

# Complete Permit Application Guidance for WDFW Hydraulic Project Approvals (HPAs)

March 2019 Version

## Forward

WSDOT's Environmental Services Office rescinded the Directional Memos for the Complete Permit Application Guidance and the Complete Permit Application Guidance in September 2018. The Army Corps of Engineers and Ecology Chapters of the Complete Permit Application Guidance were replaced with a series of webpages (see [Permits for work in wetlands and streams](#)). The Complete Permit Application Drawing Guidance was replaced with the [Permit application drawings](#) webpage. The HPA chapter is the only section left and we are renaming it the Complete Permit Application Guidance for HPAs. We anticipate replacing the Complete Permit Application Guidance for HPAs with webpages in the future.

## 1 What is a Hydraulic Project Approval?

A Hydraulic Project Approval (HPA) is a Washington Department of Fish and Wildlife (WDFW) permit required by [Chapter 77.55](#) of the Revised Code of Washington (RCW) for hydraulic projects in or over state waters. Additional information about project activities that trigger HPAs and the permitting process is available on the [WDFW website](#) and the [WSDOT HPA webpage](#).

### **Hydraulic project definition**

Hydraulic project means 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](#)(11)).

### **HPAs for over water work**

An HPA is required for all construction or work that affects state waters, including repair/replacement of any structure that crosses a stream, river, or other water body regardless of the location of the proposed work relative to the Ordinary High Water Line (OHWL) of state waters (Washington Administrative Code ([WAC 220-660-190](#))). HPAs are also required for less known actions such as falling a tree into or over state water, retrieving a vehicle from state water, or burying rock landward of the top of bank to prevent future erosion.

If your project is a Forest Practices Hydraulic Project ([WAC 222-16-010](#)), see [WAC 220-660-060](#) for review requirements. The Department of Natural Resources (DNR) uses their [Forest Practices Application](#) process for permitting forest practices-related hydraulic work ([RCW 76.09](#)).

***The following guidance describes basic information about HPAs and what WDFW requires when WSDOT applies for HPAs. Please closely coordinate with your [WDFW Habitat Biologist \(HB\)](#) throughout the HPA permit process.***

## 2 What are the common types of HPAs for WSDOT activities?

There are five types of HPAs that WSDOT typically uses: General HPAs (GHPAs), Fish Habitat Enhancement Projects (FHEP), Expedited (includes Imminent Danger), Emergency, and Standard.

### **General HPAs**

GHPAs are good for five years and help WSDOT protect the environment while meeting critical roadway safety and maintenance needs. These general permits cover a ***geographic area (not site-specific)*** such as statewide, a county, or a watershed. GHPAs do not cover activities that require compensatory mitigation.

The permit provisions include measures that avoid and minimize impacts to fish habitat and water quality as WSDOT performs authorized activities. Provisions also cover requirements for notification, reporting, and compliance. ***If a proposed activity cannot comply with GHPA provisions such as timing restrictions, you need to apply for a standard HPA.***

Here is a list of WSDOT's GHPAs and what they cover:

- [Bridge Maintenance and Preservation](#) – Bridge washing, maintenance, painting, and deck replacement.
- [Beaver Dam Removal](#) – Removal and notching of beaver dams less than a year old within WSDOT right-of-way.
- [Channelized Stream Maintenance](#) – Maintenance of channelized streams to previously existing form, function, and flow.
- [Fishway Structures in Freshwater](#) – Maintenance of fishway structures so they function properly.
- [Culvert Maintenance](#) – Cleaning and repair of culverts to previously existing form, function, and flow.
- [Debris Removal from Bridges](#) – Removal of debris from bridge piers.
- [Statewide Fresh Water Geotechnical Survey](#) – Geotechnical surveys in freshwater.
- [Marine Water Sediment Test Boring](#) – Retrieving soil cores and other geotechnical survey information in marine waters.

