



Washington
Department of
**FISH and
WILDLIFE**

**2018 Hydraulic Code Rule Amendments
WAC Sections 220-660-050
220-660-300
220-660-460
220-660-470**

Concise Explanatory Statement

Washington Department of Fish and Wildlife
Habitat Program
Protection Division
Olympia, Washington

April 13, 2018

Mission
of the
Washington Department of Fish and Wildlife

*To preserve, protect and perpetuate fish, wildlife, and ecosystems
while providing sustainable fish and wildlife
recreational and commercial opportunities.*

RCW 34.05.325

Public participation—Concise explanatory statement.

...(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule; [See section 8 Reasons for Adopting the Rules]

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; [See section 7 Differences between Proposed Rules and Adopted Rules] and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so. [See section 6 Comments Received and Responses to Comments]

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment.

[[2009 c 336 § 1](#); [2005 c 274 § 262](#); [1998 c 125 § 1](#); [1995 c 403 § 304](#); [1994 c 249 § 7](#); [1992 c 57 § 1](#); [1988 c 288 § 304](#).]

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Executive Summary

This report presents the Washington Department of Fish and Wildlife's concise explanatory statement as required by the Administrative Procedure Act in RCW 34.05.325.

The Hydraulic Code, chapter 77.55 RCW, is intended to ensure that construction or performance of work that will use, divert, obstruct or change the natural bed or flow of state waters adequately protects fish life. WDFW is responsible to promulgate rules to implement the statute. WDFW maintains Hydraulic Code Rules that are:

- consistent with the statute,
- provide an administrative framework under which to implement the statute, and
- provide information about the effects of hydraulic projects on fish life and the ways in which projects can be adjusted to protect fish life.

WDFW's primary objective for initiating rule making now is to adopt an emergency rule (WSR 17-22-013) as a permanent rule, modifying authorized work times under WAC 220-660-300(7) for the Sultan River. Other objectives include amendments to make the rules consistent with statute regarding the sunset of application fees; applying new science to authorized work times in the Similkameen and Sultan Rivers; and other administrative and housekeeping amendments that improve transparency, accuracy, and clarity but do not change the effect of the rules.

WDFW received six public comments on this rule making. There was no testimony presented at the public hearing on March 17, 2018. WDFW has made minor changes to the proposed rule language in response to the comments received. No changes were made that affect the cost-benefit analysis or other regulatory analyses conducted for this rule making activity.

WDFW requests the Fish and Wildlife Commission adopt the rules with the minor language changes described below.

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1 Introduction

Since 1943, anyone planning to undertake certain construction projects or activities in or near state waters has been required to obtain a Hydraulic Project Approval (HPA) permit from the Washington Department of Fish and Wildlife (WDFW). The Hydraulic Code, Chapter 77.55 of the Revised Code of Washington (RCW), was passed by the legislature in 1943 and is now entitled *Construction projects in state waters*.

Thousands of HPAs are issued each year for activities ranging from work on bulkheads, piers, and docks to culvert replacement and mineral prospecting. The sole purpose of the HPA is to protect fish life from the adverse effects of construction or the performance of work in or near the water, and the HPA is unique among construction permits in this regard. The rules that govern the HPA Program are the Hydraulic Code rules in chapter 220-660 of the Washington Administrative Code (WAC).

2 Reasons for the Hydraulic Code and Rule

The state Legislature gave WDFW the responsibility to preserve, protect, and perpetuate all fish and shellfish resources of the state. To help achieve that goal, the Legislature passed a state law in 1943 called *Protection of Fish Life*, which is now recorded as [chapter 77.55 RCW](#) *Construction Projects in State Waters* (Hydraulic Code). The Hydraulic Code authorizes WDFW to issue a permit containing provisions for the protection of fish life from effects of construction projects in or near water.

