

Summary Sheet

Meeting dates:	April 14, 2018
Agenda item:	Rulemaking Options and Possible Timeline for Motorized Mineral Prospecting Methods
Presenter(s):	Randi Thurston, Protection Division Manager; Teresa Scott, Environmental Planner

Background summary:

On January 5, 2018, Department staff briefed the Commission on a Trout Unlimited petition requesting changes to the mineral prospecting rule (WAC 220-660-300). The Commission denied the petition, but asked for an additional briefing and panel discussion on the science related to mineral prospecting, potential risks to fish life, how the current rule addresses the risks, and other policy considerations. On February 10, 2018, panels representing the Department, mineral prospectors, and Trout Unlimited presented this information to the Commission. The Commission also heard public comment from interested parties during the meeting. The Commission now asks for a briefing from the Department on further aspects of motorized mineral prospecting, including how extensive the activity is in Washington, the enforceability of current rule, the extent of the threat from aquatic invasive species resulting from movement of mineral prospecting equipment around the state, comparison of Washington and neighboring states' regulations, and options and possible timeline for rule development.

Staff recommendation:

If the Commission decides to regulate non-small scale mineral prospecting methods through individual HPAs rather than the Gold and Fish pamphlet, it should direct the Department to initiate rulemaking. Rule revisions should address topics such as which methods are permitted under the Gold and Fish pamphlet and those that require individual HPAs, methods of mineral prospecting that are consistent with rule, the need to identify the location and extent of mineral prospecting operations, and methods to reduce the threat of aquatic invasive species associated with mineral prospecting.

Policy issue(s) and expected outcome:

Does the Commission want to revise the current rule to require mineral prospectors using non-small scale prospecting methods to obtain individual Hydraulic Project Approvals (HPAs) rather than operate under the Gold and Fish pamphlet?

Fiscal impacts of agency implementation:

The fiscal impact is dependent on whether, and to what extent, the Commission requires the Department to undergo rulemaking for mineral prospecting methods.

There will be no direct fiscal impact if the Commission decides not to initiate rule-making.

If the Commission requires a new rule, the fiscal impact could be significant. Rules adopted under Chapter 77.55 RCW are called "significant legislative rules" and require more detailed steps and decisions when compared to most WDFW rulemakings. Department staff will likely hold multiple meetings with stakeholders to identify issues and options, and inform stakeholders of proposed rule once drafted. These meetings would incur travel costs for staff.

A rule change will require a variety of analyses under the Administrative Procedure Act (Chapter 34.05 RCW), which might include development of a small business economic impact statement, and cost benefit analysis, which could require the services of an Economist.

Compliance with the State Environmental Policy Act (SEPA) may trigger the need for an Environmental Impact Statement, which might require the services of a consultant. After rule adoption, the Department will need to revise the Gold and Fish pamphlet, provide training to staff, and conduct public outreach.

If the Commission adopts a revised rule, the Department may need additional regional or headquarters staff for implementation, depending on what application procedures are imposed. If individual HPAs are required, the Department anticipates more staff time needed to process individual applications that it currently covers under the Gold and Fish pamphlet. The effort to process these will depend on whether individual site review is necessary.

Public involvement process used and what you learned:

The Commission has heard from representatives of mineral prospecting and environmental interests during panel presentations and during public testimony at Commission meetings following receipt of the petition for rule adoption by Trout Unlimited. The Commission also has received numerous letters on the topic.

Mineral prospecting and its impact on fish life and habitat is of significant interest to many stakeholders, with strongly-held opinions on both sides. Because mineral prospecting in state waters is a hydraulic project, the Commission has the authority to require the Department to modify the rule for non-small scale prospecting methods to protect fish life.

Action requested and/or proposed next steps:

If the Commission decides to modify the current rule, direct the Department to initiate rulemaking for mineral prospecting. The Department will periodically brief the Commission on progress of the rulemaking.

Draft motion language:

Choose the appropriate motion:

- I move to direct the Department to initiate rulemaking for mineral prospecting activities. The Department is encouraged to consult with interested stakeholder groups when developing the rule. The Department must reconsider which prospecting methods to regulate under the Gold and Fish pamphlet and which require individual HPAs.

Or,

- I move to direct the Department to initiate rulemaking to require individual HPAs for all suction dredge mineral prospecting. The Department is encouraged to consult with interested stakeholder groups when developing the rule.

