



PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF A STATE ADMINISTRATIVE RULE

Print Form

In accordance with [RCW 34.05.330](#), the Office of Financial Management (OFM) created this form for individuals or groups who wish to petition a state agency or institution of higher education to adopt, amend, or repeal an administrative rule. You may use this form to submit your request. You also may contact agencies using other formats, such as a letter or email.

The agency or institution will give full consideration to your petition and will respond to you within 60 days of receiving your petition. For more information on the rule petition process, see Chapter 82-05 of the Washington Administrative Code (WAC) at <http://apps.leg.wa.gov/wac/default.aspx?cite=82-05>.

CONTACT INFORMATION *(please type or print)*

Petitioner's Name Brad Throssell, Chair
Name of Organization Trout Unlimited - Washington State Council
Mailing Address 12819 SE 38th Street, Suite 462
City Bellevue State WA Zip Code 98006
Telephone _____ Email brad.throssell@dell.com; dfinnerty@tu.org; celliot@tu.org

COMPLETING AND SENDING PETITION FORM

- Check all of the boxes that apply.
- Provide relevant examples.
- Include suggested language for a rule, if possible.
- Attach additional pages, if needed.
- Send your petition to the agency with authority to adopt or administer the rule. Here is a list of agencies and their rules coordinators: <http://www.leg.wa.gov/CodeReviser/Documents/RClist.htm>.

INFORMATION ON RULE PETITION

Agency responsible for adopting or administering the rule: Washington Department of Fish & Wildlife

1. NEW RULE - I am requesting the agency to adopt a new rule.

The subject (or purpose) of this rule is: _____

The rule is needed because: _____

The new rule would affect the following people or groups: _____

2. AMEND RULE - I am requesting the agency to change an existing rule.

List rule number (WAC), if known: WAC Chapter 220-660 - and see attachment letter and materials.

I am requesting the following change: Amendment of regulation regarding motorized suction dredging.

This change is needed because: WDFW's current regulations violate state law, including RCW Chapter 77.55 (HPA statute); Chapter 34.05 (Administrative Procedures Act); and the federal Endangered Species Act and Clean Water Act.

The effect of this rule change will be: Compliance with state and federal law; protection of river and creek habitat and fish populations in Washington State.

The rule is not clearly or simply stated: _____

3. REPEAL RULE - I am requesting the agency to eliminate an existing rule.

List rule number (WAC), if known: _____

(Check one or more boxes)

It does not do what it was intended to do.

It is no longer needed because: _____

It imposes unreasonable costs: _____

The agency has no authority to make this rule: _____

It is applied differently to public and private parties: _____

It conflicts with another federal, state, or local law or rule. List conflicting law or rule, if known: _____

It duplicates another federal, state or local law or rule. List duplicate law or rule, if known: _____

Other (please explain): _____

EXHIBIT

- A -

SUBSTITUTE HOUSE BILL 1565

Passed Legislature - 1997 Regular Session

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Mielke, Pennington, Carrell, Mulliken, Thompson and Cairnes)

Read first time 03/05/97.

1 AN ACT Relating to small scale prospecting and mining; adding a new
2 section to chapter 75.20 RCW; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The legislature finds that small scale
5 prospecting and mining: (1) Is an important part of the heritage of
6 the state; (2) provides economic benefits to the state; and (3) can be
7 conducted in a manner that is beneficial to fish habitat and fish
8 propagation. Now, therefore, the legislature declares that small scale
9 prospecting and mining shall be regulated in the least burdensome
10 manner that is consistent with the state's fish management objectives
11 and the federal endangered species act.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 75.20 RCW
13 to read as follows:

14 (1) Small scale prospecting and mining shall not require written
15 approval under this chapter if the prospecting is conducted in
16 accordance with provisions established by the department.

17 (2) By December 31, 1998, the department shall adopt rules
18 applicable to small scale prospecting and mining activities subject to

1 this section. The department shall develop the rules in cooperation
2 with the recreational mining community and other interested parties.

3 (3) Within two months of adoption of the rules, the department
4 shall distribute an updated gold and fish pamphlet that describes
5 methods of mineral prospecting that are consistent with the
6 department's rule. The pamphlet shall be written to clearly indicate
7 the prospecting methods that require written approval under this
8 chapter and the prospecting methods that require compliance with the
9 pamphlet. To the extent possible, the department shall use the
10 provisions of the gold and fish pamphlet to minimize the number of
11 specific provisions of a written approval issued under this chapter.

12 (4) For the purposes of this chapter, "small scale prospecting and
13 mining" means only the use of the following methods: Pans,
14 nonmotorized sluice boxes, concentrators, and minirocker boxes for the
15 discovery and recovery of minerals.

Passed the House April 26, 1997.

Passed the Senate April 26, 1997.

Approved by the Governor May 19, 1997.

Filed in Office of Secretary of State May 19, 1997.

EXHIBIT

- B -

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Sec. 2 restricts mineral prospecting that is currently allowed under the Gold and Fish pamphlet to only non-motorized activities, and requires the department to adopt related new rules by December 31, 2018, in cooperation with the mineral prospecting community.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

With motorized prospecting not allowed under the Gold and Fish Pamphlet, prospectors will be required to apply for a Hydraulic Permit Approval (HPA) to use suction dredging. Under current law, mineral prospecting and mining activities are exempt from HPA fees (RCW 77-55-321). Therefore, the cost of processing motorized prospecting HPA applications cannot be off-set by fees, and WDFW requests GFS to cover the costs.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Sec. 2: Rulemaking

Past experience with mineral prospecting rulemaking has shown that 10 stakeholder meetings will be required to develop these rules, and that a professional facilitator is required to ensure efficient meetings and to reach agreement. WDFW assumes that meetings will be in Olympia at state-owned facilities at no cost, but that travel costs will be required for facilitator at standard rates. The contract for a facilitator will be \$200/hour, 6 hours each for 10 meetings.

Rulemaking will require a Fish and Wildlife Biologist 4 (Bio 4) to be the content expert during meetings. In addition, an Environmental Planner 5 (EP 5) will be the statewide policy expert during meetings and oversee the formal rulemaking process required under Chapter 34.05 RCW. Five meetings plus additional support and prep work outside of meetings will occur in FY 2018 and five in FY 2019, requiring 0.2 FTE for each position, in both FY 2018 and FY 2019. The Bio 4 and EP 5 will not incur travel costs.

In addition to development costs above, standard rulemaking costs (\$2,500 for hearing and \$1,500 for rule adoption) will apply for public hearing and rule adoption through the F&W Commission in FY19.

Development of new Gold and Fish pamphlet will have negligible costs because publication will be online.

Sec. 2: Hydraulic Project Approval (HPA)

Assuming bill is effective on or about 7/1/17, motorized prospecting methods will require individual HPAs for activity immediately upon effective date. Because motorized methods will no longer be valid through the pamphlet, prospectors wishing to continue that activity will apply for standard HPAs. This will result in 500-800 permit applications per year for up to 5 locations per application (the maximum number of locations per application allowed by rule) statewide, but concentrated in Regions 2, 3, and 5. WDFW will require 1.0 FTE Customer Service Specialist 3 each year beginning in FY 2018 to intake these applications and assign to a

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- C -

**(2006 WDFW Mineral Prospecting White Paper, Attached Separately Due to
Size Limitation)**

EXHIBIT

- D -



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: October 04, 2017

TIME: 9:57 AM

WSR 17-20-109

Agency: Department of Fish and Wildlife (WDFW)

Subject of possible rule making:

WDFW plans to amend sections in chapter 220-660 Hydraulic Code Rules. These rules regulate aspects of construction projects in state waters for the protection of fish life. WDFW's general goal in this rulemaking is to incorporate statutory changes, accommodate other changed conditions to protect fish life, or respond to requests by customers and other interested parties for improved clarity.

