

Summary

Meeting dates: November 7- 8, 2014 Commission Meeting

Agenda item 7: HPA rule Update WAC 220-660 – Request for final adoption

Presenter(s): Jeff Davis, Habitat Assistant Director
Randi Thurston, Habitat Protection Division Manager

Background summary:

Hydraulic Code Rules and related administrative procedures have not been significantly updated since 1994. WDFW began to revise the Hydraulic Code Rules in 2006 as part of developing a Habitat Conservation Plan (HCP) to provide long-term certainty of ESA compliance related to agency permitting action. Although work on the HCP ended in 2012, WDFW has remained committed to moving forward to improve HPA rules. The updated rules incorporate more current scientific and technical knowledge to better protect fish life, increase certainty for applicants, and streamline the HPA approval process.

Approximately 1.5 hours is needed for the presentation on the recommended adjustments to the CR-102 rules and questions/answers.

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

The proposed rule changes update the rules and clarify the application and permit-processing procedures, enabling the department to use available science and technology to avoid or mitigate the impacts to fish life and habitat posed by hydraulic projects. To facilitate these rule changes and to prepare for the upcoming recodification of department WACs, the department proposes repealing Chapter 220-110 WAC and creating new rules in Chapter 220-660 WAC.

Public involvement process used and what you learned:

WDFW has involved the public and stakeholders in developing the updated Hydraulic Code Rules. WDFW formed a Stakeholder Advisory Group to provide comments on an initial draft of the HPA rules. This group included eighteen representatives from the construction industry, non-governmental organizations, state and federal agencies, and tribes. This group met eight times between October 31 and the end of December, 2011, receiving presentations on and discussing issues relating to one or two specific aspects of the HPA rules at each meeting. The group engaged in policy discussions about the proposed changes and the impacts to their interests, and commented on revised rule proposals prepared by WDFW. Those rule documents were also posted on the WDFW web site for comment by any reader. Three additional drafts of the revised code rules have been posted on the WDFW website along with forms to comment on the rules. The fourth draft accompanied the September 2013 draft PEIS. The 60-day public comment period on the CR-102 rules and the supplemental draft PEIS closed on September 15th. Staff reviewed the comments received and made changes to the rules that met the purpose and need of this project. These changes are included in the recommended adjustments to the CR-102 rules and final PEIS.

WDFW conducted a public scoping process for this EIS in summer 2012. The scoping notice was issued June 22, 2012 and the scoping comment period ended July 16, 2012. Scoping comments were accepted by email, through an online WDFW comment website, by fax, and by mail. WDFW received thirty-one comment documents. Generally, comments provided detailed suggestions for how rule changes should address specific problems or situations, or ways the proposals should not be changed from existing rules. Few commenters stated a preference among the alternatives presented, although from the overall tone of the comments provided, we deduced a leaning towards the preferred alternative.

WDFW has met one-on-one with Tribes and interested stakeholders to discuss the rule update on an ad-hoc basis since the CR-101 was filed in 2011. Stakeholders include Washington Association of Counties, Association of Washington Cities, Association of Washington Business, Washington Forest Protection Association, Ports Association, Washington Department of Transportation, Ecology, and WDNR, and the environmental community. WDFW also conducted seven public meetings, one in each of the six regions and one in Olympia, in October and November 2013. The purpose of the meetings was to answer questions and gather comment on the PEIS and draft rules. The Commission also heard public testimony on the CR-102 rules at the August 8, 2014 Commission meeting.

The diversity of tribal, stakeholder, and public concerns and interests makes it challenging to develop comprehensive rule changes that meet the purpose and need of this project. The Supplemental Draft Programmatic Environmental Impact Statement evaluated four alternatives for changes to the Hydraulic Code Rules: Alternative 1 - No Action, consisting of the Current Rules; Alternative 2 – WDFW-proposed rule changes (preferred alternative); Alternative 3 - Increased Protection of Fish Life, which includes more restrictions to protect fish life; and Alternative 4 - Increased Protection for the Built Environment, which reduces restrictions in order to reduce project costs.

WDFW did, per RCW 77.55.361 and Appendix M of the Forest and Fish Report, present the proposed hydraulic code rules to the TFW Policy Committee for review. The TFW policy Committee at their November 2013 meeting decided not to send the revised rules through a formal adaptive management process. Instead, caucuses submitted their comments to the adaptive management administrator who forwarded them to DFW.

WDFW staff will brief the Commission on the recommended adjustments to the CR 102 version of the hydraulic code rules.

Action requested:

Adoption of the rule amendments as proposed.

Draft motion language:

I move to repeal Chapter 220-110 WAC and adopt Chapter 220-660 WAC as proposed. The department will implement adaptive management of the HPA Program to assess the success the rule changes and make adjustments that will improve the effectiveness and efficiency of the

Program.

Justification for Commission action:

Existing rules have not been updated to account for statutory changes to Chapter 77.55 RCW or changes in methods to protect fish life from the impacts of a variety of hydraulic project types in waters of the state. In addition, methods for submitting and processing applications have changed and the rules need to be updated to account for modern practices for administering the processing of applications. The proposed update reflects these changes.

Communications Plan:

Washington State Register

News Release

Agency Website

Direct email to former HPA applicants

Direct email to State Environmental Policy Act (SEPA) parties of record

Direct email to interested Tribes and stakeholders

Development of the Rule Implementation Plan