascades in Washington, with critical habitat designated in north central Washington. Lynx are also found in other states. 
9. On January 23, 2017 the NMFS issued a final rule to delist the Puget Sound/Georgia Basin distinct population segment (DPS) of **canary rockfish** (*Sebastes pinniger*) under the ESA (CFR Vol 82 NO 13 77-11-7731).
10. On October 17, 2016 the USFWS published a final rule downlisting the Columbia River distinct population segment (DPS) of **Columbia white-tailed deer** (*Odocoileus virginianus leucurus*) from endangered to threatened (50 CFR Part 17 V 81, 71386-71410).
11. On September 21, 2016 the USFWS made listing findings under the ESA for four species that may occur in WA, but the species are not warranted for listing (50 CFR Part 17 64843-64857). Guadalupe Murrelet (*Synthliboramphus hypoleucus*) formerly known as the Xantus's murrelet is now recognized as two species, the **Guadalupe Murrelet** and the **Scripps's murrelet** (*S. scrippsi*). **Northern Wormwood** (*Artemisia campestris* var. *wormskioldii*) known populations are stable. **Washington Ground Squirrel** (*Urocitellus Washington*) populations are not as isolated as previously thought.
12. Critical habitat designated for the **Oregon Spotted frog** (*Rana pretiosa*) in Whatcom, Skagit, Thurston, Skamania, and Klickitat Counties in Washington. Final Rule effective May 11, 2016 (50 CFR 17).
13. Critical habitat designated for Lower Columbia River **Coho Salmon and Puget Sound Steelhead**. Final Rule effective March 25, 2016. (81 FR 9251) 
14. On October 7, 2014, the U.S. Fish and Wildlife Service proposed to list the West Coast distinct population segment (DPS) of the **fisher** (*Pekania pennant*) as threatened under the ESA (50 CFR 17 60419-60443).
15. On October 3, 2014 the USFWS issued a final rule listing for the Western DPS of the **yellow-billed**

(Continued on page 7)



Regional Road Maintenance Training

The Regional Forum typically schedules classes in the spring and fall. Field BMP classes will be announced through the WSDOT Local Technical Assistance Program (LTAP) webpage: www.wsdot.wa.gov/LocalPrograms/Training/LTAP.htm

- In-water or Field BMP Trainings will be offered March 31st and April 1st. Please contact Gregor Myhr (below) if you are interested in sending staff to either of these spring courses.

If you have other training questions, please contact Gregor Myhr (MyhrG@wsdot.wa.gov), Jeff Rudolph (jrudolp@co.pierce.wa.us), or Janine Johanson (Janine.johanson@kingcounty.gov).



BMP Training at Pierce County May 2018

ESA Species Update (continued)

- cuckoo** (*Coccyzus americanus*) as threatened under the ESA (50 CFR 17 59992-60038). The ruling went into effect on November 3, 2014.
16. On September 12, 2014 the USFWS published a final rule designating revised **Canada lynx** (*Lynx canadensis*) critical habitat, and adjusting the boundary of the lynx distinct population segment (DPS) (50 CFR 17 54782-54846) under the ESA. The final rule takes effect on October 14, 2014. (USFWS Vol 11, Issue 4)
17. On August 29, 2014, the USFWS published a final rule to list the **Oregon Spotted frog** (*Rana pretiosa*) as a threatened species under the ESA (50 CFR 17 51658-51710). The Service will make its final determination on critical habitat sometime in the future. (USFWS Vol 11, Issue 4)
18. On May 9, 2014 the final rule to list four subspecies of **Mazama pocket gopher** as threatened species under the ESA, along with designated critical habitat became effective. (50 CFR Part 17 19760-19796 and 19712-19757). (USFWS Volume 11, Issue 3 and Volume 10, Issue 1)
19. The final rule to delist the Eastern DPS of the **Steller sea lion** was published on November 4, 2013 (50 CFR Parts 223 and 224 66140-66199). (Volume 11, Issue 1)
20. On October 3, 2013 the USFWS listed the **Taylor's checkerspot butterfly** as an endangered species (50 CFR 17 61452-61503) and also designated critical habitat (50 CFR 17 61506-61589). (Volume 11, Issue 1; Volume 10, Issue 1)