WDFW's primary objective for initiating rulemaking at this time is to adopt emergency rule (WSR 17-14-079) modifying authorized work times under WAC 220-660-300 for the Sultan River as a permanent rule.

Other subjects WDFW has identified for rulemaking include:

- Consistency with Title 77.55 RCW with respect to the curtailment of application fees (WAC 220-660-050);
- Ensure Authorized Work Times in WAC 220-660-300 are based on the best available science;
- Update the department's mailing address published in WACs 220-660-460 and -470; and
- Make other essential changes to sections 050 and 300 that clarify language or accommodate administrative changes.

The rulemaking as proposed will amend the following sections:

Section	Title
220-660-050	Procedures –
220-660-300	Mineral prospecting
220-660-460	Informal appeals
220-660-470	Formal appeals

Statutes authorizing the agency to adopt rules on this subject:

RCW 77.04.012 directs the department to preserve, protect, perpetuate, and manage fish life.

RCW 77.04.020 grants the fish and wildlife commission the authority to delegate to the director any of the powers and duties vested in the commission.

RCW 77.12.047 grants the fish and wildlife commission authority to adopt, amend, or repeal rules necessary to carry out Title 77.

RCW 77.55.021 charges WDFW with approving the adequacy of means proposed for protection of fish life in association with the construction of a hydraulic project and authorizes formal and informal appeals.

RCW 77.55.091 prescribes that WDFW establish rules for small scale prospecting and mining.

RCW 77.55.051 and 081 authorize the removal or control of aquatic noxious weeds through rules published in a pamphlet format.

RCW 34.05.328 identifies rules implementing chapter 77.55 RCW as significant legislative rules.

RCW 34.05.350 compels the department to actively undertake procedures to adopt emergency rules as permanent.

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:

- Adopt emergency rule (WSR 17-14-079) modifying work windows under WAC 220-660-300 for the Sultan River as a permanent rule.
 - RCW 34.05.350(2) relating to emergency rules indicates that emergency rules cannot be sequentially filed (i.e. filed for more than one 120-day period) unless the agency is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. Proposing changes to WAC 220-660-300 Sultan River authorized work times is necessary to allow the agency to re-file Sultan River emergency rules. Another emergency rule will be promulgated to extend the change until permanent rules can be adopted.
- Consistency with Title 77.55 RCW with respect to the curtailment of application fees:
 - Changes to WAC 220-660-050 remove provisions relating to HPA application fees that sunset at the end of

2016 per RCW 77.55.321; these changes simplify permitting by removing the application fee from hydraulic code rules.

- Ensure authorized work times in WAC 220-660-300 are based on the best available science:
 - Changes to WAC 220-660-300 to revise Sultan River authorized work times are necessary to respond to new information about fish presence attributable to restoration of fish passage by Snohomish P.U.D. in a section of the Sultan River, as reflected in emergency rule WSR 17-14-079. These changes improve fish life protection.
 - Changes to WAC 220-660-300 to revise Lower Columbia River mainstem authorized work times to incorporate best available science in order to protect fish life and to simplify permitting by implementing consistency with federal agencies.
- Update the department's mailing address published in WACs 220-660-460 and -470, which will ensure WDFW receives correspondence mailed to the department.
- Make other essential changes to WACs 220-660-050 and 220-660-300 that clarify language or accommodate administrative changes:
 - Changes are proposed to WAC 220-660-050 that:
 - Allow for digital versions of gold and fish and aquatic plant control and removal pamphlets to be present on-site;
 - Clarify instructions for contacting WDFW staff outside of normal business hours;
 - Clarify procedures and criteria for transferring HPAs.
 - Changes to WAC 220-660-300:
 - Correct a typographic error in referencing WAC 220-660-050;
 - Correct terminology within mineral prospecting provisions to ensure that fish habitat structures are left undisturbed;
 - Correct captioning for figure 8; and
 - Clarify that embedded wood is to be left undisturbed; and
 - Correct a creek name that has been changed by U.S. Geological Survey.

