



Washington
Department of
**FISH and
WILDLIFE**

Concise Explanatory Statement

Hydraulic Code Rules Chapter 220-660 WAC

Incorporating Elements of ESHB 1261 into HPA Rules

WAC 220-660-030 Definitions

WAC 220-660-050 Procedures

WAC 220-660-300 Mineral Prospecting

WAC 220-660-305 Suction Dredging [Renamed]

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

April 12, 2021

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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INTRODUCTION

This report presents Washington Department of Fish and Wildlife (WDFW) concise explanatory statement for *Incorporating Elements of ESHB 1261 into HPA Rules* rule adoption, pursuant to the Administrative Procedure Act (APA) Revised Code of Washington (RCW) section 34.05.325 - *Public Participation - Concise Explanatory Statement*. Rules proposed for amendment include Hydraulic Code Rules in 220-660-030, 220-660-050, 220-660-300 and 220-660-305 of the Washington Administrative Code (WAC). WDFW writes and adopts Hydraulic Code Rules to implement Chapter 77.55 RCW titled *Construction Projects in State Waters* and also known as the *Hydraulic Code*.

Analyses relating to APA sections RCW 34.05.320 - Notice of proposed rule and RCW 34.05.328 - significant legislative rules are provided in a separate document entitled *Incorporating Elements of ESHB 1261 into HPA Rules Regulatory Analyses*. Analyses relating to Regulatory Fairness Act, chapter 19.85 RCW, are provided in a separate document entitled *Small Business Economic Impact Statement Incorporating Elements of ESHB 1261 into HPA Rules*. Both of these separate documents are available on WDFW's HPA rule making web page at <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

This *Concise Explanatory Statement* document is organized in relation to APA section 34.05.325 Public Participation - Concise Explanatory Statement, as follows:

- [Section 1](#) Describes the rules affected as part of this rule making
- [Section 2](#) Background - Summary of Rule Making
- [Section 3](#) Reasons for adopting these rules
- [Section 4](#) Differences between proposed rules and rules as adopted
- [Section 5](#) Comments received during the official public comment period

Documents relating to this rule making include Washington State Register (WSR) 20-12-052 (CR-101) filed May 29, 2020 and appearing in WSR 20-12 published on June 17, 2020; and WSR 20-24-121 (CR-102) filed on Dec. 2, 2020 and appearing in WSR 20-24 published on Dec. 16, 2020.

The public comment period for this rule making was open from December 16, 2020 through January 30, 2021. The Washington Fish and Wildlife Commission held a public hearing on January 29, 2021 via webinar. An audio transcript of that hearing is available at <https://wdfw.wa.gov/about/commission/meetings/2021>.

SECTION 1: Rules affected by this rule making

Amended Sections:	220-660-030 Definitions 220-660-050 Procedures 220-660-300 Mineral Prospecting 220-660-305 Suction Dredging
New Sections:	None
Repealed Sections:	None

SECTION 2: Background - Summary of Rule Making

Rule amendments were proposed as necessary to implement elements of Engrossed Substitute House Bill 1261 (ESHB 1261)¹ - a bill passed by the legislature during the 2020 legislative session. Bill sections 1 and 2 amended Chapter 90.48 RCW – Water Pollution Control. Section 1 requires that persons wishing to conduct motorized or gravity siphon aquatic mining must acquire a National Pollution Discharge Elimination System (NPDES) water quality permit from the Washington Department of Ecology (Ecology) if they will discharge any water to waters of the state. Ecology issues NPDES permits using their authority under the federal Clean Water Act. Section 2 prohibits motorized or gravity siphon aquatic mining or discharge of effluent from such an activity to any waters of the state that have been designated under the Endangered Species Act (ESA) as critical habitat, or that would impact critical habitat for salmon, steelhead, or bull trout. This prohibition includes fresh waters with the designated uses of salmonid spawning, rearing, and migration.

Sections 3 and 4 of ESHB 1261 also amended Chapter 77.55 RCW – Construction Projects in State Waters. Section 3 amended the definition of “small scale prospecting and mining” and added a new definition for “motorized or gravity siphon aquatic mining”. Section 4 added a new requirement for a complete a Hydraulic Project Approval (HPA) application. This requirement states “In the event that any person or government agency desires to undertake mineral prospecting or mining using motorized or gravity siphon equipment or desires to discharge effluent from such an activity to waters of the state, the person or government agency must also provide proof of compliance with the requirements of the federal clean water act issued by the department of ecology.”

2.1 Specific Objectives for this Rule Making

In order to implement elements in Sections 3 and 4 of ESHB 1261, the department’s objectives in this rule making included the following:

- ✓ Add definitions for “gravity siphon aquatic mining” and “motorized or gravity siphon equipment”;
- ✓ Specify that a standard HPA is required to conduct mineral prospecting involving motorized or gravity siphon equipment and require proof of compliance with the federal Clean Water Act for this activity as part of a complete application for a standard HPA;
- ✓ Specify that WDFW may reject an application for mineral prospecting involving motorized or gravity siphon equipment if the proposed project location or locations occur where the Department of Ecology prohibits those activities under RCW 90.48.615; and
- ✓ Remove authorization for motorized mineral prospecting activities from the Gold and Fish pamphlet rules; and
- ✓ Eliminate the annual reporting requirement for suction dredging HPAs.

