



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (August 2017) (Implements RCW 34.05.310)

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WSR 17-20-109

Agency: Department of Fish and Wildlife (WDFW)

Subject of possible rule making:

WDFW plans to amend sections in chapter 220-660 Hydraulic Code Rules. These rules regulate aspects of construction projects in state waters for the protection of fish life. WDFW's general goal in this rulemaking is to incorporate statutory changes, accommodate other changed conditions to protect fish life, or respond to requests by customers and other interested parties for improved clarity.

WDFW's primary objective for initiating rulemaking at this time is to adopt emergency rule (WSR 17-14-079) modifying authorized work times under WAC 220-660-300 for the Sultan River as a permanent rule.

Other subjects WDFW has identified for rulemaking include:

- Consistency with Title 77.55 RCW with respect to the curtailment of application fees (WAC 220-660-050);
- Ensure Authorized Work Times in WAC 220-660-300 are based on the best available science;
- Update the department's mailing address published in WACs 220-660-460 and -470; and
- Make other essential changes to sections 050 and 300 that clarify language or accommodate administrative changes.

The rulemaking as proposed will amend the following sections:

Section	Title
220-660-050	Procedures –
220-660-300	Mineral prospecting
220-660-460	Informal appeals
220-660-470	Formal appeals

Statutes authorizing the agency to adopt rules on this subject:

RCW 77.04.012 directs the department to preserve, protect, perpetuate, and manage fish life.

RCW 77.04.020 grants the fish and wildlife commission the authority to delegate to the director any of the powers and duties vested in the commission.

RCW 77.12.047 grants the fish and wildlife commission authority to adopt, amend, or repeal rules necessary to carry out Title 77.

RCW 77.55.021 charges WDFW with approving the adequacy of means proposed for protection of fish life in association with the construction of a hydraulic project and authorizes formal and informal appeals.

RCW 77.55.091 prescribes that WDFW establish rules for small scale prospecting and mining.

RCW 77.55.051 and 081 authorize the removal or control of aquatic noxious weeds through rules published in a pamphlet format.

RCW 34.05.328 identifies rules implementing chapter 77.55 RCW as significant legislative rules.

RCW 34.05.350 compels the department to actively undertake procedures to adopt emergency rules as permanent.

Reasons why rules on this subject may be needed and what they might accomplish:

WDFW proposes changes to sections under Chapter 220-660 WAC to achieve the following outcomes:

- Adopt emergency rule (WSR 17-14-079) modifying work windows under WAC 220-660-300 for the Sultan River as a permanent rule.
 - RCW 34.05.350(2) relating to emergency rules indicates that emergency rules cannot be sequentially filed (i.e. filed for more than one 120-day period) unless the agency is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. Proposing changes to WAC 220-660-300 Sultan River authorized work times is necessary to allow the agency to re-file Sultan River emergency rules. Another emergency rule will be promulgated to extend the change until permanent rules can be adopted.
- Consistency with Title 77.55 RCW with respect to the curtailment of application fees:
 - Changes to WAC 220-660-050 remove provisions relating to HPA application fees that sunset at the end of

2016 per RCW 77.55.321; these changes simplify permitting by removing the application fee from hydraulic code rules.

- Ensure authorized work times in WAC 220-660-300 are based on the best available science:
 - Changes to WAC 220-660-300 to revise Sultan River authorized work times are necessary to respond to new information about fish presence attributable to restoration of fish passage by Snohomish P.U.D. in a section of the Sultan River, as reflected in emergency rule WSR 17-14-079. These changes improve fish life protection.
 - Changes to WAC 220-660-300 to revise Lower Columbia River mainstem authorized work times to incorporate best available science in order to protect fish life and to simplify permitting by implementing consistency with federal agencies.
- Update the department's mailing address published in WACs 220-660-460 and -470, which will ensure WDFW receives correspondence mailed to the department.
- Make other essential changes to WACs 220-660-050 and 220-660-300 that clarify language or accommodate administrative changes:
 - Changes are proposed to WAC 220-660-050 that:
 - Allow for digital versions of gold and fish and aquatic plant control and removal pamphlets to be present on-site;
 - Clarify instructions for contacting WDFW staff outside of normal business hours;
 - Clarify procedures and criteria for transferring HPAs.
 - Changes to WAC 220-660-300:
 - Correct a typographic error in referencing WAC 220-660-050;
 - Correct terminology within mineral prospecting provisions to ensure that fish habitat structures are left undisturbed;
 - Correct captioning for figure 8; and
 - Clarify that embedded wood is to be left undisturbed; and
 - Correct a creek name that has been changed by U.S. Geological Survey.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

WDFW is the sole authority regulating hydraulic projects under Chapter 77.55 RCW, and the only agency that regulates hydraulic projects solely for the protection of all fish life. The U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Natural Resources, Washington State Parks, and local governments also regulate certain aspects of hydraulic projects under their own authorities. National Marine Fisheries Service and U.S. Fish and Wildlife Service regulate the “take” of threatened or endangered species listed under the federal Endangered Species Act. Tribes regulate fisheries and certain aspects of construction projects on tribal lands. Each of these entities will be invited to comment on draft rules during the rulemaking process. Their comments and concerns will be carefully considered in rule change decisions.

In addition to the public comment and hearing process, WDFW is conducting additional outreach and coordination with federal and state agencies having an identified interest or regulatory authority for two of the proposed rules, WAC 220-660-050 and WAC 220-660-300. Provisions of 220-660-290 and -300 that authorize work times are being studied to incorporate science from multiple entities and determine whether work times can be aligned with federal entities and still meet the agencies' respective management objectives.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

WDFW will follow the standard process for the adoption of administrative rules under the Administrative Procedures Act (Chapter 34.05 RCW), and implement provisions for Significant Legislative Rules under section 34.05.328. Information about the status of the HPA rulemaking process can be found on the HPA rulemaking website at <http://wdfw.wa.gov/licensing/hpa/rulemaking/>. When or if a CR-102 for proposed rulemaking is filed, that website will announce the dates when interested parties can submit public comment on proposed rules, and announce when and where the Fish and Wildlife Commission will hold a public hearing on the rule proposals. The web site will also provide information about dates when the Fish and Wildlife Commission will receive briefings on the proposed rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

	(If necessary)
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Other: HPA rulemaking website: http://wdfw.wa.gov/licensing/hpa/rulemaking/	Other:

Additional comments: None

Date: October 4, 2017

Name: Scott Bird

Title: Rules Coordinator

Signature:

