



Fish and Wildlife Habitat Conservation Areas

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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





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
 - ▶ Laws, rules, interpretation of critical areas
- ▶ My task: help you understand critical areas related to Fish and Wildlife
 - ▶ FWHCA provisions at



Roles & Responsibilities

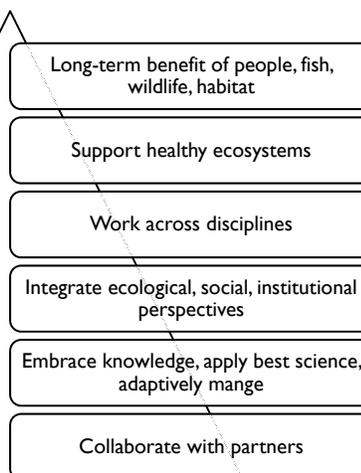
- ▶ Local governments are solely responsible for creating and implementing land use plans, implementing ordinances.
- ▶ WDFW is recognized as a source of technical expertise regarding fish, wildlife, and habitat WAC 365-190-130
 - ▶ We are purveyors of BAS for fish, wildlife and habitat
- ▶ Under state 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



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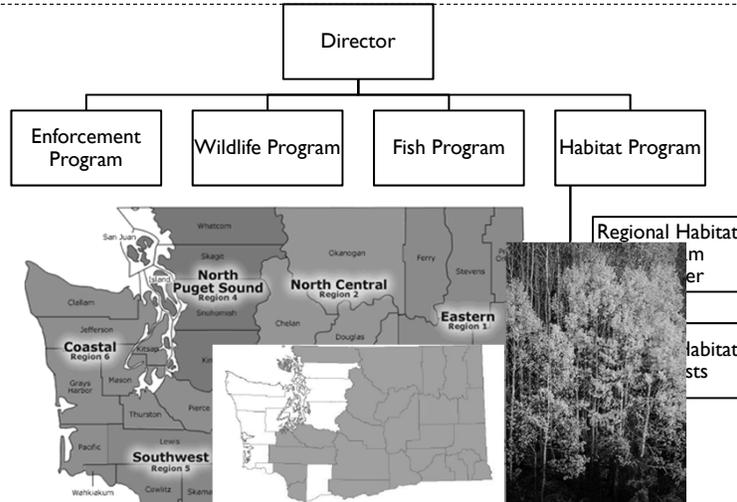
How we operate is guided by our principles

POLICY 5004:
WDFW's Conservation
Policy Guiding Principles



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WDFW Organization



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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



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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 experts
5. **PHS Customer Service**
 - ▶ Provide spatial data in key formats
6. **PHS Monitoring and Adaptive Management**
 - ▶ Tools to evaluate and improve land management and habitat

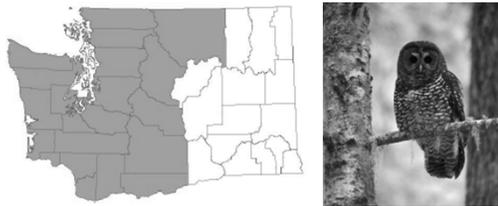


What PHS *IS* and *IS NOT*

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

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
- ▶ FWCA 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



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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



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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



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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?



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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*.
 - ▶ [http://www.ferry-county.com/Planning/PDF_Files/Ordinances/2016-Critical%20Areas%20Ordinance%202016-03\(1\).pdf](http://www.ferry-county.com/Planning/PDF_Files/Ordinances/2016-Critical%20Areas%20Ordinance%202016-03(1).pdf)



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 of Local Importance (C)
 - ▶ For jurisdictional purposes, science use



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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)
- ▶ A Digest of Growth Management Hearings Boards decisions is available at <http://www.gmhb.wa.gov/pages/Documents/2010-PresentJointDigestFebruary2016Update.pdf>



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Questions about *Habitats and Species of Local Importance?*



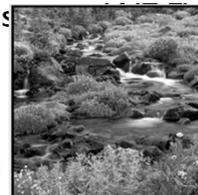
Hot Topic #4: Voluntary Stewardship Program

- ▶ 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 / Habitat Bio to sit on
 - ▶ Bio can help with init
 - ▶ WDFW on the state work plan protects c



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 p
 - ▶ Monitoring and



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
 - ▶ <http://www.kingcounty.gov/depts/dnrp/wlr/sections-programs/science-section/critical-areas.aspx>



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, sci
 - ▶ Limited to Puget
- ▶ Contact
 - ▶ Keith Folkerts, \
 - ▶ Map at <http://a>
 - ▶ HRCD data, journal articles, etc. at www.PSHRCD.com



Questions about *Monitoring and Adaptive Management*?