¹ Laws of 2020, Chapter 10; Codified in RCWs 77.55.011 and 77.55.021

In addition, the proposal specified that all activities under WAC 200-660-305 (Mineral prospecting involving motorized or gravity siphon equipment) must employ aquatic invasive species prevention.

2.2 History of this Rule Making Action

May 29, 2020	WDFW commenced rule making by filing a CR-101 Preproposal Statement of Inquiry with the Washington State Code Reviser
June 11, 2020	ESHB 1261 went into effect
Dec. 2, 2020	WDFW filed a CR-102 Notice of Proposed Rule Making with the Washington State Code Reviser for rule making implementing ESHB 1261
Dec. 16, 2020	Draft SEPA determination of nonsignificance released and comment period began for SEPA #20059
Dec. 16, 2020	Rule making public comment period began. Rule making materials were posted online at: https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking
Jan. 29, 2021	The Washington Fish and Wildlife Commission conducted a public hearing on the rule proposals; SEPA comment period ended
Jan. 30, 2021	Rule making comment period ended
Mar. 3, 2021	SEPA finalized. Final SEPA documents are available at: https://wdfw.wa.gov/licenses/environmental/sepa/closed-final
April 9, 2021	The Washington Fish and Wildlife Commission adopted the amended rule proposals

SECTION 3: Reasons for Adopting these Rules

3.1 Why is the Proposed Rule Needed?

Rule amendments are proposed as necessary to implement elements of ESHB 1261.

Bill section 2 amended Chapter 90.48 RCW. Section 2 prohibits motorized or gravity siphon aquatic mining or discharge of effluent from such an activity to any waters of the state that have been designated under the ESA as critical habitat, or that would impact critical habitat for salmon, steelhead, or bull trout. This prohibition includes fresh waters with the designated uses of salmonid spawning, rearing, and migration.

Sections 3 and 4 of ESHB 1261 also amended Chapter 77.55 RCW. Section 3 amended the definition of “small scale prospecting and mining” and added a new definition for “motorized or gravity siphon aquatic mining”. Section 4 added a new requirement for a complete HPA application.

WDFW proposes changes to WAC 220-660 to align it with RCWs implemented via ESHB 1261. Some of the changes, such as incorporating definitions and the requirement for proof of compliance with the Clean Water Act, come directly from statute. Other changes, such as removing all motorized equipment authorizations from the Gold and Fish Pamphlet (WAC 220-660-300), are not directly spelled out in statute but are necessary to administer the rules in accordance with the statute. Section 220-660-305 is being expanded from covering only suction dredging to include all activities involving motorized or gravity siphon equipment.

The only portion of the proposal that is not directly related to implementation of ESHB 1261 is found in 220-660-305(4), aquatic invasive species (AIS) prevention. As with the rest of section 305, that subsection gets expanded to include all motorized or gravity siphon equipment. The change keeps the regulation of motorized or gravity siphon equipment uniform, eliminating separate treatment of certain equipment within the category.

3.2 Consequences of not adopting the rule

Declining to adopt the proposed rules would be inconsistent with amendments to RCW 77.55 implemented via ESHB 1261. Activities conducted under the Gold and Fish Pamphlet would continue without the statutorily required HPA application that includes proof of compliance with the Clean Water Act.

With the existing procedure rules (WAC 220-660-050) and suction dredging rules, WDFW could require the proof of compliance for standard HPA applications based on statute. People wanting to know about the department’s new requirement would need to find that information in statute, creating an additional process for them to find information. The department’s constituents would not have as much notice or opportunity to learn about the new requirement as is afforded via APA rule making procedures.

Additionally, without rules that expand aquatic invasive species standards, those requirements would be applied inconsistently across different types of motorized or gravity siphon equipment. Prospectors entering Washington from out of state would face confusion about whether inspections are needed when they enter Washington. People moving between water bodies without taking AIS precautions take the risk of introduction of aquatic invasive species into waters, increasing risk to native fish species.

SECTION 4 Differences between Proposed and Adopted Rules

4.1 Describe the proposed rule and indicate adoption changes

Table 1 presents differences between the rule proposed in the CR-102 and the version adopted by the Fish and Wildlife Commission on April 9, 2021.