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 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. 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 conducting additional outreach and coordination with federal and state agencies having an identified interest or regulatory authority for two of the proposed rules, WAC 220-660-050 and WAC 220-660-300. Provisions of 220-660-290 and -300 that authorize work times are being studied to incorporate science from multiple entities and determine whether work times can be aligned with federal entities and still meet the agencies' respective management objectives.

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

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

WDFW will follow the standard process for the adoption of administrative rules under the Administrative Procedures Act (Chapter 34.05 RCW), and implement provisions for Significant Legislative Rules under section 34.05.328. Information about the status of the HPA rulemaking process can be found on the HPA rulemaking website at <http://wdfw.wa.gov/licensing/hpa/rulemaking/>. When or if a CR-102 for proposed rulemaking is filed, that website will announce the dates 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. The web site 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:


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

Additional comments: None

Date: October 4, 2017

Signature:

Name: Scott Bird



Title: Rules Coordinator

EXHIBIT

- E -

General Permit Coverage in Idaho

General Permit coverage is available statewide, except for these 4 categories.

1. **Nationally Protected Areas: National Parks System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, National Wild and Scenic Rivers System.** * Unless the land manager gives permission*
2. **Areas designated as critical habitat under the Endangered Species Act (ESA), and additional areas listed in the permit where species that are either listed as threatened or endangered are known to occur.** * Unless ESA consultation is completed*
3. **State Protected Waters: Withdrawn River Segments, State Protected Rivers, Sediment/Mercury Impaired Streams.** * No exceptions*
4. **Tribal Reservations.** * No exceptions*

EXHIBIT

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EPA has prepared a biological evaluation (BE) analyzing the effects of the GP on the listed species. A not likely to adversely affect determination has been tentatively made by EPA, based primarily on the permit restriction that dredging operations are closed on streams where critical habitat for fish species has been designated. Critical habitat contains biological features essential to the conservation of the species particularly during sensitive life stages such as spawning and rearing.

If the Services do not agree with EPA's determination of not likely to adversely affect, EPA will enter into formal consultation with them to ensure that the GP will not result in jeopardy of the listed species or adverse modification of their critical habitat.

NMFS has been reviewing applications that propose to alter stream channels and has been providing IDWR with pre-application assistance on possible ESA Section 10 incidental take permits. NMFS will continue to provide comments through this process.

The draft GP contains conditions meant to minimize impacts to T&E species and their habitats. These include the turbidity effluent limits and restrictions on locations and timing of suction dredge activities.

The IDWR recreational placer mining permit does not allow dredging during periods when fish are spawning and eggs or alevins are in the gravel. The following is information from the IDWR permit that is also included in the draft GP:

To protect important spawning populations of salmon, steelhead, and trout, streams are closed to dredging during the periods when fish are spawning and eggs or alevins are in the gravel. Because different species of fish spawn at different times, some streams have fish eggs or alevins in the gravel during every month of the year and are therefore closed year round to dredging (See Appendix C for more details).

Critical habitat was designated for the Snake River Sockeye Salmon (*Oncorhynchus nerka*); Snake River Spring/Summer Chinook Salmon (*Oncorhynchus tshawytscha*) and Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*) in December 1993. Critical habitat was designated for Snake River Steelhead in 2005. Critical habitat was designated for the Bull Trout (*Salvelinus confluentus*) in 2005. Revised critical habitat was designated for the Kootenai River White Sturgeon on July 9, 2008. Critical habitat for the KR white sturgeon consists of 18.3 river miles of the Kootenai River within Boundary County, Idaho, from river mile 141.4 to river mile 159.7.

