



Washington
Department of
**FISH and
WILDLIFE**

Small Business Economic Impact Statement

Pursuant to Regulatory Fairness Act (chapter 19.85 RCW)

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]

This proposal requires standard Hydraulic Project Approval (HPA) permits for use of motorized and gravity siphon equipment for mineral prospecting and mining that discharges water, requires proof of Clean Water Act compliance for permit applications, and eliminates the annual reporting requirement for suction dredging.

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

December 10, 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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SECTION 1 Describe Rule and Compliance Requirements

1.1 Background

The state Legislature gave the Washington Department of Fish and Wildlife (WDFW) the responsibility to preserve, protect, and perpetuate all fish and shellfish resources of the state. To help achieve this mandate, the Legislature passed a state law in 1943 called *Protection of Fish Life*. Now titled *Construction projects in state waters* and codified as [Chapter 77.55 RCW](#), the entire text of the statute can be found at: <http://app.leg.wa.gov/RCW/default.aspx?cite=77.55>.

Under the authority of Chapter 77.55 RCW, WDFW issues a construction permit called a Hydraulic Project Approval (HPA). The sole purpose of the HPA is to protect fish life from construction and other work that affects the flow or bed of state waters. HPAs are site-specific, meaning that provisions are tailored to the site conditions and species that might be affected by each particular project. The HPA contains conditions that a permittee must follow in order to mitigate¹ impacts to fish life caused by the project.

Chapter 77.135 RCW - Invasive Species - provides authority for WDFW to address invasive species using an integrated management approach. Authority is conveyed for WDFW to adopt rules to require clean/drain/dry or other decontamination methods and to require inspections for aquatic conveyances entering Washington State.

WDFW promulgates rules to implement Chapter 77.55 RCW under [Chapter 220-660 WAC](#) - *Hydraulic Code Rules*. This WAC chapter establishes regulations for administration of the HPA program. The Hydraulic Code Rules set forth definitions, administrative procedures for obtaining an HPA, steps for HPA appeals and civil compliance, and criteria generally used by WDFW to review and condition hydraulic projects to protect fish life.

One type of hydraulic project regulated by WDFW is placer² mineral prospecting and mining using motorized and nonmotorized prospecting and mining equipment. Pursuant to RCW 77.55.091 and WAC 220-660-050(9), WDFW implements WAC 220-660-300 primarily through distribution of a "Gold and Fish Pamphlet," which is a document that describes methods of, and restrictions for, mineral prospecting and mining that are regulated through the pamphlet. A person³ does not need to apply for an individualized, standard HPA if they are conducting mineral prospecting activities in accordance with the Gold and Fish Pamphlet. Persons who want exceptions to provisions in the Gold and Fish Pamphlet must apply for standard HPAs.

¹ "Mitigation" is defined in WAC 220-660-030(100) to mean sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat that supports fish life.

² "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals. WAC 220-660-030(113)

³ A "person" is defined in WAC 220-660-030(112) as meaning "an applicant, authorized agent, permittee, or contractor. The term person includes an individual, a public or private entity, or organization." This term is used throughout this SBEIS to refer to individuals and businesses.

1.2 Compliance requirements of the proposed rule and applicability of the Regulatory Fairness Act RCW 19.85

RCW 19.85.040(1) provides, “A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements.”

RCW 19.85.025(3) provides, “This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).”

ESHB 1261 was signed into law in March 2020 and made changes to chapter 77.55 RCW. In order to align with the changes to state law, WDFW developed rule proposals for several WAC sections. Below is a brief description of all the proposed changes and their status in this SBEIS. Regulatory Fairness Act (RFA) exemptions are presented in Table 1.

220-660-030 (Definitions): revises three definitions for clarity and adds new definitions for “gravity siphon aquatic mining” and “motorized or gravity siphon equipment” as reflected in the new statutory definitions for those terms. Changes in this section correct or clarify language without changing the effect of that language and do not create compliance requirements. This section is not discussed further in this analysis.

220-660-050 (Procedures): requires that proof of compliance with the federal Clean Water Act must be included in a standard HPA application for mineral prospecting or mining using motorized or gravity siphon equipment. The proposal also specifies that the department may reject an incomplete application for mineral prospecting or mining using such equipment if the proposed project location or locations occur where they are prohibited under RCW 90.48.

