

Fish and Wildlife Commission meeting

April 7, 2023

Fish Habitat Enhancement Project Streamlined Permitting

SSB 5381 Rule Making

Briefing presented by Margen Carlson and Theresa Nation

This presentation will cover:

- WDFW Hydraulic Project Approval authority
- Overview of 2021 legislation that triggered this rule making
- Rule proposal
- Expedited rulemaking process and timeline
- Public outreach



Hydraulic Project Approval (HPA) permits

RCW 77.55 Construction Projects in State Waters

- Authorizes WDFW to issue permits to protect fish and their habitat.

WAC 220-660 Hydraulic Code Rules

- Contains the rules governing HPA permits



Fish Habitat Enhancement Project streamlined
permitting is available for certain projects

Fish Habitat Enhancement Projects

- Streamlined permitting is available to qualifying projects
- Primarily described in RCW 77.55.181, with minor procedural language in WAC 220-660-050
- Results in the issuance of an HPA permit and a waiver for other local and state permits. Local governments may still require permits and fees as necessary to meet National Flood Insurance Program regulations.
- Projects are limited in scale and must be approved by a party or sponsor



Substitute Senate Bill 5381

Covers streamlined permitting of fish passage projects and went into effect July 25, 2021

Section 1	Amends the FHEP streamlined permitting in RCW 77.55 .181
Section 2	Adds language to the Shoreline Management Act exempting fish passage projects from substantial development permits
Section 3	Directs WDOT to conduct multi-agency coordination regarding streamlined permitting for their fish passage barrier correction projects

Substitute Senate Bill 5381

Section 1 details:

- Adds federally recognized tribes to the list of FHEP project approvers.
- Qualifies WDOT fish passage barrier corrections as part of larger projects for streamlining (not only stand alone projects as previously stated)
- WDOT may use APPS to apply for streamlining (previously could only use a JARPA form)
- Permit review period for WDOT fish barrier removal projects is reduced from 45 days to 30 days
- Allows local governments to require permits and fees as necessary to meet National Flood Insurance Program regulations.

Rule proposal

The rules already refer to RCW 77.55.181 for FHEP streamlining. This means most pieces of SSB 5273 do not trigger rule changes.

Only two elements of the bill need to be added into the Hydraulic Code rules:

- WDOT may omit the JARPA form and use the online application system to apply for FHEP streamlining
- The processing time for WDOT fish barrier removal projects is reduced from the standard 45 days to 30 days

These changes are located in WAC 220-660-050 *Procedures*

Rule language

WAC 220-660-050(g)(c)(ii)(C):

The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

The Washington department of transportation may omit the JARPA when applying for streamlined processing of fish habitat enhancement projects using the online application system;

Rule language

WAC 220-660-050(11)(b):

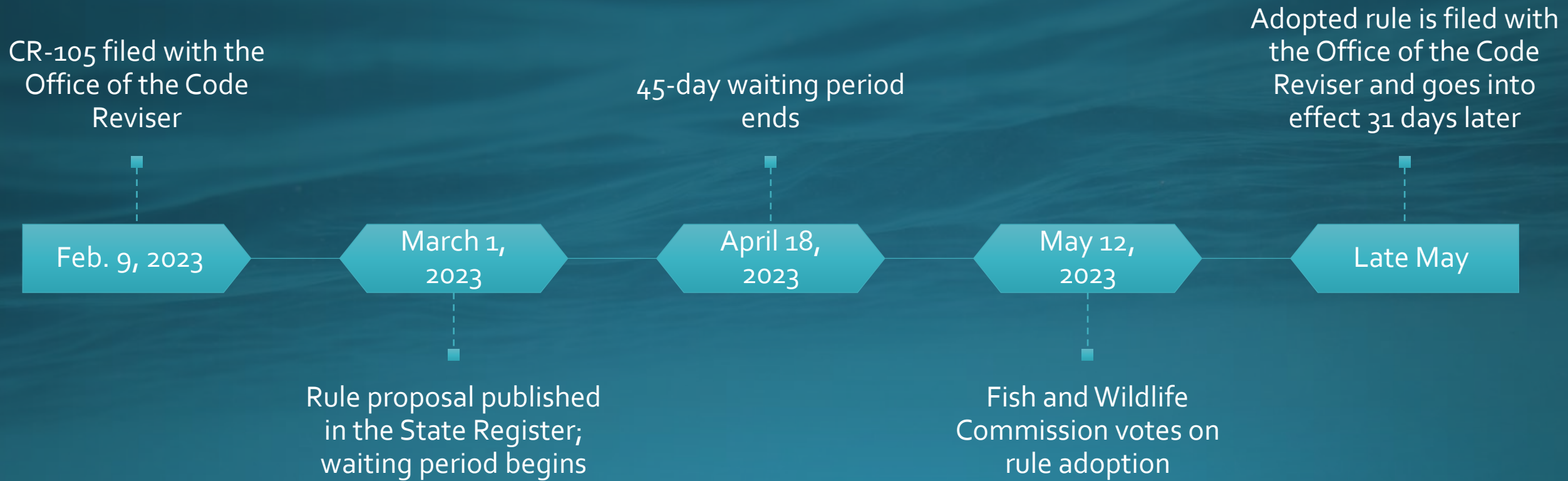
Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

For streamlined processing of Washington department of transportation fish passage barrier correction projects, the department will, within 30 days, either grant or deny approval, or make a determination that the streamlined review and approval process created by RCW 77.55.181 is not appropriate for the proposed project.

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 in the State Register. Any person may file a written objection to 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.

Expedited rule timeline



Public Outreach

Date	Action
Jan. 27	Notice of upcoming rule making sent to tribes
Feb. 9	Rule proposal filed with the Office of the Code Reviser. Rule proposal posted on WDFW website.
Feb. 22	Rule proposal sent to tribes for review
March 1	Rule proposal published in the State Register. News release sent out announcing the expedited rule and waiting period.
April 7	Fish and Wildlife Commission briefing at public meeting
April 18	Waiting period ends

To date, no inquiries or responses have been received from any tribes or other parties.



Questions?