

Concise Explanatory Statement

Hydraulic Code Rules Update

Introduction

Since 1943, anyone planning to undertake certain construction projects or activities in or near state waters has been required to obtain a Hydraulic Project Approval permit commonly known as an HPA from the Washington Department of Fish and Wildlife (WDFW or department). Thousands of HPAs are issued each year for activities ranging from work on bulkheads, piers, and docks to culvert replacement and mineral prospecting. The sole purpose of the HPA is to protect fish life. The rules that govern the HPA Program are the Hydraulic Code rules. The Fish and Wildlife Commission's (Commission's) recent adoption of Chapter 220-660 WAC *Hydraulic Code Rules* updates the rules that protect fish life from the adverse effects of construction or the performance of work in or near the waters of the state. These rules, most of which have not been updated since 1994, implement Chapter 77.55 RCW *Construction projects in state waters*.

Rationale for Adoption of the Rules

WDFW updated the rules for several reasons, which are discussed in detail below. First, the rules incorporate up-to-date fish science, technological advancements, and best management practices for constructing many hydraulic projects. This will provide better protection for fish life and habitat consistent with the advancements in understanding of the impacts of hydraulic projects on fish life and habitat since the last rule update. Second, the revisions will align the rules to statutory changes enacted since the last rule update in 1994. In some cases, the previous rules conflicted with current statutes. Third, the revised rules simplify the permitting of certain project types. Fourth, they update administrative aspects of submitting and processing applications consistent with the current statutes and current methods of filing and processing applications. Finally, they will enable WDFW to establish a baseline for adaptive management, from which WDFW will apply available science to better prevent or mitigate impacts to fish life caused by hydraulic projects.

These actions will save time and costs for some applicants, improve the overall effectiveness of the program, better align the rules and statute, and enhance a transparent decision-making process with Tribes and stakeholders.

A. Incorporate up-to-date fish science and technology

In preparation for this rule update, WDFW reviewed over 1,900 peer-reviewed journal articles, books, symposia literature, theses/dissertations, and technical reports for information applicable to hydraulic projects. This work began in 1999, when the Governor's Salmon Recovery Office commissioned the Aquatic Habitat Guidelines (AHG) workgroup, led by WDFW, to develop design criteria for hydraulic projects to benefit salmon recovery. Most of the literature has been synthesized into White Papers associated with the Habitat Conservation Plan (HCP) development and incorporated into the AHG Program documents. The HCP was a planning

document the department was preparing as part of an application for an Incidental Take Permit. The purpose of the HCP was to demonstrate that HPA-permitted projects would be minimize or compensate for the take of federal ESA-listed species.

Many of the science references reviewed for the AHG and HCP work provided information useful in revising the Hydraulic Code rules. The AHG and HCP work compiled and synthesized the available scientific information related to the potential human impacts to fish life, the habitat, and associated ecological processes resulting from the construction, maintenance, repair, replacement, modification, and removal of HPA-permitted projects. The scientific information was also used to assess the extent to which current Hydraulic Code rules mitigated the potential impacts on fish life, their habitats, and ecological processes, and to identify additional appropriate and practicable measures to mitigate adverse impacts.

Because the most recent compilation of information was completed in 2008, WDFW conducted additional review of literature available after 2008 and incorporated the relevant information into the proposed rule changes. The Science References for Hydraulic Code rulemaking available at http://wdfw.wa.gov/licensing/hpa/rulemaking/hpa_rules_scientific_literature_citations.pdf includes citations for the original compilation work as well as incorporates some of the literature made available between 2008 and development of the proposed rules. The science and technological advances that have been made since 2008, in addition to the comprehensive individual and Compiled White Papers provide the best and most comprehensive information available to us for topics relevant to Hydraulic Code rulemaking.

There have been significant gains in knowledge over the last decade with respect to how activities within our waterways affect fish life especially federally-listed species. Since the last revisions were made to the Hydraulic Code rules, we have come to better understand how to minimize these effects by implementing specific design criteria, using avoidance measures where appropriate, implementing construction related Best Management Practices, and adhering to allowable work windows aimed at protecting sensitive life stages. The following discussion illustrates the potential impacts from hydraulic projects and identifies the updates to the rules that address them.

1. Potential habitat impacts of HPA-permitted projects

Constructing or performing work activities in or near watercourses can alter the habitat that fish and shellfish depend on. Direct damage or loss of habitat causes a direct loss of fish and shellfish production. Damaged habitat can continue to cause lost production of fish and shellfish for as long as the habitat remains altered. Work activities can also alter the physical processes that form and maintain fish habitat such as hydrologic patterns and sediment movement. Impacts associated with hydraulic projects include:

- Alteration of light regime
- Aquatic vegetation modifications
- Alteration of fish migration patterns
- Disturbance of streambank or shoreline
- Direct loss of fish habitat
- Riparian vegetation modifications
- Disturbance of substrate

- Alteration of stream morphology
- Alteration of sediment delivery and movement
- Alteration of hydrologic patterns
- Alteration of beaver dams

a. *Alteration of light regime*

Structures such as piers, floats, ramps, or marinas and terminals over shoreline habitats result in reduced light or shading of fish habitat, which reduces the survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish. Marinas and terminals have a larger impact area than residential docks and they are usually associated with heavy boat traffic and human use, which can also damage or destroy aquatic plants.

The shading and light reduction created by overwater structures may alter predator/prey relationships. Juvenile salmon have been shown to avoid moving under an overwater structure if there is an abrupt transition from light to dark. Instead, they react by migrating into deeper water and around the offshore edge of the structure. This migration pathway is in a water depth zone where predators are more likely, travel distances are greater, and currents are stronger. Construction activities that create noise and turbidity can also temporarily disrupt nearshore migration and feeding.

Artificial lighting may also result in behavioral effects by interrupting normal light/darkness patterns. For example, nocturnal predators may show avoidance patterns and have reduced foraging success if prey is attracted to the light and the predator is repelled by the light.

Updates to the rules mitigate impacts caused by altering the light regime by requiring the following:

- Increase structure height to allow light transmission under the structures.
- Reduce structure width to decrease the shade footprint.
- Use the smallest number of pilings possible, allowing more light beneath the structure.
- Use grated surfaces or include openings in the deck surface to pass light. Orient grating to maximize transmission of light under the structure.

b. *Aquatic vegetation modifications*

New structures and associated vessel activity can disturb or directly remove aquatic vegetation, which can affect fish life. Marinas and terminals have a larger impact area than residential docks and they are usually associated with heavy boat traffic and human use, which can cause additional impacts to aquatic vegetation.

The updated rules avoid or minimize the removal or disturbance of aquatic vegetation by requiring that structures be located in areas that are currently devoid of native aquatic vegetation or in areas that will minimize the potential impacts, such as in deeper water or further offshore. For example, an overwater structure must be a least twenty-five feet from seagrasses and macroalgae used by herring as spawning substrate to protect this vegetation. The updated rules also require a pre-construction survey of vegetation location, species assemblage, and density.

c. *Alteration of fish migration patterns*

In-water structures can alter the movement of juvenile salmon, steelhead, and other fish species. The structure itself can physically block migration or force fish into deeper water, and changes in areas of light and dark can affect migration and increase risk of predation. Boat ramps and launches placed above bed grade can block sediment and wood movement, and alter nearshore migration of juvenile fish.

Fishways such as ladders or weirs can impact the migration of some fish. Fish passage structures that target one species or group of species may unintentionally limit the passage of other important species. Species selection can alter species composition and community relationships upstream of the passage barrier, with important implications for conservation of individual species and biodiversity.

Off-channel ponds created for livestock watering, irrigation, fire protection, or another purpose can provide beneficial habitat or can have detrimental effects on fish. Ponds can disrupt fish movement and also support elevated temperatures that are harmful to fish life. However, these areas can provide important refugia from high flow events and important rearing habitat where off-channel habitat (areas of low energy) is limiting.

The design of structures must reduce the risk of altering fish migration patterns. For examples, the updated rules require the design of boat ramps and launches to minimize interference with wood and sediment movement and the design of boarding floats to minimize grounding which can physically block fish migration. The rules also require that off-channel ponds must be designed, constructed, and screened to prevent the entry of fish unless the purpose of the plan is to provide beneficial habitat. New rules are added to protect water quality from construction-related sediment and erosion that will reduce turbidity.

The updated rules also include a new section regulating the design and construction of fish passage improvement structures. This includes fish ladders, weirs, roughened channels, trap and haul operations, and hydraulic design culverts. A fish passage improvement structure must provide safe passage and not result in significant migratory delays.

d. *Disturbance of streambank or shoreline*

Activities that install permanent or temporary structures to protect or stabilize a streambank or shoreline can result in loss of habitat or alter the bed or beach and the physical processes that form and maintain fish habitat. Constructing bulkheads, wharves, and piers can result in the removal of riparian vegetation, which supplies habitat and structure for the nearshore environment, a source of terrestrial food and nutrients. These structures can also alter sediment delivery to the nearshore area, which supports spawning habitat for many species and contributes to the composition and density of aquatic vegetation. Direct loss of habitat may include loss of cover, spawning beds, large woody material, riparian function, floodplain connectivity, and alteration of the channel/beach, any of which decreases the complexity and diversity of fish habitats.

The updated rules avoid and minimize disturbance to streambanks and shoreline. For example,

- Where feasible, use soft shore armoring or bioengineered solutions.
- Restrict structures that disconnect sediment sources unless life or property is at risk.
- To protect riparian habitat, construct any necessary access points and roads with the least impact possible.

e. *Direct loss of fish habitat*

Structures that displace river or lakebed habitat used by fish and shellfish include boat ramps or launches, marinas and terminals, water diversions and intakes, and outfall structures. Bridges and piers can also cause the loss of river or lakebed habitat. The larger the number of these structures in a given area, the greater the loss and fragmentation of habitat.

The updated rules require the size of new structures be limited to the minimum size necessary to accommodate the intended use. In the case of residential overwater structures and bank protection, the maximum footprint is defined.

f. *Riparian vegetation modifications*

Construction along streambanks or shorelines can disturb or remove riparian habitat. For example, streambank and shoreline stabilization projects may disturb the riparian zone during construction. The installation of outfalls can cause a direct loss of bank side riparian habitat to accommodate the structure or during construction. Removing sand and gravel from the streambed may also involve extensive clearing of vegetation. These activities decrease loading of large woody material in the channel, which is important as cover for fish, and short term loss of macroinvertebrates that are food for fish. Road widening and new roads, power line corridors, residential, commercial, and industrial development, trails, utility infrastructure, agriculture, and other activities have the potential to disturb and degrade riparian conditions.

The updated rules require construction activities be conducted in a manner that protects riparian vegetation. The removal of riparian vegetation is limited to the minimum necessary to construct the project. If vegetation is disturbed, revegetation is required. The replanted vegetation must be monitored for at least three years to ensure at least eighty-five percent survival.

g. *Disturbance of substrate*

Activities that disturb freshwater or nearshore substrates include installing piles for piers, boat ramps, or boat launches, dredging to improve vessel navigation or moorage, sediment traps for flow conveyance and flood abatement, and dredging to clean up contaminated sediments. Dredging in lakes converts shallow-water habitats into deeper-water habitats and may create a steeper bottom transition. This may change the size and species distribution of fish in the localized environment, altering predator/prey dynamics. The effect of dredging on rivers is more complex because localized alteration of channels can lead to dynamic shifts in channel form as the system adjusts to the changed conditions. Dredging may result in a loss of spawning gravel. These effects can extend a considerable distance beyond the bounds of the original dredging project.

The updated rules require the size of new structures be limited to the minimum size necessary to accommodate the intended use. Dredging must avoid or minimize converting shallower-water to deeper-water habitats. Dredging must not be conducted in fish spawning areas. The department may require hydrodynamic models to predict system-wide changes in salinity, turbidity, and other physicochemical regimes for project assessment planning that avoids or minimizes impacts on aquatic habitat.

h. *Alteration of stream morphology*

Activities that remove sand and gravel from streambeds can change the channel shape and bed elevation and may cause flow diversion, sediment stockpiling, and excavation of deep pits. Removing sand and gravel can also produce a local sediment shortage that can reduce spawning potential and success in gravel-starved stream reaches. Loss of gravel bar head control can create significant channel head cutting upstream of the project.

Bank protection can prevent the stream channel from naturally migrating across the floodplain. This can eliminate sources of woody material, sediment, and side channels. Natural channels evolve over time and migrate across their floodplains. When a channel naturally moves to a new alignment, it leaves behind vital habitat, such as floodplain sloughs and side channels. If the natural fluvial processes of a stream are restricted or interrupted, these side-channel habitats will diminish in productivity and be permanently lost. These habitats cannot be mitigated by the design of a project. They are lost when a channel is fixed in a specific location, regardless of the bank-protection technique.

Activities that involve changing or relocating a stream channel to restore habitat lost because of human-caused changes can result in short term impacts. Channel realignment and bank re-grading typically destroy bank and bed habitat in the active channel and will lead to temporarily elevated concentrations of suspended sediments. This may result in the downstream burial of invertebrates, elevated suspended solids, and habitat destruction. In-channel work has a much greater impact on the bank and channel when compared with off-channel work.

Activities that remove, place, and relocate large woody materials in stream channels are conducted where it is necessary to address a threat to life or public or private property, or an immediate threat of serious environmental degradation, caused by streambank erosion or flooding. During construction, these activities can result in short term impacts similar to those described for channel relocation. In general, the disturbed woody material must be replaced in a location within the stream where it could not result in damage, but would continue to help create complex habitats.

The updated rules require a qualified person's rationale for new bank protection. The design must incorporate the ecological and geomorphic processes at the site and the least-impacting technically feasible bank protection alternative must be used. Where feasible, bank protection must be located landward of the ordinary high water line.

i. *Alteration of sediment delivery and movement patterns*

Removing sand and gravel from an active channel bed may affect sediment movement if it disrupts the sediment balance in the river. This disruption may cause channel adjustments that extend considerable distances from the excavation site. Outfalls can increase erosion and lead to increased sediment supply to downstream reaches of rivers and streams and trap (accumulate) sediment. Overwater structures also act as groins, which affect longitudinal connectivity and sediment flow. In general, any activity that alters the channel profile by altering the slope or channel width can potentially have an adverse impact on sediment delivery.

Mineral prospecting and mining activities can alter streambed morphology and sediment movement patterns because a variety of machines, including suction dredges, high bankers, and other heavy equipment, are used to remove or sort large quantities of aggregate to separate out

valuable minerals. These alterations affect the physical processes that form and maintain fish habitat.

Bulkhead can also alter sediment delivery to the nearshore, which supports spawning habitat for many species and contributes to the composition and density of aquatic vegetation.

The updated rules protect sediment sources, delivery, and movement because sediment creates and maintains fish habitats of special concern such as spawning habitat.

j. *Alteration of hydrologic patterns*

Water crossing structures such as bridges or culverts can restrict the flow of streams and rivers and/or affect the movement and distribution of wood and sediment. Activities that involve surface trenching through streambanks and channels to install utility lines may also cause surface and subsurface flows to shift, altering stream hydrology.

The updated rules require the design of bridges and culverts to prevent measurable unmitigated impacts to expected channel functions and processes.

k. *Alteration of beaver dams*

Beaver dams can be removed, breached, or modified when needed to address a threat to public or private land or infrastructure caused by flooding. Such activities are conducted when the use of water level (flow) control or beaver exclusion devices is not feasible or has not successfully controlled the threat. Breaching, notching, or removing a dam can negatively affect fish, shellfish, and their habitat by de-watering the upstream pond, stranding fish, and releasing sediment and large volumes of water (that can be devoid of oxygen) downstream. Releasing sediment can affect downstream spawning areas. Breaching or removing a beaver dam may not prevent future beaver activity in the area, and persistent breaching or removal can increase the risk of negative impacts to fish habitat.

The updated rules have a new beaver management section. Beaver dam removal or modification is only allowed when the dam poses an imminent threat.

2. *Construction-related impacts that can directly harm fish*

Constructing or performing work activities in or near watercourses can kill or injure fish or shellfish directly. Impacts associated with hydraulic projects include:

- Direct injury to fish
- Entrainment and stranding
- Elevated underwater sound
- Impacts to water quality

a. *Direct injury to fish*

In addition to harming habitat, dredging may injure or kill fish and shellfish when dredging equipment traps fish during the uptake of sediments and water. Mineral prospecting and mining activities can harm fish by physically disturbing eggs or fry incubating within the bed or cause mortality from passing vulnerable fish through mineral prospecting equipment. Fish can also be harmed during fish salvage efforts (such as electrofishing, seining, and dip netting) depending

upon the method of fish removal and other environmental factors. Sound waves generated by pile driving or blasting can injure or kill fish.

The previous requirements for dredging and mineral prospecting include timing to ensure certain vulnerable fish life history stages are not impacted.

The updated rules include additional requirements for channel dewatering and stream bypasses. The isolation method must be able to withstand any flows that are encountered during the isolation period, to avoid flooding and the possibility of fish reoccupying the area prior to completing the hydraulic project. The updated rules also require the use of science-based protocols for fish removal and exclusion activities and the use of qualified people to perform fish removal, capture, handling, and exclusion.

b. *Entrapment and stranding*

Removing sand and gravel from streambeds can create trenches or pits in the bed that can trap fish and lead to death. Surface water diversions are common instream features in agricultural areas where the water is used for irrigation. Throughout the state, people also divert water for other agricultural, hydropower, industrial, recreational, residential, municipal, and hatchery purposes.

For many projects, isolating in-water work areas within cofferdams or using other methods and then using pumps to remove the remaining water allows construction activities to occur “in the dry.” This technique is fairly common for projects such as bridge and culvert replacements. However, sometimes fish can be missed during salvage efforts and can be sucked into pump intakes or pumped to upland areas where they die.

To protect fish, including salmon and steelhead, Washington State statutes RCW 77.57.070 and RCW 77.57.010 require that all surface water diversions be screened to prevent fish from being drawn into the diversions where they may be injured or killed. This screening criterion is in the updated rules. The updated rules also require the use of science-based protocols for fish removal and exclusion activities and the use of qualified people to perform fish removal, capture, handling, and exclusion to ensure fish are not stranded during dewatering activities.

c. *Elevated underwater sound*

Many hydraulic projects can create excessive underwater noise and vibration in and near the construction site. Highly intensive noise-generating construction activities such as impact pile driving or blasting can negatively affect fish by resulting in direct mortality (impact and vibratory pile driving/blasting), adverse behavioral effects (reduced feeding, impaired predator avoidance), delayed spawning, and delayed migration.

The intensity of underwater noise produced by pile driving varies considerably depending on site characteristics and the type of materials and methods employed. The updated rules mitigate impacts caused by noise by requiring the use of appropriate sound attenuation.

d. *Impacts to water quality*

Activities that disturb substrates release suspended sediments into the water column that can affect fish by interfering with breathing and feeding. Vessel activity associated with boat ramps

and launches or marinas and terminals can also increase sedimentation and diminish water quality. Using heavy machinery above and below the OHWL of any water body increases the risk of fish exposure to construction-related contaminants such as fuels, oil, grease, or hydraulic fluids, which can be toxic to fish and other aquatic life.

The updated rules have several requirements to protect water quality from construction-related impacts such as the following:

- Pump sediment-laden water (from the work area that has been isolated from surrounding water) to an infiltration treatment site.
- Dispose of debris or sediment outside of the floodplain.
- Stabilize disturbed areas at the work site with sediment corresponding to prevent erosion.
- Replace disturbed bed materials with clean gravel of the appropriate size prior to re-watering to minimize an influx of fine sediment.
- Set stockpile areas back from the bank and include erosion prevention BMPs, such as silt fencing and tarp covers.
- If treated wood is used, it should be treated by the manufacturer prevent leaching of harmful chemicals.
- Sawdust, drillings, and trimmings from treated wood should be contained with tarps or other impervious materials and prevented from contact with the bed or waters of the state.
- Structures built of treated wood should incorporate features such as steel, plastic, or rubber collars, fendering, or other systems to prevent or minimize the abrasion of treated wood by floats, ramps, or vessels.

B. Improve alignment with statutory changes

Several changes to Hydraulic Code statute (Chapter 77.55 RCW *Construction in state waters*) have occurred since the last comprehensive Hydraulic Code rule update in 1994. The updated WAC rules reflect the statutory changes. Some of the major statutory changes require the department to do the following:

- Issue a renewable five-year HPA for regular maintenance activities for marinas and marine terminals.
- Consider alternative mitigation proposals for infrastructure projects that are timed, designed, and located in a manner so as to provide equal or better biological functions and values as compared to traditional on-site, in-kind mitigation.
- Have a streamlined process for reviewing fish habitat enhancement projects submitted on a JARPA form that meets certain described conditions, including size or threshold tests.
- Issue an HPA to a County if that County declares “Chronic Danger” because flooding has impacted property, structures, water supply system, septic system, or access to roads for two consecutive years.
- Not require sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions and values if the actions are taken under a state or federal cleanup action provide compensatory mitigation. It also provides

that the department cannot require compensation mitigation for navigation and maintenance dredging of existing channels and berthing areas.

- Not require that most agricultural drainage facilities, such as tide gate, are designed and constructed to provide fish passage.

C. Simplify permitting for certain types of projects

The revised procedures section has new rules for two simplified permitting processes: “general” and “model” HPAs. General HPAs are issued primarily to local and state governments to perform the same work in multiple water bodies across a large geographic area. To qualify, the projects must be relatively simple low risk projects so they can be permitted without site-specific provisions. WSDOT, county governments, and others conduct about 2,000 projects a year under general HPAs, reducing cost for both the permittees and WDFW.

Model HPAs will be issued for qualifying individual, simple, low risk projects that can comply with published fish protection criteria. If a project complies with the published criteria, an HPA can be issued faster because no site-specific review or provisions are required. This will reduce permit processing time.

Two changes to the mineral prospecting section also simplify permitting. These are the addition of the ocean beach mineral prospecting and motorized mini high-banking to the *Gold and Fish Pamphlet*. This will eliminate the need for individual HPAs for these activities.

D. Clear application and processing procedures

WDFW issues six different types of HPAs, depending on the type of work planned and the circumstances under which it will be done. Most of these permits require written approval of a specific work plan, although that is not the case for pamphlets HPAs issued for mineral prospecting and aquatic weed control. The procedures section is expanded to clarify the application and processing procedures for all types of HPAs.

The department issues standard HPAs when the hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. Rules are added to the standard procedures subsection for two new simplified permitting process; “general” and “model” HPAs, and fish habitat enhancement project HPAs. Emergency, imminent danger and expedited HPAs are issued when there is a threat to people, property, or the environment or when normal processing time would result in significant hardship for the applicant or unacceptable damage to the environment. The updated rules require a permittee to submit an as-built drawing within thirty days after the hydraulic project authorized in an emergency, imminent danger and expedited is completed. The rules also require a permittee to mitigate any remaining impacts within ninety days of completing the project or to submit a mitigation plan to the department. Rules are also added for chronic danger HPAs. These HPAs are issued in response to county

declaration of a "chronic danger" when the situation meets the specific criteria. The department issues to pamphlet HPAs. The procedures for using the pamphlet HPAs did not change.

E. Adaptive management

The department will develop an adaptive management plan to support the HPA program. The adaptive management plan sets specific goals and measurable objectives for the HPA program. This plan will also outline how the department will evaluate the regulations, policies, or practices governing the HPA program to ensure we are meeting the program goals. Through continued monitoring and evaluation, the department can learn whether we are achieving the goals and objectives of the program and allocating scarce funding and staff resources most effectively. If monitoring indicates the department needs to make changes, the plan outlines a process for making adjustments.

Rule Development Process

A. How we involved stakeholders in reviewing rule changes

WDFW has involved the public and stakeholders in developing the updated Hydraulic Code Rules. WDFW formed a Stakeholder Advisory Group to provide comments on an initial draft of the HPA rules. This group included eighteen representatives from the construction industry, non-governmental organizations, state and federal agencies, and tribes. This group met eight times between October 31 and the end of December, 2011, receiving presentations on and discussing issues relating to one or two specific aspects of the HPA rules at each meeting. The group engaged in policy discussions about the proposed changes and the impacts to their interests, and commented on revised rule proposals prepared by WDFW.

Those rule documents were also posted on the WDFW website for review and comment by any reader. Three additional drafts of the revised code rules have been posted on the WDFW website along with forms to comment on the rules. The fourth draft accompanied the September 2013 draft Programmatic Environmental Impact Statement (PEIS), and the sixth version was the subject of the 60-day public comment period on the CR-102 rules and the supplemental draft PEIS, which closed on September 15, 2014.

WDFW met one-on-one with Tribes and interested stakeholders to discuss the rule update on an ad-hoc basis since the CR-101 was filed in 2011. Stakeholders included Washington Association of Counties, Association of Washington Cities, Association of Washington Business, Washington Forest Protection Association, Ports Association, Washington Department of Transportation, Ecology, and WDNR, and individuals within the environmental community.

WDFW also conducted seven public meetings, one in each of the six regions and one in Olympia, in October and November 2013. The purpose of the meetings was to answer questions and gather comment on the PEIS and draft rules.

WDFW did, per RCW 77.55.361 and Appendix M of the Forest and Fish Report, present the proposed hydraulic code rules to the TFW Policy Committee for review. The TFW policy

Committee at their November 2013 meeting decided not to send the revised rules through a formal adaptive management process. Instead, caucuses submitted their comments to the adaptive management administrator who forwarded them to DFW.

The Commission also heard public testimony on the CR-102 rules at the August 8, 2014 Commission meeting.

Staff reviewed the comments received on Version 6 of the rules and the supplemental draft PEIS and made changes to the rules that met the purpose and need of this project. These changes are included in the recommended adjustments to the CR-102 rules and final PEIS.

The department used a distribution list to send rule-making updates and posted information on the department's hydraulic code rule-making webpage located at <http://wdfw.wa.gov/licensing/hpa/rulemaking/>. The department also issued press releases announcing the public comment periods.

B. SEPA

WDFW conducted a public scoping process for this EIS in summer 2012. The scoping notice was issued June 22, 2012 and the scoping comment period ended July 16, 2012. Scoping comments were accepted by email, through an online WDFW comment website, by fax, and by mail. WDFW received thirty-one comment documents. Generally, comments provided detailed suggestions for how rule changes should address specific problems or situations, or ways the proposals should not be changed from existing rules.

WDFW issued a Draft Programmatic Environmental Impact Statement (Draft PEIS) on the Hydraulic Code Rule Changes in October 2013. WDFW received numerous public comments on the Draft PEIS during the comment period, which ended December 13, 2013. Also, during the 2014 Washington State Legislature, lawmakers passed amendments (SHB 2261) to RCW 34.05.271, which clarify how WDFW must identify sources of information reviewed and relied upon in preparing to take a significant agency action including changes to agency rules. In response to the public comments on the draft PEIS and amendments to RCW 34.05.271, WDFW decided to prepare a supplemental draft PEIS on the proposed rule changes. The comment period on the Supplemental Draft PEIS extended from July 15 through September 15, 2014, and 197 comments were received during that period. The comments on the Draft PEIS (Section 1.2.1) led to the Supplemental Draft PEIS.

A Supplemental Draft PEIS was released on July 16, 2014, with comments due on August 15, 2014. An extension in the comment period was granted through September 15, 2014. Most of the comments received during the comment period focused on the proposed rules. Comments on the Supplemental Draft PEIS itself were helpful in highlighting where clarifications could be made, and where language used did not accurately convey the information presented. Changes were incorporated into this Final PEIS in the Chapter 1 Introduction; in Section 1.2 SEPA process; in Section 1.5 regarding concurrent jurisdictions and authorities; in Chapter 2 descriptions of the alternatives and descriptions of the use of science; and in the Chapter 4 Impacts analysis. Minor non-substantive corrections were made (i.e. correcting typographic errors) throughout the document.

Table 1 Timeline for events in the sequence of compliance with the Administrative Procedures Act (APA), and State Environmental Policy Act (SEPA).

