



Washington
Department of
**FISH and
WILDLIFE**

Implementation Plan

Hydraulic Code Rules Chapter 220-660 WAC

Incorporating elements of 2SHB 1579 into HPA rules

WAC 220-660-050 - Procedures - Hydraulic Project Approvals

WAC 220-660-370 - Bank Protection in saltwater areas

WAC 220-660-460 - Informal appeal of administrative actions

WAC 220-660-470 - Formal appeal of administrative actions

WAC 220-660-480 - Compliance with HPA Provisions

Washington Department of Fish and Wildlife
Habitat Program
Protection Division
Olympia, Washington

April 21, 2020

Mission
of the
Washington Department of Fish and Wildlife

*To preserve, protect and perpetuate fish, wildlife, and ecosystems
while providing sustainable fish and wildlife
recreational and commercial opportunities.*

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Table of Contents

Purpose	1
Introduction	1
Implementation and Enforcement	1
Informing and Educating Persons Affected by the Rule	2
Promoting and Assisting Voluntary Compliance.....	3
Evaluating the Rule	3
Training and Informing Department Staff	4
List of Supporting Documents that may Need to be Revised.....	5
For Further Information:	5

Purpose

The Washington Department of Fish and Wildlife (the department) provides the information in this implementation plan to meet department and Administrative Procedure Act requirements (RCW 34.05.328) related to rule adoption.

Introduction

On April 24, 2020, the Fish and Wildlife Commission will adopt the proposed changes to Chapter 220-660 WAC – Hydraulic Code Rules. These changes are necessary to implement elements of 2SHB 1579¹ - a bill passed by the legislature during the 2019 legislative session. This bill implements recommendations of the Southern Resident Orca Task Force related to increasing chinook abundance. The bill adds a procedure for potential applicants to request a preapplication determination about whether a project proposed landward of the ordinary high water line (OHWL) requires a Hydraulic Project Approval (HPA). The bill also enhanced the department's civil compliance authority and repealed a statute relating to marine beach front protective bulkheads or rockwalls for single-family residences.

The purpose of this rule implementation plan is to inform those who must comply with Chapter 220-660 WAC about how the department intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance of the rule.
- Evaluate the rule.
- Train and inform department staff and interested stakeholders about the amended rule.

Also included in this plan is information about:

- Supporting documentation that may need to be written or revised because of the amended rule.
- Other resources where more information about the rule is available.
- Contact information for a department employee who can answer questions about the rule implementation.

Implementation and Enforcement

The department will form a Civil (administrative) Compliance Division to ensure compliance with the statute (Chapter 77.55 RCW), rules (Chapter 220-660 WAC) and the Hydraulic Project Approval (HPA) permits that protect fish life. The department is hiring a division manager for the new Compliance Division. The manager will develop and lead the civil compliance program

¹ Laws of 2019, chapter 290; Codified as RCWs 77.55.400 through 77.55.470.

and hire, train and supervise the inspectors. A fully operating Division will take additional time to develop. The department is uncertain when the Compliance Division will be fully up and running as that is contingent upon acquiring funding for the Division. The department will pursue funding for the next budget biennium.

Currently, department habitat biologists and engineers provide technical assistance to project proponents. Habitat biologists track construction and post-construction compliance on projects for which they have issued HPAs. They also receive reports of potential hydraulic violations. Habitat biologists work with the Enforcement Program and do not initiate criminal or civil violation procedures themselves. The department will continue with that model initially, and transition most those duties to the Compliance Division as it is formed. The Compliance Division will implement the civil compliance tools.

Voluntary compliance with the laws, rules and permit provisions is the preferred outcome for HPA projects. Where instances of noncompliance are found, Compliance Division staff will work with the project proponent to achieve voluntary compliance. When voluntary compliance is not successful, Compliance Division staff will seek authorization from management to take appropriate administrative enforcement. The department will employ a continuum of increasingly stringent enforcement tools as our role moves from technical assistance to enforcer. This continuum runs from correction requests advising people of areas of noncompliance, to administrative enforcement actions and, when appropriate, criminal prosecution.

Informing and Educating Persons Affected by the Rule

The department communicated with the key stakeholders, other natural resource agencies and tribes during rulemaking. The codified rules incorporating all revisions will be posted on the department's rule making webpage² when the revised rule is published by the Office of the Code Reviser. The department will inform affected persons about the hydraulic code rule changes by the following methods:

- Washington State Register
- News Release
- Agency Website
- Direct email to interested tribes, agencies and key stakeholders.

The department uses a range of tools to help the regulated community understand how to comply with the laws and regulations. These include providing education and technical assistance on permits, conducting inspections, performing on-site technical visits, holding workshops and providing regulatory guidance material written in easily understood language.

Many HPA applicants are individual citizens who may only apply for a permit once in their lifetime. These people often hire environmental consultants, engineers and other professionals

² <https://wdfw.wa.gov/about/regulations>

to work on their project. WDFW will develop a technical assistance directory to help connect people with experts outside the department.