The critical habitat in Idaho for the Snake River Salmon, Steelhead and Bull Trout is described as follows:

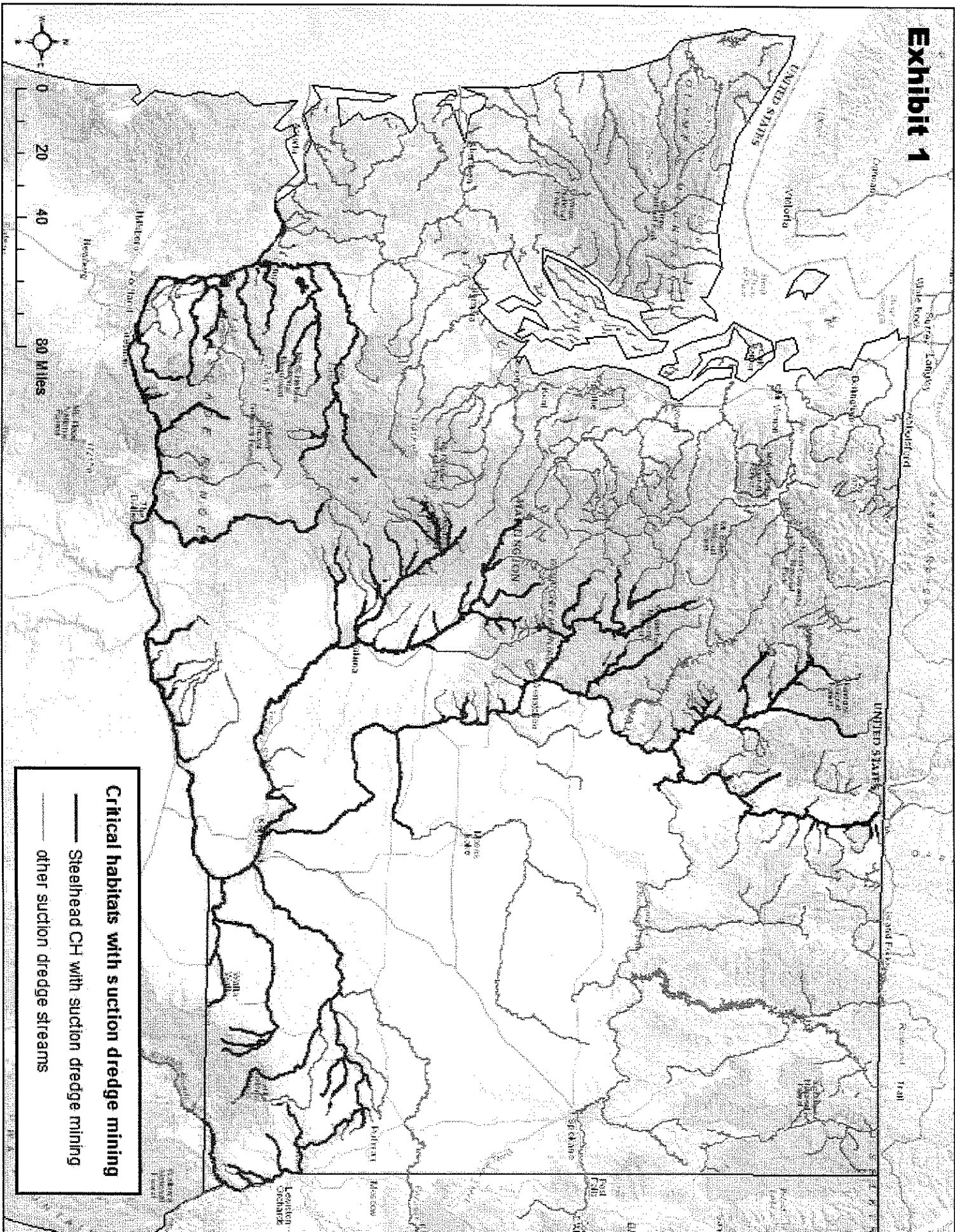
Snake River Sockeye Salmon

Consists of river reaches of the Columbia, Snake and Salmon Rivers, Alturas Lake Creek, Valley Creek, and Stanley, Redfish, Yellow Belly, Pettit and Alturas lakes (including their inlet and outlet creeks)