[Chapter 220-660 WAC - Hydraulic Code Rules](#) - establishes rules for administration of the hydraulic permit program. The Hydraulic Code Rules establish procedures for obtaining an HPA, define a complete application, present requirements for the conduct of hydraulic projects that will protect fish life, and outline steps for HPA appeals and civil compliance.

This unique authority is broader in scope than the federal Endangered Species Act (ESA; 16 U.S.C. § 1531 et seq.) authorities and narrower in scope than local land use regulations. Most HPAs are also site-specific, meaning that provisions are tailored to the species and site conditions of each particular project. The HPA contains conditions that a permittee must follow in order to mitigate impacts to fish life caused by the project.

3 Reasons for 2018 Rule Making Proposals

In November 2014, the Washington Fish and Wildlife Commission adopted a comprehensive update of the state's Hydraulic Code Rules. The current Hydraulic Code Rules have been in effect for more than two years, and in that time, staff, permittees, and others have suggested improvements. WDFW wants to minimize the impact of rule making by making incremental rule updates; therefore, the 2018 HPA amendments are fairly modest in scope and effect.

WDFW's primary objective for initiating 2018 rule making is to adopt an emergency rule (WSR 17-14-079, WSR 17-22-013) as a permanent rule, modifying authorized work times under WAC 220-660-300(7) for the Sultan River.

Other objectives WDFW has identified for this rule making activity include:

- Provide consistency with Chapter 77.55 RCW regarding to the curtailment of application fees ([WAC 220-660-050](#));
- Ensure Authorized Work Times in [WAC 220-660-300](#)(7) for the Similkameen and Sultan Rivers are based on the best available science;
- Update WDFW’s mailing address published in WACs 220-660-050, -460 and -470; and
- Make other changes to sections -050 and -300 that clarify language or accommodate administrative changes without changing the intent of the rules.

4 Summary of 2018 HPA Rule Changes

Table 1 presents a summary of 2018 Hydraulic Code Rule Change Proposals (HPA Rule Change Proposals). The table presents changes in order by WAC number, and includes the title of the rules (from Chapter 220-660 WAC) for which changes are proposed, descriptions of the proposed changes, and the reasons for the changes.

Table 1 WDFW 2018 HPA Rule Change Proposals sorted by section number

SECTION (SUBSECTION)	CHANGE	REASON FOR THE CHANGE
050 PROCEDURES - HPA		
050 (9) How to get an HPA (a) pamphlet	Adds language that a person can <u>download and save or print</u> a pamphlet HPA from the WDFW web site.	This change clarifies that a digital version of a pamphlet is as acceptable as a printed version.
050 (9) How to get an HPA (b) emergency HPA	Specifies instructions for contacting WDFW after business hours and for times when biologists can't be contacted.	Clarifies how to contact a habitat biologist or the HPA program to receive an emergency HPA.
050 (9) How to get an HPA (c) How to get a standard, expedited, or chronic danger HPA (iii) complete application package (A) application form and required attachments	Clarifies that site access permission forms (or a copy of an easement) for the project site and any mitigation sites are needed as part of a complete application. Accepts copy of easement or signature of easement holder in lieu of landowner signature. There is a change to this language since the initial proposal; see section 7.	WDFW currently requires landowner permission for WDFW site access as part of a complete application, however current rule is not clear that WDFW needs permission to access <u>all</u> locations covered by the application including multiple project sites and mitigation sites. Accepting an easement as proof that WDFW can access the site is easier for the applicant than obtaining additional landowner permission. See section 7 for reasons for changes to the proposed language.

