

Hydraulic Code Rule Update

Public comment period open through Oct. 31, 2022

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This presentation will cover:

WDFW Hydraulic Project Approval authority

Background – why we are updating the rule

Overview of the proposed rule

- Affects residential marine shoreline stabilization

Rule implementation

Public comments



Regulatory Authority

Chapter 77.55 RCW authorizes WDFW to issue permits to protect fish life and habitat

RCW 77.55.021: "...in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life."

RCW 77.55.011: "Hydraulic project means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state."



Chapter 220-660 WAC: Hydraulic Code Rules

Regulations for administration of the Hydraulic Project Approval (HPA) program

- The rules implement the law
- Criteria generally used by the department to review and condition HPA permits to protect fish life
- Procedures, permit provisions, steps for HPA appeals, and civil compliance
- WAC 220-660-370 addresses shoreline stabilization in saltwater areas



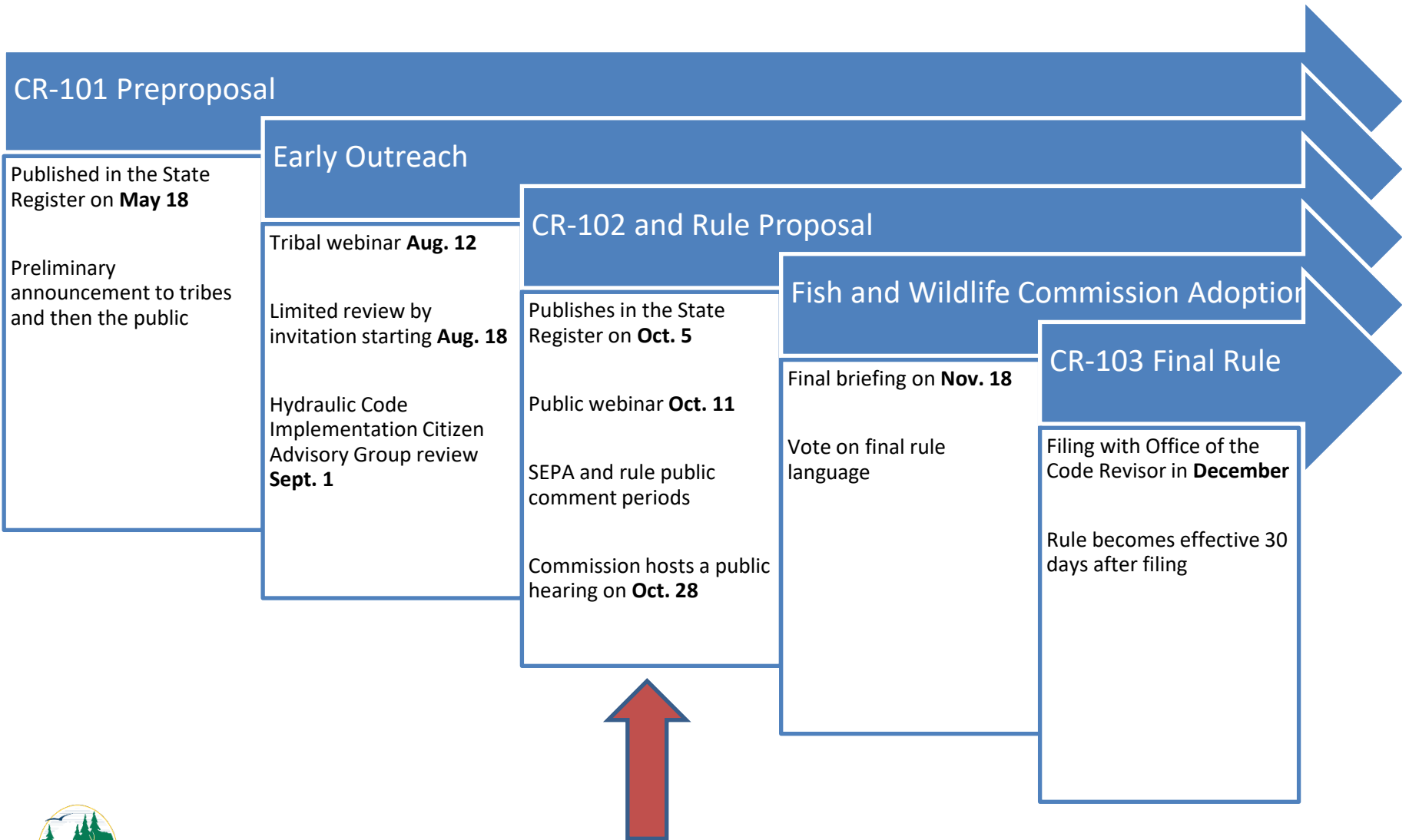
Rule Making

The process of amending or creating rules in the Washington Administrative Code (WAC)

