

**FISH AND WILDLIFE COMMISSION
POLICY DECISION**

POLICY TITLE: Joint Policy Agreement for the Management of Anadromous Salmon and Steelhead Hatcheries between tribes and the Department

POLICY NUMBER: C-3633

Supersedes: Policy C-3624 where geographically applicable (see Tribal Signatories in Addendum)

Effective Date: October 27, 2023

See Also:

Approved by: Barbara Baker



Chair, Washington Fish and Wildlife
Commission

Purpose

This Joint Policy Agreement (Co-Manager Hatchery Policy) is entered into between (the “Tribes”) and the Fish and Wildlife Commission (“FWC”), on behalf of the Washington Department of Fish and Wildlife (“WDFW”). The Tribes and WDFW are hereinafter collectively referred to as Co-Managers or Parties and may be referred to individually as Co-Manager or Party.¹ This policy establishes the Co-Managers’ expectations for collaborative management of tribal and WDFW salmon and steelhead hatchery programs in Washington State.

Co-Managers recognize that legacy habitat² degradation requires ongoing mitigation³. Co-managers further recognize that ongoing habitat loss and changing environmental conditions and ecosystem functions⁴ preclude for the foreseeable future aggregate natural- and hatchery-fish sufficient to meet the recovery⁵ needs and legal requirements of the Co-Managers. Hatcheries are primarily operated to preserve,

¹ The term Co-Manager refers to the Tribes’ and WDFW’s joint management efforts pursuant to their concurrent jurisdiction to regulate the fishery resource, as recognized in various court decisions. *United States v. State of Wash.*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff’d and remanded*, 520 F.2d 676 (9th Cir. 1975); *United States v. State of Or.*, 699 F. Supp. 1456, 1458 (D. Or. 1988), *aff’d*, 913 F.2d 576 (9th Cir. 1990); *Hoh Indian Tribe v. Baldrige*, 522 F. Supp. 683 (W.D. Wash. 1981); and subsequent court orders and sub-proceedings that established equal harvest sharing and resource management responsibilities.

² Habitat includes freshwater, estuary, nearshore marine, and offshore marine ecosystems and the environmental conditions anadromous salmonids experience that influence survival and reproduction.

³ “[Hatchery programs] are designed essentially to replace natural fish lost to non-Indian degradation of the habitat and commercialization of the fishing industry.” *United States v. State of Wash.*, 759 F.2d 1353, 1360 (9th Cir. 1985). This is particularly true for hatcheries that have formal mitigation requirements (e.g., Mitchell Act, FERC agreements, and Flood Control Act). Appropriate uses of hatchery mitigation will change over time depending on the health of individual watersheds and the worsening effects of climate change on freshwater, estuarine, and marine ecosystems.

⁴ Ecosystem function is the physical, chemical, and biological processes that transform and translocate energy or materials in an ecosystem.

⁵ Recovery, as used in this Policy, refers to the rebuilding of populations to levels that support healthy ecosystem functions and services, including robust harvest, where applicable. Due to the legacy loss of freshwater, estuarine and marine habitats and exacerbating effects of climate change, hatchery production is increasingly relied upon to meet harvest needs that cannot be provided by natural-origin salmon populations, while mitigation and restoration efforts are ongoing.

reintroduce or supplement, natural production that contributes to both the spawning production of those populations and augments harvest. Hatcheries will contribute to meeting these needs while mitigation, habitat restoration and stock recovery efforts are ongoing. Finally, the Co-Managers also recognize that the recovery and conservation of natural-origin populations are the ultimate goals where habitat can sustain natural-origin populations sufficient to support harvest goals and other ecosystem functions and services without hatchery production.–

Scope of Policy

The policy becomes effective once the FWC approves the policy and at least one Tribal Co-Manager signs the policy. This policy applies to those anadromous salmon and steelhead hatchery programs operated by WDFW and Tribal Co-Managers in the geographic areas associated with the specific Tribal Co-Managers that are signatories to this policy. Following acceptance of this policy, it is the intent of Co-Manager signatories to subsequently provide additional specification of responsibilities, agreements, and operational requirements at the regional or watershed level through comprehensive planning. Hatchery program release goals, genetic management protocols, and other plans agreed to by Co-Managers as of MONTH DAY, 2023, will remain in place until agreed to otherwise in accordance with this Co-Manager Hatchery Policy.

