

# WDFW Suction Dredging Public Listening Sessions

## Summary of Themes

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WDFW has received guidance from the Fish and Wildlife Commission to initiate rule making activity to require a standard individual Hydraulic Project Approval (HPA) for suction dredging in Washington waters; remove suction dredging as an authorized activity in the Gold and Fish Pamphlet; and identify methods to prevent the spread of aquatic invasive species during transport of suction dredging equipment. In order to gather ideas from members of the public, WDFW asked Rachel Aronson from Triangle Associates to facilitate four live public listening sessions with Washington Department of Fish and Wildlife (WDFW) in July 2018. Listening sessions were held in Wenatchee, Spokane, Olympia and Everett.

The following is the facilitator's summary of themes and comments heard in listening sessions, as well as written comments submitted by the public during and after the meetings. The summary is arranged by topic area and does not attribute comments to individuals.

It is important to recognize that perspectives captured represent only the people who attended the public meetings, and that what was heard is only a preliminary indication of the perspectives on this topic. WDFW is committed to hearing further from a workgroup and from formal public comments.

### Overview

It is important to acknowledge divisions in perspective from miners and environmental advocates. A further division might be between miners who participate in mining clubs, and miners who do not. Miners who are not in clubs were likely under-represented among participants in these meetings.

The facilitator heard quite a few suggestions from participants that would require a statutory change from the legislature to implement. WDFW can continue to work with stakeholders to clarify the limits of this rule making process.

### Major Themes

The following major themes came through clearly in the input at the public meetings.

In the following topics, the facilitator heard commonalities among the input from meeting participants on all sides of the issue:

- **A desire for fair treatment of mining relative to other regulated activities:** Both miners and non-miners expressed a desire to have mining regulations, reporting and fees in line with other regulated activities such as hunting, fishing and boating. Miners seek to not be burdened with higher regulation than other activities, while advocates would like to see mining held to the same standards. Supporters of both sides of the issue variously brought up parity in terms of:
  - Regulations
  - Reporting requirements
  - Data collection
  - Fees
  - Invasive species inspections at state borders

- **Data collection:** Participants in these meetings typically acknowledged that WDFW has a need to collect data on mining effort, who is mining, and where they are mining. There is a feeling that level of effort from people prospecting outside of clubs and claims is low. Some suggestions included:
  - A limited period of data gathering and tracking in order to have the information to respond to the Fish and Wildlife Commission, similar to the beach mining process
  - Simple reporting, along the lines of a catch record card
  - Balancing data collection with privacy needs for personal information and miners' strong preference not to share information on gold locations
  - WDFW could set up a simple system, such as a phone or email hotline, for miners to submit information on where and when they plan to dredge
  
- **Agency capacity:** Participants on both sides of the issue shared a concern about WDFW's realistic ability to meet the workload needs of a new HPA permitting program in order to respond to permits within a reasonable time frame, as well as enforcement needs. Participants were concerned about an imbalance between regulations and insufficient enforcement potentially encouraging more illegal mining. Suggestions included:
  - Looking at the resources of sheriff departments, the state patrol, or the US Forest Service to participate in enforcement and outreach
  - Providing education within WDFW and to other agencies to know the new rules, to recognize mineral trespass as a felony, and to know what questions to ask
  - Providing education to the public on how to know if suction dredging is illegal, who to call when a violation is happening or has happened
  - Seeking opportunities to streamline the permitting process, such as permitting for a whole drainage rather than individual locations
  
- **Ineffectiveness of rules changes in controlling illegal mining:** Attendees at the meetings almost universally agreed that people violating the law are the real problem. People are concerned that changing the law will not affect rule breakers, and may only burden rule followers.
  
- **Out of state miners:** Many people in state agreed that within legal limits, WDFW should charge higher fees to out of state miners who do not belong to Washington clubs. Out of state miners were not represented at these meetings.
  
- **Key role of mining clubs:** Many club members attended these meetings, and participants on both sides of the issue were strongly supportive of the role clubs play in keeping miners on track. Eyes in the Woods was discussed as a positive model for education on spotting illegal activity.
  
- **Treating motorized and nonmotorized suction dredging equally in rule:** Participants did not see a substantial distinction in these methods that merits separate treatment in rule.

In the following topics, the facilitator heard disagreement among participants. This could represent areas to focus on or opportunities for information-sharing.

- **Fish protection:** It was unclear to some participants that a permit would improve fish and aquatic life protection. Many miners stated that they that they create habitat, can safely co-exist with fish in the pamphlet window, and provide a benefit through trash and toxic metal removal. Other

participants strongly emphasized the negative impact of suction dredging, particularly illegal suction dredging.

- **Critical habitat:** Participants did not agree about the role that the federal critical habitat designation might play in terms of permitting mining.
- **Relative invasive species threat of suction dredging:** Participants did not agree on the risk that suction dredging poses for the spread of invasive species. Some miners conveyed that they inspect their gear quite carefully in order to remove all gold, keep their gear dry for long periods of time, or keep their gear consistently in one watershed, which they believe mitigate the chances of spreading invasive species.
- **Miner concerns:** Most miner participants felt unjustly tarred by the actions of a few bad apples or illegal miners. Miners had concerns that the individual permitting process would open the door to fees and stricter regulations.