The department's habitat biologists and civil engineers will continue to provide technical assistance during pre-application and pre-construction field visits in the form of design and construction information and permit application help. Compliance Division staff will provide compliance assistance during routine site inspections in the form of regulatory information and technical assistance. In addition, a person may be directed to useful sources of information relevant to problems observed at the job site.

The department will continue to use these methods to inform and notify the regulated community on issues related to these rule amendments. Information and guidance about the new rules will continue to be available on the HPA website. The department will also develop additional materials and hold workshops for the regulated community about the following:

- The department's jurisdiction under Chapter 77.55 RCW.
- How to establish benchmarks and document the location of a saltwater bank protection structure on construction drawings.
- How to use the Marine Shoreline Design Guidelines for marine shoreline stabilization.

Promoting and Assisting Voluntary Compliance

Technical assistance is a critical tool for achieving success with HPA projects. The goal of technical assistance is to ensure people understand what is necessary to comply with the statute (Chapter 77.55 RCW), rules (Chapter 220-660 WAC) and permits that protect fish life. The department provides and will continue to improve our resources and services to support voluntary compliance, including education and technical assistance designed to help people conduct their activities in a manner that protects fish life. Examples of technical assistance are brochures, site visits and workshops.

Where instances of noncompliance are found, compliance staff will work with the person to achieve voluntary compliance. A correction request will likely be the most frequently used enforcement tool. It will document minor violations of the statute, rules or permit observed during a technical assistance visit or inspection and describe the measures a person may take to voluntarily remedy the situation.

Evaluating the Rule

A key to determining if the rules effectiveness of the rules is the adaptive management process. The adaptive management process is a continual cycle consisting of planning, action, monitoring, evaluation, and adjustment. An important source of monitoring information is the feedback the department receives from permittees during compliance inspections and technical assistance visits. The department will use this input and other information to evaluate if the rule changes are achieving voluntary compliance. Following initial implementation, the

numbers of violations or necessary enforcement actions can be monitored. This information will be used to determine what additional education is needed for the regulated community. Changes to the rules will be monitored and may be discussed at a variety of habitat program staff meetings including regional, senior management team and all-staff meetings.

Data sources such as an enforcement tracking system and the HPA permit database (Aquatic Protection Permitting System) may be analyzed for the purpose of rule evaluation. The Habitat Science Division conducts a post-construction study to document HPA permit compliance and the success of the permitting process. These results help with rule evaluation as well as the HPA permitting process overall.

Training and Informing Department Staff

Habitat Biologists, Civil Engineers and Managers

Rulemaking requires outreach to the department's habitat biologists, civil engineers, management, Enforcement Program and other staff involved with Hydraulic Project Approvals. This will be done through meetings, email communication, written guidance, and one-on-one communication. In the longer term, details of the statute (Chapter 77.55 RCW) and rules (Chapter 220-660 WAC) will be updated in HPA training materials for staff.

Implementation Actions:

- Identify and engage employees who interact with the regulated community as part of their daily work.
- Brief employees about the rule amendments and available resources and give them educational resources to share with the regulated community.

Compliance Division Staff

The Habitat Program will provide training for the Compliance Division staff. Compliance Division staff will have an opportunity to develop, review and comment on the department's compliance unit manual, which will contain the new guidance on how to implement the final rule changes. Compliance Division tools, including templates and forms, will be developed. The guidance and manual will be approved by the program management team represented by both regional and headquarters management. Thus, the Compliance Division staff will also receive reinforcement from local management regarding use of new guidance.

Implementation Actions:

- Hire, train, and equip compliance unit staff.
- Train managers who authorize enforcement actions.
- Develop a Compliance Division guidance manual and forms.
- Develop a Hydraulic Code Enforcement Tracking System.

HPA Administrative Staff

The administrative staff intake new HPA applications and review them for statutory

completeness. The benchmarks requirement for shoreline armoring projects will be added to the review. Staff will receive training on how to determine if the benchmark requirement has been met.

Implementation Action:

- Train intake staff to evaluate benchmarks on shoreline armoring HPA applications.

List of Supporting Documents that May Need to be Revised

Documents that may need to be revised or updated include:

- HPA Manual
- Regulatory Service Section Desk Manual
- Policy and Procedure 5212

We will evaluate if other new guidance publications are needed as we receive feedback from inspectors, other staff and the regulated community on their needs.

For Further Information:

For information about the Hydraulic Code amendments see:

<https://wdfw.wa.gov/licensing/hpa/rulemaking/>

For information about Hydraulic Project Approvals see:

<https://wdfw.wa.gov/licensing/hpa/>

For HPA application assistance see:

<https://wdfw.wa.gov/licenses/environmental/hpa/application>

To talk with a habitat biologist, see:

<https://wdfw.maps.arcgis.com/apps/MapJournal/index.html?appid=48699252565749d1b7e16b3e34422271>

For more information about the Technical Assistance Program see:

<https://wdfw.wa.gov/licenses/environmental/hpa/application/assistance>

For more information about HPA rule implementation, contact:

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