

SHB 1085 Rule Making Regarding Plastics Reduction

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Background



Regulatory Framework

Revised Code of Washington

- Known as the RCWs
- State laws (statutes)
- Passed by the state legislature (bills) or by ballot initiative

Washington Administrative Code

- Known as the WACs or rules
- Rules detail the administration of the laws
- Written and adopted by state agencies through the “rule making” process



Regulatory Authority

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

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."

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."



Chapter 220-660 WAC: Hydraulic Code Rules

Establish regulations for administration of the Hydraulic Project Approval (HPA) program

- Definitions
- Administrative procedures for obtaining an HPA
- Steps for HPA appeals and civil compliance
- Criteria generally used by the department to review and condition hydraulic projects to protect fish life





SHB 1085

Substitute House Bill 1085 was passed by the state legislature in 2023

- Bill intent was to reduce unnecessary plastic waste and sources of plastic pollution in the environment
- Bill section 3 amended Chapter 70A.245 RCW (Environmental Health and Safety-Recycling, Waste, and Litter Reduction)
 - Administered by the Dept. of Ecology



SHB 1085

Section 3

Prohibits the sale, distribution, or installation of overwater structures, blocks or floats containing polystyrene foam that is not fully enclosed and contained in a shell made of:

- plastic with a minimum thickness of 0.15 inches
- concrete
- aluminum
- steel

Effective January 1, 2024



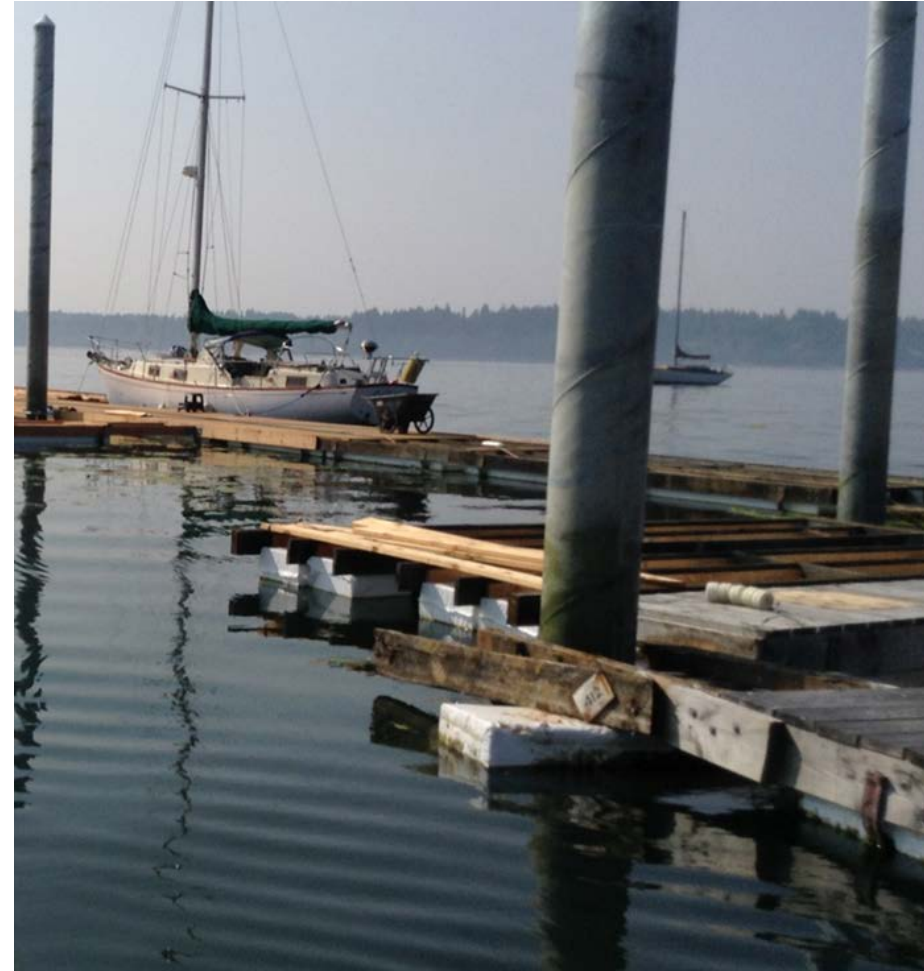
Who is in charge?

New law “belongs to” Ecology

- Statutory authority from RCW 70A.245
- Ecology responsible for the administration and enforcement

WDFW has already been regulating the use of floats for years in HPA permits (WAC 220-660)

- Statutory authority from RCW 77.55, including administration and enforcement





Rule Making



Rule Making Objectives

WDFW is undergoing rule making for Chapter 220-660 WAC to create consistency with the new law in RCW 70A.245.

Differences in language between the new law and the Hydraulic Code Rules could be confusing even though both regulate floats.

Opportunity to create uniform language for both the freshwater and saltwater HPA rules regarding flotation.





Rule Proposal

Freshwater: 220-660-140(3)(e)

Fully enclose and contain flotation for the structure in a shell (tub) ~~or 20 — 25 mm polyethylene or polyurethane wrap~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~or wrap~~ must prevent breakup or loss of the flotation material into the water. The shell ~~or wrap~~ must not be readily subject to damage by ultraviolet radiation and abrasion.