Table 1 Differences between CR-102 and adopted version of the suction dredge HPA rule proposal

WAC Section	Proposed change from CR-102	Reason for change
220-660-030(72)	"Hand-held mineral prospecting tools" means tools used for mineral prospecting that are held by hand, <u>and</u> do not have moving parts,	Clarification. To eliminate confusion about moving parts on hand-held mineral prospecting tools. Clarifies that

WAC Section	Proposed change from CR-102	Reason for change
	<p>and are not powered, in whole or in part, by internal combustion, electricity, hydraulics, or pneumatics. Examples include, but are not necessarily limited to, metal detectors, shovels, picks, trowels, hammers, and pry bars</p>	<p>they may not have moving parts powered by internal combustion, electricity, hydraulics, or pneumatics. Reference to metal detectors is also removed. The change is in response to public comments.</p>
220-660-305(5)(c)	<p>Motorized or gravity siphon equipment listed in the previous provision may be used ONLY in waters in Adams, Benton, Clallam, Franklin, Grant, Grays Harbor, Lincoln, Spokane, Whitman, and Yakima counties that are NOT designated under the Endangered Species Act as critical habitat for salmon, steelhead, or bull trout or have a freshwater designated use of salmonid spawning, rearing, and migration. A map identifying waters where motorized methods are allowed is available from Washington department of ecology. The Washington department of ecology determines where motorized or gravity siphon equipment listed in the previous provision may be used. Contact the Washington department of ecology water quality program for information about the locations where the use of motorized or gravity siphon equipment is allowed.</p>	<p>Clarification. Rather than listing those specific areas where the Washington Department of Ecology prohibits motorized or gravity siphon equipment, this change more generally refers to the Department of Ecology's authority under RCW 90.48.615. This revision clarifies that it is Ecology that is responsible for designating these areas, and it also prevents this provision from becoming obsolete in the event that Ecology amends its designations.</p>

SECTION 5: Comments Received and WDFW Responses

Proposed rules were filed with the Office of the Code Reviser as WSR 20-24-121 (CR-102) on December 2, 2020 and appeared in WSR 20-24 published on December 16, 2020. The public comment period for this rule making was open from December 16, 2020, through 5 p.m. on January 30, 2021. The Commission held a public hearing on January 29, 2021, via webinar.

On December 11, 2020, WDFW emailed information about the rule proposal to 29 federally recognized tribes. Information included background, proposal overview, a timeline, and an invitation to comment and/or initiate government-to-government consultation. WDFW also sent notice to 472 email addresses on December 18, 2020, informing stakeholders that the proposed rules had been filed with the Code Reviser. Included in that distribution were Hydraulic Code Implementation Citizen Advisory Group members, state and federal agency representatives, contacts from mineral prospecting organizations, miners who responded to our HPA survey, preproposal commenters, and other parties who have indicated interest in mineral prospecting rules.

Rule making documents were posted on WDFW’s Hydraulic Project Approval (HPA) Rule Making web page² on December 16, 2020, including copies of the CR-102, draft Regulatory Analysis, and Small Business Economic Impact Statement. WDFW provided an email address, fax number and postal address to which comments could be sent.

Table 1 shows the numbers of comments received. A total of 32 written comments were submitted during the formal comment period. One letter was sent from the Washington Wild coalition and jointly signed by 66 businesses and organizations. One comment was given orally at the Commission’s public hearing on January 29, 2021. The Makah Tribe sent comments on February 8, 2021, that included a request for formal government-to-government consultation. That consultation was conducted on March 3, 2021, with the Washington Department of Ecology also participating.

Table 1 Descriptive statistics for comments received

Category	Number
Support	8
Oppose	17
Other	6
Businesses and organizations signing joint support letter	66

Below is a summary of comments received during the formal comment period and WDFW’s responses to those comments. Comments that are not specific to the proposed rule language in WAC 220-660-030, -050, -300, or -305 are grouped in section A. Comments specific to rule language are provided on Table 3 in Section B. Section C discusses comments on rule implementation.

5.1. Non-Rule-Specific Comments

Comments in this section are grouped by topic.

1 Gold and Fish Pamphlet

Several commenters requested that the Gold and Fish pamphlet remain unchanged or that specific equipment be kept in the pamphlet. Equipment requests especially focused on battery-powered mini high-bankers and recirculating systems. Currently, the pamphlet authorizes mineral prospecting activities that include the use of certain motorized or gravity siphon equipment, but that equipment will be removed from the pamphlet under the rule proposal.

Commenters:

Five individuals

WDFW Response:

WDFW seeks via its proposed rules to implement changes to RCW 77.55 via ESHB 1261. These changes include a new requirement that proof of compliance with the Clean Water Act be

² <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

provided as part of an HPA application for any mineral prospecting activity involving motorized or gravity siphon equipment. WDFW can no longer regulate mineral prospecting involving motorized or gravity siphon equipment through its Gold and Fish pamphlet, which does not require an application. Requiring an individual HPA application for these activities triggers WDFW's standard HPA application process as required by RCW 77.55.021.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this group of comments because the comments request a condition that is not aligned with state law.

2 Prohibitions enacted by law

Opposition to the prohibitions enacted by ESHB 1261 was a common comment. Two pointed at other issues as the reasons for fish declines, stating prospecting was being used as a scapegoat. Some commentors suggested that mining claims or specific pieces of equipment should be exempt from the prohibitions. Others stated that the previous rules protected fish sufficiently, making the prohibitions unnecessary. Two commentors suggested alternative rules rather than prohibitions. One commentor indicated that they do not care what rules are enacted because they can no longer dredge.

