



# Hydraulic Code Rule Changes Title 220-660 WAC

## Implementation Plan



Habitat Improvement



Buoys



Flood Control Devices



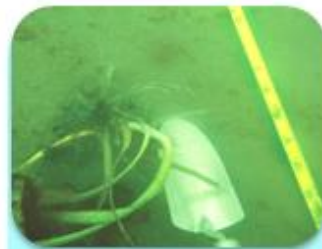
Bank Protection



Boat & Equipment Access



Overwater Structures



Aquatic Plant Control



Marinas



Dredging



Culverts



Fish Passage Correction



Fish Screens

***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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## **1 Purpose**

The Washington Department of Fish and Wildlife provides this implementation plan to meet the department and Administrative Procedures Act (RCW 34.05.328) requirements for rule adoption.

## **2 Introduction**

The purpose of this rule implementation plan is to inform those persons who must comply with Chapter 220-660 WAC, Hydraulic Code Rules about how the Washington Department of Fish and Wildlife 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.
- Contact information for a department employee who can answer questions about the rule implementation.

## **3 Implementation and Enforcement**

Habitat biologists process applications for hydraulic project approvals. Biologists will include the applicable technical provisions from Chapter 220-660 in each hydraulic project approval they issue once the rule changes become effective. These provisions protect fish life from construction-related impacts.

Habitat biologists work directly with project proponents to promote and assist voluntary compliance. Fish and wildlife enforcement officers enforce the hydraulic code and issue criminal penalties for violations. The department has yet to determine which Department staff can impose civil penalties but this will likely require executive management authorization.

## 4 Informing and Educating Persons Affected by the Rule

WDFW has involved the public and stakeholders in developing the updated Hydraulic Code Rules. WDFW formed a Stakeholder Advisory Group to provide comments on an initial draft of the Hydraulic Code Rules. This group included eighteen representatives from the construction industry, non-governmental organizations, state and federal agencies, and tribes. This group met eight times between October 31 and the end of December, 2011, receiving presentations on and discussing issues relating to one or two specific aspects of the Hydraulic Code Rules at each meeting. The group engaged in policy discussions about the proposed changes and the impacts to their interests, and commented on revised rule proposals prepared by WDFW. Those rule documents were also posted on the WDFW web site for comment by any reader.

During this pre-rulemaking period, three separate drafts (versions) of the proposed rule changes were posted on the WDFW website along with forms to comment on the drafts. The fourth draft accompanied the September 2013 Draft PEIS. Version 6 of the rules accompanied the 2014 Supplemental Draft PEIS. A final version of the proposed rule changes is based on comments received through September 15, 2014 on Version 6 of the rules and the Supplemental Draft PEIS. This final PEIS has been issued in the last week of October 2014. The Fish and Wildlife Commission will consider re-adopting the final draft rules in December 2014.

Following is a timeline for events in the sequence of compliance with the Administrative Procedures Act (APA), and State Environmental Policy Act (SEPA).

- |               |  |
|---------------|--|
| July 28, 2011 | A Pre-proposal Statement of Inquiry (CR-101) was filed by WDFW as WSR 11-16-050, announcing WDFW's intent to seek changes in the Hydraulic Code rule. This was the first step in the rulemaking process under the Administrative Procedure Act.  |
| June 22, 2012 | WDFW issued a joint Declaration of Significance for the HPA rulemaking action and a SEPA scoping notice. Comments on the scoping notice were taken through July 16, 2012.<br><br>WDFW received thirty-one comment documents. Generally, comments provided detailed suggestions for how rule changes should address specific problems or situations, or ways the proposals should not be changed from existing rules. Few commenters stated a preference among the alternatives presented, although a leaning towards the preferred alternative was deduced from the overall tone of the comments provided. |
| October 2013  | WDFW released, on October 1, a Draft Programmatic Environmental Impact Statement (Draft PEIS) outlining potential impacts of the proposed rule changes. Version 4 of the proposed rule changes was also made available in October 2013. Public comment was taken on both the Draft PEIS and proposed rule changes from October 1 through November 15, then extended through December 13, 2013. The following public meetings were also held:   |

