

## Summary Sheet

---

**Meeting dates:** October 5, 2018

**Agenda item:** Briefing - Suction Dredging Rulemaking

**Presenter(s):** Randi Thurston, Habitat Program  
Pat Chapman, Habitat Program  
Teresa Scott, Habitat Program

---

### Background summary:

In April, the Fish and Wildlife Commission directed staff to start rulemaking to remove suction dredging as an authorized activity in the Gold and Fish Pamphlet and instead, require written HPAs for this activity.

The rulemaking has three main objectives:

- Develop an individual HPA application method for suction dredging that is streamlined;
- Develop application and reporting methods to enable WDFW to determine:
  - the number of prospectors engaged in suction dredging and
  - where and how much suction dredging occurs; and
- Identify methods to prevent the spread of aquatic invasive species through the movement of suction dredging equipment into and around the state.

WDFW filed a preproposal statement of inquiry (CR-101) with the Washington Code Revisers Office in May.

Staff will brief the Commission on the following:

- Rulemaking objectives
- Criteria for evaluating recommended changes to the rules
- Outreach efforts and what we heard
- Staff proposal to meet the rulemaking objectives
- Rulemaking timeline

---

**Staff recommendation:** None – Briefing Only

---

### Policy issue(s) and expected outcome:

The Habitat Program is committed to increasing our compliance inspections and conducting implementation and effectiveness monitoring of suction dredging. This effort along with required reporting will help us determine the location, scope and scale of suction dredging in the state and if there are unaddressed impacts to fish life.

---

**Fiscal impacts of agency implementation:** N/A

---

---

**Public involvement process used and what you learned:**

Staff conducted four public meetings, three tribal meeting, two stakeholder workshops and one inter-agency meeting. Many prospectors think either the current rules are too onerous already or they are fine as is. They do not think there is a valid reason to require standard HPAs for suction dredging. Some tribes, the environmental community and seven of the twelve HPA Advisory Committee members do not think the scope of the current rulemaking goes far enough to protect fish species listed as threatened or endangered under the Federal Endangered Species Act. In general, participants agree that WDFW needs to increase enforcement.

As of September 28, 2018, WDFW had received 112 emails in the HPA Rules Mailbox. Most expressed support for the position of the tribes and environmental community. A summary of the comments is in your briefing materials. Also included are a summary of the four public meeting. The workshop participants are reviewing the two meeting summaries so these are not yet available.

---

**Action requested and/or proposed next steps:**

Staff will file the noticed of Proposed Rule Making (CR-102 form) in November. The proposed changes to the rules will reflect the current objectives of the rulemaking. The rulemaking process will comply with the Administrative Procedures and State Environmental Policy Acts.

---

**Draft motion language:** None – Briefing Only

---

**Post decision communications plan:** N/A



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (August 2017)**  
**(Implements RCW 34.05.310)**  
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: May 08, 2018

TIME: 1:41 PM

WSR 18-11-037

**Agency:** Department of Fish and Wildlife (WDFW)

**Subject of possible rule making:**

On April 14, 2018, the Fish and Wildlife Commission directed WDFW to initiate a rule making to require individual Hydraulic Project Approvals (HPAs) for all suction dredge mineral prospecting. To accomplish this requirement, WDFW plans to amend two sections and create a new section under chapter 220-660 WAC. Section 220-660-300 WAC regulates common mineral prospecting methods authorized under WDFW's "Gold and Fish" pamphlet. WDFW's goal in this rule making is to modify existing rules and create new rules that will permit motorized and non-motorized suction dredging activities in the state through individual HPAs while providing protection for fish life.

WDFW's objectives in this rule making include the following:

- Develop an individual HPA application method for suction dredging that is streamlined;
- Develop application and reporting methods to enable WDFW to determine:
  - the number of prospectors engaged in suction dredging and
  - where and how much suction dredging occurs; and
- Identify methods to prevent the spread of aquatic invasive species through the movement of suction dredging equipment into and around the state.