[Commenters:](#)

Five individuals

[WDFW Response:](#)

WDFW seeks, via its proposed rules, to implement changes to RCW 77.55, the law which governs its hydraulic code rules. New statutory prohibitions on the use of motorized or gravity siphon aquatic mining are dictated by the Legislature, not WDFW. WDFW cannot develop rules that are inconsistent with governing statutes. The proposed rules are consistent with governing law, including the recent legislative changes to RCW 77.55, and are thus within WDFW's rule making authority.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this group of comments because the comments address statutory concerns that are outside the scope of WDFW's proposed rules or are not aligned with state statutes.

3 Potential Use Areas map

One comment concerned the potential use areas as determined by the Department of Ecology (Ecology) and displayed on their online Potential Use Areas map. The comment stated that spawning streams are incorrectly identified.

[Commenters:](#)

One individual

[WDFW Response:](#)

WDFW defers to Ecology’s identification of potential use areas, which Ecology does in accordance with state law.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this comment because the comment addresses statutory concerns that are outside the scope of WDFW’s proposed rules.

4 Toutle River Concern

One commentor stated that all mining operations should be banned on the South Fork Toutle River and expressed a critical view of fish management practices.

[Commenters:](#)

One individual

[WDFW Response:](#)

The South Fork Toutle River is currently designated as salmonid spawning, rearing and migration, and therefore motorized or gravity siphon aquatic mining is prohibited under the laws passed in ESHB 1261. Mining using hand-held mineral prospecting tools and select other equipment is, and will continue to be, authorized through WDFW’s Gold and Fish pamphlet or a standard HPA. If the mining activity is conducted in compliance with the Gold and Fish pamphlet or standard HPA, then the activity is compatible with protection of fish life. WDFW only regulates mining activities that are properly considered “hydraulic projects” under RCW 77.55.011(11). WFW does not regulate other types of mining.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this comment because the comment addresses a concern that is already addressed, in part, by statute, and/or it addresses a concern that is outside the scope of the proposed rules.

5 Mining as a pollutant

Two comments were received objecting to the concept that mining output is a pollutant, because the output is material that originated in the stream in the first place. One of these comments referred to Supreme Court Justice Ginsburg’s pot and ladle analogy from case law regarding the federal Clean Water Act.

[Commenters:](#)

Two individuals

[WDFW Response:](#)

WDFW is authorized in Chapter 77.55 RCW to protect fish life and fish habitat in Washington. This is accomplished through the HPA permitting program. The above comments specifically regard

definitions of pollutants in the federal Clean Water Act, which is outside of WDFW's rule making authority.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this group of comments because the comments address statutory concerns that are outside the scope of WDFW's proposed rules.

6 Discover Pass

One commentor suggested a prospecting permit statewide, following the rules of the Gold and Fish pamphlet, to be obtained as an attachment to the Discovery Pass. It would allow mini high-bankers to recirculate and dump no more than 50 gallons of recirculated water on the ground each day, at a specified distance from body of water, so long as the water is from the same body of water.

[Commenter:](#)

One individual

[Response:](#)

The Gold and Fish pamphlet covers specific mining activities statewide and does not require a Discover Pass as a condition of use. WDFW does not recommend such a condition because the majority of mining activity takes place on lands where a Discover Pass is not applicable. Additionally, requiring a Discover Pass will not contribute to the protection of fish life.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this comment because the comment is outside the scope of the proposed rules.

7 Legislative action

One commentor asked that WDFW return to the state legislature to recommend that ESHB 1261 be struck down as unnecessary.

[Commenters:](#)

One individual

[WDFW Response:](#)

Regardless of whether the Legislature decides to amend or repeal statutory changes made via ESHB 1261 in the future, those statutory changes, including changes to RCW 77.55, are current law. WDFW seeks, via its proposed rules, to implement changes to RCW 77.55, which governs its hydraulic code rules. WDFW cannot develop rules that are inconsistent with governing statutes. The proposed rules are consistent with governing law, including recent legislative changes to RCW 77.55, and are thus within WDFW's statutory rule-making authority.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this comment because the comment addresses statutory concerns that are outside the scope of the present rule making activity.

8 Ban all motorized and gravity siphon methods of placer mining

WDFW received a range of comments that transcend the scope of the current rule making activity. These comments indicated that all motorized and gravity siphon mineral prospecting methods should be banned. All five comments cited concerns for fish. One comment requested no mining in or near streams that have sports fish in them. Another stated that mining would also complicate water rights adjudication being conducted by the Department of Ecology.

[Commenters:](#)

5 individuals

[WDFW Response:](#)

The direct and indirect environmental effects of motorized and gravity siphon aquatic mining are considered to be a function of the intensity, frequency, duration, and location of the activity. Under the current and proposed rules, if the mining activity is conducted in compliance with the Gold and Fish Pamphlet or a standard HPA, then the activity is compatible with protection of fish life. Given the state of scientific information on existing mitigation measures under the current regulations, and given the statutory limitations on WDFW's authority to condition or deny permits, WDFW does not currently have a sufficient basis on which to ban mineral prospecting involving motorized or gravity siphon equipment outright.

[How the final rule reflects this group of comments:](#)

No changes to the rule proposal are made as a result of this group of comments because the comments address issues that are beyond the scope of the present rule making activity.