Proof of compliance with the federal Clean Water Act is differentiated in this document from the act of compliance with the Clean Water Act. The costs of relevant prohibitions and permitting under the Clean Water Act are not incorporated into this analysis under RCW 19.85 or RCW 34.05.328 because such costs are indirect and result from new legal requirements that are outside the scope of WDFW’s rulemaking authority under RCW 77.55. Proof of compliance with the Clean Water Act is a new HPA application requirement that is specifically dictated by statute in RCW 77.55.021(2)(e) and is therefore not discussed in this analysis.

HPA applications for motorized or gravity siphon mineral prospecting and mining methods which are to occur in locations where an activity is prohibited under RCW 90.48.615(2) are impossible to complete statutorily under the proof-of-compliance requirement of RCW 77.5.021(2)(e). Department procedures for handling of these incomplete applications are internal government operations and not evaluated in this analysis.

220-660-300 (Mineral Prospecting): removes authorization for motorized or gravity siphon mineral prospecting activities from the Gold and Fish pamphlet rules. Those activities are moved to 220-660-305. Changes to this section do not create new compliance requirements and so it is not discussed further in this analysis.

220-660-305 (Suction Dredging): changes the name of this section to “Mineral prospecting involving motorized or gravity siphon equipment” and contains rules for prospecting using motorized or gravity siphon equipment. Specifically, it expands the existing requirements for

suction dredging to include all prospecting with motorized or gravity siphon equipment. The reason for this requirement is to implement RCW 77.55.021(2)(e). The annual reporting requirement for suction dredging is repealed. This WAC section is the subject of this SBEIS analysis.

Table 1 RFA exemptions to the proposed rule changes

| Section | Change | RFA exempt? | Exemption citation |
|-----------------|--|-------------|---|
| 030 Definitions | Multiple changes to definitions, one addition, one deletion | Y | RCW 34.05.310(4)(d) Correct or clarify language |
| 050 Procedures | Require proof of compliance with federal Clean Water Act in HPA applications | Y | RCW 34.05.310(4)(e) Dictated by statute |
| 050 Procedures | Allow WDFW to reject incomplete applications for prohibited locations | Y | RCW 34.05.310(4)(b) Internal government operations |

1.3 Professional Services Required

One goal of WDFW’s HPA application system is that applicants are able to complete and submit an application without the assistance of professional services. WDFW provides free support services during normal business hours to persons having difficulty establishing an account, starting an application, completing an application, and submitting that application.

HPAs for mineral prospecting projects that move less than 50 cubic yards of material are exempt from SEPA under WAC 197-11-835(2)⁴. Applicants wishing to move less than 50 cubic yards can cite this exemption in order to meet the application requirement of providing proof of SEPA compliance under RCW 77.44.021(2)(d). Applicants wishing to move 50 cubic yards or more of material must complete a SEPA checklist and submit it to the SEPA lead agency so that the lead agency can make a determination about the effects of the project on the environment. Providing a copy of the lead agency’s determination as part of the HPA application is generally sufficient for purposes of complying with RCW 77.55.021(2)(d).

One reason many HPA applicants might need professional services is to obtain engineering advice and engineer-certified plans and specifications to file with their HPA application. Because motorized and gravity siphon prospecting are not construction activities, engineered plans and specifications are not required to complete the application. As a result, applicants are unlikely to use professional services.

⁴ WAC 197-11-835 “The following activities of the department of fish and wildlife are exempted:”... “(2) Hydraulic project approvals where there is no other agency with jurisdiction [besides the department of fish and wildlife] requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials ...”

Professional services relating to maintaining a computer and internet connection would be included under “Administrative Costs.”

Refer to section 7 (cost-benefit analysis) of the Regulatory Analysis for more about economic considerations relating to the rule. The Regulatory Analysis document is available at: <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

SECTION 2 Identify Businesses - Minor Cost Threshold

RCW 19.85.040(2)(c) states, “Provide a list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.”

RCW 19.85.020(1) states, “Industry” means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget.’

RCW 19.85.020(2) states, “Minor cost” means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll.’

This rule making activity regulates placer gold or mineral prospecting and mining methods in Washington that involve motorized and gravity siphon equipment, including but not limited to spiral wheels, concentrators and high-bankers, gravity siphons, suction dredges, power sluice/suction dredge combinations, high-bankers and power sluices. Any business that conducts motorized or gravity siphon placer mining would be required to comply with the proposed rules. Those businesses conducting suction dredging are already required to obtain an individualized, standard HPA under the existing rules.

WDFW took several steps to attempt to identify businesses that would need a standard HPA to conduct suction dredging. The first step WDFW took was to survey stakeholders and mineral prospecting HPA holders.

