



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

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DATE: May 29, 2020

TIME: 11:51 AM

WSR 20-12-052

Agency: Washington Department of Fish and Wildlife (WDFW)

Subject of possible rule making: The department is considering amendments to Hydraulic Code Rules, Chapter 220-660 WAC, necessary to implement ESHB 1261 (Laws of 2020, chapter 10), which become effective on June 11, 2020.

Rule sections requiring amendment include WAC 220-660-050 (Definitions), WAC 220-660-050 (Procedures-Hydraulic project approvals), WAC 220-660-300 (Mineral prospecting), and WAC 220-660-305 (Suction dredging).

Statutes authorizing the agency to adopt rules on this subject: RCWs 77.04.012, 77.12.047, and 77.55.021; ESHB 1261 (Laws of 2020, chapter 10),

Reasons why rules on this subject may be needed and what they might accomplish:

Rule amendments are needed to implement elements in sections 3 and 4 of ESHB 1261 to update the definition of small scale prospecting and mining, add a definition for motorized or gravity siphon aquatic mining, specify that an individual hydraulic project approval (HPA) permit is required to conduct motorized or gravity siphon aquatic mining, remove references to motorized or gravity siphon aquatic mining from the Gold and Fish pamphlet, and require proof of compliance with the federal Clean Water Act for said activity when applying for an HPA.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

WDFW is the sole authority regulating hydraulic projects under Chapter 77.55 RCW, and the only state agency that regulates hydraulic projects solely for the protection of all fish life. The U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Natural Resources, Washington State Parks, and local governments also regulate certain aspects of hydraulic projects under their own authorities. The National Marine Fisheries Service and U.S. Fish and Wildlife Service regulate the "take" of threatened or endangered species listed under the federal Endangered Species Act. Tribes regulate fisheries and certain aspects of construction projects on tribal lands. State, federal, and local government entities will be invited to comment on draft rules during the rulemaking process. WDFW will conduct government-to-government consultation with tribes.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Changes to chapter 77.55 RCW made in ESHB 1261 compel associated changes to the implementing Hydraulic Code Rules in chapter 220-660 WAC.

The standard process for the adoption of administrative rules under the Administrative Procedures Act (Chapter 34.05 RCW) and the applicable provisions for Significant Legislative Rules (RCW 34.05.328) is the most appropriate process for this Hydraulic Code rule making. Negotiated rule making is not practicable because rule language will largely mirror statute language, which reflects collaboration during the legislative session, and because negotiated rule making would increase the time needed and the cost of rule-making without added benefit. Pilot rule making is not applicable because the statutory changes, and therefore the proposed amendments, apply statewide.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

(If necessary)

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Additional comments:

Date: May 29, 2020

Name: Michele K Culver

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Signature:

