



# Regional Road Maintenance ESA Program Guidelines Newsletter

## Proposed Revisions to ESA - Public Comments

### Inside this issue:

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

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) proposed a series of rules/amendments to the implementing regulations of the Endangered Species Act (ESA) in two separate announcements. A third announcement came only from the U.S. Fish and Wildlife Service.

The proposed revisions to the ESA are in response to a 2017 Executive Order titled "Enforcing the Regulatory Reform Agenda" (EO 13777). The Services then requested public comment on needed reforms, and these proposed changes are in response to the comments received.

The Services will accept public comments on all three proposed revisions until **September 24, 2018**. They are especially interested in (1) the extent to which the changes outlined in this proposed rules will affect timeframes and resources needed to conduct consultation and (2) anticipated cost savings resulting from the changes. While not reflected in any proposed changes to the regulations at this time, they also seek comment on the merit, authority, and means for the Services to conduct a single consultation, resulting in a single biological opinion, for Federal agency actions affecting species that are under the jurisdiction of both FWS and NMFS.

If any of the proposed amendments are finalized, the changes in those amendments would not apply to any previous consultations. Most of the specific proposals appear small in scope, but collectively, they cover many aspects of how ESA consultations are conducted. If some or all of these proposed changes are made, they may affect our consultation processes. It will take time for the Services to understand and implement these changes, and time for agencies to adjust.

Refer to the Federal Register announcements for more detail:

- Revision of Regulations for Interagency Cooperation. [50 CFR Part 402 pages 35178-35193](#). USFWS and NMFS.
- Revision of the Regulations for Listing Species and Designating Critical Habitat [50 CFR Part 24 pages 35193-35201](#). USFWS and NMFS.
- Revision of the Regulations for Prohibitions to Threatened Wildlife and Plants. [50 CFR Part 17 pages 35174-35178](#). USFWS only.

### Upcoming Events and

#### Hot Topics:

- Field BMP trainings scheduled in Monroe on October 30th and 31st. See page 7 for more details.

## Evolution of Stormwater Permitting Report

The EPA convened a group of stakeholders for a workshop to envision the future of stormwater management. The resulting report aims to provide a synthesis of participant ideas and along with other existing research to identify the most impactful opportunities for strengthening MS4 permits and program implementation.

Download the full report: <https://www.acwa-us.org/documents/evolution-of-stormwater-permitting-approaches-and-program-implementation-final-report/>

## 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](mailto:myhrg@wsdot.wa.gov) and Janine Johanson at [janine.johanson@kingcounty.gov](mailto:janine.johanson@kingcounty.gov).

### - Negotiating Team

No update

### - Program Review and Approval

The next biennial report to NMFS is due at the end of 2018.

### - 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.

## Ecology's SWMMWW Update

The Department of Ecology is accepting comments on the Draft 2019 Stormwater Management Manual for Western Washington until November 14, 2018. Ecology prefers comments be submitted using the provided template and submitted to their online system. Links to the reviewable content, comment template and the online system can be found:

<https://fortress.wa.gov/ecy/ezshare/wq/permits/Flare/Draft2019SWMMWW.htm>

## Stormwater Action Monitoring

The Department of Ecology administers the Stormwater Action Monitoring (SAM) program (previously called the Regional Monitoring Program) on behalf of the Stormwater Work Group and the 90+ municipal stormwater permit collaborators.

Bookmark the new SAM website:

<https://ecology.wa.gov/Regulations-Permits/Reporting-requirements/Stormwater-monitoring/Stormwater-Action-Monitoring>



## Solid Waste Handling Standards WAC 173-350

Ecology has adopted comprehensive amendments to the Solid Waste Handling Standards (WAC 173-350). Significant changes were made to multiple sections of the rule.

One of the main updates was the establishment of criteria for when earthen material "soil" is a solid waste. Definitions added or modified in the rule include: reuse, asphaltic materials, cementitious materials, cured concrete, de minimis, engineered soil, petroleum contaminates soil, street waste, clean soil, clean dredged material, contaminated soil and contaminated dredged material.

