

Summary

Meeting dates: October 4-5, 2013

Agenda item: Update of Chapter 220-110 Hydraulic Code Rules

Presenter(s): Randi Thurston, Protection Division Manager

Background summary:

This briefing will inform the Fish and Wildlife Commission about the purpose, scope and timeline for updating the hydraulic code rules. This briefing will also include a timetable for briefing the Commission over the next seven months on the major changes to the rules. WDFW's goal is to request Commission adoption of the revised rules in June 2014.

This presentation will be divided into four main components:

- (1) Overview of the hydraulic code rules and the role in protecting fish life;
- (2) Why WDFW is updating the rules and the process and timeline for the update;
- (3) The proposed schedule for briefing the Commission on major rule changes; and an
- (4) Overview of proposed changes to hydraulic project approval procedures and penalties rules.

Approximately 45 minutes will be needed for the presentation and questions/answers.

Policy issue(s) you are bringing to the Commission for consideration:

None, briefing only

Public involvement process used and what you learned:

N/A

Action requested:

None, briefing only

Draft motion language:

N/A

Justification for Commission action:

N/A

Communications Plan:

N/A

Tentative Schedule

Fish and Wildlife Commission Hydraulic Code Rule Update

◆ October 2013

- Overview of our hydraulic code authority
- Changes to 220-110-030 Hydraulic project approval - procedures (220-110-060)
- Changes to 220-110-360 Penalties (220-110-480)

◆ November 2013

- New section 220-110-090 Mitigation requirements for hydraulic projects
- New section 220-110-130 Freshwater habitats of special concern
- New section 220-110-120 Authorized work times in freshwater

◆ December 2013

- New section 220-110-110 Common construction requirements
- New section 220-110-420 Artificial aquatic habitat structures
- New section 220-110-350 Intertidal forage fish spawning habitat surveys
- New section 220-110-360 Seagrass and macroalgae surveys

◆ January 2014

- Changes to 220-110-060 Construction of freshwater docks, piers, and floats and the driving or removal of piling (220-110-150)
- New section 220-110-160 Boat ramps and launches in freshwater areas
- New section 220-110-170 Marinas and terminals in freshwater areas
- New section 220-110-240 Beaver dam management

◆ February 2014

- Changes to 220-110-070 Water crossing structures (220-110-200)
- New section 220-110-210 Fish passage improvement structures
- Changes to 220-110-201 through 206 Mineral prospecting (220-110-310)

◆ March 2014

- Changes to 220-110-250 Authorized work times in saltwater areas (220-110-330)
- Changes to 220-110-300 Saltwater piers, pilings, docks, floats, rafts, ramps, boathouses, houseboats, and associated moorings (220-110-380)
- New section 220-110-430 Outfall structures in saltwater areas
- New section 220-110-450 Boring in saltwater areas