Or,

- I move to direct the Department to initiate rulemaking to require individual HPAs for all motorized mineral prospecting activities. The Department is encouraged to consult with interested stakeholder groups when developing the rule.

Or,

- I move to direct the Department to initiate rulemaking to require individual HPAs for all mineral prospecting methods not defined as small scale mineral prospecting and mining under RCW 77.55.011(21). The Department is encouraged to consult with interested stakeholder groups when developing the rule.
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Is there a “second”?

If so, then motion maker discusses basis for motion; other Commissioners discuss views on motion; amendments, if any, proposed and addressed

Post decision communications plan:

- The Department will comply with the relevant Administrative Procedure Act rule-making requirements if the Commission directs the Department to initiate rule-making.
- The Department will notify interested stakeholder groups that it is initiating rule-making.



Washington Department of Fish and Wildlife Comparison of Suction Dredge Permitting Regulations in California, Oregon, Idaho, and Washington State

DRAFT January 31, 2018

PROVISION	WASHINGTON	OREGON	IDAHO	CALIFORNIA
Primary permitting agency	WDFW: Hydraulic Project Approval Program	Oregon Department of State Lands: Removal-Fill Program	Idaho Department of Water Resources: Stream Channel Protection Program	California Department of Fish and Wildlife: Suction Dredge permit program
Secondary permits	n/a	Oregon Department of Environmental Quality NPDES; Oregon Department of Geology and Mineral Industries letter of exemption	Federal EPA NPDES or exemption	Pending: California Water Resources Control Board and Regional Water Quality Control Boards for NPDES
Allowed work periods	Allowed work periods determined stream-by-stream based on when salmonids unlikely to be building redds or incubating in gravels; Exceptions possible via individual permit. Daylight hours only.	Seasonal work windows, motorized suction dredging prohibited in Essential Salmon Habitats (ESH); Daylight hours only.	Open areas identified on web map; Seasonal work periods identified; Prohibitions in some waters with ESA-listed fish; Special restrictions and work periods required in special waters (5 stream systems).	Work period restrictions per table provided in rules, determined on a stream-by-stream basis. Area closures around specified thermal refugia. Some streams or stream reaches are closed year-round. Daylight hours only.
Dredge suction intake diameter	4.25 inches generally; Some larger streams allow 5.25-inch nozzle; larger nozzle than listed for stream requires individual HPA	Intake nozzle with inside diameter not to exceed 4 inches in ESH; Not to exceed 6 inches otherwise	Intake diameter no greater than 5 inches	Normally limited to 4 inches; may be increased to 6 or 8 inches in certain areas under special CDFW conditions
Horsepower or throughput	Limit throughput using nozzle size; Limit sluice surface area to 3 square feet without timing restrictions, 10 square feet with timing restrictions	Not to exceed 16 HP in ESH, 30 HP otherwise	Not to exceed 15 HP	Limit throughput using nozzle size
Linear distance between dredges	200 feet	500 feet	100 feet (except NPDES requires 800 feet)	500 feet

PROVISION	WASHINGTON	OREGON	IDAHO	CALIFORNIA
Disturbance of woody vegetation	May not undermine, cut, or disturb live, rooted vegetation of any kind. Boulders and large woody material within the frequent scour zone must stay within that zone.	Streambank disturbance prohibited, including rooted or embedded woody plants below OHWL	Alterations, modifications, or changes to the natural existing shape of the stream channel within or below MHWM requires a stream channel alteration permit	No woody streamside vegetation shall be removed or damaged
Large scale habitat disturbance	May not use vehicle-mounted winches; OK to move boulders and large woody materials that are not embedded; must replace to essentially same location; Fill and level upland tailings and piles; No excavation from toe of slope.	Movement of large scale non-embedded habitat features allowed by hand and non-motorized equipment only	Undercutting of a stream bank or dislodging of stream bank vegetation is prohibited.	Motorized winching to move boulders, logs, or other objects is prohibited.
Water quality protections	Not allow visible sediment plumes to enter areas where redds or fish life are located. Fuel storage and refueling requirements.	Oregon DEQ NPDES permit coverage required for mining permit - must operate per NPDES permit provisions. Plume longer than 300 feet downstream prohibited.	Idaho NPDES Recreational Placer Mining General Permit coverage or exemption required; More restrictive with respect to impaired waters and streams with ESA-listed fish/shellfish.	California state water quality permitting requirements for suction dredging are under development.

For further information:

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