

# **Fish Passage and Screening Rules: RCW 77.57**

**FWC Habitat Committee, 8/10/23**

**Margen Carlson, Habitat Program Director**

**Gabrielle Stilwater, Fish Passage Rules Coordinator**

**Tom Jameson, Fish Passage Division Manager**



# Agenda

1. Welcome & Overview
2. Rule Process & Authorities
3. Actions Outside of Authority
4. Draft Proposal:  
Recommendations Under  
Current Authority
5. General Discussion
6. Next Steps

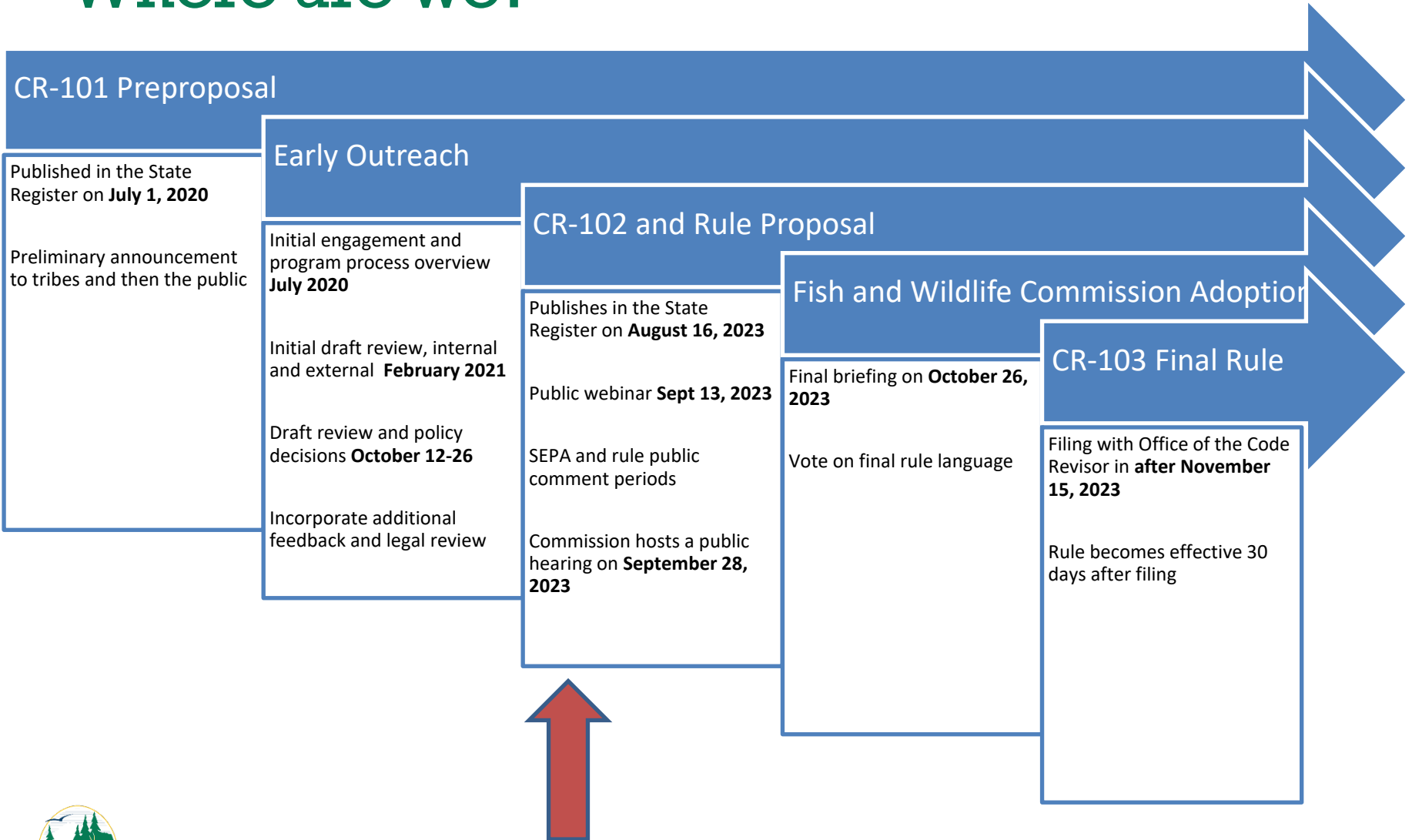


# Welcome & Introduction to Rule Making

- Orca Task Force: Recommendation #3
- Legislative Direction
  - ESHB 1109 (2019) – Operating budget
- Inclusion of Climate Adapted Water Crossings
  - Co-management agreement in 2019