SECTION (SUBSECTION)	CHANGE	REASON FOR THE CHANGE
050(9)(c)(iii) (G) Payment of application fee required; and (H) Seeking approval under farm and agricultural land fee exemption	These two subsections are deleted, removing reference to payment of application fee to complete an application.	Although the fee has been curtailed per statute ¹ , deleting these WAC sections eliminates applicant confusion about paying fees that are no longer authorized. Additional changes regarding fees occur later in this section.
050 (9)(c)(iii)(New subsection G)	Proposed new language: (G) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage	WDFW needs a brief statement from applicants about why normal processing would result in significant hardship to the applicant or unacceptable environmental damage. This new requirement will reduce the pre-review time and will result in quicker determination that an application is complete (and therefore ready for habitat biologist review).
050(10) Incomplete applications (c) closing incomplete applications	Revises the time period after which WDFW can close inactive permits. Current period of inactivity is 6 months; staff and applicants asked to expand that to 12 months. This change also allows applicants to postpone closure for an additional 12 months (for a total of 24 months) before the application is closed.	WDFW proposes an amendment extending this period to 12 months to enable applicants more time to resolve application issues, with the possibility of a single 12-month extension, if needed, after which the application will be closed. Read on for additional changes that implement this solution.
050 (11) fee refund	Removes paragraph/subsection (11) and promotes subsection (12) (application review period) to (11)	Striking provisions for refund of an application fee. Necessary for consistency with statute.
050 (12 11) new subsection (c)	Requires the habitat biologist to place written documentation into the application record before issuing WDFW-declared emergency, expedited, and imminent danger HPAs. There is a change to the proposed language; see section 7, below, for details.	By issuing the HPA, a habitat biologist is implicitly acknowledging an emergency, imminent danger, or request for expedited processing. This change requires a habitat biologist to make that determination explicitly and include it in the permit record. Documentation must justify the reasons for declaring an imminent danger, applicant hardship, or immediate threat to public safety or environmental damage. See section 7 for reasons for changes to the proposed language.

¹ From July 2012 through June 2017, a \$150 application fee was charged for each new application and major project modification. A few project types including mineral prospecting were exempt from this fee. The fee provisions ended effective July 1, 2017 under RCW 77.55.321.

SECTION (SUBSECTION)	CHANGE	REASON FOR THE CHANGE
050 (13 12) Suspending the Review Period (c) closing an application delayed for processing	Revises the time period after which WDFW can close inactive permits. Current period of inactivity is 6 months; staff and applicants asked to expand that to 12 months. This change also allows applicants to postpone closure for an additional 12 months (for a total of 24 months) before the application is closed.	Continuation of changes needed to implement a longer elapsed time period for inactive applications before WDFW can close the application. This subsection says more about the process WDFW must follow to close an application, and clarifies that the applicant can request up to an additional 12 months before WDFW closes the application.
050 (16 15) Requesting a time extension, renewal, modification or transfer(a)(c)(e)and(f)	Change allows the transfer an HPA to a new permittee and provides clarity for conditions for transfer.	New provision provides benefits to entities wishing to transfer a permit from one project manager to another. Currently, WDFW requires a new application to transfer a project from one project manager to another.
050 (16 15) Time extension etc. (d) pertaining to fees	Remove language pertaining to fees for HPA modifications	Consistency with statute.
050 (17 16) fee for modifications (c) modifications initiated by WDFW	Remove language pertaining to fees for HPA modifications	Consistency with statute.
050 (17) requesting a transfer (section deleted)	Subsection (17) prohibiting transfers is deleted.	Striking this section restores the ability to transfer a permit to a new permittee.
050 (17) New Subsection: Revoking an HPA	Adds conditions under which WDFW can revoke an HPA	This new subsection provides transparency on the conditions under which WDFW can revoke an HPA as well as the process for notifying the permittee.
300 MINERAL PROSPECTING		
300 (3) General requirements (b) Individual HPA application	Change reference from -060 to -050	Corrects a typo in the 2014 adopted rules so that the rule is referencing the correct WAC section.
300 (4) Mineral prospecting in freshwater without timing restrictions (g) Processing aggregate (xi) habitat improvement structures	Add word “fish” to clarify which habitat improvement structures may not be disturbed	Clarification for consistency with the term “fish habitat improvement structure” currently defined in WAC 220-660-030. Will avoid confusion for permittees when trying to identify habitat improvement structures to avoid.