In particular the definition for contaminated soils was modified from, "soils removed during the cleanup of a hazardous waste site, or dangerous waste facility closure, corrective actions or other clean-up activities and which contain harmful substances but are not designated dangerous wastes" to:

*"soil containing one or more contaminants from a release and when moved from one location to another for placement on or into the ground:*

- *Contains contaminants at concentrations that exceed a cleanup level under chapter 173-340 WAC, MTCA - cleanup regulation, that would be established for existing land use at the location where soil is placed; or*
- *Contains contaminants that affect pH, and pH*

*of the soil is below 4.5 or above 9.5 or is not within natural background pH limits that exist at the location where soil is placed.*

*Unless excluded in WAC 173-350-020, contaminated soil is solid waste and must be managed at a solid waste handling facility in conformance with this chapter or chapter 173-351 WAC, Criteria for municipal solid waste landfills. Characterization of material may be required based on solid waste facility acceptance standards. Examples of potentially contaminated soil may include but are not limited to street waste, petroleum contaminated soil, engineered soils, and soils likely to have contaminants from a release associated with from industrial or historical activities."*

Ecology anticipates no impacts in the cost-benefit comparison based on amendments to the definitions section. However, as noted in the implementation plan, some stakeholders have expressed significant concerns with the cost and potential delays associated with changes in the rule. Ecology identifies that their staff will be able to assess the success of rule changes in this area through interactions with stakeholders, and to make recommendations if the approach turns out to have unidentified shortcomings.

Agencies should refer to Ecology's website for full information and rule adoption documents.

<https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-350-Nov13>

## BMP Feature: Salvage and Relocation BMPs for Freshwater Mussels

This article is intended to provide a quick summary of the guidelines and required considerations for planning and conducting mussel recovery and relocation efforts. The source guidance called, *Freshwater Mussel Relocation Guidelines*, was developed by the Pacific Northwest Native Freshwater Mussel Workgroup and can be found at: <http://www.xerces.org/wp-content/uploads/2009/10/mussel-relocation-position-statement.pdf>.

Instream activities often require isolation and the bypassing of water around a worksite. This often requires removal and relocation of salmonids to areas where there will be no impacts of the instream work. Typically the main focus of these efforts are on salmon and resident fish species. Freshwater mussel populations in the Pacific Northwest are in decline (Blevins et al. 2017). Many local streams may contain populations of freshwater mussels which should be included in salvage and relocation efforts. Salvaging and relocation of all aquatic life requires significant planning in order to be successful.

### General Evaluation Guidelines:

1. Conduct an initial survey to identify the species, abundance, if possible (sex ratio), age of the mussels present, evaluate extent of distribution.
2. If work site will be affected by the Maintenance activity, review plans to determine footprint, project timeline, and extent of possible (worst case scenario) of disturbance.
3. Plan the efforts/techniques that would provide the highest effectiveness of aquatic fauna relocation efforts. Review site to develop/implement BMPs that would protect/limit the aquatic resources at the site.

When reviewing the site for mussel presence, remember that mussels are cryptic and are typically found in areas that are covered with water year round. Surveys should occur during warmer weather when mussels are closer to the surface.



## BMP Feature: Salvage and Relocation BMPs for Freshwater Mussels

### Selecting a Relocation Site

1. Selecting a site requires careful evaluation, site nearby, already containing the same species of mussels, with ample space' will be isolated from any potential impacts, are host fish species present at selected site.

2. Mussels are found in fish bearing waters (host), in locations where they are permanently under water, and occur at high densities. A recent salvaging project near Portland removed and relocated over 300 mussels\*. The relocation site needs to be stable. Mussels need to be placed at the deepest locations of the relocation site (this lowers the risk of predation by raccoons and other predators).

Salvaging efforts should be multi-phased, before and during drawdown it is important to check the site for any mussels which may have been missed.

### Considerations for Transport, Relocation and Monitoring:

1. Do not plan to do salvage efforts solely on the day of dewatering.
2. Carefully and quickly transport salvaged mussels, they are easily stressed by handling. Keep cool and moist, minimize time out of the water.
3. Cannot be held (in artificial habitats) for long periods of time.
4. Work site should be resurveyed for mussels

- missed several times after initial salvage event.
5. Consider transporting in coolers or cover buckets with moist towels.
6. Mark relocation site in order to evaluate effectiveness and survival.
7. Document all efforts, results, and monitoring. Documentation should be used/incorporated in an adaptive management approach.

Please refer to the following website for additional resources required to fully plan for salvaging and relocating mussels. <https://xerces.org/western-freshwater-mussels/>

For more information on best management planning guidelines for conserving freshwater mussels see: <https://xerces.org/conserving-the-gems-of-our-waters/>

\*Information provided by Laura Guderyahn, Ecologist, Portland Parks & Recreation



Western Pearlshell showing signs of stress during dewatering



## ESA Species Updates

This section highlights ESA species updates:

1. **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.
2. 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.
3. 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.
4. 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).
5. 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).
6. 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.

