



## PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

### CONTACT INFORMATION *(please type or print)*

Petitioner's Name Kim McDonald

Name of Organization Fish Not Gold

### COMPLETING AND SENDING PETITION FORM

- ☐ Check all of the boxes that apply.
- ☐ Provide relevant examples.
- ☐ Include suggested language for a rule, if possible.
- ☐ Attach additional pages, if needed.
- ☐ Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

### INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: \_\_\_\_\_

☐ **1. NEW RULE - I am requesting the agency to adopt a new rule.**

☐ The subject (or purpose) of this rule is: \_\_\_\_\_

☐ The rule is needed because: \_\_\_\_\_

☐ The new rule would affect the following people or groups: \_\_\_\_\_

☒ **2. AMEND RULE - I am requesting the agency to change an existing rule.**

List rule number (WAC), if known: WAC 220-660-305(5)

See addendum

☒ I am requesting the following change: \_\_\_\_\_

See addendum

☒ This change is needed because: \_\_\_\_\_

See addendum

☒ The effect of this rule change will be: \_\_\_\_\_

☐ The rule is not clearly or simply stated: \_\_\_\_\_

☐ **3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.**

List rule number (WAC), if known: \_\_\_\_\_

*(Check one or more boxes)*

☐ It does not do what it was intended to do.

☐ It is no longer needed because: \_\_\_\_\_

☐ It imposes unreasonable costs: \_\_\_\_\_

☐ The agency has no authority to make this rule: \_\_\_\_\_

☐ It is applied differently to public and private parties: \_\_\_\_\_

☐ It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: \_\_\_\_\_

☐ It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: \_\_\_\_\_

☐ Other (please explain): \_\_\_\_\_

# ADDENDUM

2. Question No 1: WAC 220-660-305(5) add (z): Removing water from any waterbody may require a water right issued by Washington State Department of Ecology. A person must have a valid water right if they seek to remove water from any waterbody where a water right is required. Contact the Washington State Department of Ecology to determine whether a water right is required. If a water right is required, evidence of a water right must be submitted with HPA application.

WAC 220-660-305(5) add (z z): a discharge of sediment to ground or ground based holding pond requires a Washington State Waste Discharge Permit. An individual State Waste Discharge Permit can be obtained from the Washington State Department of Ecology. If a person is discharging into the ground or ground based holding pond, a copy of an Individual State Waste Discharge Permit must be submitted with HPA application.

2. Question No. 2: Requiring an applicant to verify whether a water right is necessary and if one is required, to demonstrate that they have obtained a water right, is protecting fish life. Preventing unpermitted dewatering of waterbodies is a key component in protecting fish life. The declining runs of salmon, steelhead and Bull trout (see Exhibit 1) are a result of lack of plentiful clear, fresh water. Gravel rich headwater areas where motorized mining activity frequently occurs are also critical areas for salmon, steelhead, and Bull trout spawning and rearing, and are vulnerable to effects of dewatering.

Discharges of wastewater into the ground eventually impact in-stream water quality and therefore fish life. Requiring an individual State Waste Discharge Permit to be submitted with the HPA application will protect fish life, particularly in the critical habitat designated by law.