For those hatchery programs that fall under this Co-Manager Hatchery Policy, this policy will supersede all elements of the FWC’s Anadromous Salmon and Steelhead Hatchery Policy (Policy C-3624). All other hatchery programs will be operated based on existing regional- or watershed-specific Co-Manager hatchery program agreements, legal requirements, and C-3624 and other applicable policies.

Guiding Principles and Policy Positions

In conducting evaluations needed toward achieving an optimal balance of the various benefits and risks of hatcheries, attention shall be given to the explicit purpose and principles of this Policy and any stated objectives in the individual agreed-to hatchery program plans.

Principle 1: Tribal Treaty Rights are supreme law of the land⁶. It is acknowledged that hatchery programs are essential components of regional salmonid management plans that support natural resource management responsibilities in sustaining Treaty Rights (*e.g., United States v. State of Wash., United States v. State of Or., Hoh Indian Tribe v. Baldrige* and sub-proceedings).

- Co-Managers acknowledge and re-commit to follow all court orders and management agreements arising under *U.S. v. Wash., Hoh Indian Tribe v. Baldrige, and U.S. v. Or.* pertaining to salmonid hatchery operations and management.

Principle 2: Hatchery fish support Treaty Right fishing obligations that cannot be provided by natural-origin salmonid populations alone. Harvest of hatchery fish is managed within Co-Manager harvest management processes.

- Hatcheries are recognized as supporting the four basic values recognized by the federal courts associated with tribal treaty-reserved fishing: (1) conservation of the resource to ensure a future

⁶ The United States Constitution, Article VI states in part, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

supply, (2) ceremonial, religious, and spiritual values, (3) subsistence values, and (4) commercial values.

Principle 3: Hatcheries produce fish for state-regulated recreational and commercial fishing opportunities beyond that provided by natural-origin salmonid populations. Such fisheries, and the infrastructure support they entail, provide important cultural socio-economic benefits to key fishery-dependent communities.

Principle 4: The Co-Managers will develop and/or operate in accordance with hatchery program plans that include clearly-defined hatchery goals and describe hatchery operations at the regional and/or watershed level. The hatchery plans promote conservation through an All-H⁷ approach – a focus on how hatchery production is integrated with habitat, hydropower, and harvest.

- Hatchery program plans should support ecosystem function, such as providing prey for Southern Resident Killer Whales, buffering pinniped and avian predation, and providing nutrients that cycle between freshwater and marine environments.
- Hatchery program plans should consider how natural-origin salmonids support ecosystem function and should size the hatchery program and time of hatchery releases in a manner that considers ecosystem constraints, with recognition of changing environmental and climate conditions.
- Hatchery program plans should consider how hatchery production can contribute to productive natural-spawning populations that are locally adaptive, and diverse genetically to maintain adaptability in the face of changing environmental and climate conditions.
- Hatchery plans should consider how hatchery operations can maintain or enhance the genetic diversity and adaptability of hatchery broodstock.
- Hatchery program goals should strive to balance harvest opportunities, cultural, economic, conservation, and ecological benefits with potential genetic and ecological risks to natural-origin salmonid populations, and environmental conditions such as habitat degradation. Risks and benefits reflect perspectives, values, and biological factors that should be considered in both social and ecological contexts.
- Hatchery management plans shall be aligned with regional or watershed recovery and rebuilding plans agreed to by the Co-Managers⁸.
- It is recognized that there are hatchery program plans in varying stages of consultation, in specific geographic areas, which are agreed-to by Co-Managers. These hatchery program plans will not be modified without Co-Manager agreement.

⁷ All-H refers to managing harvest, hatcheries, hydropower, and habitat (i.e., the 4 Hs) in a comprehensive, integrated manner considering the impacts and conditions of each in a holistic management structure.

⁸ As examples: WRIA 1 Salmon [Recovery Plan](#), Fish Propagation Facilities Plan [Baker River Project](#), and the Snohomish Chinook Recovery Plan: Phases of Recovery and Integrated Adaptive Management Strategy (Endangered Species Act (ESA) Section 7(a)(2) Biological Opinions (2019, 2022): <https://repository.library.noaa.gov/view/noaa/30944>; <https://repository.library.noaa.gov/view/noaa/37557>; Supplemental Environmental Assessment (2021): <https://repository.library.noaa.gov/view/noaa/32081>; ESA Biological Opinion and Final Environmental Assessment (2017) for Snohomish Basin salmon hatchery programs).