SECTION (SUBSECTION)	CHANGE	REASON FOR THE CHANGE	
300 (5) Mineral prospecting in freshwater without timing restrictions (k) habitat improvement structures	Add word “fish” to clarify which habitat improvement structures may not be disturbed	[Same as above]	
300 (5) Mineral prospecting in freshwater without timing restrictions (p) excavate...toe of the slope	Replace Figure 8 caption with correct version	Will correct an inadvertent error and fully describe the subject matter for Figure 8 that shows permitted and prohibited excavation site locations. Reduces the likelihood that a permittee will excavate in a prohibited location.	
300 (6) Ocean beach prospecting (j) relating to disturbance of large woody material or jams	Add word “embedded” to clarify that (for ocean beach prospecting) non-embedded large wood can be moved, but embedded large wood can’t be cut, disturbed, or moved.	Clarifies which large wood must be left undisturbed; reduces confusion about the type of large wood that is most ecologically valuable to be left undisturbed.	
300 (7) authorized work times	Change “Negro Creek” to “Etienne Creek” in Peshastin	USGS changed the name of this creek and “Etienne” is now the more common reference locally. This change will make it easier for prospectors to identify the stream on official maps.	
300 (7) authorized work times – Okanogan County, Similkameen River	Split a section of the Similkameen River into two new sections with differing authorized work times	Recent surveys in the Similkameen River between Enloe Dam and Palmer Creek have shown there is no rainbow trout spawning habitat in this section. Mountain whitefish have emerged by late May in this section in most years. This means that the authorized work times can be extended. From Palmer Creek to the Canadian border, there is better habitat for rainbow trout spawning so WDFW is retaining the current authorized work time in this new section of the Similkameen.	
	STREAM SECTION	CURRENT WORK WINDOW	PROPOSED WORK WINDOW
	Similkameen River (49.0325) - Upstream of Enloe Dam <u>to Palmer Creek</u>	July 1 - October 31	June 1 – October 31
	Similkameen River upstream of Palmer Creek	na	July 1 – October 31

SECTION (SUBSECTION)	CHANGE	REASON FOR THE CHANGE	
300 (7) authorized work times – Snohomish County, Sultan River	Change Sultan River authorized work times. There are changes since the initial proposal; see section 7, below, for details.	Anadromous fish passage has been opened up in a section of the Sultan River upstream of the City of Everett diversion dam. WDFW proposed new work windows because anadromous fish are actively using the newly-opened reach for spawning and incubation. This change splits the section from the diversion dam to Elk Creek into two sections. Change is consistent with emergency rules WSR 17-14-079 and WSR 17-22-013. See section 7 for reasons for changes to the proposed language.	
	STREAM SECTION	CURRENT WORK WINDOW	PROPOSED WORK WINDOW
	Sultan River (07.0881) - Mouth to diversion dam.	August 1 - August 15	August 1 - August 31
	Sultan River (07.0881) - Diversion Dam to Elk Creek anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam)	July 16 - February 28	August 1 – August 31
Sultan River(07.0881) - From anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam) to Elk Creek	na	July 16 - February 28	
460-470 APPEALS			
460 Informal Appeal (5) and 470 Formal Appeal (6)	Change address to HPA PO box.	WDFW recently changed official mailing address for headquarters. This rule change will ensure that appellants submit requests to correct mailing address and that WDFW will receive these requests in a timely fashion.	

5 Rule Development Process, Timeline, and Outreach

WDFW follows provisions of the [Administrative Procedure Act](#) relating to the standard rule making process. Because Hydraulic Code Rules have been identified by the Washington Legislature as significant legislative rules, provisions of [RCW 34.05.328](#) apply.

Preproposal Inquiry

On October 4th, 2017, WDFW submitted a [Preproposal Statement of Inquiry](#) (WSR 17-20-109) to the Washington Code Reviser that conveyed the rulemaking objectives and identified rule sections WDFW proposed to open to meet those objectives. This information was published in the Washington Register on Oct. 16, 2017.