- The intent is to make sure that the rules (WACs) align with the new laws (RCWs)
- WDFW is undergoing rule making for Chapter 220-660 to incorporate SSB 5273
- The current proposed changes apply specifically to marine shoreline stabilization projects



Rule Making Steps



SSB 5273

- Passed during the 2021 state legislature and went into effect July 25, 2021
- New statutory language is found in RCW 77.55.231(1)
- Language is similar to WAC 220-660-370
- Establishes new standards for the replacement of residential marine shoreline stabilization



Rule Proposal

Existing: WAC 220-660-370	New: RCW 77.55. 231	Proposed change to rule: WAC 220-660-370
Standards for new and waterward replacement of marine shoreline armoring	Standards for replacement residential marine bank protection and armoring	Add replacement residential marine shoreline stabilization standards into the rule.
Must use least impacting technically feasible alternative	Must use least impacting technically feasible alternative	The existing language in rule is applied to the replacement of residential marine shoreline stabilization.
Includes most-to-least preferred alternatives list	Includes most-to-least preferred alternatives list	The alternatives list in SSB 5273 is slightly different and is added into the rule. The existing list also remains.



Rule Proposal

Existing: WAC 220-660-370	New: RCW 77.55. 231	Proposed change to rule: WAC 220-660-370
Requires a site assessment, alternatives analysis and design rationale report prepared by a qualified professional	Requires a site assessment and alternatives analysis report when proposing hard armoring	The existing language in rule is applied to the replacement of residential marine shoreline stabilization.
Mandatory report components identified	No mandatory report components identified	Mandatory report components already in rule are applied to the replacement of residential marine shoreline stabilization.
WDFW may provide a report exemption based on scale and nature of the project	WDFW may provide a report exemption based on scale and nature of the project	Agency retains discretion to provide report exemptions. New language specifies the exemption of beach restoration and passive shoreline techniques from the report requirement.



Rule Proposal

Existing: WAC 220-660-370	New: RCW 77.55. 231	Proposed change to rule: WAC 220-660-370
"Feasible" is not defined	"Feasible" means available and capable of being done after taking into consideration cost, existing technology, and logistics, in light of overall project purposes	The definition from SSB 5273 is applied to all of section 370.
Emergency and expedited permits are not addressed	Emergency and expedited permits are not addressed	New language on how emergency and expedited shoreline stabilization permit applications will be processed.



Implementation

- Implementation of SSB 5273 began in July 2021.
- WDFW has worked to educate the public about the statutory requirements. Outreach will continue after rule adoption.
- Staff have been informed of the requirements. They may attend biweekly office hours meetings to discuss projects and ask questions.
- Minor costs for staff time for additional training.



Public Comments

The public comment period runs through Oct. 31, 2022

Comment themes:

- Support the rule
- Climate change as part of the required analysis
- Questions about how cost is considered for a project
- Ask for exemptions or exceptions that cannot be accommodated under the new statutes





Questions?

Margen Carlson – Habitat Program Director

Matt Curtis – Protection Division Manager

Theresa Nation – HPA Rule Making Coordinator



For Reference: Preferred alternatives comparison

New armor & waterward replacement (already in WAC)	Replacement residential armor (in RCW)
(i) Remove the bank protection structure	(i) Remove the structure and restore the beach
(ii) Control upland drainage	(ii) Remove the structure and install native vegetation
(iii) Protect, enhance, and replace native vegetation	(iii) Remove the structure and control upland drainage
(iv) Relocate improvements or structures*	(iv) Remove the structure and replace it with a soft structure constructed of natural materials, including bioengineering
(v) Construct a soft structure	(v) Remove the hard structure and construct upland retaining walls
(vi) Construct upland retaining walls	(vi) Remove the hard structure and replace it with a hard structure located landward of the existing structure, preferably at or above the ordinary high water line
(viii) Construct hard structure at the ordinary high water line	(vii) Remove the hard structure and replace it with hard shoreline structure in the same footprint as the existing structure



For Reference: Site assessment and alternatives analysis report components

- An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;
- Evidence of erosion and/or slope instability to warrant the stabilization work;
- Alternatives considered and the technical rationale specific to the bank protection technique proposed;
- An analysis of the benefits and impacts associated with the chosen protection method; and
- An explanation of the method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