Date	Rule-Making Action
July 28, 2011	A Pre-proposal Statement of Inquiry (CR-101) was filed by WDFW as WSR 11-16-050, announcing WDFW’s intent to seek changes to the Hydraulic Code rules. This was the first step in the rulemaking process under the Administrative Procedure Act.
October 2013	On October 1, 2013, WDFW released a Draft Programmatic Environmental Impact Statement (Draft PEIS) outlining potential impacts of the proposed rule changes. Version 4 of the proposed rule changes was also made available in October 2013. Public comment was taken on both the Draft PEIS and version 4 of the proposed rule changes from October 1 through November 15, and then extended through December 13, 2013.
October 2013	Eight public meetings were held around the state.
December 2013 – June 2014	WDFW reviewed public comments on both the proposed rule changes and on the PEIS. More stakeholder discussions resulted in moving the rules from Version 4 through Version 5 to Version 6 during this time. WDFW also prepared a Supplemental Draft PEIS during this time.
July 2 , 2014	WDFW filed a Notice of Proposed Rulemaking (CR-102) providing public notice of the proposed rule changes (Version 5) and the opportunity to comment on those changes.
July 16, 2014	The Washington State Register (WSR 14-14-133) published the proposed rules changes, staff-recommended additional rule refinements, the CR-102, and an APA-required Small Business Economic Impact Statement. The Supplemental Draft PEIS was also released on this date. Version 6 of the rules included rule changes processed through Version 5 (“OTS-6463.1”) plus last-minute changes recommended by staff pursuant to ongoing stakeholder discussions (“WDFW staff Recommended Amendments to OTS-6463.1”). Both these rule documents were published in WSR 14-14-133. WDFW staff continued to meet with stakeholders and tribes through the summer to clarify and revise the proposed rules as necessary. A comment deadline of August 15 was set, and the public was notified that comments received by August 1 would be summarized and provided to the Fish and Wildlife Commission at the August 8 meeting.
August 2014	The Washington Fish and Wildlife Commission, a nine-member citizen panel that sets WDFW policy, held a public hearing on the proposed rule changes on August 8. The Commission did not take action to adopt the proposed rules changes at the August 8 meeting. WDFW extended the comment deadline for both the proposed rules and Supplemental Draft PEIS through September 15, 2014.
September-October 2014	WDFW reviewed and developed responses to comments and revised the Supplemental Draft PEIS to its Final version. Comments on Version 6 of the rules were compiled into a staff-recommended set of changes for the Commission to consider in November. The list of supporting science citations was posted the webpage.
November 7, 2014	The Commission voted to repeal the existing rules in WAC 220-110 and adopt the updated Hydraulic Code rules.
December 5, 2014	With the Implementation Plan completed, the Commission voted to rescind its prior vote on November 7, 2014, and then voted to repeal the existing rules in WAC 220-110 and adopt the updated Hydraulic Code rules.

Differences between the Text of the Proposed Rule and the Rule as Adopted

Proposed rules were filed as WSR 14-14-133 on July 5, 2013, for public review and comment. Most comments focused on aspects of the rules that the commenters wanted WDFW to change. Upon careful consideration of the comments received, WDFW made some changes to the proposed rules. In deciding which changes to make, WDFW considered the following:

- Was the change reasonable? If the change did not exceed our authority, was not excessively restrictive and was supported by science, then we were more likely to incorporate the change.
- Did the change improve effectiveness of the rules to protect fish life? If the change to the design and construction provisions reflected what we know about fish life, the impacts from hydraulic projects and measures that mitigate those impacts, then we were more likely to incorporate the change.
- Did the change provide more clarity or certainty? If the change made the application process and design and construction provisions clearer, then we were more likely to incorporate the change.
- Did the change provide more flexibility? If the change provided the ability for alternatives designs and construction practices that provide equal or better protection for fish life, then we were more likely to incorporate the change.
- Did the change improve the cost effectiveness? If the change provide demonstrated value in terms of fish protection, then we were more likely to incorporate the change.

Staff made minor changes to correct spelling, grammar and format numbering. Staff also made plain talk improvements such as using everyday words, reducing sentence clutter and placing key points upfront. Other differences between the proposed and adopted rules are summarized as follows.

These changes were made throughout the rules to ensure terms are used consistently.

“Addressed” is changed to “mitigated”.

“A minimum of” is changed to “at least”.

“Authorized” is changed to “approved”.

“Avoid and minimize” is changed to “must follow the mitigation sequence to protect.”

“Below the ordinary high water line” is changed to “waterward of the ordinary high water line”.

“Commencing” is changed to “starting”

“Critical life history stages” is changed to “sensitive life history stages”.

“Fish and shellfish” or “fish” is changed to fish life”.

“Fish guards” is changed to “fish screens”.

“Fish habitat” is changed to “habitat the supports fish life”.

“Fishway” is changed to “fish habitat improvement structure”.

“Infrastructure” is changed to “structures or other improvement of value”.

“May be granted” is changed to “are valid”.

“Practicable” or “possible” is changed to “feasible”.
“Prevent” is changed to “avoid”.
“Provided” is changed to “if”.
“Quantity” is changed to “quantity by habitat type”.
“Stocks” is changed to “populations”.
“Timber” is changed to “trees”.
“Work site” is changed to “job site”.

These changes were made to improve readability and clarity unless otherwise noted:

WAC 220-660-010 was modified to better align with RCW 77.55.011(11). A hydraulic project is the construction or performance of work that will uses, diverts, obstructs, or changes the natural flow or bed of any of the salt or fresh waters of the state... The purpose of the HPA is to ensure that construction or performance of ~~other~~ work is done in a manner that protects fish life...

WAC 220-660-020 ~~Implementation of~~ Implementing these provisions is necessary to ... The department will review each application ~~will be reviewed~~ on an individual basis. ~~In addition~~, all hydraulic projects must also meet the applicable mitigation requirements in WAC 220-660-080.

WAC 220-660-030 the following sentence was removed because the terms in statute were not noted as such. ~~Common terms that are already defined in statute are noted as such.~~ (4) Examples include ~~nutria, certain species of~~ waterfowl, amphibians, fish, ~~and~~ shellfish; and nutria. (12) In streams where there is no floodplain it is often the width of a stream or river at the dominant channel forming flow ~~that with a recurrence interval in the~~ reoccurs every one- to two-years ~~range~~. (13) "Bed" means the land below (waterward of) the ordinary high water lines of state waters. This definition does not include irrigation ditches... except where they exist in a natural watercourse that has been ~~altered~~ artificially altered. (20) “Channel bed width” means the width of the bankfull channel, although bankfull may not be well defined in some channels. For those streams which are non-alluvial or do not have floodplains, the channel width must be determined using features that do not depend on a floodplain. (25) "Compensatory mitigation" means ...~~for the purposes of compensating to compensate~~ to compensate for ~~unavoidable~~ adverse impacts ... (27) the following sentence is modified to clarify “control” applies to nuisance plants that may or may not be noxious weeds. "Control" of an aquatic ~~noxious weed plant~~ plant means ... (30) These habitats include habitats of special concern listed in WAC 220-660-1020 and 220-660-3320 ~~and habitats for priority fish and shellfish~~. (32) "Design flood" ...~~that is best suited to ensure for~~ the project design ~~of a project to~~ creates and shapes habitat ... (42) "Eradication" of an aquatic noxious weed means to eliminate ~~a noxious weed~~ it ... (50) "Fish conservation bank" means a ~~fish~~ habitat creation, restoration, or enhancement project intended to provide a bank of credits to compensate for ~~unavoidable~~ impacts to.... Fish conservation banks are managed to optimize desired habitat for ESA-listed and at-risk fish species. (53) ...placed in or next to bodies of water to ~~make~~ improve existing conditions ~~better~~ for fish life. (62) the last sentence was added to clarify the jurisdiction. This definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans. (77)(c)(i) ... which identifies and authorizes specific aquatic ~~noxious weed and aquatic beneficial~~ plant ... (79) ... third party ~~in lieu~~ instead of conducting project-specific mitigation... (82) the following sentence was modified to improve readability. ... that a person may submits to request a written HPA... (83) "Lake" means

...artificially-impounded natural fresh waters ... (87) "Major modification" means ... hydraulic project approval that is not... (82) Commercial services include, ~~but are not limited to,~~ overnight or live-aboard boating accommodations. (102) "Mitigation sequence ~~ing~~" means ~~taking~~ the successive steps that in the mitigation sequence. The department and the applicant must consider and implement to protect fish life when constructing or performing work. These steps must be considered and implemented in the order listed: mitigation actions in the following sequential order: ... (105) "Nearshore" means shallow waters where sunlight reaching the bed is sufficient to support the growth of submerged aquatic vegetation. (106) "No net loss" means: (a) ~~Avoidance or mitigation~~ Sequentially for avoiding impacts, minimizing unavoidable impacts, and compensating for remaining adverse impacts to fish life. (b) ~~Avoidance or mitigation~~ Sequentially avoiding impacts, minimizing unavoidable impacts, and compensating for net loss of habitat functions necessary to sustain fish life. (c) ~~Avoidance or mitigation~~ Sequentially avoiding impacts, minimizing unavoidable impacts, and compensating for loss of area by habitat type. (119) "Protection of fish life" means avoiding, and minimizing unavoidable impacts, and compensating for remaining impacts to fish life and the fish habitat that supports fish life through mitigation sequencing. (120) This definition does not supersede other state laws that govern the qualifications of professionals that perform hydraulic projects. (130) "Saltwater area" means those state waters ~~with salinity as high as 35 parts per thousand of dissolved salts. It includes and the associated beds below~~ (waterward of) the ordinary high water line in Puget Sound, the Strait of Juan de Fuca and the open coast. Saltwater areas include estuaries and other surface- water - connected wetlands that provide or maintain fish habitat that supports fish life ~~populations.~~ Salinity in estuaries may range from 0.5 to 30 parts per thousand of dissolved salts. This definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans. (151) "Waterbody" means "waters of the state". (153) "Watercourse," "river" or "stream" means... (159) "Written notice" or "written notification" means a communication ~~via~~ through U.S. mail or via e-mail.

WAC 220-660-040(2)(i) the following was modified to clarify what is a portable boat hoist. (ii) Does not have a frame length greater than fifteen feet. (iv) Does not have a canopy. Is not installed or removed using equipment operated on the bed ~~below the OHWL.~~ (2)(i)(ix) the following is modified to clarify the portable boat hoist cannot be installed without an HPA during spawning and incubation in lakes where sockeye spawn on the beach. Sockeye do not spawn on the beaches of Lake Quinault or Lake Wenatchee but rather spawn in tributaries to the lake. Is not installed in any of the following sockeye salmon-bearing lakes during times of the year when spawning and egg incubation is occurring in beach areas:

- ~~(A) Baker;~~
- ~~(B) Cle Elum;~~
- ~~(C) Osoyoos;~~
- ~~(D) Ozette;~~
- ~~(E) Pleasant;~~
- ~~(F) Quinault;~~
- ~~(G) Sammamish;~~
- ~~(H) Washington; and~~
- ~~(I) Wenatchee.~~

Table 1

Authorized Work Times to Install Portable Boat Hoists in Lakes with Sockeye Spawning Beaches

Lake Name and Water Resource Inventory Area ((WRIA) in parentheses)	Authorized Work Times
<u>Baker (04)</u>	<u>June 15 - August 15</u>
<u>Cle Elum (39)</u>	<u>September 1 - March 31</u>
<u>Osoyoos (49)</u>	<u>May 15 - September 30</u>
<u>Ozette (20)</u>	<u>August 1 - October 31</u>
<u>Pleasant (20)</u>	<u>August 1 - October 31</u>
<u>Sammamish (08)</u>	<u>July 15 - September 30</u>
<u>Washington (08)</u>	<u>July 15 - September 30</u>

WAC 220-660-050(3)(a) An individual regular standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites. 050(3)(b)(ii)(A)(III) The department may make an exception ...or when no pre-permit issuance site visits are needed. 050(3)(b)(iii)(c) The general HPA will include a requirement that notice be given to the department activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year. 050(4)(a)(iv) ... work to protect fish life or property threatened... 050(4)(e) Within ninety days after a hydraulic project ~~the~~ authorized in an emergency HPA ~~hydraulic project~~ is completed, any remaining unavoidable impacts... 050(5)(f) Within ninety days after a hydraulic project ~~the~~ authorized in an imminent danger HPA ~~hydraulic project~~ is completed, any remaining unavoidable impacts... 050(7)(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, A any remaining unavoidable impacts ... within ninety days after completion of a hydraulic project authorized in an expedited HPA. 050(8)(c)(i) When a pamphlet HPA is ~~required~~ used, ..., (A) A pamphlet HPA, subsection (3) of this section; or (B) An emergency HPA, subsection (5) of this section. ~~(C) A minor modification of an HPA, WAC 220-660-030(97); and (D) A major modification of an HPA, WAC 220-660-030(85).~~ 050(8)(c)(iii)(D) ...protection of fish life and their habitats, including any reports assessing impacts from the hydraulic project to fish life and their habitats that supports fish life, and plans to mitigate those impacts to ensure the project results in no net loss of fish habitat function, value, and quantity; 050(8)(c)(iii)(G) ... agreement ~~previously~~ established... 050(8)(c)(iii)(G)(V) Modification of permits issued for projects applied for be-fore July 10, 2012, and modifications of permits issued to those projects; 050(12)(a) ... local, state, and federal permitting or authorizing agencies... Emergency, imminent danger, expedited, ... (b) Except for emergency, imminent danger, and expedited, and emergency HPAs... 50(13)(b)(v) ... and all participating permitting and authorizing agencies... 050(14)(e) ... as long as the modifications do not adversely affect fish life or ~~their habitats~~ the habitat that supports fish life populations. The

permittee should contact the ~~biologist who issued the HPA~~ habitat program's Olympia headquarters office through email or the department online permit application system to request a minor modification. 050(15)(a) ... the department may grant standard HPAs that are valid for a period of up to five years. 050(16)(f) The department will issue a letter documenting approved minor modification and a written HPA ~~if the request~~ documenting approved major modifications is approved.

WAC 220-660-060 the original WAC section was approved before all steps in the integration process occurred. The language is changed to reflect that integration has occurred but no substantial changes are made to the requirements. 060(3)(g) the following sentences are changed to improve consistency with forest practices. ... that DNR ~~deny~~ disapprove the FPA... ... appropriate ~~provisions~~ conditions to the FPA.

WAC 220-660-080(1) ... minimizing and rectifying unavoidable impacts, and compensating for remaining unavoidable impacts. ~~The department applies the technical and special provisions to mitigate impacts to fish life from hydraulic projects.~~ This mitigation must achieve no net loss ~~minimizes of fish habitat function, value, and quantity.~~ 080(3)(a) ... and the including fish life habitat function, value, and quantity habitat that supports fish life based on available information. 080(3)(c)) All work subject to this chapter must achieve no net loss through a sequence of mitigation actions. However, the department may not impose permit conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project. 080(3)(d) We eliminated the mitigation sequence here since it is defined in the definitions section. 080(3)(g) All maintenance work must comply with the applicable common technical construction provisions and project-specific and site-specific construction provisions. Maintenance work that rehabilitates and replaces a structure must also comply with the applicable common technical design provisions. 080(4)(b) ...that restore impacted habitat types and functions on-site or immediately adjacent to the impact site. If mitigation actions on or near the project on-site or at an adjacent site cannot mitigate the project impacts, then the department prefers compensatory mitigation actions at another location benefit the same fish life populations, habitat types and functions as those impacted by the project. However, the department must give due consideration to any compensatory mitigation proposal that improves the overall habitat functions in the watershed for the affected fish life populations at the project site. 080(4)(c) ~~The department may not limit the scope of compensatory mitigation options to areas on or near the project site, or to habitat types that are the same type as those on the project site. The department must fully review and give due consideration to compensatory mitigation proposals that improve the overall fish habitat functions and values in the watershed for the affected fish populations at the project site.~~ At the request of the project proponent, the department must also accommodate However, the department will not approve ... ~~fish habitat functions, and values~~ and quantity. 080(4)(d) ... ~~fish habitat function, value, and quantity by habitat type such as the habitat equivalency analysis, habitat evaluation procedure or other~~

~~method acceptable to the department. Compensatory mitigation must also compensate...~~ 080 (4)(f) However, this baseline does not apply to ~~illegally constructed~~ hydraulic projects ~~constructed illegally~~ ~~illegally constructed~~. ~~Illegally constructed does not include~~ Structures that predate the hydraulic code or structures that were previously authorized under past versions of the hydraulic code are deemed legal structures. 080(4)(h)(ii) The maintenance work does not comply with (3)(g) in this section. 080(4)(i) ~~Maintenance work that rehabilitates and replaces a structure must comply with the applicable common technical provisions and project-specific and site-specific provisions.~~ 080(4)(k) The department may require ~~corrective measures to ensure performance goals and objectives specified in the HPA are achieved.~~ ~~The~~ A monitoring and contingency plan ~~must to~~ ensure the compensatory mitigation meets the performance goals and objectives specified in the HPA. 080(5)(a) ...for projects ~~with unavoidable adverse impacts and those with ongoing, complex...~~ 080(5)(c) The following sentence is modified to improve consistency with RCW 77.55.251. When reviewing a mitigation plan under RCW 77.55.021, the department must, at the request of the applicant, follow the guidance contained in RCW 90.74.005 through 90.74.030. ~~An applicant may use a mitigation plan to propose compensatory mitigation within a watershed.~~ Pursuant to RCW 90.74.020, a mitigation plan must do the following... 080(5)(d)(ii) ...species recovery plans and associated habitat restoration strategies, watershed plans... 080(5)(d)(iv) The significance of any negative impacts to non-target fish life species, fish stocks, or resources.

WAC 220-660-100(1)(a) ~~There are ninety-one species of fish in Washington: Fifty species of native fish and forty-one introduced fish species. Freshwater habitats of special concern are listed in WAC 220-660-120 and 220-660-330, and include priority habitats in the priority habitats and species program. These~~ Freshwater habitats of special concern...

WAC 220-660-110(2) ... to fish life is reduced or ~~unless the risk~~ can be avoided.

110(3)(a)(iii)(D)(vi) Other circumstances and conditions pertaining to the proper protection of fish life.

WAC 220-660-120(1) ~~Common freshwater construction provisions can apply to many hydraulic projects. However,~~ Only applicable common construction provisions will be applied to a specific hydraulic project... 120(2) Some activities can ~~may~~ kill or injure... 120(4)(b) ~~The~~ ~~D~~ design and locate location of new temporary access roads to avoid or and minimize unavoidable must follow the mitigation sequence to protect erosion and delivery of sediment to waters of the state from erosion and delivery of sediment. 120(4)(d) the following is modified to improve consistency with the definition of LWM. Woody vegetation greater than ~~six~~ four inches diameter that must be removed to construct the hydraulic project must be marked in the field by the applicant ~~and specifically~~ approved for removal by the department. 120(4)(e) ... preproject location ~~prior to~~ before leaving the job site demobilization. 120(5)(a) ~~Avoid or and minimize unavoidable intentional damage to or removal of riparian, aquatic, and wetland vegetation by confining the~~

~~use of equipment to specific access and work corridors. (5)(b) Avoid or and minimize unavoidable the use of equipment below the OHWL of rivers, streams, and lakes.~~ (5)(a) Confine the use of equipment to specific access and work corridors to protect riparian, wetland and aquatic vegetation. 120(5)(d) the following sentences are modified to provide flexibility without reducing fish protection. Equipment used in or near water must use environmentally acceptable lubricants composed of biodegradable base oils. These are vegetable oils, -based lubricants synthetic esters, and polyalkylene glycols. The department may ...forty-eight hours or less or if containment prevents the lubricants from entering waters of the state. 120(6)(b) Do not stockpile construction material ~~below~~ waterward of the OHWML in waters of the state rivers, streams, and lakes unless authorized ~~to do so in the HPA by the department.~~ 120(6)(c) Use only clean, suitable material as fill material (no trash, debris, car bodies, tires, asphalt, concrete, etc.). 120(6)(e) ... construct forms to contain ~~for~~ any wet concrete. Place impervious material over any exposed wet concrete not lined with forms that will come... 120(6)(g) the following sentence was moved to section (7)(f) . Use tarps or other methods to completely contain treated wood sawdust, trimmings, and drill shavings. 120(6)(h) However, products made from recycled scrap tires specifically manufactured for use in the aquatic environment are ~~allowed~~ approved by the department. 120(7)(b) ... sediment control until demobilization work and ...120(8) The provisions in this section were reordered to reflect the order of this work. 120(8)(a) ...unless nets can be secured and maintained. there is no difficulty securing and/or maintaining the nets. 120(9)(b) The department will ~~may~~ not require hydraulic analysis for short-term a bypass on a stream with low ~~stream~~ flows. 120(10) The department will not require modeling for a short-term cofferdams installed in a ~~stream with~~ low flow streams. 120(12)(f). The department will require all person(s) removing fish from a job site to follow an approved protocol. An approved protocol is available on the department web site. or a A person may submit another protocol with their application. The department will approve another protocol if it provides equal or better fish protection. The protocol will be authorized approved by the department in the HPA. 120(13)(i) ... zone and aquatic vegetation, and wetland vascular plants (except noxious weeds) damaged or destroyed by construction. The department may require a vegetation monitoring and contingency plan. 120(13)(j) The department must approve species composition,... The species composition should be similar to the surrounding native vegetation whenever feasible. 120(13)(m) ...the replanted riparian and wetland sites until the plantings are well established.

WAC 220-660-130 ~~Appropriate-Suitable methods to design stream bank structures identify and select an appropriate stream bank protection technique~~ are available... 130(2) Direct loss of habitat may include loss of aquatic vegetation cover, spawning gravel beds, large woody material, riparian zone vegetation function, and floodplain connectivity as well as alteration of the channel/beach. 130(3)(a) This requirement does not apply to projects that address ~~localized~~ constriction or drop/weir scour or other scour caused by an existing structure. 130(3)(e) Where technically feasible, the toe of the structure must be located landward of the OHWL, unless an alternative is shown to have a net benefit to fish life and the habitat that supports fish life.

~~Restrict the placement of material waterward of the OHWL to installing mitigation features (e.g., logs, and rootwads) approved by the department. Large wood or other materials consistent with natural stream processes can be placed waterward of the OHWL when approved by the department.~~ 130(4)(a) ... the department may grant an exemption on a case-by-case basis ... 130(6)(c) ... ~~unless the department has specifically authorized~~ approved ~~it~~ by the department.

WAC 220-660-140(1) A ramp is a structure ~~gangway~~ that... 140(2)(a) These processes include ~~altering the light regime, ... protective nurseries for fish life, shellfish, crustaceans, and many other animals.~~ 140(2)(b) ... block migration and cause other impacts. 140(3)(c)(i) piers and docks to six feet for the first thirty feet from the shoreline (measured from mean low water). 140(3)(c)(i)(B) For the Columbia River, ~~the following criteria may apply:~~ limit the width of residential piers and docks to six feet for the first fifty feet from the shoreline. ~~Docks less than or equal to six feet in width should be located fifty feet from the shoreline.~~ Docks must ~~and~~ have twenty feet of water depth below them ~~float~~ ... 140(3)(c)(iv)...residential pier, dock, ramp and float designs to include grating. The department may require a public recreational pier, dock, ramp and float designs to include grating. 140(3)(c)(iv)(C) In waterbodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock. 140(3)(c)(iv)(E) ...Any objects that are not part of the structure on, ... 140(3)(c)(iv)(G) If grating is required, locate flotation under the solid decked area only. 140(3)(g) Embedded anchor(s)~~Helical screw, "duckbill,"~~ or other approved anchor(s) or piling may hold floats in place. 140(3)(i) ...within the ~~past~~ twelve months immediately before ~~of~~ the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present. 140(3)(j) ...functional grating in the replaced portion only. 140(4)(a) Use the smallest diameter and minimum number of pilings... 140(7)(a) Operate and anchor vessels and barges during construction in a manner that avoids or minimizes unavoidable such that they do not adversely impacts to protects native submerged aquatic vegetation. 140(7)(c) ~~A~~ When installing steel piling, a vibratory hammer or water jet to drive piling is preferred for installing steel piling. 140(7)(g) the following during when removing piling removal: 140(7)(g)(iv) ... that matches the native material whenever feasible. 140(7)(j) ~~Dispose of replaced~~ removed docks...

WAC 220-660-150(1) ...vehicular trailers or by hand ~~for primitive boat launch designs.~~ ...

WAC 220-660-160(3)(c)(ii) ... deep areas to avoid or and minimize the need for dredging. 160(3)(c)(iv) ... biological integrity such as heavily industrialized areas. 160(3)(d)(i) Design marinas and terminals so that most over-water cover-age is in the deepest water feasible. 160(4)(b) ...Any objects that are not part of the structure on, above, or below the grating should not block light penetration. 160(4)(d) and(e) ... (both criteria measured from mean low water). 160(5)(b) ... twenty feet deep (measured from mean low water). 160(7)(e) The department may require the following when removing... 160(7)(e)(iii)(A) Cap all buried stumps with clean sediment that matches the native material. 160(7)(g) ~~Dispose of replaced~~ removed docks...

WAC 220-660-170(1) ... navigational channels ~~and sediment traps~~ for flow conveyance. River Dredging is also used to ~~for flood abatement and to~~ clean up contaminated sediments. 170(2) ... ~~riparian~~ damage to riparian zone vegetation,... 170(3)(c) ... boat ramp and boat launch approaches, and hydroelectric dams.

WAC 220-660-180(3)(a) ~~The department may authorize removing additional sand and gravel, including from wetted portions of the channel, when the project is an integral part of a department approved comprehensive flood control plan.~~ 180(4)(b) The permittee must place boundary markers ...

WAC 220-660-190 A list of approved manuals and guidelines is on the department's web site. Crossings on nonfish bearing streams ~~with no fish~~ must be designed to pass ~~the 100-year recurrence interval flood flow~~, wood, and sediment expected in the stream reach to reduce the risk of catastrophic failure of the crossing. Water crossing structures on nonfish bearing streams with no fish in the forest environment that are designed to pass the 100-year flood flow and debris likely to be encountered meet this standard. 190(3)(b) ~~The water crossing structure must be designed to avoid and minimize measurable impacts to the expected channel functions and processes found at the site, or mitigate for impacts to them.~~ The design of the water crossing structure must follow mitigation sequencing to prevent measurable unmitigated impacts to the expected channel functions and processes found at the site. 190(3)(c)(i) Similar slope: The slope should be that of a stable (~~equilibrium~~) channel ~~and not over-steepened~~ that would fit within the geomorphic context of the reach. 190(3)(d) A person may propose ~~an~~ one of the following alternative crossing design methods instead of complying with the provisions under subsections (4) and (6) of this section ~~when the following circumstances exist:~~ 190(3)(d)(iii) Fish passage improvement structures will be approved where extreme and unusual site conditions prevent them a person from complying... 190(4)(d) A person must design (~~size~~) the bridge to account for the lateral migration expected to occur during the bridge's lifespan ~~to minimize the need for bank armoring.~~ The department will approve encroachment ~~into the channel migration zone~~ expected pathway of lateral migration if ~~the mitigation sequencing in the design~~ follows the mitigation sequence can be shown to avoid or minimize impacts to protect fish life and the their habitat that supports fish life. 190(4)(f) The design must have at least three feet of clearance between the bottom of the bridge structure and the water surface at the 100-year peak flow ~~unless~~ The department may grant an exception based on or engineering justification shows a lower clearance provided by the applicant for sufficient will clearance that allows for the free passage of anticipated debris. 190(4)(g) The bridge design must minimize avoid the... 190(6)(a)(iii) ... prevailing stream gradient unless engineering justification for an alternative slope is approved by the department. 190(6)(a)(v) ~~In the case of box and bottomless culverts, depth of culvert fill must be adequate to accommodate~~ Alternative depths of culvert fill may be accepted with engineering justification that considers channel degradation and total scour. 190(7)(c) In site-specific

situations, the department may approve a temporary culvert that does not meet all fish passage criteria in site-specific situations. These situations may include streams where there is limited fish movement and presence, and where the use of a temporary culvert will result in lower fewer adverse impacts over the long-term. 190(6)(b)(iii)(E)(II) ... of the frequent high rate of sediment transported... 190(10)(f) Vented (grade-separated) fords are preferred over at-grade fords because there is less aquatic disturbance and delivery of sediment and contaminants when traffic is separated from flowing water. Traffic should be separated from flowing water by utilizing vented fords or other appropriate alternatives. 190(13) Permanent removal of a water crossing (abandonment): (a) When removing a water crossing removal without replacing it, a person must be compliant comply with the following...

WAC 220-660-200(7)(a) If target fish species are present and actively migrating, fish ladders with AWS must have enough water must be available at all stream flows to pass fish ...

WAC 220-660-210 (1) ... Channel realignment is used to restore a single-thread, straightened channel(s) to a more natural sinuous pattern.

WAC 220-660-220(1) Large woody material (~~LWM~~) is trees and tree parts larger than four inches in diameter and longer than six feet or rootwads that enter stream channels... 220(2)(a) The removal and cutting of large woody material can adversely affect the natural channel-forming processes associated with wood accumulation in the channel... 220(3)(a) ...wood removal including cutting diminishes fish habitat functions of or value. 230(3)(a) ... removed or modified without compensatory mitigation only when: 230(3)(b) ~~The department will not require compensatory mitigation to remove beaver dams less than one year old.~~

WAC 220-660-250(2) ...where they are at risk for injury or death from entrainment. In addition to screening water to prevent entrainment of fish life. Other ... 250(4)(a) A diversion structure should must not hinder... 250(4)(e)(i)(J)(ii) Diversion dams must ...across the stream until reasonable effort has been exercised unless needed to seal the dam to achieve the water right.