### **Fish Habitat Enhancement Project HPAs**

Fish Habitat Enhancement Project (FHEP) is a streamlined permit and approval process ([RCW 77.55.181](#)) for projects that remove human-made or caused fish passage barriers (must be listed in WSDOT's environmental retrofit program), restore an eroded or unstable stream bank using bioengineered techniques, or place woody debris or instream structures that benefit naturally reproducing fish stocks. The sole purpose of the project must be for fish habitat enhancement ([WAC 220-660-050\(3\)\(b\)\(i\)](#)). Any portion of the project that is not fish habitat enhancement will disqualify the project from FHEP processing. Applicants using this process are strongly encouraged to coordinate with the WDFW HB and local governments early in the process.

To apply for FHEP, applicants should use the APPS online application and include a Joint Aquatic Resource Permit Application (JARPA), an FHEP sponsorship letter, and an FHEP form (see [Office of Regulatory Innovation and Assistance](#) JARPA website). Submit the application package to both WDFW and the local government.

WDFW provides local governments fifteen days to submit comments regarding environmental impacts. Within 45 days, WDFW will either approve or deny the project or make a determination that the review under FHEP is not appropriate.

Projects meeting the criteria for FHEP review that are approved by WDFW are not subject to the requirements of the State Environmental Policy Act, nor are they required to obtain local approvals or pay local permitting fees. See [RCW 77.55.181](#) for more information about this process.

### **Expedited HPAs (includes imminent danger)**

[RCW 77.55.021](#)(14) and (16) specify the requirements for the determination of an imminent danger and application for an Expedited HPA. If either the county legislative authority or WDFW declares that an imminent danger exists, WSDOT may apply for and WDFW must issue an Expedited HPA. If neither the county legislative authority nor WDFW had declared that an imminent threat exists but normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment, WDFW must document the hardship or damage and issue an Expedited HPA, including any mitigation that may be required. In either case, a complete, written application that contains all the elements identified for a Standard HPA is required for an Expedited HPA, except that Imminent danger and expedited projects are not required to comply with SEPA. Expedited HPAs are valid for up to 60 days after WDFW issues the permit, and cannot be extended.

### **Emergency HPAs**

When WDFW, the county legislative authority, or the governor declares an emergency, WSDOT may request an Emergency HPA verbally. [RCW 77.55.021](#)(12) specifies the requirements for an Emergency HPA. If WDFW, the county legislative authority, or the governor declares an emergency, WDFW must issue immediately, upon request, a verbal approval without the need to obtain a written HPA prior to commencing work for: a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. This is the only HPA that does not require WSDOT to submit a permit application. Here are the steps for an emergency HPA:

- 1) WSDOT contacts the HB to discuss the emergency and if the proposed work meets the requirements in [RCW 77.55.011](#)(7) and [77.55.021](#)(12a).
- 2) If an emergency has been declared, or WSDOT and WDFW agree the project qualifies as an emergency (preferably after a site visit), the HB and WSDOT will discuss the project, including any immediate mitigation requirements.
- 3) The HB will issue a verbal HPA with all applicable provisions, after which work may begin. The HB will fill out the permit application and issue a written HPA with the noted provisions within 30 days of issuing the verbal HPA.
- 4) Within 90 days of emergency project completion, if any impacts remain, mitigation actions must be completed under a separate HPA, or a mitigation plan for those impacts must be submitted for approval ([WAC 220-660-050](#)(4)).

### **Standard HPAs**

Standard individual HPAs cover hydraulic projects that are not covered under other HPA types. Multisite HPAs cover work at multiple specific sites (usually not more than five), generally within the same water resource inventory area (WRIA) or tidal reference area. This type of HPA can be used if multiple sites need the same kind of work once, or frequent maintenance over five years but aren't covered by a GHPA. [WAC 220-660-050](#)(3)(b)(ii) contains more criteria for multisite HPAs.

### 3 What steps should you take before submitting an HPA permit application package?

#### WSDOT – WDFW Hydraulic Code Agreement

WSDOT and WDFW have agreed on HPA application and review procedures through a [Memorandum of Agreement \(MOA\)](#) Concerning for Transportation Activities and Implementation of the Fish Passage Retrofit Program and Implementation of the Chronic Environmental Deficiency (CED) Program.

