



Washington
Department of
**FISH and
WILDLIFE**

Implementation Plan

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 2, 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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Purpose

The Washington Department of Fish and Wildlife (WDFW) proposed changes to Chapter 220-660 WAC – Hydraulic Code Rules. We are providing this implementation plan to meet department and Administrative Procedure Act requirements (RCW 34.05.328) related to rule adoption.

Introduction

On April 9, 2021, 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 ESHB 1261 - a bill passed by the legislature during the 2020 legislative session. Bill sections 1 and 2 amended Chapter 90.48 RCW – Water Pollution Control. These sections are not the subject of this rule making. Sections 3 and 4 of ESHB 1261 amended Chapter 77.55 RCW – Construction Projects in State Waters. Section 3 made changes to definitions. 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.”

The purpose of this rule implementation plan is to inform the public how WDFW 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

WDFW will implement the amended Hydraulic Code Rules on the date they become effective. Regulatory Services Section staff will implement the procedural changes and biologists will include the technical provisions that reflect the amendments to the Hydraulic Code Rules in

new permits they issue or revise. The new requirement for proof of compliance with the Clean Water Act (CWA) will be confirmed before a permit is processed, and is therefore not subject to violation.

Since hydraulic code laws and regulations are complicated, WDFW has a responsibility to help the regulated community understand how to comply. We use a range of tools as our roles move from educator to enforcer. WDFW will improve compliance with the Hydraulic Code Rules through increased public education, technical assistance, and inspections. A new Compliance Division is under development at WDFW, and it will play a role once it is functioning. Biologists typically have first contact with miners and will work with them to prevent non-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

WDFW communicated with the public, other natural resource agencies and tribes during rulemaking. The codified rule incorporating all revisions will be posted on WDFW rules webpage when the revised rule is published by the Office of the Code Reviser. WDFW 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 stakeholders.

WDFW will also update the “Rules for mineral prospecting and placer mining” webpage. The update will include:

- An overview of the rule changes
- Information about how to apply for a standard HPA
- An updated Gold and Fish Pamphlet

The department’s habitat biologists and frontline staff will continue to provide technical assistance and answer questions.

Promoting and Assisting Voluntary Compliance

WDFW will continue to work with stakeholders to encourage voluntary compliance with the rule. The main requirement of the new rule, providing proof of compliance with the CWA, is a mandatory step in applying for an HPA. No HPA will be issued without it. WDFW will assist applicants as necessary to find information about CWA permitting and how contact the Washington Department of Ecology. Voluntary compliance will primarily apply to the aquatic

invasive species prevention measure. The measure will appear as a provision in HPA permits issued for prospecting involving motorized or gravity siphon equipment. WDFW has an established technical assistance program that promotes and assists with voluntary compliance with the Hydraulic Code Rules. The new Compliance Division will also assist with promoting voluntary compliance once the division is fully developed and functioning.

Evaluating the Rule

The purpose of the rule is to implement ESHB 1261 by requiring standard HPA permits for all mineral prospecting involving motorized or gravity siphon equipment. This provides a nexus for applicants to submit their proof of compliance with the CWA. Previously, some of these aquatic mining activities were authorized in the in the Gold and Fish pamphlet and did not require an application process. WDFW will conduct internal monitoring to ensure that HPA applications for mineral prospecting are processed in accordance with the Hydraulic Code Rules. We will also continue to interact with the regulated community and gather feedback about the permit application process so that we can make adjustments as necessary to promote compliance.

Training and Informing WDFW Staff

Rulemaking requires outreach to the department's habitat biologists, administration, enforcement staff and others involved with Hydraulic Project Approvals. This will be done through meetings, email communication, written guidance, and one-on-one communication. Details of the statute (Chapter 77.55 RCW) and rules (Chapter 220-660 WAC) will be updated in HPA training materials for staff. Training will mainly focus on changes to the permit process.

Implementation Actions:

- Identify and engage employees who interact with the regulated community as part of their daily work.
- Brief frontline employees about the rule amendments and available resources, and give them educational resources to share with applicants.
- Train the administrative staff to evaluate mineral prospecting HPA applications for CWA compliance as part of the statutory completeness review.

List of Supporting Documents that May Need to be Revised

Documents that may need to be revised or updated include:

- Gold and Fish Pamphlet: Rules for Mineral Prospecting and Placer Mining
- HPA Manual
- Regulatory Services Section Desk Manuals

For Further Information:

For more information about the Hydraulic Code Rule amendments see:

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

For more 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 HPA rule implementation, contact:

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