

Communications Plan

ESHB 1579 Implementation

Background

On April 24, 2020 the Fish and Wildlife Commission adopted rule amendments needed to implement elements of Second Substitute House Bill 1579 (2SHB 1579)¹ - a bill passed by the legislature during the 2019 legislative session. This bill implements recommendations of the Southern Resident Orca Task Force (task force) related to increasing chinook abundance.

In order to implement 2SHB 1579, the rule amendments include the following:

- Adding a procedure for prospective applicants to request and receive a determination of whether a project proposed landward of the OHWL requires an HPA;
- Adding language clarifying that the department can disapprove a new application if the applicant has failed to pay a civil penalty, respond to a stop-work order, or respond to a Notice to Comply;
- Striking language from rule that references the repealed marine beach front protective bulkheads or rockwalls statute (RCW 77.55.141);
- Requiring saltwater bank protection location benchmarks to be recorded on plans as part of a complete HPA application;
- Clarifying the compliance sequence, which ranges from seeking voluntary compliance through technical assistance and correction requests to the use of increasingly stronger civil enforcement tools and adding the new compliance tools to the rules:
 - Stop Work Orders;
 - Notice to Comply;
 - Notice of Civil Penalty;
- Specifying a maximum civil penalty amount of \$10,000 per violation; and
- Providing a civil penalty schedule and specify signature authority for certain compliance tools, as directed by 2SHB 1579.

Communication Objectives

1. Provide information about the changes to the law, including new requirements, process, and timeline to staff and key stakeholders.
2. Ensure proper communication channels are identified and available for questions from media and stakeholders.

¹ Laws of 2019, Chapter 290; Codified as RCWs 77.55.400 through 77.55.470.

Audiences

- Media
- WDFW executive team
- WDFW Advisory Groups
 - Hydraulic Code Implementation Citizen Advisory Group
- WDFW Staff
 - Habitat program
 - Enforcement officers
 - Regional admins/directors
 - Customer service
- Washington Department of Ecology
- Washington Department of Natural Resources Aquatic Resources Division
- Washington State Parks and Recreation Commission
- Tribal governments
- U.S. Army Corps of Engineers (Seattle Office)
- National Marine Fisheries Service (Washington Offices)
- U.S. Fish and Wildlife Service (Washington Offices)
- Bulkhead Contractors
- Rule Making Stakeholders

Communication Schedule

Task	Deadline	Lead	Status
Web content on WDFW website (overview of new requirements, FAQs, process explanation, contacts)	May 15	Rachel Blomker	
Key messages shared with WDFW staff	May 15	Rachel Blomker & Randi Thurston & Pat Chapman	
Update example bulkhead plans on website		Engineers & Pat Chapman	
Outreach to bulkhead contractors about rule change	May 22	Pat Chapman	
Executive briefings	May 22	Margen Carlson	
Follow up with reporters who have covered Southern Resident Orca Task Force in the past	May 22	Rachel Blomker	
Send email to key stakeholders identified in audiences with brief explanation of new law and regulations and links to websites	May 22	Randi Thurston/Pat Chapman	
Blog post about new regulations	May 29	Rachel Blomker	
Email to legislators and conservation groups	May 29	Randi Thurston/Pat Chapman	
Rules go into effect	June ?		

Frequently asked questions

What sections of the rules changed?

- 220-660-050 Procedures
- 220-660-370 Bank protection in saltwater areas
- 220-660-460 Informal appeal of administrative actions
- 220-660-470 Formal appeal of administrative actions
- 220-660-480 Compliance with HPA Provisions.

When will the department start implementing the new rules?

- The new rules will become effective on June 12, 2020. On the effective date, the department will start requiring that saltwater bank protection location benchmarks be recorded on plans as part of a complete HPA application. The Environmental Specialists in the HPA Processing section will ensure benchmarks are shown on the plans. The department will also continue to implement the procedure for prospective applicants to request and receive a determination of whether a project proposed landward of the OHWL requires an HPA.
- The department will not use the civil compliance tools until we have a Civil Compliance program in place. This includes having dedicated trained staff to implement the civil enforcement authority.

How will enforcement of the Hydraulic Code occur in the interim?

- Staff should continue to comply with Policy and Procedure 5212 Monitoring Compliance with the State Hydraulic Code. Additional training on Policy and Procedure 5212 will be provided to Habitat and Enforcement staff.

What's the legal penalty?

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

Next Steps

- Develop and provide training to staff and saltwater bulkhead contractors on the benchmark requirement.
- Update example benchmark plans on the technical assistance webpage. The plans should indicate a length and compass bearing needs to be added to line from the benchmark to the waterward face of the bulkhead.
- Resend guidance from last year to remind staff that the marine beach front protective bulkheads or rockwalls statute (RCW 77.55.141) was rescinded.

- Resend guidance about the procedure for prospective applicants to request and receive a determination of whether a project proposed landward of the OHWL requires an HPA. Add to the HPA Manual.
- Send talking points to staff regarding the formation of a civil compliance program.
- Develop and provide training to staff on Policy and Procedure 5212.

DRAFT

Communications Plan

ESHB 1261 Implementation

Background

A new state law will go into effect June 11, 2020 that bans the use of motorized and gravity siphon aquatic mining equipment 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 and gravity siphon mining equipment only in those areas not designated as critical habitat or use area. 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 or a gravity siphon mining equipment 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 mining 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.