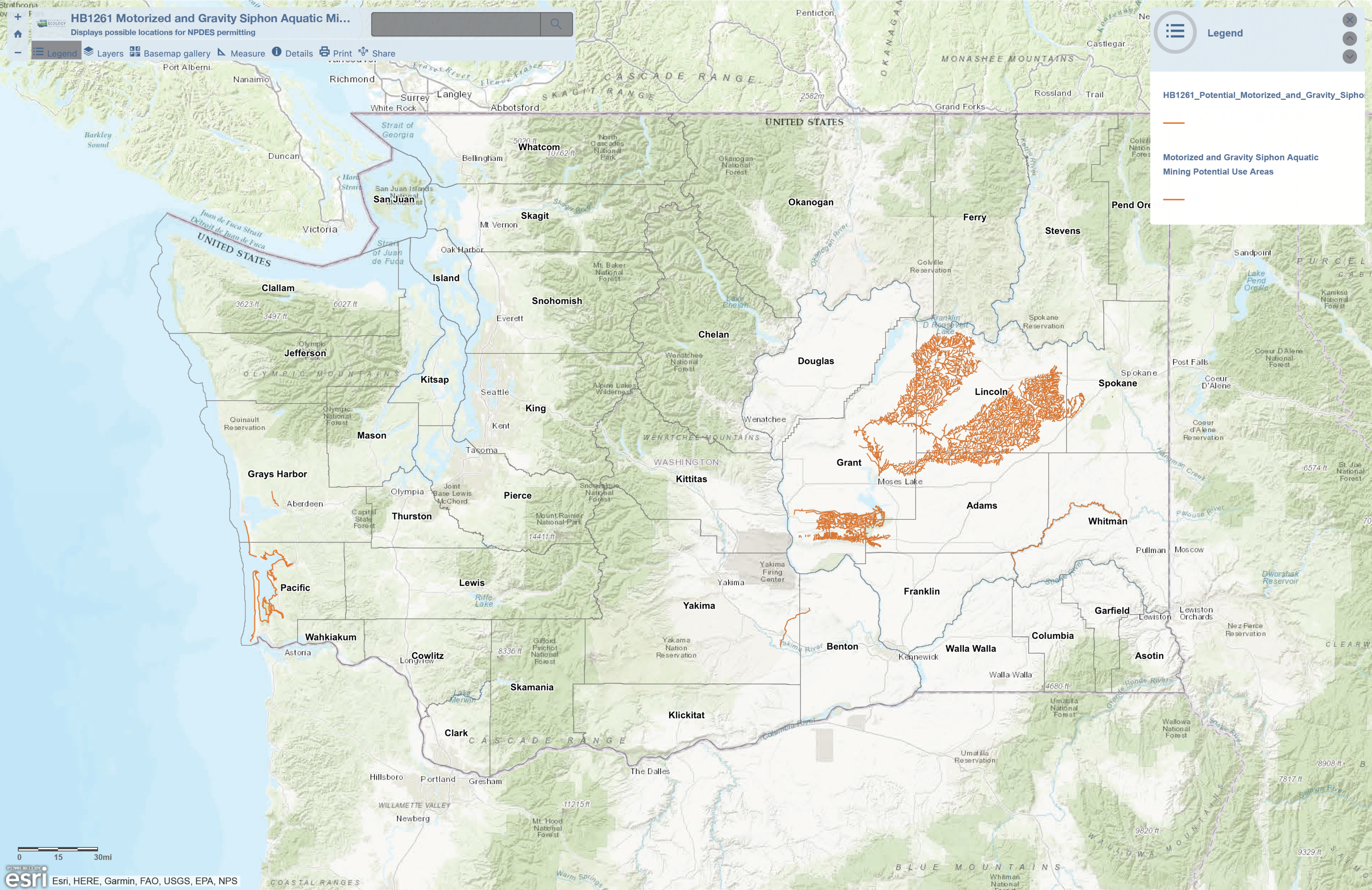
2. Question No. 3: HPA motorized mining permittees will now be aware of the state law requiring a water right if they intend to withdraw water from a waterbody and be aware of the requirement for individual State Waste Discharge permits if a permittee is seeking to create a ground based holding pond or facility for wastewater. Ensuring permittees have a water right and an individual State Waste Discharge permit should reduce multiple agency enforcement actions for violating state laws and reduce interactions between water right holders and permittees without a water right.

RCW 90.48.615(2) states "The following act or acts are prohibited: Motorized or gravity siphon aquatic mining...." Withdrawing water with a motorized pump from a water body to run through a motorized sluice (high banker) which may be positioned slightly upland from the water withdraw pump is clearly motorized aquatic mining. If WDFW continues to issue HPA permits for this type of activity, the applicant should be required, in order to protect fish life, to show they have a water right to legally withdraw water as well as discharging the "waste" so close to state waterbodies, with the required permits.