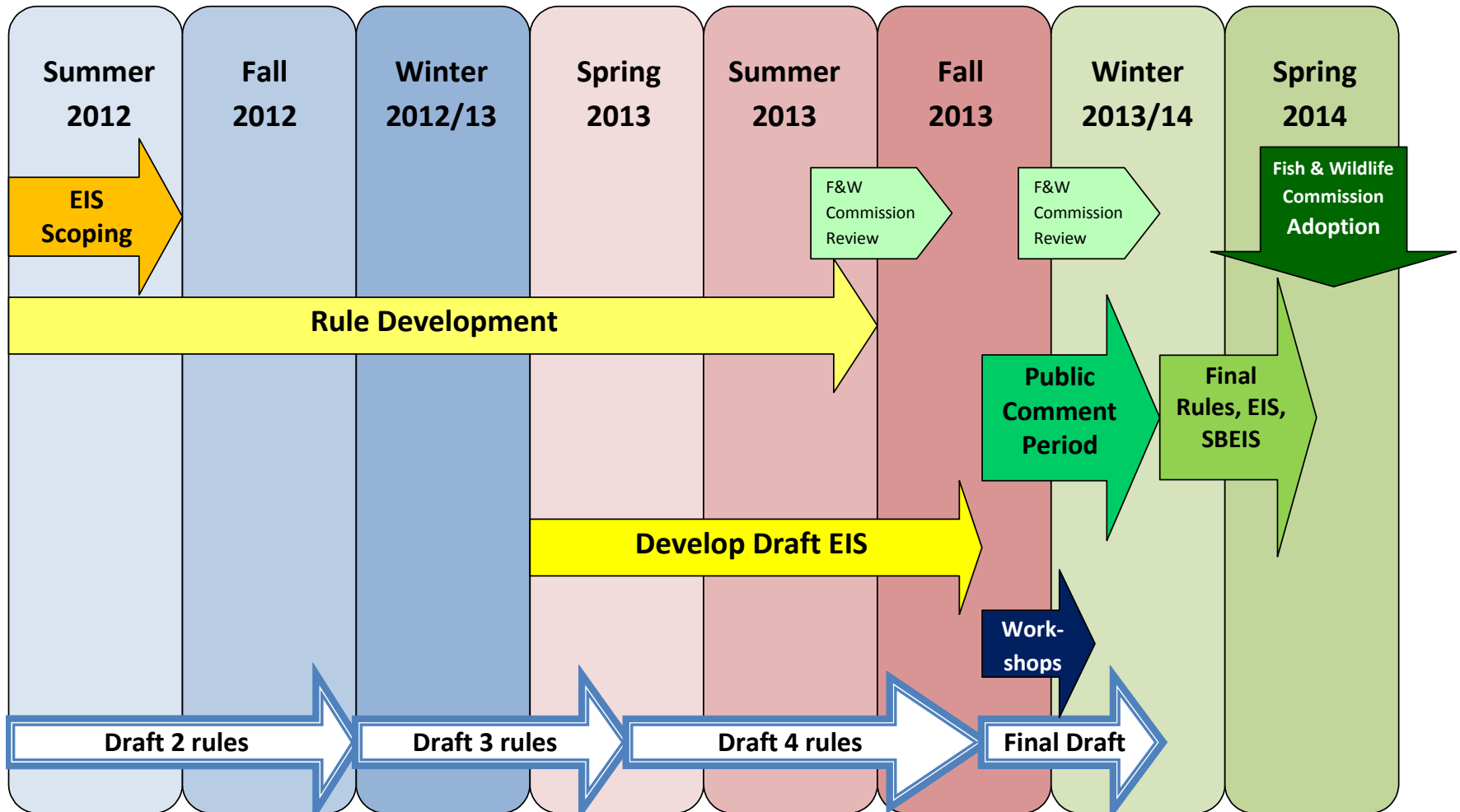
◆ April 2014

- Briefing and public hearing opportunity

◆ June 2014

- Request adoption

Rulemaking Timeline



October 4-5 2013, WDFW Commission Meeting

Section Title: WAC 220-110-480 Compliance

Background: Currently, the Enforcement Program administers criminal penalties for non-compliance of the hydraulic code. The enforcement program does not administer civil penalties. The Habitat Program worked with the Enforcement Program to define our roles and responsibilities for hydraulic code compliance. The Habitat Program is responsible for HPA permit compliance inspections and the Enforcement Program is responsible for investigating and non-permitted hydraulic projects. However, the Enforcement Program is still responsible for administering penalties for non-compliance identified during compliance inspections. Once the rule changes are adopted, the Habitat Program will undertake education, technical assistance and civil enforcement actions to gain compliance with the hydraulic code. This will be an alternative to referring permit non-compliance to the Enforcement Program for action.

Summary of New Section or Proposed Changes: This section replaces WAC 220-110-360 Penalties. This section still includes rules for criminal and civil penalties but it expands the rules to allow successive civil enforcement actions prior to issuing a civil penalty. The revised section now includes the following:

- Opportunity to voluntarily correct non-compliant condition.
- Procedures for a notice of correction.
- Procedures for issuing a civil penalty.
- A timeline for compliance.

Public Comments:

Support

No specific comments

Concerns

This WAC implements the department's current civil and criminal penalty statutory authority. Tribes and conservation groups would like to see the department has enhanced civil authority that would include larger civil penalties and stop work authority. This is outside our current statutory authority.

WAC 220-110-360

Penalties (Existing Language)

(1) Under RCW [77.15.300](#), it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or, violate any requirements or conditions of the HPA for such construction or work.

(2) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of RCW [77.55.021](#). The department shall impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice shall describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify informal and formal appeal rights for the person penalized. If the violation is an ongoing violation, the penalty shall accrue for each additional day of violation. For ongoing violations, the civil penalty may continue to accrue during any appeal process unless the accrual is stayed in writing by the department.

(3) If not timely appealed under WAC [220-110-340](#) or [220-110-350](#), the civil penalty order is final and unappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW [77.55.291](#) and [34.05.578](#).