9 Landowner permission

One commenter requested an amendment to Chapter 220-660 WAC to require that all HPA applicants be required to provide proof of landowner permission prior to approval of an HPA.

[Commenter:](#)

Washington Department of Natural Resources

[WDFW Response:](#)

Chapter 77.55 RCW limits WDFW authority to issue, deny, and condition HPAs to ensure protection of fish life. Landowner permission does not impact fish life; therefore it is not necessarily a prerequisite to WDFW making a decision whether to issue an HPA, with or without conditions.

That said, HPAs do not authorize trespass. WDFW requires project proponents seeking to complete hydraulic projects on privately owned land to submit proof of landowner permission for

WDFW to enter a project site for the purpose of providing technical assistance and monitoring compliance. When a project is conducted on public lands, landowner permission to access the project site is unnecessary because WDFW already has access to public lands.

Where a landowner or land management entity has authority to regulate waters, WDFW's hydraulic code rules do not supersede those restrictions. For example, where federal or state land managers have, using other authority, closed an area or specific waters to mining or imposed some other restriction, WDFW's regulations do not override that closure or restriction/requirement.

How the final rule reflects this comment:

No changes to the rule proposal are made as a result of this comment because the comments address issues that are beyond the scope of this rule making.

10 General support for the proposal

Seven commentors expressed support of the proposal. WDFW also received a joint letter of support signed by 66 businesses and organizations representing environmental interests. Some commentors indicated support and desired strict rules to protect fish life. Others simply indicated that they did not have any objections to the proposal. Additional issues presented by some of the commentors are covered in the responses above.

Commenters:

Department of Natural Resources, Snoqualmie Tribe, 66 businesses and organizations in a joint letter, and 5 individuals

WDFW Response:

Comments noted.

How the final rule reflects this group of comments:

Final adoption of the proposal is supported by these comments.

11 General opposition to the proposal

In total, seventeen letters expressed opposition. Some explained that the permitting process was too difficult and the rules too complicated. Others explained that regulation discourages families from participating in outdoor activities or hinders to continuity of traditions. Multiple letters expressed opposition to regulation of mineral prospecting or referred to the loss of nonspecific rights. However, it was unclear whether they were objecting to regulations in statute, or rule changes being proposed by WDFW. Five letters expressed general opposition to the rule changes.

Commenters:

17 individuals

[WDFW Response:](#)

Individual concerns expressed in the letters are addressed in the responses above. The rule changes are limited to those necessary to align the rules with new laws passed by the Washington Legislature through ESHB 1261. The single exception is the expansion of the invasive species prevention requirement from suction dredge equipment to all motorized or gravity siphon equipment. Without the changes, the rules would conflict with the requirements in statute. Because the Legislature specifically requires project proponents to provide proof of compliance with the Clean Water Act as part of the HPA application process, failure to update the rules to align with current state law is not a viable alternative

[How the final rule reflects this group of comments:](#)

For the reasons explained in each of the sections mentioned above, the proposal is not changed as a result of these comments because the proposal provides the most feasible way to implement new statutes into the hydraulic code rules.

5.2. Comments on specific rule language

WDFW received a number of comments on individual subsections of the proposed rules. Comments and responses are presented on Table 2.

Table 2 Comments specific to rule sections, with responses and dispositions

Topic or WAC	Comment	WDFW Response	How final proposed rule reflects this comment
WAC 220-660-030 - Definitions			
220-660-030(036)	The definition for “Dredging” is incorrect and does not meet any legal definition we have found. This definition as written includes using a backhoe or caterpillar tractor with a blade.	The definition of dredging is not proposed for change. It encompasses various dredging activities beyond mineral prospecting. The activity that may be authorized for mineral prospecting is defined specifically as “suction dredging” and does not include backhoes or caterpillar tractors.	No change proposed because this definition is not specifically relevant to mineral prospecting and is beyond the scope of the present rule making activity.
220-660-030(068)	“Gravity siphon aquatic mining” is improperly defined. Siphon means that a vacuum is formed; then water and/or gravel is drawn in due to the vacuum.	The proposed definition is not attempting to define the term “siphon”, but rather to distinguish mining activities powered by “gravity siphon” from other types of non-motorized mining.	No change proposed because the level of detail offered is not required for the purpose of the rule.
220-660-030(072)	<p>The term “do not have any moving parts” needs to be removed. A pulley, a hand operated winch, a wagon, a rocker box, a bucket handle, all have moving parts.</p> <hr/> <p>Clarification would alleviate most issues. 'Moving Parts' is the most obvious and needs definition my sluice for instance has nuts/bolts and a ramp that 'moves' when matting is added/removed.</p>	The revised definition for “hand-held mineral prospecting tools” was intended to capture powered, mechanical moving parts (i.e., motorized). We agree that it needs further revision for clarity.	Instead of removing “do not have any moving parts”, we propose amending WAC 220-660-030(072) to read: "Hand-held mineral prospecting tools" means ((a)) tools used for mineral prospecting that are held by hand and ((are not)) do not have moving parts powered, in whole or in part, by internal combustion, <u>electricity</u> , hydraulics, or pneumatics. Examples ((are metal detectors)) include, but are not necessarily limited to, shovels, picks, trowels, hammers, and pry bars ((hand-operated winches, and battery-operated pumps specific to prospecting; and (b) Vac-pacs)) .

