Presentation Overview

- Background
  - WDFW's Roles & Responsibilities in GMA
  - PHS and other WDFW resources
- 5 Hot Topics for CAO updates
  - Bald eagles
  - Definition of Fish and Wildlife Habitat Conservation Areas
  - Habitats an
  - Voluntary S
  - Monitoring
- Questions
Background

GMA’s Challenge

- Designate and protect critical areas in keeping with Best Available Science and give anadromous species special consideration. RCW 36.70A.172
- Protect means ecosystems of critical areas experience “no net loss of ecological function” (WAC 365-196-830(4))
- GMA requires local governments update CAOs to reflect recent changes. RCW 36.70A.130
- My task: help you understand what has changed recently related to Fish and Wildlife Conservation Areas
- FWHCA provisions are found in WAC 365-190-130
Roles & Responsibilities

- Local governments are solely responsible for creating and implementing land use plans, implementing ordinances.
- WDFW is recognized as a source of technical expertise regarding fish, wildlife, and habitat (WAC 365-190-130)
- We are purveyors of BAS for fish, wildlife and habitat
- Under state law, WDFW has an obligation on behalf of the public to perpetuate fish and wildlife—which are considered property of the state (RCW 77.04.012)
- WDFW has no regulatory authority regarding land use

How we operate is guided by our principles

POLICY 5004:
WDFW’s Conservation Policy Guiding Principles

- Long-term benefit of people, fish, wildlife, habitat
- Support healthy ecosystems
- Work across disciplines
- Integrate ecological, social, institutional perspectives
- Embrace knowledge, apply best science, adaptively manage
- Collaborate with partners
Priority Habitats & Species

- Since 1990 PHS is how WDFW provides info about fish, wildlife, and habitats to inform land use decision making
- Court-recognized source of Best Available Science
- Customers: Counties, cities, developers, landowners
  - Also foresters, agencies, WDFW staff, researchers…
- PHS Uses
  - CAO updates
  - Planning/permitting development projects
  - Informing mitigation projects
  - Planning/permitting timber harvests
  - Planning conservation acquisitions; managing land for wildlife
The PHS Suite

1. **PHS List**
   - Criteria-based; listed, vulnerable, or culturally significant
2. **PHS Maps**
   - Known locations of Priority Species and Priority Habitats
3. **PHS Management Recommendations**
   - Synthesis of science-based land management considerations
4. **PHS Technical Advice**
   - Site-specific, situation-specific advice from Habitat Biologists
5. **PHS Customer Service**
   - Provide spatial data in keeping with Sensitive Data policy
6. **PHS Monitoring and Adaptive Management**
   - Tools to evaluate and improve land use management and habitat

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What PHS *IS* and *IS NOT*

<table>
<thead>
<tr>
<th><strong>PHS IS...</strong></th>
<th><strong>PHS IS NOT...</strong></th>
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<tbody>
<tr>
<td>A <em>suite</em> of info and tools to inform land use decisions</td>
<td>Just a list, just management recommendation, or just a map</td>
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<tr>
<td>Guidelines/Advice</td>
<td>Regulation</td>
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<tr>
<td>WDFW's identification of key species/habitats <strong>vulnerable</strong> to harm via <strong>land use change</strong></td>
<td>An exhaustive list of species/habitats WDFW is concerned about</td>
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<tr>
<td>A general tool that typically requires a skillful application</td>
<td>A cookbook that provides a ready answer for all cases</td>
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WDFW Resources

- PHS info:
  - www.wdfw.wa.gov/conservation/phs
- Regional Biologist info:
  - http://wdfw.wa.gov/conservation/habitat/ahb/

Hot Topics for CAO Updates

- Bald Eagles
- FWPCA Definition
- Species of Local Importance
- Voluntary Stewardship Programs
- Monitoring and Adaptive Management
Hot Topic #1: Bald Eagles

- Eagles are doing well! Delisted from ESA!
  - State *Threatened* to *Sensitive*; reviewing now for possible delisting
- USFWS has assumed primary responsibility for bald eagle management
  - Bald and Golden Eagle Protection Act
  - Migratory Bird Treaty Act
- WAC 232-12-292 has no effect; referencing it in a CAO is meaningless
- WDFW no longer participates in developing or reviewing Bald Eagle Management Plans; CAOs should not require it

Recommendations for CAO Updates

- Require that developers who may potentially impact bald eagle habitat complete the USFWS’ self-assessment to determine if a permit from USFWS is needed
- USFWS recommends local jurisdiction *not automatically* require a USFWS permit because the self-certification process can result in actions that make the $500 permit unnecessary
- USFWS recommends developers only apply for a USFWS permit if the self-certification process determines that a permit is needed
- USFWS recommends (and WDFW concurs) that development activities near bald eagle habitat be carried out consistent with the national Bald Eagle Guidelines
Bald Eagle Resources

- USFWS’ self-certification and National Bald Eagle Management Guidelines are available at http://www.fws.gov/pacific/eagle/
- USFWS contacts:
  - Mark Miller (360) 534-9347
  - Migratory Bird Permit Office, (503) 872-2715