[Statutory Authority: RCW [77.55.091](#)(2), [77.12.047](#), and [77.04.020](#). WSR 09-02-017 (Order 08-318), § 220-110-360, filed 12/29/08, effective 4/3/09. Statutory Authority: RCW [75.08.080](#). WSR 94-23-058 (Order 94-160), § 220-110-360, filed 11/14/94, effective 12/15/94.]

220-110-490 Compliance (formerly 220-110-360)

(1) DEPARTMENT PROGRAM

The department must develop programs to encourage voluntary compliance by providing technical assistance consistent with statutory requirements. The programs must include, but are not limited to, technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods to provide technical assistance. In addition, the department must provide upon request a list of organizations, including private companies, which provide technical assistance. This list must be compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(2) TECHNICAL ASSISTANCE VISIT

- (a) For the purposes of this chapter, a technical assistance visit is a visit by the department to a facility, business, or other location that:
 - (i) Has been requested or is voluntarily accepted; and
 - (ii) Is declared by the department at the beginning of the visit to be a technical assistance visit.
- (b) During a technical assistance visit, or within a reasonable time thereafter, the department must inform the owner or operator of the facility of any violations of law or department rules identified by the department as follows:
 - (i) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state law or rule;
 - (ii) A statement of what is required to achieve compliance;
 - (iii) The date by which the department requires compliance to be achieved;
 - (iv) Notice of the means to obtain any technical assistance services provided by the department or others; and
 - (v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(3) NOTICE OF CORRECTION

- (a) If in the course of any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that are not in compliance with applicable laws and rules enforced by the department and are not subject to penalties as provided for in subsections (4), the department may issue a notice of correction to the responsible party that must include:
 - (i) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state law or rule;
 - (ii) A statement of what is required to achieve compliance;
 - (iii) The date by which the department requires compliance to be achieved;
 - (iv) Notice of the means to contact any technical assistance services provided by the department or others; and
 - (v) Notice of when, where, and to who in the department a request to extend the time to achieve compliance for good cause may be filed.
- (b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.
- (c) If the department issues a notice of correction, it must not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(4) CIVIL PENALTIES

- (a) The department may issue a civil penalty provided for by law without first issuing a notice of correction if:
 - (i) The person has previously been subject to an enforcement action for the same or similar type of violation of Chapter 77.55 RCW or Chapter 220-110 WAC or has been given previous notice of the same or similar type of violation of the this statute or rule; or
 - (ii) Compliance is not achieved by the date established by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date; or
 - (iii) The violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has

a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or

- (iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.
- (b) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55RCW or chapter 220-110 WAC. The department must impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation. For ongoing violations, the civil penalty may continue to accrue during any appeal process unless the accrual is stayed in writing by the department in an informal appeal or the board in a formal appeal.
- (c) If not timely appealed under WAC 220-110-460 or 220-110-470, the civil penalty order is final and non-appealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and RCW 34.05.578.
- (d) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.

(5) TIME FOR COMPLIANCE

The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction pursuant to subsections (3) or (4) may request an extension of time to achieve compliance for good cause. Requests must be submitted to the department in writing following the procedures specified by the department in the notice. The department must respond in writing within ten calendar days.

(6) CRIMINAL PENALTY

Under RCW 77.15.300, it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or, violate any requirements or conditions of the HPA for such construction or work.

Section Title: WAC 220-110-060 Procedures

Background: The procedures section includes how an applicant applies for an HPA and how the department processes the request.

Summary of New Section or Proposed Changes: Subsections have been added to clarify the application requirements for two new HPA types, chronic danger and fish habitat enhancement project. A section has been added allowing WDFW to develop simplified HPA process for qualifying projects. Other new sections detail procedures for incomplete applications, requirements for a completed package, and the application review period and the conditions under which an application fee can be refunded.

Public Comments:

Support

No specific comments

Concerns

Tribes and NOAA have expressed concerns about the simplified HPA process. The qualifications for the project types are in the section. However, the department has not made a decision on which specific project types would be eligible. This uncertainty is the major cause of the concern. The department's intent is to have the ability to reduce processing time for some low risk project types.

