

#### **16.16.710 Habitat conservation areas – Designation, mapping, and classification.**

A. Habitat conservation areas, as defined in Article 9 of this chapter, are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the county meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.

B. The approximate location and extent of identified fish, wildlife, and sensitive plant habitat areas are shown on the county's critical area maps as well as state and federal maps. However, these maps are to be used as a guide and do not provide a definitive critical area determination; each applicant is responsible for having a property-specific determination made pursuant to Article 2 of this chapter. The county shall update the maps as new habitat conservation areas are identified and/or more comprehensive information on function, condition, cover type, and resolution is developed.

C. Habitat conservation areas shall include all of the following:

##### **1. Streams.**

a. All streams which meet the criteria for Type S, F, Np, or Ns waters as set forth in WAC [222-16-030](#) of the Washington Department of Natural Resources (DNR) Water Typing System, as now or hereafter amended.

i. Type S streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(1) as now or hereafter amended, as a Type S water and are inventoried as "shorelines of the state" under the Shoreline Management Master Program for Whatcom County, pursuant to Chapter [90.58](#) RCW. Type S waters contain salmonid fish habitat.

ii. Type F streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(2) as now or hereafter amended, as Type F water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish.

iii. Type Np streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(3) as now or hereafter amended, as Type Np water. Type Np waters do not contain fish habitat.

iv. Type Ns streams are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(4) as now or hereafter amended, as a Type Ns water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.

b. Ditches or other artificial water courses are considered streams for the purposes of this chapter when:

- i. Used to convey natural streams existing prior to human alteration; and/or
- ii. The waterway is used by anadromous or resident salmonid or other resident fish populations; or
- iii. Flows directly into shellfish habitat conservation areas.

2. Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (<http://ecos.fws.gov/ecp/>), as amended.

3. Areas in which state-listed priority species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the Washington Department of Fish and Wildlife's Priority Habitats and Species List (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.

4. State priority habitats and areas associated with state priority species as listed in Washington Department of Fish and Wildlife's Priority Habitats and Species List (<http://wdfw.wa.gov/mapping/phs/> or <http://wdfw.wa.gov/conservation/phs/list/>), as amended.

5. Areas in which state-listed rare plant species are found, or contain suitable habitat for said listed species, as listed in the Department of Natural Resources' Natural Heritage Program (<http://www1.dnr.wa.gov/nhp/refdesk/plants.html>), as amended.

6. Areas in which state-listed saltwater critical areas are found, as listed in WAC [173-26-221\(2\)\(c\)\(iii\)\(A\)](#).

7. Naturally occurring ponds or manmade ponds and lakes under 20 acres in size and created prior to September 30, 2005, excluding agricultural, fire protection, and stormwater facilities.

8. All other waters defined as waters of the state, including marine waters.

9. Natural area preserves, aquatic reserves, and natural resource conservation areas as defined by the Washington Department of Natural Resources.

10. Portions of the San Juan Islands National Monument within Whatcom County (including Chuckanut Rock, tip of Eliza Island, Eliza Island Rocks, Lummi Rocks, Baker's Reef, Carter Point, Carter Point Rock, and Seal Rock at the north end of Lummi Island, and subsequently designated areas).

11. Frequently flooded areas that are subject to the Federal Emergency Management Agency's National Flood Insurance Program Biological Opinion (FEMA BiOp).

12. Species and Habitats of Local Importance. Locally important species and habitats that have recreational, cultural, and/or economic value to citizens of Whatcom County, including the following:

a. Species. The department of planning and development services shall maintain a current list of species of local importance as designated by the county council.

b. Habitats.

i. The marine nearshore habitat, including coastal lagoons, and the associated vegetated marine riparian zone. These areas support productive eelgrass beds, marine algal turf, and kelp beds that provide habitat for numerous priority fish and wildlife species including, but not limited to, forage fish, seabird and shorebird foraging and nesting sites, and harbor seal pupping and haulout sites. This designation applies to the area from the extreme low tide limit to the upper limits of the shoreline jurisdiction; provided, that reaches of the marine shoreline that were lawfully developed for commercial and industrial uses prior to the original adoption of this chapter may be excluded from this designation, but not otherwise exempt from this chapter.

ii. The Chuckanut wildlife corridor, which extends east from Chuckanut Bay and adjacent marine waters, including Chuckanut Mountain, Lookout Mountain, the northern portions of Anderson Mountain, and Stewart Mountain continuing along the southern Whatcom County border to Mount Baker/Snoqualmie National Forest boundary. This area represents the last remaining place in the Puget Trough where the natural land cover of the Cascades continues to the shore of Puget Sound.

iii. The department of planning and development services shall maintain a current list and map of habitats of local importance, as designated by the county council.

D. In addition to the species, habitats, and wildlife corridors identified in subsection (C)(12) of this section, the council may designate additional species, habitats of local importance, and/or wildlife corridors as follows:

1. In order to nominate an area, species, or corridor to the category of "locally important," an individual or organization must:

a. Demonstrate a need for special consideration based on:

i. Identified species of declining population;

ii. Documented species sensitive to habitat manipulation and cumulative loss;

iii. Commercial, recreational, cultural, biological, or other special value; or

iv. Maintenance of connectivity between habitat areas;

b. Propose relevant management strategies considered effective and within the scope of this chapter;

c. Identify effects on property ownership and use; and

d. Provide a map showing the species or habitat location(s).

2. Submitted proposals shall be reviewed by the county and may be forwarded to the State Departments of Fish and Wildlife, Natural Resources, and/or other local, state, federal, and/or tribal agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.

3. If the proposal is found to be complete, accurate, and consistent with the purposes and intent of this chapter and the various goals and objectives of the Whatcom County comprehensive plan and the Growth Management Act, the county council will hold a public hearing to solicit comment. Approved nominations will become designated locally important habitats, species, or corridors and will be subject to the provisions of this chapter.

4. The council may remove species, habitats, or corridors from this list if it can be shown that there is no longer a need to provide protection beyond that afforded by WDFW management strategies. Species and habitats of local importance that are not regulated elsewhere in this chapter may be removed if sufficient evidence has been provided by qualified professionals that demonstrates that the species no longer meets any provisions of subsection (D)(1)(a) of this section. (Ord. 2017-077 § 1 (Exh. A); Ord. 2005-068 § 1).