We also attempted to identify industries by four- and six-digit North American Industry Classification System (NAICS) codes. Mineral prospecting and mining businesses directly regulated by WDFW fit under the 4-digit NAICS code 2122 for metal ore mining and more specifically, the six-digit code 212221 for gold ore mining. WDFW collected and reviewed data relating to businesses under the 2122 and 212221 industry codes. That effort did not yield data for the review because of the limited number of businesses in Washington. Further explanation is provided in section 2.2.

WDFW made additional inquiries using internet and state-run business databases (section 2.3). Forty-four potential businesses were identified, but ultimately none of them yielded any data for the SBEIS analysis. Most were not involved in mineral prospecting. Others no longer existed, could not be located, or did not conduct business in Washington.

This research led WDFW to conclude that identifying mineral prospecting businesses based on business name, business owner, or 4- or 6-digit NAICS codes does not help us identify the businesses required to comply with the proposed rule. Because of this, it is difficult to obtain the kinds of data needed to complete the SBEIS analysis.

Considering these information constraints, WDFW decided to rely upon survey data (section 2.4) from the mineral prospectors themselves to estimate the costs to comply with the rule, and to otherwise do the best we could to make the estimates required in the SBEIS with the available data. Ultimately, WDFW relies upon steps to lessen impacts imposed by the proposed rule on small businesses and other persons (section 6).

The following subsections provide more detail on the research WDFW conducted to identify businesses that might be required to comply with the proposed rule, and our conclusions based on that research.

2.1 Business research

When WDFW began to prepare the documents necessary to accompany rule change proposals, we considered how we might get information from miners and mining businesses about the economic impacts of the proposed rule.

WDFW developed a survey to determine the time and financial costs related to acquiring an HPA permit. The survey also attempted to identify mineral prospecting businesses, and some basic information about those businesses. We developed an extensive stakeholder list during our 2018 suction dredge rule making process. That list includes individual prospectors, clubs, businesses, nonprofit groups, government agencies, and other interested parties. We also compiled the names of those who have acquired the 174 suction dredging HPAs that have been issued in the past 5 years. Altogether, our current outreach list totals 472 names. We sent survey invitations by email to the entire outreach list on July 31, 2020. The survey was available online for three weeks. We received a total of eighty-one responses. Sixty respondents reported that they had applied for a mineral prospecting HPA in the past, while twenty reported that they had not. Those who had applied were asked about the time required and the cost to hire help for the application, as well as collecting information about any mineral prospecting businesses.

Four respondents indicated that they owned a mineral prospecting business. The business types were broken down as: three sole proprietorships and one corporation. One of these provided their business name, contact information, and Washington Universal Business Identifier (UBI). Another provided their UBI number. One provided only an NAICS code (212221). The unnamed UBI number was entered into the Washington State Department of Revenue (DOR) Business Lookup Tool⁵. It did not turn up a valid business account. In total, we were able to obtain data from four businesses and positively identify one of them. That business volunteered to be contacted for further questions.

⁵ <https://secure.dor.wa.gov/gteunauth/#1>

2.2 Metal ore mining businesses - NAICS 212221

To further identify businesses that might be affected by the suction dredge rule proposals, WDFW examined the NAICS list of industries to identify which industries are directly regulated by WAC 220-660-305. Mineral prospecting and mining businesses directly regulated by WDFW fit under the 6-digit NAICS code 212221 for gold ore mining. Information under this code was completely masked due to the small number of establishments, and therefore of no use. We examined data for a somewhat larger category, using the 4-digit NAICS code 2122 for metal ore mining. Table 2 presents data from the SBEIS tools⁶ for the NAICS codes 212221 and 2122.

Table 2 Businesses data for businesses identified under industry classification codes 212221 and 2122

| Industry 4-digit or 6-digit 2012 NAICS Code | NAICS Code Definition | Number of Establishments | TOTAL Annual Payroll | TOTAL Annual Revenue | AVG Annual Payroll | AVG Annual Revenue | 1% of Annual Payroll | <0.3% of annual revenue or income or \$100 |
|---|-----------------------|--------------------------|----------------------|----------------------|--------------------|--------------------|----------------------|--|
| 212221 | Gold Ore Mining | D | D | D | D | D | D | \$100 |
| 2122 | Metal ore mining | 3 | D | \$12,127,576 | D | \$4,043,525 | D | \$12,128 |

Source: Washington State Auditor Minor-Cost-Threshold Calculator.xlsm, which uses data from the 2017 Economic Census of the United States.