WAC 220-110-030

Hydraulic project approvals—Procedures (Existing Language)

- (1) A person shall obtain an HPA before conducting a hydraulic project.
- (2) Receipt by the department of any one of the following documents constitutes an application for a written HPA:
 - (a) A joint aquatic resources permit application (JARPA) submitted to the department;
 - (b) A forest practice application submitted to the department of natural resources, if the hydraulic project is part of a forest practice as defined in WAC [222-16-010](#); or
 - (c) A section 10 or 404 public notice circulated by the United States Army Corps of Engineers or United States Coast Guard.
- (3) You shall request a written HPA by submitting a complete written application to the department. You shall request a pamphlet HPA by following the procedures in WAC [220-110-031](#). Your application for a written HPA shall contain general plans for the overall project, complete plans and specifications for the proposed construction or work waterward of the MHHW line in salt water, or waterward of the OHWL in fresh water, complete plans and specifications for the proper protection of fish life, and notice of compliance with any applicable requirements of the State Environmental Policy Act, chapter [43.21C](#) RCW, unless otherwise provided for in chapter [77.55](#) RCW. You and your authorized agent, if one is acting for you, must sign and date the application.
- (4) The department shall grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department shall strive to issue HPAs in less than thirty days. The forty-five day requirement shall be suspended if:
 - (a) The site is physically inaccessible for inspection;
 - (b) You or your authorized agent, if one is acting for you, remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application;
 - (c) You or your authorized agent, if one is acting for you, requests a delay;
 - (d) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW [77.55.161](#) (3)(b); or
 - (e) The department is reviewing the application as part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(5) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(6) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property.

(7) The department may issue an expedited written HPA in those instances where normal processing would result in significant hardship for the applicant, or unacceptable environmental damage would occur.

(8) Expedited HPA requests require a complete written application and shall take precedence over other nonemergency applications. These will be issued within fifteen calendar days of receipt of a complete written application. The provisions of the State Environmental Policy Act, chapter [43.21C](#) RCW, are not required for expedited written HPAs.

(9) The county legislative authority or the department may declare an emergency or continue an existing declaration of an emergency where there is an immediate threat to life, the public, property, or of environmental degradation. Upon the declaration of an emergency, the department shall grant verbal approval immediately upon request for a stream crossing, or work to remove any obstructions, repair existing obstructions, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow. The verbal approval shall be obtained prior to commencing emergency work and the department must issue a written HPA reflecting the conditions of the verbal approval within thirty days. The provisions of the State Environmental Policy Act, chapter [43.21C](#) RCW, are not required for emergency HPAs.

(10) The department may accept written or verbal requests for time extensions, renewals, or alterations of an existing HPA. The request must be processed within forty-five calendar days of receipt of the request. Approvals of such requests shall be in writing. Transfer of an HPA to a new permittee requires written request by the original permittee or their authorized agent, if one is acting for the permittee, and such request shall include the HPA number. This written request shall be in a form acceptable to the department and shall include a statement that the new permittee agrees to be bound by the conditions in the HPA. The new permittee shall not conduct any project activities until the department has issued approval.

(11) Each HPA is usually specific to a watercourse, stating the exact location of the project site, and usually consists of general, technical, and special provisions.

(12) The written HPA, or clear reproduction, shall be on the project site when work is being conducted and shall be immediately available for inspection.

(13) The department may grant HPAs for a period of up to five years. Permittees shall demonstrate substantial progress on construction of that portion of the project relating to the HPA within two years of the date of issuance. The following types of HPAs issued under RCW [77.55.021](#) shall remain in effect without the need for periodic renewal, provided the permittee notifies the department before commencing work each year:

(a) Work of a seasonal nature that diverts water for irrigation or stock watering purposes; and

(b) Stream-bank stabilization projects if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include, but is not limited to, history of permit application, approval, or photographs. Periodic floodwaters by themselves do not constitute a problem that requires an HPA.

(14) An HPA shall be denied when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If approval is denied, the department shall provide the applicant, in writing, a statement of the specific reason(s) why and how the proposed project would adversely affect fish life.

(15) Protection of fish life shall be the only grounds upon which the department may deny or condition an HPA.

(16) The department may place specific time limitations on project activities in HPAs to protect fish life.

(17) HPAs do not exempt the applicant from obtaining other appropriate permits and following the rules or regulations of local, federal, and other Washington state agencies.

(18) The department shall administer this chapter in compliance with SEPA, chapter [43.21C](#) RCW, and chapters [197-11](#) and [220-100](#) WAC.

(19) The department may, after consultation with the permittee, modify an HPA due to changed conditions. The modification becomes effective unless appealed as specified in RCW [77.55.021](#)(4) and WAC 220-110-340 and 220-110-350.