Questions about bald eagles?
Hot Topic #2: FWHCA Definitions

- 2010 reorganization of WAC 365-190, -195, and -196 simplified and clarified the rules/guidance/minimum standards contained in these chapters.
- WAC 365-190-030 has new/revised definitions for
  - Fish and Wildlife Habitat Conservation Area
  - Habitats of Local Importance
  - Species of Local Importance
- WAC 365-190-130 has a new/revised definition for
  - Fish and Wildlife Habitat Conservation

Recommendations for CAO Updates

- See handout for redline/strikeout version of changes
- WDFW recommends CAOs reflect these new definitions
  - Departures from these definitions, when appropriate, should be explained using BAS and a reasoned process

Questions?
Hot Topic #3: Habitats and Species of Local Importance

- The State Supreme Court ended Ferry County’s bid to list only subset of PHS habitats and species as Habitats and Species of Local Importance. [Ferry County v. Concerned Friends]
  - The Court affirmed the County’s right to not include some habitats or species, but reaffirmed that such a decision must be backed by a scientifically reasoned decision-making process. [Also see Stevens County v. Futurewise]
- Ferry County’s CAO now designates all Priority Habitats and Priority Species on WDFW’s PHS List as Habitats and Species of Local Importance.

Recommendations for CAO Updates

- GMA requires counties and cities to protect the functions and values of critical areas/ecosystems
  - GMHBs/courts repeatedly have affirmed that counties may decide whether to designate species/habitats of local importance AND that decisions to not designate PHS must be justified
    - Search “ecosystem” in GMHB Digest
- WDFW recommends CAOs designate and protect all PHS Habitats and Species of Local Importance (or through some other means)
  - For jurisdictions that choose not to designate/protect all PHS species/habitats, jurisdiction should maintain a record of the science used to reach that conclusion.
Recommendations for CAO Updates

- Spreadsheet of county-specific Priority Habitats and Species is at http://wdfw.wa.gov/publications/00165/2013_distribution_by_county.xls
- WDFW Habitat Biologists can help determine if it makes sense to exclude some of these species from your CAO (e.g., whales)

Questions about *Habitats and Species of Local Importance?*
Hot Topic #4: Voluntary Stewardship Program

- Alternate way to address critical areas in ag lands
  - 3 years to complete plan
  - For counties that didn’t opt in CAOs must address ag lands like non-ag lands

- Goal: Protect and enhance critical areas where agricultural activities are conducted while maintaining and improving long-term viability of agriculture
  - Standard for protection of critical areas is maintenance of 2011 conditions

Hot Topic #4: VSP

- Work plan elements: Identify…
  - Critical areas and ag activities
  - Economic viability of agriculture in county
  - Outreach plan to contact landowners
  - Entity to provide landowner assistance
  - Measurable programmatic and implementation goals and benchmarks

- WDFW recommends Watershed Groups invite Habitat Bio to sit on
  - Bio can help with initial conditions, critical areas, benchmarks
  - WDFW on the state’s technical review panel that determines if work plan protects ag
Questions about VSP?

Hot Topic #5: Monitoring and Adaptive Management

- WAC provisions on BAS (365-195) unaltered since first released (2000)
- Monitoring and Adaptive Management discussed in WAC 365-195-920
- State Supreme Court said in *Swinomish*¹ that a monitoring program that lacks benchmarks is inadequate

¹ 161 Wn.2d 415, *Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*
Hot Topic #5: Monitoring and Adaptive Management

- The inherent uncertainty and complexity of FWHCAs (e.g., riparian areas) means gathering sufficient scientific information to reduce/eliminate risk associated with managing land use is practically impossible.
- WAC specifies two options for local governments facing uncertainty surrounding their management of critical areas:
  - Precautionary principle
  - Monitoring and adaptive management

Recommendations for CAO Updates

- WDFW recommends jurisdictions establish a monitoring and adaptive management program.
  - Especially where protections are riskier (e.g., narrower buffers).
- What to monitor?
  - Land cover or land cover change
  - Programmatic items
    - Is mitigation completed? Are follow-up inspections completed? Does permit tracking system facilitate follow on monitoring?
- Examples
  - Snohomish County Critical Area Monitoring Report, 2014
    - http://snohomishcountywa.gov/DocumentCenter/View/22692
  - King County CAO monitoring website
PHS Monitoring and Adaptive Management

- PHS Adaptive Management Tool: High Resolution Change Detection dataset allows you to answer questions such as
  - To what extent have tree cover been removed from FWHCAs?
  - To what extent have impervious surfaces been added to FWHCAs?
- Data is free and easy to use
  - Costs WDFW hundreds of thousands of dollars to create
  - Created using incredibly complex methods to come up with an easy-to-use, scientifically sound dataset
- Limited to Puget Sound basin
- Contact
  - Keith Folkerts, WDFW, 360-902-2390, keith.folkerts@dfw.wa.gov
  - Map at http://arcg.is/1YRTtnq
  - HRCD data, journal articles, etc. at www.PSHRCD.com

Questions about Monitoring and Adaptive Management?
Questions?

- Keith.folkerts@dfw.wa.gov