WAC 220-660-260(1) ...construct energy dissipation structures ~~at the~~ landward side of the riparian zone buffers whenever possible feasible so discharged water can infiltrate into the soil ~~of the buffer~~ or to sheet flow through the ~~buffer~~ riparian zone into the stream. 260(2) This can cause a direct loss of bank side riparian zone vegetation habitat. Riprap and other energy dissipation structures can bury fish in-stream habitat and riparian zone vegetation. 260(4)(d) or other effective method ~~proposed by a person and~~ approved by the department.

WAC 220-660-270(1) ~~This section applies to utility lines constructed below the ordinary high water line of state waters.~~ An HPA is not required for utility crossings attached to bridge structures.

WAC 220-660-280(3)(d) Use equipment that minimizes the number of cable crossings over the stream must be minimized to reduce damage

WAC 220-660-290 (4)(c)(i), (5)(c)(i), (6)(c)(i) and (9)(b)(i) Modified the list of sockeye lakes to those with beach spawning only. ...for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, ~~Quinault~~, Cle Elum, Sammamish, and Washington. ~~and Wenatchee~~. 290(5)(viii) Avoid Do not using use contaminated equipment...

WAC 220-660-320(1)(a)(vi) Feeder bluffs and other shoreforms that support that form and maintain forage fish spawning beaches geomorphic processes such as sediment delivery and movement that creates and maintains habitat that supports fish life. 320(1)(b) or adjacent areas with similar bed materials characteristic may... 320(3)(b)(i) Pacific sand lance ...composed of fine to coarse sand and ~~or~~ small pea gravel; 320(3)(b)(iv) Lingcod (Ophiodon elongatus) nesting areas located in high-relief rock; 320(3)(b)(vi) ... located in kelp and other macroalgae beds... 320(3)(b)(xi) Macroalgae species Pacific herring use as spawning substrate; 320(3)(b)(xii) Intertidal wetland vascular plant areas... 320(4)(a) The location and construction of hydraulic projects should be located and constructed to avoid impacts to geomorphic processes that create and maintain nearshore zone habitats (geomorphic processes) that supports fish life in the nearshore zone. This is because impacts to Geomorphic processes are difficult to replace or compensate for. mitigate.

WAC 220-660-330(3)(b)... April 1 through December 31 for projects in or adjacent to lingcod nests. 330(3)(f) ... authorized work times if an intertidal forage fish spawning bed survey complies with the followings:

WAC 220-660-340(1) ...sand lance spawning habitat adjacent to documented areas or in...

WAC 220-660-350(3)(a)(i) ... wharf or other over-water structure; 350(3)(a)(iii) New dredging, trenching, filling (~~e.g.~~ boat ramps, and fixed breakwaters, artificial habitat structures), or grading; 350(3)(b)(ii) Evaluate if Help the applicant can locate and construct the project to avoid or minimize impacts while following the mitigation sequence to protect seagrass and ~~or~~ kelp beds, and ~~or~~ in herring spawning beds other macroalgae used as spawning substrate.; and (iii) Establish a location for the project that will minimize impacts when avoidance is not possible. 350(3)(c) Seagrass and macroalgae surveys must be conducted between June 1 and October 1 because the full extent of seagrass eelgrass and macroalgae distribution can be more accurately mapped. If the preliminary survey shows that the project can be located and built without impacting seagrass and kelp beds or in herring spawning areas other macroalgae used as spawning substrate, the preliminary survey will meet the needs for mapping the project area. However, if the preliminary survey shows the project footprint will impact existing seagrass and

kelp beds or in herring spawning areas other macroalgae beds used as spawning substrate, the department will require an advanced survey. 350(3)(d) The department will use an advanced surveys to estimate project impacts to seagrass and kelp beds and in herring spawning areas other macroalgae beds used as in herring spawning substrate. ~~beds.~~ Advanced surveys ~~must occur~~ between June 1 and October 1 and are conducted to:

WAC 220-660-360(1) Description: ~~Common saltwater construction provisions can apply to many hydraulic projects. However,~~ Only applicable common... 360(2) Some activities can ~~may~~ kill or injure fish life while... 360(4)(b) Limit the removal of native vegetation to... 360(4)(c) ... pre-project location ~~before leaving the job site prior to demobilization.~~ 360(5)(c) the following change to reflects a comment and a subsequent review of the science related to lubricants. The remaining modifications improve clarity and consistency. Equipment used in or near water must use environmentally acceptable lubricants composed of biodegradable base oils. These are vegetable-based lubricants oils, synthetic esters, and polyalkylene glycols. The department may waive this requirement for a small project that has minimal use of equipment in or near the water if the duration of the project is forty-eight hours or less or if containment prevents the lubricants from entering waters of the state. 360(6)(a) ...propeller wash to seagrass, ~~and~~ kelp, and forage fish spawning beds. 360(6)(b) ,, in seagrass, ~~and~~ kelp, and forage fish spawning beds. 360(7)(d) The department discourages the use of whole tires. However, products made from recycled tires specifically manufactured for use in the aquatic environment are approved by the department. 360(9)(f) The department must approve species composition, planting densities and a maintenance plan requirements for replanting on a site-specific basis. The species composition should be similar to the surrounding native vegetation. 360(9)(i) ...the replanted riparian and wetland sites until the plantings are well established.

WAC 220-660-370 The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life. (1) To, but to be considered soft, the total area of the project must consist of at least eighty-five percent of the total project area in aerial extent must be constructed with naturally occurring materials used in a manner ways that mimics are consistent with the natural shore processes taking place in the vicinity of the project. In addition, the remaining fifteen percent of the total project... The total project area extends cross-shore from MLLW to the OHWL, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end. (3)(a) ~~If repairs to the existing structure are completed~~ an application for an HPA is submitted for repairs within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint. (3)(b) ~~Avoid or minimize adverse impacts to fish life by~~ Use using the least- impacting technically feasible alternative. (3)(c)(ii) ~~If construction of a new, replacement, or repaired single-family residence bulkhead or other bank protection project in a salt water area , or replacement or repair of an existing single family residence bulkhead or other bank protection project waterward of the existing structure~~ will result in the permanent loss ... However, the

construction of all bulk-heads or other bank protection must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.(3)(d) ... bank protection work or the replacement or rehabilitation of a bulkhead or other bank protection structure that extends waterward of the existing structure must ...

WAC 220-660-380(2) These processes include ~~changing the~~ light regime... (3)(b) The design and ~~locate~~ location of structures must follow the mitigation sequence to avoid or minimize impacts to protect salt water habitats of special concern. (3)(b)(iii) The department ~~may~~ will require ~~an~~ a eelgrass seagrass/macroalgae habitat survey for all new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate. (3)(b)(iii)(B) ... ~~located~~ structures must be located at least twenty-five feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds ~~away from algae species~~ on which herring spawn (measured at extreme low water). (3)(c) Usable means no major deterioration or section loss in critical structural components is present. (3)(d) ... functional grating in the replaced section only. (5)(e) Design floats in intertidal areas with stoppers ... (6)(a) Use the smallest diameter and minimum number of pilings required to construct a safe structure. (5)(f) ... Any objects that are not part of the structure on, above, or below the grating should not block light penetration. (5)(i) Embedded Helical screw or "duckbill" anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place. (8)(a)(i)(A) A eelgrass seagrass/macroalgae habitat survey is ~~are~~ not required ... The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage ~~submerged aquatic vegetation~~ seagrass and kelp beds and in herring spawning beds other macroalgae used as spawning substrate. (8)(b)(i)(B) Eelgrass Seagrass/macroalgae habitat survey is ~~are~~ required if The surveys is ~~are~~ needed to ensure the mooring buoy system is installed at a location ~~where submerged aquatic vegetation~~ seagrass, kelp and in herring spawning beds other macroalgae used as spawning substrate will not be damaged. (9)(d) ... Any objects that are not part of the structure on, above, or below the grating should not block light penetration. ~~(10)(a) Operate and anchor vessels and barges so that they do not adversely impact seagrass, kelp, or forage fish spawning beds.~~ (10)(e)(iii)(A) Cap all buried stumps with clean sediment that matches the native material.

WAC 220-660-390(1) ...from vehicular trailers or by hand ~~for primitive boat launch designs.~~(2) A boat ramp or launch covers ~~removes~~ seabed habitat that supports fish life from use by fish and shellfish. (3)(a)(i) The department ~~may~~ will require ~~an~~ seagrass/macroalgae habitat survey for all new ramp or launch construction unless the department can determine the project will not impact seagrass and kelp beds and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required ~~for replacement of~~ to replace an existing structure within its original footprint. (3)(d) The department will authorize boat ramps and launches on marine accretion shoreforms (such as barrier beaches, points, spits, and hooks) only if there will be no

impact to ~~natural physical~~ geomorphic processes that create and maintain ~~shoreform~~ nearshore habitats. (4)(b) ... ramp and launch below the pre-existing beach grade of the beach...

WAC 220-660-400 This section applies to constructing, maintaining, ~~and repairing, and re-~~ ~~moving~~ marinas and terminals in saltwater areas. (3)(b) The department ~~will~~ ~~may~~ require a ~~eelgrass~~ seagrass/macroalgae habitat survey for a new construction unless the department can determine the project will not impact seagrass and kelp beds and in herring spawning beds other macroalgae used as spawning substrate. (3)(c)(i) ~~Locate new marinas and terminals to avoid and minimize im-pacts to seagrass and kelp.~~ (3)(c)(i) Locate new marinas and terminals in naturally deep areas to avoid or minimize the need for dredging. (3)(c)(iii) Locate new marinas and terminals in areas with existing low or impaired biological value such as heavily industrialized areas. (3)(d) Whenever feasible, design marinas and terminals to allow light penetration to intertidal and shallow subtidal water areas. (3)(d)(i) Design ~~and construct~~ marinas and terminals so that most over-water coverage is in the deepest water ~~possible~~ feasible; this is necessary to allow light penetration to the intertidal and shallow subtidal areas. (3)(d)(iii) Minimize the width of ~~intertidal and shallow subtidal~~ over-water and in-water structures. (3)(d)(v) ... use ~~maximize~~ the amount of light-reflecting materials on the underside of above overwater structures that are not grated. (4)(b) ~~The~~ Locate location and construct construction of new marinas must follow the mitigation sequence to avoid and minimize adverse impacts to protect surf smelt and Pacific sand lance spawning beds, seagrass and kelp beds , kelp and intertidal wetland vascular plants. (4)(c) ~~Locate and construct new marinas to avoid and minimize ad-verse impacts to kelp and intertidal vaseular plants.~~ (4)(c)(ii) Any objects that are not part of the structure on, above, or below the grating... (4)(h) ... light from attracting fish or disrupting fish migration behavior... (5) ~~The~~ Locate location and construct construction of new terminals must follow the mitigation sequence to avoid or and minimize unavoidable adverse impacts to protect saltwater habitats of special concern. (7) ... do not adversely impact seagrass and kelp beds and in herring spawning areas other or macroalgae species beds used as herring spawning substrate. (7)(b) The pier and dock(s) centerline... ~~eelgrass~~ seagrass/macroalgae habitat survey.

WAC 220-660-410(2)... and changes to ~~estuarine and~~ nearshore zone ecosystem dynamics such as salinity intrusion. As a result, dredging (3)(b) ~~The~~ Design design and construction of dredging projects must follow the mitigation sequence to avoid or and minimize unavoidable dredging and expansions that convert to avoid or minimize converting intertidal to subtidal habitat. (3)(d) The department requires a ~~eelgrass~~ seagrass/macroalgae habitat surveys for all new dredging. A surveys is ~~are~~ not required for maintenance dredging or deepening the channel within ~~their~~ the original dredged footprint. (4)(e) Dredging must avoid adverse impacts to seagrasses and kelp beds, intertidal wetland vascular plants, and geoduck tracts. (f) ~~kelp, macroalgae, intertidal vaseular plants, and geoduck tracts.~~

WAC 220-660-420(3)(d) ~~Artificial aquatic habitat structures must fill a habitat need identified in (a) of this subsection.~~ HPA applications ... (4)(d) ~~A person must~~ Do not use materials that would leach metals...

WAC 220-660-430(4)(b) ~~The Design~~ design and ~~locate~~ location of outfalls ~~so that the outflow, or and any associated energy dissipaters must follow the mitigation sequence to do not cause loss of fish and shellfish to avoid or and minimize unavoidable impacts to protect saltwater habitats of special concern.~~ (4)(e) The department ~~may~~ will require an seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. A survey is not required for ~~replacement of~~ to replace an existing structure within its original footprint.

WAC 220-660-440 (1) An HPA is not required for utility crossings attached to bridge structures. (2) Trenching through banks and beaches alters habitat that supports fish life, such as substrate characteristics, and therefore their productivity of the nearshore zone. (3) The design and ~~A person must~~ location of utility crossings must follow the mitigation sequence to protect to avoid impacts to saltwater habitats of special concern. (4)(a) ~~A person must~~ Excavate ~~for~~ and install cables, sewer lines, and other utilities using equipment and techniques that minimize adverse impacts to fish life and the ~~shellfish and their habitat that supports fish life.~~ (4)(b) The department will ~~may~~ require an eelgrass seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. A survey is not required for ~~replacement of~~ to replace an existing structure within its original footprint. (4)(e) ~~No~~ Do not stockpile stockpile of excavated materials containing silt, clay, or fine-grained soil or bed material ~~is allowed below~~ waterward of the OWHL.

WAC 220-660-450 *Test boring in saltwater areas* – The following sentence was modified to improve clarity. (3)(a) Take samples only within the project area approved by the department proposed footprint of the hydraulic project; (3)(c) ~~After geotechnical or sediment information has been logged, seal the bore hole and substrate surface with the appropriate material including bentonite grout, pellets, and/or chips; and~~

WAC 220-660-460 An informal appeal is an appeal to the department pursuant to chapter 34.05.060 RCW (Administrative Procedures Act). (8) Informal Appeal Hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, the appellant is not the person who applied for the HPA, or the appeal involves an order imposing civil penalties, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review.

WAC 220-660-470 *Formal appeal of administrative actions* - The following modifications were made to improve clarity the appeal process. A formal appeal is an appeal to the Pollution Control Hearings Board pursuant to chapter 34.05 RCW and chapter 371-08 WAC. (6) The request must be plainly labeled as "Request for Formal Appeal" and, pursuant to WAC 371-08-340, must

include the following:(a) The appellant's name, mailing address, e-mail address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number; (b) The specific department action that the appellant contests; (c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;(d) A copy of the order or permit you are appealing, and if appealing a permit decision, a copy of the permit application; (e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful; (f) A clear and concise statement of facts to explain the appellant's grounds for appeal; (g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question; (h) The specific relief requested; (i) The signature of the appellant or his or her representative. (8) The request for a formal appeal must contain the information required by WAC 371-08-340...

WAC 220-660-480 (1) ~~Department~~ Technical Assistance program: Pursuant to chapter 43.05 RCW... (1)(a) Technical Assistance is defined in chapter 43.05 RCW as including (i) information on the laws, rules, and compliance methods and technologies applicable to the department's programs; (ii) information on methods to avoid compliance problems; (iii) assistance in applying for permits; and (iv) information on the mission, goals, and objectives of the program. (1)(b) "Technical Assistance documents" means documents prepared to provide information specified in subsection (a) of this section that is labeled a technical assistance document by the department. Technical assistance documents do not include notices of correction, violation, or enforcement action. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation. (2)(a) Pursuant to RCW 43.05.030, ~~For the purposes of this chapter,~~ a technical assistance visit is defined as a visit by the department to a project site or other location that: (2)(b) Notice of Violation. During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a notice of violation to inform the person of any violations... (2)(c) ~~A technical assistance notice of violation is not a formal enforcement action and is not subject to appeal.~~(3)(a) Procedures for correction of violations. If during any inspection or visit that is not a technical assistance visit,... (4)(b) The department may issue a civil penalty without first issuing a notice of correction, as provided ~~for~~ by law in RCW 43.05.110,without first issuing a notice of correction if:...

Response to Comments Received During the Comment Period for the CR-102

The proposed rule resulted in comments from 159 commenters. Key comments relative to the proposed adoption of the hydraulic codes rule are summarized below along with Department responses.

Comment 1: Eliminate general and model HPAs

Response: General HPAs are issued for hydraulic projects that have low risk to fish life because they are routine, small-scale and short-duration. About twenty percent of the hydraulic projects conducted each year are covered under general permits.

Model HPAs will be similar to the Corps Regional General Permit process so a project will have to meet the specified requirements to receive the permit. This is a tool the department can use to get more projects constructed in a fish-friendly manner. If an applicant can meet the fish-friendly project design and construction criteria, they can get their permit faster. Both general and model HPAs allow the department to focus limited staff resources on higher risk projects.

Comment 2: Protect forage fish spawning areas. The department should require timing restrictions or surveys for all potential forage fish spawning areas. The Hydraulic Codes and requirements should be written such that any proposed in-water, potentially habitat-degrading, work along a saltwater beach shoreline must show beyond any doubt that there is no surf smelt spawning there. That would mean at least a full year of certified, approved surveys and analysis unless that has already been done recently.

Response: The rules allow the department to require surveys in areas adjacent to documented areas if the habitat is suitable. However, requiring surveys for a year is overly burdensome and would likely be deemed unreasonable (RCW 77.55.021(7)(a) and RCW 77.55.231(1)).

Our science division is currently collecting new data on forage fish presence/absence. These data will be used to develop an occupancy model that will predict the likelihood of egg presence. Once the model is developed it will go through the rule adoption process so we can use the model to determine whether surveys are needed in potential areas.

Comment 3: Eliminate conservation banks and in-lieu fee programs as mitigation options. These proposed programs do not have any statutory direction and allowing a project applicant to pay a fee or purchase credits for habitat damage rather than undertake department evaluated and monitored mitigation that can be measured for success is a step backwards in the State's efforts to restore Puget Sound.

Response: The bank or in-lieu fee provision recognizes these tools exist and gives the applicant the flexibility to use them with some sideboards. There is a connection to RCW 77.55.241 because a state or federal certified fish conservation bank, a joint 404/401 mitigation and fish conservation bank, or in-lieu fee program may be more cost effective and provide better benefit to fish life than on-site mitigation. Please note that this is a form of mitigation considered after the standard mitigation sequencing has been applied onsite at the impact site. Please see Ecology's website regarding mitigation (conservation) banks and in-lieu fee programs at <http://www.ecy.wa.gov/mitigation/options.html>. These programs are intensively monitored.

Comment 4: Protect against impacts from shoreline hard armoring. An HPA application for new, replacement, or rehabilitated bulkhead or other bank protection work must include a site assessment which includes evaluation of need, alternatives analysis and design rationale by a qualified professional (such as a coastal geologist, geomorphologist, etc.) for the proposed project and selected technique. New and replacement armoring should not be allowed unless a need is clearly determined by a qualified professional. If a need for stabilization is confirmed,

hard armoring will not allowed unless evaluation determines soft stabilization techniques are not possible. This requirement should apply to projects processed under both RCW 77.55.141 and RCW 77.55.021. The department should deny HPAs for bank protection project applications processed under RCW 77.55.141 that don't meet these criteria.

Response: The Hydraulic Code (Title 77.55 RCW) sets boundaries on the scope of HPAs. HPAs may not be unreasonably withheld or unreasonably conditioned (RCW 77.55.021(7)(a)). Also HPA conditions must be reasonably related to the project, and not an attempt to optimize conditions for fish that are out of proportion to the impact of the proposed project (RCW 77.55.231). Although marine bulkheads are a significant cause of cumulative impacts in Puget Sound, RCW 77.55.141 directs that WDFW shall issue HPAs, with or without restrictions, for single-family marine bulkheads that meet specified criteria. Implementing this suggestion would require a statutory change.

Comment 7: Amend the proposed definition of “No Net Loss” to clearly reflect a meaningful definition of the term, that existing conditions of shoreline ecological functions remain the same as before a development action is implemented.

Response: The existing definition of no-net-loss is retained with some minor modification. “Avoid and mitigate” is changed to “sequentially avoiding impacts, minimizing impacts and compensating for remaining adverse impacts”. Because our authority is limited to the protection of fish life, our definition of no-net-loss is specific to fish life and the habitat that supports fish life. However, geomorphic functions that are important for creating and maintaining fish habitat, such as sediment and wood delivery and transport, are included in “Habitats of special concern”.

Comment 7: Requiring no-net-loss of fish life, habitat function and quality by habitat type exceed the department's authority granted under Chapter 77.55 RCW and Chapter 90.74 RCW.

Response: We respectfully disagree that requiring no-net loss of fish life and habitat that supports fish life is going beyond our authority. WDFW has sole authority to implement the Hydraulic Code Rules (chapter 220-110 WAC) under chapter 77.55 RCW (Construction Projects in State Waters). RCW 77.55.021 (1) states

“...In the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval from the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.”

Chapter 77.55 RCW does not define the phrase “protection of fish life.” The former and current definitions of no-net-loss require mitigation sequencing for loss of fish life, habitat function, and area by habitat type. This is the standard we need to protect fish life.

Comment 8: We received several comments related to the authority granted to WDFW under Chapter 77.55 RCW. Examples of these comments include:

- After "area of ground" add "below the OHWL"; "after "immediately adjacent" add "upstream or downstream". After "conducted under" add "the authority of" to be consistent with RCW 77.55.021;
- An HPA is not authorized to be issued into the floodplain outside of work being done below the OHWL, per RCW 77.55.021, and 77.55.011 (25);
- After "woody vegetation" add "below the OHWL" to be consistent with RCW 77.55.021; and
- After "upland are above" delete "limits of the anticipated floodwaters" add "below the OHWL" to be consistent with RCW 77.55.021.

Response: WDFW has sole authority to implement the Hydraulic Code Rules (chapter 220-110 WAC) under chapter 77.55 RCW (Construction Projects in State Waters). RCW 77.55.011(11) defines a “hydraulic project” as “the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwater of the state.”

Although both “bed” (RCW 77.55.011(1)) and “waters of the state” (RCW 77.55.011(25)) are defined as land or waters waterward of the “ordinary high water line” (RCW 77.55.011(16)), the definition of a hydraulic project includes construction or performance of work landward of the ordinary high water line if it will use, divert, obstruct, or change the natural flow or bed waterward of the ordinary high water line.

Comment 9: We received several comments about mitigation for maintenance activities. Some commenters expressed that the department should not require mitigation for maintenance activities. Others expressed that we should require compensatory mitigation or restoration if the existing structure being maintained degraded the habitat.

Response: RCW 77.55.231(1) clarifies HPA authority with respect to conditioning a permit as follows:

“Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.”

This section means that WDFW can’t require a project to mitigate for all cumulative effects up to and including effects of the specific project at issue. The HPA program is limited to mitigating the effects of the specific project application. This statutory provision is especially important in understanding the HPA program’s limitation on requiring project mitigation to address the cumulative negative effects to the environment from land development and use.

Thus, to comply with RCW 77.55.231(1), maintenance work does not generally require compensatory mitigation unless the maintenance causes a new loss of fish habitat function, value, or quantity by habitat type that is not associated with the original construction of the structure. Compensatory mitigation would also be required if maintenance work that rehabilitates or replaces a structure cannot comply with the applicable common technical design provisions.

Comment 10: Delete sub-section 2 Fish life Concerns. This should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, the potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.

Response: "Section 2 Fish life Concerns" clarifies for the regulated public the potential impacts from hydraulic projects and is intended to help applicants to better understand why the design and construction provisions are need to protect fish life.

"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The uses of can, could, and should are not associated with requirements.

Comment 11: The freshwater dredging section applies to river dredging for vessel navigation, but not necessarily to dredging small creeks using backhoes. There are few provisions in either section that would prevent head cutting resulting from gravel removal, although this is a common provision in small stream HPAs. There should be provisions requiring dredging to be conducted when streams are dry, if they go dry. Small stream dredging should not result in gravel starvation in downstream reaches.

Response: We agreed dredging should not result in gravel starvation to downstream reaches. We have agreed to work with stakeholders in the 2015-2017 timeframe to develop a separate chapter for sediment removal from small streams.

Comment 12: Construction of culverts to an arbitrary design standard of 100-year recurrence is inconsistent with current engineering practice. Further, the accommodation of such an extreme weather event for all culvert installations will constitute a serious financial burden to local government and is an unfunded mandate. The section further broadens the WDFW area of authority to beyond the OHWM which is unreasonable and excessively broad.

Response: The proposed rule changes are not substantively different than the standards already being implemented. Currently, the statewide climate adaptation strategy suggests that expected future conditions be factored in to project design, including accommodation for changes in stream discharge or tidal influence. We will continue to work with project proponents to

incorporate new science and help them balance risk and cost for designs that are adequately protective of fish life.

Comment 13: The new proposed code mentions stream simulation design, but is ambiguous on whether the stream simulation design is required or merely suggested. The WDFW crossing guidelines, as well as testimony from WDFW engineers and biologists, make clear that stream simulation design are the best solution to eliminating fish passage barriers, passing flood flows, passing debris, and reducing maintenance due to gravel and wood accumulation, all of which are implied in the proposed code. Given these advantages, the code should reflect the best available science and give WDFW the authority to require stream simulation design as the first acceptable standard.

Response: All water crossings must provide unimpeded fish passage and protect channel functions and processes. The stream simulation design method achieves this. But the no-slope and alternative culvert design methods can also achieve this provided the design is appropriate for the site. WDFW has the authority to approve a less costly design approach as long as the project will protect fish life.

Comment 14: The proposed section on large woody material removal (220-660-220) actually has weaker habitat protection than the current code. Whereas the proposed code says the department will approve requests for LWD removal for protection of property, or where necessary to construct a hydraulic project, the current code (WAC 220-110-150) provides that LWD removal ...shall only be approved where necessary to address safety considerations, or its removal would not diminish the fish habitat quality of the watercourse.

Response: We respectfully disagree that (3)(a) weakens habitat protection. The current rules state “The department will approve the repositioning or removal of large woody material within the watercourse when needed to protect life, the public, property, or when needed to construct or mitigate for a hydraulic project. The department will require a person to place the repositioned or removed wood directly back in the channel unless it is not feasible due to geological, engineering, or safety constraints. If large woody material must be removed from the channel, the department will require compensatory mitigation if the wood removal including cutting diminishes habitat functions or value.” The fish protection standards are the same.

Comment 15: The proposed revisions do very little to bolster fish life and habitat protections surrounding suction dredge mining. While the current revisions are being undertaken, it is an excellent time to implement long-needed changes to the Hydraulic Code surrounding small scale placer mining. Neighboring states with similar threatened and endangered fish such as California, Oregon, and Idaho have seen fit to recently change their permitting practices to better protect threatened and endangered species that use aquatic habitat subject to suction dredge mining. Maine and Tennessee have undertaken similar actions to reduce risk to their own vulnerable aquatic organisms. Given the threatened nature of many of Washington's own fish

populations, it makes sense that WDFW should undertake similar precautions to protect our state's valuable natural resources.

Response: The rules for mineral prospecting have been updated twice since 1994. The most recent version of the Gold and Fish pamphlet was published in April 2009. Because of this we decided to focus our limited resources on updating the rules that hadn't been updated since 1994.

Comment 16: The proposed change by the ports would allow up to 3 years from a breach in a bank protection structure for submission of a permit for repairs. Combining these maximum time limits would allow inundation and establishment of a new OHWL to potentially occur for up to an 8 year period. Such a long time period would potentially allow for development of a new OHWL and aquatic functions could become well established. Such habitat would then be lost if a bulkhead is re-constructed in the old footprint. We recommend that this section revert to the previous language and require repairs be completed (rather than a permit submitted) within 3 years, or the newly established OHWL will become the existing OHWL for permitting purposes.

Response: The ports and others expressed concern that they may not be able to obtain all necessary permits to repair the bank protection within two years of a breach. Please note the existing and proposed rules require a permittee to demonstrate substantial progress on the project within two years of the date of HPA issuance.

Comment 17: New Piers, ramps and floats must have grating installed over the entire deck, ramp or float surface. Grating must be installed parallel to the wide of the pier, ramp or float and have an open area of at least sixty percent.

Response: Continued research is needed to improve our understanding of the relationship between overwater structures and the behavior of migrating juvenile salmonids because the science is incomplete. The research on the effects of shading on aquatic vegetation is more complete. The rules do incorporate mitigation measures to reduce the impacts from shading such as the following:

- Avoid impacts by locating structures away from eelgrass beds whenever possible.
- Minimize the area of impact by using the best available installation methods.
- Minimize shading by using the lowest possible number of pilings.
- Space pilings to minimize shade to areas suitable for eelgrass.
- Minimize dimensions of the structure to reduce shade.
- Incorporate design elements such as grated decks or deck openings to reduce shade.
- Whenever possible, orient structures to reduce the shade in habitat. Locate the structure as high above the water as practical to reduce shade.
- Avoid vessel impacts to seagrass by maximizing the vertical and horizontal distance between vessel propellers and eelgrass to the extent practicable, maintaining a minimum clearance of 1 foot below the propeller.

APPENDICE A

Table A- 1 Comments on Proposed Hydraulic Code Rule Changes Version 6.

