

# Commission Briefing on the Peterson Prospecting Rule Petition

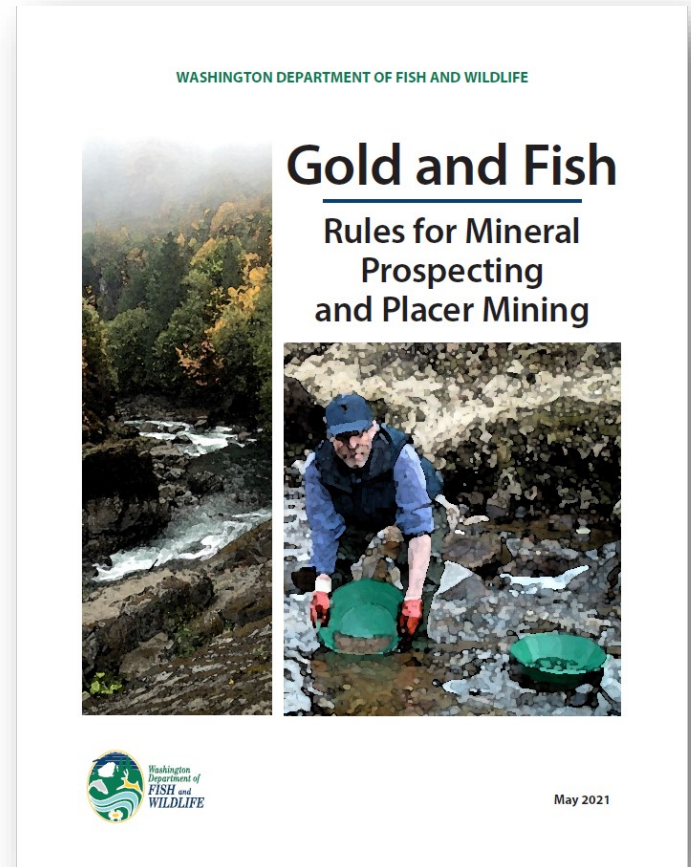
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# Two petition components:

- A narrative section asserting that WDFW has removed certain motorized mining operations from the Gold and Fish rules contrary to direction from the 2020 legislature in ESHB 1261. The petitioner asks that those operations be returned to the Gold and Fish rules so that individual HPAs are not required.
- In-line edits to WAC 220-660-300 and -305.



# Options for addressing the petition

- 1) Deny the petition in writing, stating the reasons for denial and, where appropriate, the alternative means by which it will address the concerns raised by the petitioner.
- 2) Grant all or part of the petition and initiate rule making.



# HPA Authority

Chapter 77.55 RCW Construction Projects in State Waters: specifies that anyone wishing to undertake a hydraulic project must get a Hydraulic Project Approval (HPA) permit for the protection of fish life.

RCW 77.55.011: "Hydraulic project means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state."

Rules for the administration of HPA permitting are found in chapter 220-660 WAC- the Hydraulic Code Rules

WDFW regulates mineral prospecting activities that meet the definition of a hydraulic project.



# Getting an HPA to prospect

Individual Permits: require a complete application and review of work plan, equipment type and site

Gold and Fish Pamphlet: small scale mineral prospecting does not require an individual permit when conducted in the times, places, and manner authorized by the pamphlet

- RCW 77.55.091: (1) Small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.
- RCW 77.55.011: "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; nonmotorized concentrators; and minirocker boxes for the discovery and recovery of minerals, but does not include metals mining and milling operations as defined in RCW **78.56.020**.



# Mineral prospecting rules timeline

WHEN	ACTION
<b>January 1999</b>	Publication of new Gold and Fish (G&F) pamphlet covering “small scale prospecting and mining”, following rule making as directed by the 1997 legislature
<b>July 2015</b>	G&F pamphlet is republished following overhaul of the Hydraulic Code rules
<b>April 2018</b>	Commission directs staff to commence rule making to remove suction dredging from G&F rules (WAC 220-660-300)
<b>May 2019</b>	Commission adopts the amended rules. G&F pamphlet is republished accordingly.
<b>June 2020</b>	ESHB 1261 takes effect. The statutory definition of “small scale prospecting and mining” is changed to omit motorized equipment, functionally excluding it from the G&F pamphlet. Also, WDFW must require proof of Clean Water Act compliance, issued by Ecology, as part of most prospecting HPA applications.
<b>April 2021</b>	Commission adopts rules implementing ESHB 1261. G&F pamphlet is republished accordingly.



# Staff recommendation

Staff recommends denial of this petition for the following reasons (briefing p.4)

## Consistency with current law passed by Legislature

- Amending the rules for “small scale prospecting and mining” covered by the *Gold and Fish* pamphlet to include motorized mining would be inconsistent with RCW 77.55.021 as amended by ESHB 1261, and RCW 77.55.091.

## Consistency with best practices

- The proposed set of amendments to WAC 220-660-300 and -305 are neither consistent with best available practices as adopted by the commission, nor the protection of fish or their habitat, and there is no new statute or case law that warrants re-initiating rule making for the regulation of mineral prospecting.

## Consistency with recent Commission rule making

- The Commission adopted the current rules for mineral prospecting following extensive public process... [and] carefully analyzed the risks from mineral prospecting and mining to fish and their habitat during previous rule making. Best practices to protect fish life are reflected in the current rules.



# Questions?







## Definition in statute

RCW 77.55.011: "Motorized or gravity siphon aquatic mining" means mining using any form of motorized equipment including, but not limited to, a motorized suction dredge or a gravity siphon suction dredge, for the purpose of extracting gold, silver, or other precious metals, that involves a discharge to waters of the state, but does not include metals mining and milling operations as defined in RCW 78.56.020.

