



State of Washington

## DEPARTMENT OF FISH AND WILDLIFE

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### DETERMINATION OF SIGNIFICANCE AND REQUEST FOR COMMENTS ON SCOPE OF EIS

**Name of Proposal:** Hydraulic Code Rule Revisions

**Description of Proposal:** Washington Department of Fish and Wildlife (WDFW) seeks to improve the program in order to routinely deliver regulatory certainty and consistency, improve internal and external efficiencies, ensure transparent decision-making, and improve program effectiveness. These actions will deliver some cost savings for applicants, improve the overall effectiveness of the program, eliminate inconsistencies between the statute and the rules, and enhance a transparent decision making process with our stakeholders and coordinating government entities.

**Proponent:** WDFW

**Location of Proposal:** Projects that may affect the bed or flow of waters of the state require Hydraulic Project Approvals. Updating the Hydraulic Code rules will apply statewide to all areas under the jurisdiction of the state Hydraulic Code Chapter 77.55 RCW Construction in State Waters, including actions in marine or freshwater.

**Lead Agency:** WDFW

**EIS Required:** WDFW is required by statute<sup>1</sup> to evaluate proposed actions –including non-project actions such as rulemaking - for environmental impacts. WDFW has determined that the proposed Hydraulic Code Rule revision could have a significant adverse impact on the environment (“Determination of Significance”) and plans to issue an environmental impact statement (EIS). WDFW made this determination of significance (DS) because we want to ensure that all potential environmental impacts of the rule revision are considered, and that the public can comment to us about their concerns.

**The lead agency had identified the following areas for discussion in the EIS:**

**Purpose:** The purpose of this proposed rulemaking is to adapt the Hydraulic Code rules so they are more streamlined for the applicant, to make better use of current science for fish life protection, and to achieve consistency with legislative changes to the Hydraulic Code<sup>2</sup>.

**Need:** The proposed action is needed because most of Chapter 220-110 WAC has not been updated since 1994. Since that time, the status of several populations of fish has changed; more scientific information about how to protect fish life is available; new construction methods and materials are available; applicable statutes have been revised; and the types and numbers of construction projects that are proposed have changed. The department also seeks to simplify the application and approval process to the benefit of both applicants and agency permit writers. These changes should improve protection of fish and shellfish under the Hydraulic Code rules.

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<sup>1</sup> RCW 43.21C.030(2)(c)

<sup>2</sup> Chapter 77.55 Revised Code of Washington <http://apps.leg.wa.gov/rcw/default.aspx?cite=77.55>

**Goals:** The primary goal of Hydraulic Code rule revision is to update technical, performance, procedural, and administrative requirements to better align with statutory changes made since the rules were last revised.

Secondary objectives are to simplify the permitting of certain types of projects and establish a structure for adaptive management in response to changing science and technology and/or results of effectiveness monitoring.

**Strategies and Alternatives:** In addition to the proposal articulated above, WDFW has identified two alternatives that merit further analysis – a no-action alternative, and a prescription-only alternative.

**No-Action Alternative:**

The no-action alternative would be to continue to rely on Chapter 220-110 WAC as currently codified. No updates would be made.

**Prescription-only Alternative:**

Under a prescription-only alternative, Chapter 220-110 WAC would contain rules, as directed by RCW 77.55.081 and 77.55.091, for removal or control of noxious weeds and for small scale mining and prospecting. With those two exceptions, Chapter 220-110 WAC would not include general permits or general requirements applicable to construction activities. Instead, each proposed hydraulic project would be evaluated on a site-by-site basis. All requirements for each project, (no matter how common or routine that type of project is), would be established through an analysis of the unique conditions present at that specific site. Protection of fish life would be optimized site-by-site.

**Alternatives That Will Not Be Analyzed:** Three other alternatives were considered but will not be analyzed in detail because they do not meet the purpose and need of the proposed action:

**Procedural Alternative:**

The procedural alternative would be to make only those changes to Chapter 220-110 WAC that are necessary because of changes to the enabling laws, including recodifications. While this would meet the purpose of ensuring that the Hydraulic Code rules meet statutory requirements, it would not incorporate best available science, nor would it necessarily improve protection of fish, shellfish, and their habitats.

**One Activity at a Time Alternative:**

Similar to the approach that WDFW took to update the rules for mineral prospecting, under this alternative the agency would update the rules for only one selected activity at a time. While this could meet the purpose and need for the particular activity that is selected, it would not improve application processing, and would not ensure that the permit program as a whole meets the regulatory standard of protection of fish, shellfish, and their habitats.

**“Most Commonly Permitted” Alternative:**

The “MCP” alternative would involve changes only to Chapter 220-110 WAC sections that cover the most-frequently-permitted types of construction projects. While this could meet the purpose and need for the particular activities that are selected, it would neither improve application processing nor ensure that the hydraulic code rules as a whole meet the regulatory standard of protection of fish, shellfish, and their habitats.

**Known or anticipated key environmental issues or areas of controversy or concern:**

Among the issues that WDFW expects to be controversial in revising the Hydraulic Code rules are:

- The requirement for no-net-loss of fish life, and the related requirement that impacts that cannot be avoided must be mitigated;
- Review of, and potential changes to, in-water work windows;
- Provisions relating to maintenance and repair of in-water structures;
- Provisions for water crossing structures;
- Provisions for the installation of tide gates;
- Provisions for installation of fishways;
- Provisions regarding bank protection and bulkheading;
- Provisions around channel modifications;
- Provisions streamlined permit processing for fish habitat enhancement projects.

**Scoping.** Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You can comment on alternatives, mitigation measures, probable impacts, and licenses or other approvals that may be required. Please review the existing Hydraulic Code rules (Chapter 220-110 WAC) to understand the types of actions regulated by the rules, and for which impacts could be evaluated in the EIS.

**Method of Comment:** The following procedures shall govern the method to comment on agency SEPA proposals. Comments received through these procedures are part of the official SEPA record for this proposal.

You can submit your comments any one of the following ways:

- Email to [SEPAdesk2@dfw.wa.gov](mailto:SEPAdesk2@dfw.wa.gov)
- Online at the WDFW SEPA website comment link at: <http://wdfw.wa.gov/licensing/sepa/>
- Fax to (360) 902-2946;
- Mail to the address below.

**We must receive your comments within 21 days of the date of this letter. This means we must receive your comments by July 16, 2012.**

**Responsible Official:** Bob Zeigler

**Position/Title:** SEPA/NEPA Coordinator, WDFW Regulatory Services Section

**Address:** 600 Capitol Way North, Olympia, WA 98501-1091

After the comment period closes, applicants may view the updated status of this proposal on the WDFW SEPA website: <http://wdfw.wa.gov/licensing/sepa/>.

If you have questions about this Scoping or the details of the proposal, contact Bob Zeigler at the address, e-mail, or fax number above; you can also call him at (360) 902-2578.

**DATE OF ISSUE:** June 22, 2012

**SIGNATURE:**