Topic or WAC	Comment	WDFW Response	How final proposed rule reflects this comment
220-660-030(096)	How does an animal get used in the definition for mineral prospecting equipment?	"Animal" was added to the definition of mineral prospecting equipment by public request during a previous round of rule making. The use of animals to mineral prospect is not currently authorized under the Hydraulic Code rules.	No change proposed because commenter has asked a question and not proposed a change.
WAC 220-660-300 Mineral Prospecting			
220-660-300(4)(g)(ix)	Add the fish guard back in the document if you genuinely care about fish life. Water intake screens still need to be used on hoses and is required legally by Ecology. Open sluices and buckets do not require it.	Language about fish guards has been removed from this subsection because the Gold and Fish pamphlet will no longer authorize the use of equipment that would trigger the fish guard requirement.	No changes proposed because the language in question is no longer needed in this subsection and is instead found in 220-660-305(6)(e). The comment regarding buckets and sluices is supported in the original proposal.

Topic or WAC	Comment	WDFW Response	How final proposed rule reflects this comment
WAC 220-660-305 Suction Dredging			
220-660-305(8)	Retain the suction dredging reporting requirement. Ecology may re-open additional waters to motorized suction dredging. Removal of the reporting provision would preclude WDFW from implementing reporting which is critical for meaningful oversight and management.	<p>Annual reporting of suction dredging activity was intended to assist WDFW in evaluating the extent and impact of freshwater suction dredging statewide. The extensive prohibitions on motorized or gravity siphon aquatic mining enacted in ESHB 1261 have significantly curtailed activity. At this time there are no active suction dredging HPAs in the allowed freshwater areas. Since ESHB 1261 became effective, WDFW also has not received any HPA applications for the allowed freshwater areas. We anticipate very little, if any, suction dredging activity in the future. Risks associated with suction dredging have been reduced proportionately.</p> <p>Data collection from reporting will be insufficient to fulfill its intent. Therefore, WDFW has chosen to reduce an unnecessary regulatory burden by eliminating the suction dredge reporting rule. Should a future need arise to collect data, WAC 220-660-050(13)(d) allows for reporting requirements in HPA permits.</p> <p>Ecology's designations of salmonid spawning, rearing and migration locations are not likely to change frequently. They are identified in WAC 173-201A-600 and changes require significant legislative rule making. In the event that the designation rules change, WDFW will respond as necessary.</p>	No changes proposed because eliminating the reporting requirement represents the least burdensome alternative that will achieve the goals and objectives of this proposal.

Topic or WAC	Comment	WDFW Response	How final proposed rule reflects this comment
220-660-305(5)(e)	Remove the word salmonid and only use the words salmon and steelhead.	This is a general comment, but the term "salmonid" only occurs in this subsection of the rule proposal. It is part of the name of a specific water quality category found in WAC 173-201A-200.	No change proposed because using the alternate language would make the reference inaccurate.

5.3. Comments on rule implementation

Suggestions and comments included:

1. Exempt current HPA holders from rules until the day of the HPA expiration.
2. We want to encourage WDFW to continue collaborative enforcement with the Department of Ecology. WDFW's Habitat and Enforcement staff are extremely familiar with not only mining claims and sites, but also the mining community itself. Visits by WDFW staff, engaging with miners on site, can be extremely helpful in further educating the mining community about the new law, regulations and enforcement.

Commenters:

One individual, Snoqualmie Tribe and 66 businesses and organizations in a joint letter

WDFW Response:

WDFW will not rescind any existing HPAs. However, permits may no longer be usable if they are written for motorized or gravity siphon aquatic mining in areas now prohibited by law. Presently, all unexpired permits are in areas where motorized or gravity siphon aquatic mining is now prohibited. However, permittees may continue to use their permits for non-prohibited activities.

WDFW recognizes that both customer service and fish life protection are served when our staff consult on permits, conduct inspections, and perform site inspections and on-site technical assistance. WDFW will endeavor to conduct site visits to active HPA sites as necessary within constraints of agency resources. We recognize that site visits provide an opportunity for our staff to coach permittees into compliance using education and technical assistance.

Please note, WDFW will not be making compliance visits to sites in prohibited areas specifically for the enforcement of those prohibitions. WDFW staff will continue to communicate with Ecology, but enforcement of the prohibitions in RCW 90.48.615 are ultimately under the jurisdiction of Ecology.

How the final rule reflects these comments:

The comments do not directly address the proposed rule, so no changes are made to the final rule based on these comments.

5.4 SEPA comments

Two comments were submitted in response to the draft SEPA determination. These comments and a response are provided with the Determination of Nonsignificance on the WDFW SEPA web site at <https://wdfw.wa.gov/licenses/environmental/sepa/closed-final> for SEPA #20059.