Outreach

Following this notice, WDFW conducted outreach to solicit advice on the specific language proposed for changes. On November 14, 2017, WDFW met with key HPA stakeholder representatives and with the [Hydraulic Code Implementation Citizen Advisory Group](#) to present the rule change proposals and solicit comments prior to development of the proposed rule amendment proposal. Individual contacts were made with agencies, tribes, and stakeholders not able to meet on November 14.

Regulatory compliance document

A regulatory compliance document was prepared and made available in order to meet provisions of chapter 34.05 RCW and chapter 19.85 RCW. That document, now in its final form, includes a final Cost-Benefit Analysis for the proposed rule changes. In that document, WDFW determines that:

- Benefits outweigh costs for each proposed change [RCW 34.05.328(1)(d)];
- The rules proposed for adoption are the least burdensome alternatives [RCW 34.05.328(1)(e)]; and
- There are no small businesses in Washington that are impacted by the proposed changes, therefore no Small Business Economic Impact Statement is required (chapter 19.85 RCW).

The final document is available at: <https://wdfw.wa.gov/licensing/hpa/rulemaking/>

State Environmental Policy Act compliance

WDFW adopted two existing environmental documents (Final Programmatic Environmental Impact Statement 14-049 and Determination of Nonsignificance 08-046), provided minor additional information as an addendum, and made a new threshold determination (Determination of Nonsignificance or DNS) under the State Environmental Policy Act (SEPA) in reference to this proposed rule making activity.

After independent review, WDFW identified and adopted the referenced documents as being appropriate for this proposal because they meet our environmental review needs for the current proposal.

Subsequently, WDFW determined that this proposal does not have a probable significant adverse impact on the environment. Therefore, pursuant to RCW 43.21C.030(2)(c) an environmental impact statement (EIS) is not required. WDFW issued this DNS (SEPA # 18007) after we reviewed the environmental checklist and other information on file with us. There were no comments on the DNS, so the SEPA documents were finalized on April 10, 2018. A summary of comments on the rule making is available along with other final SEPA #18007 documents is available at: https://wdfw.wa.gov/licensing/sepa/sepa_final_docs_2018.html

Proposed rule making

WDFW developed rule amendments and submitted a notice of proposed rulemaking to the Code Reviser on January 22, 2018 (WSR 18-03-145) that identified the proposed rule change language, dates for submitting public comments, and the date and time of the public hearing.

The public comment period was open from October 16th for comments on the preproposal notice, and from the February 7th publication of the rule change proposal, and comments were taken through 5:00 pm March 17th, 2018.

Staff briefed the Fish and Wildlife Commission on March 17th prior to the public hearing for these proposed rules. No testimony was presented during the Commission public hearing at the March 17th meeting. Written comments made during the public comment period are summarized in section 6.

Preparing the final rules for adoption

After the public comment period and public hearing, staff:

1. Compiled and responded to the comments (Refer to section 6),
2. Determined what changes to the proposed rules are needed based on those comments (refer to section 7),
3. Developed a final rule package, including an *implementation plan* (separate document) and *concise explanatory statement* (this document),
4. Briefed the Fish and Wildlife Commission on comments received and changes made since the initial proposals (April 20, 2018), and
5. Asked the Commission to adopt the final rules.

Rule change proposals, as amended in response to public comments, were adopted by the Fish and Wildlife Commission on April 20, 2018 and become effective on June 1, 2018.

6 Comments Received and Responses to Comments

The public comment period for this rule change proposal was open from October 16 for comments on the preproposal notice, and from the February 7 publication of the rule change proposal in the Washington State Register through 5:00 pm March 17, 2018. No public testimony was provided at the Fish and Wildlife Commission public hearing held March 17. Comment letters (emails) received on the proposals include: Tom Davis representing the Washington Farm Bureau (2/6/2018); Kim McDonald representing Fish Not Gold (2/16/2018); Megan White representing Washington Department of Transportation (3/15/2018); John Rothlin representing Avista Corporation (3/16/2018); and Kassie Markos representing Puget Sound Energy (3/16/2018). Staff member Brendan Brokes also commented on the proposals. Comments are summarized on Table 2.