### Next steps

At one public listening session that happened to have a small turn out, miners and a non-miner were able to have a dialogue that both sides felt was productive. It was clear that information-sharing can be helpful and lead to greater understanding on both sides. WDFW intends to work closely with a workgroup over the next two months in order to dig deeper into the questions that need to be answered in order to respond to the Commission.

WDFW has received 112 comment emails regarding the proposed HPA suction dredge rule making through September 28, 2018. Of those, 104 were forms letters containing the same seven points:

- All motorized methods removed from pamphlet
- ESA compliance
- Clean Water Act compliance
- Invasive species prevention
- Evidence of USFS Notice of Intent
- At least 3 site visits by compliance officers
- State should register suction dredges

Several concerns were also expressed in individual email messages. All concerns relating to the rules are listed below in the writers own words.

<b>Comments Received in the HPA Rules Email Box as of 9/28/18</b>	<b>Number of Emails with Comment</b>
<b>Ban river dredging</b>	
Allowing motorized mining (or other degradations of our watersheds) gives a few private interests unfair status over public interest.	1
Please restrict prospecting to the impacts that individual panning causes.	1
Ban river dredging.	1
<b>Remove all motorized methods from the pamphlet</b>	
All motorized mineral prospecting methods should be removed from coverage under the Gold and Fish Pamphlet, not just suction dredge mining.	104
HPAs shall be required for all forms of motorized mineral prospecting (e.g., highbanking), not just suction dredging.	3
<b>Prohibit suction dredging in ESA Critical Habitat or require other fish protections</b>	
ESA-designated Critical Habitat should be off-limits or WDFW should obtain a Habitat Conservation Plan approved by NOAA Fisheries and U.S. Fish and Wildlife.	104
Mining is prohibited: no mining in the following designated habitat areas: ESA Critical Habitat; Wild Steelhead gene banks; Wild and Scenic Rivers; Withdrawn River segments; any other river and streams or segments of rivers and streams re-opened to access for migratory protected fish by removing culverts or other blockages.	3
Prohibition of the activity on any stream or tributary that is indigenous anadromous salmonid habitat from the line of ordinary high water to the lowest extent.	1
Prohibit of suction dredge mining and/or motorized prospecting during the months that are critical for salmon development.	1
The following river systems have been specifically identified as priority lamprey reintroduction areas: Yakima, Methow, Naches, Walla Walla, Tucannon and avoid during spawning seasons.	3
<b>Require NPDES permit or programmatic NPDES coverage</b>	
WDFW's program should include a programmatic NPDES permit or other CWA permit issued by the Washington State Department of Ecology, in order to ensure compliance with the federal CWA.	104

All HPA applications for suction dredge mining shall have proof of application for NPDES permit with WA Dept. of Ecology, to ensure compliance with the federal Clean Water Act.	3
Must include §303(d) and TMDL information from WA Dept. of Ecology.	3
<b>Require proof of cultural resources compliance &amp; U.S. Forest Service Notice of Intent</b>	
Applicants should submit a Proof of Notice of Intent (NOI) for activities on U.S. Forest Service lands, with their HPA application.	104
HPA application shall have proof of WA Department of Archaeology and Historic Preservation check and proof of contact with all applicable local and regional Tribal cultural resource offices regarding potential site disturbance.	3
All HPA applications for suction dredge mining on USFS land shall have proof of Notice of Intent filed with appropriate USFS Ranger District.	3
<b>Require a mitigation plan in all suction dredging applications</b>	
HPA application shall include a mitigation plan for restoring the site after work is complete. The mitigation plan shall include drawings clearly showing the expected location and amount of tailings after work is complete, and any vegetation within 200 feet of OHWM that will be altered. Vegetation that will be altered must be described by species and size. Descriptions of trees to be altered shall include diameter at breast height. The WDFW regional fish biologist will make the final determination of whether the mitigation plan is adequate to mitigate all impacts from the permitted activity prior to approving the application. Any proposed mitigation plantings must include a minimum of three years monitoring and maintenance. The WDFW regional fish biologist will make the final determination of whether the mitigation plan has been successfully executed at the end of the monitoring and maintenance period. If the WDFW biologist determines that additional mitigation work is needed due to plant mortality or other reasons, the applicant shall be responsible for implementing the additional required work.	3
In the permit applications the applicant shall describe access methods for delivering suction dredge to water. Riparian vegetation and woody debris within 200 feet of OHWM that will be altered in any way must be described, and any impacts shall be addressed in the mitigation plan.	3
<b>Other application requirements</b>	
No HPAs will be administered to clubs. Each miner shall be required to obtain an individual HPA.	3
If seeking exceptions to <i>Gold and Fish Pamphlet</i> , application for separate HPA is required.	3
All HPA sites shall be located with latitude/longitude coordinates.	3
No "general" HPAs for stream or basin. Must be a specific location.	3
Place a cap on the number of permits some reaches of rivers.	1
One commenter provided a list of application requirements and permit conditions WDFW should require.	1
<b>Work timing issues</b>	