SECTION 6: Report Preparation

This report was prepared by:

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Appendix A - List of Commenters

WDFW received 32 comment letters and emails. One letter was sent from the Washington Wild coalition and jointly signed by 66 businesses and organizations.

Commenters sending individual letters or emails:

Matthew Baerwalde, Snoqualmie Tribe; Charles Ballard; Eero Bremer; Dave Caldiera; Thomas Chase; Harry Davis; Michael Dunican; Steve Emrich; Brett Foley; Tami Gilden; Mike Gohl; Kevin Grayson; William Hayton; Matthew Holp; Jerry Johnson; Michael Kearney, Washington Department of Natural Resources; Haley Kennard, Makah Tribe; Ilene Le Vee; Michael Lindsay; Lawrence Lombardo; David Lont; Bryan McKeenan; Mike Oster; Dennis Petersen; Jeremiah Remus; Virgil Renicker; Levi Schauman; Billie Taylor-Hurd. Two commentors signed with only a first name.

Organizations signing the joint comment letter from Washington Wild Coalition:

Alliance; Alpine Lakes Protection Society; American Rivers, Rivers of Puget Sound & Columbia Basin; Art Wolfe, Inc.; Bale Breaker Brewing Co.; Black Hills Audubon Society; Cascade Forest Conservancy; Cascadia Wildlands; Center for Environmental Law & Policy; Chuckanut Brewery; Clark-Skamania Flyfishers; Columbia Riverkeeper; Conservation Northwest; Duna Fisheries, LLC; Earth Ministry/Washington Interfaith Power & Light; Eastside Audubon; Fish Not Gold; FOGH (Friends of Grays Harbor); Fremont Brewing; Friends of Heybrook Ridge; Friends of the Issaquah Salmon Hatchery; Grays Harbor Audubon Society; Greater Bellingham Running Club; Hellbent Brewing Company; Inland Empire Fly Fishing Club; Issaquah Alps Trails Club; Kettle Range Conservation Group; Lucky Envelope Brewing; Methow Valley Citizens Council; MidFORC Coalition; MiiR; Mount Baker Club; Mountain Gear, Inc; Native Fish Society; NOLS Pacific Northwest; North Cascades Audubon Society; North Cascades Conservation Council; North Central Washington Audubon Society; Northwest Fly Anglers; Northwest Watershed Institute; Okanogan Highlands Alliance; Old Stove Brewing, LLC; Pacific Rivers; Pilchuck Audubon Society; RE Sources; Save Our Wild Salmon Coalition; Skagit Audubon Society; Sky Valley Chamber of Commerce & Visitor Information Center; Skykomish Valley Environmental & Economic; Spokane Riverkeeper; Stoup Brewing; The Lands Council; The Rainier Audubon Society; The Wilderness Society; Three Rivers Chapter of Trout Unlimited; Troutwater Fly Shop and Guide Service; WA State Council of Fly Fishers International; Washington Chapter Sierra Club; Washington Council of Trout Unlimited; Washington Wildlife Federation; Watershed Pub & Kitchen; Western Environmental Law Center; Whatcom Land Trust; Wild Steelhead Coalition; Wildwater River Guides; Women for Wild Lands.

SEPA DNS 20-059 Comments were received from the following:

Linda Paralez, Jefferson County Department of Community Development; Department of Ecology, Southwest Regional Office.

Appendix B – Washington Wild Coalition letter



January 29, 2021

Mr. Larry Carpenter
 Chair
 WA Department of Fish & Wildlife
 Commission
 600 Capitol Way N.
 Olympia, Washington 98504

Ms. Theresa Nation
 Habitat Division
 WA Department of Fish & Wildlife
 PO Box 43200
 Olympia, Washington 98504-3200

RE: Joint Comments on Draft Regulations for ESHB 1261

Dear Washington Department of Fish and Wildlife Commissioners:

Thank you for the opportunity to comment on the proposed rules for ESHB 1261. Many of the 66 undersigned organizations signed a letter sent to the Washington Department of Fish and Wildlife (WDFW) Directors on April 1, 2020 urging the adoption of strong regulations that match the intent of the law.

Passage of this legislation was the result of a decade-long hard-fought win for salmon recovery, orca whales, and clean water. The law bans the practice of motorized suction dredge mining in Washington rivers and streams that have been designated as critical salmon habitat to protect the hundreds of

millions of dollars of investment in salmon habitat restoration efforts by federal, state, and municipal governments, conservation organizations and Tribes.

We appreciate the overall good work and diligence of the agency in advancing these rules consistent with the intent of the law. These proposed rules are extremely timely as more and more Washingtonians begin to find recreational opportunities in our vital salmon and steelhead watersheds and we continue to wrestle with the impacts of habitat degradation.

We believe the proposed rules address our concerns regarding the implementation of ESHB 1261 except for the removal of WAC 220-660-305(8). While we appreciate the concept that because of ESHB 1261 not as many motorized miners will be seeking HPAs, we still believe, as Department of Ecology continues to refine which waters motorized mining may be permitted, requiring reporting is necessary and precludes future revisions back to a reporting mechanism if more waters are opened to motorized mining.