Table 2 Comments Received

WAC SECTION 220-660-	ELEMENT	COMMENT	RESPONSE
050 (9)(c)(iii)(A)	Require landowner signature; allow copies of easements to fulfill this requirement.	Utility companies commented that easements might not accomplish site access objectives, and that utilities should not be required to renegotiate easements to accommodate WDFW access	The intent is to allow a copy of an easement to serve in place of a landowner signature if that is easier for the applicant. WDFW modified the rule language accommodate these concerns. See Section 7 for modified language.
050 (12 11) (c)	WDFW must document emergency, expedited, imminent danger	Commenters expressed concern that this requirement would delay issuance of an emergency HPA.	WDFW did not intend for applications to be delayed while WDFW staff comply with this requirement. WDFW modified the rule language to address this concern. See Section 7 for modified language.
050 (16 15) (a)(c)(e) and(f) & 050(17)	Reinstate the ability for HPAs to be transferred to another party.	Commenters supported having this ability restored.	No change needed.
300(7) Sultan River, Snohomish County	Sultan River authorized work times	Staff noticed a discrepancy between the published rule change and the intended rule change.	WDFW modified the rule language to align with the supporting science and staff recommendation; see section 7. Change does not affect cost-benefit analysis.
Other comments	Accessibility to WDFW rule proposal materials	Commenters appreciate availability on the WDFW website of the annotated version of the proposed rule language.	This has been requested in the past and we're glad this transparency has helped reviewers.
	Stop rulemaking	Commenter requested WDFW stop the current rule making until ongoing litigation can conclude or the Commission grants new rule making under a petition from Trout Unlimited.	The Fish and Wildlife Commission denied Trout Unlimited's petition for rule making. Decisions relating to this request would be the subject of independent rule making activity.

7 Differences between Proposed Rules and Adopted Rules

Proposed rules were filed with a CR-102 form on January 22, 2018 as WSR 18-03-145. Upon careful consideration of the comments received, WDFW made the following changes to the proposed rule text from the proposed language in the CR-102 to the adopted language (CR-103 form):

Table 3 Changes to text of proposed rules

SECTION	CR-102 PROPOSED LANGUAGE	LANGUAGE FOR ADOPTION (CR-103)	REASON
050 (9)(c)(iii)(A)	A completed application form signed and dated by the applicant, (landowner) <u>landowner(s) or landowner</u> (representative) <u>representative(s) of any project site or off-site mitigation location</u> , and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. <u>A copy of an easement granted to the applicant by the landowner that includes an allowance for the department to access the project location(s) and any off-site mitigation location(s) for prepermit or postpermit inspection may be substituted for landowner or landowner representative signature;</u>	A completed application form signed and dated by the applicant, (landowner) <u>landowner(s), (or) landowner</u> (representative) <u>representative(s), or easement holder of any project site or off-site mitigation location</u> , and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. <u>The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;</u>	The intent is to allow a copy of an easement to serve in place of a landowner signature if that is easier for the applicant. WDFW consulted with commenters from utility companies and modified language to clarify that a copy of the easement is not required, nor is an easement required to include specific provision for WDFW access to the property.
050 (12 11) (c)	<u>If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record prior to issuing the HPA.</u>	<u>If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.</u>	WDFW did not intend for applications to be delayed while WDFW staff comply with this requirement. WDFW recommends implementing the commenter's suggestion to require filing this information within three days of issuing the permit.

