



Wild Fish Conservancy  
N O R T H W E S T  
S C I E N C E   E D U C A T I O N   A D V O C A C Y



August 1, 2022

Washington Fish and Wildlife Commission  
PO Box 43200  
Olympia, WA 98504-3200  
commission@dfw.wa.gov

Re: *WDFW's Violation of Environmental Laws and Reckless Endangerment of Wild Fish Populations*

Dear Chair Baker and Members of the Washington Fish and Wildlife Commission:

On behalf of the Wild Fish Conservancy (WFC), The Conservation Angler, and Washington Wildlife First, we urge you to curb the Washington Department of Fish and Wildlife's ongoing actions to flood the ecosystem with hatchery fish, in clear violation of state environmental law.

This massive expansion in hatchery production may be your most enduring legacy. On your watch, the Department has prepared plans to expand hatchery production by more than 62 million salmon over 2018 levels—an increase of more than 40%.<sup>1</sup> On August 5, you will be asked to approve a legislative budget proposal that includes tens of millions of dollars to support this expansion.<sup>2</sup> And the Department has already taken big steps to implement this expansion. Earlier this year, the hatchery division manager announced that state hatcheries were releasing 11 million more hatchery salmon than the previous year,<sup>3</sup> adding to a previous increase of at least 26.1 million.<sup>4</sup>

Yet the Commission has *never approved* any specific plans to increase hatchery production. The Department has *never submitted for public review* any plans to increase hatchery production. And the Department has *never performed an environmental review* of any plans to increase hatchery production, as mandated by the [State Environmental Policy Act \(SEPA\)](#).

Although this expansion was undertaken as part of the “Orca Prey Initiative,” ostensibly to boost the odds of survival for the Southern Resident killer whales, the Department has not provided any public

---

<sup>1</sup> These number are approximate, because the Department does not report yearly production levels. The 2021 Hatchery Improvement Master Plan indicated that hatchery production in 2020 had increased by 26.1 million Chinook, coho, and chum salmon over 2018 levels (ES-1), and the Plan targeted an additional increase of more than 36 million *Chinook* salmon. See Washington Dep't of Fish and Wildlife, Hatchery Improvement Master Plan—Southern Resident Killer Whale Prey Enhancement (Jan. 1, 2021) ([2021 Master Plan](#)). The 2021 Master Plan estimates the total potential *Chinook* salmon increase at about 51 million, but does not provide a total expected increase for all salmon species, which would be in excess of 62 million. The 2021 Master Plan also indicates that state hatcheries produced 145 million fish in 2017. *Id.* at ES-11.

<sup>2</sup> This includes funds within the \$98 million requested for hatchery improvements, and \$6.8 million for the “hatchery investment strategy,” to support increases already made.<sup>2</sup> See Washington Dep't of Fish and Wildlife, [2023-25 Budget Request Overview](#) (July 2022). The overview does not explain how much of this funding is needed due to the hatchery expansion, nor what percentage of other requests are necessitated by the increase in fish maintained at state hatcheries.

<sup>3</sup> Washington Dep't of Fish and Wildlife, [Volunteers sought as WDFW marks millions of hatchery salmon for release](#), Mar. 12, 2022.

<sup>4</sup> 2021 Master Plan at ES-1. This counts only prior increases in 2020, as we count not find data on the increases in 2021.

analysis to support its hypothesis that producing more hatchery fish will help the state's endangered resident orcas. It has not addressed the substantial evidence, including from its own scientists, that this expansion may significantly harm endangered populations of wild Chinook salmon—and the orcas that depend upon them. And it has not formally considered alternative plans that might more effectively and more expeditiously help resident killer whales, while also mitigating the risk to wild fish populations.

The Department is taking a big risk in your name. This unprecedented escalation in hatchery production could deal an irreparable blow to Washington's wild fish and orca populations. State law does not prevent such risky actions, but it does require that agencies understand the potential consequences first. The Commission thus has a legal and ethical responsibility to ensure that the Department has complied with the law by carefully considering the enormous environmental implications of its actions.

We are thus writing to ask you to actively engage on this issue. To begin with, we are asking you to:

- ask hard questions of Department management about its hatchery expansion program, and demand the clear answers that both you, and the public, deserve;
- carefully consider your upcoming vote on whether to approve the hatchery expansion funds contained within the 2023-2025 budget request; and
- actively participate in decisions about how to respond to current litigation over the Department's violation of SEPA—keeping in mind that the Department is a public agency, whose objective should be to *comply* with the law, not to break it and avoid responsibility.

We respect that this Commission takes its responsibility to represent the interests of the people of Washington very seriously, and that it is comprised of Commissioners who have the qualifications to carefully analyze the concerns raised by this letter—including fisheries professionals who understand the complexity of state fish policy, a public planner who specialized in SEPA compliance, attorneys who appreciate SEPA's legal implications, and scientists who understand the importance of considering potential environmental repercussions before taking this kind of action.

At the same time, we are acutely aware that you are part-time volunteers, without a research staff or other resources to assist you in gathering any information that Department management does not provide. As a result, we want to help provide the information you need to actively engage with Department management on this issue. Toward that end, this letter will explain how the Department has pursued plans to expand hatchery production without formal Commission approval or required SEPA review, while ignoring warnings in the Department reports that it commissioned. In the appendices you will find a chronology of key dates in the evolution of the Department's hatchery policy (Appendix A), and a list of questions that we hope the Commission will ask Department management, to which both the Commission and the public deserve answers (Appendix B). For those Commissioners who want to do additional research on their own, we have assembled key documents in a [Hatchery Policy Resource Library](#) (to which we also link throughout this letter and appendices).

Finally, we have arranged for a group of attorneys, scientists, and advocates to testify regarding these issues during the Commission's open public comment session on August 5, to offer further perspective and expertise on the issues raised here. It is unfortunate that the Department has never held public hearings to discuss its hatchery expansion, nor asked outside experts to advise the

Commission regarding the potential dangers of its current course of action. We encourage the Commission to correct this oversight, but in the meantime, we hope the Commissioners will take the opportunity to ask questions of our speakers during their August 5 testimony.

### **Department Has Failed to Comply with the State Environmental Policy Act**

SEPA places guardrails on agency actions with potentially significant environmental consequences, to ensure that state agencies “shape [our] future environment by deliberation, not default.”<sup>5</sup> SEPA thus “demands a ‘thoughtful decision-making process’ where government agencies ‘conscientiously and systematically consider environmental values and consequences.’”<sup>6</sup>

If the Department had complied with the legal requirements imposed by SEPA and the Administrative Procedure Act,<sup>7</sup> it would have (1) presented a detailed public proposal for hatchery expansion *before* it began to increase the production of hatchery fish; (2) given the public an opportunity to comment on this proposal; (3) fully examined the environmental consequences of this expansion, including its potential impacts on both endangered salmon and Southern Resident killer whales, as well as potential alternatives to avoid or mitigate those impacts; and (4) presented a final plan to the Commission, along with the SEPA analysis of that plan, for review and approval.

But there has been no such “thoughtful decision-making process” here. Instead of complying with the process dictated by SEPA, the Department directed its hatcheries to increase production in 2018, before the Commission had taken any action on the issue, without presenting any public proposal detailing its plans for such an increase, and without any engagement in the SEPA process. By 2019, the Department was already releasing 8 million additional Chinook and Coho salmon over prior-year levels—an action that would have taken significant planning and preparation during 2018, including the capture of additional broodstock and collection of additional eggs.<sup>8</sup>

Indeed, the only time the Commission directly considered the question of whether to increase hatchery production was on September 7, 2018, when the Commission approved a motion that expressed a “general policy intent and guidance” to increase hatchery production by about 50 million Chinook salmon ([2018 Commission Resolution](#)). Commissioner Don McIsaac brought this surprise motion amid the Commission’s consideration of funding requests for the 2019-2021 operating budget.<sup>9</sup> No

---

<sup>5</sup> See *Wild Fish Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 873, 502 P.3d 359 (2022) (quoting *Stempel v. Dep’t of Water Res.*, 82 Wn.2d 109, 118, 508 P.2d 166 (1973)).