Codes: "D" means data are withheld to avoid disclosing data for individual companies; data are included in higher level totals.

Numbers of employees in Washington under these NAICS codes are range "e": 250 to 499 employees. The actual number is withheld to avoid disclosing data for individual companies.

WDFW made several observations about this information. First, there are so few businesses in this industry in Washington that employment and payroll data are masked by the U.S. Census Bureau to avoid disclosing information for individual companies. Second, the provided revenue data for NAICS code 2122 (e.g., average annual business revenue of \$4 million) do not seem to fit the kind of businesses WDFW assumes would be required to comply with the proposed motorized or gravity siphon equipment rule. This determination is based on anecdotal information provided by miners in 2017⁷ indicating that the average miner yields 3 grams of gold per day and that miners average 20 days of suction dredging per year. 3 grams of gold times 20 days per year equals 60

⁶ "SBEIS Tools" include document templates, spreadsheets, examples, and other guidance provided by the Governor's Office of Regulatory Innovation and Assistance, the state Auditor's Office, and the Office of Financial Management: https://www.oria.wa.gov/site/alias_oria/934/Regulatory-Fairness-Act-Support.aspx

⁷ Wheeler, S. and W.S. Brown. October and November 2017. Personal Communications.

grams of gold per year, worth \$3,690.00 today⁸. WDFW would expect the average annual revenue for a business involving suction dredging to be closer to \$3,700 than \$4 million. Because of this, WDFW determined that data from the SBEIS tools were of limited utility in developing the SBEIS analysis.

2.3 Business research

In September 2020, WDFW did further research to identify businesses subject to the new HPA requirements. We conducted searches to find businesses with “prospecting”, “prospector”, “placer” or “gold mining” in the business name. Primary online tools were business data bases maintained by Department of Licensing, Department of Revenue, and Office of the Secretary of State⁹, and web searches using Google. We found forty-four businesses during the search and conducted deeper searches on eleven. The others were not primarily mineral prospecting businesses, as evidenced by names and NAICS numbers. Of the remaining eleven, four were closed according to the Department of Revenue business lookup tool. Two others were also quickly eliminated as one turned out to be a jeweler and the other a gold, silver and antiques dealer.

Three of the businesses were identified as owned by the same person. WDFW was able to contact that individual’s primary business by telephone. We received a response back that none of the three mining businesses were currently conducting any mining or mineral operations in Washington¹⁰. The last business could not be located online or physically. It appears to have moved to an unknown location according to an address search of the Skagit County property search website¹¹.

2.3.1 Conclusions drawn from business research

When we conducted the research described in sections 2.2 and 2.3, we expected the results would add to our list of businesses involved in metal ore mining (NAICS 212221) or we would discover other NAICS codes to include in our small business analysis. Instead, we observed that most of the businesses among these results are identified in widely differing industries (i.e. have NAICS codes that indicate primary activities that are very different from gold mining or metals mining) or have no identified industry.

At this point, WDFW concluded that 1) Even though NAICS codes 2122 and 212221 seem to be most closely aligned with the business activity regulated by WDFW, “212221” businesses don’t adequately represent mineral prospecting conducted under WAC 220-660-305; 2) it’s impractical to determine whether a business is affected under this proposal based solely on searches using the Department of Revenue Business Lookup Tool, and 3) motorized and gravity siphon aquatic

⁸ <https://goldprice.org/> Gold spot price at \$61.50 U.S. dollars per gram. Accessed on October 5, 2020 at 8:02pm Eastern Standard Time.

⁹ Note that business information from Licensing, Revenue, and Secretary of State is now available using the Revenue “Business Lookup” tool instead of the separate searches conducted in 2017.

¹⁰ Maryann Rhodes (voicemail). October 14, 2020. Personal Communications.

¹¹ <https://www.skagitcounty.net/Search/Property/> accessed 10/9/2020.

mining-related businesses in non-mining industry codes are not likely to be fairly represented by using payroll and income census data for those industry codes in the SBEIS analysis.

2.4 Survey - Data results for effort and costs

As described in section 2.1, WDFW sent out a survey to 472 contacts on our distribution list. The survey collected information about the time and cost to acquire an HPA for mineral prospecting activities. The questions were presented only to those who first responded that they had previously applied for an HPA. The values are understood to be data based on real experience rather than hypothetical estimates. The results are summarized in Table 3. The median time spent was three hours, with a maximum of sixty hours. The relatively low numbers may be explained in part by the fact that the majority (74%) used the simplified application form. The other 28% filled out either the Aquatic Protection Permitting System (APPS) online form or the Joint Aquatic Resources Permit Application (JARPA) form. The JARPA form is considerably longer than either the simplified form or the regular online form.

