

Hydraulic Code Rule Update

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This presentation will cover:

Overview of 2021 legislation that triggers Hydraulic Code rule making

Expedited rule making process

Rule making to implement E2SHB 1382 - Habitat Recovery Pilot Program

Implementation of the Habitat Recovery Pilot Program



2021 Legislation

Three bills made changes to RCW 77.55

All three bills went into effect on July 25, 2021

The bills all necessitate rule making for WAC 220-660



[E2SHB 1382 Streamlining the environmental permitting process for](#)

[salmon recovery projects.](#) Creates the Habitat Recovery Pilot Program. The program is intended to advance habitat restoration projects to construction as quickly and efficiently as possible. Local governments will maintain their ability to implement floodplain planning. The program expires on June 30, 2025. Expedited rule making is currently under way.

[SSB 5273 Concerning the replacement of shoreline armoring.](#)

Requires a site assessment and alternatives analysis when replacing a marine shoreline stabilization or armor structure. The project must utilize the least impacting technically feasible bank protection alternative for the protection of fish life. The scope is limited to residential marine projects only. Standard rule making will be conducted during the winter and spring of 2022.

[SSB 5381 Addressing fish passage project permit streamlining.](#)

This bill modifies the existing Fish Habitat Enhancement Project (FHEP) streamlined permitting process. It addresses the ability of local governments to meet National Flood Insurance Program requirements and has language on multiagency permit coordination. It also amends FHEP streamlining of HPA permits to include WDOT fish passage barrier corrections as part of larger projects (not stand alone, as previously). It adds federally recognized tribes to the list of project sponsors. Expedited rule making is slated for spring 2022.







Hydraulic Code Rule Making to Implement E2SHB 1382

Why expedited rule making?

- The proposed rule qualifies for an expedited process because it incorporates a statute by reference (RCW 34.05.253).
- Expedited procedures will allow us to complete this round in under four months.
- Standard rule making can take a year or more. We would like the regulated community to benefit from the program as soon as possible.
- The Pilot Program is set to end on June 30, 2025
- Allows WDFW to focus funding on program implementation and operations and less on administrative actions.



Expedited rule steps

1. File a notice and proposed rule with the Office of the Code Reviser (OCR) for publication in the State Register.
2. APA requirements waived: SBEIS, significant legislative rule analysis, and public hearing.
3. A 45-day waiting period is initiated the day the rule proposal is published. Any person may file a written objection to the expedited rule making during this time.
4. If no objection is filed, the rule may be adopted by the FWC without any further notice.
5. An order adopting the rule is then filed with OCR. The new rule becomes effective 31 days after filing.



Timeline

| Date | Action |
|-------------------------|--|
| October 6 | The rule proposal published in the State Register. A 45-day waiting period was initiated. The SEPA comment period began. |
| October 20 | SEPA comment period ended |
| November 22 | The waiting period ends and WDFW is free to move forward with adoption |
| December 3 | The Fish and Wildlife Commission votes on rule adoption |
| Mid-December | WDFW files the adopted rule with the Office of the Code Reviser |
| Mid-January 2022 | The new rule goes into effect 31 days after filing |



The rule proposal

NEW SECTION

WAC 220-660-490 Habitat recovery projects. Projects must satisfy the requirements outlined in RCW 77.55.480, to be processed as a streamlined habitat recovery project. Requirements outlined in that statute are incorporated herein by reference as if fully set forth herein. Copies of this statute, available to the public on request, are also available online at:

<https://app.leg.wa.gov/RCW/default.aspx?cite=77.55.480>



Rule outreach

- Tribal notification 9/22 and webinar 10/5
- Rule making information published on WDFW rules website 9/27
- Created a new pilot program implementation website and email address.
- Notice in the State Register 10/6
- Press release 10/6





Implementation – Habitat Recovery Pilot Program

MAP Team convened

RCW 77.55.480(4)(c)

A Multi-Agency Permitting Team reviews projects

- Local government with jurisdiction
- WDFW
- Ecology
- Recreation and Conservation Office (RCO)
- DNR (if project on state-owned aquatic land)
- Puget Sound Partnership (if project located in the Puget Sound basin)



MAP Team

Habitat Recovery Pilot Program (HB 1382) Multiagency Permitting Team (MAP Team):

| <u>Agency</u> | <u>Role</u> | <u>Name</u> | <u>Title</u> |
|---------------|-------------|-------------------|---------------------------------------|
| WDFW | primary | Josh Peters | Protection Division Manager |
| WDFW | alternate | TBD | Pilot Program Coordinator |
| ECY | primary | Jeremy Sikes | Senior Shoreline Planner |
| ECY | alternate | Sydney Fishman | Shoreline Armoring Planning Associate |
| RCO | primary | Marc Duboiski | Salmon Section Manager |
| GSRO | primary | Jeannie Abbott | Lead Entity Program Manager |
| DNR | primary | Michal Rechner | Assistant Division Manager, Aquatics |
| DNR | alternate | Hannah Blackstock | Environmental Planner 4, Aquatics |
| PSP | primary | Stephanie Suter | Planning Program Manager |
| PSP | alternate | TBD | Pilot Program staff |



Other steps

Hiring a biologist to serve as the pilot program coordinator

Updates to the online HPA permitting system (APPS)

Working through details of the review process and developing staff guidance

Outreach to the restoration community and local governments



Prospective applications

- We've received inquiries from proponents, discussed cases, offered guidance
- A couple applications in the HPA pipeline could be processed under as Habitat Recovery Pilot Program projects
- Pre-qualification requirements:
 - Cultural resources
 - Flood risk reduction requirements



Questions?

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