We also want to encourage WDFW to continue collaborative enforcement with the Department of Ecology. WDFW's Habitat and Enforcement staff are extremely familiar with not only mining claims and sites, but also the mining community itself. Visits by WDFW staff, engaging with miners on site, can be extremely helpful in further educating the mining community about the new law, regulations, and enforcement.

Again, thank you for your good work on implementing ESHB 1261.

-
Sincerely,

Kim McDonald
President
Fish Not Gold

J Michelle Swope
Washington Regional Coordinator
Native Fish Society

Tom Uniack
Executive Director
Washington Wild

Mike Petersen
Executive Director
The Lands Council

Bill Arthur
Vice Conservation Chair
Washington Chapter Sierra Club

Rich Simms
President
Wild Steelhead Coalition

Brad Throssell
State Chair
Washington Council of Trout Unlimited

Lucy Brookham
Policy Manager
Cascade Forest Conservancy

Steve Jones
Conservation Chairman
Clark-Skamania Flyfishers

Brett VandenHeuvel
Executive Director
Columbia Riverkeeper

Trish Rolfe
Executive Director
Center for Environmental Law & Policy

Rick McGuire
President
Alpine Lakes Protection Society

Sarah Kliegman
co-Executive Director
Okanogan Highlands Alliance

Ann Darlington
BOD President
Friends of Heybrook Ridge

Allen Gibbs
Vice President
Pilchuck Audubon Society

Jon Bowne
President
Inland Empire Fly Fishing Club

Jay Galvin
President
The Rainier Audubon Society

Arthur Campbell
President
North Central Washington Audubon Society

Paul Fish
President
Mountain Gear, Inc

Kevin and Meghann Quinn
Co-Owners
Bale Breaker Brewing Co.

Robert Kaye
Chair, Conservation Committee
North Cascades Audubon Society

Amy Grondin & Greg Freidrichs
Owners
Duna Fisheries, LLC

Kelsey, Ben, Liz & Craig Curran
Owners
Watershed Pub & Kitchen

Raymond Kwan & Barry Chan
Owners
Lucky Envelope Brewing

Mike Clancy
Conservation Chair
WA State Council of Fly Fishers International

Brian Stan
Co-Founder
Old Stove Brewing, LLC

Debbie Cople
Director
Sky Valley Chamber of Commerce & Visitor
Information Center

Sara Nelson
Co-Founder/Owner
Fremont Brewing

Larry Lober
Membership Coordinator
Greater Bellingham Running Club

Dave Werntz
Science and Conservation Director
Conservation Northwest

Mark Boyar
President
MidFORC Coalition

Arthur (R.D.) Grunbaum,
President
FOGH (Friends of Grays Harbor)

Sam Merrill
Conservation Committee Chair
Black Hills Audubon Society
Anna Wille
Co-founder
Women for Wild Lands

Jack Guinn
Owner
Hellbent Brewing Company

Inessa Pearce
President
Skykomish Valley Environmental & Economic
Alliance

Josh Laughlin
Executive Director
Cascadia Wildlands

Wendy McDermott
Director, Rivers of Puget Sound & Columbia
Basin
American Rivers

Jeremy Lucas
Conservation Chair
Eastside Audubon

Peter Bahls
Executive Director
Northwest Watershed Institute

Shannon Wright
Executive Director
RE Sources

Michael Davis
Mount Baker Club
Bellingham, WA

Lara Zahaba
Co-Owner | Marketing & Communications
Stoup Brewing

John McGlenn
President
Washington Wildlife Federation

Mark Taylor
President
Three Rivers Chapter of Trout Unlimited

Larry Franks
Board Vice President
Friends of the Issaquah Salmon Hatchery

Mari and Will Kemper
Owners
Chuckanut Brewery

Jerry White, Jr.
Executive Director,
Spokane Riverkeeper

Janet Strong
President
Grays Harbor Audubon Society

Johnny Boitano
Co-Owner/Guide
Troutwater Fly Shop and Guide Service

Joseph Bogaard
Executive Director
Save Our Wild Salmon Coalition

Lance Reif
Owner
Wildwater River Guides

Timothy Coleman
Executive Director
Kettle Range Conservation Group

Susan Jane M. Brown
Staff Attorney
Western Environmental Law Center

Greg Haller
Conservation Director
Pacific Rivers

Timothy Manns
Conservation Chair
Skagit Audubon Society

Phil Fenner
President
North Cascades Conservation Council

Gabe Epperson
Executive Director
Whatcom Land Trust

Cecilia Vollert
Brand Manager
Miir

Art Wolfe
Conservation Photographer
Art Wolfe, Inc.

Lindsay Frickle
Executive Director
Issaquah Alps Trails Club

Matt Moore
President
Northwest Fly Anglers

Paul Satzinger
Operations Manager
NOLS Pacific Northwest

Megan Birzell
Washington State Director
The Wilderness Society

Jasmine Minbashian
Executive Director
Methow Valley Citizens Council

LeeAnne Beres
Executive Director
Earth Ministry/Washington Interfaith Power &
Light