

Summary

Meeting dates: February 14, 2014, Commission Conference Call

Agenda item: Petition to Change Rules – Mineral Prospecting (Thomas) WAC 220-110-206

Presenter(s): Pat Chapman, Regulatory Services Coordinator
Perry Harvester, Region 3, Regional Habitat Program Manager

Background summary:

The Fish and Wildlife Commission was petitioned at the December Commission meeting by Mr. Bill Thomas to repeal the work windows adopted by the Commission in 2008 that regulate the timing of mineral prospecting activities permitted through the Gold and Fish pamphlet. These rules are incorporated in WAC 220-110-206.

Most mineral prospecting activities are regulated by the department through the Gold and Fish pamphlet. The pamphlet lists rules adopted by the Commission and serves as the Hydraulic Project Approval (HPA) for those activities included in it. The pamphlet allows prospectors to conduct certain small scale prospecting activities year around. Prospectors using larger equipment are restricted to specific work windows to protect vulnerable life stages from the impacts of those activities. Some waters have no suitable work times as sensitive life history stages of fish occur throughout the year. These waters require prospectors, or any other hydraulic project proponent, to submit an application for an individual permit. Any prospector seeking approval for an exception to the requirements of the Gold and Fish pamphlet may submit an application to the department for an individual HPA.

The Gold and Fish pamphlet and individual HPAs for prospecting are exempt from the \$150 fee normally charged by the department for HPA applications.

The petition states that the rule should be repealed because it imposes unreasonable costs and further states:

“The model used to develop the timing windows adopted November 2011 have been determined to be flawed, too generic to be useful, unproven or validated. The overly restrictive dates require individual application and processing unnecessarily.”

Policy issue(s) you are bringing to the Commission for consideration:

Pursuant to RCW 34.05.330 should the Commission:

- a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised by the petitioner, or
 - b) Initiate rule-making proceedings in accordance with RCW [34.05.320](#).
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Public involvement process used and what you learned:

Mr. Thomas participated in the workgroup the department formed to develop the current rules. Included in the workgroup were prospector representatives as well as representatives from various tribes, environmental interests, other state and federal agencies, and Washington Department of Fish and Wildlife. The department worked with this group and other stakeholders for over a year, but not surprisingly there was not unanimous agreement on every

aspect of the rules. The most contentious aspect of the rules adopted by the Commission in 2008 has been the work windows. The department believes the methods used to develop the work windows use sound scientific principles and existing data, but some prospectors disagree. No other stakeholder groups have petitioned to repeal the work windows. An extensive comment period during the 2008 rule adoption process, and during the current revision of the overall Hydraulic Code Rules have not identified any credible evidence that the work windows are flawed.

Action requested:

The department requests that the Commission deny the petition to repeal WAC 220-110-206.

Draft motion language:

I move to deny the petition to repeal work windows for mineral prospecting in WAC 220-110-206.

Justification for Commission action:

The petitioner has not provided evidence to show that the current rule imposes unreasonable costs. The department's mineral prospecting work windows are based on best available science and have been reviewed by numerous parties during past and current rule adoption processes. If prospectors desire to operate outside of the work windows in the rules and Gold and Fish pamphlet they can apply, without charge, to the department for alternatives. The department approves these exceptions provided fish life can be protected.

Communications Plan:

N/A