EXHIBIT

- G -

Exhibit 1



Critical habitats with suction dredge mining

- Steelhead CH with suction dredge mining
- other suction dredge streams

EXHIBIT

- H -

**(Cascadia Wildlands January 10, 2017 Notice of Intent, Attached Separately
Due to Size Limitations)**

EXHIBIT

- I -

**(Cascadia Wildlands Rulemaking Petition to Ecology, Attached Separately
Due to Size Limitations)**



Memorandum

October 17, 2017

TO: Washington Fish and Wildlife Commission
FROM: Trout Unlimited
RE: Responsible suction dredge mining in Washington State

The intent of this memorandum is to provide the Washington Fish and Wildlife Commission with background information on suction dredge mining regulations in Washington State and to explain why Trout Unlimited (TU) and our partners believe legislative and administrative actions are needed to institute appropriate reforms.

What is motorized suction dredge mining?

It is a form of mineral prospecting that uses gas-powered motorized dredges to vacuum the bed and banks of rivers, creeks, and shorelines to search for gold. This PBS NewsHour piece provides a good synopsis of the issue in Washington State: <http://www.pbs.org/newshour/bb/hunt-for-gold-in-washingtons-waterways-dredges-up-conflict/>



Suction dredge mining on Swauk Creek, tributary to the Yakima River and ESA-designated Critical Habitat for steelhead and bull trout.

How is suction dredge mining regulated in WA?

Washington State has the most lax state laws and regulations of motorized suction dredging of all western states with Pacific salmon and steelhead populations. Washington allows suction dredge mining and other forms of motorized mineral prospecting without requiring permits or regulatory oversight. Under the Hydraulic Permit Approval (HPA) law implemented by Washington Department of Fish and Wildlife (WDFW), “small scale prospecting and mining” may occur without individual HPA permits, but rather, under the generalized *Gold and Fish Pamphlet*. WDFW’s rule allows for **motorized** suction dredging as a type of “small scale prospecting” – even though “small scale prospecting and mining” is defined as “pans, **non-motorized** sluice boxes; concentrators...” RCW 77.55.091(21).

Given this definition, motorized suction dredging is arguably outside the definition of small scale mining. Notwithstanding, WDFW says 95% of suction dredging operations in Washington

– approximately 500-800 per year¹ – occurs under the auspices of the *Gold and Fish Pamphlet*. This is especially concerning given the high number of out-of-state residents who now conduct the activity in Washington State to avoid the habitat and water quality protections adopted in our neighboring states.

What is actually happening on the ground?

Virtually all waterways (including coastal beaches) in Washington are open for motorized suction dredging, including areas designated as Critical Habitat under the Endangered Species Act (ESA). Suction dredging occurs across Washington State: from the South Fork Nooksack River with its spring Chinook salmon on the brink of extinction to Peshastin Creek in the Cascade Mountains with its steelhead trout that must travel 500 miles and navigate seven dams to return to their spawning waters.

Most of the instream mining claims in Washington State are owned by mining or prospecting clubs; this greatly complicates the task of ensuring compliance with the *Gold and Fish Pamphlet* and monitoring suction dredging activities because there is no system for individual tracking and accountability. There are at least 11 mining clubs² in Washington State, as well as several privately-owned companies that act as guides³, taking clients out on mining trips. In exchange for a fee, the mining clubs provide access to mining claims, including providing suction dredges and other equipment available for rent. In this way, much of the motorized suction dredge activity is not “small scale” or “recreational” in nature – it is a commercial business activity.