# Rule Making Steps: Where are we?



# Regulatory Authority

Statutes for considerations:

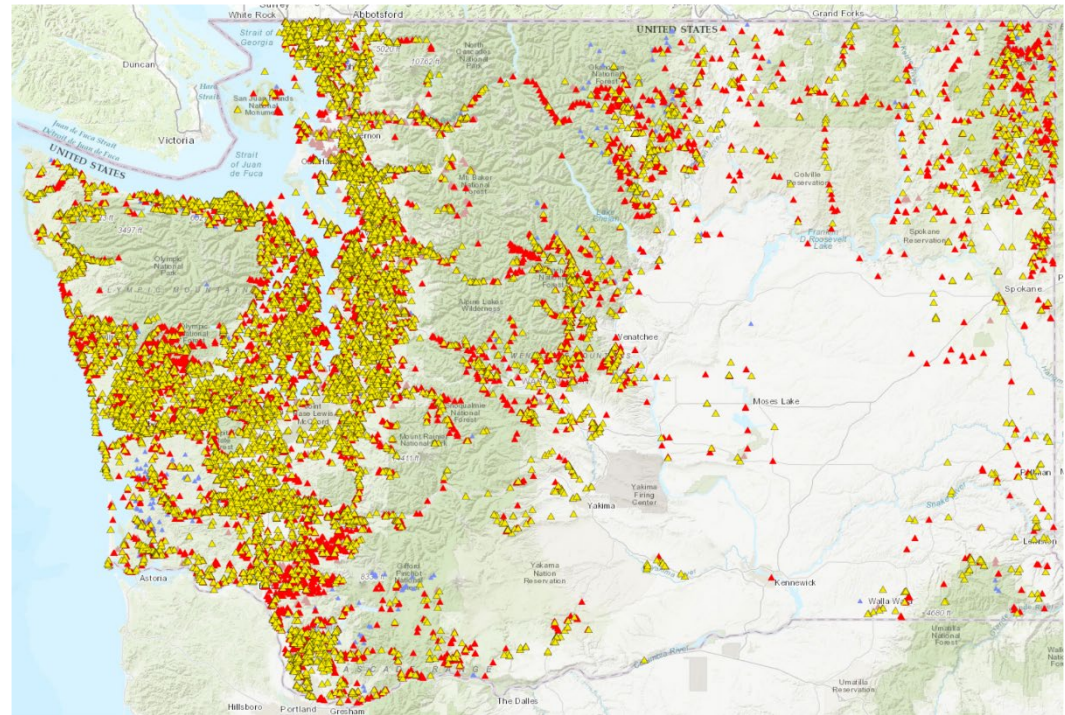
Statute	RCW Title
<b>RCW 77.57.010</b>	Fish guards required on diversion devices—Penalties, remedies for failure.
<b>RCW 77.57.030</b>	Fishways required in dams, obstructions—Penalties, remedies for failure.
<b>RCW 77.57.040</b>	Director may modify inadequate fishways and fish guards.
<b>RCW 77.57.060</b>	Director may modify inadequate fishways and protective devices.
<b>RCW 77.57.070</b>	Diversion of water—Screen, bypass required.



# Actions Outside of Rule Making

WDFW recognizes that addressing fish passage presents a complex network of issues that extend beyond this rule making effort.