Seven individuals indicated that they had sought professional assistance. The cost for that assistance was reported as \$100 or less for all but one respondent. The median value was impacted by the fact that two respondents reported hiring assistance but then identified their cost as \$0. It was also impacted by an outlier data point of \$2,000. We use the median of responses (the middle value in the list of responses) for all the survey results because the data received contained outliers that would influence a standard mean or average (sum of responses divided by the number of responses).

The survey attempted to differentiate mineral prospecting businesses and their specific effort and costs. The median time reported by businesses to apply for HPAs was 1 hour, with 4 hours being the highest reported time effort. No businesses reported hiring professional assistance.

Table 3 Overall survey responses for time and financial cost to apply for an HPA

| | Median hours spent applying for an HPA | Response range for hours spent applying for an HPA | Median cost for application assistance | Response range for cost for application assistance |
|------------------------|---|---|---|---|
| All responses (52) | 3 | 0.5 to 60 | \$100 | \$0 to \$2,000 |
| Business responses (4) | 1 | 0.5 to 4 | none | none |

2.5 Minor cost threshold

WDFW concluded that neither the SBEIS tools nor the research completed in steps described in sections 2.2 and 2.3 can help us identify the minor cost thresholds.

Identify the minor cost thresholds for that industry.

Pursuant to RCW 19.85.020(2), "Minor cost" means "a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll."

WDFW determined that neither industry codes 2122 nor 212221, nor any other industry identified during our research provides data are representative of the businesses required to comply with the proposed rule. WDFW does not have payroll, employment, or business revenue data for businesses of any size required to comply with the proposed rule. Therefore, the minor cost threshold for this analysis is determined to be \$100 (Table 4). Any costs imposed on a small business that are over \$100 would be considered for this analysis to be more than minor and potentially disproportionate.

Table 4 Small Business Industry Classification and Minor Cost Thresholds

| | |
|---|---|
| North American Industry Classification System (NAICS) code | 212221 |
| NAICS Business Description | Gold ore mining |
| # of businesses in Washington | Unknown, data is masked (from Revenue in September 2020) |
| Minor Cost Threshold = the greater of <0.3% of annual revenue or income, or \$100 | Average annual receipts for businesses that would be regulated under proposed WAC 220-660-305 are unknown, so we use \$100 for this analysis. |
| Minor Cost Threshold = 1% of annual payroll | Average annual payroll for businesses that would be regulated under proposed WAC 220-660-305 is unknown, so we use \$0.00 for this analysis. |
| Applicable minor cost threshold | \$100 |

SECTION 3 Costs of Compliance

RCW 19.85.040(1) provides, "...It [the SBEIS] shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs..."

WDFW estimated the costs to comply with the proposed rules. We used the cost of hiring help for the HPA application process as reported in the survey. We also used responses for hours per permit and a cost per hour established by WDFW. Those two values were combined to estimate a cost per permit. We used a similar "hours x cost per hour" approach to estimate the cost of aquatic invasive species prevention.

Because there are no industry records of annual payroll to help us estimate costs per hour for the suction dredging and motorized prospecting industry, WDFW referenced mining labor data provided by the Bureau of Labor Statistics¹². We chose the worker type we think mostly closely

¹² Bureau of Labor Statistics. Industries at a Glance Statistics for Metals Ore Mining NAICS 2122. Occupation: Continuous Mining Machine Operator (a worker who extracts raw materials from the ground for commercial and other uses by operating self-propelled mining machines that rip coal, metal and nonmetal ores, rock, stone, or

matches the work of a suction dredger - Continuous Mining Machine Operator - which earned an average hourly wage of \$28.68 for metal ore mining in 2019. We are using this figure to estimate hourly costs per individual for the time taken to comply with the proposals.

We anticipate the cost of equipment and supplies to be minimal. WDFW's HPA applications can be completed online using a home computer with an internet connection. Computers and internet connectivity are available for free to the public at most libraries.