Communication Objectives

1. Provide information about the changes to the law, including new requirements, process, and timeline to key stakeholders.
2. Actively coordinate information between WDFW and Ecology.
3. Ensure proper communication channels are identified and available for questions from media and stakeholders.

Audiences

- Mineral prospecting clubs & organizations
 - Use existing email list for suction dredge rulemaking
- Mineral prospectors with current or pending HPAs
 - Use email and mailing list from current mineral prospecting HPA permittees

- Conservation organizations
 - Trout Unlimited
 - Cascadia Wildlands
 - Fish not Gold
- Media
 - Skagit Valley Herald
 - Wenatchee World
 - Yakima Herald
- WDFW executive team
- WDFW Advisory Groups
 - Hydraulic Code Implementation Citizen Advisory Group
 - Puget Sound Steelhead Advisory Group
- WDFW Staff
 - Habitat program
 - Enforcement officers
 - Regional admins/directors
 - Customer service
- Ecology executive team
- Ecology Staff
- State legislators (Those who signed onto the bill and the chairs/members of policy committees)
- Washington Department of Natural Resources Aquatic Resources Division
- Washington State Department of Archaeology and Historic Preservation
- Washington State Parks and Recreation Commission
- Tribal governments
- U.S. Forest Service
 - Most of prospecting occurs on forest service land.
- U.S. Army Corps of Engineers (Seattle Office)
- U.S. Bureau of Land Management (Washington Offices)
- National Marine Fisheries Service (Washington Offices)
- U.S. Fish and Wildlife Service (Washington Offices)
- National Park Service Geologic Resources Division

Communication Schedule

Task	Deadline	Lead	Status
Get clarifications from AG's office	April 15	Ecology	Complete
Form WDFW/Ecology implementation team	April 15	Ecology/WDFW	Complete
Respond to exec letter	April 20	Ecology	Complete
Web content on WDFW website (overview of new requirements, FAQs, process explanation, contacts)	May 15	Rachel Blomker (WDFW)	In progress
Web content on Ecology website (overview of new requirements, FAQs, process explanation, contacts)	May 31	Stacy Galleher (WDFW)	

Task	Deadline	Lead	Status
Key messages shared with WDFW staff with link to updated webpage	May 15	Randi Thurston & Pat Chapman	Preliminary FAQs sent earlier in April.
Outreach with new HPA applicants about upcoming law	Ongoing	Pat Chapman	Including notes on approved permits with info about the new law.
Executive briefings	May 15	Margen Carlson (WDFW) Stacy Galleher (Ecology)	WDFW Fish and Wildlife Commission Habitat Committee received briefing on 5/1 EMT briefing TBD
Follow up with reporters who have covered suction dredging in the past.	May 22	Rachel Blomker (WDFW) Stacy Galleher (Ecology)	
Send email to key stakeholders identified in audiences with brief explanation of new law	May 22	Randi Thurston/Pat Chapman (WDFW) Stacy Galleher (Ecology)	
Draft letters to mineral prospecting clubs and people with current or pending HPAs	May 22	Nate Lubliner (Ecology)	
Mail letter	May 29	Nate Lubliner (Ecology)	
Blog post about new regulations	May 29	Rachel Blomker (WDFW) Stacy Galleher (Ecology)	
Email to legislators and conservation groups	May 29	Randi Thurston/Pat Chapman (WDFW)	
Update Gold and Fish pamphlet to remove all references to motorized equipment	June 10	Pat Chapman (WDFW)	
Post revised Gold and Fish pamphlet to website	June 10	Rachel Blomker (WDFW)	
Law goes into effect	June 11		

Frequently asked questions

What are the changes to the law?

- It prohibits the use of all motorized and gravity siphon aquatic mining equipment 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.
- 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 and are returning effluent from mining activity back to surface or ground waters.

- It requires a person who applies for a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife to engage in mineral prospecting or mining using motorized or gravity siphon equipment, 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 methods of mineral prospecting and mining from the Gold and Fish Pamphlet. Only small scale prospecting and mining methods will be authorized in the Pamphlet.

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 new or incomplete HPA applications for motorized and gravity siphon prospecting and 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 or mining in critical salmonid habitat or a designated use 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.

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.

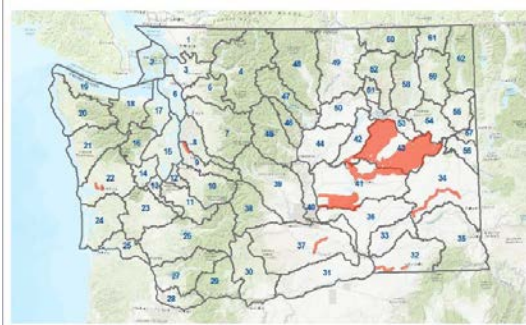
How does this law compare to other states?

- The new Washington law has the strictest regulations among west coast states.
- While Oregon banned suction dredging in some areas, they still allow other motorized methods such as high-banking.

- In California, there is a moratorium on suction dredging pending the issuance of a statewide water quality permit, and other motorized methods are still allowed.

Where can I see critical habitat areas?

- Ecology has maps of each watershed on their [website](#). The red shaded areas are locations where suction dredge mining is allowed. See the example below.



How will this law be enforced?

- Each agency will enforce its own laws, rules and permits. However, if staff from one agency suspect a violation another agency's authority, they can send the information about the incident to the other agency.

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 correction request, stop work order, notice of correction, or a civil penalty of up to \$10,000 for each violation.