1. Prioritization
2. Funding





# Draft Rule Proposal

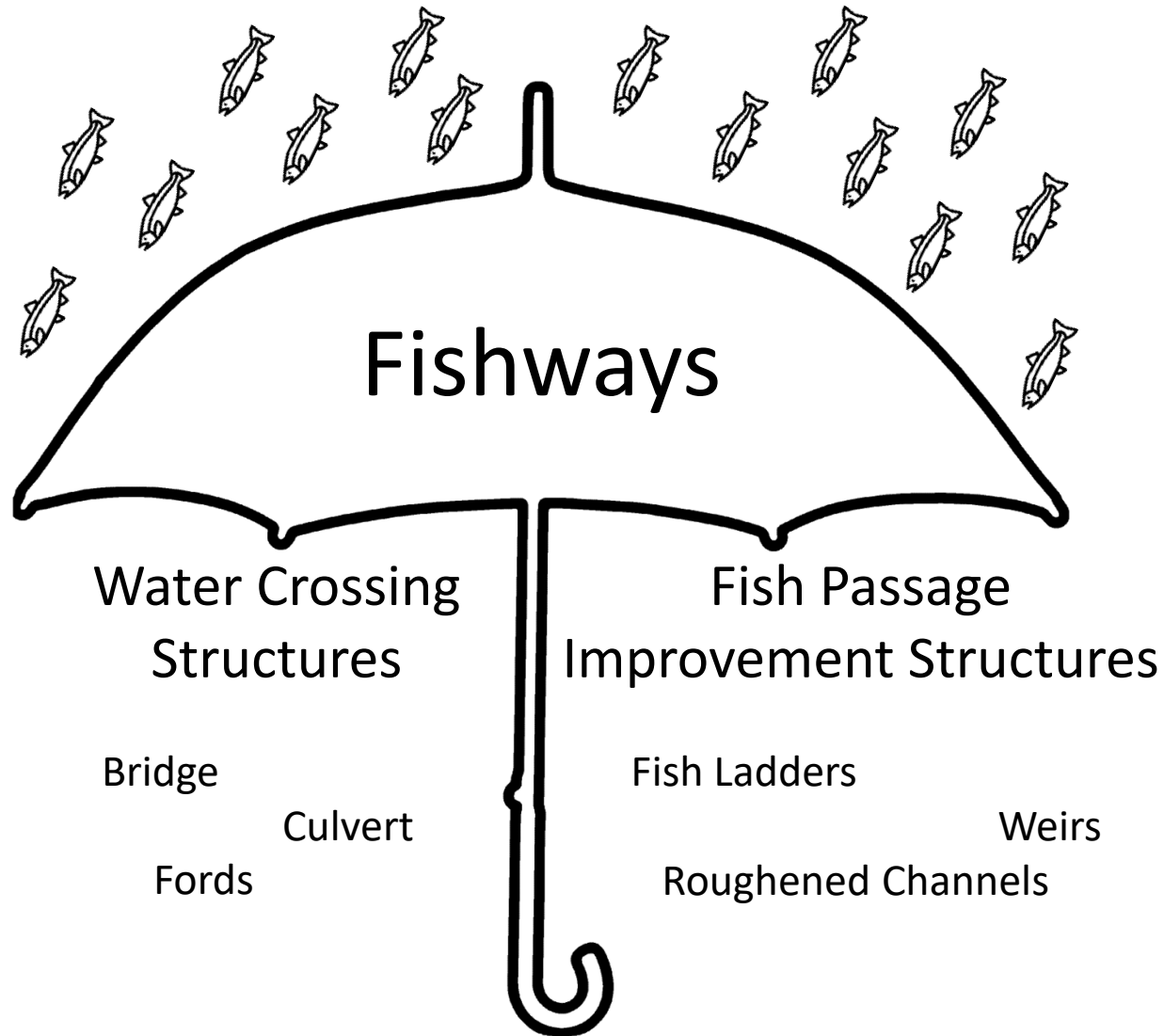
# Rule Proposal: Outline

1. Introduction & Instructions
2. Definitions
3. Applicability
4. Standards for Fishways and Water Diversions
  - A. Water crossings
    - i. Climate Adapted Water Crossings
  - B. Fish Passage Improvement structures
  - C. Water Diversions
5. Compliance
6. Appeals: Informal and Formal





# Rule Proposal: Definitions



# Rule Proposal: Applicability

## Applicability

### 1. Performance Standards

- A. Protecting all fish species at all life stages for water diversions and fishways.

### 2. Projects

- A. New and existing structures on lake, stream, or river.

### 3. Exemptions

- A. Man-made agricultural drainage facilities installed before May 20, 2003, repair/replacement is also exempt.
- B. Diversions installed before June 11, 1947 in system with only game fish.



# Rule Proposal: Standards

## Water Crossing Structures:

### 1. Fish Life Concerns:

Climate change language is added in this section.

### 2. Standards:

- No behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions
- Must consider 100-year peak flow and future bankfull width projections. If less than 5%, no additional consideration is required.
- Use of Water Crossing Design Guidelines
- Fish passage inventory and assessment guidance used to initiate passability assessment.



# Rule Proposal: Standards

## Water Crossing Structures:

### 3. Existing Structures:

- The “exemption” clause.
  - If water crossings exist and are legally installed before rule adoption, they aren’t required to upgrade to climate change requirements, so long as they function as originally intended.



# Rule Proposal: Standards

## Fishway Standards:

### 1. Fish Passage Improvement Structures:

#### A. Fish Life Concerns

- These structures are not preferred
- Permitted when an artificial barrier cannot be removed.

#### B. Standards:

- Sediment, flow, surface drop
- Adequate flow for expected fish species
- Can't be used to get around natural barriers, unless rare circumstances prevail.

