RULE-MAKING ORDER
PERMANENT RULE ONLY

CR-103P (December 2017)
(Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 19, 2021
TIME: 1:45 PM

WSR 21-09-066

Agency: Washington Department of Fish and Wildlife

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ **(If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)**

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WDFW's purpose for this rulemaking is to implement elements of Engrossed Substitute House Bill 1261 (Laws of 2020, c. 10), passed by the legislature in 2020. Rule changes will:

- Add a definition for "gravity siphon aquatic mining" and "motorized or gravity siphon equipment";
- Specify that a standard hydraulic project approval (HPA) permit is required to conduct mineral prospecting involving motorized or gravity siphon equipment and require proof of compliance with the federal Clean Water Act for this activity as part of a complete application for a standard HPA;
- Specify that the department may reject an incomplete application for mineral prospecting involving motorized or gravity siphon equipment if the proposed project location or locations occur where they are prohibited under RCW 90.48.615;
- Remove authorization for motorized and gravity siphon mining activities from the Gold and Fish pamphlet rules;
- Specify that all activities under WAC 200-660-305 (Mineral prospecting involving motorized or gravity siphon equipment) must employ aquatic invasive species prevention;
- Eliminate the annual reporting requirement for suction dredging HPAs; and
- Other minor changes are to clarify or avoid conflict with statute.

Citation of rules affected by this order:

New:

Repealed:

Amended: 220-660-030 Definitions; 220-660-050 Procedures; 220-660-300 Mineral Prospecting; and WAC 220-660-305 Suction Dredging

Suspended:

Statutory authority for adoption: RCWs 77.04.012, 77.12.047, 77.55.021, 77.55.091, 77.135.100, 77.135.110, and 34.05.328.

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 20-24-121 on Dec. 2, 2020 (date).

Describe any changes other than editing from proposed to adopted version: There are two minor changes between the rules proposed in the CR-102 (filed as WSR 20-24-121 on Dec. 2, 2020) and the version adopted by the Fish and Wildlife Commission on April 9, 2021. The table presents changes between versions.

WAC Section	Proposed change from CR-102	Reason for change
220-660-030(72)	"Hand-held mineral prospecting tools" means tools used for mineral prospecting that are held by hand~~,~~ and do not have moving parts~~, and are not~~ powered, in whole or in part, by internal combustion, electricity, hydraulics, or pneumatics. Examples include, but are not necessarily limited to, ~~metal detectors,~~ shovels, picks, trowels, hammers, and pry bars	Clarification. To eliminate confusion about moving parts on hand-held mineral prospecting tools. Clarifies that they may not have moving parts powered by internal combustion, electricity, hydraulics, or pneumatics. Reference to metal detectors is also removed. The change is in response to public comments.

220-660-305(5)(c)	~~Motorized or gravity siphon equipment listed in the previous provision may be used ONLY in waters in Adams, Benton, Clallam, Franklin, Grant, Grays Harbor, Lincoln, Spokane, Whitman, and Yakima counties that are NOT designated under the Endangered Species Act as critical habitat for salmon, steelhead, or bull trout or have a freshwater designated use of salmonid spawning, rearing, and migration. A map identifying waters where motorized methods are allowed is available from Washington department of ecology.~~ The Washington department of ecology determines where motorized or gravity siphon equipment listed in the previous provision may be used. Contact the Washington department of ecology water quality program for information about the locations where the use of motorized or gravity siphon equipment is allowed.	Clarification. Rather than listing those specific areas where the Washington Department of Ecology prohibits motorized or gravity siphon equipment, this change more generally refers to the Department of Ecology's authority under RCW 90.48.615. This revision clarifies that it is Ecology that is responsible for designating these areas, and it also prevents this provision from becoming obsolete in the event that Ecology amends its designations.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Theresa Nation
Address: P.O. Box 43200 Olympia, WA 98504-3200
Phone: (360) 688-4745
Fax: (360) 902-2946 Attn: Theresa Nation
TTY: (360) 902-2207
Email: HPARules@dfw.wa.gov
Web site: https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking

Other: The final cost-benefit analysis is contained in the final Hydraulic Code Rules Chapter 220-660 WAC – Incorporating Elements of ESHB 1261 Into HPA Rules Regulatory Analyses document that also contains the least burdensome alternative analysis and significant legislative rule determinations. The final Small Business Economic Impact Statement, Concise Explanatory Statement and Implementation Plan are also available at the HPA rule making web page noted above.

Note: If any category is left blank, it will be calculated as zero. No descriptive text.

Count by whole WAC sections only, from the WAC number through the history note. A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	____	Amended	____	Repealed	____
Federal rules or standards:	New	____	Amended	____	Repealed	____
Recently enacted state statutes:	New	____	Amended	4	Repealed	____

The number of sections adopted at the request of a nongovernmental entity:

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:

New ____ Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended 4 Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date Adopted: April 9, 2021	**Signature:**
Name: Larry Carpenter	
Title: Chair, Fish and Wildlife Commission	**Larry Carpenter, FWC Chair**