21. On October 3, 2013 the USFWS published a final rule to list the **streaked horned lark** (*Eremophila alpestris strigata*) as threatened (50 CFR 17 61452-61503) and also designate critical habitat (50 CFR 17 61506-61589). A 4(d) rule will also be implemented (Volume 11, Issue 1; Volume 10, Issue 1).
22. The USFWS listed two plants as threatened under the ESA and designated critical habitat for **Umtanum Desert buckwheat** and **White Bluffs bladderpod** with an effective date of May 23, 2013.
23. On February 4, 2013, the USFWS proposed to list the North American distinct population segment (DPS) of the **wolverine** (*Gulo gulo luscus*). Wolverine critical habitat could not be determined at this time. (USFWS Volume 10, Issue 2).
24. On January 14, 2013, the NOAA proposed to designate critical habitat for **Lower Columbia River Coho Salmon and Puget Sound Steelhead**. Comments are due April 15, 2013.
25. The NOAA accepted a petition to delist **Puget Sound's killer whales** from the ESA. NOAA is seeking information on the southern resident killer whales during its review until January 28, 2013. (NOAA Fish Volume 10, Issue 1).
26. The USFWS revised critical habitat for the **northern spotted owls** across federal lands in Washington, Oregon and Northern California on November 21, 2012 (proposed March 2012). Today 9.6 million acres are designated as Critical Habitat. (USFWS Federal Register Vol 77 No 233, Dec 4, 2012; Volume 9, Issue 3—proposal to revise critical habitat)



Future Meetings - Update Your Schedule!

Forum meetings are typically held on the second Thursdays of January, April, July, and October.

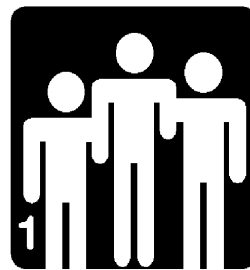
Current scheduled meetings include:

- January 9, 2020 Pierce County Tacoma Mall Office

If you are interested in hosting a Regional Forum meeting, please speak up at the next Regional Forum meeting or contact Janine Johanson.

Committee meetings are scheduled on an as-needed basis. If you would like to be part of a committee, contact Gregor Myhr (MyhrG@wsdot.wa.gov).

If you would like to be added to the e-mail list, have questions or need directions contact Janine Johanson (janine.johanson@kingcounty.gov).



**Program Element 1:
Regional Forum**

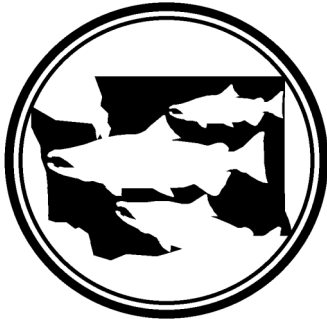
Regional Forum Members

Agencies that received a Biological Opinion from NOAA Fisheries

1. City of Bellevue
2. City of Bremerton
3. City of Burien
4. Cowlitz County
5. Clallam County
6. Clark County
7. City of Covington
8. City of Edgewood
9. City of Everett
10. City of Kenmore
11. City of Kent
12. King County
13. Kitsap County
14. Kittitas County
15. City of Lake Forest Park
16. City of Lakewood
17. Lewis County
18. City of Maple Valley
19. Mason County Public Works and Utilities and Waste Management
20. City of Mill Creek
21. City of Monroe
22. City of Newcastle
23. Pierce County
24. City of Poulsbo
25. City of Renton
26. City of Sammamish
27. City of SeaTac
28. City of Shoreline
29. Skagit County
30. Skamania County
31. Snohomish County
32. City of Sumner
33. City of Tacoma
34. Thurston County
35. City of University Place
36. City of Winlock
37. WSDOT



RRMP Contacts



For more information regarding the Regional Road Maintenance ESA Program please contact any of the following individuals:

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Common Acronyms

ACOE	Army Corps of Engineers
BA	Biological Assessment
BMP	Best Management Practice
BO	Biological Opinion
CEU	Continuing Education Unit
CWA	Clean Water Act
DPS	Distinct Population Segment
Ecology	Washington State Department of Ecology
EPA	United States Environmental Protection Agency
ESA	Endangered Species Act
ESU	Evolutionarily Significant Unit
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
HB	House Bill
MS4	Municipal separate storm sewer system
NOAA Fisheries	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
ORA	Office of Regulatory Assistance
RCW	Revised Code of Washington
RRMP(G)	Regional Road Maintenance ESA Program (Guidelines)
RF	Regional Forum
SB	Senate Bill
SBE	Sequential Biological Evaluation
USFWS	United States Fish and Wildlife Service
UW	University of Washington
WAC	Washington Administrative Code
WSDOT	Washington State Department of Transportation
WSU	Washington State University

THE RRMPG IS ON THE WEB!

<http://www.wsdot.wa.gov/Maintenance/roadside/esa.htm>