3.1 Multiple permits

Most HPAs are issued for a 5-year period pursuant to WAC 220-660-050(14)(a). Pursuant to WAC 220-660-050(b)(ii)(A), a standard multi-site HPA can authorize work at multiple project sites if: (I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area; (II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and (III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

Analysis of existing mineral prospecting HPAs found that three individuals held two permits each in the past five years out of 172 total permit holders. Two of those people had multiple sites, necessitating two permits. The third was eligible for a single multi-site permit rather than two single-site permits. Given the existing rate of 1.1% (or 2 of 172) of permittees needing multiple permits, we have conducted our cost-to-comply analysis based on the more common condition of one permit per applicant.

3.2 Calculated costs to comply

3.2.1 Costs to comply with the HPA-required rule

Each person wishing to lawfully conduct activities covered in WAC 220-660-305 in Washington State will be required to obtain an HPA. A person is not required to apply for an HPA; however, an HPA is required if a person wishes to conduct the activity. WDFW assumes that each of those HPAs would be issued for a 5-year period as allowed under WAC 220-660-050(14)(a).

If a person takes 3 hours (median survey response) to complete an HPA application, that costs \$86.04 in labor based on our estimated cost per hour. If professional assistance is required, then \$100 is added to the cost for a total of \$186.04. If each HPA is valid for 5 years, and each person needs only one HPA, then the annual cost per person to complete the application process is \$186.04 divided by 5, or \$37.21 per year.

Businesses reported taking one hour (median survey response) to complete an HPA application for a labor cost of \$28.68. No business reported hiring professional assistance, but if \$100 from the general survey responses is applied, then a business may spend a total of \$128.68. Over 5 years, the cost comes to \$25.74 per year.

sand from the mine face and load it onto conveyors or into shuttle cars in a continuous operation.) Downloaded September 14, 2020 from https://www.bls.gov/oes/current/naics4_212200.htm#47-0000. Note that the machine referenced for this occupation is nothing like the motorized equipment used in Washington, but it was the closest occupation we could find for the U.S. metal ore mining industry as a whole.

In summary, we have estimated that the range of costs for an individual or small business to comply is from \$128.68 to \$186.04. Over the 5-year permit period, the range is \$25.74 to \$37.21 per year.

3.2.2 Costs to comply with the Aquatic Invasive Species Rule

The expansion of WAC 220-660-305, from suction dredging to all motorized and gravity siphon equipment, includes the aquatic invasive species prevention rules in WAC 220-660-305(4). The subsection specifies that all motorized and gravity siphon equipment that has been used in waters outside of Washington State must be inspected for the presence of aquatic invasive species. Further, all motorized and gravity siphon equipment used in any water of the state must be decontaminated according to department specification prior to use in a different water of the state.

“Clean-Drain-Dry” decontamination steps published on the WDFW web site can be undertaken by the average person using supplies commonly available: hot water, brushes, and household cleaning liquid¹³. WDFW conducted a survey of suction dredgers in January 2019 that included questions about decontamination of equipment¹⁴. They reported that cleaning and drying out their equipment is a regular activity associated with dredging because they want to ensure that all the gold collected by the equipment is recovered. Eighty-four percent of survey respondents indicated they took decontamination steps in 2018.

The proposed rules also require persons bringing motorized and gravity siphon equipment into Washington from out-of-state to have their equipment inspected for the presence of aquatic invasive species prior to using that equipment to mineral prospect in Washington. Inspections for the presence of aquatic invasive species are available at major highway entry points into the state, so persons bringing equipment into Washington can arrange their entry so they are inspected as they cross the state line. Certificates of inspection are available on request at the time the inspection is completed. Inspections and certificates are provided at no cost.

If a person takes 2 hours and 30 minutes (median survey response) to comply with the proposed aquatic invasive species decontamination rule for suction dredging equipment, that costs \$71.70 in labor. Suction dredging equipment is generally larger and more complex to clean than the equipment being added under this rule making. WDFW estimates that the time required to decontaminate the simpler and smaller equipment would be somewhat less. We are using the larger value in lieu of a more specific estimate for the smaller equipment to accommodate for any uncertainty in our estimate.

3.2.3 Summary of Costs to Comply

The up-front cost to acquire a permit is estimated from \$128.68 to \$186.04. The cost to comply with the aquatic invasive species rule is estimated at \$71.70 annually. The total cost to comply in the first year of a permit is the highest, and is estimated from \$200.38 to \$257.74. Total costs to comply per person per year over a 5-year permit range from \$97.44 to \$108.91.