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
010		Amend to retain existing opening language which reads: It is the intent of the department to provide protection for all fish life through the development of a statewide system of consistent and predictable rules	Comment noted.	No
020		First paragraph, 4th sentence, delete "cumulative". In Response to Comments, Draft 2, Fish & Wildlife made the following statement: <i>Under RCW 77.55 we do not have authority to regulate cumulative impacts.</i>	This simply describes the benefits of the rules. The rules do "minimize" cumulative impacts however; we don't require compensatory mitigation for cumulative impacts. As an example, mitigation for the first dock would be the same as mitigation for the fifth dock built on a lake if the impacts from each dock were the same. We wouldn't require the applicant for the fifth dock to compensate for the cumulative impacts from all five docks. However, the mitigation required to offset unavoidable impacts caused by the fifth dock will minimize cumulative impacts.	No
020		In the last sentence, delete "the department will incorporate new science and technology as it becomes available." Adding or incorporating information and calling it "adaptive management" to change the WAC without going through rule-making would not be following the administrative procedures act.	If an applicant proposes a project that uses new science or technology that provides equal or better protection for fish life we want the flexibility to allow that. We agree that if the new science or technology becomes a standard requirement it must go through rule-making.	No
020		In the second paragraph the department may modify or delete common technical provisions, or add special provisions. Are there limits or constraints to these modifications? It is not clear in subsection 070 and this section seems to give unlimited authority to local Department personnel. Please change.	The department is constrained by statute. See RCW 77.55.021(7)(a) and RCW 77.55.231(1)	No
020		The department will incorporate new science and technology as it becomes available (This statement needs	The rule-making process does invoke public process. If an applicant proposes a project that uses new science or	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		to be substantiated to be valid. How will WDFW incorporate new science? DNR recommends WDFW through the Fish and Wildlife Commission adopt a process much like the Forest Practices Adaptive Management Program to invoke a public process under which they will make future rule changes based on science),	technology that provides equal or better protection for fish life we want the flexibility to allow that. We agree that if the new science or technology becomes a standard requirement it must go through rule-making.	
030	(011)	Second sentence, delete "constrains the water" and use original language of "contains it". "Containing" is a more accurate description of what banks do, according to common usage.	It is common for waterbodies to overflow their banks during high-flow events. For this reason "constrains" is an accurate description.	No
030	(012)	Delete all of the second sentence. There is no relationship between flood flow reoccurrences and the bankfull width.	The bankfull discharge often has a flood frequency of approximately 1.5 years on the annual series, but the frequency can vary widely depending on the particular watershed and stream reach characteristics (FISRWG 1998). We will add the word "often" to clarify.	Yes
030	(020)	Section 220-660-(030)(20): "Channel bed width" means the width of the bankfull channel, although bankfull may not be well defined in some channels. For those streams which are non-alluvial or do not have floodplains, the channel width must be determined using features that do not depend on a floodplain." The request for the addition was attributed to WFPA; however, WFPA does not support this definition. Again, the reliance on "bankfull" width is an expansion of the Department's authority	Comment noted. Will attribute the definition to WDFW.	No
030	(020)	Channel bed width - How can a stream be non-alluvial? A stream, by definition, must have flow of water adequate to form and maintain a channel. If it is non-alluvial, then there inadequate flow of water to form a stream. Maybe it is intended here that the bed and banks are "non-alluvial" meaning they are essentially bedrock. Clarification may be needed here.	Comment noted.	No
030	(021)	Definitions (20) and (21) referring to chronic danger, defines the condition as having experienced at least two consecutive years of flooding. How does this differ from	The Legislature created an additional HPA type: "chronic danger". The language in the definition is from RCW 77.55.021(15).	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		an emergency or imminent danger HPA. Also, what about damage to property (land which is being used for economic gain, or personal use). Please clarify.		
030	(024)	After "minimization" add "mitigation sequencing."	This definition is consistent with RCW 90.74.010(1).	No
030	(026)	Keep existing definition of "control." The new definition cannot be attained at any location. This would automatically place anyone out of compliance.	This definition is consistent with 16-750-003(2)(a) State noxious weed list definitions.	No
030	(033)	This definition refers to an alteration by humans. It does not give a timeframe, or the manner of alterations. Currently, there are many classified streams that would be considered to be a ditch if time-frames were not included.	Comment noted.	No
030	(037)	The definition of "Emergency" does not include the designation of an "Emergency" as declared by the local legislative authority. I recommend that this definition include such a clarification regarding the authority of the local legislative authority to declare an emergency in order to eliminate any confusion regarding the validity of actions taken subsequent to the declaration by local government forces to preserve life and property.	The authority to declare an emergency (with respect to hydraulic projects) is stated in chapter 77.55.021(12) as <i>"The department, the county legislative authority, or the governor may declare and continue an emergency."</i> Your proposal would not be consistent with this statute, or would require a legislated change. The process for declaring an emergency is in section 050(4).	No
030	(041)	Keep existing definition of "eradication." The new definition cannot be attained at any location. This would automatically place anyone out of compliance.	This definition is consistent with WAC 16-750-003(2)(c) State noxious weed list definitions.	No
030	(046)	Please provide a definition or parameters for "significant hardship"	WDFW declines to provide a definition at this time, though we agree that defining this term could be very helpful for applicants and the department. We note that there are hundreds of statutes that provide exceptions for "significant" or "undue" hardship, and few that actually define the term. This is not meant to justify WDFW's decision, but is merely an observation and acknowledgement of the difficulty agencies have experienced in defining the term.	No
030	(050)	I support the definition.	Comment noted.	No
030	(050)	Amend to read: Fish habitat" means habitat, which is used by fish life at any life stage at any time of the year	To reduce conflicting interpretations, the definition provided in this section is the same as the definition in	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat. Fish habitat also include habitats and ecosystems that indirectly support fish life habitats.	forest practices rules.	
030	(050)	WDFW should provide clarity in the rule by removing the phrase "including potential habitat" from this definition or including a statement in this section of the rule and elsewhere that it will not require mitigation for impacts to potential habitat on previously existing and currently serviceable structures when an applicant is performing maintenance work on those structures.	Section 080 states clearly that maintenance and repair work does not require compensatory mitigation unless the work will result in a new impact not associated with the original construction, or the work does not comply with common and project/site specific construction provisions.	No
030	(051)	This definition is blatantly set up to promote fish life habitat restoration, particularly on private/agricultural drainage ditches that are not streams.	A fish habitat enhancement project is defined in RCW 77.55.181.	No
030	(052)	What about stream channel improvements that alleviate flooding and improve "human conditions" and are fish neutral? Please add this.	This definition describes restoration work to improve fish habitat.	No
030	(052)	After "placed in" delete "or next to" to be consistent with RCW 77.55.021.	"Fish habitat improvement structures" (the definition at which your edit was directed) include materials placed in or next to the water to improve fish habitat. The Term "or next to" is appropriate here. Please see our response in Appendix A Section A.1.2 regarding jurisdictional boundaries.	No
030	(054)	Under RCW 77.55.021(7)(a) , " protection of fish life is the only ground upon which approval of a perm it may be denied or conditioned ." "Fish life" however is not defined in the RCWs. Therefore, WDFW seeks to define "fish life" through the rulemaking process, irrespective of what the legislature intended that to mean. To do so is to define and expand unilaterally its own jurisdiction. WDFWs jurisdiction and rulemaking authority is limited only to the HPA approval process, in so far as the legislature intended it, and not with respect to when an HPA will be required.	The purpose of WAC is to implement RCW. This language does not conflict with the RCW. Fish life has been defined in WAC 220-110-020(36) since at least 1994.	No
030	(061)	This needs to be added to the definition of fish life	Comment noted. Our jurisdiction is defined in RCW	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		habitat...otherwise there is a disconnect between what is not a freshwater area and what is fish life habitat; fish life habitat could be protected in a non-freshwater area.	77.55.021(1). There is work that occurs in non-fish bearing freshwaters of the state that impacts fish life and their habitats downstream. An example is a project that blocks the transport of sediment and wood by the stream to downstream spawning areas.	
030	(062)	Structural components (i.e. framing) should not be considered in this calculation as there is no other way to support the grating.	The proposed definition is consistent with other regulations. Another option is to increase the amount of surface area coverage to account for structural components	No
030	(066)	This new guideline appears to expand the definition of "protection of fish life" as given in the RCW, and therefore reaches beyond its scope.	"Protection of fish life" is mandated but not defined in chapter 77.55 RCW. Please see existing WAC 220-110-020(68) and proposed WAC 220-660-030 paragraph 116 in version 6; 118 in the final adopted rule.	No
030	(067)	This new guideline appears to expand the definition of "protection of fish life" as given in the RCW, and therefore reaches beyond its scope.		No
030	(071)	Does this include net-pens?	Yes in a broad sense.	No
030	(077)	The timeframe for imminent danger needs to be expanded beyond 60-days to at least 90-days.	This expansion would require a legislative change. 60 days is in the definition in statute (RCW 77.55.011(12)).	No
030	(079)	This definition refers to use of explosives on "any location adjacent to the waters". What does this mean? Adjacent to waters is not defined and who makes the determination. Please correct. This comment also applies to definition (80) "immediately adjacent".	Adjacent is determined by the impact to fish life and the habitat that supports fish life. This could vary depending on the amount of explosives, the sound attenuation, and physical characteristics of the site.	No
030	(079)	After "under, or in waters of the state" delete "or in any location adjacent to any waters of the state". In-water blasting does not define blasting in upland areas that are out of the water. These are two definitions contained into one.	This is our definition of this hydraulic project. Please see our response regarding our jurisdiction.	No
030	(080)	After "area of ground" add "below the OHWL" and after "immediately adjacent" add "upstream or downstream". After "conducted under" add "the authority of" to be consistent with RCW 77.55.021.	Please see our response in Appendix A Section A.1.2 regarding jurisdictional boundaries.	No
030	(082)	Your definition of "lake" needs to be refined. As defined currently, this could include man-made ponds and it should not. The Department of Ecology and law	We'll add "artificially impounded natural fresh waters of the state" to provide clarity.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		currently allows the impoundment of water up to ten-feet high and one acre in size of which WDFW does not have jurisdiction for said waters.		
030	(085)	To be consistent with other State laws and regulations, Dept. of Fish and Wildlife should use the same definition that the Dept. of Ecology, as included in the Stormwater Manual, and has required all agencies to adopt as part of stormwater ordinances, NPDES permits, construction site permits, and other water quality regulations that WDFW was also required to adopt.	This definition accurately explains how the term is used in this chapter. No citation for a RCW or WAC definition is provided. Repair and maintenance is mentioned in SEPA but is not defined in WAC 194-11-040 or chapter 43.21C RCW. The purpose of having definitions in rule is to clarify how the term is used in that rule.	No
030	(085)	The definition of maintenance and the associated definition of rehabilitation are too limited to allow counties to maintain existing infrastructure. This limitation has and will lead to county infrastructure failing over time with potential environmental degradation. We believe it is important to establish a process that addresses this issue. At a minimum the definition for maintenance should be expanded to include some activities that restore a structure to a condition that will not likely fail and cause other environmental problems.	The rules do not preclude activities that restore a structure to a condition that will not likely fail or cause environmental problems.	No
030	(086) and (098)	Refer to major and minor modification. These are not definitions at all as they are circular and wholly left up to the discretion of local Department personnel. This level of discretion of a defined term is inappropriate and should be reworked, or eliminated.	The language from the minor modification definition is from RCW 77.55.231(3). All other modification are considered major and require modification of the HPA. Proposed section 050(16) and (17) provides the rules for modifications.	No
030	(089)	Delete "all of the annual peak floods of record" and replace with "the average of all one-year flood elevations." Annual peak floods would indicate the hundred year flood or higher and is not a flood that occurs annually every year. This would indicate the one-year flood level to be consistent with RCW 77.55.021.	This is defined as an <u>average</u> of the annual peak flows.	No
030	(105)	Ordinary high-water line can be skewed by one year of flooding and therefore would not be considered ordinary. Please revise the definition.	This definition is from the statute RCW 77.55.011(16).	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
030	(106)	Need to define habitat functions to be protected.	See proposed WAC 220-660-100(3) and WAC 220-660-320(3) and (4).	No
030	(106)	Add a definition “no net loss” outlining that existing conditions of shoreline ecological functions should remain the same as before a development action is implemented, and that the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions and resulting habitat loss resulting from new development.	The existing definition of no-net-loss is retained with some minor modification. Because our authority is limited to the protection of fish life, our definition of no-net-loss is specific to fish life and the habitat that supports fish life.	Yes
030	(114)	Amend to read: When certification is not required the professional must have: obtained a B.S., B.A., or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and have at least five years of related work experience.	Your suggestion seems overly prescriptive to us. Many of the DFW scientific technicians who conduct habitat surveys have two-year degrees, and are considered “qualified professionals.” Please refer to the response to the next comment.	See next
030	(114)	We believe that the WDFW definition for a “Qualified Professional” is in conflict with WA State engineering practice law definition. The RCW defines the practice of engineering as being “any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services, creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.”	The term qualified professional can apply to several occupations including biologist. Proposed WAC 220-160-010 states “The purpose of the HPA is to ensure that construction or performance of other work is done in a manner that protects fish life.” Engineering certification is not required to comply with the proposed rules, but someone with the proper understanding of the processes that create and maintain fish habitat is required (“qualified professional”). Building codes, and other rules and laws, exist for the protection of the public health and safety. The applicant must obtain appropriate permits for building a civil structure and an engineer has to back that up with their stamp. Based on legal advice, we will amend the proposed rule by adding the following disclaimer: “This definition does not supersede other state laws that govern the qualifications of professionals that perform hydraulic projects.”	Yes
030	(116)	Protection of fish life - this definition implies that mitigation sequencing is required when proposed activities will avoid impacts. If avoidance is achieved then mitigation should not be required.	Avoidance is the first step in the mitigation sequence. If avoidance is achieved the subsequent steps are not required.	No
030	(116)	Amend to read: Protection of fish life means prevention	Comment noted. The proposed amended rule definition	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		of loss or injury to fish or shellfish, and protection of the habitat that supports fish and shellfish populations.	accurately reflects how the authority under chapter 77.55 RCW is implemented.	
030	(116)	It is recommended that a variation of the previously proposed definition be utilized, as follows: "Protection of fish life "means the prevention of loss or injury to fish life and the protection of fish life habitat by avoiding and mitigating adverse impacts through mitigation sequencing."	See response above.	No
030	(118)	We believe the inclusion of 'compensating for' is too ambiguous and itself needs to be defined. Different stakeholders may have conflicting definitions for 'compensation.' For example, the tribes in their comments stated that they would like to remove language within 080(4)(d) which we believe helps define how you would determine compensatory mitigation.	Definitions, in general, describe the term and not how it is applied. Please see our response related to section 080(4)(d).	No
030	(120)	Rehabilitation means "major work". What is major work, and who determines major work, versus ordinary work. Please revise.	The key part of the definitions is "... needed to restore the integrity of a structurally deficient or functionally obsolete structure." This would be work beyond routine maintenance and repair.	No
030	(120)	Delete this definition. Rehabilitation is a type of maintenance as used in the State definition of "maintenance."	Repair and maintenance is mentioned in SEPA but is not defined in WAC 194-11-040 or chapter 43.21C RCW. The purpose of having definitions in rule is to clarify how the term is used in that rule.	No
030	(121)	Delete this definition. Replacement is a type of maintenance as used in the State definition of "maintenance."	Repair and maintenance is mentioned in SEPA but is not defined in WAC 194-11-040 or chapter 43.21C RCW. The purpose of having definitions in rule is to clarify how the term is used in that rule.	No
030	(124)	"Riparian Zones" seems to include flood plains, which it should not. Please refine this definition.	Your comment was noted but this statement is contrary to the science. See Management Recommendations for Washington's Priority Habitats: Riparian for the science http://wdfw.wa.gov/publications/00029/ .	No
030	(124)	Delete the last sentence. Aquatic zones are areas below the OHWL. This definition implies that all riparian zones have both aquatic and upland habitats. But not all riparian zones do.	We have added the word "often" to clarify that most riparian zones have elements of both ecosystems.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
030	(128)	Keep the old definition. After the second sentence, starting with "saltwater areas include" delete the rest of sentence. It is arbitrary and needs to be consistent with other regulations and boundary limits which do not currently include freshwater areas that are below the 35 parts per million saltwater definition.	We have modified this definition.	Yes
030	(130)	"fish" should not be deleted here, but could be changed to "fish life". deleting "fish" here opens the HPA rules to regulating non-fish life habitat.	For consistency this was amended to "habitat that supports fish life".	No
030	(144)	After "mobile life stage" add "when fish would be expected to move or to travel."	The definition accurately explains how the terms are used in this chapter.	No
030	(149)	Delete the sentence "A 'watercourse' includes all surface-water-connected wetlands that provide or maintain fish habitat." A watercourse is a separate definition from the definition of a "wetland" and should not combine the two.	This definition accurately explains how the term is used in this chapter. The purpose of amending the definition is to provide clarity. In the past 20 years people have failed to obtain an HPA for work in wetlands that are salt or freshwaters of the state as required in RCW 77.55.021(1).	No
030	(151)	The inclusion of "watercourse" was introduced to expand jurisdiction from just "streams" to smaller formerly unregulated "watercourses".	We respectfully disagree. "Watercourse" is defined in our current rules, WAC 220-110-020(105) and we are not proposing substantive changes. Our jurisdiction is governed by the statutory definition of "hydraulic project" in RCW 77.55.011(11).	No
030	Add	Add definition for "fishway"	A fishway is any structure covered under chapter WAC 220-660-200 Fish passage improvement structures. An exception is a trap-and-haul operation that would not, typically, be called a fishway, but it is a fish passage improvement structure.	No
030	Add	The definition of "impact" should be provided.	See no-net-loss.	No
030	Add	The term "water body" is used in the rules in a few different places, yet there is no definition in Section 030. For example, the term "water body" is used in Section 190 (Water Crossings). Section 030(147) defines water crossing structures as "...structures that span over, through, or under a watercourse. Examples are bridges, culverts, conduits, and fords." Yet Section 190 states that	The definition: "Waterbody means 'waters of the state' has been added to 220-660-030.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		an HPA is required for any structures that cross a stream, river, or water body. What is the definition of a water body? Should "water body" be replaced with "watercourse", "lake", or some other text that is defined in Section 030?		
030	Add	Add definition for "infrastructure"	We assumed that this term fell under common parlance and didn't require a definition. But the usage in these rules, and in many contemporary documents related to environmental issues, is quite a bit broader than a strict definition of infrastructure according to Webster: "the basic equipment and structures (such as roads and bridges) that are needed for a country, region, or organization to function properly." Clearly, what we call infrastructure is any structure, public or private, essential or non-essential, that is of value. We will replace "infrastructure" with "structures or other improvements of value."	Yes
040	(2)	Exemptions should be aligned with Corps 404 exemptions, SEPA exemptions, and Shoreline Permit exemptions.	The exemptions are defined in chapter 77.55 RCW.	No
040	(2)(i)(vi)	Does "other structures that add surface area to the hoist" include shade covers?	Will add "shade" to this section in order to clarify.	Yes
040	(2)(j)	Amend to read: Instrument installation, operation or removal does not impede or interfere with spawning, feeding or migration needs of fish life.	This is restricted to work by hand or with hand tools and the work cannot block fish passage.	No
040	(2)(k)	Restate or add to (k) to read, . . . the provisions within WAC 220-660 do not apply to Forest Practices Hydraulic Projects which are defined and governed in chapter 222 WAC.	We'll amend to read "Forest Practices Hydraulic Projects, as defined in chapter 76.09 RCW and governed in Title 222 WAC."	Yes
040	(2)(l)	Omit exemption for floating raft systems used for private or commercial shellfish culture facilities.	This would require a statutory change. See RCW 77.12.047(3)	No
050	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement. Please refer to WAC	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		the RCW and not provide guidance language.	197-11-700 for more about definitions.	
050	(3)	Risk to public safety appears discretionary and should contain some standards. For example, ' if the structure creates conditions above and beyond the natural dangers of a river.'	An emergency is defined in Hydraulic Code rules section 030(38) as “an immediate threat to life, the public, property, or environmental degradation.” This definition comes directly from RCW 77.55.011(7).	No
050	(3)(b)(i)(B)	Some flexibility should be afforded fish habitat enhancement projects that are not directly related to and result from another project impacting wetlands, riparian areas, or waters of the state.	Fish habitat enhancement projects are defined in RCW 77.55.181. They are not mitigation projects but restoration projects.	No
050	(3)(b)(i)(D)	Applicants who have been rejected for a Streamlined Fish Habitat Enhancement project should not have to submit a new complete written application for standard processing if they want the project reviewed under standard HPA processing procedures.	They don't. An applicant may request the department process their application as a standard individual HPA.	No
050	(3)(b)(ii)	Delete last sentence. It is not consistent with RCW 77.55. The RCW does not limit the number of locations per HPA issued; this is contrary to current practices.	The purpose of WAC is to implement RCW. This language does not conflict with the RCW.	No
050	(3)(ii)(A)	Change " A standard HPA may authorize work at multiple project site if:" to " A multisite HPA may authorize work if . "	The language is changed to clarify that an individual standard HPA is limited to a single project site.	Yes
050	(3)(iii)	Eliminate General HPA	Comment noted. See our response related to HPA permit streamlining.	No
050	(3)(iv)	Eliminate Model HPA	Comment noted. See our response related to HPA permit streamlining.	No
050	(4)(a)(i)	The level of authority allowed to declare an emergency is too restrictive (governor, department or county legislative authority). Permittees or those that may require an emergency HPA should be able to work directly with WDFW staff to determine if an emergency situation exists without a formal emergency declaration being issued.	See RCW 77.55.021(12)(a). Applicants can work directly with the department but the department, not the applicant, must make the emergency declaration.	No
050	(4)(a)(ii)	The requirement that the county legislative authority “must notify the department, in writing, if it declares an emergency;” is unreasonable and not supported by statute.	Notification is required in statute - See RCW 77.55.021(12)(a). We cannot process HPA under the emergency declaration if we don't know it exists.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
050	(4)(a)(iv)	Permittees or those that may require an emergency HPA should be able to work directly with WDFW staff to determine if an emergency situation exists without a formal emergency declaration being issued.	WDFW is authorized to make a determination that an emergency exists; we do so by working directly with an applicant. It is unclear what is being suggested. If we contact an applicant about their emergency and we don't hear back from them, we send them a written HPA. If suggestion is that the work would begin without securing approval from the department this would violate RCW 77.55.021(1)	No
050	(4)(d)	The requirement for "as-built drawing within thirty days after the hydraulic project is authorized" is burdensome and unreasonable. There should be adequate time, at least 90-120 days,	The language reads "...within thirty days after the hydraulic project authorized in the emergency HPA is <u>completed.</u> "	No
050	(4)(e)	Motivation for submitting an acceptable mitigation plan after the emergency actions have been completed cannot be determined. Language should specify that the materials used for an emergency action will be removed (e.g. rip rap) if an acceptable mitigation plan cannot be produced.	If the HPA authorized the materials to remain in place after the emergency then this would be a compliance issue. The statute and rules regarding compliance and enforcement must be followed by the department.	No
050	(5)(e)	After "HPA is issued" add "or the date of the last permit is issued through the JARPA process that includes federal, state, or local agency."	This suggestion does not comply with RCW 77.55.021(14)	No
050	(5)(e)	In the case of imminent danger to public health and safety, there must be issuance of the HPA earlier than 15 calendar days after receiving a complete written application.	This suggestion does not comply with RCW 77.55.021(14)	No
050	(5)(f)	A mitigation plan should be provided before the work is conducted rather than within 90 days after completion.	Ideally it would, but since the HPA must be issued within 15 days this may not be possible.	No
050	(6)	There must be provisions for mitigation, as none are required as per this section. We recommend [missing what was recommended]	The project must satisfy the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii) so a mitigation plan may not be necessary. The biologist would include the appropriate avoidance and minimization provisions in the HPA and compensatory mitigation (if necessary).	No
050	(6)(b)	Please add property to the list of items that are damaged or threatened.	This language comes directly from RCW 77.55.021(15).	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
050	(7)	There does not seem to be a compelling reason why a mitigation plan cannot be submitted prior to an Expedited HPA rather than after it is completed.	Ideally we would have a plan but since the HPA must be issued within 15 days this may not be possible.	No
050	(7)(a)	Who determines "significant hardship"?	The department. See RCW 77.55.021(16)	No
050	(7)(a)	WDFW should provide more detail on what constitutes a significant hardship or unacceptable environmental damage and who has the authority to designate this. An imminent danger HPA is very similar to an expedited HPA and further clarification is necessary.	You are correct; both are processed in the same timeframe. See RCW 77.55.021(14) and (16) for additional clarification.	No
050	(7)(d)	After "or a mitigation plan" add "per RCW 90.74.020". Mitigation plans are authorized by the legislature in 90.74 for off-site mitigation, not for RCW 77.55.	See RCW 77.55.251	No
050	(9)(c)(iii)(D)	Proposed WAC 220-660-050(9)(c)(iii)(D) relates to fish life and habitat, while the RCW 77.55.021(2)(c) definition of a complete application specifically only refers to "proper protection of fish life." There should be no discretion on what constitutes an incomplete application - while there may conversely be discretion on what constitutes a "complete application."	Comment noted. However the rules should define what constitutes "complete plans and specification for the proper protection of fish life."	No
050	(9)(c)(iii)(D)	After "habitats, and plans" add "per RCW 90.74.020." After "mitigate those impacts to insure the project" delete "results in no-net loss of fish habitat function, value, or quantity" and add "that is protective of fish life" to be consistent with RCW 77.55.021. RCW 90.74.020 the legislature authorized off-site mitigation plans that included fish habitat, function, value, and quantity of the off-site plan. Expanding these same requirement to the WAC 220-660 is not consistent with RCW 77.55 or RCW 90.74 and is an expansion of authority of the HPA process. The WDFW Policy 5002 Requiring or Recommending Mitigation is an internal document stating goals of the WDFW which appear to be unrelated to the guidance and statute 77.55 to require no-net loss. Goals within department policies should not drive the development of rules beyond the limit of the statute.	We respectfully disagree that requesting a description of the measures that will be implemented for the protection of fish life and habitat that supports fish life is going beyond our authority.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
050	(9)(b)	After "emergency HPA" add "if no reply, leave required information on the voicemail or an email to meet this requirement."	If we don't hear back from the applicant we send them a written HPA. If suggestion is that the work would begin without securing approval from the department this would violate RCW 77.55.021(1)	No
050	(9)(c)	There is no listing for imminent danger HPA. Please address the imminent danger HPA's and how they are obtained.	See proposed section 050(5). If you meant minor modifications see proposed section (14)(e).	No
050	(9)(c)(iii)(B)	WDFW should verify that technical work products comply with all relative state laws including the Washington State Engineering Practice Regulations.	Our authority is limited to the protection of fish life. We do not have the authority to enforce other state laws such as Washington State Engineering Practice Regulations. The applicant must assume responsibility for all other aspects of the project's design, permitting and performance.	No
050	(9)(c)(iii)(C)	Change "work waterward of the mean higher high water line in salt water..." to "work waterward of the ordinary high water line..."	See RCW 77.55.021(2)(b).	No
050	(9)(c)(iii)(D)	WDFW should include language here that states "or biological assessment and biological opinion issued as part of consultation with NMFS & USFWS if including the protection of fish life." (WAC 220-660-050.9.C.iii.D) Preparing this level of documentation for federal agencies to demonstrate measures taken to protect the life of endangered species should be sufficient for a state agency.	Often the BA is sufficient but since these documents address impacts to federally listed species only, the mitigation measures may not protect some fish life. See Freshwater Habitats of Special Concern (100) and Saltwater Habitats of Special Concern (320).	No
050	(9)(c)(iii)(D)	Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but WDFW may not impose conditions that attempt to optimize conditions for fish life out of proportion to the impact of the proposed project. RCW 77.55.231.	Your comment was noted but it wasn't specific enough to respond to. Please see section 080 Mitigation	No
050	(12)(a)	The proposed code changes show that WDFW will notify other agencies of the proposal and provide a review period. This additional step is not necessary. It should be the applicant's responsibility to coordinate with other agencies and tribes, not WDFW	RCW 77.55.351 requires the department to provide access to local governments and others to hydraulic approval applications.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
050	(12)(a)	Seven days is too short a time-frame for the Tribes to review and comment on many HPA. We suggest at least a 15-day review period.	Comment noted. We need to maintain the 7-day comment period in order to maintain compliance with our statutorily-mandated processing timeline.	No
050	(12)(e)	DNR has a proprietary role as the manager of state owned aquatic land and is not a “permitting” agency; if this (12)(a) was re- written to state “local, state and federal permitting or authorizing agencies,” it would then technically include DNR.	We added the recommended language to clarify that DNR can access the public system.	Yes
050	(13)(b)(v)	Similar comment on 220-660-050 (13) (b) (v); if it said “and all participating agencies” or “and all participating or authorizing agencies,” it would then technically include DNR.	We added the recommended language to clarify that DNR can access the public system.	Yes
050	(14)(a)	Who determines, unreasonably withhold, or condition and how is the situation remedied, or determined? The Department in issuing a permit should not be able to determine whether or not it is reasonably held or conditioned and local legislative authority should have jurisdiction.	Ultimately it would be the Pollution Control Hearings Board if a denial or HPA conditions are appealed on the grounds they are unreasonable.	No
050	(14)(a)	WDFW needs to clearly define "out of proportion" so that applicants have some certainty in knowing how the agency will ensure that its biologists consistently impose conditions that are not out of proportion to the project's impacts.	This language is from the statute. What is "out-of-proportion" is project specific. A permittee can appeal HPA conditions if they think the conditions are "out-of-proportion".	No
050	(14)(b)	Omit "unless enough mitigation can be assured by provisioning the HPA or modifying he proposal"	This accurately reflects agency practice of provisioning the HPA or modifying the proposal to protect fish life. The latter is done after consultation with the permittee.	No
050	(14)(b)	Omit "the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141.	Implementing this suggestion would require a statutory change. See RCW 77.55.141(2)	No
050	(14)(d)	Change "may require a person to notify the department..." to "must and/or will require..."	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
050	(14)(d)	Add section containing requirement for start work	See 220-660-050(14)(d)	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		notification and AHB approval of work start.		
050	(15)(d)	This provision should further clarify it applies to other maintenance work that occurs periodically.	This language is from RCW 77.55.021(9)(c).	No
050	(16)(c)	WDFW should be capable of responding to requests for in-water work extensions in a timely fashion. Many in-water work extension requests will occur during construction, late in the season for example, and knowing sooner than 45 days will be critical for continuing construction. Waiting 45 days for an in-water work extension is unacceptable.	The language is from RCW 77.55.021(10). A time extension is different than a work window extension. A time extension would be requested if your HPA expired in November 2014 but you couldn't do the work until July 2015. A work window extension is usually a minor modification so the biologist can give verbal authorization without modifying the HPA.	No
050	(17)	County projects requiring HPAs can be subjected to delays or changes due to changed conditions during a project. RCW 77.55.021(10) authorizes DFW to modify a permit due to changed conditions. The proposed rules do nothing to clarify or limit the ability of DFW to require new permits or new permit conditions due to changed conditions. All too often, counties have experienced new permit requirements during a project adding substantial costs and have felt pressured into accepting these requirements to avoid projects being stopped. DFW required permit modifications should show that new permit requirements are necessary to protect fish life. It would be helpful to have language added to the proposed rules establishing a review process to ensure permit modifications are truly warranted and that added conditions are reasonable.	The statute requires the department to consult with the permittee. The statute also requires the department to be reasonable and we cannot optimize. If you do not agree that the modification is reasonable or you think the modification is optimizing you can appeal the HPA.	No
050	(17)(a)	Change "the department may modify a permit due to changed conditions..." to "the department may modify an hpa due to changed conditions, new information, to correct errors or to add additional conditions as necessary to ensure the protection of fish life."	Implementing this suggestion would require a statutory change. See RCW 77.55.021(10) & (11)	No
060		There continues to be conflict between definitions of "shellfish", "fish life" and "fish life habitat" and "fish bearing" streams between the FPA definitions and the Hydraulic Code. The definitions of the Hydraulic Code must be retained as the two codes are integrated in order	Terms used in this section, as in every section of the Hydraulic Code rules, refer to definitions provided in the rule (section 030) unless an alternative definition is provided in a specific subsection. The definition for fish life and shellfish are unchanged. There isn't an existing	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		to maintain protection levels for fish life and fish life habitat, and the technical guidance required to be developed as specified in WAC 220-660-060(b), must clarify any differences in definitions to provide adequate fish life and fish life habitat protection for forest practices hydraulic projects.	or proposed definition for a fish bearing stream. The only change is to the definition of fish habitat so it better aligns with the FPA definition WDFW agrees that these terms need to be commonly understood in both the HPA and Forest Practices programs, and will continue to work with DNR and others to ensure this is indeed the case.	
060		RCW 77.55.361 specifically relates to "fish protection standards" not "fish life protection standards." WFPA is concerned that adding "fish life" to WAC 220-660-060 creates an inconsistency with RCW 77.55.361. We ask that you retain the current "fish protection standard" language in WAC 220-660-060 in appropriate deference to the statutory language.	We have changed "fish life protection standards" to "fish protection standards".	Yes
060	(1)(b)	In April 2012, the Washington state legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires <u>resulted in the integrating integration of the hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules and the addition of technical guidance in the Forest Practices Board Manual for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, forest practices hydraulic projects are regulated under forest practices rules and the requirements of the hydraulic code rules</u> will no longer apply to any forest practices hydraulic projects as soon as fish protection standards have been integrated into the forest practices rules, and technical guidance has been developed and approved for inclusion in the Forest Practices Board Manual. Thereafter, forest practices hydraulic projects will be regulated under forest practices rules. The amended statutes also include a requirement that the department adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.	This proposed revision is focused on changing the verb to past tense, rather than projecting into the future. This comment is appropriate, since HPA/FPA Integration has already occurred.	Yes, change verb tense to past tense.
060	(2)(a)	For FPAs that include a forest practices hydraulic project	The original language is more appropriate for the	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		involving fish bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and <u>notify the department of natural resources (DNR) to either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments.</u> Before commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will shall also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.	concurrence review process being described in this section. Current (original) language is more consistent with the legislature's direction because: (1) with the very limited timeframe for "standard" reviews (non-concurrence), WDFW will attempt to communicate with DNR as concerns arise during the review of a FPHP; however, this is not always possible prior to providing comments; (2) if there <u>is</u> time to actually work with the landowner to address concerns prior to commenting, WDFW will inform DNR of those communications.	
060	(2)(c)	“Preapplication collaboration with the department will result in more efficient and successful outcomes for forest landowners and their proposed hydraulic projects.” While one certainly hopes this is true, I’m not sure this statement belongs in WAC. Consider rewording to, “The intent of preapplication collaboration with the department is to provide more efficient and successful outcomes...”	Agree with suggested revision.	Yes
060	(3)(a)	The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards; <u>the plans and specifications provided through the Department of Natural Resources for the purpose of providing written comments in plain speak to the Department of Natural Resources regarding fish protection standards;</u>	The original language is consistent with legislative direction for WDFW’s review of those FPHPs with specified criteria for concurrence reviews.	No
060	(3)(d)	...If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating <u>in plain talk what that specific information is missing from the project design as it relates to fish protection standards</u> and that the applicant has been notified.	We respectfully disagree with proposed revision. Original language is more appropriate for WDFW's direction to staff related to missing information. Missing information may not always directly relate to fish protection standards, but may be needed in order for WDFW staff to understand the specifics of the project plan and design, so that they can assess whether or not the project meets fish protection standards. Specific details and guidance can be provided to staff as the need	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			arises.	
060	(3)(f)	The department must provide written notification of concurrence or nonconcurrence to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards <u>and cite the forest practices rule the project does not meet.</u> As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant <u>and any missing design specifications regarding fish protection standard.</u> including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards	We respectfully disagree with recommended revisions. The first revision should not be necessary if the FP rules contain all the appropriate fish protection standards from the Hydraulic Code. Fish protection standards are the criteria to measure against.	No
060	(3)(g)	. . . The department will recommend that DNR deny <u>disapprove</u> the FPA when efforts described in subsection (3)(e) of this section have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and enough mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate provisions <u>conditions</u> to the FPA. <u>A recommendation for disapproval must be accompanied by an explanation, written in plain talk, as to which fish protection standards are not being met, and what changes would be required to achieve the standard.</u>	We have changed "deny" to "disapprove" and "provisions" to "conditions". We respectfully disagree with rest of suggested revisions. WDFW will also recommend that DNR disapprove an FPA if adequate information is never provided for WDFW to assess the project for its ability to meet fish protection standards.	Yes
070	(1)	Who at the department can modify or delete technical provisions when one of the items listed is demonstrated?	All habitat biologists who process HPA applications can modify or delete technical provisions. They are the director's designees.	No
070	(1)	Omit "through establishing conditions on an HPA permit."	This is an accurate statement. Only those conditions on the permit apply.	No
070	(1)(d)	Amend to read: The modification or deletion of the provision will not contribute to net loss of fish life or habitat.	Comment noted.	No
070	(1)(h)	Omit	If an applicant proposes a project that uses new technology that provides equal or better protection for fish life we want the flexibility to allow that.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080		Retain this language "The department must require a mitigation plan for projects with significant impacts and those with ongoing, complex, and experimental mitigation actions."	We have changed the language to read "The department may require a mitigation plan for projects with significant impacts. The department must require a mitigation plan for those projects with ongoing, complex, and experimental mitigation actions." A mitigation plan isn't needed if the HPA can be conditioned to cover all mitigation actions required.	Yes
080		Drainage maintenance plans are currently being utilized or encouraged by WDFW and diking and drainage districts, but there is no provision or mechanism in the proposed rules that address the elements of such a plan independent of an amorphous mitigation plan. A drainage maintenance plan can be utilized as a tool, but is not required. The rule should spell out a mechanism to implement these drainage maintenance plans and elements thereof, if used.	The department would continue to accept drainage maintenance plans submitted with the HPA application. The language for what constitutes a complete application is the same as the existing rule language.	No
080		The rules should further clarify that certain periodic agricultural maintenance, particularly the maintenance work of established flood control facilities that protect and enhance agricultural lands, should be exempted from the no net loss standards of fish life that are too onerous or costly to endure.	Chapter 77.55 RCW doesn't exempt hydraulic projects conducted on agricultural so the department has to process HPA applications for this work to comply with the law. The no-net-loss standard has not changed. The proposed language is virtually the same as that in the existing rules. In addition, most maintenance activities do not require compensatory mitigation	No
080	(1)	Delete the last sentence "This mitigation minimizes loss of fish habitat function, value, and quantity."	This is the definition of no-net-loss. See WAC 220-110-020(68).	No
080	(1)	Amend to read: The department defines mitigation as sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts. The department applies the technical and special provisions to mitigate impacts to fish life from hydraulic projects. This mitigation may lessen the loss of fish habitat function, value, and quantity however mitigation does not always ensure that unavoidable impacts and the resulting habitat or species loss are fully offset.	Comment noted - this language was changed to reflect (3)(c).	Yes
080	(2)	Change "and revegetation" to "retaining existing vegetation."	This is rectifying the impact by restoring the affected environment.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(2)	Delete all of "Fish Life Concerns." Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	Comment noted - our attorneys who reviewed the rules said while this is unusual it is acceptable.	No
080	(3)(a)	What type of information can be used to make these determinations? Are these science based decisions only? This wording is vague and may cause confusion toward making permit decisions.	It can be information provided in the permit application or other information the department has available.	No
080	(3)(a)	At the end of the first sentence, after "on available information" add "within the worksite" to be consistent with RCW 77.55.021 and 77.55.231.	Your comment was noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction	No
080	(3)(a)	Delete "to fish life, including fish habitat function, value, and quantity based on available information" and replace with "for the proper protection of fish life" per RCW 77.55.021. This new guideline appears to expand the definition as given in the RCW, and therefore reaches beyond its scope.	A role of the Fish and Wildlife Commission is to define protection of fish life through the adoption of the rules.	No
080	(3)(b)	Delete all of (3)(b) because it is arbitrary. This new guideline appears to expand the definition of "Protection of fish" as given in RCW 77.55.021, and therefore reaches beyond its scope. It appears that it's an open-ended requirement that would extend beyond the area being permitted, which expands the HPA beyond RCW 77.55.021. 77.55.231 states: (1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.	We are constrained in the implementation of the Hydraulic Code rules to the authority conveyed to us in statute. We agree that surveys, studies, or reports requested by the department must be reasonably related to the project, and that we cannot optimize.	No
080	(3)(b)	In the first sentence, after "impacts to fish life" add "that are reasonably related to the project."	We have changed the language in (2) to clarify this would only be needed to assess impacts reasonably related to the hydraulic project.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(3)(d)	"prevent" should be replaced with "avoid" for consistency.	We have made this change to improve consistency.	Yes
080	(3)(d)	After "impacts to fish life" add "that are reasonably related to the project."	We have changed the language in (2) to clarify this would only be needed to assess impacts reasonably related to the hydraulic project.	Yes
080	(3)(e)	Under Section 3e, the Department may require advance mitigation of an experimental mitigation technique. If the mitigation works from the new technique, we would be supplying twice the mitigation needed. Please rework this section to enable one to one mitigation , perhaps by requiring a bond, or other financial incentive rather than the actual work prior to mitigation.	The department cannot require financial assurances. We agree that if the advanced mitigation is fully functioning prior to the impact that a 1:1 ratio is appropriate. Please note the use of the word "should" here indicates this isn't a firm requirement.	No
080	(3)(f)	Delete all of (f). Replacement of any portion of any structure may not be able to use other types of materials since replacement is part of maintenance, which is maintaining a structure under mitigation and the State definition of "maintenance." This would be mitigation required for implementing mitigation.	This would be an exception as allowed for in 220-660-070(g).	No
080	(4)(3)	Omit	Comment noted	No
080	(4)(b)	Compensatory mitigation is being set up to be regulated much like wetland mitigation which will significantly increase costs to affected project proponents, and such that mitigation/conservation banks can be set up or layered on existing banks. Ultimately the costs will stifle agricultural ditch cleaning and result in the loss of farmland.	We respectfully disagree. "Mitigation" and "No-net-loss" are in the existing rules in effect since 1994. The purpose of this section is to provide clarity about when mitigation including compensation is required. The bank or in-lieu fee provision recognizes these tools are out there and gives the applicant the flexibility to use them with some sideboards.	No
080	(4)(b)	After "offset impacts" add "that are reasonably related to the project."	We have changed the language in (2) to clarify this would only be needed to assess impacts reasonably related to the hydraulic project.	Yes
080	(4)(b)	We request that the word "same" on the revised comments be removed and the condition that the department may waive the no net loss mitigation be added. This section should recognize that the "same" habitat types and fish populations may not be beneficial if these are invasive or non-native.	Comment noted. Impacts to non-native invasive species would not require compensatory mitigation.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(4)(c)	Amend to read: When reviewing a mitigation plan, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. When using this guidance, the department may not limit the scope of compensatory mitigation options to areas on or near the project site, or to habitat types that are the same type as those on the project site. The department must fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay. The department must also accommodate the mitigation needs of the infrastructure or non-infrastructure development, including proposals or portions of proposals that are explored or developed in RCW 90.74.040. However, the department is not required to approve an off-site mitigation plan and will not approve compensatory mitigation that does not provide equal or better fish habitat functions and values.	Language was modified to read ... At the request of the project proponent, the department must also accommodate the mitigation needs of the infrastructure or non-infrastructure development, including proposals or portions of proposals that are explored or developed in RCW 90.74.040.	Yes
080	(4)(c)	The current draft code underscores the preference for on-site, but does not emphasize the parallel importance of in-kind mitigation. DNR recommends that WAC 220-660-080(4)(c) be modified to reflect the importance of in-kind mitigation, especially in consideration of potential impacts to high priority aquatic habitats such as eelgrass. Allowances for out-of-kind mitigation can contribute to a net loss of ecosystem function and undermine extensive efforts to conserve and restore critical aquatic habitats.	We'll amend the language to read "...the department prefers compensatory mitigation actions that restore impacted habitat types and functions ..." See (4)(b)	Yes
080	(4)(d)	Omit	Comment noted.	No
080	(4)(d)	The rules should state measures which will be used to compare baseline conditions to those expected following project implementation.	There are many different tools to do this so we want the applicant to have the flexibility to use the most suitable methodology.	No
080	(4)(d)	After "mitigation credit and debits" add "at a mitigation site."	Comment noted - debits would occur at the impact site and credits would occur at the mitigation site. However, the mitigation credits could also be generated at the impact site. We think the language is clear.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(4)(d)	Add a provision to 220-660-80 that provides a compensatory mitigation analysis tool appropriate for analyzing the impacts of large wood relocation, in addition to those provided for analyzing impacts to land. We still have some concern about the level of complexity. We also request the proposed technique be made available for review.	Comment noted. The department is working on a mitigation guidance document that will go through SEPA before being used by the department.	No
080	(4)(d) and (e)	While DNR has no specific comment on the proposed wording for WAC 220-660-080 (4) (c), please note that DNR will consider these requests that affect state-owned aquatic land on a case-by-case basis. DNR preference is authorize only those mitigation projects that restore or enhance ecological processes and functions to state-owned aquatic lands; compensation projects should not adversely affect naturally occurring aquatic habitats or species on state-owned aquatic lands. In addition, project proposals must not conflict with DNR habitat stewardship goals or DNR landscape scale plans, including aquatic reserve management plans.	The department must comply with statute, RCW 77.55.241.	No
080	(4)(e)	Eliminate the mitigation banking and in-lieu fee programs that have been introduced. These proposed programs do not have any statutory direction and allowing a project applicant to pay a fee or purchase credits for habitat damage rather than undertake department evaluated and monitored mitigation that can be measured for success is a step backwards in the State's efforts to restore Puget Sound.	Please see Ecology's website regarding mitigation banks and in-lieu fee programs at http://www.ecy.wa.gov/mitigation/options.html These programs are intensively monitored.	No
080	(4)(e)	Mitigation banks are often a better solution than permittee responsible projects	Comment noted	No
