How to ask questions during workshop

Teams Live Events allows attendees to ask questions:
- Our moderators will review and publish your questions.
- The facilitator will refer your questions to the correct presenter.

If you have additional questions or feedback, please email: FishPassageRules@dfw.wa.gov.
Agenda

1. Welcome, Introduction, & Background
2. Agenda overview
   – Process for today
   – Process for Rule Development
3. Policy Analysis: Recommendations under Current Authority
4. Policy Analysis: Recommendations outside of Rulemaking
5. General Discussion
6. Next Steps
What started rulemaking

Orca Task Force: Recommendation #3

- Lack of prey species caused by barriers
- Task Force recommended WDFW be directed to adopt rules fully implementing RCW 77.57 (Fishways, Flow, and Screening)

Legislative Direction

- ESHB 1109 (2019) – Operating budget

Climate Adapted Water Crossings

- Co-management agreement in 2019
Main Goals

The goal for rulemaking is to codify current standards used by WDFW for:
- Instream structures;
- Screening and diversions; and
- Climate adapted water crossing structures.

Additionally, rulemaking will also address compliance issues for instream structures and screening.
General Process for creating rules

Three Rulemaking Phases:

- **Cr-101**: announces that the agency is undertaking rulemaking; published July 1, 2020 in state register.
- **CR-102**: when the state files the proposed rule language and publishes in the state register; this is what the formal public hearings will be focused on.
- **CR-103**: the final rule filing; rules are in effect 30 days after this is published in the state register.
Development of this rulemaking

1. Introductory workshops to discuss direction and get feedback
   • Workshops between June 23 and July 29, 2020
   • Informal follow-up discussions with stakeholders and partners

2. Currently: Policy workshops to review proposed draft rule language
   • APA process – SEPA review and Cost/Benefit Analysis

3. File the CR-102
Policy Analysis: Recommendations Under Current Authority
The Habitat Program reviewed the Revised Code of Washington (RCW) 43.05 and 77.57 to implement rules surrounding fish passage improvement work.

- Codifying current, effective standards is a primary goal of this effort; provisions in Washington Administrative Code (WAC) 220-660 were mirrored in draft language.

Statutes for considerations:

<table>
<thead>
<tr>
<th>Statute</th>
<th>RCW Title</th>
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<tbody>
<tr>
<td>RCW 43.05</td>
<td>Technical Assistance Programs</td>
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<tr>
<td>RCW 77.57.010</td>
<td>Fish guards required on diversion devices—Penalties, remedies for failure.</td>
</tr>
<tr>
<td>RCW 77.57.030</td>
<td>Fishways required in dams, obstructions—Penalties, remedies for failure.</td>
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<tr>
<td>RCW 77.57.040</td>
<td>Director may modify inadequate fishways and fish guards.</td>
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<tr>
<td>RCW 77.57.050</td>
<td>If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.</td>
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<tr>
<td>RCW 77.57.060</td>
<td>Director may modify inadequate fishways and protective devices.</td>
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<tr>
<td>RCW 77.57.070</td>
<td>Diversion of water—Screen, bypass required.</td>
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## Different Authorities

<table>
<thead>
<tr>
<th>RCW 77.55</th>
<th>RCW 77.57</th>
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<tbody>
<tr>
<td>• Construction projects in state waters</td>
<td>• Fishways, flow, and screening</td>
</tr>
<tr>
<td>• WAC 220-660</td>
<td>• No existing WAC</td>
</tr>
<tr>
<td>✓ Hydraulic Code Rules</td>
<td>✓ Current rulemaking effort</td>
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<tr>
<td>✓ Applies to new projects</td>
<td>✓ Applies to existing and new structures</td>
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Fish Screens

Key points of rules relating to fish screens and water diversions:
• All diversions must be adequately screened on lake, river, or stream
• A diversion structure must not hinder upstream and downstream passage of adult and juvenile fish
• If no water right exists, DFW will notify the Dept of Ecology
• Standards for water diversions and intakes:
  - WAC 220-660-250
Fishways

Key points of rules relating to fishways:

• New definitions for “fishway” and “climate adapted water crossing”

• All fish passage improvement and water crossing structures must not hinder the upstream and downstream passage of adult and juvenile fish.

• Standards for water crossings:
  ▪ WAC 220-660-190
  ▪ WAC 220-660-200
Fishways (cont’d)

Climate Adapted Water Crossings:
• Considerations for new and replacement culverts
  ▪ Calculating bankfull width and 100-year peak flow
• Existing passable culverts are grandfathered in until replacement is needed
Compliance Actions

• Technical assistance:
  – steps for achieving voluntary compliance

• If unsuccessful, then steps for enforcement include:
  – 30-day notice to comply
  – Civil action/tort claim
  – Public Nuisance
  – Closure/replacement by DFW
  – Liens
Recommendations: Actions outside of rulemaking
Actions outside of rulemaking

For compliance measures, some actions would require statutory change.

- Civil penalties are outside of authority.

WDFW recognizes that addressing fish passage presents a complex network of issues that extend beyond this rulemaking effort.

1. Prioritization
2. Funding
Questions
Questions for Discussion

- What circumstances might trigger more severe compliance actions?
- What are preferred long-term options to fishway when deemed impractical?
Next Steps
Questions?

To provide feedback: fishpassagerules@dfw.Wa.Gov