¹³ <https://wdfw.wa.gov/ais/youcanhelp.html>

¹⁴ Details about the survey can be found in the Small Business Economic Impact Statement for the Hydraulic Code Rules Chapter 220-660 WAC 2019 HPA Suction Dredge Rulemaking, available at <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking#Final-rule>.

3.3 Lost sales or revenues and lost jobs

RCW 19.85.040(1) states, "...It [The SBEIS] shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue..."

Data regarding industry revenue was unavailable. The results from searches using the SBEIS tools are summarized in Table 2. WDFW conducted a phone interview with one business that was identified in the online survey. That business reported permitting complications that caused a one-month work delay at one site. The estimated value of that delay was \$2,000. The business interviewed indicated that they had no employees and that no jobs would be created or lost because of the proposed rules. Additional data on employment was also unavailable. The Washington Employment Security Department Employer Database tool¹⁵ returned no results on companies that hire employees. The US Census Bureau 2017 Economic Census contained only masked data for annual sales, revenue and payroll. The number of employees was given as 250-499, which is also a masked value.

Based on insufficient data, WDFW was unable to estimate the number of jobs created or lost, or changes to sales and revenue, as a result of compliance with the proposed rule.

SECTION 4 More than Minor Costs

RCW 19.85.030(1)(a) provides, "In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; ..."

RCW 19.85.020(2) provides, "'Minor cost' means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll...'

The RCW chapter 19.85 does not specify whether the cost to consider per business is the up-front cost or the average cost per year. Based on the costs of compliance estimated in section 3.2.3, the estimated costs for an individual or business to comply in the first year with the proposal (\$200.38 to \$257.74) surpasses the minor cost threshold of \$100 shown on Table 4. The annual cost to comply over a 5-year permit (\$97.44 to \$108.91) lands right at the top of the \$100 minor cost threshold. WDFW has used the first-year cost and developed a complete SBEIS to maximize transparency during rulemaking and to better inform the regulated community.

SECTION 5 Disproportionate Impact on Small Businesses

RCW 19.85.040(1) provides, "...To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the

¹⁵ <https://esd.wa.gov/find-an-employer#/>

proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) Cost per hour of labor; or (c) Cost per one hundred dollars of sales.”

Four survey respondents identified themselves as businesses required to comply with the proposed rule; no others self-identified as businesses. One survey respondent identified as a small business and reported no employees during a phone interview. WDFW is unable to distinguish the cost of compliance between small businesses and the ten percent of businesses that are the largest businesses required to comply. However, WDFW acknowledges the possibility that smaller businesses may face a higher proportionate cost than larger businesses.

SECTION 6 Steps to Reduce Costs to Individuals or Small Businesses

RCW 19.85.030(2) states, “Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW [19.85.040](#) [i.e. in Section 5 of this document], the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:” [Note: RCW 19.85.030(2)(a) through (f) lists the methods, which are also listed under items (a) through (f) in Table 4 of this document].

RCW 19.85.030(3) states, “If a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter.”

RCW 19.85.030(4) states, “In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more than minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter.”

RCW 19.85.030(5) states, “If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency must provide a clear explanation of why it has made that determination.”

RCW 19.85.040(2) states, “A small business economic impact statement must also include: (a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses...”

The goals and objectives of the statutes that the proposed rule is intended to implement are discussed fully in section 4 of the Regulatory Analysis, available at:

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

Table 5 Required methods of reducing costs imposed by the rule on small businesses

| RCW 19.85.030 (2) Requirements | | WDFW response |
|--------------------------------|---|---|
| Sub-section | Method | |
| a) | Reducing, modifying, or eliminating substantive regulatory requirements | WDFW considered reducing, modifying, or eliminating substantive regulatory requirements in the proposal. The requirements are predominantly limited to those necessary to align WAC 220-660 with ESHB 1261 (Laws of 2020, chapter 10) |
| b) | Simplifying, reducing, or eliminating recordkeeping and reporting requirements | The reporting requirements in WAC 220-660 305(8) will be eliminated. |
| c) | Reducing the frequency of inspections | Not applicable to this proposal. The requirement must be met prior to an HPA being issued. |
| d) | Delaying compliance timetables | The rule does not address the compliance timetables. |
| e) | Reducing or modifying fine schedules for noncompliance; or | The rule does not affect fines for noncompliance. |
| f) | Any other mitigation techniques, including those suggested by small businesses or small business advocates. | WDFW has been and will continue working with miners to identify and implement actions to lessen impacts to miners; Other techniques are discussed in Section 6.1. |

6.1 Other actions considered to lessen costs to businesses

- Environmental stakeholders suggested that a separate application be developed for motorized mining HPAs. This approach is deemed not necessary at this time because a simplified permit application already exists and is commonly used. There is no evidence to suggest that a separate application form would further reduce costs to businesses.
- One prospecting stakeholder suggested an equipment buyback plan for those who will no longer be able to use their equipment. WDFW is not pursuing this option because all prospectors will have the option to apply for a standard HPA that will permit them to use their equipment in allowed areas. Motorized and gravity siphon aquatic mining prohibitions in certain areas are outside the scope of WDFW’s rulemaking authority under RCW 77.55.