080	(4)(e)	We ask that the new Hydraulic Permit Application rules provide a mitigation sequencing process that puts WDFW rules, in conformance with other State and Federal mitigation rules whereby approved conservation banks with appropriate habitat credits are the preferred mitigation option for HPA permits when this is the best environmental alternative.	The approach suggested doesn't reflect our mitigation policy. The policy has a preference for in-kind and on-site mitigation.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(4)(e)	Delete the last sentence, to be consistent with RCW 90.74.010(1)(c)	The work can still benefit the same fish populations and accomplish RCW 90.74.010(1). Note the use of "should" indicates a preference as opposed to "must" that indicates it's required.	No
080	(4)(f)	If the habitat conditions is degraded, then the compensatory mitigation should strive to improve on a degraded state rather than trying to maintain it.	What you are suggesting would be "optimizing" and would not comply with RCW 77.55.231.	No
080	(4)(g)	After "condition of the habitat" add "within the project worksite."	Comment noted. Please see our response regarding our jurisdiction.	No
080	(4)(h)	Require compensatory mitigation for the repair or replacement of structures due to the increased duration of habitat impact.	The baseline for assessing impacts is the existing condition not the pre-project construction condition.	No
080	(4)(h)	DFW has asserted that most of this work { maintenance, rehabilitation and replacement) will not require any mitigation above and beyond avoidance and minimization measures. As such, WDFW should provide the needed clarity within the rule by removing the definition for "rehabilitation" and delete references to "work that rehabilitates" or by indicating that maintenance work, even that which rehabilitates an existing structure, will not require compensatory mitigation or replacement.	We do clearly state this but there are stated exceptions.	No
080	(4)(h) & (i)	Join and amend to read: Maintenance, repair and replacement on a legally constructed structure must comply with the applicable common technical provisions and project-specific and site-specific provisions. Maintenance does not require compensatory mitigation unless: The maintenance causes a new loss of fish life habitat function, value or quantity not associated with the original construction of the structure. Mitigation will be required for repair and replacement of a legally constructed structure that extends the timeframe for habitat impacts.	We modified (4)(i) to clarify when compensatory mitigation may be required for maintenance work.	Yes
080	(4)(i)	Delete all of (i) to be consistent with (h).	There are no inconsistencies. These build on one another but we have added a sentence for clarity.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(4)(i)	The term “replacement” occurs at least 35 times in the CR-102 version of the rule update, and several of these instances would benefit from a definition with a time limit. Without such a time limit it is fully possible (indeed, we can provide examples) to replace a structure that was destroyed years or even a decade ago, encroach on an inter-tidal area, regardless of the impact, with no mitigation, even when a clear mitigation option is at hand. This could be changed easily here, by including a one-year limit on applications for replacement, and a similar limit on repairs and rehabilitation. In the current rule update the proposed limit is three years for a bulkhead that has been breached.	WAC 220-660-140(3)(h) and WAC 220-660-380 (3)(h) of the proposed rule both indicate that a structure must have been usable at the site within the twelve months immediately before the time of application submittal to be considered a replacement. We have made some minor changes to these sections to clarify this.	Yes
080	(4)(j)	Amend to read: Removal of a legally constructed human-made or engineered structure does not require compensatory mitigation unless project work creates a new impact that is not offset by the removal of the structure. Removal of any illegally constructed human-made or engineered structure will require compensatory mitigation with the pre-construction habitat considered the baseline	Comment noted. The statute of limitations for enforcement of a hydraulic code violation is two years. Removal of a structure under a court order would be subject to compensatory mitigation.	No
080	(4)(k)	After "impacts" add "reasonably related to the project."	See previous comment.	No
080	(5)(a)	Change "may" to "will"	Comment noted.	No
080	(5)(a)	This implies that a mitigation plan may not be required...but if they are going to do things on a credit/debit methodology, then everything has to be documented to the extent that credit/debits can be calculated essentially requiring a formal mitigation plan.	A mitigation plan isn't needed if the HPA can be conditioned to cover all mitigation actions required.	No
080	(5)(a)	Delete "department may require" and add "Proponents may use" to be consistent with RCW 90.74.020.	WDFW can require a mitigation plan. However, upon request of the applicant, we have to follow the <u>guidance</u> contained in RCW 90.74.005 through 90.74.030.	Yes
080	(5)(b)	Delete all of (b) and rewrite to say "Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed" to be consistent with RCW 90.74.020.	WDFW can require a mitigation plan. However, upon request of the applicant, we have to follow the guidance contained in RCW 90.74.005 through 90.74.030.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(5)(c)	Amend to read: A mitigation plan to propose off-site mitigation that upon request of the applicant is reviewed by the department using the guidance in RCW 90.70.20 must:	We have changed the language to read: "When reviewing a mitigation plan under RCW 77.55.021, the department must, at the request of the applicant, follow the guidance contained in RCW 90.74.005 through 90.74.030. Pursuant to RCW 90.74.020, a mitigation plan must do the following:"	Yes
080	(5)(d)(i)	Amend to read: The relative value of the mitigation for the targeted habitat and fish life resources, in terms of the quality and quantity of biological functions and values provided	Our authority is specific to fish life. The suggested language could be interpreted to mean we were expanding our protection beyond fish life.	No
080	(5)(d)(ii)	Again, mitigation is to fit into bigger restoration plans, leading to more control by agencies and tribes of any proposed mitigation.	Comment noted, however your comment wasn't specific enough to respond to.	No
080	(5)(d)(ii)	WDFW must consider whether the mitigation plan provides equal or greater fish habitat functions and values compared to the existing conditions, based upon a number of factors. Among those factors are, "the compatibility of the proposal with broader resource management and habitat management objectives and plans, such as existing resource management plans, species recovery plans..." Does "existing" include only plans that are in place at the time WAC 220-660 is adopted, or does it include plans that "exist" at whatever time in the future WDFW is considering a particular mitigation plan?	"Existing" means plans that exist at the time the mitigation plan is submitted for approval.	No
080	(5)(d)(iii)	Change "fish habitat functions" to "habitat functions supporting fish life" or similar.	"Fish habitat functions" was changed to "habitat functions". The term "habitat functions" appears five times. The term "habitat function" is defined>	No
080	(5)(d)(iv)	Amend to read: The benefits of the proposal to the broader watershed landscape, including the benefits of connecting various habitats, ecological processes and fish life units and reducing population-limiting habitats or functions for target species;	Comment noted	No
080	(5)(d)(vi)	How is "significance" measured?	The impact to the productive capacity of the habitat and the population status of the non-target fish species.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
080	(5)(f)	After "department" delete "will require" and add "may develop." After "applicant the department" delete "if" and add "for". After "including monitoring" add "not to", to be consistent with 77.55.021(9)(b).	Comment noted. The RCW citation doesn't pertain to the comment.	No
080		Compensatory mitigation is required for restoration projects such as the removal of fine sediment from urban streams.	Compensatory mitigation means compensating for impacts by replacing or providing substitute resources and environments. The department would not require the fine sediment removed to be placed back in the stream. This would be counterproductive. Nor would we require additional stream habitat restoration to compensate for impacts.	No
090		In the last sentence, after "tidally influenced" delete "areas upstream of river mouths and" to be consistent with the definition of freshwater, which is less than 35 parts per million.	The language is accurate. Most freshwater waterbodies have less than 0.5 ppm of dissolved salts. Estuaries are considered saltwater.	No
100	(1)(a)	How are "habitats of special concern" different from essential habitat. Is this a second protected class of habitat? Is this a different definition of "Priority" than the WDFW priority habitat and species program. "Priority" fish species need to be listed somewhere with a rationale provided for their listing.	Freshwater (100) and saltwater (320) habitats of special concern are defined as those areas that provide essential functions in the developmental life histories of fish. We use the term "essential" in its common meaning: essential functions are necessary functions. We modified language referring to "essential fish habitat functions" because "Essential Fish Habitat" (EFH) was defined by the U.S. Congress in the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act. We do not use this term with its federal meaning in the hydraulic code rules. The "Priority Habitats and Species" designation is a construct of the Washington State "Priority Habitats and Species" (PHS) program, which was developed by WDFW to support county and local government implementation of the Growth Management and Shoreline Management Acts. "Priority species" include species appearing on federal and state endangered species lists, but also includes other saltwater and freshwater species of commercial, recreational, and tribal importance in Washington. "Priority Habitats" support	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			one or more “priority species.” Both federal EFH and state PHS are distinct from the “Critical Habitat” designated by NOAA or USFWS for a species listed under federal Endangered Species Act. “Habitats of Special Concern” in the hydraulic code rules could include areas designated as EFH, “Critical Habitat,” “Priority Species,” or “Priority Habitat” and are specified within each rule section.	
100	(2)	Delete all of (2). Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, the potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. “May” is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
100	(3)	For clarity of this section, we suggest that connected wetlands be added to off-channel habitat, and that wording be changed to clarify important geomorphic processes, as follows: (a)(v) Off-channel habitat including wall-based channels, flood swales, side channels, <u>and</u> floodplain spring channels <u>and</u> connected wetlands: (b)(i) Woody material and sediment <u>supply</u> , delivery and transport:	We changed the language to improve clarity.	Yes
100	(3)	Shade is an important riparian function that should be included here.	It is mentioned in section (2)(a)	No
110	(1)	Are "critical periods" defined anywhere, or is this undefined still?	These are defined in (3)(a)(i)	No
110	(2)	Delete all of (2). Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, the potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. “May” is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
110	(3)	WDFW should include language that requires the department to develop in water work windows in conjunction with federal agencies. Conflicting work windows can be a substantial challenge during construction for applicants. Requiring the applicant to coordinate between state and federal agencies on in water work windows is a dis-service to the applicant.	The work windows established by the Services cover only ESA-listed fish species. The department conditions HPAs to protect more than just ESA-listed fish species. As a result of the different authorities the work windows may be different for the same project.	No
110	(3)	To provide increased certainty to project proponents/permit applicants, authorized work times should be detailed in this section as in "Authorized Work Times in Saltwater" and "Mineral Prospecting" (Table 2, page 91).	The department publishes on its public web site the times when spawning salmonids and their incubating eggs and fry, or other critical life history stage are least likely to be within Washington state fresh waters. In many cases these times would be more restrictive than a site and project-specific work window specified by the biologist.	No
110	(3)(a)	After "hydraulic projects in" delete "or near" to be consistent with 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
110	(3)(a)(vi)	As written, this is too broad and encompassing. WDFW should consider modifying this text to state (vi) Other circumstances and conditions <u>Other circumstances and conditions pertaining to fish life and habitat needs.</u>	We changed the language to improve clarity.	Yes
120		Fresh water habitats of special concern. "Freshwater habitats of special concern provide essential functions in the developmental life history of priority fish species. These include spawning and rearing habitats for state and federal listed species, and species of recreational, commercial or tribal importance." In the past, we have been required to release non-native predators back into these waters along with ESA-listed native species when captured during HPA authorized activities. Please amend this section to require euthanasia of non-native predator species regardless of their recreational importance when encountered during HPA authorized activities in fresh water habitats of special concern.	Many people who construct hydraulic projects don't know how to identify native from non-native fish. This should be discussed with the habitat biologist on a project-specific basis.	No
120	(2)	Delete all of (2). Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, the potential" is purely	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	to the project. The use of can, could and should is not associated with a requirement	
120	(2)	220-660-120 (2) could be read permissively; "can" as in "it's okay to kill or injure fish." Please consider adding a sentence saying that the purpose of the following sections is to prevent/ minimize impacts to fish life.	The section describes fish life concerns. It doesn't authorize adverse impacts.	No
120	(3)(a)	In our recent meetings with WDFW, they have expressed that they do not intend to require qualified professional assessment or engineered mitigation for erosion repair work (i.e., scour at a culvert inlet, road fill protection, etc.) The proposed WAC should be updated to clarify such.	See 130(3)(a)	No
120	(4)(d)	In the third sentence, after "woody vegetation" add "below the OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(4)(d)	Regulatory creep.	We respectfully disagree. The importance of riparian areas to fish life is well documented in the science. Requiring avoidance, minimization of unavoidable impacts, and replanting of riparian vegetation damaged by construction of a hydraulic project is within our authority.	No
120	(5)(a)	Clarify native vegetation when referring to avoidance and minimizing damage to riparian, aquatic, and wetland vegetation.	Certainly native vegetation is more desirable than non-native. However, retaining vegetation in general helps control erosion. In addition, many people who construct hydraulic projects don't know how to identify native from non-native plant species.	No
120	(5)(c)	"...wet and muddy..." This is vague terminology that should be better defined if this will be a permit condition.	Comment noted.	No
120	(5)(e)	We believe the proposed modifications will provide a benefit for operations when we have equipment in or near water.	Comment noted.	No
120	(5)(e)	Should be one work week (5 or 6 days) regardless of	Comment noted.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		hours.		
120	(5)(e)	We request that waivers be allowed on projects of a longer duration using equipment that does not have vegetable based lubricants to be used in or near water with proper containment and approval.	Comment noted.	No
120	(6)(b)	What is "OHML"? Do you mean "OHWL"?	Yes, error corrected.	Yes
120	(6)(d)	Clarify who at the department can approve the use of angular rock and the design flow that it must withstand if outside of the normal peak 100-year flow requirement?	The biologist processing the HPA application.	No
120	(6)(f)	DNR continues to disagree with WDFW for allowing the use of treated wood in fresh water. DNR's standards for state-owned aquatic land require no treated wood in the water.	Comment noted.	No
120	(6)(h)	DNR continues to disagree with WDFW for allowing the use of tires in fresh water	Comment noted.	No
120	(10)(a)	In-water work area isolation using a cofferdam structure – define short term?	We removed the term "short-term".	Yes
120	(12)	HPAs should require QA/QC plan to ensure fish capture efficiency and thoroughness	See (12)(f)	No
120	(13)(e)	After "upland are above" delete "limits of the anticipated floodwaters" and add "below the OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(13)(a)	After "disturbed bed" add "and". After bank, delete "and riparian zone" to be consistent with RCW 77.55.021. It should read "Restore disturbed bed and bank." The riparian zone is above the OHWL and outside Waters of the State.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(13)(a)	Is grass seeding and mulching acceptable?	This depends on the pre-project condition.	No
120	(13)(b)	After "remove any temporary fill" add "below the OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(13)(i)	After "proven methodology, replace" delete "native riparian" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(13)(j)	After "maintenance requirements for replanting" add	Comment noted. Please see our response in section	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		"below the OHWL" to be consistent with RCW 77.55.021	A.1.2 of Appendix A regarding our jurisdiction.	
120	(13)(j)	Does the planting plan have to be included in the engineering design packet – who approves these plans?	It should be part of the application the biologist approves.	No
120	(13)(j)	We believe the addition of "species composition" could cause an issue if the approving agent requests that the re-vegetation area be replanted with unique or hard to grow species. We respectfully request that “similar to surrounding native vegetation” be added to this section.	We'll amend the provision language to clarify.	Yes
120	(13)(k)	After "complete replanting" add "below the OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(13)(l)	Who can waive the plant vegetation requirement if natural revegetation is likely to occur?	The biologist processing the HPA application.	No
130	(1)(a)	Add 'spawning and incubation gravel' to this list.	See section (2)	No
130	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. “May” is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
130	(2)	220-660-130 (2): As with 220-660-120 (2), this section could be read permissively; “can” as in “it is okay to kill or injure fish.” Please consider adding a sentence saying that the purpose of the following sections is to prevent/ minimize impacts to fish life.	The section describes fish life concerns. It doesn't authorize adverse impacts.	No
130	(2)(a)	220-660-130: Please consider adding language to cross-reference the potential for state ownership. The JARPA has been designed specifically for this purpose.	Comment noted. We have language elsewhere in the proposed rules regarding compliance with other agency regulations.	No
130	(3)	Work accomplished under this section is by definition professional engineering. Execution of this work and its review and approval constitute the practice of professional engineering and should be limited to those individuals specifically permitted in RCW 18.43.	Comment noted. A geologist or fluvial geomorphologist would also be qualified to provide this rationale.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
130	(3)(a)(ii)	After "project design" delete "such as a reach and" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
130	(3)(e)	This item implies that Flow-Redirection Techniques such as Stream Barbs, Porous Weirs, and Engineered Log Jams that are discussed in Chapter 6 of the "Integrated Stream Bank Protection Guidelines" cannot be installed because they would be installed water ward of the OHWL. We recommend removing this statement from the proposed HPA rules or re- writing the rule that effectively addresses the impacts stated.	The flow-redirection techniques you describe must show clear net benefit to fish. If you can show that by using, say, a stream barb, there will be less rock used, that channel response and complexity will be enhanced over, say, a revetment alternative, then it is better to work waterward of OHW. The following language should allow such alternatives to be permitted. Proposed language: (e) Where technically feasible, the toe of the structure must be located landward of the OHWL. Restrict the placement of material waterward of the OHWL to installing mitigation features (e.g., logs and rootwads) approved by the department, unless an alternative is shown to have net benefit to fish life.	Yes
130	(3)(e)	The term 'technically feasible' has no defined limitations. Items such as cost should not be included under this definition.	Comment noted.	No
130	(4)	Change the term "existing" to 'potential', as spawning may not currently be occurring due to a degraded condition.	Comment noted. The department cannot apply mitigation for habitat functions that don't currently exist	No
130	(5)(b)(i)	After "eroding shoreline" add "within the easement where possible."	This requirement is not related to fish life protection.	No
140	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
140	(2)(a) and (2)(b)	This section could be read permissively; "can" as in "it is okay to kill or injure fish." Please consider adding a sentence saying that the purpose of the following sections is to prevent/ minimize impacts to fish life.	The section describes fish life concerns. It doesn't authorize adverse impacts.	No
140	(3)(c)(i)	The width of residential piers and docks should be based	Proposed WAC section 070(g) allows changes to the	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		on intended use (consistent with recreational piers in this proposed section). Intended use may vary for residential piers and docks based on activities, Americans with Disability Act (ADA) requirements or other factors.	technical provisions for geological, engineering or environmental constraints or safety concerns. (f) allows changes if the provisions conflict with other regulations such as ADA.	
140	(3)(f)	The term "embedded anchor" should be used instead of "helical screw, duckbill". This is a more generic and accepted term.	We have changed the language to "embedded anchors"	Yes
140	(3)(h)	"usable" should not be the basis for allowing a replacement structure. Allowance to replace a structure should be provided if it is within the same footprint as the existing structure. Usable is a subjective term.	This does not prohibit the construction of a new structure but it may affect the mitigation required. We amended the language and added "Usable means no major deterioration or section loss in critical structural components is present."	Yes
140	(3)(i)	250 ft2 seems to be an arbitrary determination. Use percentage based approach. If required to install grating based on this rule, it is not clear if the entire surface needs to be replaced or just the area planned for replacement.	250 square feet is the size of a typical residential float. We have changed the language clarifying that the grating is required in the replaced section only.	Yes
140	(4)(b)	For residential docks, minimum piling diameter should be determined by intended use and site conditions not arbitrarily set at 6".	Section 070(g) allows changes to the technical provisions for geological, engineering or environmental constraints or safety concerns. (f) allows changes if the provisions conflict with other regulations such as ADA.	No
140	(5)(a)	Please see the question in comment 1 (hoists) and associated photo.	The language is amended to read "The design of the watercraft lift/grid must follow the mitigation sequence to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern."	Yes
140	(7)(a)	"...such that they do not adversely impact native submerged aquatic vegetation." should read ".....in a manner that minimizes impacts to native submerged aquatic vegetation."	We changed the language to "Operate and anchor vessels and barges during construction in a manner that protects native aquatic vegetation."	Yes
140 and 160		In your definitions use section 140, 380 Was 220-660-140 220-110-060 I suggest you use terms that are used in the boating and marine industry for Docks, piers and gangways and ramps. Boat Launch Ramp: A sloped surface designed for launching and retrieving trailered boats and other water craft to and from a body of water. Ramp: is a sloped surface over 5% running slope (as	The existing description matches the descriptions used by other regulatory agencies. For example, "pier, ramp and float" is commonly used.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		<p>used in the building codes and the ADA)</p> <p>Gangway: A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. (Gangways that connect to passenger vessels are not a gangway).</p> <p>Boarding Float: A portion of a pier where a boat is temporarily secured for the purpose of embarking or disembarking</p> <p>Boat Slip: That portion of a main pier, finger pier, or float where a boat is moored for the purpose of berthing , embarking, or disembarking.</p>		
150	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
150	(2)	This section could be read permissively; "can" (or "may") as in "it is okay to kill or injure fish." Please consider adding a sentence saying that the purpose of the following sections is to prevent/ minimize impacts to fish life. Please apply this comment to other "fish life concerns" sections throughout the draft.	The section describes fish life concerns. It doesn't authorize adverse impacts.	No
160	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
160	(3)(a)	This section should read ".....to avoid and minimize impacts to fish spawning..."	Comment noted.	No
160	(4)(b)	Should use functional grating standards to be consistent. By definition, structural framing is required to be under grating to support the pier, dock and/or float.	We changed the language to clarify this doesn't apply to structural components.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
170	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
170	(3)(a)	After "the department may" delete "not". After "spawning beds" delete "unless" and add "if". After "restoration project" add "or the authorized dredging is mitigated."	This suggestion would reduce the current fish protection standard. See WAC 220-110-130(1)	No
170	(3)(c)	We request that maintenance dredging be recognized as a routine and necessary operational function for hydroelectric facilities.	We have changed the language to read: The department may require a pre-project channel survey or assessment by a qualified professional to determine the root causes of a sediment deposition problem and the potential channel changes that may result from dredging. This provision does not apply to maintenance dredging of navigational channels and berthing areas, hydroelectric facilities, and boat ramp and boat launch approaches.	Yes
170	(3)(c)	After "navigational channels" add "ditches, stormwater systems".	This section is not specific to sediment removal in small streams. The department will work with interested stakeholders to development rules for sediment removal from small streams in the 2015-2017 biennium. Until then, habitat biologists will provision the HPAs for this work on a project-by-project basis.	No
170	(3)(c)	We support the proposed edits form the Ports. These modifications will benefit us in maintaining boat ramps and boat launch approaches at our reservoirs.	Comment noted.	No
170	(3)(c)	In our recent meetings with WDFW, they have indicated that this subsection applies to dredging of large rivers for the purpose of navigation and flood prevention. WDFW has indicated that they will work with stakeholders in the 2015-2017 timeframe to develop a separate chapter for sediment removal from small streams. As such, WDFW should clarify in WAC that this subsection does not apply to work associated with maintaining existing	WDFW will work with stakeholders in the 2015-2017 timeframe to develop a separate chapter for sediment removal from small streams. It would be inappropriate to include the commitment to work on this in WAC, and any other change to this section at this time would be premature until new provisions are developed so they can be cited.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		structures that remove sediment from small channels and culverts .		
170	(3)(c)	Suggested text change: "The department may require a preproject channel survey or assessment by a qualified professional to determine the root causes of a sediment deposition problem and the potential channel changes and effects to salmonid habitat that may result from dredging."	Our authority and responsibility under the hydraulic code is not limited to salmonids so that change would be inappropriate. The department, not the applicant, should determine the impacts to fish life from any proposed channel change.	No
170	(4)(e)	After "in water disposal site or" delete "outside of the floodplain" and add "in an area above the OHWL."	Comment noted. Please see our response regarding our jurisdiction.	No
170 and 180		The freshwater dredging section applies to river dredging for vessel navigation, but not necessarily to dredging small creeks using backhoes. There are few provisions in either section that would prevent headcutting resulting from gravel removal, although this is a common provision in small stream HPAs. There should be provisions requiring dredging to be conducted when streams are dry, if they go dry. Small stream dredging should not result in gravel starvation in downstream reaches.	We agreed dredging should not result in gravel starvation to downstream reaches. WDFW will work with stakeholders in the 2015-2017 timeframe to develop a separate chapter for sediment removal from small streams.	No
170 and 180		Dredging is frequently used to temporarily solve problems caused by other factors, such as undersized or misplaced culverts that impede sediment transport. Requiring a technical justification could clarify these problems and the potential solutions. The lack of protective provisions in the proposed code is unfortunate, because in certain circumstances sediment removal can actually be used to improve some habitats, such as creating off-channel and backwater refugia. As proposed the improvement is limited to fish spawning areas only. These two dredging sections could be greatly improved to protect, rather than diminish, habitat in small streams.	This is one reason the language reads "The department may require...". It wouldn't be needed in this case because the project is a beneficial project for fish life.	No
180		This section may warrant clarification to make the distinction between "sand and gravel removal" and allowable dredging activity.	Comment noted.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
180	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
180	(4)(k)	After "must take place above the" delete "above the limits of the anticipated floodwater" and add "OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response regarding our jurisdiction.	No
190		Construction of culverts to an arbitrary design standard of 100-year recurrence is inconsistent with current engineering practice. Further, the accommodation of such an extreme weather event for all culvert installations will constitute a serious financial burden to local government and is an unfunded mandate. The section further broadens the WDFW area of authority to beyond the OHWM which is unreasonable and excessively broad.	The proposed rule changes are not substantively different than the standards already being implemented. The statewide climate adaptation strategy suggests that expected future conditions be factored in to project design, including accommodation for changes in stream discharge or tidal influence. We will continue to work with proponents to incorporate new science and balance risk and cost for designs that are adequately protective of fish life. Also, please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
190		Delete the first sentence in the third paragraph. To indicate that an HPA is needed regardless of the location of the proposed work is not consistent with RCW 77.55, which indicates HPA authority is the below the OHWL of waters of the State.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
190		Language in current version of rule is not changed, but proposed WDFW staff amendments would add the language: "A list of approved manuals and guidelines is in the department's website. (WSDOT)" Alternative 4 in the Supplemental Draft Programmatic EIS includes the following provision: "Amend the rules to allow American Association of State Highway and Transportation Officials and Federal Highway Administration standards (by name) because they have been well vetted by the engineering community."	WDFW has posted the referenced documents on our Habitat Guidelines web site. WDFW typically runs design standards through an Aquatic Habitat Guidelines committee, which includes fisheries professionals and environmental engineers as well as WSDOT engineers and professionals related to other aspects of HPA project development. Once that team is comfortable with the guidance, WDFW can post them.	No
190		The new proposed code mentions StreamSim design, but	All water crossings must provide unimpeded fish	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		is ambiguous on whether StreamSim is required or merely suggested. The WDFW crossing guidelines, as well as testimony from WDFW engineers and biologists, make clear that StreamSim culverts are the best solution to eliminating fish passage barriers, passing flood flows, passing debris, and reducing maintenance due to gravel and wood accumulation, all of which are implied in the proposed code. Given these advantages, the code should reflect the best available science and give WDFW the authority to require StreamSim as the first acceptable standard.	passage and protect channel functions and processes. The stream simulation design method achieves this. But the no-slope and alternative culvert design methods can also achieve this provided the design is appropriate for the site. WDFW has the authority to approve a less costly design approach as long as the project will protect fish life.	
190	(1)	In our recent meetings with WDFW, they have indicated that they will revise this language to state that "Crossings on streams with no fish must be designed to pass wood and sediment expected in the stream reach to reduce the risk of catastrophic failure of the crossing." We look forward to seeing this edit in the final version of the WAC.	This change has been made	Yes
190	(1)	In our conversations with WDFW, they have expressed that they accept water crossing designs that are compliant with Federal Highway and AASHTO guidelines. The WAC should be updated to establish this assurance.	The proposed rules do not require compliance with any specific design criteria. The rule points to guidance that can be helpful in designing projects, and WSDOT and FHWA design methodologies are among those helpful guidance documents. Any method used must protect fish life and provide fish passage. WDFW will issue an HPA for projects that meet this standard regardless of the guidelines used.	No
190	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
190	(2)	Suggested text modification: "A person must design water crossing structures in fish-bearing streams to allow all fish at all life stages to move freely through them at all flows when fish are expected to move."	"Fish" is used here in the general sense, just as it is in chapter 77.57 RCW, which we interpret as "all fish."	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
190	(2)(a)	Who will determine if the impacts of encroachment are minimal to fish and their habitat?	The permitting biologist is an authorized agent of the Director and determines whether a proposal meets the requirements of the hydraulic code. The applicant supplies the information that the biologist evaluates. The biologist may seek the assistance of a habitat engineer in technical matters. Our guidance documents give the applicant and biologist the background for the design and evaluation of a given project.	No
190	(3)(e)	After "three typical widths" delete "bankfull" and add "bed width" to be consistent with RCW 77.55.011, definition of "bed". Delete the second half of the sentence, starting with "measure in the stream reach" and ending with "self-forming stream" to be consistent with RCW 77.55.231	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
190	(3)(a)	Delete all of the second sentence, starting with "passage." It is arbitrary.	Comment noted. This language was added to provide clarity at the request of the regulated community.	No
190	(3)(b)	After "crossing design" delete "must ensure" and add "should consider". After "unconstrained by the structure" delete "so they do not cause discernable impacts to fish life." Delete all of the second sentence - an HPA is not authorized to be issued into the floodplain outside of work being done below the OHWL, per RCW 77.55.021, and 77.55.011 (25).	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
190	(3)(c)	Does this mean that the slope must match the slope of what you'd find in the reference reach or the slope of the area that's been altered?	You appear to have misunderstood the nature of this section and the statement, and maybe a little about the structure of these two chapters (220-660-190 and -200). Water Crossing Structures must be designed to, (3)a, "ensure that upstream and downstream channel processes and functions commonly associated with the type of channel found at the site are unconstrained by the structure so they do not cause discernable impacts to fish life." If they do not and, for instance, require grade control (roughened channels, rock weirs, etc.), then they would fall under 220-660-200 Fish Passage Improvement Structures. The provision (3)c concerns the design of a water crossing in an area that has been altered and does not give us a clear impression of what	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			would take place at the site under more natural conditions. We are giving you an opportunity to use expected channel processes for the design of the structure at that site by estimating the slope and cross section.	
190	(3)(c)	We recommend including additional channel stabilization measures that do not impact fish migration. Roughened channels, rock weirs, and other methods should be allowable considering the species of fish present.	All of the methods you mention are acceptable and covered under the provisions in WAC 220-660-200.	No
190	(3)(c)(iii)	Who determines what an extreme and unusual site condition is that would allow a designer to use a fish passage improvement structure? Could an example of this be when we have many feet of grade change to make up due to a perched culvert?	Ideally, it is the applicant who determines this. Your example might be a good one, but an assessment of the site conditions must provide the justification for it. The permit biologist can help with this decision, and is the person who determines what's appropriate in a given situation. An HPA will be issued if you present a clear case that complies with the appropriate provisions of the code.	No
190	(3)(c)(ix)	The reference to this term appears to have been removed from section 190. It appears in another section, but there is no definition.	We don't know what term you are referring to.	No
190	(3)(d)	25. 220-660-190 (3) (d): Is there a reason for different levels of permission in (i), (ii), and (iii)? A person “ ‘can’ design a water crossing ...” in (i), “ ‘may’ use an alternative design...” in (ii), and “ ‘can’ use methods...” in (iii).	The section describes fish life concerns. It doesn't authorize adverse impacts.	No
190	(3)(d)	To address the gaps in the science and provide alternatives, WFPA strongly supports the appropriate inclusion of a provision for alternative culvert designs in WAC 220-660-190(3)(d).	Comment noted	No
190	(3)(d)(i)	After "protection of fish habitat" delete "and the maintenance of the expected channel processes defined by the site conditions" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
190	(3)(e)	The language requiring use of a minimum of three typical bankfull widths has remained. The discussion on	We do not believe that the additional effort needed to measure bankfull width in three locations has significant	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		economic impacts in the Supplemental Draft EIS does not address this potential impact on agencies such as King County Dept. of Transportation.	adverse economic impact. If you are onsite, taking a measurement is relatively quick.	
190	(3)(f)	In our recent meetings with WFDW, they have indicated that removal of existing bridge components, including approach fill, would only be required if existing components are causing impacts to fish and their habitat. If there are no impacts, then components can be left in place. The proposed rule should be updated to clarify this intent. Additionally, the proposed rule should identify the fish protection criteria for which components, especially approach fill, can remain.	The provision reads: "(f) When removing an existing crossing in preparation for a new crossing, a person must remove all the existing components (approach fill, foundations, stringers, deck, riprap, guide walls, culverts, aprons, etc.) likely to cause impacts to fish and their habitat. The department may approve the partial removal of certain components when leaving them has been shown to have no measurable, or minor, impact."	No
190	(4)(c)	After "active floodplain" delete "must have" and add "should consider". After "typically evaluated in" delete "a reach analysis" and add "that are reasonably related to the project site." We'd prefer to delete all of (c). Referencing active floodplain span width and major encroachments into the floodplain and defining thresholds within the floodplain and reach analysis for stream crossings would be implementing the Water Crossing Guidelines 2013 document and other publications and manuals as rule, which are inappropriate to be used to develop conditions for the WAC. Any guidance, published materials, or white papers that never went through rule-making or that are not completed and are "draft" documents, would be unacceptable to be used as rules without going through rule-making. This requirement as listed in (4)(c) should be deleted from the entire WAC. It goes beyond the authority of RCW 77.55 by expanding the HPA permit process beyond the borders of waters of the state, which is defined as the OHWL.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction. Please see our responses in the "science" section regarding your comment on the 2013 guidelines document.	No
190	(4)(a)	The requirement that the bridge design accommodate "ice, large wood and associated woody material, and sediment likely to move under the bridge during the 100-year flood flows or the design flood flow approved by the department" is unreasonable, impossible to	Comment noted.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		accurately calculate and excessively broad in scope.		
190	(4)(b)	After "wingwalls, and approach fill" delete "must be" and add "should consider placement."	Comment noted.	No
190	(4)(c)	In our recent meetings with WDFW, they have indicated that they will not require compliance with any specific design criteria. They have indicated that WSDOT and FHWA bridge design methodologies are typically adequate for the protection of fish life. Additionally, WDFW does not expect this rule change to increase the span length of bridge projects in comparison to bridges designed to comply with current WAC. WDFW should make the needed clarification within this section of the WAC.	The proposed rules do not require compliance with any specific design criteria. The rule points to guidance that can be helpful in designing projects, and WSDOT and FHWA design methodologies are among those helpful guidance documents. Anyone can propose any bridge design developed through any method providing that it protects fish life. This is outlined in 220-660-190(3)d.	No
190	(4)(d)	Delete the first sentence. Too many unknowns and variables when considering the lifespan of a bridge structure, or the lateral movement of a watercourse -- and is outside the authority of an HPA permit. Delete the second sentence. 77.55.011 definition states (11) <u>"Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.</u> The natural flow or bed is limited to waters of the State, which is defined as below the OHWL. We recommend removing this statement from the proposed HPA rules or re- writing the rule that effectively addresses the impacts stated.	In response to this and other comments, this provision has been changed to provide more clarity.	Yes
190	(4)(f)	Who from the department is authorized to grant exception based on engineering justification?	The habitat biologist who is processing the HPA application often with the help of a WDFW environmental engineer.	No
190	(4)(f)	We recommend defining the term "engineering justification" and describing the exception process for this rule. It is recommended to identify, in rule, specific situations that would be excepted considering the impacts stated above.	In response to other comments this provision has been changed: 190(4)(f) The design must have at least three feet of clearance between the bottom of the bridge structure and the water surface at the 100-year peak flow or engineering justification for sufficient clearance that allows for the free passage of anticipated debris.	Yes
190	(4)(g)	NRCS shares this approach to all in-stream projects,	We understand that there are differences between permit	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		however there is potential for conflicting opinions that will be project and personnel specific.	writers, but we are working hard to provide good guidance documents and training opportunities to help consistently interpret these rules.	
190	(4)(g)	Design of bridge piers, abutments and scour protection is exclusively limited to the licensed professional engineer in responsible charge of the design in accordance with RCW 18.43.	The protection of fish life is one aspect of a complete water crossing design. The other studies required are the responsibility of the owner and designer and it is these studies in combination with fish protection which form a "technically sound engineering practice." We do not pretend that compliance with these rules will result in a fully engineered structure. All that is required in these rules is to provide fish passage and protect their habitat. There has been on-going research into crossing design for fish protection by WDFW, USDA Forest Service, several universities and other researchers (Barnard 2003, Inter-Fluve 2008, Robertson, Bair et al. 2011, Barnard, Yokers et al. In preparation), among others. A study is in progress by D. Cenderelli and M. Weinhold, USDA Forest Service on the physical effectiveness monitoring of channels at road-stream crossings – a statistically-based approach. Others are keenly interested in the effectiveness of water crossings for fish passage and channel processes – names and studies can be supplied. It will take some time to develop a strong scientific foundation in this area. In the meantime we are required to protect fish and we are applying criteria to guide designers to achieve acceptable results.	No
190	(6)(a)	The design process required in this section is onerous and unreasonable for small culverts. I recommend that this section be applicable only to culverts greater than 24 inches in diameter.	Please note the provisions in this section apply to fish bearing waters only.	No
190	(6)(a)(iii)	To clarify, is the prevailing stream gradient or the stream reference reach gradient?	The assumption is that these are the same. We would not intentionally choose a reference reach that was at a significantly different slope.	No
190	(6)(b)	I recommend that this section be applicable only to culverts greater than 24 inches in diameter.	Please note the provisions in this section apply to fish bearing waters only.	No
190	(6)(b)(i)	After "must generally have" delete "a channel bed width	This statement does not limit the design. Using the term	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		that is ten feet or less and". Limiting the width of a culvert is arbitrary and should be established by the design engineer.	"generally" signals that there can be exceptions to this general requirement.	
190	(6)(b)(ii)	Delete all of (ii). Limiting the length of a culvert is arbitrary and should be established by the design engineer.	WDFW has carefully considered this length criteria and think that it gives a person ample flexibility within the range of this method. A person can also propose an alternative method in section -190(3)d; the rule provides a wide range of flexibility while maintaining adequate protection for fish life..	No
190	(6)(b)(iii)(E)1	After "area where the channel" add "stream".	Comment noted.	No
190	(6)(b)(iii)(B)	After "equal to or greater than the average" delete "channel" and add "stream."	Comment noted.	No
190	(6)(b)(iii)(B)	After "the width of the" delete "channel" and add "stream". After "greater than the average" delete "channel" and add "stream." Delete "channel bed width" relating to "stream bed width" from the entire document. Changing the definition of "bed full width" to "channel bed width" but defining that as "bankfull width" would be designing a stream crossing as described in the Water Crossing Guidelines 2013 document and other publications and manuals as rule, which are inappropriate to be used to develop conditions for the WAC. Any guidance, published materials, or white papers that never went through rule-making or that are not completed and are "draft" documents, would be unacceptable to be used as rules without going through rule-making. This requirement as listed in (6)(b)(iii)(B) should be deleted from the entire WAC. It goes beyond the authority of RCW 77.55 by expanding the HPA permit process beyond the borders of waters of the state, which is defined as the OHWL.	Comment noted.	No
190	(6)(b)(iii)(D)1	After "greater than the average" delete "channel" and add "stream."	Comment noted.	No
190	(6)(b)(iii)(D)2	After "greater than the average" delete "channel" and add "stream."	Comment noted.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
190	(6)(b)(iii)(D)3	After "greater than the average" delete "channel" and add "stream."	Comment noted.	No
190	(6)(b)(v)	The requirement for culvert countersink should be determined on a case by case basis.	Establishing a minimum countersink requirement does not limit the engineer's ability to choose an appropriate depth of fill above that. Some countersink is required and this is the minimum we think is necessary. In addition, a person can propose an alternative method in WAC 220-660-190(3)d.	No
190	(6)(b)(vi)	The determination of the median particle size is not practical.	This provision creates a measurable criterion by which to judge whether the material selected is appropriate for the project site. In most cases, particle size won't be an issue. If you are asked to verify your particle size, the median is by far the simplest statistic to employ.	No
190	(6)(d)(l)	The horizontal width must be equal to or greater than the average channel bed width plus twenty-five percent" is unreasonable and not supported by engineering practice or published standards.	A person can propose an alternative method by following criteria in WAC 220-660-190(3)d.	No
190	(7)(c)	After "unimpeded fish passage" add "when fish are expected to move."	Suggestion noted.	No
190	(7)(c)	The company supports the additional language providing for the use of a temporary culvert that does not meet fish passage criteria.	Comment noted.	No
190	(8)	There is no specified time limit until a culvert becomes constructed. Under the emergency provision, this limit should be a maximum of one year, where a scoping design is provided at the time of the proposed emergency fish passage.	Ideally, a year is appropriate. Unfortunately, emergencies create conditions that are less than ideal and the applicant often needs more flexibility to resolve the situation.	No
190	(8)(b)	From our recent meetings with WDFW, we understand that if a water crossing provided fish passage prior to an emergency situation, then WDFW will expect the replacement/repair structure to provide fish passage. Structures that had not provided fish passage prior to the emergency would not require fish passage as a part of the emergency fix. WDFW will expect the emergency repair/replacement to be of a size equal or greater than	Fish passage is required, regardless of prior conditions. The language reads "Fish passage must be provided at the times of the year when fish are expected to move. If the culvert design does not provide unimpeded fish passage, a person can use methods found in WAC 220-660-200 (fish passage improvement structures) to pass fish until a culvert is constructed."	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		the structure that existed prior to the emergency. We also understand that WDFW will expect the temporary structure to pass adult fish during upstream salmon migration if they are blocked. The WAC should be updated to clarify this information.		
190	(10)(f)	Does this mean that the surface of the ford must exceed water elevation? Driving through low water depth is assumed when utilizing a ford. How is traffic to be "separated from flowing water?"	We changed the language to read "Vented (grade-separated) fords are preferred over at-grade fords because there is less aquatic disturbance and delivery of sediment and contaminants when traffic is separated from flowing water."	Yes
190	(12)(f)	Is angular rock acceptable fill in a ford since this will not attract spawning fish?	We have tried to leave the specifics of many provisions open to give the applicant and the permittees the flexibility to choose the most appropriate material. The basic requirement is to prevent spawning in the ford. Quarry stone will often be the most available and appropriate, but other materials might also be acceptable, for example cobbles from a near-by pit, when the fish present are too small to dig such heavy stones.	No
190	Intro	must be?	Comment noted. We could not determine what this comment referred to.	No
190	Intro	change "with debris" to "including debris"	The language is amended to "... and debris..."	Yes
200		As these types of structures are known to fail or have less certainty for fish passage as more permanent solutions, we suggest establishing a time limit for the emergency and temporary use of these fish passage improvement structures. This will help avoid 'indefinite' structures that may fail to pass fish. Further, fish passage needs to be monitored for the life of the structure to ensure that periods of insufficient fish passage are minimal and if needed, corrections are made timely.	Comment noted. This would be site-specific. For example, the approved timeframe for fish ladder on a dam may be different than a trap and haul operation around a failing culvert. Please note chapter 77.57 RCW requires fish passage structures on dams or other manmade obstructions.	No
200		Section 220-660-200(2) mentions that removing gravel disrupts the sediment balance and can cause unforeseen channel adjustments in rivers, but has no provisions to alleviate this concern. There are also no provisions to assure that LWD and riparian vegetation will be	The biologist would condition the HPA with applicable dredging provisions.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		protected during freshwater dredging projects. Most of all, there is no requirement to show that the dredging is necessary, or will be effective, as in other sections (e.g. shore protection). This is important because small stream dredging is often proposed by landowners and county departments that have only minimal knowledge of (and little regard for) sediment transport processes, and thus “maintenance dredging” becomes a chronic impact to habitat. Dredging is frequently used to temporarily solve problems caused by other factors, such as undersized or misplaced culverts that impede sediment transport.		
200	(1)	Weirs and roughened channels should not be included in this category for fish barrier removal projects. Weirs should be defined within the code.	Because the population of fish above a fishway depends on the proper functioning of the structure for survival, we categorize them differently with added provisions for their inspection and maintenance. We understand that there are circumstances that require a fishway and we do not discourage it.	No
200	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can and could is not associated with a requirement	No
200	(3)(c)	What types of compensatory mitigation might be required when fish passage improvement structures are used? Who would make this determination?	The type of compensatory mitigation would be project-specific. The habitat biologist would approve the proposed compensatory mitigation.	No
200	(3)(h)	To clarify, if fish passage improvement structures are used then periodic inspection will be required. Who will be required to perform this inspection? Who will determine the inspection interval?	In your application you would provide an inspection and maintenance plan, such as that outlined in the Water Crossing Design Guidelines p. 138. The specifics of that plan are determined by the designer and must address the protection of fish life. The inspection and maintenance is the responsibility of the owner of the fishway, or their agent, who provides the personnel and materials to execute it. The permitting biologist approves the plan as part of the HPA. The HPA is in effect for 5 years, but RCW 77.57.030 requires that the owner maintain that	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			fishway in perpetuity.	
200	(7)(a)	In our meetings with WDFW, they have indicated that if a fish ladder facility is not equipped to control the flow, then WDFW will not expect it. They have indicated that this provision is only relevant to facilities where the flow is managed, as in an irrigation diversion, hydropower, or an off-channel fishway and it does not apply to WSDOT owned fishways. As such, WDFW should update the proposed WAC to provide this needed clarification.	The language is amended to read "If target fish species are present and actively migrating, fish ladders with managed flow must have enough water available ..."	Yes
200	(9)	Roughened channels and weirs are considered to be fishways or designed as a component of fishways and the use of both will be discouraged?	The basis for design in 220-660-190 is expected channel processes. If your proposal creates a structure that would not be supported by prevailing stream processes, it is a fishway that must meet specific criteria and be inspected and maintained for its lifespan. We have built hundreds of weirs, fishways, baffled culverts, and other structures in our streams over the last 30 years or so and, for the most part, they were constructed and forgotten, falling out of compliance and isolating fish populations or extirpating them. Either you allow the stream to respond to changes in bed elevation or you take responsibility for the structure that prevents it.	No
200	(9)	In our recent meetings with WDFW, they have indicated that the proposed rule does not preclude the design of roughened channels as water crossing structures. As such, the WAC should be updated to provide that clarification or WDFW should move the Roughened Channel Design criteria found in WAC 220-660-200 to the Water Crossing Section (WAC 220-660-190).	We apologize for any misunderstanding, but roughened channels are fish passage improvement structures and are covered under WAC 220-660-200. They are appropriate for water crossings, but since they are engineered structures that have operating criteria, they must be monitored to make sure that they stay within compliance.	No