[Statutory Authority: RCW [77.12.047](#) and [77.55.021](#). WSR 10-19-051 (Order 10-242), § 220-110-030, filed 9/13/10, effective 10/14/10. Statutory Authority: RCW [77.55.091](#)(2), [77.12.047](#), and [77.04.020](#). WSR 09-02-017 (Order 08-318), § 220-110-030, filed 12/29/08, effective 4/3/09. Statutory Authority: RCW [75.08.080](#). WSR 94-23-058 (Order 94-160), § 220-110-030, filed 11/14/94, effective 12/15/94; WSR 87-15-086 (Order 87-48), § 220-110-030, filed 7/20/87. Statutory Authority: RCW [75.08.012](#), [75.08.080](#) and [75.20.100](#). WSR 84-21-060 (Order 84-176), § 220-110-030, filed 10/15/84; WSR 84-04-047 (Order 84-04), § 220-110-030, filed 1/30/84. Statutory Authority: RCW [75.20.100](#) and [75.08.080](#). WSR 83-09-019 (Order 83-25), § 220-110-030, filed 4/13/83.]

220-110-060 Procedures—hydraulic project approvals (formerly 220-110-030)

(1) DESCRIPTION

There are six categories of HPAs: standard, emergency, imminent danger, chronic danger, expedited and pamphlet. Most HPAs issued by the department are standard HPAs.

(2) FISH LIFE CONCERNS

Construction or the performance of other work activities in or near the watercourses can kill or injure fish or shellfish directly. This work can also alter the habitat that fish and shellfish depend on. Direct damage or loss of habitat causes a direct loss of fish and shellfish production. Damaged habitat can continue to cause lost production of fish and shellfish for as long as the habitat remains altered. HPAs mitigate the adverse effects of construction and other work to fish, shellfish, and their habitat.

(3) STANDARD HPA

(a) A standard HPA is the HPA issued by the department when a hydraulic project does not meet the criteria for another type HPA.

(b) Special Types of Standard HPAs

(i) Fish habitat enhancement project (FHEP) HPA

(A) Projects must satisfy the requirements identified in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects involving placement of large woody material, bioengineering, or barrier removal that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals, which may not use the FHEP process. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject a fish habitat enhancement project proposed under RCW 77.55.181 if the local government raises concerns during the comment period that cannot be mitigated by conditioning the HPA. The department will reject the project if the department determines that,

because of the size and the scale of the project, it raises public health and safety concerns. If the project is inappropriate for streamlined processing, the department must provide written notice of rejection to the applicant and local government within twenty days of receiving the application.

(D) If the department rejects a fish habitat enhancement project proposed under RCW 77.55.181, the applicant or authorized agent may submit a new complete written application with project modifications or additional information required for streamlined processing. If the applicant or authorized agent want the department to consider the project under standard HPA processing procedures, they must submit a new complete written application for standard processing.

(i) Simplified HPA

(A) The department will establish a simplified HPA application and permitting process for qualifying hydraulic projects. To qualify a project must:

- a. Have risks to fish life that are fully mitigated by the technical provisions established in chapter 220-110 WAC;
- b. Be a low complexity project that minimizes misinterpretation of the HPA provisions, and therefore can be permitted without site-specific conditions;
- c. Be readily described and understood with a combination of words, plans, pictures, and graphics; and
- d. Meet all of the eligibility requirements described in the simplified application.

(B) The department will accept simplified HPA applications for projects that meet the project eligibility requirements and for which it receives a complete written application. If necessary to confirm project eligibility, the department may conduct a site visit prior to approving or rejecting a simplified application.

(C) The department may reject applications for simplified HPA if:

- a. The plans and specifications for the project are insufficient to show that fish life will be protected;
- b. The applicant or authorized agent does not fill out the application correctly;

- c. The proposed project does not meet the eligibility requirements described in the project application; or
- d. The potential impacts from the project pose a high risk to fish or fish habitats that cannot be fully mitigated by the technical provisions and therefore require compensatory mitigation.

(D) The department must provide written notice of application rejection to the applicant. An applicant or authorized agent may resubmit the application to the department for standard application processing under this section, or may submit a new simplified application if the department rejected the application because the applicant or authorized agent did not fill out the original application correctly.

(4) EMERGENCY HPA

(a) Declaring an emergency

- (i) Only the governor, county legislative authority, or department may declare an emergency or continue an existing declaration of an emergency. An emergency declaration may be made where there is an immediate threat to life, the public, property, or of environmental degradation.
- (ii) The county legislative authority must notify the department, in writing, if they declare an emergency.
- (iii) Upon the declaration of an emergency, and if requested to do so, the department must grant verbal approval immediately for work to protect fish life or property threatened by a water of the state because of the emergency, including the repair or replacement of a stream crossing, removal of obstructions ,or protection of streambanks.

