

WSR 22-11-094
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FISH AND WILDLIFE

[Filed May 18, 2022, 11:42 a.m.]

Subject of Possible Rule Making: Amendments to hydraulic code rules, chapter 220-660 WAC, necessary to implement SSB 5273 (chapter 279, Laws of 2021), which became effective on July 25, 2021. Rule sections requiring amendment may include WAC 220-660-030 Definitions, 220-660-050 Procedures—Hydraulic project approvals, and 220-660-370 Bank protection in saltwater areas.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.04.012, 77.12.047, 77.55.021, 77.55.231, 34.05.328; and SSB 5273 (chapter 279, Laws of 2021).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule amendments are needed to implement SSB 5273 regarding replacement of marine residential shoreline stabilization or armoring.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington department of fish and wildlife (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 United States 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 United States 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. State, federal, and local government entities will be invited to comment on draft rules during the rule-making process. WDFW will conduct government-to-government consultation with tribes.

Process for Developing New Rule: Changes to chapter 77.55 RCW made in SSB 5273 compel associated changes to the implementing hydraulic code rules in chapter 220-660 WAC.

The standard process for the adoption of administrative rules under the Administrative Procedure Act (chapter 34.05 RCW) and the applicable provisions for significant legislative rules (RCW 34.05.328) is the most appropriate process for this hydraulic code rule making. Negotiated rule making is not practicable because rule language will largely mirror statute language, which reflects collaboration during the legislative session, and because negotiated rule making would increase the time needed and the cost of rule making without added benefit. Pilot rule making is not applicable because the statutory changes, and therefore the proposed amendments, apply statewide.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting shoreline stabilization rule making, <https://publicinput.com/shorelinestabilizationCR101>, voicemail comments 855-925-2801, project code 2265, TTY 360-902-2207, email shorelinestabilizationCR101@PublicInput.com, website <https://wdfw.wa.gov/about/regulations/development/shoreline-stabilization-rule>; or Theresa Nation, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2562.

May 18, 2022
Annie Szvetecz
Rules Coordinator