WDFW will develop rules in cooperation with the recreational mining community and other interested parties.

The rule making as proposed would amend sections 220-660-030 WAC (Definitions) and 220-660-300 WAC (Mineral prospecting) and create a new section under Chapter 220-660 WAC.

**Statutes authorizing the agency to adopt rules on this subject:** RCWs 77.04.012, 77.12.047, 77.55.021, 77.55.091 and 34.05.328. .

**Reasons why rules on this subject may be needed and what they might accomplish:**

WDFW proposes changes to sections under Chapter 220-660 WAC to achieve the following outcomes:

- Modify existing rules or create new rules that will permit motorized and non-motorized suction dredging activities in the state through individual HPAs while providing protection for fish life.
- Develop an individual HPA application method for suction dredging that is streamlined.
- Develop application and reporting methods to enable WDFW to determine the number of prospectors engaged in suction dredging and where and how much suction dredging occurs.
- Identify methods to prevent the spread of aquatic invasive species through the movement of mineral prospecting equipment around the state.
- Make other essential changes to WACs 220-660-030 and 220-660-300 that clarify language, intent or accommodate administrative changes.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:**

WDFW is the sole authority regulating hydraulic projects under Chapter 77.55 RCW, and the only state agency that regulates hydraulic projects solely for the protection of all fish life. The U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Natural Resources, Washington State Parks, and local governments also regulate certain aspects of hydraulic projects under their own authorities. National Marine Fisheries Service and U.S. Fish and Wildlife Service regulate the "take" of threatened or endangered species listed under the federal Endangered Species Act. Federal land managers, including U.S. Forest Service, National Parks Service, and Bureau of Land Management, regulate activities occurring on federal lands and have an interest in state hydraulic code regulations. Tribes regulate fisheries and certain aspects of construction projects on tribal lands. Each of these entities will be invited to comment on draft rules during the rulemaking process. Their comments and concerns will be carefully considered in rule change decisions. In addition to the

public comment and hearing process, WDFW is coordinating with federal and state agencies having an identified interest in rules in WAC 220-660-300.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

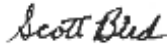
WDFW determined that the standard process for the adoption of administrative rules under the Administrative Procedures Act (Chapter 34.05 RCW) and the provisions for Significant Legislative Rules (RCW 34.05.328) is the appropriate process for Hydraulic Code rule making. Negotiated rule making is not practicable because it would increase the time needed and the cost of rule-making and provide little or no additional benefit while pilot rule making is not applicable because the proposed amendments apply statewide.

Consequently, WDFW will hold public meetings to solicit input from interested parties about the content of the proposed rule amendments prior to filing a notice of proposed rule making. Information about the status of the HPA rule making process can be found on the HPA rulemaking website at <http://wdfw.wa.gov/licensing/hpa/rulemaking/>. When the proposal (CR-102) for the rulemaking is filed, the department will announce how and when interested parties can submit public comment on proposed rules, and announce when and where the Fish and Wildlife Commission will hold a public hearing on the rule proposals via the department website. The website will also provide information about dates when the Fish and Wildlife Commission will receive briefings on the proposed rules.

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

	(If necessary)
Name: Randi Thurston	Name:
Address: PO Box 43234 Olympia, WA 98504-3234	Address:
Phone: (360) 902-2602	Phone:
Fax: (360) 902-2946	Fax:
TTY: (800) 833-6388	TTY:
Email: HPARules@dfw.wa.gov	Email:
Web site: <a href="http://WDFW.wa.gov">http://WDFW.wa.gov</a>	Web site:
Other: HPA rulemaking website: <a href="http://wdfw.wa.gov/licensing/hpa/rulemaking/">http://wdfw.wa.gov/licensing/hpa/rulemaking/</a>	Other:

Additional comments:

<b>Date:</b> May 8, 2018	<b>Signature:</b> 
<b>Name:</b> Scott Bird	
<b>Title:</b> Rules Coordinator	