

Concise Explanatory Statement (CES)
Hydraulic Project Approval rule making implementing RCW 77.55.480 regarding streamlining of fish habitat enhancement projects, 2003

Rules amended as part of this rulemaking:

WAC 220-660-050 Procedures-Hydraulic project approvals

Rules repealed as part of this rulemaking:

N/A

Rules created as part of this rulemaking:

N/A

1. Background/Summary of Project:

The rule amendment is necessary to incorporate statutory changes from Substitute Senate Bill (SSB) 5381 into the Hydraulic Code Rules. This rule went through the expedited rule making process.

The Hydraulic Code Rules govern the Hydraulic Project Approval (HPA) permitting process. They reside in Chapter 220-660 Washington Administrative Code (WAC). HPA permits are issued to protect fish and their habitat during construction. The Hydraulic Code Rules set forth administrative procedures for obtaining an HPA, steps for HPA appeals and civil compliance, and criteria generally used by the department to review and condition hydraulic projects to protect fish life.

Some habitat improvement projects are qualified to receive streamlined HPA permitting and exemption from most other local and state permits. These projects are called Fish Habitat Enhancement Projects (FHEP). The permit streamlining process is laid out in RCW 77.55.181.

Legislative Background

SSB 5381, titled *Fish Passage Project Permits-Streamlined Review and Approval*, was a bill passed during the 2021 legislature. It went into effect July 25, 2021. The bill included changes to the law that establishes the HPA permit program, Chapter 77.55 Revised Code of Washington (RCW). Specifically, it made changes to the FHEP streamlined permitting process.

Elements of SSB 5381 Section 1:

- Adds federally recognized tribes to the list of project approvers;
- Qualifies Washington Department of Transportation (WDOT) fish passage barrier corrections which are part of larger projects, for streamlining (not only stand-alone projects, as previously required);
- WDOT may use the online permit application system to apply for FHEP streamlining (previously could only use a JARPA form);
- The permit review period for WDOT fish barrier removal projects is reduced from 45 days to 30 days; and

- Allows local governments to require permits and fees as necessary to meet National Flood Insurance Program regulations.

Sections 2 and 3 of the bill are not part of this rule making. Section 2 made changes to the Shoreline Management Act. Section 3 directed WDOT to conduct multiagency coordination regarding permit streamlining for their fish passage projects.

Rule Amendments

The Hydraulic Code rules already reference RCW 77.55.181 for FHEP projects. Most elements of SSB 5381 do not necessitate rule modification. Only two minor changes are necessary to incorporate the following:

- WDOT may use the online permit application system to apply for FHEP streamlining (previously could only use a Joint Aquatic Resources Permit Application (JARPA) form); and
- The permit review period for WDOT fish barrier removal projects is reduced from 45 days to 30 days.

2. Reasons for adopting the rule:

The rule amendment is necessary to incorporate statutory changes from SSB 5381 into the Hydraulic Code Rules (WAC 220-660).

3. Differences between the text of the proposed rule and the rule as adopted:

No changes from the proposed rule.

4. Public comments, response to comments, and consideration of comments

This rule was proposed under the expedited rule-making process that eliminated the need for the agency to hold public hearings. No objections were received within the 45-day waiting period and the Washington Fish and Wildlife Commission adopted the rule on May 12, 2023.

Therefore, the agency has entered an order adopting the rule without further notice or a public hearing.