



ESHB 1261 Briefing Companion Material

April 28, 2020

Background on ESHB 1261

A new state law will go into effect June 11, 2020 that bans motorized and gravity siphon aquatic mining in all areas that are designated as critical habitat for salmonids (salmon, steelhead, or bull trout) under the Federal Endangered Species Act (ESA) and in designated use areas where salmonids spawn, rear, and migrate.

Currently, prospectors who seek to suction dredge in Washington are required to get an individual Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW).

Under the new law, prospectors may use motorized mining equipment only if they do so in a way that avoids designated critical habitat and use areas. In addition to the HPA, prospectors may be required to get another permit from the Department of Ecology. The National Pollutant Discharge Elimination System (NPDES) permit will be required if the prospector will be discharging water from motorized equipment or a gravity siphon back into surface or ground waters.

Small-scale prospectors may continue to use [WDFW's Gold and Fish pamphlet for non-motorized mining methods only](#). To comply with the new state law, WDFW will go through a rule making process starting June 11, 2020 to remove authorization for all motorized prospecting equipment from the Gold and Fish pamphlet.

Definitions

- **Motorized or gravity siphon aquatic mining:** The use of any form of motorized equipment including, but not limited to, a motorized suction dredge or a gravity siphon suction dredge, for the purpose of extracting gold, silver, or other precious metals, that involves a discharge to state waters. This definition does not include metals mining and milling operations as defined in RCW 78.56.020.
- **Small-scale prospecting and mining:** The use of only the following methods for the discovery and recovery of minerals: pans; non-motorized sluice boxes; non-motorized concentrators; and mini rocker boxes. This definition does not include metals mining and milling operations as defined in RCW 78.56.020.

Frequently asked questions

What are the changes to the law?

- It prohibits all motorized and gravity siphon aquatic mineral mining in areas that are designated as critical habitat for salmon, steelhead, or bull trout under the Federal Endangered Species Act (ESA) and in designated use areas where salmonids spawn, rear, and migrate under WAC 173-201A-602.



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- It authorizes the Department of Ecology to issue National Pollution Discharge Elimination System (NPDES) permits to prospectors who are working outside of critical habitat and designated use areas.
- It requires a person who are applying for a Hydraulic Project Approval (HPA) to conduct motorized and gravity siphon aquatic mining to submit proof of compliance with the Clean Water Act (CWA) as part of a complete HPA application. This proof of CWA compliance will be in the form of an NPDES permit or written notice from Ecology that no NPDES permit is required.
- It adds a definition for motorized or gravity siphon mining to RCW 77.55.011 and amends the definition of small-scale prospecting and mining. [Chapter 77.55 Construction Projects in State Waters](#) is the law that gives WDFW the authority to issue HPAs.

Will this law impact the Gold and Fish Pamphlet?

- Once the law goes into effect on June 11, 2020 the department will remove the remaining motorized mining methods currently authorized in the Gold and Fish Pamphlet to comply with the new law.

What will happen to my HPA application if it is still pending when the new law takes effect?

- Beginning June 11, 2020, WDFW will not process any incomplete HPA applications for motorized mining that do not include proof of compliance with the Clean Water Act (CWA).

After the law goes into effect, what happens to the people who have HPAs? Are they legally able to work without an NPDES permit?

- No. If they are prospecting in critical salmonid habitat or a designated use area or using motorized prospecting equipment in a manner that impacts such an area, they must stop any motorized mining practices or gravity siphon aquatic mining. If this prospecting work is taking place in a non-critical or non-designated use habitat, they must stop working and apply for a NPDES permit from Ecology.

Will WDFW be modifying all its current HPA permits to include the requirements from the law?

- No. Although the law prohibits motorized mining and gravity siphon aquatic mining in critical and designated use habitat, the new law did not authorize WDFW to rescind or modify active HPAs issued prior to June 11, 2020.



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What is the role of the Department of Fish and Wildlife compared to Department of Ecology?

- WDFW issues Hydraulic Project Approvals and Ecology issues the National Pollution Discharge Elimination System Permits.

What authority does the new law give to Ecology?

- The law adds a new section to 90.48 RCW that governs Ecology's Water Pollution Control authority.

How will this law be enforced?

- Each agency will enforce its own laws, rules and permits.

What's the legal penalty?

- A person who violates the Hydraulic Code (Chapter 77.55 RCW) laws, rules or provisions of an HPA may be subject to penalties for a gross misdemeanor. Once WDFW completes its current rulemaking a person may also be subject to a stop work order, correction request, or a civil penalty of up to \$10,000 for each violation.