DATE	TIME	LOCATION
10/17/2013	6:00 PM – 8:00 PM	WDFW Mill Creek Regional Office 16018 Mill Creek Blvd Mill Creek, WA 98012
10/23/2013	6:00 PM – 8:00 PM Mineral Prospecting Focus	Natural Resources Building Capitol Campus 1111 Washington Street SE Olympia, WA 98501 Natural Resource Building Room 172
10/24/2013	6:00 PM – 8:00 PM	Natural Resources Building Capitol Campus 1111 Washington Street SE Olympia, WA 98501 Natural Resource Building Room 172
10/28/2013	6:00 PM – 8:00 PM	Center Place 2426 N Discovery Place Spokane Valley, WA 99216
10/29/2013	6:00 PM – 8:00 PM	Grant County Public Works 124 Enterprise St SE Ephrata, WA 98823
10/30/2013	6:00 PM – 8:00 PM	Moxee City Hall 255 W Seattle Ave Moxee, WA 98936
11/4/2013	6:00 PM – 8:00 PM	Water Resources Center 4600 S.E. Columbia Way Vancouver, WA 98661

December 2013 - June 2014 WDFW reviewed public comments on both the proposed rule changes and on the EIS. More stakeholder discussions resulted in moving the rules from Version 4 through Version 5 to Version 6 during this time. In response to comments, WDFW was also preparing a Supplemental Draft PEIS during this time.

July 2, 2014 WDFW filed a Notice of Proposed Rulemaking (CR-102) providing public notice of the proposed rule changes (Version 5) and the opportunity to comment on those changes.

July 16, 2014 The Washington State Register (WSR 14-14-133) published the proposed rules changes, staff-recommended additional rule refinements, the CR-102, and an APA-required Small Business Economic Impact Statement. The Supplemental Draft PEIS was also released on this date.

Version 6 of the rules included rule changes processed through Version 5 (“OTS-6463.1”) plus last-minute changes recommended by staff pursuant to ongoing stakeholder discussions (“WDFW staff Recommended Amendments to OTS-6463.1”). Both these rule documents were published in WSR 14-14-133. WDFW staff continued

to meet with stakeholders and tribes through the summer to clarify and revise the proposed rules as necessary.

A comment deadline of August 15 was set, and the public was notified that comments received by August 1 would be provided to the Fish and Wildlife Commission at the August 8 meeting.

- |                            |  |
|----------------------------|--|
| August 2014                | The Washington Fish and Wildlife Commission, a nine-member citizen panel that sets WDFW policy, held a public hearing on the proposed rule changes on August 8. Written comments received during the early part of the comment period were summarized for the commission. The commission did not take action to adopt the proposed rules changes at the August 8 meeting.<br>WDFW extended the rule and EIS comment deadline through September 15, 2014. |
| September-<br>October 2014 | WDFW reviewed and developed responses to comments and revised the EIS to its Final version. Comments on Version 6 of the rules were compiled into a staff-recommended set of changes for the FWC to consider in November.  |

WDFW has met one-on-one with Tribes and interested stakeholders to discuss the rule update on an ad-hoc basis since the first CR-101 was filed in 2011. Stakeholders requesting to meet with WDFW included Washington Association of Counties, Association of Washington Cities, Association of Washington Business, Washington Forest Protection Association, Ports Association, Washington Department of Transportation, Ecology, and DNR, and members of the environmental community. WDFW has welcomed input on the proposed rule changes, accepting input on suggested changes continuously since 2011.

After adoption, the department will inform affected persons about the hydraulic code rule changes by the following methods:

- Washington State Register
- News Release
- Agency Website
- Direct email to former HPA applicants
- Direct email to State Environmental Policy Act (SEPA) parties of record
- Direct email to interested Tribes and stakeholders

When applicants contact the department, staff will inform and educate them about the rule changes that affect them.