200	(011)	In the first paragraph, after "trap and haul operations" delete "and hydraulic design culvert retrofits". Culverts are stream crossings and should be in that section.	Since hydraulic culverts designs are only intended to provide fish passage and do not protect habitat, they are in this section	No
200	Table 1	The table prescribes water velocities suited only to adult fish. The table should be revised to include a maximum velocity option for juvenile fish when a crossing requires upstream juvenile passage.	The assumption is that these velocities are calculated at a high fish passage design flow (when adults are expected to move) and that at lower flows the velocity will be proportionately lower and provide passage conditions for smaller fish. The movement of juveniles is not as time-	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			dependent as that of adults and is also more complicated in terms of stimulus and the passage pathways through the bed. It is very difficult to determine an appropriate velocity for juveniles because of this.	
210	(1)	What documentation will have to be done or provided to demonstrate the benefit or lack of adverse impact to fish life. Who will be able to approve these projects?	Sections (3) and (4) describe the design and construction of these channels. Documentation that addresses these provisions will be adequate, provided that the level of detail is commensurate with the scale and complexity of the project. The plans are approved by the permitting biologist.	No
210	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can and could is not associated with a requirement	No
210	(3)(a)	Typically when re-meandering straightened channels we are changing the configuration back to what was there historically or what the reference reach presents - the length, width, depth and floodplain configuration may be very different to the straightened incised channel – is this going to make it difficult to get these projects permitted?	No. What you describe is a good example of a channel realignment that benefits fish and should be easily permitted.	No
220		The proposed section on large woody material removal (220-660-220) actually has weaker habitat protection than the current code. Whereas the proposed code says the department will approve requests for LWD removal for protection of property, or where necessary to construct a hydraulic project, the current code (WAC 220-110-150) provides that LWD removal ...shall only be approved where necessary to address safety considerations, or its removal would not diminish the fish habitat quality of the watercourse..	We respectfully disagree that (3)(a) weakens habitat protection given existing WAC 220-110-032(3).	No
220		We are concerned that removal or cutting of wood from the channel will continue to degrade habitat faster than it is being restored. The current code (WAC 220-110-150)	The language is amended to include cutting of LWM.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		provides a much stronger statement about the importance of wood in the river, saying wood removal "shall only be approved where necessary to address safety considerations, or its removal would not diminish fish habitat quality of the watercourse" . The proposed wording states that removing wood will require mitigation, but should also include mitigation for cutting or other actions that diminish its function.		
220	(1)	The company respectfully disagrees with the tribes assessment that large woody material is "trees and tree parts larger than 4 inches in diameter and longer than 6 feet or rootwads". In our opinion, material of this size will not provide sustained long-term fish habitat.	This reflects our current and proposed definition of large woody material.	No
220	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can and could is not associated with a requirement	No
220	(3)	An inventory of all pieces removed or reposition should be recorded and reported as a permit requirement. This enables tracking of impacts to fish habitat, documents problem frequency and magnitude at the site, and describes the fate of each piece of wood.	The approved plan should specify the number of pieces removed or repositioned. If this is a GHPA this can be added to the annual reporting provision. The department would not require tracking of repositioned. Wood removed and placed back in the stream would result in no loss of habitat function or value.	No
220	(3)(a)	In the last sentence, after "function of value" add "within the project site."	Actually, this would likely occur downstream as well.	No
220	(3)(b)	At the end of the third sentence, delete "floodplain" and add "bed or bank."	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
220	(3)(b)	Does this mean logs that span the bed of the channel below the OHWM or span the bank of the channel suspended above the active channel?	Above the active channel.	No
220	(3)(b)	NRCS staff have recently been told that we would not be permitted to do this because of the effects it would have	We should be able to address conflicts between rule and interpretation. First, consult our Aquatic Habitat Guidelines publications for a more in-depth discussion	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		on the riparian vegetation.	of the topic. Then, discuss the conflict with the permitting biologist. If that is not satisfactory, suggest that the biologist consult with the Habitat engineering staff or Habitat management for a clarification of the rule and an agency interpretation. Finally, you can enter into the appeal process for a more formal ruling on the application.	
220	(3)(b)	The rule does not allow for other viable methods of anchoring. We routinely utilizes timber piling and large boulders to ballast LWM. In lieu of having these anchoring methods available we are concerned that excess material and/or excavation and earth fill may be required. In some cases burying the LWM would be inadequate to resist buoyancy and drag forces.	You are fully covered by this provision. "Anchoring" is a general term and may be accomplished in any number of ways, including timber piles and boulder ballast. Please see Stream Habitat Restoration Guidelines or Integrated Streambank Protection Guidelines for a more complete explanation of anchoring.	No
220	(4)	NRCS is requesting confirmation that all wood material to be placed as part of a restoration project must now be suspended to move and can no longer be dragged into place.	This sounds as though it is consistent with the new provisions. Suspension is preferred, but a yarding corridor can be established to localize the disturbance and dragging logs over skid logs is also approved.	No
230	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
230	(3)(a)	Subsections (i) and (ii) could be in direct conflict with one another if a beaver dam is more than 1 year old, but has been modified by recent beaver activity and is now threatening ng a water crossing structure or public/private lands.	We changed (3)(a) to clarify "Beaver dams may be removed or modified <u>without compensatory mitigation only</u> when:..." We'll remove the last sentence in (3)(b) since it is redundant.	Yes
230	(3)(b)	Requiring compensatory mitigation for beaver dam removal or breaching for maintenance of a water crossing structure or other infrastructure is disproportional to the minor, temporary impacts of the action. Beavers will rebuild in the same location or elsewhere thereby providing essentially the same	We agree if the beaver are not removed from the site and may rebuild. However, if impacts from fish habitat in the established wetland will occur, compensatory mitigation may be required.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		functions.		
240	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
240	(3)	Does the WDFW have policy on replacement structures for existing ponds? Simply letting ponds fail over time may release large stored sediment plumes into water courses. Is there a process to allow landowners maintenance opportunities on existing ponds?	No, we don't have a policy. We cannot compel a property owner to maintain their ponds. They have to request an HPA. The specifics of each case would determine the way it is managed and those details would be worked out between the permitting biologist and the applicant.	No
240	(3)(i)	To clarify, if landowner builds an irrigation pond (gravity fed) but WDFW views this pond as beneficial to salmon as an off channel habitat then the pond inlet/outlet would then have to be designed for fish passage?	The irrigation system must be isolated from fish bearing water. If the pond is considered fish habitat then the irrigation withdrawal must be screened.	No
250	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
260	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
260	(4)	Are road cross drain outlets (forest or agricultural road) considered to be outfalls? Are roof runoff structure outlets considered to be an outfall? Subsurface drainage	If the cross drain does not discharge to, or affect the bed or flow of waters of the state, it does not require a permit.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		outlets?		
260	(4)(a)	After "associated structures" add "below the OHWL."	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
260	(4)(a)	220-660-260 (4) (a) needs a couple more commas to be clear. As it is, it could be read to mean that people should consider alternatives to avoid LID techniques. I suggest: (a) Before designing and constructing an outfall,(<-added) consider alternatives such as tying into existing municipal storm water lines to avoid multiple storm water discharge points, (<- added) and low impact development (LID) techniques utilizing pervious pavement, infiltration galleries, green roofs, etc., to minimize discharge impacts.	We added appropriate commas to clarify the intent.	Yes
260	(4)(d)(vi)	In forestry settings we primarily use angular rock for energy dissipaters – if cross drains are considered outfalls then we may want to discuss.	If the cross drain does not discharge to, or affect the bed or flow of waters of the state, it does not require a permit. If the cross drain or a stormwater system outfalls to waters of the state, then it will require a permit and the design must conform to these provisions. Provision (vi) states that quarry stone outfalls are acceptable but only after other methods to reduce scour (provisions (i) through (v)) have been shown to be infeasible.	No
270	(1)	Public Utility District No. 1 of Cowlitz County, Washington (Cowlitz PUD) supports the proposed amendment to the Hydraulic Project Approval Rules listed below: “Amendment to Section 270 Utility crossings in freshwater areas 270(1) Utility lines are cables and pipelines that transport gas, telecommunications, fiber optics, power, sewer, oil, and water lines from one side of a watercourse to the other. An HPA is not required for utility crossings attached to bridge structures. (WDFW)”	Comment noted	No
270	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		should implement the RCW and not provide guidance language.		
280		The use of the word "timber" implies a forest practice activity; DNR suggests changing to "trees" to avoid confusion with forest practices rules governing these practices. This entire section alludes to forest practices which are governed under WAC 222 for certain forest practices hydraulic projects. DNR recommends a header in parenthesis that states "(Projects that meet the definition of FPHP found in WAC 222 are governed under that WAC and the provisions of this chapter do not apply)". This helps create a clear separation between the two jurisdictions and avoiding confusion.	We changed "timber" to "trees".	Yes
280		Suggested text modification: "The number of cable crossings over the stream must be minimized to reduce damage or disturbance to RMZ trees. Use of equipment that minimizes the number of yarding corridors shall be used, such as 'slack-line pulling carriages' or equivalent. Place cable tailholds across watercourses with identifiable bed or banks, if they minimize the number of new yarding roads needed. When changing roads, a person must move the cable around or over the riparian vegetation and banks to avoid damaging the vegetation and banks. "	The language is amended to read "Use equipment that minimizes the number of cable crossings over the stream to reduce damage or disturbance ..."	Yes
280	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
280	(3)(e)	After "other small debris above the" delete "anticipated limits of floodwater" and add " OHWL."	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
290	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	to the project. The use of can, could and should is not associated with a requirement	
290	(7)(iii)	The definition of “Aquatic plant” is broad and includes common plants encountered by NRCS when planning riparian, freshwater wetland, and estuary restoration projects. Typically undesirable weed species are controlled as a part of restoring native plant communities. In many cases reed canary grass and common rush (<i>J. effuses</i>) (undesirable) is intermixed with sparse native plants (slough sedge, cottonwood seedlings less than 24” tall, etc.). These projects may or may not contain other engineering practices requiring in-water work in waters of the state. Section 7 (ii) requires advance notification to remove aquatic beneficial plants. Is there a threshold for notification required on the amount of native plant materials removed or is removing a single native plant constitute the need to notification? This seems like an area where some level of professional judgment can be made to exempt aquatic plant control activities from the notification requirement when the overall objective is native habitat restoration.	This is specific to someone working under the "Aquatic Plants and Fish" pamphlet. Please look at Aquatic Plants and Fish http://wdfw.wa.gov/publications/00713/wdfw00713.pdf for clarification in this matter.	No
300		The proposed revisions do very little to bolster fish life and habitat protections surrounding suction dredge mining. While the current revisions are being undertaken, it is an excellent time to implement long-needed changes to the Hydraulic Code surrounding small scale · placer mining. Neighboring states with similar threatened and endangered fish such as California, Oregon, and Idaho have seen fit to recently change their permitting practices to better protect threatened and endangered species that use aquatic habitat subject to suction dredge mining. Maine and Tennessee have undertaken similar actions to reduce risk to their own vulnerable aquatic organisms. Given the threatened nature re of many of Washington's own fish populations,	Comment noted. The rules for mineral prospecting have been updated twice since 1994. The most recent version of the Gold and Fish pamphlet was published in April 2009. Because of this we decided to focus our limited resources on updating the rules that hadn't been updated since 1994.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		it makes sense that WDFW should undertake similar precautions to protect our state's valuable natural resources.		
300		Additionally, the rules covering mineral prospecting are inconsistent with many of the other HPA rules and need to be rewritten to maintain consistency with other habitat impacts. Examples of these inconsistencies include: Including motorized equipment and suction dredges as "tools", and allowing prospecting without timing restrictions with these pieces of equipment. Allowing a person to relocate wood and boulders is inconsistent with the repositioning of wood in Section 220-110-220. There is no mention of the need to replace wood that has been removed.	Comment noted. The rules for mineral prospecting have been updated twice since 1994. The most recent version of the Gold and Fish pamphlet was published in April 2009. Because of this we decided to focus our limited resources on updating the rules that hadn't been updated since 1994. Please note work without timing restriction can only occur outside the wetted stream perimeter. Boulders and wood can be move but must be retained in the frequent scour zone. Wood cannot be cut.	No
300		Don't require the refilling of dredge holes. Suction dredger make ideal holes for fish life by producing refugia for fry and resting locations for salmon and steelhead, refugia for protection from attacking birds, and other wildlife. The deeper the water the cooler it is and is sometimes vital for survival in the warm summer months, may even get cool upwelling waters coming up from the bedrock. Pools also serve as catch basis for small sands and silts during flooding, etc. thus preventing some silting from reaching the redds. Also, the rocks piled up along the holes serves as refugia for the newly hatched fry because the spaces (voids) between the rocks and boulders provide protection from larger fish. Research says that this is the most critical time for survival of fish fry and smolts.	The only change we proposed to the Gold and Fish Pamphlet was the addition of the rules for small scale mineral prospecting on ocean beaches. During the rule making process we received science supporting timing window changes. The rules for mineral prospecting have been updated twice since 1994. The most recent version of the Gold and Fish pamphlet was published in April 2009. Because of this we decided to focus our limited resources on updating the rules that hadn't been updated since 1994. No science was provided to support this comment.	No
300		Several rules found in the current April 2009 Gold and Fish pamphlet are to be deemed as interfering, prohibitive, and not scientifically necessary per House Bill 2261 or common sense.	The only change we proposed to the Gold and Fish Pamphlet was the addition of the rules for small scale mineral prospecting on ocean beaches. During the rule making process we received science supporting timing window changes. The rules for mineral prospecting have been updated twice since 1994. The most recent version of the Gold and Fish pamphlet was published in April 2009. Because of this we decided to focus our	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			limited resources on updating the rules that hadn't been updated since 1994.	
320		"Because (1) considerable recent (2013) research by the Department of Ecology and Department of Fish and Wildlife has been focused on the mapping of feeder bluffs and especially, exceptional feeder bluffs, in the "Feeder Bluff Mapping of Puget Sound" report by Coastal Geologic Services, and (2) the Puget Sound Vital Sign target for shoreline armoring calls for a reduction in existing armoring along "feeder bluffs" - we believe this key shoreline category deserves explicit mention due to its role in supporting geomorphic processes. Therefore, we recommend that the following underlined language be added to the start of the sentence: "Feeder bluffs and other shoreform that support geomorphic processes ..."	Feeder bluffs are eroding bluffs that supply sediment. We changed the language to clarify that feeder bluffs and other shoreforms support geomorphic processes.	Yes
320	(1)	Description - Based on this section it would appear that the vast majority, if not all, of saltwater areas fit within this category. It doesn't appear that this designation would need its own distinct WAC section especially when considering 220-660-320(1)(b) that includes adjacent areas to saltwater habitats of special concern.	Comment noted	No
320	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
320	(2)(b)	How is "higher level of protection" defined vs. areas that are not saltwater habitats of concern? Providing additional information related to this will provide greater certainty for applicants.	Please refer to (1)(b) Description	No
320	(3)(a)(iv)	Add Lingcod nesting sites.	Lingcod nesting sites were added	Yes
320	(3)(b)(ii)	Change " small gravel" to "pea gravel" and omit shell	Our fish program recommended that the description	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		material	remain as is.	
320	(3)(b)(iv)	Add Lingcod nesting site information	Description was added.	Yes
320	(3)(b)(v)	Add macroalgae as a "saltwater habitat of special concern" and do not limit protection to only to those macroalgae beds in herring spawning areas. Macroalgae is used by a wide range of species – including juvenile salmon.	Macroalgae is ubiquitous throughout shallow nearshore saltwater areas. This would make virtually every place in Puget Sound a saltwater habitat of special concern.	No
320	(3)(b)(v)	Add "macroalgae beds"	Added "Macroalgae species Pacific herring use as spawning substrate; "	Yes
320	(4)(a)	Change "should" to "must"	This cannot always be achieved. This flexibility ensures the requirement is reasonably related to the project.	No
320	(4)(a)	Grammar seems incorrect.	We corrected this.	Yes
320	(4)(a)(vi)	Amend to read: Feeder bluffs and Drift cells that form and maintain spits and beaches and provide substrates required for plant propagation, fish and shellfish settlement and rearing, and forage fish spawning	This is covered in (b)(i) and (ii)	No
330		Include language that timing may change with new information on spawning times and use of nearshore by juvenile salmonids	This is covered in 070(2)	No
330		Include timing information for Surf Smelt in Tidal Reference Area 1. Amend Herring Window in Tidal Reference Area 9 to include Cherry point herring spawning through full month of June.	Because eggs have been found only once in November 1993 and Hammersley Inlet where the eggs were found has been repeatedly surveyed since, our scientist opinion is that a timing restriction isn't warranted at this time.	No
330		I really wish the Hydraulic Codes and requirements were written such that any proposed in-water, potentially habitat-degrading, work along a saltwater beach shoreline must show beyond any doubt that there is no surf smelt spawning there. That would mean at least a full year of certified, approved surveys and analysis. Unless that has already been done recently.	To require surveys for a year is overly burdensome and would likely be deemed unreasonable by the PCHB.	No
330		Establish provisions requiring pre-construction forage fish spawning surveys in areas adjacent to known spawning areas or were there are significant gaps in the habitat survey work.	The new rules allow the department to require surveys in areas adjacent to documented areas if the habitat is suitable.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
330		Omit language related to “documented” forage fish spawning areas. Add provisions to fully protect forage fish spawning habitats that have not yet been adequately inventoried from construction impacts. In section 220-660-330, Change the word “documented” to inventoried.	Many suitable areas have been inventoried several times and no forage fish eggs have been found.	No
330		Add provisions to work timing conditions to include the protection of adult fish from construction impacts during spawning and pre-spawning activity.	The intent of timing windows is to protect fish life during vulnerable life history stages. Adult fish are mobile and able to react to the disturbance caused by construction activities.	No
330		We suggest you strengthen this measure by adding the following language: <i>In areas that are not documented as spawning sites, but have characteristics that would support forage fish spawning, surveys must be conducted over a two year period throughout the assumed local spawning season to determine if the site is used for spawning. Surveys must be conducted by individuals certified in WDFW forage fish spawning survey protocols. In the absence of such a survey, the project must be designed and operated under the presumption that forage fish spawning could occur at the site. WDFW will not require implementation of forage fish protections if no spawning is detected during two consecutive survey years.</i>	Comment noted. Until we have additional scientific information we will maintain the proposed language. Our science division is currently collecting new data on forage fish presence/absence. These data will be used to develop an occupancy model that will predict the likelihood of egg presence. Once the model is developed it will go through the rule adoption process so we can use the model to determine whether surveys are needed.	No
330	(1)	Omit "unless a person can take mitigation measures to eliminate risk during critical periods"	If there is no or minimal risk then a timing restriction isn't warranted.	No
330	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. “May” is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
330	(2)	Omit "unless the risk can be avoided"	If there is no or minimal risk then a timing restriction isn't warranted.	No
330	(3)(a)	Omit "documented"	Comment noted	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
330	(3)(a)	Omit "adjacent"	Comment noted	No
330	(3)(e)	Omit "documented"	Comment noted	No
330	(3)(e)	Omit "documented"	Comment noted	No
330	(3)(e)	Habitat biologists should have the discretion to work with the project proponent to develop best practices and/or mitigation actions that will allow for the necessary work to take place. As is, these authorized work times are overly restrictive.	This is allowed under (3)(i) and under proposed section 070.	No
330	(3)(f)(i)	Correction "per WAC 220-660-370" should be "per WAC 220-660-340"	Correction made	Yes
330	(3)(f)(ii) & (iii)	Join and amend to read: If the survey shows eggs are not present the person may start work after submitting the survey report to the department and receiving start work approval. If the permittee does not complete the work within seven days of the start of project, an additional survey, with department approval, is required. The biologist must conduct a survey every seven days until the work is completed. If a survey shows eggs are present, work must stop and the department must prohibit work waterward of the OHWL for a minimum of three weeks. Work may not begin until a new survey shows there are no eggs present	This language was in earlier draft versions of the rules. Our scientists, Dr. Phil Dionne and Dr. Timothy Quinn, both indicated a subsequent survey isn't warranted.	No
330	(3)(g)	Omit "adjacent"	Comment noted	No
330	(3)(g)	Omit "documented"	Comment noted	No
330	(3)(h)	Amend to read: Timing restrictions related to forage fish spawning areas will be applied to sites in or near known spawning areas. Timing conditions may also be applied to other areas with suitable habitat and bed materials when the department determines that use of the area for spawning is likely. (or similar)	Until we have additional scientific information we will maintain the proposed language. Our science division is working on an occupancy model that will predict forage spawning areas. Once the model is developed it will go through rule adoption process so we can use the model.	No
340	(1)	Amend to read: The department uses intertidal forage fish spawning bed surveys to determine presence, absence, quantity, and timing of surf smelt and Pacific sand lance spawning. The department may require an applicant to hire	See previous comments	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		a qualified, department-trained biologist to conduct an intertidal forage fish spawning survey. The presence of suitable spawning habitat or eggs may restrict project type, design, location, and timing.		
340	(1) and (3)	As with aquatic vegetation surveys, WDFW should only require that forage fish spawning surveys be conducted by a qualified professional using the approved WDFW survey protocol. WDFW should not require additional training of qualified professionals. This would be similar to qualified engineering professionals discussed in these proposed rules as well.	Comment noted. Completion of the one-day training is an important step to ensure the protocol is implemented correctly.	No
340	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
340	(2)	Add: "or on potential spawning reaches that have not been adequately surveyed but that contain suitable spawning substrates." to end of paragraph	See previous comments	No
340	(3)(b)	Omit " the department may modify this protocol when only presence or absence are required."	Documenting the development stage isn't needed to determine presence and absence.	No
350		. The upper beach, where forage fish spawn, is typically shaded by overhanging vegetation. A structure overhanging the upper beach might mimic this natural shade. This shade might even be beneficial to forage fish eggs by protecting them from direct sunlight and reducing desiccation. By contrast, a bulkhead eliminates the upper beach.	Comment noted	No
350	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		language.		
350	(3)	Omit " unless the department can determine the project will not impact seagrass and macroalgae"	If we can determine there is no impact it is unreasonable to require an unnecessary survey.	No
350	(3)(a)(i)	Amend to read: Constructing a new dock, mooring buoy, float, marina or marine terminal, jetty or breakwater, boat ramp, or other project that may cover or disturb seagrass or macroalgae habitats.	These are all covered in (a)(i) - (iv).	No
350	(3)(a)(iii) & (iv)	Combine and amend to read: Maintenance dredging, trenching, filling or grading.	This is not required for all maintenance dredging. See RCW 77.55.271	No
350	(3)(b)	Amend to read: Surveys shall follow the protocols identified the departments Eelgrass/Macroalgae Habitat Interim Survey Guidelines which can be found on the department website. Survey work must be conducted by biologists who are qualified to identify the predominant eelgrass and macroalgae species in the project area and survey results and interpretation will be subject to WDFW approval. The department will use the preliminary survey to:	WDFW allows the use of other protocols if they meet our monitoring standards.	No
350	(3)(b)	If a preliminary survey shows that seagrasses and macroalgae are absent, is a determination made that the project proposal will not impact aquatic vegetation? If so, this should be clearly describe bed in this section to provide certainty to project proponents/permit applicants.	If seagrass/macroalgae is not present how could project impact these resources? We don't require mitigation for loss/damage to a resource that isn't present. This is covered in proposed section (080)(4)(f).	No
350	(3)(b)(ii)	Omit "or minimize"	Comment noted	No
350	(3)(c)	Omit " in herring spawning beds"	Comment noted	No
350	(3)(c)	WAC 220-660-350(3)(c) acknowledges the seasonal and temporal variation of aquatic vegetation and states a department preference for conducting preliminary surveys between June 1 and October 1 when aquatic vegetation is at its fullest extent. Allowing preliminary surveys to be completed outside of this window could allow a project to improperly conclude it can be completed without adverse impacts aquatic vegetation. It is not clear what the threshold is to trigger an advanced	We amended the language to read "Seagrass and macroalgae surveys must be conducted between June 1 and October 1 because the full extent of seagrass and macroalgae distribution can be more accurately mapped."	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		survey if the preliminary survey is completed between October 2 and May 31. DNR recommends preliminary surveys used for concluding no impact should be completed during June 1 to October 1 to ensure conservation and recovery efforts are not undermined.		
350	(3)(f)	Omit "the predominant"	Comment noted	No
350	(3)(g)	Change "may" to "will"	Change made	Yes
360	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement.	No
360	(2)	Amend to read: Construction and other work can negatively affect fish life. Some activities may kill or injure fish while others behavioral changes or a physical interruption to spawning, foraging or migratory behaviors which reduces fish growth and survival. Some activities can damage the habitat used for spawning and egg incubation, rearing, feeding, hiding from predators, and migration.	The current language covers these points.	No
360	(4)(b)	Change "six inches" to "four inches."	Change made	Yes
360	(4)(b)	The word "vegetation" is omitted after "native" in the first sentence of this section.	Change made	Yes
360	(6)(a) & (b)	Change "seagrass and kelp beds" to "seagrass and macroalgae beds" or "seagrass, macroalgae and kelp beds"	Changed to "seagrass, kelp, and forage fish spawning beds."	Yes
360	(8)	"undated" should read "inundated".	Change made	Yes
360	(010)	Omit "causing harm" and change "Activities related to the fish kill or fish distress must not resume..." to "Work must not resume..."	This is overly burdensome. Many times other work is occurring concurrently with the hydraulic project.	No
370		The proposed change by the ports would allow up to 3 years from a breach in a bank protection structure for	Comment noted. The ports and others expressed concern that they may not be able to obtain all necessary permits	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		submission of a permit for repairs. Combining these maximum time limits would allow inundation and establishment of a new OHWL to potentially occur for up to an 8 year period. Such a long time period would potentially allow for development of a new OHWL and aquatic functions could become well established. Such habitat would then be lost if a bulkhead is re-constructed in the old footprint. We recommend that this section revert to the previous language and require repairs be completed (rather than a permit submitted) within 3 years, or the newly established OHWL will become the existing OHWL for permitting purposes.	to repair the bank protection within two years of a breach. Please note the existing and proposed rules require a permittee to demonstrate substantial progress on the project within two years of the date of HPA issuance.	
370		Add language noting that due to significant impacts, single family bulkhead projects often result in the permanent loss of critical food fish and shellfish habitat, and that many bulkhead projects are processed under 77.55.021.	Added "The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life."	Yes
370	(1)	Change "are either soft or hard techniques to " include both soft or hard techniques."	"either" is accurate here.	No
370	(1)	WAC 220-660-370 (1): replace the word "aerial" with the word "areal," or re-word to say "...to be considered soft, at least eighty-five percent of the total project area must consist of naturally occurring materials..." There is also something missing or unclear in the next sentence in this section, "The remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff) and still be called soft." Consider instead, "In order to be considered soft, the remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff)." This section also defines "area" as extending cross-shore from MLLW to OHW; does this mean that bank protection installed below MLLW will not be considered "soft"?	We replaced the word "aerial" with "areal."	Yes
370	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	to the project. The use of can, could and should is not associated with a requirement	
370	(2)	Change "protects the beaches where critical food fish or shellfish habitat occur and the nearshore..." to " protects critical food fish or shellfish habitat and the beaches where these habitats occur and the nearshore..."	The section accurately reflects the concern.	No
370	(3)(a)	Change "three years" to "two years"	Other commenters said three years is more reasonable.	No
370	(3)(d)	Amend to read: An HPA application for new, replacement, or rehabilitated bulkhead or other bank protection work must include a site assessment which includes evaluation of need, alternatives analysis and design rationale by a qualified professional(such as a coastal geologist, geomorphologist, etc.) for the proposed project and selected technique. New and replacement armoring will not be allowed unless a need is clearly determined by a qualified professional. If a need for stabilization is confirmed, hard armoring will not allowed unless evaluation determines soft stabilization techniques are not possible. This requirement applies to projects processed under both RCW 77.55.141. and RCW 77.55.021. This report must include:	This doesn't comply with RCW 77.55.141(2)	No
370	(4)(a) & (b)	Merge sections with application section applying to bulkheads processed under both statutes.	This doesn't comply with RCW 77.55.141(2)	No
370	(5)(a)	Is there scientific justification for "no greater than 6 feet" waterward of the OHWM? This should be a site specific decision based on need and the existing language "least distance needed" should provide acceptable protection without what seems to be an arbitrary distance determination.	This is in statute RCW 77.55.141.	No
380	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	to the project. The use of can, could and should is not associated with a requirement	
380	(3)(a)	Omit "if possible."	Must is mandatory. "May" is appropriate when a requirement may not apply in all situations.	No
380	(3)(b)	Omit "or minimize" throughout entire subsection.	Comment noted	No
380	(3)(b)(iii)	Change "may" to "will"	Change made	Yes
380	(3)(b)(iii)(A)	The term "must" should be replaced with "should" to allow for situations where this buffer may not be achievable but minimization and mitigation may be an acceptable outcome.	Exceptions can be allowed under proposed section 070(1)(c).	No
380	(3)(b)(iii)(A)	Amend to read: Structures must be located at least twenty-five horizontal feet and four vertical feet away from seagrass and macroalgae at extreme low tide.	Term "algae species" is removed.	Yes
380	(3)(b)(iii)(B)	Omit	Comment noted	No
380	(3)(b)(iii)(B)	"at least" should be replaced with a qualifying ng statement that structures should be placed the maximum distance possible from species of concern to avoid and minimize impacts. Minimization and mitigation for impacts may provide for acceptable alternative strategies/outcomes than defining specific distances.	Comment noted. Exceptions can be allowed under proposed section 070(1)(c).	No
380	(3)(b)(iv)	"mitigation" should be "migration"	The language is amended to "migration"	Yes
380	(3)(d)	"usable" should not be the basis for allowing a replacement structure. Allowance to replace a structure should be provided if it is within the same footprint as the existing structure. Usable is a subjective term.	This does not prohibit the construction of a new structure but it may affect the mitigation required. We have added "Usable means no major deterioration or section loss in critical structural components is present."	Yes
380	(3)(e)	Replacement of more than XX percent of decking or replacement of decking substrate requires installation of functional grating. The grating must conform to the requirements in this section	Comment noted	No
380	(3)(e)	250 ft2 seems to be an arbitrary determination. Use percentage based approach. If required to install grating based on this rule, it is not clear if the entire surface	250 square feet is the size of a typical residential float. We have changed the language to clarify that the grating is required in the replaced section only.	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		needs to be replaced or just the area planned for replacement.		
380	(4)(a)	Change "six feet" to "XX" feet	Comment noted. The comment was not specific enough to respond to.	No
380	(4)(a)	Is the minimum height requirement of 6' at the landward end of piers and docks scientifically derived? This height seems arbitrary and may not be possible based on site characteristics.	The importance of light in the nearshore is well documented in the literature. This height requirement is typically achievable on marine shorelines. Section 070(1)(g) allows deviations from this standards for geological or engineering constraints.	No
380	(4)(b)	Change "six feet" to "four feet". Add allowance for ADA residential piers to be six feet in width and add width parameter limit for recreational piers i.e. "no more than"	Comment noted. No science was provided to support this comment.	No
380	(4)(c) & (d)	Merge sections and amend to read: New Piers, ramps and floats must have grating installed over the entire deck, ramp or float surface. Grating must be installed parallel to the wide of the pier, ramp or float and have an open area of at least sixty percent.	Comment noted. No science was provided to support this comment. Please note, grating over flotation does nothing to improve light penetration.	No
380	(4)(e)	Amend to read: Limit the width of residential ramps to four feet wide. Limit the width of recreational ramps to the minimum width needed to accommodate the intended use with maximum width not to exceed XX feet. Cover the entire ramp surface with grating.	Comment noted. The comment was not specific enough to respond to.	No
380	(5)(a)	Omit " if possible"	WDFW will not require if it's not possible.	No
380	(5)(b)	Amend to read: Limit the width of residential floats to eight feet . Limit the width of recreational floats to the minimum width needed to accommodate the intended use with maximum width not to exceed XX feet. Cover the entire float surface with grating.	Comment noted. The comment was not specific enough to respond to.	No
380	(5)(c)	Omit "if possible."	The size of the vessel(s) may limit what's possible.	No
380	(5)(d)	How were the maximum float size dimensions determined? This section should read "....minimum size needed for the site and intended use..."	The importance of light in the nearshore is well documented in the literature. This width requirement is typically achievable. Proposed WAC section 070(1)(g) allows changes to the technical provisions for geological, engineering or environmental constraints or safety	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			concerns. (1)(f) allows changes if the provisions conflict with other regulations such as ADA.	
380	(5)(f)	Amend to require one hundred percent grating with at least sixty percent open area over the entire float surface.	Comment noted. No science was provided to support this comment. Please note, grating over flotation does not improve light penetration. See definition of functional grating.	No
380	(5)(f)	"...below should not block light penetration ..." An allowance should be made for structural framing under the grating as this is the only way a float can be supported.	We have added language to clarify this doesn't apply structural components.	Yes
380	(5)(i)	The term "embedded anchor" should be used instead of "helical screw, duckbill". This is a more generic and accepted term.	We have changed the language to "embedded anchors".	Yes
380	(6)(b)	This section should not define maximum piling diameter for residential docks. It should be the same for public recreational docks: "minimum diameter needed to accommodate the intended use". Should be based on use and site characteristics.	Section 070(g) allows changes to the technical provisions for geological, engineering or environmental constraints or safety concerns. (f) allows changes if the provisions conflict with other regulations such as ADA.	No
380	(7)(c)	In WAC 220-660-380 (7) (c), please consider adding language similar to that in 220-660- 140 (3) (g), i.e., "the design should not use treated wood for the decking of the structure."	This is 03(c).	No
380	(8)(a)(i)	The term "embedded anchor" should be used. Helix and Manta are brand names and not the only options on the market.	We have changed the language to "embedded anchors"	Yes
380	(8)(a)(i)(a) & (B)	Join and amend to read: Seagrass and Macroalgae habitat surveys are required for all new mooring buoy systems to ensure any submerged aquatic vegetation will not be damaged from buoy installation, vessel propellers or shading from moored vessels.	Not required for installation of an embedment style anchor because these are installed by divers. As a result, the HPA can be conditioned to require the diver to install the anchor away from important vegetation.	No
380	(9)	The replaced structure must be removed and disposed of upland such that it does not reenter state waters." What if the replaced structure meets permit requirements? Can it be reused if permissible? Can it be recycled instead of "disposed of upland"? Recycling should be encouraged	A replaced structure can be reused but it must be specifically permitted in the HPA. Materials can also be recycled.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		when appropriate.		
380	(9)(d)	Amend to require one hundred percent grating with at least sixty percent open area over the entire float surface.	Comment noted. No science was provided to support this comment. Please note, grating over flotation does not improve light penetration. See definition of functional grating.	No
380	(10)(a)	Change "adversely impact seagrass, kelp, or forage fish spawning beds" to "seagrass, kelp, macroalgae, or forage fish spawning beds."	Comment noted	No
380	(10)(a)	This should be a best management practice (BMP) and not in rule as it is only a guideline and not enforceable.	(10)(a) is removed because this requirement is already in proposed section 360.	Yes
380	(10)(g)(v)(A)	Remove word "sausage". Absorbent boom is clear and understandable term and does not preclude other appropriate types of absorbent boom and potential future changes in technology.	We have changed the language to "absorbent boom"	Yes
380	(10)(h)	"Dispose of replaced piers, ramps, floatsin an upland disposal site". Replaced materials should be allowed for reuse if they meet current standards. Recycling should be encouraged when appropriate.	A replaced structure can be reused but it must be specifically permitted in the HPA. Materials can also be recycled.	No
390		WAC 220-660-390 should incorporate language to limit new private boat launches associated with single family residences and encourage public and community launches a means to avoid/minimize impacts to the marine nearshore ecosystem. Sec 390(a) should be modified to state that design and location of new boat launches and ramps "must avoid" saltwater habitats of special concern (e.g., forage fish spawning habitat and native aquatic vegetation), similar to the way Section 410(3)(c) "prohibits" new dredging in sand lance, surf smelt, herring spawning beds, etc.	Comment noted. The "must" is implied but the language was changed to make it clear.	Yes
390	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		language.		
390	(3)(a)	"...to avoid and minimize adverse impacts"	This would be less protective than the current rules.	No
390	(3)(b)	Change "may" to "will"	Change made	Yes
390	(3)(c)	Omit "and minimize"	Excavation below the OHWL may not be avoidable.	No
390	(3)(d)	Change "to minimize impacts" to "avoid impacts"	Impacts from boat ramps below the OHWL may not be avoidable.	No
390	(3)(g)	Side slope requirements should be site specific determinations nations and not predetermined.	Comment noted. Exceptions can be allowed under proposed section 070(1)(c).	No
400	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
400	(3)(c)(iv)	...existing low or impaired biological value." How is this defined and who makes the decision of what locations have this type of status? As written this is ambiguous and does not provide project proponents or permit applicants with any certainty about how it would apply.	We agree it's a bit ambiguous. That's why (3)(c) says "where possible."	No
400	(3)(c)(v)(D)	Amend to require the use of grating over one hundred percent of all overwater surfaces. Grating must have a minimum of sixty percent open area. Grating must be oriented so the lengthwise opening maximizes light penetration. Materials may not be stored on grated areas and portions of the structure that are not grated areas i.e. boathouse or loading ramps must use light reflecting materials on the underside of the OWS	Marine terminals cannot install grating in many cases because of the intended use.	No
400	(3)(a)	Change "may" to "will"	Must is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project.	No
400	(3)(b)	Change "may" to "will"	Must is mandatory. "May" is appropriate when a	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
			requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project.	
400	(3)(c)	Omit "when possible"	This may not always be possible.	No
400	(3)(c)(i)	Omit "and minimize"	Avoidance may not always be possible.	No
400	(3)(c)(ii)	Omit "or minimize"	Avoidance may not always be possible.	No
400	(3)(c)(iiI)	Omit "or minimize"	Avoidance may not always be possible.	No
400	(3)(c)(v)(B)	Add width parameters/limit i.e. "no more than"	The width of a terminal supporting large ships will depend on the intended use.	No
400	(3)(c)(v)(C)	Add height parameters i.e. "at least six feet"	The height of a terminal supporting large ships will depend on the intended use but this is often much greater than six feet.	No
400	(4)(a)	Amend to read: The department prohibits constructing marinas on or over the following saltwater habitats of special concern: Pacific herring spawning beds, lingcod and rockfish settlement and nursery areas, eelgrass, macroalgae and kelp beds.	The proposed language maintains the current restrictions.	No
400	(4)(a)	This section should be rewritten. Why are marinas singled out for this prohibition and not marine terminals? "Prohibit precludes any opportunity to avoid, minimize and mitigate impacts and should not be used.	The current rules do not have a specific section for marine terminals, just marinas. The prohibition is in the current rules so changing it to avoid and minimize reduces current fish protection standards.	No
400	(4)(b)	Omit and add habitats of special concern listed to 220-660-400(4)(a)	The proposed language maintains the current restrictions.	No
400	(4)(d)	Omit "if possible."	This may not always be possible.	No
400	(4)(d) - (d)(iii)	Omit	The proposed language increases protection for juvenile salmonids.	No
400	(4)(e)	Amend to add a depth value or a definition of "phototrophic zone"	The common definition is adequate. It varies depending on where you are in the Salish Sea.	No
400	(4)(f)	39. WAC 220-660-400 (4) (f) needs to be edited; "Any replacement roof...in landward.	We have changed the language.	Yes
400	(4)(h)(i)	"single entrance should be better described or defined, especially due to the fact that the requirement is landward of OHWM. How does this help avoid,	This language is in the current rule and we are not proposing to change it. The language says "A single entrance may be required..." Proposed section 070	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		minimize fish life concerns?	allows modification of the rules to address engineering constraints.	
400	(4)(h)(ii) - (j)(v)	Amend to restrict new breakwater construction.	Breakwaters are sometimes needed for new marinas.	No
400	(4)(i)(ii)	Horizontal/vertical ratios should be based on site specific characteristics/requirements and pre-determined.	This language is in the current rule and we are not proposing to change it. Proposed section 070 allows modification of the rules to address engineering constraints.	No
400	(4)(j)(iii)	Breaches between breakwaters should be engineering decisions based on site specific characteristics/requirements and not predetermined.	This language is in the current rule and we are not proposing to change it. Proposed section 070 allows modification of the rules to address engineering constraints.	No
400	(5)	How are saltwater habitats of special concern established and listed/documented for use by permitting community.	See Section 320.	No
400	(6)(h)(i)	Remove word "sausage". Absorbent boom is clear and understandable term and does not preclude other appropriate types of absorbent boom and future changes in technology.	We have changed the language to "absorbent boom"	Yes
400	(6)(j)	"Dispose of replaced piers, ramps, floatsin an upland disposal site". Replaced materials should be allowed for reuse if they meet current standards. Recycling should be encouraged when appropriate.	A replaced structure can be reused but it must be specifically permitted in the HPA. Materials can also be recycled.	No
410	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
410	(2)	WAC 220-660-410 (2): Similar to previous comments about using "can" or "may" in sections describing fish life concerns: Using "may" as you do in this section could be read as "it is permissible to...", particularly because in 220-660-410 (3)(a), I believe you are using "may" in the sense of "it is permissible for the department to require hydrodynamic modeling."	The section describes fish life concerns. It doesn't authorize adverse impacts.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
410	(3)(a)	Change "may" to "will"	Must is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project.	No
410	(3)(b)	Design project to avoid dredging and expansions that convert intertidal to subtidal habitat, where possible.	We have clarified the language.	Yes
410	(3)(c)	Project proponents should be provided the opportunity to demonstrate how their project design will avoid, minimize and mitigate for impacts to these habitats instead of an outright prohibition in the rule. The rule would need to be changed if adaptive management and/or new technology/science provides alternatives.	This is language in the current rule. The change would reduce fish protection from the current standard. Proposed section 070(c) allows modification of the rules if the original provision would result in a denial of an HPA when there is enough mitigation to allow the project.	No
410	(3)(d)	Omit "new". Omit "Surveys are not required for maintenance dredging within their original footprint"	This would not comply with RCW 77.55.271	No
410	(3)(e)	Omit	Comment noted. This would reduce fish protection.	No
410	(3)(e)	"Dredging must avoid and minimize adverse impacts to ..."	The language is amended.	Yes
410	(3)(f)	Should allow for dredged depths based on use, need and prior dredged depths not arbitrary existing depth at seaward end and for some uses versus others. Existing depth at seaward end may not be suitable for current uses.	This is language in the current rule. Proposed WAC section 070(g) allows changes to the technical provisions for geological, engineering or environmental constraints or safety concerns.	No
410	(4)(f)	Omit "when possible"	Limiting to daylight hours lengthens the overall time dredging will take. So it may not be possible or desirable in some cases.	No
420		WAC 220-660-420 Artificial reefs should only be utilized to advance species- specific conservation and recovery objectives as part of a larger coordinated management strategy. Permitting an artificial reef as a means to enhance a recreational fish viewing opportunity does not fill a specified habitat void or advance a species-specific recovery objective. DNR recommends that artificial reefs not be permitted as a generic addition to aquatic habitats as this can result in displacement of existing soft-bottom ecological communities and have	Comment noted. WDFW has a different perspective.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		unintended ecological impacts. Although viewing opportunities may be an indirect benefit of an artificial reef, it should not be considered an adequate justification for a proposal.		
420	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
420	(3)(a)(i)	The Washington Scuba Alliance supports the draft language proposed for section WAC 220-660-420 regarding "Artificial aquatic habitat structures in saltwater areas." Specifically, the language in proposed section WAC 220-660-420.3(a)(i) supports a design objective for artificial habitat structures to "Enhance fish viewing opportunity at a specific location."	Comment noted	No
430	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
430	(3)(d)	This section discusses when a "fishway" is required on a tide gate. There is no definition or description of what is considered as a "fishway" in this section or in section WAC 220-660-030.	See "fish passage improvement structure."	No
440	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
440	(4)(b)	Change "may" to "will"	Change made.	Yes
450	(2)	Section 2 should be deleted or moved to a guidance document. Using the language with words such as "can, could, may, and potential" is purely speculative and inappropriate to be listed for a WAC as rule-making. This language is appropriate for guidance. The WAC should implement the RCW and not provide guidance language.	"Must" is mandatory. "May" is appropriate when a requirement may not apply in all situations. This flexibility ensures the requirement is reasonably related to the project. The use of can, could and should is not associated with a requirement	No
450	(3)(a)	Project proponents/permit applicants may need to conduct additional borings outside of a proposed footprint depending on the project proposal/site characteristics. These should be allowed if a qualified professional determines that they are necessary. Rule language should be revised to reflect this.	The boring is the hydraulic project and the plans approved by the department would delineate the project footprint.	No
460	(3)	WDFW should allow 90 days for submission of a request for an informal appeal.	Comment noted. This is current language and we are not proposing to change this section.	No
460	(6)	WDFW should develop an appropriate time period for issuing a decision on an informal appeal instead of just suspending the process during the informal appeal conference process.	Comment noted. This is current language and we are not proposing to change this section. Please note the decision to participate in an informal conference is the appellants'.	No
470	(3)	WDFW should provide 90 days for a formal appeal to be served on the department. The rule currently requires 30 days.	This timeline is in statute. RCW 77.55.021(8)(b).	No
470	(5)	WDFW should provide 90 days for requesting a formal appeal during the described process.	This timeline is in statute. RCW 77.55.021(8)(b).	No
480	(3)	Change "Notice of correction" to "Notice of correction and stop work condition." Add section creating a common stop work condition that will be added to approved permits allowing the department to temporarily require a cessation of work when any violation of permit conditions is discovered.	WDFW cannot ask a permittee to incriminate themselves in a potential gross misdemeanor.	No
480	(4)	WDFW should provide 90 days for civil penalty payments.	This timeline is in statute. RCW 77.55.291(4).	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
170	(1)	Dredging can restore sediment impaired salmon spawning and rearing habitat in small urban streams and restore the natural toxic algae free function of sediment impaired lakes. The latter in-water salmon habitat enhancement activity needs to be encouraged and facilitated by WDFW drafting and promulgating appropriate instructions and a simplified no fee permitting process that will enable local governmental agency personnel including the Pierce Conservation District and its volunteers, tribal members, enlightened environmental organizations and volunteer citizen stream stewards to responsibly execute WDFW's Stream Restoration Guidelines 2012 Technique 11 prescribed sediment removal best management practice.	The department will support an amendment to RCW 77.55.181 to allow this activity under the Fish Habitat Improvement Process.	No
200	(1)	Are stream barbs/vanes also discouraged?	We believe that these are bank protection techniques, not fish passage structures. We would need a more specific case to evaluate them.	No
220	(3)(b)	Does this mean logs that span the bed of the channel below the OHWM or span the bank of the channel suspended above the active channel? We were recently told that bed channel spanning logs would not be permitted even though this type of feature was present throughout the reference reach because they would be considered fishway structures.	The least impacting method of stabilizing is preferred. In general, WDFW discourages grade control. If these logs are for habitat enhancement, then buried logs can help to stage and store sediment, and provide channel diversity. However, these logs must be able to respond to changes in bed elevation as they do in a natural channel.	No
130	(4)(b)(ii)	if it is determined that the "root cause" of the bank failure occurs offsite, outside of the NRCS's client's control, will the Department still permit the bank stabilization project or will the "root cause" need to be addressed?	The WAC 220-660 submitted to the code reviser does not have -130(4)(a)(ii). But, -130(4)(b)(ii) says: (ii) Use a site and reach assessment to understand the causes of erosion;... This provision does not require that you eliminate the cause, only that it be understood. The assumption is that, if the designer is aware of the cause, then his protection strategy will perform better with fewer impacts to stream processes and habitat.	No
120	(5)(e)	Chevron's suggested modification also allows non-vegetable-based lubricants to be used as long as they meet the "readily biodegradable" requirements of OECD 301B and pass the acute toxicity requirements of OECD 201 and EC-50, OECD 202. Furthermore, these readily	The provision was changed to read "Equipment used in or near water must use environmentally acceptable lubricants composed of biodegradable base oils. These are vegetable oils, synthetic esters, and polyalkylene	Yes

