

Proposed Revision of the Hydraulic Code Rules

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Why update our rules?

A lot has changed since 1994

- **Changes to the statute**
 - 15 new sections added to 77.55 RCW
- **Changes to procedural and administrative requirements**
 - A new HPA type
 - New online application system
 - Simpler permitting of certain types of projects
- **New science and technology**
 - White papers

Presentation Objectives

- Background
- Timeline
- HPA Overview
- Commission Briefing
- Proposed Changes



Background

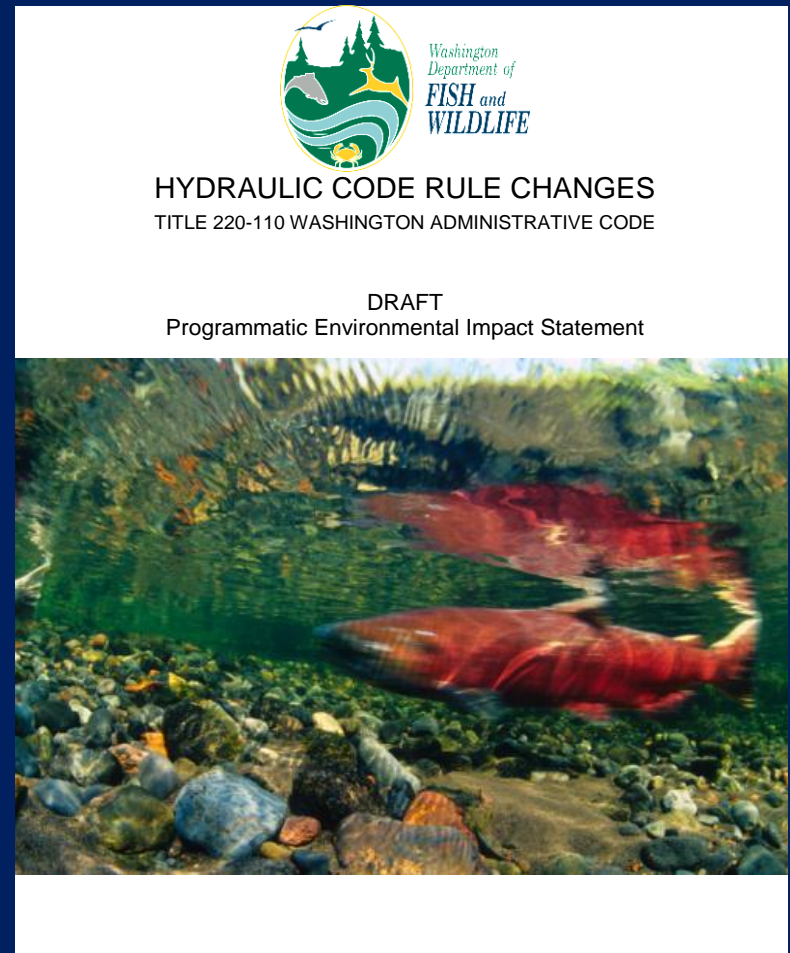
Began in 2006

- Stakeholder group meetings
- Individual stakeholder meetings

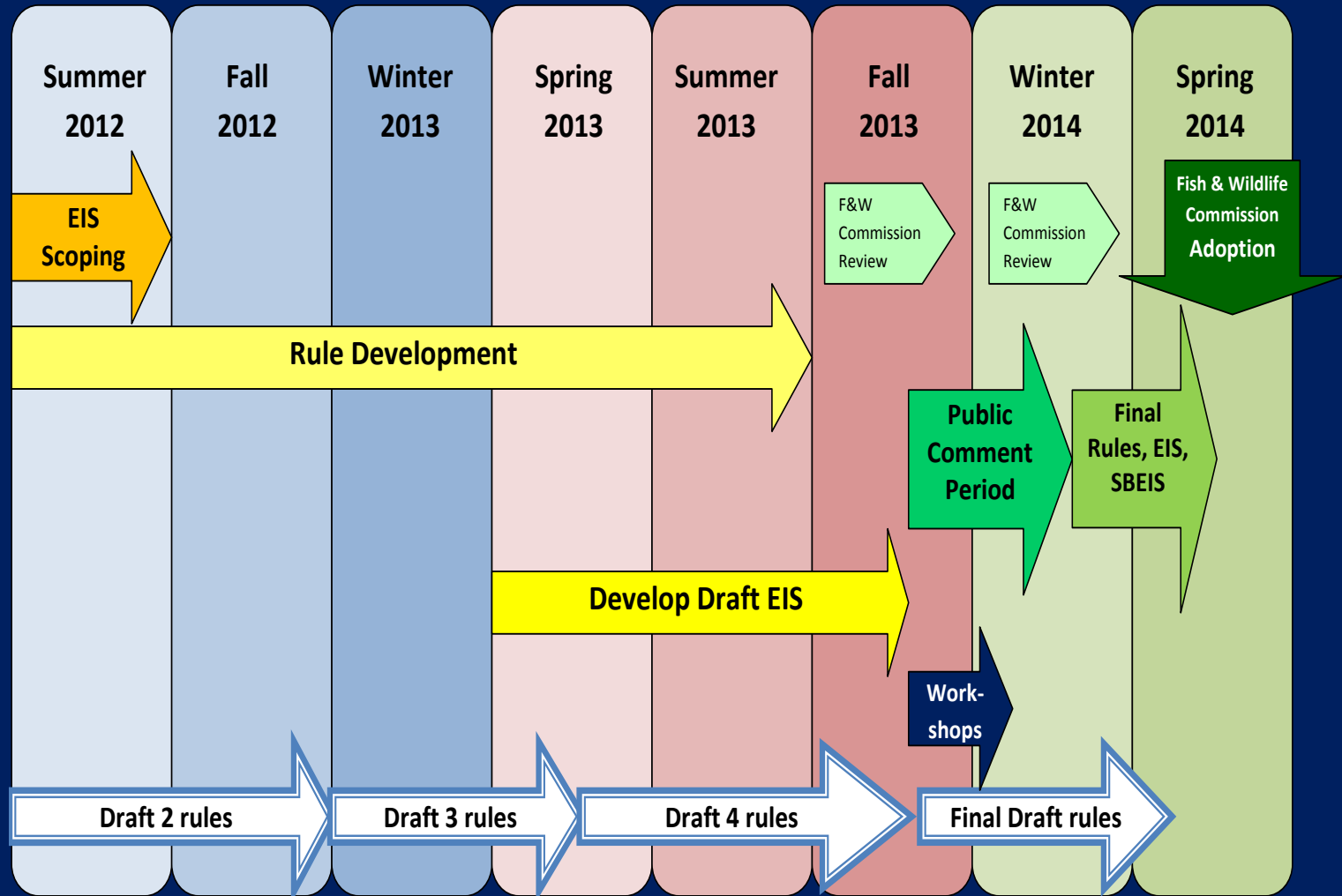
Four draft versions

Draft PEIS

- 45-day comment period
- Seven public meetings



Timeline





HPA Overview

Information is subject to changes and amendments over time.

October 4-5, 2013, WDFW
Commission Meeting Presentation

WDFW Authority for HPAs

- Chapter 77.55 RCW –
Construction projects in
state waters
 - Established in 1943
- Chapter 220-110 WAC –
Hydraulic code rules



Basis of HPAs

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."

What is the Purpose of an HPA?

RCW 77.55.021: “...for the protection of fish life”



What Is Fish Life?

WAC 220-110-020

"Fish life means all fish species, including but not limited to food fish, shellfish, game fish, and other non-classified fish species and all stages of development of those species"



Do All Hydraulic Projects Require an HPA?