(b) Department procedure for processing a request for an emergency HPA

- (i) All emergency projects must meet the requirements in WAC 220-110-100 – Mitigation requirements for hydraulic project approvals and the requirements in WAC 220-110-110 through 220-110-460 that apply to the specific project.
- (ii) If the department issues an oral HPA, the department must issue a written HPA documenting the exact conditions of the oral HPA within thirty days of issuing the oral HPA.

(5) IMMINENT DANGER HPA

- (a) In cases of a declared imminent danger, the department must issue an expedited HPA, upon request, for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.
- (b) Only the county legislative authority or the department may determine if an imminent danger exists. The county legislative authority must notify the department, in writing, if it determines that an imminent danger exists.
- (c) Upon declaration of an imminent danger, and before starting work, an applicant or authorized agent must obtain a written HPA from the department. A complete written application is required. The provisions of chapter 43.21C RCW are not required for imminent danger HPAs. All imminent danger projects must meet the requirements in WAC 220-110-100 – General mitigation requirements for HPAs.
- (d) A person must submit a complete written application to the department to obtain an expedited HPA.
- (e) Imminent danger HPAs are written, and must be issued by the department within 15 calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(6) CHRONIC DANGER HPA

- (a) The department must issue a chronic danger HPA, upon request, for work necessary to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property. All chronic danger projects must meet the requirements in WAC 220-110-100 – General mitigation requirements for HPAs.
- (b) Only the county legislative authority may determine that a chronic danger exists. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway exists. The county legislative authority must notify the department, in writing, when it determines that a chronic danger exists.
- (c) A person must submit a complete written application to the department to obtain a chronic danger HPA. Application submittal and processing requirements for chronic danger HPAs are the same as for other non-expedited or non-emergency HPAs. Unless the project also satisfies the requirements for fish habitat enhancement

projects identified in RCW 77.55.181(1)(a)(ii), the provisions of chapter [43.21C](#) RCW are required. Projects that meet the requirements in RCW 77.55.181(1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

(7) EXPEDITED HPA

- (a) The department may issue an expedited written HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.
- (b) Before starting work, an applicant or authorized agent must obtain a written HPA from the department. A complete written application is required. The provisions of chapter [43.21C](#) RCW are not required for expedited HPAs. All expedited projects must meet the requirements in WAC 220-110-100 – General mitigation requirements for HPAs.
- (d) A person must submit a complete written application to the department to obtain an HPA.
- (e) Expedited HPAs must be issued by the department within 15 calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(8) PAMPHLET HPA

- (a) A pamphlet is a written HPA, based on rules, issued in a booklet form. Currently there are two pamphlet HPAs: “Gold and Fish” and “Aquatic Plants and Fish”. The department develops and adopts rules for the pamphlet HPAs through the formal rule-making process. These rules become the provisions of the pamphlet HPA. The permittee must follow the provisions in the pamphlet. If a permittee cannot follow the provisions, the permittee must apply for a standard HPA before doing the hydraulic project.
- (b) A person must get and review a pamphlet HPA before conducting the authorized hydraulic project.
- (c) When a pamphlet HPA is required, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.
- (d) The permittee, equipment operator(s), and other individuals conducting the project must follow all provisions of the pamphlet HPA.

- (e) The department may grant exceptions to a pamphlet HPA only if the applicant or authorized agent applies for a standard individual HPA for the project.

(9) HOW TO GET AN HPA

(a) How to get a pamphlet HPA

- (i) The applicant or authorized agent may submit requests for a pamphlet HPA to the department either verbally or in writing. Pamphlet HPAs are also available on the department's website.

(b) How to get an emergency HPA

- (i) Upon an emergency declaration, and before starting emergency work, an applicant or authorized agent, if one is acting for the applicant, must obtain an oral or written HPA from the department. A complete written application is not required. However, the applicant or authorized agent must provide adequate information describing the proposed action. In addition, the provisions of chapter 43.21C RCW (State Environmental Policy Act), are not required for emergency HPAs. During normal business hours, Monday through Friday 8:00 am to 5:00 pm, the applicant or authorized agent may request an emergency HPA orally or in writing from the biologist who issues HPAs for the geographic area where the emergency is located. After business hours, the applicant or authorized agent must contact the emergency hotline at (360) 902-2537 to request an emergency HPA.