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
		biodegradable hydraulic oils provide better lubrication protection, which also leads to less lubricant disposal.	glycols."	
120	(7)(f)	After "above the limits of" delete "anticipated floodwater" and add "OHWL" to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(7)(g)	after "Upland area above the" delete "limits of anticipated floodwater" and add "OHWL." to be consistent with RCW 77.55.021.	Comment noted. Please see our response in section A.1.2 of Appendix A regarding our jurisdiction.	No
120	(7)(f)	Perhaps you mean, "Route the construction water (wastewater) <u>FROM</u> the project to an upland area above the limits of anticipated floodwater."	Yes	Yes
120	(9)(m)	DNR suggest this section be written in plain speak so that it can be understood by landowners and easily implemented? Earlier versions of the Hydraulic Code rules provided alternate screening parameter that matched readily available products. (i.e., 3/32" or smaller 1/16"). 220- 660-120 (9) (m) through (p) refer to fish "screens." 220-660-120 (9) (m) (iv) refers to a fish "guard." Is there a difference between a "guard" and a "screen?" If not, please consider rewording for consistency.	We made the language consistent. However, please note in the definition "Fish screen" means fish guard.	Yes
000	General	The Fish and Wildlife Commission can insist that HPA technical provisions are specifically and precisely written for beaver dam and sediment removal (dredging) salmon habitat enhancement projects so that WDFW biologists' discretion in determining mitigation, if any, is "...relate[d] to the project and...proportional to the impact of the project." As it now stands too much discretion is allowed WDFW's biologist in determining whether or not mitigation will be required, and if so how much, for beaver dam and sediment removal salmon habitat enhancement projects.	Hydraulic projects have many variables. Precise rules limit the flexibility of the biologist to condition the permit appropriately to mitigate impacts from the proposed work. The biologists and environmental engineers must have the flexibility to ensure the mitigation including compensatory mitigation is appropriate for the project and site specific impacts.	No
050	(9)(c)(ii)(B)	Regional WDFW staff have communicated to applicants, such as Grant PUD, that there would be delay in processing a JARPA and that the electronic online form is the fastest and best way to apply for a HPA	There is no difference in the processing time. APPS has some advantages such as being able to pay online and the ability get status updates on your application processing but these don't affect processing time.	No

