



Regional Road Maintenance ESA Program Guidelines Newsletter

Puget Sound Steelhead Recovery Plan

Inside this issue:

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

On December 27, 2019, the NMFS issued the final recovery plan for the Puget Sound steelhead distinct population segment (DPS). The plan was finalized after public comment and in cooperation with a wide variety of experts. The plan lays out a recovery strategy to address the potential threats based on the best available science and includes goals that incorporate objective, measurable criteria which, when met, would result in a determination that the species be removed from the list.

Since listing in 2007, steelhead status has changed little; the abundance of natural spawners is very low and productivity remains predominately negative. Degradation and fragmentation of freshwater habitat, with consequential effects on connectivity, remain the primary limiting factors and threats facing the Puget Sound steelhead DPS. The DPS is at very low viability, as are all three of its constituent major population groups, and many of its 32 demographically independent populations.

Final Recovery Plan: <https://www.fisheries.noaa.gov/resource/document/esa-recovery-plan-puget-sound-steelhead-distinct-population-segment-oncorhynchus>

WOTUS - Navigable Waters Protection Rule

On January 23, 2020, the EPA and the Department of the Army (Army) finalized the Navigable Waters Protection (NWP) Rule to define "Waters of the United States" and thereby establish federal regulatory authority under the CWA. For the first time, the agencies are streamlining the definition to include four simple categories of jurisdictional waters, clear exclusions for many water features that traditionally have not been regulated, and definitions for terms in the regulatory text that have never been defined before. In the CWA, congress explicitly directed the Agencies to protect "navigable waters." The Navigable Waters Protection Rule regulates these waters and the core tributary systems that provide perennial or intermittent flow into them.

The four categories of waters are federally regulated: territorial seas and traditional navigable waters, perennial and intermittent tributaries to those waters, certain lakes, ponds, and impoundments, and wetlands adjacent to jurisdictional waters. The final rule also details 12 categories of exclusions; features that are not "Waters of the United States", such as features that only contain water in direct response to rainfall, groundwater, many ditches, prior converted cropland, and waste treatment systems.

The final rule clarifies key elements related to the scope of the CWA, including: removing the proposed separate categories for jurisdictional ditches and impoundments, refining the definition of "typical year", and defining "adjacent wetlands".

The NWP Rule is the second step in a two-step process to revise the definition of "waters of the United States" consistent with the February 2017 Presidential Executive Order. This final rule will become effective 60 days after publication in the Federal Register and will replace the Step One Rule published in October, 2019. <https://www.epa.gov/nwpr/navigable-waters-protection-rule-step-two-revise>

Public webcast recording: <https://www.epa.gov/nwpr/navigable-waters-protection-rule-step-two-revise#publicoutreach>

Upcoming Events and

Hot Topics:

In-Water BMP Trainings
March 31st and April 1st

Field BMP Training May 5th
and 6th

(see page 7)

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:

- 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.

- 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.

Draft Kelp Recovery Plan for Puget Sound

The Puget Sound Kelp Conservation and Recovery Plan provides a framework for coordinated research and management actions to protect kelp species from a suite of global and local stressors. Achieving kelp conservation and recovery will require a collaborative effort between many stakeholders.

Actions identified in the Recovery Plan address six strategic goals:

- Reduce stressors
- Improve understanding of the value of kelp to Puget Sound ecosystems and integrate into management
- Describe kelp distribution and trends
- Designate kelp protected areas
- Restore kelp forests

- Promote awareness, engagement and action from user groups, Tribes, the public and decision-makers

Public review draft available : https://www.nwstraits.org/media/2880/pugetsoundkelpconservationandrecovery-plan_public_review_draft_1219.pdf



Salmon Habitat Rule Making

On 12/2/2019, Ecology announced rulemaking to consider amending the state's surface water quality standards (WAC 173-201A) to incorporate a "Salmon Spawning Habitat Protection" rule. This rulemaking will consider revising aquatic life uses, to provide additional water quality and habitat protection for early life stages of salmonids—including salmon, steelhead, and trout—and their spawning gravel.

Two revisions will be considered in this rulemaking:

- 1.) Revising the freshwater dissolved oxygen (DO) criteria to better protect early life stages of salmon in spawning gravel.
- 2.) Adding fine sediment criteria to provide additional protection for spawning gravel habitat.

Draft rule development and stakeholder meetings are anticipated through the winter of 2020 with a public comment period to follow. Rule adoption is not expected until the summer of 2021.

Details can be found: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-201A-Salmon-spawning-habitat>

Chronic Environmental Deficiency

Chronic Environmental Deficiencies (CEDs) are locations along the state highway system where recent, frequent, and chronic maintenance repairs to the state transportation system are causing impacts to fish and fish habitat. In 2002, the WSDOT established a partnership with the WDFW to move away from the repetitive repair of WSDOT roads. CED site restoration concentrates on long-term solutions that will optimize improvements for fish and fish habitat, while also addressing transportation needs.