Many of the prospectors using these services are from out of state. Because a large portion of mining claims are on U.S. National Forest Lands, these clubs and guides are required to register with the USFS. However, to date, none of these clubs have registered. The clubs provide little to no monitoring of the mining activities, nor do they ensure that their members are complying with the *Gold and Fish Pamphlet* (Trout Unlimited staff witnessed this on the ground on Scotty Creek in 2015, when we talked with a group of three prospectors from Oregon who were using a mining club claim and had no idea what the *Gold and Fish Pamphlet* was). A search of the Washington Secretary of State’s corporation and non-profit database shows less than half the clubs identified in footnote 2 are registered with the State of Washington.

How do other states and the federal government regulate motorized suction dredge mining?

In Idaho, the Environmental Protection Agency (EPA) adopted a Clean Water Act NPDES permit, concluding that such a permit was necessary to comply with the Clean Water Act: “An NPDES permit is required because the small suction dredge activities discharge pollutants to waters of the United States. The CWA § 301(a) prohibits the discharge of pollutants from point sources to

¹ Based on estimate of number of individual permits (HPAs) required if suction dredging was removed from coverage under the Gold and Fish Pamphlet, as determined by Washington Department of Fish and Wildlife fiscal note development for 2017 HB 1077 (<https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=44708>).

² Washington Mining Club, North Central Washington Prospectors, Bedrock Mining Association, North American Miners Association, Prospectors Plus, Yakima Prospecting Association, Boeing Prospectors, Western Gold Prospectors Association of American, Northwest Mineral Prospectors Club, Southwest Washington Gold Prospectors.

³ Blue Sky Gold Mining and Prospectors Plus

waters of the United States unless they are authorized by a NPDES permit issued under CWA § 402.” (EPA NPDES General Permit, Response to Comments #6).

Alaska also has a similar NPDES permit requirement. The California Legislature enacted a moratorium against motorized suction dredging in 2015, replaced the ban with a new permit system in 2016, and the California Supreme Court rejected mining arguments that federal law pre-empted state mining regulations. The Oregon Legislature adopted a permit requirement in 2017 that includes both water quality and fish habitat protections focused on priority salmon and steelhead habitat areas.

What does the science say?

Scientific studies have shown suction dredging causes impacts to fish and fish habitat: erosion and sedimentation in streams, which can smother incubating fish eggs and invertebrates; water contamination by mercury and other heavy metals buried in stream sediments mobilized by dredging activities; physical impacts to eggs, juvenile fish, invertebrates, and other aquatic organisms that are “processed” by suction dredges; disturbance of riparian vegetation at equipment access points and streamside campsites due to long-term use; and interruption of natural stream form and function and destruction of habitat features.

Also, suction dredging often creates unnatural pools, which pose a serious stranding risk to fish during low water. These habitat impacts are being allowed to continue in the very same creeks and rivers where Washington’s taxpayers have spent millions of dollars to protect fish habitat and water quality, and where the regulated community must comply with both HPA and NPDES water quality permit requirements.

A summary of the scientific literature and studies on this issue is included with this memorandum.

Why is the State of Washington being sued for its failure to regulate motorized suction dredging?

The Washington Legislature has yet to enact a regulatory system like other Western States and the EPA. Because of this, a Notice of Intent to sue was filed in January 2017 by the Center for Biological Diversity and Cascadia Wildlands highlighting the significant inadequacies of Washington State's current system. A subsequent lawsuit, *Cascadia Wildlands v. WDFW*, Case No. 17-2-03912-34, was filed in Thurston County Superior Court on June 30th, 2017. With precedent set in other states on this issue, Washington is in a very tenuous legal position with its lack of regulation of suction dredge mining, and the courts could shut down the activity entirely.

What is the solution?

A strong and diverse coalition of partners has coalesced around the objective of responsible suction dredge mining in Washington State. Our coalition is not seeking an outright prohibition or moratorium against motorized suction dredge mining. Instead, we believe Washington State

should adopt a permitting system and comply with the federal ESA and Clean Water Act (CWA). Washington's regulatory system should include:

- Individual HPA permit requirements for motorized suction dredging – treating this activity just like other in-water construction activities that are subject to the HPA statute;
- An NDPES General Permit to ensure compliance with the federal Clean Water Act. The federal EPA and other states have already concluded this permit coverage is required by federal law.
- Specific protections for areas in Washington State designated as critical habitat for salmon and steelhead listed under the Endangered Species Act.