7. 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).
8. Critical habitat designated for Lower Columbia River **Coho Salmon and Puget Sound Steelhead**. Final Rule effective March 25, 2016. (81 FR 9251)
9. 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).
10. On October 3, 2014 the USFWS issued a final rule listing for the Western DPS of the **yellow-billed cuckoo** (*Coccyzus americanus*) as threatened under the ESA (50 CFR 17 59992-60038). The ruling went into effect on November 3, 2014.
11. On September 12, 2014 the USFWS published a final rule designating 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)
12. 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)
13. 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)
14. 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)
15. 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)
16. 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-



(Continued on page 7)

## Regional Road Maintenance Training

**T**wo fall season BMP Field classes scheduled in Monroe on October 30th and 31st.

**Registration:** <http://www.wsdot.wa.gov/sites/default/files/2018/08/29/RRMPFieldBMPMonroeOct2018.pdf>

Typically classes are given in Spring and Fall. Additional classes can be scheduled if enough participants are on a waitlist. Contact Susan Neff [NeffS@wsdot.wa.gov](mailto:NeffS@wsdot.wa.gov) and let her know the class you are interested in and how many staff you would like to send to each class—this allows the Regional Forum to determine what class to provide and where.

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



BMP Training at Pierce County May 2018

## ESA Species Update (continued)

- 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).
17. 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.
  18. 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).
  19. 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.
  20. 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).
  21. 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)
  22. On September 4, 2012, the USFWS announced that the **Mardon skipper butterfly** (*Polites mardon*) does not warrant protection under the Endangered Species Act (ESA) (50 CFR 17, 77:54332-54352). (Volume 9, Issue 4)
  23. In June 2012, The USFWS announced a modification of **Marbled Murrelet** nesting season in Washington. The USFWS will use the new definition to conduct their analyses for any actions that will be implemented in the 2013 breeding season. Biological Assessments submitted after December 1, 2012 should reflect this new nesting season information (USFWS; Volume 9, Issue 3)
  24. On June 19, 2012, the USFWS published a final rule designating revised critical habitat for the Pacific Coast distinct population segment (DPS) of the **western snowy plover** (*Charadrius nivosus nivosus*) (50 CFR 77, 36728-36869). 24,527 acres were designated in the final rule in Washington, Oregon, and California. Washington critical habitat areas formerly totaled 2,526 acres, and now total 6,077 acres in the final rule.
  25. On June 5, 2012, the USFWS announced a finding that a petition to list the southern (*Lagopus leucura altipetens*) and Mount Rainier (*L. l. rainierensis*) subspecies of **white-tailed ptarmigan** as threatened under the Endangered Species Act had presented substantial information to indicate that listing may be warranted (CFR 77, 108, 33143-33155).



## Future Meetings - Update Your Schedule!

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

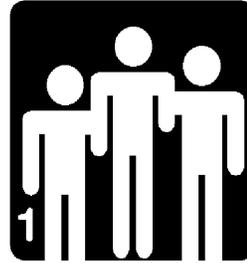
Current scheduled meetings include:

- October 4, 2018 (Vancouver)
- January 10, 2019 (TBD)

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](mailto: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](mailto:janine.johanson@kingcounty.gov)).



**Program Element 1:  
Regional Forum**

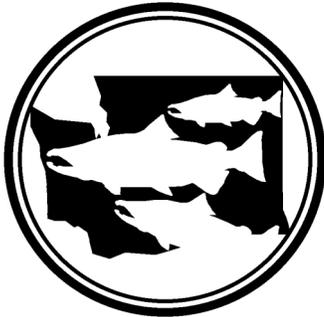
## Regional Forum Members

### Agencies that received a Biological Opinion from NOAA Fisheries

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



## RRMP Contacts



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

Gregor Myhr: [Myhrg@wsdot.wa.gov](mailto:Myhrg@wsdot.wa.gov)

Ted Parker: [Ted.parker@snoco.org](mailto:Ted.parker@snoco.org)

Janine Johanson: [Janine.johanson@kingcounty.gov](mailto:Janine.johanson@kingcounty.gov)

Jeff Rudolph: [Jrudlop@co.pierce.wa.us](mailto:Jrudlop@co.pierce.wa.us)

Trevin Taylor: [Taylorl@co.thurston.wa.us](mailto:Taylorl@co.thurston.wa.us)

Matt Barnhart: [Mbarnha@co.pierce.wa.us](mailto:Mbarnha@co.pierce.wa.us)

### *Common Acronyms*

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

**THE RRMPG IS ON THE WEB!**

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