6.2 Additional steps WDFW has taken to lessen impacts

Several steps were taken during the preproposal period and prior to reduce costs to comply with the proposal:

- WDFW has designed the proposal such that the simplified HPA application remains an option. The simplified application is easier to complete than the Joint Aquatic Resources Permit Application (JARPA) used by other agencies.
- The proposal allows WDFW to reject applications for prohibited locations. These applications are otherwise impossible to move beyond incomplete status and would remain in a state of limbo indefinitely. The rejection process allows applicants to receive a timely decision about the status of their applications.

SECTION 7 Involving stakeholders in rule development

RCW 19.85.040(2) states, “A small business economic impact statement must also include:... (b) A description of how the agency will involve small businesses in the development of the rule.”

RCW 19.85.040(3) states, “To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW [34.05.310\(2\)](#) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business.”

Because requiring applications is integral to the objectives for rule making, WDFW took advantage of opportunities to communicate the objectives of rule making to those affected, and to obtain information from affected persons about how the rules would impact them. Those events are summarized in Table 6.

Table 6 Stakeholder contact events

| Date(s) | Person(s) | Activity |
|---------|--|---|
| 4/28/20 | Fish and Wildlife Commission Habitat Committee | Habitat Program staff introduced rulemaking to be done in response to ESHB 1261 |
| 5/6/20 | U.S. Forest Service and Hydraulic Code Implementation Citizens Advisory Group (HCICAG) | Emailed draft communication plan |
| 5/26/20 | Director | Habitat Program Director briefed the WDFW Director |

| Date(s) | Person(s) | Activity |
|---------------------------------------|--|---|
| 6/11/20 | News Release | Announcing that ESHB 1261 took effect June 11, 2020 |
| 6/18/20 | Tribes | Tribal Affairs sent an email notification of rulemaking initiation, objectives, and copy of CR-101 |
| 6/19/20 | Stakeholders and Agencies | Habitat Program sent an email notification of rulemaking initiation, objectives, and copy of CR-101 |
| 6/25/20 | Stakeholders and Agencies | Habitat Program sent an email regarding changes to and publication of a new Gold and Fish Pamphlet |
| 7/31/2020 | Stakeholders, Agencies and prospecting HPA holders | Habitat Program sent an email providing background on the rulemaking and an invitation to participate in a survey for the SBEIS |
| 9/28/2020 10/14/2020 10/22/2020 | Prospecting businesses (names kept confidential) | Habitat Program sent emails and phone calls to collect data for the SBEIS and Regulatory Analysis (RA) |
| 11/10/2020 | HCICAG | Habitat Program distributed draft rule proposal for review |
| 11/30/2020 | HCICAG | Draft SBEIS distributed for review |
| 12/11/2020 | Tribes | Rule proposal and SBEIS distributed for review |
| December 2020 | Stakeholders and Agencies | Habitat Program will distribute information and notice of the upcoming comment periods for rule making and for SEPA. A narrated Power Point slide show will be posted to the HPA Rulemaking website for public use. |

SECTION 8 Number of jobs created or lost

RCW 19.85.040(2) states, "A small business economic impact statement must also include:... (d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

There will likely be no jobs newly created or lost as a result of this proposal. A large portion of the regulated community is already required to obtain an individual HPA under WAC 220-660-305 for suction dredging.

SECTION 9 Summarize results of small business analysis

Costs to comply with the proposal are more than the small business minor cost threshold of \$100. The up-front cost to acquire a permit is estimated from \$128.68 to \$186.04. The cost to comply with the aquatic invasive species rule is estimated at \$71.70 annually. Total costs to comply per person per year range from \$97.44 to \$108.91. There is insufficient information to determine disproportionate impacts between small businesses and larger businesses. Mitigation steps taken are presented in Section 6.

SECTION 10 Report Preparation

This report was prepared by:

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