<sup>6</sup> *Id.* Specifically, SEPA requires environmental review of all non-exempt agency actions, including “any policy, plan, or program that will govern the development of a series of connected actions.” WAC 197-11-704(2)(a), (2)(b)(iii). This means that for every action, an agency must make a threshold determination of whether an action “is likely to have a probable significant adverse environmental impact[.]” WAC 197-11-330(1)(b). Whenever a policy or plan is “reasonably likely” to have more than a “moderate effect on the quality of the environment,” an agency must prepare a full Environmental Impact Statement before proceeding. See *Norway Hill Pres. & Prot. Ass’n v. King Cty. Council*, 87 Wn.2d 267, 278, 552 P.2d 674 (1976); RCW 43.21C.031(1).

<sup>7</sup> The Administrative Procedure Act requires agencies to act within their statutory authority. RCW 34.05.570(4)(c). Under the Fish and Wildlife Code, the Department’s “decision-making authority [rests] with the fish and wildlife commission,” which should engage in an “open and deliberative process that encourages public involvement and increases public confidence in department decision making.” RCW 77.04.013.

<sup>8</sup> Wash. Dep’t of Fish and Wildlife, “Proposal to increase hatchery Production to Benefit Southern Resident Killer Whales” (Jan 7, 2019) ([2019 Proposal](#)), at 5 (Table 1).

<sup>9</sup> These funding proposals were linked to the Department’s involvement with the Governor’s Southern Resident Killer Whale Recovery and Task Force, although the September 2018 vote came before the Task Force issued either of its reports in November 2018 and November 2019. The Task Force’s sixth recommendation was a significant increase in hatchery production of Chinook salmon, although it acknowledged that this action could create “significant risk to the recovery of

policy decision was on the [Commission's agenda](#) for that meeting, the motion was not provided to the public in advance, and there was no opportunity for public comment.

In discussion of the motion,<sup>10</sup> Commissioners expressed a sense of urgency to react to the public's "expectation that we do something" about declining numbers of Southern Resident killer whales, emphasizing their desire to "go big" in order to "send a message;" to take a "bold big step" to avoid "negativity" from their "customer base;" to "throw[] a very big number against the wall," to see what might stick; and to "swing for the fences" with a big idea, leaving decisionmakers to later "pick and choose" what would actually work. One Commissioner challenged his colleagues to act now or face certain failure in the eyes of the public: "I guess I'm wondering what we're afraid of. Are we afraid to make a statement about a critical scenario that we have with the Southern Resident killer whales?"

The Commission was not presented with any science supporting the proposition that increased hatchery production would help the Southern Resident killer whales, nor did they discuss the threat of harm to endangered wild fish populations, or how it might be averted. However, it was clear the Commissioners did not believe this vote was a final authorization—much less an approval for the Department to implement any and all plans to increase hatchery production in the coming years. To the contrary, Commissioner McIsaac emphasized that his motion was only meant to give the Department "general guidance" at a "higher policy level," assuring the Commission that there was "much process yet to come" and that "planning is an important part of the professional execution of this policy." Other Commissioners were clear that the details of the proposal would need to be discussed at a later time, and that this vote was "not the final word."

Nevertheless, the Department now refers to the "2018 Commission decision" as its basis of authority for all hatchery expansions in the subsequent years.<sup>11</sup> This includes actions taken to expand hatchery production in 2018 (both before and after the vote), and actions to implement the January 7, 2019 "Proposal to increase hatchery Production to Benefit Southern Resident Killer Whales" ([2019 Expansion Proposal](#)) and the January 1, 2021 Hatchery Improvement Master Plan ([2021 Master Plan](#)). Neither the 2019 Expansion Proposal nor the 2021 Master Plan were ever submitted for public comment, proposed to the Commission for approval, or evaluated through the SEPA process.

In fact, until recently, the Department claimed that the 2021 Master Plan was still just a "draft,"<sup>12</sup> and the plan acknowledges it would be subject to SEPA review "[u]pon finalization."<sup>13</sup> However, the Department is moving forward with expanding hatchery production as described in this "draft" plan, is requesting funding for the capital expenditures described in the "draft" plan, and during the Commission's April 9, 2022 meeting, reported on the "continued implementation" of the "draft"

---

natural salmon stocks," and directed the Department to use adaptive management to mitigate those impacts. *See* Southern Resident Orca Task Force, [Final Report and Recommendations](#) (Nov. 2019), at 10, 69. The Task Force reports were not specific plans of action, and did not go through SEPA review.

<sup>10</sup> *See* audio recording of discussion for agenda item B, "[Salmon Hatcheries: Conservation, Fishery Enhancement, and Prey Availability](#)," Washington Fish and Wildlife Comm'n (Sept. 7, 2018).

<sup>11</sup> *See* [WDFW's Motion to Dismiss Amended Petition](#), *Wild Fish Conservancy et al. v. Wash. Dep't of Fish and Wildlife et al.*, King County Superior Court (No. 21-2-13546-0), Dkt. 40 (April 14, 2022), at 1-2, 4, 5, 8, 9, 12. In fact, the Department has claimed that its SEPA violations cannot be challenged, because all its actions to expand hatcheries are merely to "implement the Commission's expansion decision." *Id.* at 2, 9, 10, 13.

<sup>12</sup> *See* [WDFW's Motion to Dismiss](#), *Wild Fish Conservancy et al. v. Wash. Dep't of Fish and Wildlife et al.*, King County Superior Court (No. 21-2-13546-0), Dkt. 17 (Dec. 22, 2021), at 9 & n. 12. In fact, the Department has claimed that plaintiffs have no recourse against its continued expansion of hatchery production in violation of SEPA, because any expansion that it makes for years to come merely "implement the Commission's expansion decision." *Id.* at 2, 9, 10, 13.

<sup>13</sup> [2021 Master Plan](#), at J-8.

plan.<sup>14</sup> This flies in the face of SEPA’s requirement that decisionmakers analyze potential environmental consequences at the “earliest possible stage” of the planning process, so they can consider the environmental consequences of a proposal “before the project picks up momentum, not after.”<sup>15</sup>

Not only has the Department failed to perform a SEPA analysis at the “earliest possible stage” of its hatchery expansion plans, but after *four years* of increasing hatchery production, including under at least two different plans, it has yet to perform any environmental analysis under SEPA.

### **Department Sidesteps Meaningful Review of 2021 Hatchery Policy**

The Department had the perfect opportunity to bring itself into SEPA compliance on its hatchery expansion last year, when it presented a new hatchery policy for the Commission’s review.

The 2021 Policy replaced the Commission’s 2009 hatchery policy (C-3619) ([2009 Reform Policy](#)), which focused on the “scientific and systematic redesign of hatchery programs to help recover wild salmon and steelhead and support sustainable fisheries.” The 2009 Reform Policy expressed the Department’s commitment to the best available science, and an acknowledgment that its highest priority is conservation of wild fish. The policy required the Department to use the principles, standards, and recommendations of the [Hatchery Scientific Review Group](#) to guide its hatchery program, and to develop a structured monitoring and evaluation program to enable adaptive management. During [SEPA review of the 2009 Reform Policy](#), the Department [promised to develop Hatchery Action Implementation Plans](#) for each region of the state, which it would submit for SEPA review upon completion.

The 2009 Reform Policy was never fully implemented, and the Hatchery Action Implementation Plans were never completed. In a 2020 review of hatchery reform policy conducted at the Commission’s request ([2020 Hatchery Reform Report](#)), the Department concluded that “more work was needed in all areas,” noting that its hatchery program was still missing the “critical” component of a system for “[d]efining program success and collecting and analyzing data to adaptively manage our programs.”

Nevertheless, fishing groups claimed that the 2009 Reform Policy had put a “stranglehold” on the fishing industry, and pushed for the Commission to repeal its science-based standards. On June 15, 2018, the Commission responded by suspending the first three provisions of the 2009 Reform Policy, purportedly while the Department conducted a review of hatchery reforms.<sup>16</sup> This review was meant to conclude within 6 months to a year, but the Department did not complete it until 2020, when it produced the [2020 Hatchery Reform Report](#)<sup>17</sup> and “A Review of Hatchery Reform Science in Washington State,” ([2020 Hatchery Science Review](#)), the final versions of which neither the Department or Commission publicly acknowledged or discussed.

