

## **W4: Protecting the Habitat We Have and the Habitat We Restore**

What is the essence of the platform for the topic?

Protection can be achieved through a variety of regulatory and incentive based tools. At present, there is no common standard for regulations required of local governments, or a common approach to other tools for change such as incentives. How can we achieve a standard level of salmon protection? How can these standards be implemented? What would be the tools to do so?

- What aspects of the platform are headed in the right direction?
- What improvements were suggested by this session?
- What questions still remain to be answered?
- What happens next and who will be involved in or responsible for the next steps?

### ***General session notes:***

(Introduction and statements of issue experts)

Critical Areas Ordinances are a good way to institute protection.

Tension exists in rapidly growing areas between restoration of habitat that has been degraded and protection of existing habitat. Rules have been the focus of critical areas ordinances (CAO) in the past. For instance, there have been big debates on how big buffers should be—some people are more interested in stopping development than are interested in habitat protection. So, there is tension regarding these kinds of issues. Every region has a different approach to attempting to resolve this problem.

How do you provide incentives to someone who has property next to a habitat area? Economic costs to property owners are so great that we miss out on incremental increases—they don't take action because of the high cost involved. How do you encourage them to start taking incremental steps?

As long as we have command and control regulation we will continue to have regulatory battles. Regulation is necessary but not sufficient (platform Q #2, pg. 8: When is regulation [or incentives, or compensation,] an appropriate tool?), if we want to get beyond this log jam, we must provide different types of incentives and other regulatory tools. These will help expand political and other kinds of support.

We will double our population in the coming years—we need to figure out how to accommodate these additional people. It is our responsibility to address this fundamental issue.

Farm land and conservation can be made partners in conservation. Conservation and protection becomes difficult in stream corridors as they pass through different land uses—there is a lot of variability along the riparian corridor. Figuring out how to keep

agricultural and other working lands working will be a great accomplishment—we can do this, and then turn to urban areas. Then the challenge is this: How do we grow in this area? 41% of our watershed areas are already protected. 78% are in benign areas, so the challenge is the remaining 22%. We must put our public agendas at the front door—how do we grow and protect at the same time?

We must find ways to increase political support for these programs—current regulatory tools and incentives are not enough. Communication is important. No one has gotten the message that the new CAOs are better than the previous laws. The regulations don't protect those who are already here as opposed to those who have yet to arrive. There must be protection of current resources now and for the future—cutting down all trees on your property and replanting with grass won't work.

Local governments need assistance. We need to create a link between land use ordinances and salmon recovery. The State's commitment is being tested in the process of balancing needs assessment and property rights—what are the benefits to the property owners today and those who will come after them?

Tribal perspective: there is a fundamental flaw in our philosophy. The tree of life and working toward the common good v. process of implementing resolutions requires a change in thinking about compliance—what good is implementation of resolutions if there isn't compliance? For example, water is critical to salmon recovery but the state legislature is creating laws about water that make salmon recovery more difficult. Tribes want to contribute and have good science, as they are on the watershed and surrounded by it—they want to recover salmon to get back to a way of life. It will take a collective effort to do this. But the tribes' perspective is this: they have already given much, and lost trust as promises were not kept. It shouldn't take 100 years to recover salmon.

The Growth Management Act represents a great opportunity to put protection strategies in place, and an opportunity to educate and work in collective fashion. We are just now starting to confront some conflicts. We are required to make some choices and decisions about where people live and how things are protected—everyone wants their green space and not development next door. But, there are costs and benefits that are born by all of us under the GMA—the most obvious choice is urban/rural residents in these areas. Urban residents still want the benefits of green spaces, while in rural areas many landowners don't want regulations about what to do with their property. How do we provide regulatory flexibility for these rural landowners?

Best available science is the most recent problematic area—people don't know what it is, and it has not been properly defined. Science can tell us what the relevant risk is in the decision making process. Also, a reactive, piece-meal approach will never get the job done because the habitat functions and values of areas are driven by landscape scope processes.

Local governments need good management options and good science: what kinds of science will lead to what kinds of options? A collaborative approach must be used here; it

will be more effective to work from an interest-based perspective. This is what King County did most effectively—they gave landowners predictability and flexibility. Education on issues helps with this.