The department will post the final rule language on the department's Hydraulic Code rule-making webpage. The codified rule incorporating all revisions will be posted on the department rules webpage when the revised rule is completed by the Office of the Code Reviser.

## **5 Promoting and Assisting Voluntary Compliance**

Section 220-660-480 Compliance with the HPA provisions, encourages voluntary compliance by providing technical assistance consistent with Chapter 43.05 RCW. The voluntary compliance program will include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods for the delivery of technical assistance. In addition, the department will provide, upon request, a list of organizations, including private companies that provide technical assistance. All of this information will also be available on the department's website.

## **6 Evaluating the Rule**

To help ensure that work permitted under the terms of HPA's sufficiently preserve, protect, and perpetuate fish life, the department has implemented a focused compliance and effectiveness monitoring and evaluation program. WDFW is implementing this monitoring plan in phases, with the first phase directed at effectiveness of water crossing and bank protection structures. The plan has three groups of metrics to evaluate effectiveness of the rule at 1) improving the customer's experience; 2) protecting fish life, including habitat function; and 3) achieving compliance.

This monitoring is essential to adaptive management. Monitoring is the only way to assess our success at achieving objectives, and consequently monitoring is necessary to improve management through time. The department will use monitoring data to inform an adaptive management process that WDFW will use to improve the effectiveness and efficiency of the Hydraulic Code Implementation Program.

The adaptive management process provides a mechanism to involve an Advisory Group to improve transparency and collaboration, and to ultimately achieve the best results. The department may ask the Advisory Group to provide input on the adaptive management framework, final monitoring reports, and/or alternative strategies and proposals developed by department staff. In particular, the department will engage the Advisory Group when actions might:

- Have a significant impact on HPA applicants (e.g. in cost or construction time).
- Negatively affect the environment or create unintended consequences.
- Impose significant changes to standard/current practices.

The department will also develop and implement a new Compliance Assurance Plan that has several objectives. Primarily the plan will provide detailed information about the sequence in achieving compliance with permit provisions. This will range from simple outreach and technical assistance to civil and criminal penalties. The Plan will help staff determine what level of compliance to pursue, and provide details on the steps necessary



to implement the chosen pathway. The plan also will provide guidance to help staff navigate the appeal processes available to permittees and citizens.

WDFW will track four metrics associated with achieving compliance with permit provisions, rule, and statute. Metrics are:

- Number of compliance notices resulting in voluntary compliance;
- Number of civil penalties levied and paid; Amount \$ paid.
- Number of appeals; % in favor of WDFW.
- Number of criminal citations; % resulting in conviction.

## **7 Training WDFW staff**

The department will train staff about the rule changes. The department will also offer training to affected stakeholders. The training will focus on the following:

- The differences between Chapter 220-110 WAC and Chapter 220-660 WAC.
- How the changes affect the application and review process.

Headquarters staff will meet with regional habitat biologists in December 2014 through January 2015 to review the rule changes and implementation. The department will offer additional statewide training in spring 2015 to habitat biologists and affected stakeholders.

## **8 List of Supporting Documents that May Need to be Written or Revised**

This amendment is major. Several documents need to be written or revised. These include the following:

- Gold and Fish Pamphlet: Rules for mineral prospecting and placer mining (minor revision)
- Aquatic Plants and Fish Pamphlet (minor revision)
- Times When Spawning and Incubating Salmonids are Least Likely to be Within Washington State Freshwaters (minor revision)
- Policy and Procedure 5212 (revision)
- Hydraulic Code Compliance Program Staff Manual (new)
- Printed information for technical assistance visits and a list of organizations, including private companies that provide technical assistance (new).
- Adaptive Management Plan (new)

## 9 Contact Information

For more information about the Hydraulic Code see:

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

For more information about the rule implementation contact:

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