

2017-18 Rule Change Pre-Proposal – Briefing Table

2017-18 HPA Rule Change Pre-Proposal

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
050 Procedures - HPA			
050 (9) How to get an HPA (a) pamphlet	Adds language that a person can <u>download and save or print</u> pamphlet HPA from the WDFW web site.	Allows digital versions of pamphlets as valid copies on the work site. WDFW has made a PDF version of each pamphlet available for years. This change seeks to clarify that a digital version of a pamphlet on the project site is acceptable in lieu of a printed version.	Housekeeping change that helps permittees comply with rules.
050 (9) How to get an HPA (b) emergency HPA	Specifies instructions for contacting WDFW after business hours and for times when biologists can't be contacted.	Clarifies how to contact a habitat biologist or the HPA program to receive an emergency HPA.	Housekeeping change that helps permittees contact WDFW.
050 (9) How to get an HPA (c) How to get a standard, expedited, or chronic danger HPA (iii) complete application package (A) application form and required attachments	Clarifying that site access permission forms (or a copy of an easement) for both the project site and any mitigation sites are needed in order to have a completed application.	WDFW currently requires landowner permission as part of a complete application, however current rule is not clear that WDFW needs permission to access <u>all</u> locations covered by the application including multiple project sites and mitigation sites. We also need proof that an easement allows WDFW to access the site as a permitting agency for work requested by the easement holder.	Housekeeping clarification that does not change the effect of the rule. WDFW needs landowner signature to enable access to all project sites that are not accessible via public lands. Many projects are being conducted via maintenance or other easement types. WDFW needs to review those documents to ensure we can gain access during project review, permitting, and construction.

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
050(9)(c)(iii) (G) Payment of application fee required; and (H) Seeking approval under farm and agricultural land fee exemption	These two subsections are deleted, removing reference to payment of application fee to complete an application.	Removing fee language (Sunset date for the HPA fee was June 30, 2017) to eliminate applicant confusion. Although the fee has been curtailed per statute, deleting these WAC sections eliminates applicant confusion about paying fees that are no longer authorized. Additional changes regarding fees occur later in this section.	Housekeeping change to maintain consistency with statute.
050 (9)(c)(New subsection G)	Proposed new language: <u>(G) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage</u>	WDFW needs a brief statement from applicants about why normal processing would result in significant hardship to the applicant or unacceptable environmental damage. This new requirement will reduce the pre-review time and will result in quicker turnaround for a determination by WDFW staff that an application is complete (and therefore ready for habitat biologist review).	New application requirement: We frequently get applications for expedited processing without any explanation about why it's needed and for which no declaration of imminent danger has been made or communicated to WDFW by the county. WDFW must document how the applicant meets the requirements for expedited processing.
050(10) Incomplete applications (c) closing incomplete applications	Revises the period after which inactive permits can be closed by WDFW. Current period of inactivity is 6 months; staff and applicants asked for 12 months. This change also allows applicants to postpone closure for an additional 12 months. A procedures for attempting to engage applicant prior to closing the application is also included.	WDFW proposes an amendment extending this period to 12 months to enable applicants more time to resolve application issues, with the possibility of a single 1-year extension, if needed, after which the application will be closed. See below for additional changes that implement this solution.	Applications are frequently left in limbo while applicants pursue other permits and approvals. Permit times for other agencies are getting longer, so WDFW is proposing to accommodate extend the inactive period during which an application can be closed by WDFW..

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
050 (11) fee refund	Removes paragraph/subsection (11) and promotes subsection (12) (application review period) to (11)	Striking provisions for refund of an application fee. Necessary for consistency with statute.	Fee: Housekeeping change to maintain consistency with statute.
050 (12 11) new subsection (c)	Requires the HPA biologist to place written documentation into the application record prior to issuing HPAs for WDFW-declared emergency, expedited, and imminent danger HPAs.	A habitat biologist is implicitly acknowledging an emergency, imminent danger, or request for expedited processing by issuing the HPA; this change requires a habitat biologist to make that determination explicitly and include it in the permit record. Documentation must justify the reasons for declaring an imminent danger, applicant hardship, or immediate threat to public safety or environmental damage.	This housekeeping change is necessary to ensure WDFW has a complete record of permit circumstances.
050 (13 12) Suspending the Review Period (c) closing an application delayed for processing	Revises the period after which inactive permits can be closed by WDFW. Current period of inactivity is 6 months; staff and applicants asked for 12 months. This change also allows applicants to postpone closure for an additional 12 months. A procedures for attempting to engage applicant prior to closing the application is also included.	Continuation of changes needed to implement a longer elapsed time period for inactive applications before WDFW can close the application. This subsection says more about the process WDFW must follow to close an application, and clarifies that the applicant can request up to an additional year before WDFW closes the application.	Applications are frequently left in limbo while applicants pursue other permits and approvals. Permit times for other agencies are getting longer, so WDFW is proposing to accommodate this.
050 (16 15) Requesting a time extension, renewal, modification or transfer(a)(c)(e)and(f)	Change restores the ability to transfer an HPA to a new permittee and provides clarity for conditions for transfer.	New provision provides benefits to entities wishing to transfer a permit from one project manager to another. Currently, WDFW requires a new application to “transfer” a project from one project manager to another.	Transfers (continued). New administrative provision.