SECTION	PROVISION	COMMENT	RESPONSE	CHANGE RESULTED
120	(7)(d)	The proposed rule currently reads, it appears to allow WDFW to stop project activities for any siltation of state waters without consideration or acknowledgement of existing DOE water quality standards and general permits.	You are correct. Our authority is limited to the protection of fish life. Proposed section 070(1)(f) allows us to delete or modify technical provisions in conflict with applicable local, state, or federal regulations that provide equal or better protection for fish life. This would apply to WQ regulations and permits issued by Ecology. Our rules only require activities causing harm to fish life to immediately stop if a fish kill occurs or fish are observed in distress.	No
300		I feel that the Commission and the agency should do their fiduciary duty and bring forth this issue in the form of legislation and remove small scale mineral prospecting from RCW 77.55 and establish new statutes regarding lawful prospecting and mining per the federal mining laws and jurisdiction. This tiny activity (compared to historical prospecting and mining practices) is totally non-significant. Given the all the peer reviewed subject matter science pertaining to small scale mineral prospecting received by this Commission and the agency over the past decade and in spite of the workshops and public miners rallies in Okanagan County and in Kittitas County, this writer is still baffled by the actions of the State of Washington into the affairs of prospectors and miners operating on the public domain set aside for mineral entry. The presumption of preemption by the state of Washington into this activity is currently being hotly contested not only here in Washington State (Beatty v WDFW Court of Appeals, opinion pending) in Oregon and a huge case in California.	Comment noted.	No