Mechanical suction dredging should not be permitted in areas where migratory or native fish are spawning or have spawned during the six months prior to the permit requested time window (to avoid disturbance of fish eggs and young hatchlings) for all fish species including but not limited to anadromous species classified as endangered, threatened or declining.	1
HPA work windows must consider the potential presence of all possible life stages (e.g., spawning, incubating, and rearing) of ESA-listed fish species or other priority fish species. If no suitable work window can be found that protects these various life stages that may be present in a given waterbody, then mining shall not be permitted in that waterbody. The WDFW regional fish biologist will make the determination of appropriate work windows, using all credible available information, in accordance with all provisions of WAC 220-660-110.	1
<b>Implementation requirements</b>	
Require suction dredges operating in Washington State be registered, so that equipment can be tracked to owners. This is important because suction dredges are often left illegally unattended in streams while not in use.	104
Applicant shall notify regional WDFW fish biologist 24 hours prior to commencing work and 24 hours after work is complete.	3
All motorized mining equipment shall be inspected by regional biologist for invasive species prior to commencement of work.	3
All suction dredges shall have a registration/permit sticker issued by the State of Washington fixed to the front of the machine's right pontoon.	3
All suction dredges shall be equipped with functioning fish screens that comply with WDFW fish screen criteria.	3
<b>Compliance and monitoring requirements</b>	
At least 3 site visits by WDFW compliance officers (i.e., pre-, during, and post-project to ensure compliance with HPA permit requirements).	104
When considering penalties, choose an amount that will deter the activity and will not allow the user to recoup costs.	1
Water conditions downstream of permitted suction dredging should be monitored to establish the magnitude and nature of changes to the waters receiving waste discharge(s) (aka pollution) from mechanized suction dredging.	1
Maximum water temperature: to protect spawning, rearing, and incubating fish, motorized mineral prospecting is prohibited in fish habitat, as defined in WAC 222-16-030, if water site temperature (as measured by a digital thermometer with 0.1° F sensitivity) exceeds 63.5° F (or 17.5°C). Thermometers shall be carried by enforcement officers and employed during field visits.	3
The rules should be flexible enough to allow a person to move up or down a stream in order to comply with the current 200-foot separation requirement. Consider that several people can work on club claims at one time.	1
Requiring individual permits will not increase compliance. Enforcing the rules in the dredging pamphlet that are already required will.	1
<b>New rules aren't needed</b>	

Numerous scientific research studies have shown that suction dredging under the current rules does ZERO damage to the environment and actually is beneficial to spawning grounds when people follow the current rules.	1
Rewriting the Current Gold and Fish Book is a complete waste of time and taxpayer's money.	1
Changing our HPA rules in the middle of our dredging season is not only unconstitutional, but forced entrapment.	1
The primary reason for the rulemaking seems to be tracking and controlling miners that are prospecting for minerals and gems. It does not seem to be for anything but control and tracking not for assisting wildlife.	1
The state of Washington has no legal jurisdiction outside the Ordinary High Water Line and remove all references from the Gold and Fish Pamphlet.	1
The Gold and Fish Pamphlet is defined in state law as an HPA.	1
Small scale miners will not endure more complex reporting systems than the current fishing community.	1
<b>Other issues</b>	
Consider impacts to Tribal Treaty Fishing Rights.	1
Suction dredging damages physical and biological conditions of the water (in surface water and the stream water in the streambed zone known as the hyporheic), and therefore meets the definition of a 'pollutant' at both the state and federal levels.	1
Allow the permit process for public dredging of invasive snails to be very easy, and very cheap (or free) or even rewards by giving discounted or complimentary Discover Passes for certain numbers of pounds of snail brought to WDFW for destruction and disposal.	1
All of the suction dredgers that I know do not go from one waterway to another unlike some of the people that fish in several different waterways without cleaning there [sic] waders or any of their gear that would spread aquatic invasive species.	1
There is no need for additional methods to prevent the spread of aquatic invasive species during transport of suction dredging equipment. We follow the same rules as published by WDFW for aquatic motor craft.	1

On September 20, 2018, the seven of the nine Hydraulic Code Implementation Citizen Advisory Group members present agreed to the following statement relating to the current suction dredge rulemaking. Three members were absent.

*“In the rule making process, steps are taken to*

- 1. Address compliance with water quality under RCW 90.48, and*
- 2. Ensure WDFW compliance with the federal Endangered Species Act.*

*The Hydraulic Code Citizen Advisory Group has additional concerns that the rule making does not adequately address protection of fish life and fish habitat. The HCICAG intends to provide additional recommendations as rule making proceeds.”*