



Washington
Department of
**FISH and
WILDLIFE**

Implementation Plan

Hydraulic Code Rules Chapter 220-660 WAC Incorporating Elements of SSB 5273 into HPA Rules

WAC 220-660-370 Bank protection in saltwater areas [Renamed]

Washington Department of Fish and Wildlife
Habitat Program
Protection Division
Olympia, Washington

November 14, 2022

Mission
of the
Washington Department of Fish and Wildlife

*To preserve, protect and perpetuate fish, wildlife, and ecosystems
while providing sustainable fish and wildlife
recreational and commercial opportunities.*

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Purpose

The Washington Department of Fish and Wildlife (WDFW) proposed changes to Chapter 220-660 WAC – Hydraulic Code Rules. We are providing this implementation plan to meet department and Administrative Procedure Act requirements (RCW 34.05.328) related to rule adoption.

Introduction

On November 18, 2022, the Fish and Wildlife Commission will adopt the proposed changes to Chapter 220-660 WAC - Hydraulic Code Rules. These changes are necessary to implement elements of SSB 5372 - a bill passed by the legislature during the 2021 legislative session. SSB 5273 is codified in RCW [77.55.231](#) and applies to the issuance of HPA permits.

SSB 5273 requires that anyone desiring to replace residential marine shoreline stabilization or armoring must use the least impacting technically feasible bank protection alternative for the protection of fish life. The requirement must be met by preparing a site assessment and alternatives analysis report (report) before proposing a hard armoring technique.

The purpose of this rule implementation plan is to inform the public how WDFW intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance of the rule.
- Evaluate the rule.
- Train and inform department staff and interested stakeholders about the amended rule.

Also included in this plan is information about:

- Supporting documentation that may need to be written or revised because of the amended rule.
- Other resources where more information about the rule is available.
- Contact information for a department employee who can answer questions about the rule implementation.

Implementation and Enforcement

WDFW will implement the amended Hydraulic Code Rules on the date they become effective. Regulatory Services Section staff will implement any procedural changes and biologists will include the technical provisions that reflect the amendments to the Hydraulic Code Rules in new permits they issue or revise. The new requirement to submit a site assessment and alternatives analysis report will be confirmed before a permit is processed in most cases, and is therefore generally not subject to violation.

Since hydraulic code laws and regulations are complicated, WDFW has a responsibility to help the regulated community understand how to comply. We use a range of tools as our roles

move from educator to enforcer. WDFW will improve compliance with the Hydraulic Code Rules through increased public education and technical assistance. The Compliance Division addresses noncompliance cases, although that will not be relevant to this rule proposal for most permit holders. If a site assessment and alternatives analysis report is incomplete or inaccurate, an HPA may be delayed or denied until an acceptable report is provided. WDFW is responsible for determining that a project proposes the least impacting technically feasible alternative before issuing an HPA permit. In the case of emergency or expedited permits that are issued before a report is submitted, failure to submit the report within 90 days of permit issuance may result in noncompliance. When voluntary compliance is not successful, Compliance Division staff will seek authorization from management to take appropriate administrative enforcement. The department will employ a continuum of increasingly stringent enforcement tools as our role moves from technical assistance to enforcer. This continuum runs from correction requests advising people of areas of noncompliance, to administrative enforcement actions and, when appropriate, criminal prosecution.

Informing and Educating Persons Affected by the Rule

WDFW communicated with the public, other natural resource agencies and tribes during rulemaking. The codified rule incorporating all revisions will be posted on WDFW rules webpage when the revised rule is published by the Office of the Code Reviser. WDFW will inform affected persons about the Hydraulic Code Rule changes by the following methods:

- Washington State Register
- News Release
- Agency Website
- Direct email to interested tribes, agencies, and stakeholders.

The department's habitat biologists and frontline staff will continue to provide technical assistance and answer questions. The department will also continue to leverage outreach opportunities such as the Shore Friendly program and during public Marine Shoreline Design Guidelines training.

Promoting and Assisting Voluntary Compliance

WDFW will continue to work with stakeholders to encourage voluntary compliance with the rule. The main requirement of the new rule, submission of a site assessment and alternatives analysis report, is a mandatory step in applying for an HPA. No standard HPA will be issued without it unless it has been specifically exempted. Emergency and expedited HPA permits may be issued before the report is submitted, but the report must still be submitted within 90 in order to be compliant with the permit.

The report requirement will appear as a provision in emergency or expedited HPA permits issued for shoreline stabilization. WDFW has an established technical assistance program that promotes and assists with voluntary compliance with the Hydraulic Code Rules. The Compliance Division will also assist with promoting voluntary compliance.

Evaluating the Rule

The purpose of the rule is to implement SSB 5273. WDFW will conduct internal monitoring to ensure that HPA applications for marine shoreline stabilization are processed in accordance with the Hydraulic Code Rules. We will also continue to interact with the regulated community and gather feedback about the permit application process so that we can make adjustments as necessary to ensure that reports are accurate and complete when first submitted.

Training and Informing WDFW Staff

Rulemaking requires outreach to the department's habitat biologists, administration, compliance staff and others involved with Hydraulic Project Approvals. This will be done through meetings, email communication, written guidance, and one-on-one communication. Details of the statute (Chapter 77.55 RCW) and rules (Chapter 220-660 WAC) will be updated in HPA training materials for staff. Training will focus on changes to the permit process, evaluating site assessment and alternatives analysis reports and evaluating projects for the least impacting technically feasible alternative.

Implementation Actions:

- Identify and engage employees who interact with the regulated community as part of their daily work.
- Brief frontline employees about the rule amendments and available resources, and give them educational resources to share with applicants.
- Continue to hold biweekly office hours to discuss implementation and project review until implementation is complete.

List of Supporting Documents that May Need to be Revised

Documents that may need to be revised or updated include:

- HPA Manual
- Regulatory Services Section Desk Manuals

For Further Information:

For more information about the Hydraulic Code Rule amendments see:

<https://wdfw.wa.gov/about/regulations>

For more information about Hydraulic Project Approvals see:

<https://wdfw.wa.gov/licensing/hpa/>

For HPA application assistance see:

<https://wdfw.wa.gov/licenses/environmental/hpa/application>

To talk with a habitat biologist, see:

<https://wdfw.maps.arcgis.com/apps/MapJournal/index.html?appid=48699252565749d1b7e16b3e34422271>

For more information about HPA rule implementation, contact:

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