---

<sup>14</sup> See Wash. Dep’t of Fish and Wildlife, [Anadromous Salmon and Steelhead Hatchery Policy \(C-3624\): Implementation Progress Report](#) (April 8, 2022), at 6, and related discussion in the [audio of the proceedings](#), beginning at 3:21:25.

<sup>15</sup> *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663-34, 860 P.2d 1024 (1993).

<sup>16</sup> This motion was brought as another surprise motion by Commissioner McIsaac, as part of an [agenda item](#) related to “briefing, public comment, and possible guidance” related to hatchery reform. It was not provided to the public in advance for review—in fact, Commissioner McIsaac made his motion directly after a public comment session.

<sup>17</sup> Although this report was originally tasked with evaluating the effectiveness of the Department’s hatchery reform measures, “[a]fter initial scoping, it was determined that the required data to perform an ad hoc hatchery effectiveness analysis for 159 hatchery programs was not available.” 2020 Hatchery Reform Report at iv. As a result, the authors pivoted to analyze whether the 2009 Reform Policy was ever fully implemented.



The key provisions of the 2009 Reform Policy remained suspended until the Commission approved a new hatchery policy (C-3624) on April 9, 2021 ([2021 Hatchery Policy](#)). The 2021 Hatchery Policy provides for the creation of a technical procedures document that will include a risk management framework, outline an adaptive management plan, and provide a structured decision-making process for the development of individual hatchery management plans.<sup>18</sup> Until these new hatchery management plans are approved, the 2021 Hatchery Policy nominally restores safeguards from the 2009 Reform Policy, *except* that it provides that all “watershed specific policies or initiatives adopted by the Commission” since June 14, 2018, will remain intact even if they conflict with the 2009 Reform Policy, including the “2018 SRO prey initiative.”<sup>19</sup>

This exception effectively grandfathers into the 2021 Hatchery Policy all past and future hatchery expansions done in the name of the “2018 SRO prey initiative.” Indeed, Department management has interpreted this exception to allow it to continue to ramp up hatchery production without regard to the provisions of the 2009 Hatchery Reform Policy, and without developing hatchery management plans under the 2021 Hatchery Policy. Nevertheless, the Department issued a [Determination of Nonsignificance \(DNS\)](#) for the 2021 Hatchery Policy, concluding that an Environmental Impact Statement was unnecessary because “the policy itself is not project specific and does not call for any explicit department actions that would impact the environment.”<sup>20</sup> Elsewhere, the Department’s statement was more qualified: “Policy C-3624 provides no direction in terms of changes in hatchery production, *except with the possibility that production associated with the SRO prey initiative may increase production.*”<sup>21</sup>

Yet the Department made no attempt to evaluate the effects of this “possible” increase in production during its SEPA review. WFC and the Conservation Angler objected to the DNS on these grounds:

The environmental impacts from the substantial increase in hatchery production proposed through the SRO prey initiative have yet to be assessed through SEPA, and the initiative requires an Environmental Impact Statement (EIS) to determine if its controversial actions will harm threatened and endangered fish species—and whether they will actually help SRO [footnote excluded]. WDFW could not permit the massive increases in hatchery chinook production provided for under the SRO prey initiative under C-3619, because the HSRG percentage hatchery origin spawners (pHOS) thresholds would be impossible to meet, and such increases would inevitably undermine wild chinook recovery efforts. This initiative thus violates the intent, guidelines, and goals of the C-3619 policy (as it was written on June 14, 2018), and it must go through its own SEPA process before it is put into action through the non-routine taking of adult fish for broodstock or the release of juvenile fish.<sup>22</sup>

---

<sup>18</sup> Although this document was supposed to be developed within the first year of the new policy, Department management indicated in its first-year report that it was still in the preliminary stages of development.

<sup>19</sup> [2021 Hatchery Policy](#), at 4.

<sup>20</sup> See [SEPA Environmental Checklist](#), filed in support of the Determination of Nonsignificance for C-3624 (March 8, 2021), at 4.

<sup>21</sup> *Id.* at 15 (emphasis added).

<sup>22</sup> See Wild Fish Conservancy and The Conservation Angler, [Letter to Lisa Wood, Washington State Environmental Policy Act Coordinator](#), Re: Comments to the SEPA Process for Fish and Wildlife Commission Policy (Mar. 23, 2021), at 2.

In its response to these comments, WDFW claimed that “[a]ny policy or initiative taken by the [Fish and Wildlife] Commission or the agency that has the potential to affect the environment will undergo a separate SEPA review process.”<sup>23</sup> Regarding the hatchery increases under the “Orca Prey Initiative,” it asserted that “This policy anticipates that the potential environmental effects of the SRO prey initiative will be suitably reviewed by state and federal agencies.”

These assurances were disingenuous, at best, given that the Department is the “state agenc[y]” responsible for providing SEPA review of the “Orca Prey Initiative”; that there is no doubt that the “Orca Prey Initiative” has “the potential to affect the environment”; and that, by this point, the Department was already increasing hatchery production under the umbrella of the “Orca Prey Initiative,” without undertaking any SEPA review.

### **Department SEPA Violations Risk Serious Environmental Harm**

In your role as Commissioners, you do not need to be convinced that the Department’s hatchery expansion will harm Washington’s wild fish and orca populations to be gravely concerned about the Department’s refusal to perform a SEPA environmental analysis. You only need to acknowledge that such environmental harm is a possibility, which the Department has not fully acknowledged, examined, or accounted for. And you do not need to take our word for this: The HSRG’s evaluation of the 2019 Expansion Proposal, and the Department’s own conclusions in its 2020 Hatchery Science Review, both make clear that this expansion poses a serious risk of environmental harm.

As directed by the Legislature, the Department submitted its 2019 Expansion Proposal to the HSRG for review. The HSRG returned a letter on September 28, 2018 ([2018 HSRG Letter](#)), which fully evaluated only one facet of the proposed expansion—the potential genetic impact of increased hatchery production, and the corresponding loss of fitness in natural fish populations.<sup>24</sup> The 2018 HSRG Letter indicated the panel had been unable to evaluate other potential impacts of the proposed expansion due to the short timeline and a lack of information provided by the Department.<sup>25</sup>

Although the HSRG was thus unable to conduct a comprehensive analysis of the proposed expansion, it urged the Department to do so on its own, to obtain a “more accurate assessment of the benefits and risks to endangered salmon and steelhead populations.”<sup>26</sup> The HSRG expressed significant reservations about the entire expansion plan, and skepticism about whether it would achieve the desired objective of assisting the Southern Resident killer whales.

In particular, the HSRG urged the Department to explicitly state its “scientific rationale” for the proposed hatchery expansion: “Assuming the increase in production is for Orca consumption, is there any biological justification that suggests how well this will work, how confident we might be in these assumptions, and how those biological assumptions influenced the choice of programs and sizes?”<sup>27</sup> If the Department had any biological justification for the proposed increases, the HSRG urged that it be documented.

---

<sup>23</sup> Wash. Dep’t of Fish and Wildlife, [Comments on DNS 21-008 Anadromous Salmon and Steelhead Policy C-3624](#), at 9.

<sup>24</sup> [2018 HSRG Letter](#), at 24.

<sup>25</sup> *Id.* at 25.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 26.