# EXHIBITS

1. Link of Endangered Anadromous and resident fish in Washington State including information regarding declining runs: <https://stateofsalmon.wa.gov/statewide-data/salmon/dashboard/>
2. Washington State Department of Ecology map of of potential mining areas (in red) and all other waterbodies where motorized mining is not permitted.
3. Link to determining whether applicant for HPA has Water Right: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-rights-search> and link to individual State Discharge Permits: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-quality-permits/Water-Quality-individual-permits>
4. RCW 90.48.615 (2): The following act or acts are prohibited: Motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout. This includes all fresh waters with designated uses of: Salmonid spawning, rearing, and migration.
5. Link to Dennis Peterson/Washington Small Scale Miner's Action Group Petition for Rulemaking which was denied by the Commission. Mr. Peterson was granted an HPA permit on April 7, 2023, for essentially the same activity he was trying to seek changes to the WAC in his petition: <https://wdfw.wa.gov/sites/default/files/about/regulations/petitions/20220209-petersen-motorized-mining-redacted.pdf>.
6. Letter to Washington Department of Ecology and WDFW regarding recent permit issued to Mr. Dennis Peterson using motorized mining methods to withdraw water from a stream.





HB1261 Motorized and Gravity Siphon Aquatic Mi...

Displays possible locations for NPDES permitting

Legend

Layers

Basemap gallery

Measure

Details

Print

Share

Legend

HB1261\_Potential\_Motorized\_and\_Gravity\_Siphon

Motorized and Gravity Siphon Aquatic Mining Potential Use Areas



May 11, 2023

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Re: Motorized Mining Hydraulic Permit Approval

Dear Ms. Watson, Mr. Susewind, and Ms. Baker:

We have been involved in protecting critical freshwater fish habitat in Washington from motorized mining as part of a larger coalition including Tribes, League of Woman Voters, and private businesses, for well over a decade.

In March, 2020, Governor Inslee signed ESHB 1261 (codified as RCW 90.48.615), which banned all motorized mining in critical habitat for freshwater fish. Miners, if they wanted to continue using motorized mining methods, were required to comply with the Clean Water Act and obtain NPDES permits from Department of Ecology.

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We recently learned that WDFW with the assistance of Department of Ecology, issued an HPA permit (No. 31017) to a miner who seeks to use a motorized mining method to draw water out of a watershed designated as critical, run the water through a “high banker sluice,” which is filled with gravel and sediment he removes from the same stream, and apparently deposit the sedimented water into a barrel or hole lined with a tarp. All of this will be done without the miner obtaining a “right” to remove the water (a water right). The watershed he will be mining is currently fully allocated and a review of the Ecology Water Rights map shows he does not have a water right.

In fact, the Department of Ecology, in correspondence with the miner dated April 26, 2023, reminds the miner he “needs” a water right. In other words, WDFW issued a permit to mine close to critical habitat and to withdraw water, without all the necessary permits and approvals from the Department of Ecology.

Needless to say, there are similar permit applications that have been submitted to WDFW, meaning there are going to be a lot of miners withdrawing water in the Peshastin watershed without any right to that water.

We ask WDFW to rescind this permit and not issue any other permits until the applicants can prove they have a “water right” issued from the Department of Ecology, or have a transferred water right from Icicle Peshastin Irrigation District, who holds the rights to the allocated surface water in the Peshastin watershed.

Obviously we are concerned that this type of mining activity is filled with risk of having the sedimented water entering the stream after the mining operation is complete and the destruction of the riparian zone from the significant removal of material to “load the sluice.” We believe approval of this type of activity contravenes the intent of the law.

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Thank you for your consideration.

Kim McDonald  
Founder, Fish Not Gold

Bill Arthur  
Sierra Club and Chair, Snake/Columbia River Salmon Campaign

Tom Uniak  
Executive Director  
Washington Wild

Crystal Elliot-Perez  
Washington State Director  
Trout Unlimited

Pat Hesselgesser  
Chair, Washington Council of Trout Unlimited

cc: Melanie Rowland  
Lorna Smith  
Margen Carlson  
Theresa Nelson  
Mark Peterschmidt