

Commission Briefing on the 2023 Prospecting Rule Petition

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Margen Carlson, Habitat Program Director
Matt Curtis, Protection Division Manager
Theresa Nation, Environmental Planner



Rule-making Petition:

- Require proof of a valid water right, where required, as part of an HPA application for mineral prospecting involving motorized or gravity siphon equipment.
- Require proof of a state waste discharge permit, when required, as part of an HPA application for mineral prospecting involving motorized or gravity siphon equipment.



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

RCW 77.55 Construction Projects in State Waters

- Authorizes WDFW to issue permits to protect fish life and habitat
- *Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. RCW 77.55.021(7)(a)*

WAC 220-660 Hydraulic Code Rules

- Contains the rules governing HPA permits
- The proposed changes apply specifically to mineral prospecting with motorized or gravity siphon equipment

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



Mineral prospecting rules timeline

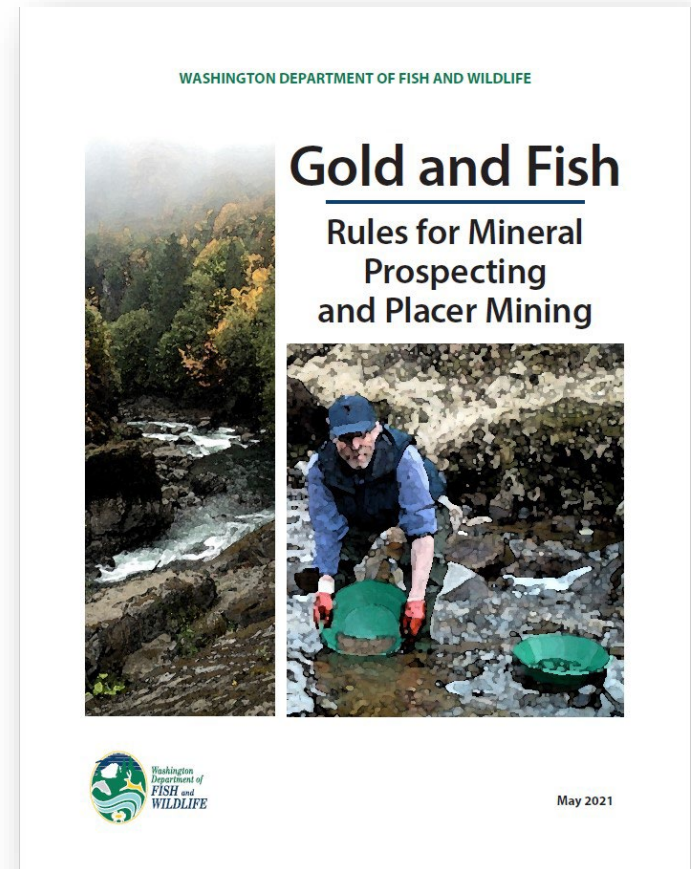
WHEN	ACTION
January 1999	Publication of new Gold and Fish (G&F) pamphlet covering “small scale prospecting and mining”, following rule making as directed by the 1997 legislature
December 2014	Commission adopts a large-scale overhaul of the Hydraulic Code rules, including mineral prospecting
April 2018	Commission directs staff to commence rule making to remove suction dredging from G&F
May 2019	Commission adopts the amended rules.
June 2020	ESHB 1261 takes effect. The statutory definition of “small scale prospecting and mining” is changed to omit motorized equipment. Also, WDFW must require proof of Clean Water Act compliance, issued by Ecology, as part of most prospecting HPA applications.
April 2021	Commission adopts rules implementing ESHB 1261
April 2022	Commission denies a petition to put motorized prospecting back into the Gold and Fish pamphlet.



Getting an HPA to prospect

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

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



HPA Application

In RCW 77.55.021, the legislature defined a complete HPA application to include:

- General plans for the overall project;
- Complete plans and specifications of the proposed construction or work within the ordinary high water line in fresh water;
- Complete plans and specifications for the proper protection of fish life;
- *Notice of compliance with any applicable requirements of the state environmental policy act, and*
- *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. RCW 77.55.021(2)(e)*



Staff recommendation

Staff recommends denial of this petition for the following reasons (summary sheet p. 2-3)

Consistency with current law passed by Legislature

- The Legislature has clearly defined what is required for a complete HPA application and actively chose not to include water rights and waste discharge permits. Therefore, it would be difficult to defend additional requirements and there is no statute or case law authorizing WDFW to collect the proposed information for a complete application.

Applicants may learn about other permitting requirements without withholding HPA processing

- Water rights and waste discharge permits are programs vested to Ecology and they state that additional permit requirements may be necessary in their letter documenting compliance with the Clean Water Act. Additionally, WDFW includes a note on every HPA that, while not enforceable with our authority, informs applicants that additional authorizations may be needed.

HPAs for mineral prospecting are fully protective of fish life for those activities within our authority



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.