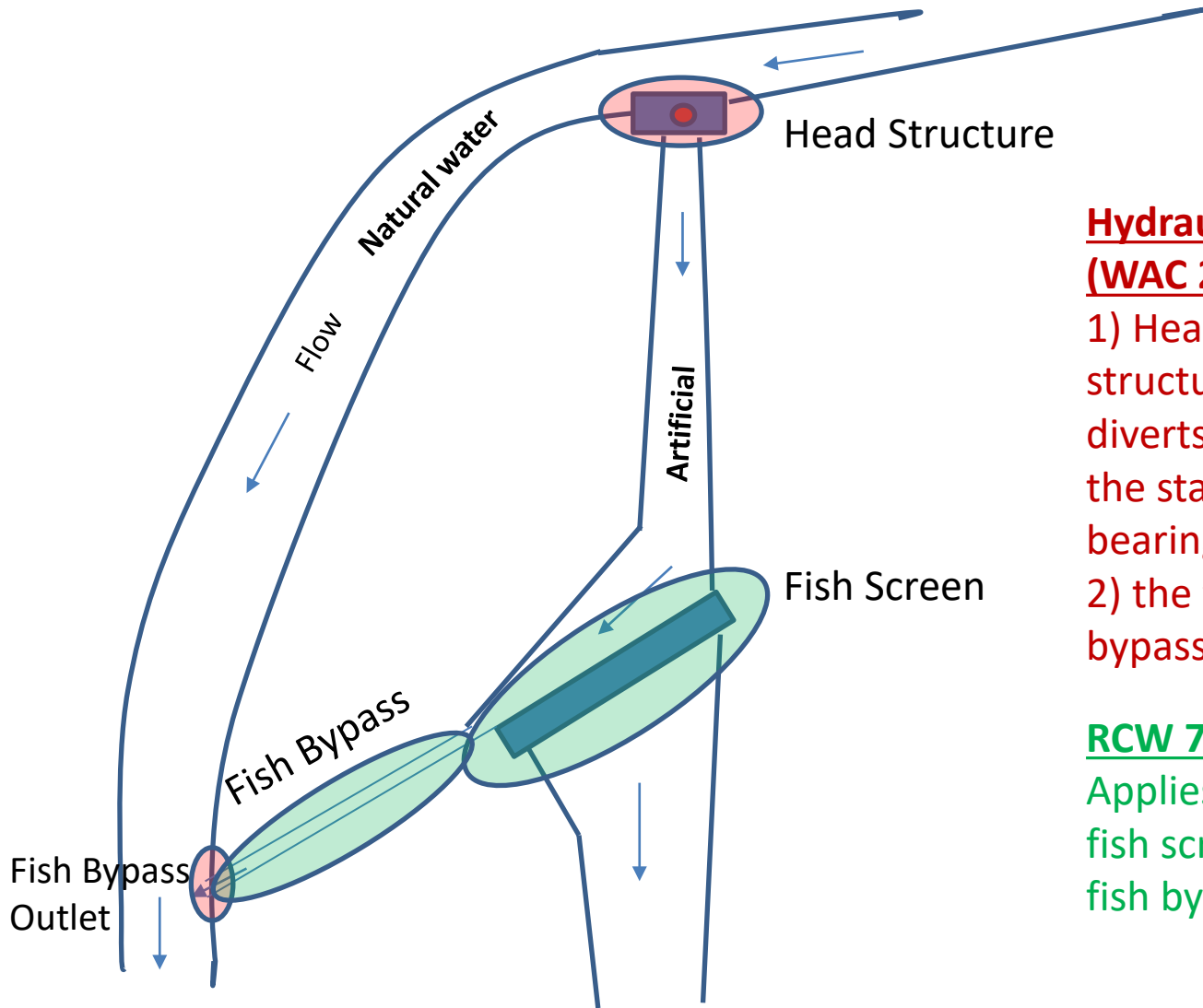


# Rule Proposal: Standards

## Water Diversion Standards:

1. Fish Life Concerns
2. Standards
  - A. Protection of Fish Life
    - Appropriate design at diversion and intake locations
  - B. Effective Screening
    - No apparent damage or accumulation of debris
3. Alignment with WAC 220-660-250





**Hydraulic code  
(WAC 220-660):**

1) Head structure that diverts waters of the state (fish bearing) and 2) the fish bypass outlet.

**RCW 77.57:**

Applies to the fish screen and fish bypass.



# Rule Proposal: Compliance

## 1. Voluntary Assistance:

- Steps for achieving voluntary compliance, such as HPA permit or agreement.

## 2. Technical Assistance:

- Support voluntary compliance with information, assistance, and site visits.
  - Correction Request or Notice to Comply can be issued during site visit if there's more than minor harm to fish or the owner has previous violations of 77.55 or 77.57.





# Rule Proposal: Compliance

## 3. Compliance Inspections:

- Can issue a correction request or notice to comply if there's harm to fish or a prior violation.
- Prioritize inspections based on fish resources and quality and quantity of fish habitat

## 4. Compliance Pathways:

- Correction Request
- Notice to Comply
- Additional Remedies:
  - Initiate additional civil or criminal enforcement action in circumstances where a structure owner or owner has failed to comply with a notice to comply



# Rule Proposal: Appeals

## 1. Informal & Formal Appeals

- Can appeal a notice to comply. Able to try resolution with WDFW before filing appeals.
- Time frame:
  - 30 days from date of notice to comply receipt.



# Questions?



# How to Comment

**Due: September 29, 2023**

**Online:** <https://publicinput.com/X7702#0>

**Email:** [FishPassage101@PublicInput.com](mailto:FishPassage101@PublicInput.com)

**Mail:**

Washington Dept. of Fish and Wildlife

Attn: Gabrielle Stilwater

P.O. Box 43200

Olympia, WA 98504-3200

**Voice Message:** 855-925-2801, project code 4535

**Fax:** (360) 902-2946

Attn: Gabrielle Stilwater

**Project Website:** For additional project information, please visit:

<https://wdfw.wa.gov/species-habitats/habitat-recovery/fish-passage/rule-making>