300(7) Sultan River	STREAM SECTION	CR-102 PROPOSED LANGUAGE	LANGUAGE FOR ADOPTION (CR-103)
authorized work times	Sultan River (07.0881) Mouth to Diversion Dam at river mile 9.4	[No change originally proposed]	August 1 – August 15 August 1- August 31
	Sultan River (07.0881) - Diversion Dam to Elk Creek <u>anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam)</u>	July 16 – February 28 <u>August 1 – August 31</u>	July 16 – February 28 <u>August 1 – August 31</u>
	Sultan River (07.0881) - From anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam) to Elk Creek.	<u>July 16-February 28</u>	<u>July 16 - February 28</u>
	REASON:	Adding a change for the lower section of the Sultan River better aligns with the science used to develop the rule change proposal for the Diversion Dam-to-Culmback Dam section.	

8 Reasons for Adopting the Rules

OBJECTIVE

Adoption of an emergency rule ([WSR 17-22-013](#)) modifying authorized work times under WAC 220-660-300 for the Sultan River as a permanent rule

Consistency with Title [77.55 RCW](#) with respect to the curtailment of application fees ([WAC 220-660-050](#))

Ensuring authorized work times in [WAC 220-660-300](#) are based on the best available science

Updating WDFW's mailing address in sections 220-660-050, -470, and -470

Clarifying language or accommodating administrative changes in sections 050 and 300

REASON

Rule changes authorized work times based on new scientific information about fish utilization of the Sultan River. Change is necessary to protect fish life.

Rule change clarifies for potential applicants that the fee is no longer in effect. Change reduces stakeholder confusion.

Rule changes authorized work times based on new scientific information about fish utilization in the Similkameen River. Change reduces permitting requirements and increases allowed work time for individuals wishing to conduct mineral prospecting in the Similkameen River.

This is an administrative change that reduces confusion for stakeholders.

Rule changes provide additional information or language changes that clarify the intent of these sections:

These changes either increase permitting efficiency, clarify the process for obtaining an HPA, improve applicant/permittee convenience, or are necessary for administrative documentation.

9 References in Support of Rule Making

In 2013, the Washington legislature found that *it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognized that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making. Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way.*²

Pursuant to this statute, WDFW must identify, before taking a significant agency action, sources of information reviewed and relied upon by the agency in the course of preparing to take that action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. WDFW must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in this statute do not imply or infer any hierarchy or level of quality. Reference categories are provided on Table 4.

Table 4 Categories of references pursuant to RCW 34.05.271(1)(c)

CATEGORY	DESCRIPTION	CATEGORY	DESCRIPTION
(i)	Independent peer review	(v)(B)	Court and hearing board decisions
(ii)	Internal peer review	(v)(C)	Federal and state administrative rules and regulations
(iii)	External peer review	(v)(D)	Policy and regulatory documents adopted by local governments
(iv)	Open review	(vi)	Research data that hasn't been incorporated into peer review
(v)	Legal and policy document: related to the legal framework for the action, including but not limited to:	(vii)	"Records of the best professional judgment" of employees
(v)(A)	Federal and state statutes	(viii)	other (catch all)

References relied upon by WDFW in order to develop these rule proposals are provided on Table 5.

Table 5 References relied upon to develop 2018 HPA rule change proposals

AUTHOR(S)	DATE	TITLE & CITATION	CATEGORY (I – VIII)
Alexander, C.A., C. Peters, D. Marmorek, and P. Higgins	2006	A decision analysis of flow management experiments for Columbia River mountain whitefish (<i>Prosopium williamsoni</i>) management. <i>Can. J. Aquat. Sci.</i> 63:1142-1156.	i