Environmental Coordinators are encouraged to coordinate early and often with HBs to discuss project details and avoid surprises after submitting the permit application. The extent of early coordination should be proportionate to the level of environmental risk a project presents. Here are some recommendations to help you navigate through the HPA early coordination:

- Follow the HPA mitigation sequence that outlines the successive steps that WDFW and the applicant must consider and implement to protect fish life when constructing or performing work. These steps must be considered and implemented in the order listed:
  - 1) Avoid the impact.
  - 2) Minimize unavoidable impacts.
  - 3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
  - 4) Reduce or eliminate the impact over time.
  - 5) Compensate for unmitigated impacts.
  - 6) Monitor this impact and make corrective measures.

See [WAC 220-660-030](#)(102) for the specific language.

- Coordinate with your HB to discuss avoidance and minimization measures and HPA application package requirements. Early and often coordination with the HB can facilitate the HPA permitting process.
- Discuss mitigation options if impacts cannot be avoided. The [MOA between WSDOT and WDFW](#) and [WAC 220-660-080](#) provides mitigation guidance.
- Study [WDFW’s HPA webpage](#) with technical information such as work window timing limitations for freshwater and saltwater. The technical information page also includes links to fish exclusion, mitigation, salmonid mapping, and other information.
- Study the Hydraulic Code rules and use guidance that is relevant to your project. These rules contain requirements and provisions for different types of work such as water crossing structures, bank protection, and others. Here’s a list of common WSDOT activities along with rule and guidance information:

Activity Type	WAC	Guidance
Water Crossings	<a href="#">220-660-190</a>	<a href="#">Water Crossing Design Guidelines</a>
		<a href="#">Stream Habitat Restoration Guidelines</a>
		<a href="#">WSDOT’s Fish Passage policies and procedures</a> <a href="#">WSDOT’s Chronic Environmental Deficiencies (CED) policies and procedures</a> (also see MOA)
Bank Stabilization	<a href="#">220-660-130</a> (fresh water)	<a href="#">Integrated Streambank Protection Guidelines</a>

	<a href="#">220-660-370</a> (salt water)	
Channel Change	<a href="#">220-660-210</a>	

- Review the Endangered Species Act (ESA) documents prepared for your project to check for any federal commitments pertaining to construction timing and fish and ensure these are consistent with your proposed schedule.
- Submit a pre-application for GHPAs and others that require complex in-water work like culvert replacements and bridge construction/demolition. You don't need to complete the SEPA process before submitting a pre-application. This is an opportunity to discuss HPA provisions and issues with the HB ahead of time, avoiding potential delays during the official HPA submittal process. GHPA processing usually takes longer than other HPA types, so plan for that as you anticipate your permitting needs.

#### 4 What is required for a complete HPA application?

A complete HPA application needs to describe the project design, impacts to the aquatic environment, efforts to avoid and minimize impacts to aquatic resources, construction methods, and proposed mitigation. This information is required so that the WDFW [HB](#) can assess project impacts and address mitigation needs based on a thorough understanding of the project design. The HB will issue an HPA that includes provisions that protect fish life and fish habitat, discuss needed project design changes if warranted, or deny an HPA if fish life cannot be protected.

For most HPAs, permit applicants should fill out an application in the [Aquatic Protection Permitting System](#) (APPS). WDFW and WSDOT strongly recommend using APPS to submit permit applications. APPS enables you to convert the APPS application into a [Joint Aquatic Resources Permit Application \(JARPA\)](#) should you need one for other permit applications (e.g. Corps permit) or FHEP. However, WDFW will still accept the most current version of the [JARPA](#) completed and submitted electronically or by mail ([WAC 220-660-050](#)). In officially declared emergencies, WSDOT requests an HPA verbally.

WDFW has 45 days to issue Standard HPAs (includes FHEP, General HPAs, multi-site) and 15 days to issue Expedited and Imminent Danger HPAs after they receive a complete permit application. Carefully review the permit application package so it is submitted complete as required by WSDOT applications per [RCW 47.85.020\(4\)](#), reducing potential delays in issuing the HPA. WDFW will likely declare your application is statutorily incomplete and request you supply the missing information if these components are not included in the application package. If WDFW receives an incomplete application, WDFW must notify WSDOT in writing, within 10 working days of receipt of that application, why the application is incomplete and what information is needed to make it complete. Other HPA procedures are listed in [WAC 220-660-050](#).