**Table responses to session questions:**

Question: What aspects of the platform are most successful? Is there a part you agree/disagree with? Is it headed in the right direction?

We need to look at the larger landscape. We must consider the rights of future generations, and use all the tools in the tool box, emphasizing voluntary measures first, and using non-voluntary measures as a backup.

The platform relies too heavily on critical area ordinances, and not enough on other things. There is compensation for private property owners, but no compensation to the public when harm is caused by private property owners building things like piers.

Regarding the list of principles on page 7 of the platform, expand environmental functions to social functions as well. We must have private sector support to get the job done.

Regarding principle # 3: Property owners must be involved in defining what good stewardship is, and this must be done at the beginning of the process.

Principle #7 about stakeholder involvement is a law, but this is a problem due to lack of funding and staff—this is a key concern. In the variety of incentive tools, regulation must be the backup that doesn't get carried by private sector.

Participants expressed disagreement about allowing degraded areas to further degrade or not. Most were IN agreement with principle #3, with the key word being 'appropriate'. For principle #4 there was general agreement, but some thought the word 'must' should be used instead of 'may'. Principle #5 agreement/disagreement seemed unclear. For principles #6 and #7, people were in agreement.

Like the idea that there is a statement of principles included in the platform to measure present and future actions. Like and want incentive-based approach, this is very important. Principles #4 and #5 must clearly define what is legal and what is constitutional; the term 'public benefit' must be properly defined and compensated.

Regarding the 'flexibility' in #2, regulations should not be one size fits all, but there is a need for common standards such as classification of stream types. Different buffer types are good depending on what kind of area they are in; also incremental steps are good. There is an emphasis on lack of enforcement here. No funding means it doesn't make sense to go forward—we need the hammer to make incentives more appealing. #4 is unclear: what does it mean to 'provide adequate protection of natural resources', and how does this relate to possible compensation?

There is general agreement on mix of incentives and voluntary measures. Biggest disagreement surrounds #2: how do you set the base-line level that you are going to protect? In #7 there needs to be a broad definition of 'stakeholder', as all the public is a stakeholder.

What are the benefits of being a stakeholder? To be successful, we must educate the general public about the role of stakeholder, and demonstrate how it will be of benefit—we have to do so in a specific way or the public won't really care about being a stakeholder or not.

Should regulation be the first approach? Education is difficult in the political arena, so are there other ways to educate? A possible example might be to hand out information at specific times, for instance when a house is sold. However, it is difficult for the local jurisdiction to enforce the regulation. An effective mechanism is to put burden of enforcement on homeowner associations rather than on governments. Peer pressure, or neighbors enforcing rules with other neighbors works better than a letter from the city.

The connection between farms and fish is poorly understood, and there is little education about this connection. Education at the classroom level and campaign efforts work, but this requires getting out there and working with them. Education and cooperation are the two biggest components. If education and cooperation are successful, then we can cut down on regulation.

The problem is how much regulation is needed?

What are we trying to do with increased critical area and critical areas ordinances? We must try and consider this, especially in urban areas.

Remaining habitats in urban areas are severely degraded and won't return to historical levels, but are still very important. Buffer areas and lawn chemical regulations are some of the things we can do, but the fact remains that we are trying to accomplish something different in urban areas than we are in rural areas.

We must make a distinction in how urban and rural areas function. If we make the decision to supplant natural systems with human-made, artificial systems in urban areas, we will have to engineer the solutions that accommodate the natural system best. In the rural areas, we must maintain a level of protection so natural systems can continue to function. Science can tell us how much impact rural areas can bear, and at what level they can continue to function.

In rural areas, the issue is maintenance of existing habitat functions and values. In urban area the issue is different. The question is, where can we spend our money most effectively? We need to fix at the point where pollutants are entering the system; this sometimes means an engineered solution rather than a natural solution with less impact. (In terms of cost effectiveness)

We must protect urban areas too, not just regulate. (Urbanites want protection, too!)

Regarding rural areas that are slated for future growth—can we retain some of the natural functions while developing these areas? Rural residents don't want to be responsible for all the protection, while urban people don't want to do all the maintenance—a balance must be struck. We must also remember that it starts at the incremental level. Don't write off areas that are above a certain threshold, because we may view these areas differently in the future.