Rule Proposal

Saltwater(structure design): 220-660-380(5)(h)

Flotation for the structure must be fully enclosed and contain flotation for the structure in a shell (tub). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~or wrap~~ must prevent breakup or loss of the flotation material into the water. The shell ~~or wrap~~ must not be readily subject to damage by ultraviolet radiation and abrasion.





Rule Proposal

Saltwater (replacement projects): 220-660-380(9)(f)

Flotation for the structure must be fully enclosed and contain flotation for the structure in a shell (tub). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~or wrap~~ must prevent breakup or loss of the flotation material into the water. The shell ~~or wrap~~ must not be readily subject to damage by ultraviolet radiation and abrasion.





Rule Making Timeline



Why expedited rule making?

- Standard rule making can take a year or more. Expedited rule making procedures will allow us to complete this minor round of rule making in approximately 5 months.
- The “foam docks and blocks” law takes effect on January 1, 2024. HPA permitting will not be directly impacted, but getting the language aligned quickly may help avoid confusion.
- The rule proposal qualifies for expedited rule making because, “The content of the proposed rules is explicitly and specifically dictated by statute” RCW 34.05.353(1)(d).



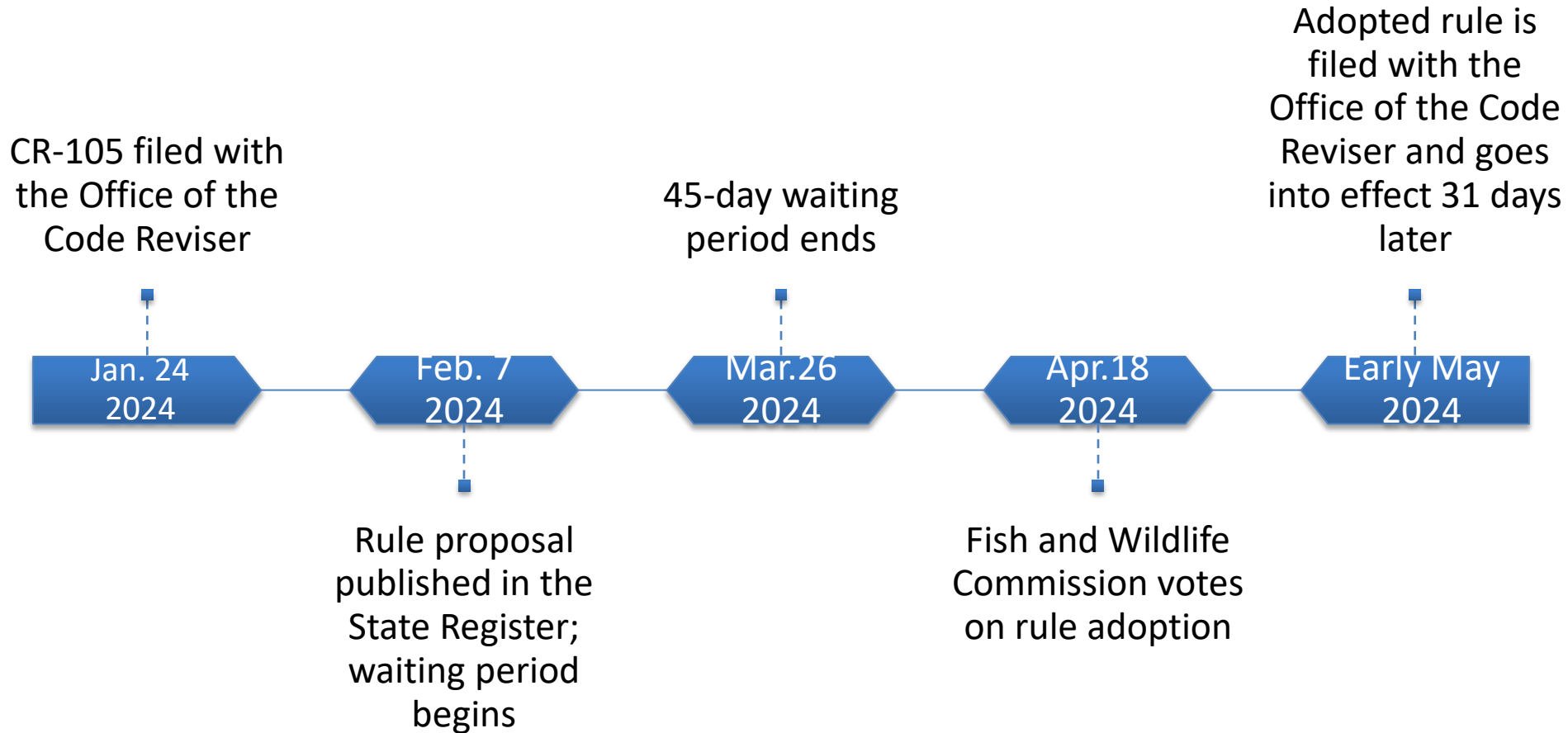


Expedited rule steps

1. File a notice and proposed rule with the Office of the Code Reviser (OCR) for publication in the State Register.
2. APA requirements waived: SBEIS, significant legislative rule analysis, and public hearing.
3. A 45-day waiting period is initiated the day the rule proposal is published in the State Register. Any person may file a written objection to expedited rule making during this time.
4. If no objection is filed, the rule may be adopted by the FWC without any further notice.
5. An order adopting the rule is then filed with OCR. The new rule becomes effective 31 days after filing.



Expedited rule timeline



Questions?

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