The CED program has saved maintenance cost, reduced the loss of commerce due to road closures, removed or reused rip-rap and other material damaging aquatic habitat and replaced with rough woody structures designed to improve salmon habitat.

Review the WSDOT's latest CED annual report: <https://www.wsdot.wa.gov/environment/technical/disciplines/stream-restoration/ced-policies-procedures>

BMP Feature: Beaver Exclusion Devices

Beaver populations continue to rebound from historically depressed levels and it is clear that beavers are dispersing across the landscape and reoccupying areas throughout their historical distribution. One sign of this rebound is the increasing number of sites where maintenance crews are combating flooding issues caused by beaver activity. Maintenance of beaver dams and plugged culverts has become common place for road maintenance crews.

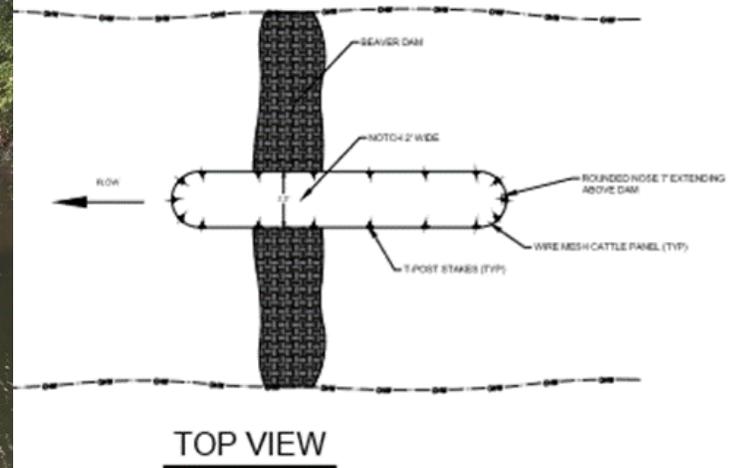
Beavers are notorious for their rumbustious activity in repairing and rebuilding dams almost as fast as maintenance crews can dismantle them. For dams located in roadside ditches and along roads in remote areas of a county or city road system, the response time and accumulated costs required for crews to return to these locations weekly or in many cases, daily can add up. Various devices have been developed and deployed over the years to limit the impacts beavers have on roadways. But as opinions about fish passage

among permitting agencies evolve, once accepted tools (like flexible pond levelers) are falling out of favor; permitting trends have all but eliminated the use of leveler/flow through devices in fish-bearing waters. Permitting agencies are leaning more toward allowing notching, however, notching can be time consuming and expensive for both staff and equipment. Experimental alternative approaches and designs are needed to realize permitting and cost efficiencies. The following are examples of recent design adaptations.

At a remote site where beavers dammed a roadside ditch a design for a exclusion device to protect the notch may be a reasonable approach.

Two devices were installed around notches on two dams. The notches were placed in the center of the ditch line. A long narrow cage was set in the notch. This device is easily installed and should allow for fish passage during normal flows.

Pros	Cons	Unknowns
Permitting	Installation	Fish Passage
Shape (higher difficulty for beaver)		Long term

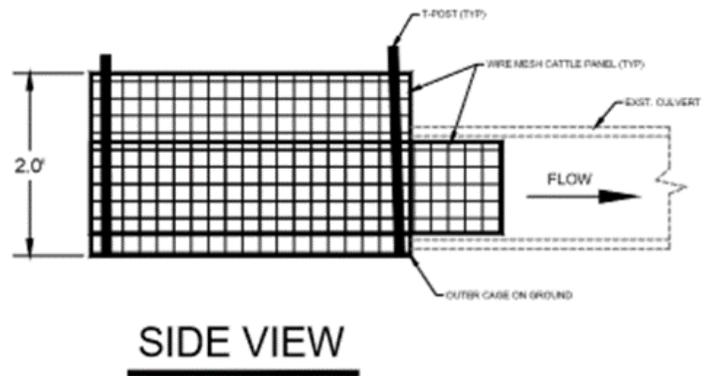


Left: Notch excluder design functioning during a high water event, and is maintaining the water level below the road surface. Right: Top view plan set.

BMP Feature: Beaver Exclusion Devices

Another design which can be used at culverts as a temporary and portable excluder incorporates the double-walled cage design, a cage inside a cage. This design is quick to build and install and shows promise in locations with new or intermittent beaver activity.

Pros	Cons	Unknowns
Permitting	Installation	Fish Passage
Design (double cage)		Long term
Portable/reusable		



Left: Culvert excluder design functioning during a high water event, and is maintaining the water level below the road surface. Right: Side view plan set

For more information (and complete plan set) contact:

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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 insulanus*) 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 BMP Training March 31st and April 1st in Monroe.
- Field BMP Training May 5th and 6th at Taylor Town

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.

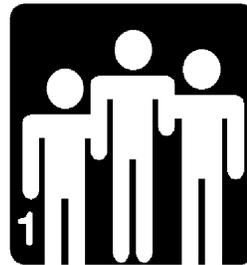
Current scheduled meetings include:

- April 30, 9:30-12 at 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>