We need to facilitate hands on activities for the public—getting people out there and actually doing the restoration. Here, we should use non-regulatory folks as people are more likely to trust them. We should have builders talking to builders, business people to business—not necessarily 'environmentalists', as they might be considered 'too radical' for some people.

### **Education v. regulation:**

Trying to get people out of cars and homes is very difficult. Education is viewed as a 10-20 year process; if you want progress now, regulation is the best measure. Some people don't want to get it, (salmon smell so they don't want them in their creek), so we **must** use regulation along with education. When regulations go in, we get a flood of applications that are due the week before regulation goes into effect, the regulation costs money, and this is the main cost driver (also certainty of regulation).

Most regulations come down on rural areas. Response—regulation is not the immediate answer, due to the resulting litigation, (especially if you get a backlash of regulation.) What kinds of incentive can you offer in rural areas? Some places require different kinds of buffers, and so we must aim different incentives accordingly.

A full box of tools is generally agreed upon.

Low impact development is viewed differently. The market forces us to view this differently now. In urban areas, most housing is condos and multi-purpose housing—this is selling, despite people not liking it—it can be cost-effective and low impact. Denser development in smaller lots can fit more people in the same space. For example, the King County Housing bill will fill a market niche and create more demand for this kind of housing. This will continue to happen—use more creative ideas to resolve the space and low impact housing connection. But smaller cities are still focusing on big lots and big houses—this is a big hurdle we now face—the adoption of anti-cluster measures in some cities works in opposition to what we are trying to accomplish. Supporting density in the city...say yes to this in support of salmon, and this will do a lot!

Conservation banking is a tool that is used in other areas of U.S. but not seen in the Pacific Northwest.

Create incentive programs for development through Built Green programs. There is flexibility involved. Now it is currently in a skeleton form, but it may be a good incentive for appropriate development in the future.

Question from moderator: What other questions have we not addressed that you would like to see addressed? What other question do we need to address?

- When are we going to have more local studies to draw upon? (Local science studies as opposed to studies in vastly different locales.)
- No money is available for monitoring the effectiveness, stewardship or restoration efforts that occur.
- How do you define minimal regulation level of public trust?
- There is a lack of specification about what best available science is.
- How do you regulate on a watershed scale, with multiple jurisdictions, and create flexible solutions (individual v. group), *and* create incentives? When do people start accepting the science that is there?
- How do you clearly distinguish the line between where regulation ends and incentives start? There needs to be guidance and direction.

Considering the questions on page 8 of the platform statement:

Q4: What role should non-regulatory programs such as education have in salmon recovery?

Education should provide info to the people so that they have the opportunity to understand what the problem is, and what their role is in the solution. Education has to be a proactive event. Political leaders needed to be educated! Also, the general population needs education in order to demand and energize action. On a local level, get people out of meetings and on the ground—this will provide motivation and social networks to help address the issues. Education should address how the individual can affect change. Incentive programs have little certainty over the long run, people can change their minds; a 10-20 year incentive program is a large time frame for us, but a small time frame for the fish. There is a need for amnesty days, for people who own open space that has had garbage dumped on it. On amnesty days we can help clean these up.

Q5: enforcement—what do we do about it? This is a challenge, but King County has made headway. Infractions are brought to the attention of the authorities by neighbors, but this is a hit and miss process. The science behind it is still in process, so the more you can get the citizenry involved in not only the design of the measure but the enforcement of it as well, the better. This is the best way to make it happen. But how do we go from county enforcement to citizen enforcer and enforcement? Answer: Conservation Districts are funded independently, work closely with counties and WRIs, and have good relationships with farmers and with counties. This is a quasi public-private group already in the mix, and they have people trained to do this.

Q3: What would increase the political support necessary for local governments to enact and implement effective regulatory and incentive-based protection programs?

First, money! Provide financing for acquisition and compensation. The land owner will go for this 9 out of 10 times if the finances are in place. Second, generate positive media—how do you frame the question/issue? Depending on how the question is asked and framed, this will go a long way toward positive media. Third, we need to use education to change the perceptions about what the regulations actually do. Education should be directed not only at the public, but also at the regulators and the media. Fourth, we must impose penalties, sanctions, and fines. It's amazing what will happen when people are faced with large fines.

Q1: What assistance is most helpful for local governments as they update their growth management programs and critical areas ordinances this year?

