



APRIL 1, 2020

Washington Fish & Wildlife Commission  
 Washington Department of Fish and Wildlife  
 PO Box 43200  
 Olympia, Washington 98504-3200

Ms. Laura Watson  
 Director, Washington State Department of Ecology  
 PO Box 47600  
 Olympia, Washington 98504-7600

**Re: ESHB 1261 – Implementation and Adoption of Regulations**

Dear Commissioners and Director Watson:

The undersigned 55 conservation, recreation and wildlife organizations, businesses, local businesses and faith leaders worked diligently to ensure that ESHB 1261 was passed with strong bi-partisan support in both the Washington State Senate and House this past session. The bill was recently signed by Governor Inslee and becomes law on July 1, 2020.

This new law will require both the Washington Department of Ecology (Ecology) and the Washington Department of Fish and Wildlife (WDFW) to implement, and as necessary promulgate new regulations regarding the permitting and enforcement of all motorized mineral prospecting in Washington State. The law now requires anyone using motorized mineral prospecting methods to obtain a determination of compliance with the federal Clean Water Act and Chapter 90.48 RCW. It also requires WDFW to verify Clean Water Act compliance *prior* to issuing a Hydraulic Project Approval (HPA) permit. Equally as important, it prohibits all motorized mineral prospecting in any stream or river that has been designated

under the Endangered Species Act as critical habitat or would impact critical habitat for salmon, steelhead or bull trout. This includes fresh waters with designated uses of salmonid spawning, rearing, and migration.

We understand you will ask your staff to prepare proposed rules for your approval. We would like to offer the following general requirements as well as a listing of all Washington State waterbodies that will be closed to motorized mineral prospecting (see attachment to this letter).

We propose that final regulations require:

1. Proof of Clean Water Act compliance prior to issuing an HPA permit.
2. Confirmation by WDFW that the HPA permit provided by WDFW is not within designated critical habitat.
3. Proof of compliance with all state and federal laws, including filing Notices of Intent if motorized mining activity occurs on US Forest Service managed land.
4. Compliance with all best practices for invasive species prevention, including inspections of motorized mining equipment.
5. All current HPA permits must be amended for enforcement and clarity. The law prohibits motorized mining in critical habitat, therefore any outstanding HPAs permitting motorized mining in critical habitat should be amended to prohibit those forms of mining or revoked. RCW 77.55.021(10) provides WDFW with authority to modify an existing HPA "due to changed conditions." Obviously, a change in state law explicitly requiring compliance with the Clean Water Act and prohibiting motorized mining in ESA Critical Habitat is a changed condition.

With the overwhelming support of the Washington State Legislature, it is clear our state's lawmakers expect seamless coordination between Ecology and WDFW to implement this new law. If the agencies approach either the application process or the enforcement component of this work in a "siloed" agency manner, the results will be inadequate for both protection of freshwater fish habitat and for establishing a clear pathway for the regulated community. However, if both agencies provide a coordinated application process as well as coordinated enforcement, we believe critical fish habitat will be protected and prospectors will enjoy a clear and streamlined regulatory process.

In addition to close coordination between agencies on the implementation of this new law, we believe clear communication with the mining community about the law's ramifications is essential. We suggest the agencies provide direct communication to members of the mining community, and education and training about new legal requirements, the focus of the law on protecting habitat and fish life, and enforcement mechanisms will be vital to successful implementation of this new law. There is already evidence of conversations happening within the mining community about how prospectors are intending to disregard the new law. It is critical for WDFW and the Ecology to establish a strong and clear path for implementation of this new law and an unwavering dedication to its enforcement.

We look forward to working with your agencies to successfully implement this new law.

Thank you for your consideration.

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