(c) How to get a standard, expedited or chronic danger HPA

- (i) The applicant or authorized agent must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

(A) A pamphlet HPA (WAC 220-110-050 (3))

(B) An emergency HPA (WAC 220-110-050 (5))

(C) A minor modification of an HPA (WAC 220-110-030 (16))

- (ii) The applicant or authorized agent, may submit any of the following application forms to the department when applying for an HPA:

(A) The electronic on-line application form developed by the department;

- (B) The current version of the JARPA;
 - (C) If applying for streamlined processing under RCW 77.55.181, the current version of the JARPA, including the most recent version of the application for streamlined processing of fish habitat enhancement projects. These may be submitted to the department as attachments to the on-line application form;
 - (D) If applying for simplified HPA application processing for qualifying projects under subsection (8) of this section, the most recent version of the applicable electronic on-line simplified HPA application form developed by the department;
 - (E) If applying for approval of a watershed restoration project under RCW 77.55.171, the current version of the JARPA. This may be submitted to the department as an attachment to the on-line application form.
- (iii) A complete application package for an HPA must contain:
- (A) A completed application form for an HPA that is signed and dated by the applicant, landowner, or landowner representative, and the authorized agent. Completion and submittal of the on-line application form through the department's on-line permitting system must be the equivalent of providing signature and date, provided all documents required during the on-line application process are submitted to the department;
 - (B) Plans for the overall project;
 - (C) Complete plans and specifications for all aspects of the hydraulic project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state;
 - (D) A description of the measures that will be implemented for the proper protection of fish life and their habitats, including any reports assessing impacts to fish life and their habitats, and plans to mitigate those impacts to ensure the project results in no-net-loss of habitat;
 - (E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency of compliance with any applicable requirements of the State Environmental Policy Act under chapter [43.21C](#) RCW, unless otherwise provided for in chapter [77.55](#) RCW; or the project qualifies for a specific categorical exemption under Chapter 197-11 WAC; and,

- (F) Written approval, if proposing a fish enhancement project, by one of the entities specified in RCW 77.55.181 (b).

- (iv) Payment of the application fee required under chapter 77.55 RCW. This fee must be submitted with the application or paid under a billing agreement previously established with the department unless the project is one of the following project types exempt from the application fee:
 - (A) Project type approved under pamphlet permits

 - (B) Mineral prospecting and mining

 - (C) Projects on farm and agricultural land, as that term is defined in RCW 84.34.020

 - (D) Projects reviewed by a department biologist on contract with the applicant

 - (E) Projects applied for before July 10, 2012, and modifications of permits issued to those projects

- (v) The applicant, or authorized agent must submit the complete application package using the department's on-line permitting system or by sending the package to the department's Habitat Program Olympia headquarters office.
 - (A) Applications not submitted through the department's on-line permitting system must be mailed to the Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234; e-mailed to HPAapplications@dfw.wa.gov; faxed to 360-902-2946; uploaded to a file transfer protocol site acceptable to the department, or hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

 - (B) Dimensions of printed documents may not be greater than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

 - (C) Applicants and authorized agents must submit applications and supporting documents with a combined total of 30 or more pages as digital files rather than printed documents. All digital files must be in formats compatible with

Microsoft Word, Microsoft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

- (vi) Applications submitted to the Habitat Program during normal business hours are deemed received on the date submitted. The department may declare applications submitted to Habitat Program after normal business hours as received on the next business day.

(10) INCOMPLETE APPLICATIONS

- (a) The department must determine within ten days of receipt of the application whether the application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information necessary to make the application complete. The department may return the incomplete application to the applicant or authorized agent, or hold the application on file until it receives the necessary information. The department will not process the application until it receives the information needed to complete the application.
- (b) The applicant or authorized agent, if one is acting for the applicant, must submit additional information in response to a written notification of incomplete application through the department's on-line permitting system or to the department's Habitat Program's Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.
- (c) The department may not process any application that has been incomplete for more than six months. The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new application to receive further consideration of the project.

(11) REFUND OF APPLICATION FEE

- (a) The application fee is non-refundable except when the proposed project is not a hydraulic project and therefore not subject to an HPA, or when the application fee was paid but the project is exempt from the fee. Upon determination that an application qualifies for a refund, the department must issue the refund within one week.