There is concern about using best available science—there needs to be a better definition. Support collaboration around opposing viewpoints—despite coming at things from different points, people can still agree on what needs to be done. Look at how other jurisdictions are coming up with smart growth plans, and make sure plenty of funding is available to implement smart growth, media, and feasibility studies—take time to do this in a pilot project or study. Find and recognize forward thinking landowners, give them awards, and publicly recognize them. We need to think 7 generations outward—we need to think further than just 1 generation ahead.

Q2: When is regulation the appropriate tool, and when should a property owner receive incentives or compensation? How can we accommodate both property rights of landowners and property rights of tribes for salmon? What principles should guide local protection efforts across Puget Sound?

How do you define these terms? Ultimately, this becomes a political and social judgment about what we value, and while this does change over time, there is a tension and conflict about how to balance property rights. Property rights and conflicts and rights of tribes—how do we balance them? Finally, there is a limit on what can be regulated. Stewardship is most effective on a people to people basis. The challenge here is that a flexible approach with many components costs money, and we must be willing to pay for this.

Regulations are most important when trying to protect what you already have; incentives are more effective in terms of restoration. Use a constitutional test as a benchmark instead of drawing line about protecting existing areas. Take into account responsibility, going beyond and designing appealing benefits. Try to build in rewards for those who have been doing the right thing already. How do you reward them and not punish them? We must secure certainty and government funding, yet still provide voluntary measures. When do you provide compensation? There are other public benefits beyond protecting health and safety—there are many direct and indirect impacts to property.

What happens next and who will be involved and responsible for these steps?

What will you like to see happen when you leave the conference regarding habitat protection?

- Would like to see people being altruistic when it comes to the public good—changing human nature is within the scope of our group. Restoration is seen as ‘taking’ instead of a public good: the benefits are downstream, but these downstream benefits are not as visible. Thus, public good, generosity of spirit...
- See that Dan Kowalski’s multi-media presentation be made available.
- Convince our Governor to implement state wide efforts, as has already happened with recycling.
- Banking and TDR programs: the whole system is working against salmon protection, but we can use mitigation banking as one tool. We haven’t made the market forces work yet, so we must use creative thinking in order to make this happen; we must break down current barriers.
- Define the baseline for regulatory compliance. Which baseline is the minimum for regulations? Once this is defined, other things will fall into place.
- We will continue to participate at least into the next decade.
- The tough part is coming up with programs to provide incentives for regulation—most of our shorelines are already developed. We must fix this first and then move on.

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*Below you will find a summary of additional comments submitted by people in **Summit Comments & Evaluation forms**; (these comments were submitted post-breakout, and may reflect the views and opinions of individuals who did not participate in the breakout session dialogue.)*

It is important to set geographic goals for both protection and restoration. We must prioritize among watersheds—not all habitat has the same function, and some sites provide more benefit for a wider spectrum of species.

How is habitat protection being balanced with the concepts of “core” watersheds, and how is “priority” critical habitat mapping being identified by NOAA fisheries?

***Regulation—2 perspectives:***

*Regulation:*

- Strong regulations must be in place to maintain existing habitat. Emphasis on voluntary incentives is important, but doesn’t give us the assurance that habitat will be protected or restored in the long run.
- Even the most well crafted, well funded regulations are not effective if they are not enforced.

*Incentives/Acquisition/Conservation Easements:*



- Move beyond thinking about protection as regulation only.
- If habitat is important, we should create programs to buy or rent. We can't rely entirely on GMA or CAO.
- We must implement smart growth measures to direct growth away from sensitive areas and promote sustainable building practices. Should we reward families for buying in urban areas rather than building in rural areas?
- Discussion of regulatory tools vs. voluntary participation is a divisive issue. Tone of collaboration and balance among all available tools should be encouraged. "Manage and enhance" terminology is more acceptable to rural landowners than "protect".
- Conservation easements should incorporate funding for long term monitoring and management, because they have a high ongoing cost—can be more expensive in the long run than outright acquisition.
- There is more public support and political will for incentive-based protection. Acquisition should be recognized as the protection tool with the greatest amount of certainty.

Need support for off site mitigation, including endangered species banking. Exchange ineffective protection for large-scale off-site banked habitat.