² RCW 34.05.271 Finding – Intent 0 2013 c 68

AUTHOR(S)	DATE	TITLE & CITATION	CATEGORY (I – VIII)
BPA	1984	Natural Propagation and Habitat Improvement - Volume IIB- Washington: Similkameen River Habitat Inventory - Final Report 1983. Bonneville Power Administration, April 1984.	vi
Boyer, J.K.	2016	Spawning and early life history of mountain whitefish in the Madison River, Montana. Masters Thesis. MT State Univ., Bozeman. 115 pgs.	ii
Brown, C.J.D.	1952	Spawning habits and early development of the mountain whitefish, <i>Prosopium williamsoni</i> in Montana. <i>Copeia</i> 1952(2):109-113.	i
Ford, B.S., P. Higgins, A. Lewis, K. Cooper, T. Watson, C. Gee, G. Ennis, and R. Sweeting	1995	Literature reviews of the life history, habitat requirements and mitigation/compensation strategies for thirteen sport fish species in the Peace, Liard and Columbia River drainages of British Columbia. <i>Can. Man. Rep. Fish. Aquat. Sci.</i> 2321: 342 pgs.	i
Golder Associates Ltd.	2014	Lower Columbia River whitefish life history and egg mat monitoring program: Year 5 Interpretive Report. Report prepared for BC Hydro, Castlegar, BC. Golder Report No 11-492-0111F; 102p +app.	viii
Martin, A.O., J. Mundie, C. Newcombe, L. Bahls, J. Fraley, C Martinka, and J. Vashro	1987	Predicted impacts of the proposed Sage Creek coal limited mine on the aquatic and riparian resources on the Flathead River Basin, British Columbia and Montana. Biological Resources Committee of the Flathead River International Study Board.	v
McPhail, J.D. and P.M. Troffe	1998	The mountain whitefish (<i>Prosopium williamsoni</i>): a potential indicator species for the Fraser System. Environment Canada , Environmental Conservation Branch, Aquatic and Atmospheric Sciences Division, Report DOE FRAP 1998-16 Vancouver.	ii
Meyer, K.A., F. Elle, and J. Lamansky, Jr.	2009	Environmental factors related to the distribution, abundance and life history characteristics of mountain whitefish in Idaho. <i>N. Am. J. Fish. Mgmt.</i> 29:735-767.	i
Pierce, R., M. Davidson and C. Podner.	2012	Spawning behavior of mountain whitefish and co- occurrence of <i>Myxobolus cerebralis</i> in the Blackfoot River Basin, Montana. <i>Trans. Am. Fish Soc.</i> 141:3.	i
Rajagopal, P.K.	1979	The embryonic development and the thermal effects on the development of the mountain whitefish, <i>Prosopium williamsoni</i> (Girard). <i>Journal of Fish Biology</i> 15: 153-158.	i
Revised Code of Washington	2017	Chapter 77.55 Construction Projects in State Waters; 77.55.321 Application fee for a hydraulic project permit or permit modification-Projects exempt from fees-Disposition of fees. [2012 1st sp.s. c 1 § 103.] Expired June 30, 2017	v(A)

AUTHOR(S)	DATE	TITLE & CITATION	CATEGORY (I – VIII)
Thompson, G.E., and R. W. Davies	1976	Observations on the age, growth, reproduction, and feeding of mountain whitefish (<i>Prosopium williamsoni</i>) in the Sheep River, Alberta. <i>Trans. Am. Fish. Soc.</i> 105(2):208-219.	i
Washington Department of Fish and Wildlife	2017	WDFW Region 2 Individual HPA Permitting Options Mineral Prospecting - Suction Dredging - Similkameen River Upstream of Enloe Dam, Okanogan County, Washington	vii
Washington Department of Fish and Wildlife	2017	Upper Similkameen River survey findings - mineral prospecting opportunities outside the work window	vii
Washington Department of Fish and Wildlife and Snohomish County Public Utility District	2018	Spawning ground survey data for chinook, coho, chum, pink, and steelhead in the Sultan River	viii
Wydoski, R.S. and R.L. Whitney.	2003	Inland fishes of Washington. University of Washington Press. 322 pgs.	i

For Further Information

Information about the Hydraulic Project Approval Program can be found at:

<https://wdfw.wa.gov/licensing/hpa/>

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