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
050 (16 15) Time extension etc. (d) pertaining to fees	Remove language pertaining to fees for HPA modifications	Consistency with statute.	Housekeeping change to maintain consistency with statute.
050 (17 -16) fee for modifications (c) modifications initiated by WDFW	Remove language pertaining to fees for HPA modifications	Consistency with statute.	Housekeeping change to maintain consistency with statute.
050 (17) requesting a transfer (section deleted)	Subsection (17) prohibiting transfers is deleted.	Striking this section restores the ability to transfer a permit to a new permittee.	Transfers (continued).
050 (17) New Subsection: Revoking an HPA	Adds conditions under which WDFW can revoke an HPA	This new subsection provides transparency on the conditions under which WDFW can revoke an HPA as well as the process for notifying the permittee. Criteria for conditions of transfers is discussed with 050 (16 15) (a)(c)(e)and(f).	Increases clarity for when WDFW can take this action and ensures that WDFW documents the reason for revocation.
300 Mineral Prospecting			
300 (3) General requirements (b) Individual HPA application	Change reference from - 060 to 050	Corrects a typo in the 2014 adopted rules so that the rule is referencing the correct WAC section.	Housekeeping change to correct a typographic error in 2014 adopted rules.
300 (4) Mineral prospecting in freshwater without timing restrictions (g) Processing aggregate (xi) habitat improvement structures	Add word "fish" to clarify which habitat improvement structures may not be disturbed	Clarification for consistency with the term "fish habitat improvement structure" currently defined in WAC 220-660-030. Will avoid confusion for permittees when trying to identify habitat improvement structures to avoid.	Housekeeping change to improve clarity; does not change the effect of the rule.

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
300 (5) Mineral prospecting in freshwater without timing restrictions (k) habitat improvement structures	Add word “fish” to clarify which habitat improvement structures may not be disturbed	[Same as above]	[Same as above.]
300 (5) Mineral prospecting in freshwater without timing restrictions (p) excavate...toe of the slope	Replace Figure 8 caption with correct version	Will correct an inadvertent error and fully describe the subject matter for Figure 8 that shows permitted and prohibited excavation site locations. Reduces the likelihood that a permittee will excavate in a prohibited location.	Housekeeping change corrects a typographic error in 2014 adopted rules.
300 (6) Ocean beach prospecting (j) relating to disturbance of large woody material or jams	Add word “embedded” to clarify that (for ocean beach prospecting) non-embedded large wood can be moved, but embedded large wood can’t be cut, disturbed, or moved.	Clarifies which large wood must be left undisturbed; reduces confusion about the type of large wood that is most ecologically valuable to be left undisturbed.	Housekeeping change to improve clarity; does not change the effect of the rule.
300 (7) authorized work times	Change “Negro Creek” to “Etienne Creek” in Peshastin	USGS changed the name of this creek and “Etienne” is now the more common reference locally. This change will make it easier for prospectors to identify location of stream due to name change on official maps.	Housekeeping change to update geographic reference; does not change the effect of the rule.

SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
300 (7) authorized work times	Split a current section of the Similkameen River into two new sections with differing authorized work times (see below)	<p>Recent surveys in the Similkameen River section between Enloe Dam and Palmer Creek have shown there is no rainbow trout spawning habitat in this section. Mountain whitefish are emerged by late May in this section in the majority of years. This means that the authorized work times can be extended in this section.</p> <p>From Palmer Creek to the Canadian border, there is better habitat for rainbow trout spawning so WDFW is retaining the current authorized work time in this new section of the Similkameen.</p>	Substantive change based on new science that provides additional prospecting opportunity while protecting fish life.
	STREAM SECTION		CURRENT WORK WINDOW
	Similkameen River (49.0325) - <u>Upstream of Enloe Dam to Palmer Creek</u>		<u>July 1 – October 31</u>
	<u>Similkameen River upstream of Palmer Creek</u>		<u>July 1 – October 31</u>
			<u>June 1 – October 31</u>
			<u>na</u>
SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
300 (7) authorized work times	Change Sultan River authorized work times (see below)	Anadromous fish passage has been opened up in a section of the Sultan River upstream of the City of Everett diversion dam. WDFW proposed new work windows because anadromous fish are actively using the newly-opened reach for spawning and incubation. This change splits the section from the diversion dam to Elk Creek into two sections. Change is consistent with emergency rules WSR 17-14-479 and WSR 17-22-013.	Substantive change based on new information about anadromous fish usage. Boundary landmark (“anadromous fish blockage”) is still under development – WDFW is looking for a better way to refer to this landmark that is more identifiable for individuals using this section of stream.

STREAM SECTION		CURRENT WORK WINDOW	PROPOSED WORK WINDOW
Sultan River (07.0881) - Diversion Dam to Elk Creek <u>anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam)</u> [Note: we are looking for a better landmark descriptor]		July 16 – February 28	<u>August 1 – August 31</u>
<u>Sultan River(07.0881) - From anadromous fish blockage at river mile 15.7 (0.7 miles downstream of Culmback Dam) to Elk Creek</u>		na	<u>July 16 - February 28</u>
SECTION (SUBSECTION)	CHANGE	JUSTIFICATION	STAFF REMARKS
460-470 Appeals			
460 Informal Appeal (5) and 470 Formal Appeal (6)	Change address to HPA PO box.	WDFW recently changed official mailing address for headquarters. This rule change will ensure that appellants submit requests to correct mailing address and that WDFW will receive these requests in a timely fashion. Also clarifies that only one submission	Housekeeping changes to agency mailing address.