The 2018 HSRG Letter also urged the Department to consider all the impacts the increase in hatchery fish would have on wild fish populations. For example, it emphasized the likelihood that increasing the production of hatchery Chinook would increase populations of pinnipeds, which would also prey on wild Puget Sound salmon and steelhead populations.<sup>28</sup>

Given that the whole hatchery increase was being based on the “premise of trade-offs between endangered Orca, threatened Chinook, and potentially endangered steelhead,” the HSRG letter also questioned whether the Department had a sufficient program to monitor the effects of the increase, so the Department could discontinue the expansion if it discovered that the risks outweigh the benefits.<sup>29</sup> The HSRG emphasized that “[i]f this is all as uncertain as it seems, then this principle has to be the most important one.”<sup>30</sup>

Of the 10 hatchery expansions provided to the HSRG for review, the 2018 HSRG Letter advised the Department to conduct additional analysis before proceeding with six of them, finding that increasing production in the Kendall Creek, Whatcom Creek, Samish, Wallace, Marblemount and Sol Duc hatcheries would risk “genetic introgression” with a corresponding loss of fitness, leading to the loss of genetic integrity of naturally spawning endangered wild fish with a high conservation value.<sup>31</sup>

However, the Department’s consultation with the HSRG was merely *pro forma*. Even though the 2019 Expansion Proposal was never approved, finalized, or adopted, the Department had begun to implement it well before it received the 2018 HSRG letter. There is no sign Department management ever considered the opinions expressed by the HSRG, as it proceeded to increase production in all the hatcheries about which the HSRG had expressed concern, without doing any of the additional analysis that it recommended. Indeed, the pending lawsuit against the Department challenges dramatic hatchery expansions in five of the six hatcheries where the HSRG indicated that production increases would risk natural Chinook populations.<sup>32</sup>

Nor is there any sign that the Department ever considered its own [2020 Hatchery Science Review](#), even though the Commission had deemed this review as essential when it voted in 2018 to suspend the 2009 Hatchery Reform Policy. Biologists in the Department’s fisheries section submitted this analysis in January 2020 after peer-review by the Washington State Academy of Sciences.

The 2020 Hatchery Science Review provides an overview of the risks that scientists have long understood hatchery programs to pose to wild fish populations.<sup>33</sup> Since increasing program size can raise both “ecological and genetic risks,” the report suggested that “a rigorous justification for program size is essential for implementing scientifically defensible hatchery programs.”<sup>34</sup> In particular, it said the “justification for hatchery program size should consider aggregate effects of multiple hatchery

---

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* The HSRG’s concerns regarding insufficient monitoring have been frequently echoed by the Department’s own staff, including in the [2020 Hatchery Science Review](#) and the [2020 Hatchery Reform Report](#).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 27-30

<sup>32</sup> See [Second Amended Petition for Declaratory and Injunctive Relief](#), *Wild Fish Conservancy et al. v. Wash. Dep’t of Fish and Wildlife et al.*, King County Superior Court (No. 21-2-13546-0), Dkt. 54 (Second Petition), at 43-44 (challenging an 80% increase in eggtake at the Samish Hatchery in 2021, and noting the HSRG’s concerns); 44-45 (challenging 42% increase in eggtake at Kendall Creek Hatchery); 46 (challenging 50% increase in eggtake at Wallace River hatchery); 47-48 (challenging a 10% increase at Marblemount hatchery); 48-49 (challenging 21% increase at Sol Duc Hatchery).

<sup>33</sup> [2020 Hatchery Science Review](#) at 26-46.

<sup>34</sup> *Id.* at 79-80.s



programs operating within a geographic region,” and recommended a “more rigorous, consistent and intentional evaluation of cumulative hatchery effects across multiple hatchery programs[.]”<sup>35</sup>

The report also emphasized the critical need to perform an “empirical assessment of habitat carrying capacity,” to determine whether increased hatchery releases might overwhelm a habitat’s carrying capacity, consuming scarce resources needed by wild fish populations.<sup>36</sup> And it warned that large-scale hatchery production could increase fishing pressure on wild fish, because it would “magnify the political pressure to take advantage of abundant hatchery runs at the expense of natural populations.”<sup>37</sup>

Among the 2020 Hatchery Science Review’s other key findings:

- Hatchery risks include fishery risks, ecological risks, and genetic risks. Hatcheries have potential for “large magnitude ecological impacts on natural populations” that have not been well understood, are not typically evaluated, and are not usually adequately measured.<sup>38</sup>
- Excessive hatchery program size requires more careful scrutiny and scientific justification, because it affects virtually every aspect of hatchery risks.<sup>39</sup>
- In Washington’s hatchery system, a focus on efficiency and maximizing abundance has prevented the widespread implementation of risk reduction measures.<sup>40</sup>
- Although the Department has invested considerable effort into population monitoring, it does not adequately fund the analysis, reporting, and synthesis of this data, and lacks a clear framework for incorporating it into the decision-making process.<sup>41</sup> The Department also has not conducted a systematic monitoring of its hatchery programs.<sup>42</sup>
- Any hatchery reform management action should emphasize HSRG’s fundamental principles of reducing pHOS and increasing pNOB<sup>43</sup> to achieve fitness gains in wild populations.<sup>44</sup>

There is no indication the Department adjusted plans to escalation hatchery production as a result of these recommendations from its own experts. Because the Department never performed an environmental review of any hatchery expansion plan, it was never forced to wrestle with the serious, science-based concerns about such increases in any formal or public way.

Had the Department performed the required SEPA review, the results could have led to a variety of outcomes. It could have concluded that the risks of hatchery expansion outweighed its benefits, and

---

<sup>35</sup> *Id.* at 80. 111.

<sup>36</sup> *Id.* at 80.

<sup>37</sup> *Id.* at 29.

<sup>38</sup> *Id.* at 109.

<sup>39</sup> *Id.* at 105.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 107.

<sup>42</sup> *Id.* at 75.

<sup>43</sup> pHOS is the proportion of hatchery-origin fish spawning naturally among the wild fish populations. A high pHOS indicates a high proportion of hatchery fish spawning in the wild, and an increased likelihood of gene flow between wild fish and hatchery populations. pNOB is the proportion of natural-origin fish used as broodstock. A higher pNOB generally equates to lower genetic risk to wild fish but requires mining wild fish for broodstock and results in higher pHOS.

<sup>44</sup> *Id.* at 7.

declined to pursue expansion plans. Or, it could have made adjustments to its plans, to minimize or mitigate the risks, such as by removing some hatcheries from the expansion list, changing hatchery protocols, or adjusting fishing regulations. Finally, it is possible the Department would have decided to pursue the same hatchery expansion after SEPA review, but implemented a process to collect, analyze, and synthesize the data in the manner urged by both the HSRG and its own biologists, to inform an adaptive management process that would allow it to discontinue the expansion if it was causing more harm than good. The law requires all these alternatives to be fully considered in public view, and presented to the Commission for a final decision.

### **WFC and The Conservation Angler File Suit Over SEPA Violations**

As we assume the Commission is aware, WFC and The Conservation Angler sued the Department for its violation of SEPA on October 11, 2021. The [Amended Complaint](#) challenges (1) the Department’s determination that the 2021 Hatchery Policy posed no significant environmental risks requiring completion of an Environmental Impact Statement, (2) the Department’s failure to conduct a SEPA analysis of any of its actions to increase hatchery production since 2018; (3) the Department’s refusal to comply with either SEPA or the Administrative Procedure Act in the finalization and implementation of its 2021 Master Plan, and (4) specific Department actions in 2021 to increase eggtake by 8.5 million at six hatcheries without SEPA review.<sup>45</sup>

As of the date of this letter, the Department has filed three motions to dismiss, in an ongoing attempt to prevent the Court from hearing the case on its merits. Notably, none of these motions contended that the Department complied with the law. The Department has not asserted that it did not need to complete a SEPA process before undertaking hatchery expansion;<sup>46</sup> nor has it claimed that it has ever done so. Rather, the Department is playing a game of “catch me if you can,”<sup>47</sup> arguing that Petitioners are either too late, or too early, to challenge its SEPA violations—or, that they can never be challenged at all. For example, having first argued that a legal challenge to the 2021 Master Plan was premature because it was only a “draft,”<sup>48</sup> the Department later pivoted to contending that such a challenge was too *late*, because the Department had received funding to implement the 2021 Master Plan in the 2021 capital budget, five months before Petitioners filed suit.<sup>49</sup> Now, the Department has changed tack again, to assert that the 2021 Master Plan *never* needs to be finalized, and that no plans for hatchery expansion require Commission approval.<sup>50</sup>

Indeed, the Department has cycled through a variety of theories to contend that petitioners *can never challenge* its refusal to conduct SEPA analysis on its hatchery expansions. In its first two motions to dismiss, it claimed it was too late to bring a challenge to its SEPA violations, because all its past and future actions to increase hatchery production were authorized by the Commission’s [2018 Commission Resolution](#).<sup>51</sup> In its third motion to dismiss, filed last week, it had developed an even

---

<sup>45</sup> [Amended Complaint](#) at 49-57.