When applying for non-emergency HPAs, you need to provide the following information in order for your application to be statutorily complete:

#### **Permit Application**

- You can use WDFW's APPS to access the permit application.
- A JARPA is only required if the permit application package is not submitted online or if the project qualifies for FHEP.
- Include efforts to avoid and minimize impacts including timing limitations and Temporary Erosion and Sediment Control (TESC) plans.

Note: Although not statutorily required, list types of guidance that were used to design water crossings to help the HB process the HPA application.

### **Documentation/Specifications**

- Proof of compliance with the State Environmental Policy Act (SEPA) is required, unless the application type is an FHEP, Emergency, or Expedited HPA. If preservation or maintenance projects require additional work beyond the as built conditions as a result of permit requirements or engineering standards, consider using State Transportation SEPA exemption [WAC 197-11-800](#) (26). This exemption provides more flexibility than other WSDOT maintenance and preservation exemptions.
- Authorization of Agent form if other staff is submitting the application on behalf of the applicant.
- Property owner form, if submitting electronically and WSDOT is not the property owner.
- If using the streamlined FHEP HPA process, be sure to submit the sponsorship letter, JARPA, and the supplemental FHEP application form.
- Check with your HB to determine if other documentation is required for your permit application such reach assessments, basis of design, etc. Only submit information that is necessary for your HB to process your application. WDFW usually does not require information such as wetland reports. Key information from some reports may be included within the permit application or as an attachment.
- Documentation or drawings may be loaded on file transfer protocol (FTP) and other cloud storage sites if needed.

### **Drawings/Plans**

- A set of complete drawings for the project is usually required. You can use WDFW's drawing checklists to ensure your drawings meet their requirements. There are separate checklists for [water crossing structures](#) and [common projects](#). Make sure freshwater projects include the OHWL and saltwater projects include the mean higher high water line (MHHWL).
- Some unique WDFW drawing requirements that are different than the Corps is showing the diversion plan for water crossing projects, if relevant. If the contractor develops the final plan, please indicate the approximate location of the stream bypass.
- [WSDOT's Fish Moving Protocol](#), if the proposed work may require this activity.

## **5 What if I want to resolve a conflict regarding the HPA permit decision?**

It is expected that conflicts will be resolved at the field level in a cooperative and professional manner. When issues associated with a WSDOT-proposed hydraulic project cannot be resolved at the local level, personnel from either agency may request that the WDFW Habitat Protection Division Manager mediate discussions, or may proceed up their agency chain-of-command to resolve them before an HPA is issued or denied. If mediation or chain-of-command discussion is successful in resolving the issues, WDFW and WSDOT must implement any agreements reached. If agreement is not reached, WDFW will issue or deny the HPA, as appropriate. Please refer to Section 10 of the Hydraulic Code [MOA between WDFW and WSDOT as it provides](#) specific details for conflict resolution.

If the HPA is issued with provisions unacceptable to WSDOT or the HPA is denied, WSDOT may appeal WDFW's decision within 30 days of the HPA issuance or denial. [WAC 220-660-460](#) describes the informal appeal process, while [WAC 220-660-470](#) describes the formal appeal process.

## **6 What if the project changes and I need to modify the HPA?**

If the project description, scope or footprint changes after the HPA has been issued, or you need a significant time extension to complete work, you need to request a major modification and upload plans or a description of those changes. This ensures that a compliance inspector will have the final design information to compare the as-built structure. To submit a modification request, the applicant/agent that submitted the original application must log in to WDFW's online permitting system, access the original application, click the Request Modification button at the bottom of the "Application" tab, and complete the form choosing Major Modification. You may request assistance from WDFW's HPA Section staff ([APPS.Help@dfw.wa.gov](mailto:APPS.Help@dfw.wa.gov)).

If the only change needed is an insignificant change to the project or an extension of work during the current work season, confirm with the local HB that they would approve an extension of the work window. If acceptable, follow the same steps as above, but choose to submit a minor modification.