Principle 5: Hatcheries are to be designed and operated in a scientifically-sound and defensible⁹ manner, including adaptive management processes for informing decisions that include monitoring, evaluation, and research programs.

- Co-managers will monitor and evaluate hatchery- and natural-origin fish populations and their habitats to track progress for reaching goals established in the hatchery plans. Adaptive management of hatchery programs is to be informed by well-funded, coordinated, and objective monitoring and evaluation programs. Where Co-Managers deem accompanying procedure manuals or evaluation tools are desirable, these must be jointly developed or third-party tools adapted for use under close coordination, reviewed, evaluated and agreed-to by the Co-Managers prior to implementation.

Principle 6: Co-Managers shall work to secure adequate financial resources to meet current and future challenges to the successful use of salmonid hatcheries in accomplishing the purpose of this Policy. This includes planning for the negative effects of climate change on salmonid survival and the resources needed to support them. These efforts shall include:

- ensuring that adequate funding is acquired to successfully implement plans that use both state and federal appropriation processes as appropriate, as well as private funding associated with mitigation hatcheries.
- initiating and maintaining coordinated efforts among the Tribes and WDFW to acquire the necessary funds to establish, maintain, and monitor the desired hatchery programs and infrastructure that is built to meet future demands. Efforts will include a timeline for implementation (including evaluation and monitoring), strategies for state, tribal, and federal funding and estimated implementation costs, including updates to cost figures each biennium or fiscal year.
- ensuring that once Co-Managers agree to watershed or regional hatchery program plans that are consistent with the requirements under *United States v. WA* (e.g., the Puget Sound Salmon Management Plan), *United States v. OR*, *Hoh Indian Tribe v. Baldrige*, and other legally-binding Co-Manager agreements, the Co-Managers will prioritize and pursue financial support from the legislature and any available federal funding sources.
- working with the Governor’s Office to inform the Legislature on the legal requirements for hatchery production levels and agreements where hatchery funding will be prioritized.
- developing contingency agreements consistent with requirements under *United States v. WA*, *United States v. OR*, *Hoh Indian Tribe v. Baldrige* or other applicable agreements for facility operations in the event of reduced funding or other operational impediments, as appropriate.
- securing sufficient dedicated funding for watershed monitoring requirements and other compliance mandates.
- securing adequate funding to assess, plan, and implement needed changes to hatchery infrastructure and operations to mitigate for changing environmental conditions.
- securing adequate funding for fish culture practices to ensure a high level of standard.

⁹ We consider the phrases “scientifically-sound and defensible” and “best available science” (BAS) to be congruent. We have chosen to use here “scientifically sound and defensible” instead of BAS to differentiate this Policy from the state’s definition of BAS in the WAC 365-195-905, which is not applicable to this Policy.

Dispute Resolution

The Parties commit to working in good faith to seek consensus agreements. In the event that bona fide disputes arise from this Policy, the disputing Parties will first strive to resolve matters informally through government-to-government discourse at the appropriate level. Any disputant may raise any matter not resolved to a higher official. In the event that the matter is not resolved, the Parties may agree to utilize neutral third-party mediation. Where other dispute resolution mechanisms are already established, these will be followed.

Disclaimers

Nothing in this Policy is intended to conflict with any applicable federal, state, or tribal law or regulation.

Nothing in this Policy will be construed to grant, expand, create, or diminish any legally enforceable rights, benefits, or responsibilities, substantive or procedural, not otherwise granted or created by existing law. Nothing in this Policy will be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any Treaty Right, or other Rights of any Indian tribe or preempt, modify, or limit the exercise of any such Right.

Nothing in this Policy is intended to waive or diminish the Right of any Party to challenge or appeal another Party's decision or action in accordance with applicable law.

Each Party reserves all Rights, powers, and remedies now or hereafter existing in law, equity, statute, Treaty, or otherwise. A Party's signature to this Policy shall not constitute a waiver of sovereign immunity. This Policy is intended solely to facilitate coordination among the Parties, and nothing herein creates any rights in third parties or gives rise to any right of judicial review.

This Policy commits the Parties to work cooperatively and respectfully toward resolution of issues of mutual interest and concern.

Agreement of Co-Managers