<sup>46</sup> Notably, there is a categorical exemption for the “routine release of hatchery fish...where only minor documented effects on other species will occur.” WAC 197-11-835(5). The Department has not tried to claim that exemption applies to its plans to dramatically increase hatchery production.

<sup>47</sup> See [Reply ISO Second Motion to Amend Petition](#), at 1.

<sup>48</sup> [Motion to Dismiss](#) at 9 & n. 2.

<sup>49</sup> [Opposition to Second Motion to Amend](#), at 4.

<sup>50</sup> [WDFW’s Motion to Dismiss Second Amended Petition](#), at 9. This contention is a neat sidestep to the Master Plan’s concession that it would be subject to SEPA evaluation “[u]pon finalization.” 2021 Master Plan at J-8.

<sup>51</sup> [Motion to Dismiss Amended Petition](#), at 1-2, 4, 5, 8, 9-12. This argument is inaccurate, as the 2021 Master Plan aims to increase hatchery production well beyond the levels contemplated by the Commission in 2018. It is also irrelevant as a

broader theory of immunity, contending that none of its actions to expand hatchery production are “agency actions,” and thus can never be challenged under the Administrative Procedure Act.<sup>52</sup>

We expect that Department management and its attorneys will instruct the Commission to sit back and let the courts decide the issue, and that it is somehow improper to consider an issue while it is under litigation. But you are public servants first, litigants second. Petitioners are not seeking damages from the Department—the only thing the Department has to lose is an order requiring it to conduct the public environmental analysis required by law.<sup>53</sup> We believe it is your duty to consider the facts presented in this letter and in the litigation, to ask hard questions of your attorneys and Department management, and to decide whether this is how you want to run *your* Department.<sup>54</sup>

There are several reasons why you should not just be content to allow the litigation to play out. First, it may be years before it is resolved. We are confident we will eventually prevail on our legal claim, because the Department is guilty of a clear SEPA violation. But this victory will not be quick. The Department has successfully delayed the litigation of the case in King County Superior Court for nearly a year,<sup>55</sup> and we expect it will likely go to the Court of Appeals before it is concluded. In the meantime, the Department will continue pumping out tens of millions of additional hatchery fish every year, potentially causing irreparable harm to the state’s wild fish and orca populations.

Second, it is your *duty* to prevent the Department from violating the law, and from taking reckless actions that endanger the state’s wild fish and wildlife populations. **These actions are happening on your watch,** and when the courts rule the agency violated SEPA—whether that be in six months or two years—the responsibility for that legal violation will be at *your* feet.

Finally, it is also your responsibility to supervise the Department’s response to legal claims. Our lawsuit shows that the Department has gone to great lengths to avoid complying with SEPA, and you do not need to wait for a Court to find these actions illegal. It should not be the goal of the Department—or *any* state agency—to *get away with* a legal violation. We hoped that when we brought these obvious legal violations to the attention of Department management, they would take immediate steps to correct them; just as we hoped that when we filed this legal action, the state attorney general would advise the Department to comply with the law. Unfortunately, that is not what happened, so you are now presented with the choice of whether the Department should continue fighting to prevent the merits of the case from being heard—or if it should simply agree to follow the law.

---

matter of law, because SEPA has no statute of limitations and the Department cannot immunize its violations of the law merely by repeating them. See [Opposition to Motion to Dismiss Amended Complaint](#) at 1 (“WDFW does not cure this illegal conduct through repetition.”).

<sup>52</sup> [WDFW’s Motion to Dismiss Second Amended Petition](#), at 6. This theory is even more absurd than the Department’s prior claims, given that the APA defines an agency action to include the “implementation or enforcement of a statute.” The Department claims, in part, that its actions to expand hatchery production are not “agency actions” because they were directed by the legislature in its budgets—which are, of course, statutes.

<sup>53</sup> On the other hand, it is expensive to fight lawsuits like this one, which could have been avoided by simply complying with the law in the first place. Among the additional expenditures in the Department’s 2023-35 proposed budget is an additional \$100,000 a year to pay for “increased Attorney General costs.” [2023-25 Budget Request Overview](#), at 14.

<sup>54</sup> We also expect that your attorneys will advise you to discuss all, or many, of the issues raised in this letter only in executive session. We believe that would be a disservice to the public, which deserves to hear an airing of these important issues of state environmental policy. Executive session is a choice, not a legal requirement, and we urge you to inquire about the facts discussed in this letter in a public session, and to require management to make its responses public.

<sup>55</sup> Although it was filed on October 11, 2021, that lawsuit has still not reached briefing on the merits. Initially, the Department defaulted on its December 13, 2021, deadline for filing the agency record, and since that time, has filed three motions to dismiss, which have prevented the case from advancing to a decision on the merits.

## Conclusion

These issues strike at the core of the Department's responsibility to manage the state's fish and wildlife for all current and future Washingtonians—rather than enacting policies that will benefit the few at the expense of the many. We all have an interest in restoring our wild fish populations and saving the Southern Resident killer whales that depend on them. By flooding our waterways with a massive increase in hatchery fish, the Department has made a huge gamble, with the only certain payoff going to Washington's fishing interests, while the state's fish and wildlife populations bear all the risk. Worse yet, it made this bet without bothering to find out the stakes.

So we ask you: What kind of Department do you want to run? One that complies with the law, or one that seeks to avoid responsibility for its illegal conduct? One that makes careful decisions on the basis of scientific evidence, or one that takes desperate risks without stopping to assess the potential consequences?

Thank you for your attention, and for your service on behalf of all the people of Washington. We look forward to discussing these issues further when we appear before the Commission on August 5.

Sincerely,




---

Emma Helverson  
Executive Director  
Wild Fish Conservancy  
[emma@wildfishconservancy.org](mailto:emma@wildfishconservancy.org)



---

David Moskowitz  
Executive Director  
The Conservation Angler  
[david@theconservationangler.org](mailto:david@theconservationangler.org)



---

Samantha Bruegger  
Executive Director  
Washington Wildlife First  
[sbruegger@wawildlifefirst.org](mailto:sbruegger@wawildlifefirst.org)

cc:

Kelly Susewind, Director, Washington Department of Fish and Wildlife,  
[Kelly.Susewind@dfw.wa.gov](mailto:Kelly.Susewind@dfw.wa.gov)

Ruth Musgrave, Senior Policy Advisor, Natural Resources,  
Office of Governor Jay Inslee  
[ruth.musgrave@gov.wa.gov](mailto:ruth.musgrave@gov.wa.gov)