(12) APPLICATION REVIEW PERIOD

- (a) Before approving applications for new hydraulic projects, the department will provide to tribes and local, state, and federal permitting agencies, a seven calendar day review and comment period from the date the application is received by the department. The department may issue HPA permits before the end of the review period only if all interested tribes and agencies have provided comment to the department. The department may consider all written comments received when issuing or conditioning the HPA. The review period is concurrent with the department's overall review period. Emergency, expedited, and modified HPAs are exempt from the review period requirement.
- (b) Except for imminent danger, expedited HPAs, and emergency 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, and grant approval of emergency HPAs immediately upon request provided an emergency declaration has been made.

(13) SUSPENDING THE REVIEW PERIOD

- (a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's on-line permitting system or to the Habitat Program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by other than the applicant or authorized agent.
- (b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's request) if:
 - (i) The site is physically inaccessible for inspection;
 - (ii) The applicant or authorized agent, if one is acting for the applicant, remains unavailable or unable to arrange for a timely field evaluation of the proposed project after ten working days of the department's receipt of the application;
 - (iii) The applicant or authorized agent submits a written request for a delay;
 - (iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of this section, or
 - (v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

- (c) The department may not process any application delayed for processing more than six months for any of the reasons identified in subsection (6) (a) or (b). The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new application to receive further consideration of the project.

(14) ISSUING OR DENYING A HYDRAULIC PROJECT APPROVAL

- (a) Protection of fish life is the only grounds upon which the department may deny or condition an HPA. The department may not unreasonably withhold or condition approval of a permit. The HPA conditions must reasonably relate to the project, and must ensure that the project provides proper protection for fish life and their habitats. The department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.
- (b) The department may not deny an imminent danger HPA, chronic danger HPA, expedited HPA or an emergency HPA but will condition the HPA to require mitigation. The department will deny any other type of HPA or change to an existing HPA when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless adequate mitigation can be assured by conditioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.
- (c) The department may place specific time limitations on project activities in an HPA to protect fish life.
- (d) The department may require the permittee to notify the department before construction begins, upon project completion, or at other times that the department deems necessary while the permit is in effect. The department may also require the permittee to provide periodic written reports to assess permit compliance.
- (e) The HPA must contain provisions that allow for minor modifications to the work timing, plans and specifications of the project without requiring the reissuance of the permit, as long as the modifications do not adversely affect fish life or their habitats. A minor modification to the required work timing means up to a one-week deviation from the timing window in the HPA when there are no spawning or incubating fish present within the vicinity of the project. The department may grant subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of the project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification.

- (f) An applicant or authorized agent may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be must be applied for and permitted under the requirements of chapter 43.21K.

(15) HYDRAULIC PROJECT APPROVAL EXPIRATION TIME PERIODS

- (a) Except for imminent danger, expedited, emergency, and pamphlet HPAs, the department may grant standard HPAs for a period of up to five years.
- (b) Imminent danger and expedited HPAs may be granted for a period of up to sixty days, and emergency HPAs may be granted for the expected duration of the emergency hydraulic project.
- (c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.
- (d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, the permittee must notify the department before beginning work each year.
 - (i) Seasonal work that diverts water for irrigation or stock watering; and
 - (ii) Streambank stabilization projects to protect farm and agricultural land if the problem causing the erosion occurs on an annual or more frequent basis as demonstrated by the applicant. Evidence of erosion may include history of permit application, approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

(16) REQUESTING A TIME EXTENSION, RENEWAL OR MODIFICATION OF A HYDRAULIC PROJECT APPROVAL

- (a) The applicant or authorized agent, if one is acting for the applicant, may request time extensions, renewals or modifications of existing HPAs. The applicant or authorized agent must submit a written request prior to the expiration of the HPA through the department's on-line permitting system or to the Habitat Program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by other than the applicant or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent, if one is acting for the applicant, the control number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requester's signature.
- (b) The department must declare requests for time extensions, renewals, or modifications of HPAs submitted during normal business hours received on the date

submitted. The department may declare requests submitted after normal business hours received on the next business day.

- (c) The department must approve or deny the request for a time extension, renewal, or modification to an approved HPA within 45 days of the request of the change.
- (d) An applicant may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded.
- (e) The department must not modify or renew an HPA beyond the applicable five year or sixty day periods. The applicant or authorized agent must submit a new application for a project needing further authorization beyond these time periods.
- (f) The department will issue a written HPA if the request is approved.

(17) MODIFICATIONS OF A HYDRAULIC PROJECT APPROVAL BY THE DEPARTMENT

- (a) After consultation with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.
- (b) For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(18) REQUESTING A TRANSFER OF A HYDRAULIC PROJECT APPROVAL

An HPA may not be transferred to another person. Persons wishing to complete a permitted hydraulic project must submit a complete application package.