No

- Driving across established ford
- Removal of derelict fishing gear
- Spartina control
- Private sector commercial aquaculture
- Others



Types of HPAs

HPA Type	Written Application	SEPA Required	Maximum Process Time	Valid For
Standard	Yes	Yes	45 days	Up to 5 years
Chronic Danger	Yes	No	45 days	Up to 5 years
Imminent Danger	Yes	No	15 days	Up to 60 days
Expedited	Yes	No	15 days	Up to 60 days
Emergency	No	No	0 days/30 days	Up to 5 years
Pamphlet	No	N/A	N/A	Indefinite

Isn't WDFW Limited to Regulating Work Below the Ordinary High Water Line?

No

- Hydraulic project definition – anything that will *"...use, divert, obstruct, or change the natural flow or bed..."*
- Definition of "Bed" in RCW – *"the land below the ordinary high water lines of state waters"*

Are There Limits to the Conditions of an HPA?

Yes

RCW 77.55.231

"Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project."

Can WDFW Deny an HPA?

Yes, If we are unable to mitigate impacts to fish life

- RCW 77.55.021: *"...shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life"*
- RCW 77.55.021: *"Approval of a permit may not be unreasonably withheld or unreasonably conditioned"*

Are There Projects WDFW Cannot Deny?

Yes, WDFW cannot deny the following HPAs:

- Emergencies
- Imminent danger
- Expedited
- Chronic danger
- Pamphlets



Proposed Changes to the Rules

New layout

- Description
- Fish life concerns
- Design requirements
- Construction requirements

New Sections

- 13 new sections

Revised Sections

- 7 sections have significant changes



Briefing the Commission

Tentative schedule

- Cover 3-4 sections per meeting
- Request adoption in June

Briefing material

- Section title
- Background
- Summary of new section or proposed changes
- Public comments
- Proposed rule language
- Existing language



220-110-050 Procedures

(Currently 220-110-030 Procedures)

Six types of HPAs

- Standard
- Chronic danger
- Emergency
- Imminent danger
- Expedited
- Emergency

Special types of standard HPAs

- Fish habitat enhancement project
- General
- Multi-site
- Simple



220-110-470 Compliance

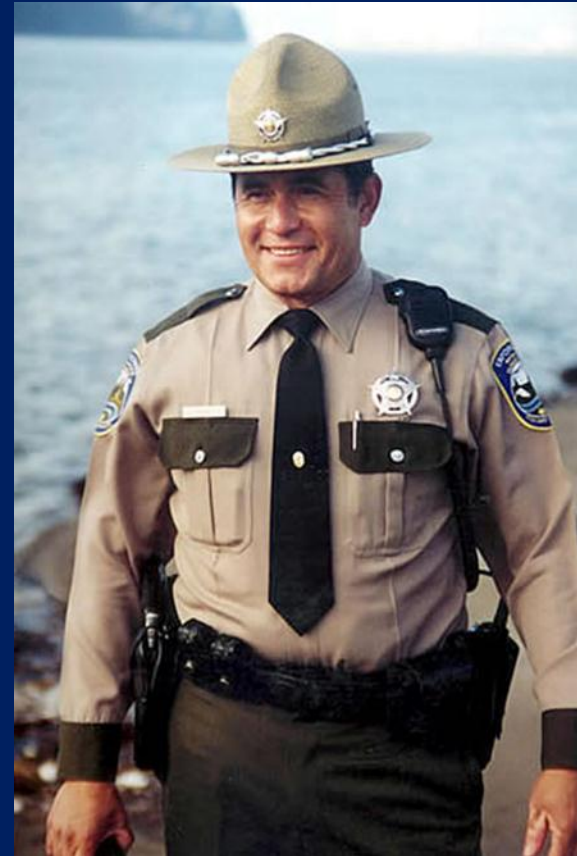
(Currently 220-110-360 Penalties)

Civil Enforcement

- Opportunity to voluntarily correct a non-compliant condition
- Procedures for a notice of correction
- Procedures for issuing a civil penalty

Criminal Enforcement

- Still an option



November Meeting

Three New Sections

- **WAC 220-110-080** - Mitigation Requirements for hydraulic projects
- **WAC 220-110-110** - Authorized work times in freshwater
- **WAC 220-110-120** - Freshwater habitats of special concern



Contact Information

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