## Appendix A

### Chronology of Events Related to the Washington’s Hatchery Expansion

<b>1880s</b>	The first hatcheries in the Pacific Northwest are built, to try to compensate for habitat loss and supplement fish runs weakened by overharvest. The hatcheries multiplied rapidly, so that there are now roughly 150 hatcheries in Washington operated by state, federal, and tribal entities. In many areas of the Northwest, hatchery fish make up most salmon in rivers and streams.
<b>1996</b>	The National Academy of Sciences <a href="#">publishes a report</a> on salmon in the Pacific Northwest, which reflects the growing scientific consensus that hatcheries are one of four primary factors that have contributed to the decline of wild salmon, along with overfishing, loss of habitat, and hydropower dams: “In retrospect, it is clear that hatcheries have caused biological and social problems. For example, hatcheries have contributed to the more than 90% reduction in spawning densities of wild coho salmon in the lower Columbia River over the past 30 years.”
<b>2000</b>	Congress establishes the <a href="#">Hatchery Scientific Review Group</a> , an independent scientific review panel charged with reviewing salmon and steelhead hatchery practices in the Pacific Northwest, to make recommendations in accordance with the latest science on how to reduce hatchery impacts on wild fish populations. From 2000 to 2004, the HSRG reviewed hatcheries in the Puget Sound and coastal regions, and from 2006 to 2009, it reviewed hatchery operations on the Columbia River.
<b>Nov. 6, 2009</b>	The Washington Fish and Wildlife Commission responds to the threats hatcheries pose to the wild fish population by adopting the <a href="#">2009 Reform Policy</a> , designed to focus on the “scientific and systematic redesign of hatchery programs to help recover wild salmon and steelhead and support sustainable fisheries.” In the <a href="#">SEPA checklist</a> related to review of the 2009 Reform Policy, the Department commits to phased review of Hatchery Action Implementation Plans. Those plans were never finalized or reviewed through SEPA.
<b>March 14, 2018</b>	Governor Jay Inslee issues Executive Order 18-02, creating the Southern Resident Killer Whale Recovery and Task Force, and directing state agencies to take immediate action to address the alarming decline of the Southern Resident killer whale population.
<b>June 15, 2018</b>	The Commission passes <a href="#">a resolution</a> directing the Department to initiate a review of “all sections and aspects” of the 2009 Reform Policy, and suspending the first three guidelines of the policy for all salmon species other than steelhead until the completion of the review. No SEPA review was conducted about the effects of this significant policy change.
<b>Sept. 5, 2018</b>	Staff presents the Commission with a budget proposal to fund the production of 50 million additional Chinook salmon smolts, cautioning that “in order to increase hatchery production, WDFW will need to meet legal, co-manager, ESA, and environmental obligations.”
<b>Sept. 7, 2018</b>	The Commission adopts the <a href="#">2018 Commission Resolution</a> , expressing a “general policy intent and guidance for the primary purpose of proposing enhanced Chinook salmon abundance for the benefit of [Southern Resident killer whale] recovery, acknowledging that there will also be secondary fishery benefits.” The resolution provides that at “a high policy level, the Commission proposes a significant enhancement in Chinook salmon abundance, via increases in releases from hatchery programs, approximating 50 million smolts beyond 2018 status quo releases.”
<b>Nov. 2018</b>	The Task Force transmits its <a href="#">first report</a> . The report’s sixth recommendation is to “[s]ignificantly increase hatchery production...consistent with sustainable fisheries and stock management, available habitat, recovery plans and the Endangered Species Act.”



## Appendix A

### Chronology of Events Related to the Washington’s Hatchery Expansion

<b>Sept. 28, 2018</b>	<p>The HSRG sends a <a href="#">letter</a> evaluating the Department’s proposed hatchery expansion. The HSRG is unable to evaluate most elements of the proposed expansion due to a short timeline and insufficient information, but analyzes the potential genetic impact of increased hatchery production at 10 hatcheries, finding that increasing production at 6 of the 10 would lead to the “loss of genetic integrity of naturally spawning ESA-listed wild fish with a high conservation value.”</p> <p>The HSRG expresses skepticism regarding the expansion plan: “Assuming the increase in production is for Orca consumption, is there any biological justification that suggests how well this will work, how confident we might be in these assumptions, and how those biological assumptions influenced the choice of programs and sizes?” Before expanding production, the HSRG urges consideration of all potential impacts to “allow managers to quantify the risks and make informed decisions.” Given the uncertainties of the proposal, the HSRG emphasizes the need for a strong monitoring program, so the expansion may be discontinued if the harm outweighs the benefits.</p>
<b>Jan. 7, 2019</b>	<p>The Department presents the legislature with the <a href="#">2019 Expansion Proposal</a> to ramp up hatchery production. Even though the 2019 Expansion Proposal was never formally finalized or approved, and did not go through a SEPA evaluation, the Department has taken steps to implement it at all 10 of the proposed hatcheries, including the 6 about which the HSRG expressed specific concerns.</p>
<b>Nov. 2019</b>	<p>The Task Force presents its <a href="#">final report</a>, which acknowledges the potential that increased hatchery production could create “significant risk to the recovery of natural salmon stocks,” and directs the Department to conduct annual adaptive management and five-year comprehensive reviews to limit those impacts. The report does not acknowledge the possibility that the increase in hatchery production could backfire and cause an even more rapid decline of both wild Chinook salmon and the imperiled Southern Resident killer whale population.</p>
<b>Jan. 23, 2020</b>	<p>Department biologists complete the <a href="#">2020 Reform Study</a>, in response to the Commission’s 2018 request to review and update the science of hatchery reform, which details the risks that hatcheries pose to wild fish populations. It warns about the “ecological and genetic risks” of increasing hatchery production, and suggests “a rigorous justification for program size is essential for implementing scientifically defensible hatchery programs.”</p>
<b>Aug. 11, 2020</b>	<p>Department staff complete the <a href="#">Reform Policy Assessment</a>, responding to the Commission’s request to review the performance of hatchery reform policies over the past 10 years. The report indicates that following initial scoping, Department staff found it did not have enough data to assess policy performance, so it instead focused on assessing the degree to which these reforms had been implemented. It found that “more work was needed in all areas,” and in many cases implementation had been stalled by a lack of funding, and indicated that one of the “areas of special concern” was the agency’s “[l]ack of quantifiable harvest program goals and a comprehensive statewide monitoring and evaluation program.”</p>
<b>Sept. 14, 2020</b>	<p>The Department issues a Determination of Nonsignificance (DNS) on a proposed hatchery policy revision.</p>
<b>Jan. 1, 2021</b>	<p>The Department unveils the <a href="#">2021 Master Plan</a>, to spend \$250 million over the next 25 years to expand hatchery production by more than 62 million smolts over 2017 levels. The 2021 Master Plan consists of more than 600 pages, including tables, figures, and appendices, but nowhere mentions either the HSRG guidelines or any HSRG review. It indicates the Department has already taken action to increase production of salmon by 26.1 million smolts over 2018 levels, and describes actions to increase hatchery production by another 36.4 million. The plan indicates that “[u]pon finalization, and as determined by the SEPA lead agency (i.e., WDFW), the Master Plan would be subject to review under the State Environmental Policy Act (SEPA).”</p>
<b>Jan. 11, 2021</b>	<p>The Department withdraws the DNS for its draft policy revision, following harsh criticism.</p>

## Appendix A

### Chronology of Events Related to the Washington’s Hatchery Expansion

<p><b>Jan. 28, 2021</b></p>	<p>The Department releases a new draft hatchery policy, re-titled the Anadromous Salmon and Steelhead Hatchery Policy, and given a new policy number, C-3624 (“<a href="#">2021 Hatchery Policy</a>”).</p> <p>The policy acknowledges there are significant risks as well as benefits to hatchery programs, and directs the Department to create a structured decision-making process that includes science-based risk management. It requires the completion of a technical procedures document within a year to establish the risk management framework, adaptive management framework, and structured decision-making process for developing hatchery management plans (HMPs) for each hatchery. Until HMPs are developed, approved, and implemented, the policy provides that all “existing hatchery operational plans, goals and objectives in effect on June 14, 2018 shall remain intact as current policy direction.” As a general rule, the 2021 Hatchery Policy thus restores all the provisions of the 2009 Reform Policy until HMPs have been developed and approved for each hatchery.</p> <p>However, it provides that all “watershed specific policies or initiatives adopted by the Commission” since June 14, 2018, will remain intact, even if they conflict with the 2009 Reform Policy, including the “2018 SRO prey initiative.” The 2021 Hatchery Policy does not mention the 2021 Master Plan.</p>
<p><b>March 9, 2021</b></p>	<p>The Department issues a <a href="#">DNS</a> for the 2021 Hatchery Policy, concluding it “will likely not have a significant adverse impact on the environment,” and an Environmental Impact Statement is therefore unnecessary. In the <a href="#">SEPA environmental checklist</a>, the Department declines to answer questions regarding environmental impact of the policy, claiming “the policy itself is not project specific and does not call for any explicit department actions that would impact the environment.” Regarding the impact of the policy on plants, animals, fish, or marine life, the Department says “Policy C-3624 provides no direction in terms of changes in hatchery production, except with the possibility that production associated with the SRO prey initiative may increase production.”</p>
<p><b>March 23, 2021</b></p>	<p>WFC and The Conservation Angler <a href="#">submit a joint letter</a> commenting on the DNS, praising the Department for drafting a policy that acknowledges the risks of hatcheries and sets forth a structured decision-making process that includes science-based risk management.</p> <p>The letter emphasizes the need to restore the requirements of the 2009 Reform Policy pending the implementation of the Hatchery Management Plans, eliminating exceptions for any policy that had not gone through separate SEPA review. The letter notes that “[w]ithout this modification, a finding of non-significance would allow a variety of unnamed ‘policies or initiatives’ to evade SEPA review. This is clearly unacceptable under the law, and dangerous as a matter of public policy[.]”</p> <p>Of greatest concern is the exemption for the “Orca Prey Initiative:” “The environmental impacts from the substantial increase in hatchery production proposed through the SRO prey initiative have yet to be assessed through SEPA, and the initiative requires an Environmental Impact Statement (EIS) to determine if its controversial actions will harm threatened and endangered fish species—and whether they will actually help SRO. WDFW could not permit the massive increases in hatchery chinook production provided for under the SRO prey initiative under C-3619, because the HSRG percentage hatchery origin spawners (pHOS) thresholds would be impossible to meet, and such increases would inevitably undermine wild chinook recovery efforts.”</p>