What is the bottom line? We need suction dredge mining reform because:

Washington State regulations are currently violating federal law and the pending lawsuit could shut down suction dredging entirely, like in other West Coast states with ESA-listed salmon and steelhead – let's find a compromise. Washington is allowing itself to be a target for out-of-state miners, creating much greater pressure on our streams and a dangerous situation for our native fish.

Our state is spending hundreds of millions of taxpayer dollars on salmon recovery throughout Washington State's watersheds – these taxpayer investments are at serious risk of being undercut without careful oversight and monitoring of suction dredge mining. Suction dredgers should have to play by the same rules as the rest of the regulated community doing work in and around Washington's waterways – this user group should not receive special treatment, especially when many of them are coming from out of state to avoid the regulatory system that protects fish in those states.

[Next Page: A summary of scientific literature and studies on motorized suction dredge mining]



Science to Support Suction Dredge Mining Reform in Washington State

Due to proven impacts of suction dredge mining on fish and fish habitat, Trout Unlimited believes it is essential for Washington State to begin tracking and monitoring all suction dredging activities. This document provides a condensed summary of information contained in pertinent scientific literature on the resource impacts associated with suction dredging and other forms of motorized mineral prospecting.

Scientific studies have shown suction dredge mining causes:

- **Erosion and sedimentation in streams**, which can smother incubating fish eggs and invertebrates (Bash et al. 2001, Campbell 1979, Cooley 1995, Griffiths and Andrews 1981, Harvey 1986, Harvey and Lisle 1998 and 1999, Hassler et al. 1986, Jones and Stokes 2006, Madej 2004, Nightengale and Simenstad 2001, Stern 1988).
- **Water contamination** by mobilizing mercury and other toxic heavy metals buried in stream sediments, which allows these contaminants to enter the food chain (Cooley 1995, Harvey and Lisle 1998, 1999, Jones and Stokes 2006, Marvin-DiPasquale et al. 2011, Moyle 2011, Washington Dept. of Ecology 2004, 2005, OAFS 2011).
- **Physical impacts** to eggs, juvenile fish, invertebrates, and other aquatic organisms that are “processed” by the suction dredge or other equipment (Campbell 1979, Griffith and Andrews 1981, Harvey 1986, 1999, Hassler et al. 1986, OAFS 2013, Prussian et al. 1999, Somer and Hassler 1992, Wagener and LaPerrier 1985, Watters 1999).
- **Disturbance of natural stream processes and habitat** by physically altering channel conditions and geomorphology through redistribution of stream sediment and removal of large woody debris and other habitat features (Bolton and Shellbertg 2001, Brooks 1988, Jones & Stokes 2006, Harvey and Lisle 1998, Harvey et al. 1982, Leopold et al. 1964, Miller et al. 2001, Montgomery and Buffington 1993 and 1997, USFS OWNF 1998, Cooley 1995, Moyle 2011, Thomas 1985).
- **Negative impacts to fish redds**, either by physical disturbance or destabilizing gravel beds, increasing the susceptibility of redds to washing-out during high flow events (Jones and Stokes 2006, Harvey and Lisle 1998, Harvey and Lisle 1999, Moyle 2011, Stern 1988).
- **Destruction of riparian vegetation** at equipment access points and streamside campsites due to long-term use (Cooley 1995, NAWA 2002, OCAFS 2015).

- **Introduction of invasive species** into streams and rivers, which can have significant economic and environmental impacts (Cusak 2009, Northwest Environmental Defense Center 2013, Upper Missouri Waterkeeper 2015).
- **Cumulative impacts** from suction dredging are cited by biologists as likely the largest long-term negative effects of this activity, particularly on small streams. (Bayley 2003, Moyle 2011, OAFS 2013).

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