## Appendix A

### Chronology of Events Related to the Washington’s Hatchery Expansion

<b>April 6, 2021</b>	<p>The Department releases the final DNS for the 2021 Hatchery Reform Policy, along with <a href="#">responses to comments</a>. In response to the comments from WFC and The Conservation Angler, the Department asserts that “[a]ny policy or initiative taken by the [Fish and Wildlife] Commission or the agency that has the potential to affect the environment will undergo a separate SEPA review process.”</p> <p>Regarding hatchery increases under the “Orca Prey Initiative,” it responds: “[T]his policy does not direct the agency to increase hatchery production in an effort to increase prey for SRO. Guideline 6 instructs the agency to “consult with Tribal Co-Managers and work with the National Marine Fisheries Service to develop an implementation plan. The guideline also requires that the agency use the appropriate stocks (“genetic strains”) and for the hatchery programs to be appropriately located and sized to effectively provide prey to endangered SROs in concert with recovery plans for threatened wild salmon and steelhead. This policy anticipates that the potential environmental effects of the SRO prey initiative will be suitably reviewed by state and federal agencies.”</p>
<b>April 9, 2021</b>	The Commission adopts the 2021 Hatchery Policy.
<b>Oct. 11, 2021</b>	WFC and The Conservation Angler <a href="#">file a lawsuit</a> in King County Superior Court to challenge the Department’s failure to conduct a SEPA analysis on its hatchery expansion plans, specifically challenging recent dramatic increases in eggtake at six hatcheries.
<b>Dec. 22, 2021</b>	The Department states in a <a href="#">motion to dismiss</a> that the 2021 Master Plan is still a draft.
<b>March 12, 2022</b>	The Department’s hatchery division manager announced that the agency is preparing to release 11 million additional fish from its hatcheries in 2022 than it did in 2021.
<b>April 9, 2022</b>	The Department discusses the “continued implementation” of the 2021 Master Plan in a presentation to the Commission on the 2021 Hatchery Policy. Department staff say, in part: “Finally on this prey initiative, we continue to implement the January 2021 Master Plan, and there are two items underneath here that involve facilities work. From money from the 21-23 capital budget there is work being done at the Voights, Kendall and Sol Duc hatcheries, and there are additional projects planned under the 23-25 capital request that is under development.”
<b>June 17, 2022</b>	The King County Superior Court <a href="#">issues an order</a> denying the Department’s second motion to dismiss litigation over its SEPA violations.
<b>July 29, 2022</b>	The Department files its <a href="#">third motion to dismiss</a> litigation over its SEPA violations.

## Appendix B

### Suggested Questions Washington's Hatchery Expansion

Because the Department has not been transparent with the Commission or the public regarding its plans to expand state hatcheries, it is difficult to find reliable and consistent data regarding past expansions or information about plans for future expansions, and to ascertain the status of work on plans and proposals that have been offered. We urge the Commission to ask Department management for a detailed, full report on its hatchery expansion progress and future plans. In the interest of transparency, we hope this information will be shared with the public, because we have a right to be kept informed about a project that will expend hundreds of millions of taxpayer dollars, and profoundly affect the future of Washington's wild fish and orca populations.

We have proposed some specific questions that we hope will guide the Commission in trying to obtain reliable information about the hatchery expansion, including how the Department has been assessing and addressing the large risk that this massive expansion will devastate wild fish populations.

**Background Data.** *We have scoured the Department's reports, plans, proposals, and presentations, and can only find scattered and incomplete data about the hatchery expansion.*

1. How much has Department management expanded hatchery production each year since 2017? Please provide release numbers, by hatchery and species, for 2017 through 2022, as well as the total numbers of all releases by species for each year.
2. How much does Department management plan to expand hatchery production in 2023? In 2024?
3. What is the total increase in hatchery production that Department management plans under the "Orca Prey Initiative," and how long will it take to reach these levels?
4. How have these hatchery increases been factored into hatchery planning by the Pacific Fishery Management Council and the Pacific Salmon Treaty?

**Planning.** *If the 2021 Master Plan is still a "draft," as the Department has claimed, then it is not clear what plan the Department is following for its hatchery expansion. Since 2018, the Department has not released any expansion plan for public comment or submitted it for Commission approval, or formally approved any of its plans or proposals. So, what is guiding its continued expansion?*

5. Did Department management take steps to implement an increase in hatchery releases before the Commission passed the resolution expressing "general policy intent and guidance" on September 7, 2018? If so, what were these steps? What was the Department's authority to take them? Were they consistent with the 2009 Reform Policy?
6. What plan is guiding the Department's current increases in hatchery policy? Please provide that plan.
  - a. If it is the [2021 Master Plan](#), when was that plan finalized? When was it approved, and by whom? Does the Department expect to submit that Plan for Commission approval? Or does it believe, as recently stated in a court filing, that the Commission has no further business supervising plans for hatchery expansion?

## Appendix B

### Suggested Questions Washington's Hatchery Expansion

- b. If it is the [2019 Hatchery Proposal](#), when was that proposal finalized? When was it approved, and by whom? Does the Department expect to submit that proposal for Commission approval?
- c. Same questions for any other plan or proposal named by the Department.
- d. If Department management does not name a specific plan, then what is guiding the increases in hatchery production?

**Involvement of Public and the Commission.** *The Department presented the 2021 Hatchery Policy for public review and Commission approval, but insisted that this policy “does not direct the agency to increase hatchery production in an effort to increase prey for SRO.” No other hatchery expansion plan or proposal has ever been submitted to the public for review or to the Commission to approve.*

7. Has Department management ever provided any of its plans or proposals for increasing hatchery production to the public for review and comment?
8. Has Department management ever provided any of its plans or proposals for increasing hatchery production to the Commission for review and approval?
9. Does Department management consider the [September 7, 2018 statement](#) of “general policy intent and guidance” to be a final authorization for any and all increases in hatchery production in the coming years?
  - a. If not, then what does Department management consider to be the boundaries of this authorization?
10. Does management believe the Commission has delegated policymaking authority to Department staff to develop the plans and policies that will govern the increase in hatchery production?
  - a. If so, what was the vehicle for this delegation of authority?

**SEPA and ESA Compliance.** *The Department has never made a threshold determination of significance on any hatchery expansion plan, the first step in the SEPA process, much less completed an Environmental Impact Statement, which would be required of a project that will have such a profound effect on the environment. When asked about SEPA compliance in the past, Department staff have evaded the question and referred to the SEPA process for the 2021 Hatchery Policy, which did not direct any hatchery increases. In addition, the Department has not completed or obtained approval for Hatchery Genetic Management Plans (HGMPs) for many of these hatcheries, which is essential to comply with the federal Endangered Species Act.*

11. The [2021 Hatchery Policy](#) commits to SEPA review of the technical procedures documents and individual hatchery plans.
  - a. The technical procedures document was supposed to be complete within a year, by April 2022. How much longer until this document is completed and submitted to SEPA review?
  - b. How long before the first hatchery management plans will be submitted for review? When will this process be finished?



## Appendix B

### Suggested Questions Washington's Hatchery Expansion

- c. In 2009 the Department [committed to a phased SEPA review](#) of its Hatchery Action Implementation plans as a part of their hatchery reform efforts in policy 3619. Why was this effort never completed? What will be different this time?
12. Has the Department ever gone through any SEPA process, including a threshold review, for any plan, policy, or action taken since 2018 to increase hatchery production?
  - a. *If the Department cites to the SEPA review process in late 2020 and early 2021 for the 2021 Hatchery Policy:* Did the SEPA review for the 2021 Hatchery Policy consider the impacts of increasing hatchery production?
  - b. *If the Department cites to any other SEPA process:* Please provide the results of that SEPA review.
13. *If Department management concedes that no SEPA review has been performed on any plans, policies, or actions to increase hatchery production:*
  - a. Does Department management believe that plans, policies, and actions to increase hatchery production are exempt from SEPA?
  - b. If so, what is the basis for this exemption?
    - i. *If it claims that it does not need to perform SEPA because the hatchery increases were suggested by the Governor's Task Force, and included in legislative budget authorizations:* What is your basis for claiming that plans to execute such recommendations do not need to go through SEPA review?
  - c. *If the Department concedes that SEPA applies to plans to increase hatchery production:* What is the rationale for not performing SEPA review on any plans, policies, and actions to increase hatchery production?
  - d. *For the attorneys in executive session:* Setting aside the defenses to the litigation based on the statute of limitation and other technical claims, do you believe that the Department has complied with SEPA in regard to its plans, policies and actions to increase hatchery production?
14. Has the Department completed and obtained approval of HGMPs for all of the hatcheries at which it is currently releasing fish or expanding production?
  - a. Please provide a list of all the hatcheries at which the Department is expanding production, listing the status of the HGMPs for each.
  - b. In those federal HGMP permits, is the state able to comply with all conditions, such as the control of disease, pHOS levels, broodstock collection goals, etc.? How is the Department monitoring compliance?
  - c. For those hatcheries that have final HGMPs, has the state received approval from NMFS to exceed the permitted hatchery production?

## Appendix B

### Suggested Questions Washington's Hatchery Expansion

**Quantifying and Managing Risks to Wild Fish.** *SEPA requires a public and formal process of environmental review, to ensure that state agencies will fully understand the environmental risk of their proposed actions, and consider possible alternatives or ways to mitigate that risk. Since the hatchery expansion did not go through this formal and public process, the public has no idea what actions the Department has taken to understand, avoid, or mitigate the risk of its hatchery expansions, nor what, if any, alternatives were considered and dismissed. In fact, the Department has never publicly presented the scientific basis for its rationale that the increases in hatchery production will benefit the SRKWs.*

15. Does Department management concede that the planned increases in hatchery production pose a threat to wild fish populations?
  - a. If not, please explain how this position is consistent with the 2020 Hatchery Science Review produced by Department staff.
16. What scientific support do you have for the hypothesis that this increase in hatchery production will benefit the Southern Resident killer whales?
  - a. What evidence is there that the SRKW will eat hatchery fish?
  - b. How long will it take for the hatchery fish to mature to the point where the SRKW will eat them?
  - c. How have we accounted for the risk of increased predation of both hatchery and wild fish as a result of the increase?
  - d. How have we accounted for the risk that the increased hatchery fish will consume resources that wild fish populations need to survive?
  - e. How have we ensured increases in fishing pressure will not reduce prey availability for SRKW as a result of the hatchery expansion, including through the Pacific Salmon Treaty?
  - f. Will the hatchery expansion cause the percentage of hatchery origin spawners (pHOS) in spawning streams to exceed safe levels? How will the Department address pHOS in those watersheds with increased hatchery production? How will the Department address pHOS in those watersheds adjacent to watersheds with increased hatchery production?
  - g. What steps have been taken by any federal or state entity to implement selective fishing methods to ensure that increased fishing does not cause increased take of wild fish populations?
17. What process has Department management gone through to formally assess the risks and environmental impacts of the increase in hatchery production?
  - a. What process did the Department go through to assess possible alternatives to the current course of action?
  - b. What process did the Department go through to assess ways to mitigate or avoid the risks to the current course of action?

## Appendix B

### Suggested Questions Washington's Hatchery Expansion

- c. Did the Department assess any alternatives that could provide an immediate benefit to the SKRW?
- d. Please provide documentation of this process.

**Response to Scientific Reports.** *Both the [2018 HSRG Letter](#) and the [2020 Hatchery Science Review](#) expressed a number of specific concerns about the hatchery expansion plan. Yet we have seen no public evidence that the Department has ever considered or responded to those concerns, much less that it has made adjustments to its expansion plans in light of those concerns.*

18. What steps has the Department taken to improve its monitoring of the impact of increases in hatchery production, since its monitoring process was criticized by the HSRG in 2018 and found inadequate by Department staff in 2020?
  - a. How will the Department determine if the current hatchery increases are a success, and at what point they can be ended?
  - b. How will it determine if the harms outweigh the benefits, and if increases should be curtailed?
  - c. What progress has the Department made in implementing the [2020 Hatchery Science Review](#) recommendations, including the need to develop a stand-alone monitoring and adaptive management plan for each hatchery program that quantifies both benefits and risks, and explicitly links hatchery performance metrics to potential operational changes?
  - d. Has the Department developed an adaptive management plan as directed by the legislature?
  - e. Please provide the adaptive management framework and monitoring process currently being used.
19. How did the Department adjust its plans for hatchery increases in light of concerns [voiced by the HSRG in 2018](#)?
  - a. Did it remove any of the hatcheries from the list for which the HSRG voiced concerns about genetic risks? If not, why not?
20. How did the Department adjust its plans for hatchery increases in light of the concerns voiced by the two reviews requested by the Commission in 2018?
  - a. What progress has the Department made in implementing the [2020 Hatchery Reform Report](#) recommendations? How are the documented concerns being addressed in the interim?
  - b. What progress has the Department made in implementing the [2020 Hatchery Science Review](#) recommendations? How are the documented concerns being addressed in the interim?

**Budgetary Provisions.** *In its latest motion to dismiss, the Department argues that it does not need Commission approval for its hatchery plans, because it has been acting at the direction of the legislature and the Governor. That legislative direction starts with the submission of proposed budgets, which include a massive amount of funding for hatchery expansions. The*

## Appendix B

### Suggested Questions Washington's Hatchery Expansion

*Department argues that once the legislature approves funding for a proposed project, it never needs to go back to the Commission for approval. Yet it is not clear that the Commission fully understands what is in these proposed budgets when it approves them. We urge the Commission to insist that these figures be fully divulged before approving the 2023-2025 budget proposal, and that it understand what steps the Department has taken to comply with past legislative directives.*

21. For the budget proposal for the 2023-2025 budget, please break down:
  - a. How much of each category of expenditures will go toward further increases in hatchery production?
  - b. How much of each category of expenditure is necessitated by increases in production that the Department has already implemented since 2017?
  - c. How does the scale of hatchery production and infrastructure expenditures compare to:
    - i. habitat restoration expenditures,
    - ii. harvest reform expenditures,
    - iii. investments to implement the myriad recommendations in the Department's 2020 Hatchery Reform Report and 2020 Hatchery Science Review?
  
22. In the legislative appropriation for fiscal years 2020 and 2021, the Department was directed to develop an adaptive management plan to "ensure the conservation and enhancement of wild stocks."
  - a. Did the Department develop that plan? If so, please provide.
  - b. Did that plan take into account prior comments from the HSRG and Department staff regarding the lack of sufficient information to conduct adaptive management?