



Washington  
Department of  
**FISH and  
WILDLIFE**

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## **Small Business Economic Impact Statement**

Pursuant to Regulatory Fairness Act (chapter 19.85 RCW)

## **Hydraulic Code Rules Chapter 220-660 WAC**

### **2019 HPA Suction Dredge Rule Making**

WAC 220-660-305 Suction Dredging [Proposed new Section]

**This proposal requires standard Hydraulic Project Approval permits for use of suction dredge, dryland dredge, and suction dredge/highbanking combination equipment for mineral prospecting and mining, establishes reporting requirements for that use, and requires equipment decontamination to prevent the spread of aquatic invasive species.**

Washington Department of Fish and Wildlife  
Habitat Program  
Protection Division  
Olympia, Washington

April 18, 2019

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***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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## SECTION 1: Describe rule and compliance requirements

### 1.1 Background

The state Legislature gave the Washington Department of Fish and Wildlife (WDFW) the responsibility to preserve, protect, and perpetuate all fish and shellfish resources of the state. To help achieve this mandate, the Legislature passed a state law in 1943 called *Protection of Fish Life*. Now titled *Construction projects in state waters* and codified as [Chapter 77.55 RCW](#), the entire text of the statute can be found at: <http://app.leg.wa.gov/RCW/default.aspx?cite=77.55>.

Under the authority of Chapter 77.55 RCW, WDFW issues a construction permit called a Hydraulic Project Approval (HPA). The sole purpose of the HPA is to protect fish life from construction and other work that affects the flow or bed of state waters. HPAs are site-specific, meaning that provisions are tailored to the site conditions and species that might be affected by each particular project. The HPA contains conditions that a permittee must follow in order to mitigate<sup>1</sup> impacts to fish life caused by the project.

Chapter 77.135 RCW - Invasive Species - provides authority for WDFW to address invasive species using an integrated management approach. Authority is conveyed for WDFW to adopt rules to require clean/drain/dry or other decontamination methods and to require inspections for aquatic conveyances entering Washington State.

WDFW promulgates rules to implement Chapter 77.55 RCW under [chapter 220-660 WAC](#) - *Hydraulic Code Rules*. This WAC chapter establishes regulations for administration of the HPA program. The Hydraulic Code Rules set forth definitions, administrative procedures for obtaining an HPA, steps for HPA appeals and civil compliance, and criteria generally used by WDFW to review and condition hydraulic projects to protect fish life.

One type of hydraulic project regulated by WDFW is placer<sup>2</sup> mineral prospecting and mining using motorized and nonmotorized prospecting and mining equipment. Pursuant to RCW 77.55.091 and WAC 220-660-050(9), WDFW distributes WAC 220-660-300 as the "Gold and Fish Pamphlet," which describes methods of, and restrictions for, mineral prospecting and mining. A person<sup>3</sup> does not need to apply for a standard HPA if they are conducting mineral prospecting activities in accordance with the Gold and Fish Pamphlet. Persons who want exceptions to provisions in the Gold and Fish Pamphlet must apply for standard HPAs.

On April 14, 2018, the Fish and Wildlife Commission (Commission) directed WDFW to propose rule changes that will remove suction dredging as an activity authorized under the Gold and Fish Pamphlet. New rules are needed to require suction dredgers to apply for standard HPAs. The

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<sup>1</sup> "Mitigation" is defined in WAC 220-660-030(100) to mean sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat that supports fish life.

<sup>2</sup> "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals. WAC 220-660-030(113)

<sup>3</sup> A "person" is defined in WAC 220-660-030(112) as meaning "an applicant, authorized agent, permittee, or contractor. The term person includes an individual, a public or private entity, or organization." This term is used throughout this SBEIS to refer to individuals and businesses.

Commission also directed WDFW to propose rules that require suction dredgers<sup>4</sup> to report their activities annually and rules that prevent dredgers from spreading aquatic invasive species.

The Commission gave three reasons why these changes were needed. First, no application is required to work under the Gold and Fish Pamphlet. As a result, WDFW doesn't know how many dredges are operating statewide and where or when they are being operated. Obtaining this information would improve WDFW's ability to assess the potential risks to fish life, including potential cumulative impacts, and to target inspections to ensure dredgers are complying with HPA provisions.

Second, WDFW is concerned that Washington will experience an increase in dredgers as a consequence of Oregon's expanded restrictions on suction dredging that became effective January 1, 2018. The reason WDFW is concerned about this problem is because Oregon experienced a significant increase in suction dredgers, from 656 permitted placer miners in 2008 to 1,095 permitted placer miners in 2010, that Oregon Department of State Lands attributed to the moratorium California placed on suction dredging in 2009. WDFW currently does not know how many out-of-state dredgers work under the pamphlet, and would have no way of knowing how many more were coming into Washington to dredge resulting from the new Oregon rules. Again, without this information, WDFW can't accurately assess the risk to fish life.

Third, WDFW assumes that an increase in the number of out-of-state dredgers would increase the risk of aquatic invasive species coming into the state. Dredgers, like other watercraft, could also spread aquatic invasive species in-state when they move their equipment from waterbody to waterbody. Although chapter 77.135 requires inspections and decontamination for aquatic invasive species, the Gold and Fish Pamphlet does not explicitly require inspections of dredges coming into the state, nor does the pamphlet include best practices to prevent the spread of aquatic invasive species in-state. Once non-native species become established in a new environment, where their natural enemies are missing, these invaders can spread rapidly. Aquatic invasive species can out-compete native species and disrupt efforts to recover naturally-reproducing salmon, steelhead, and trout stocks.

Refer to Sections 1 and 3 of the *2019 HPA Suction Dredge Rule Making Regulatory Analysis* ("Regulatory Analysis") document for more about the history of and need for the proposal. Section 4 of that document discusses how the proposed rule meets the general goals and specific objectives of the statutes. The Regulatory Analysis is available at <https://wdfw.wa.gov/licensing/hpa/rulemaking/>.

## **1.2 Compliance requirements of the proposed rule**

***RCW 19.85.040(1) "A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements."***

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<sup>4</sup> The terms "suction dredgers," "dredgers," "miners," and "mineral prospectors" are used interchangeably throughout this document and refer to persons who would be required to comply with the proposed rules unless the context clearly indicates otherwise.

In order to implement the Commission’s directive, WDFW developed rule proposals for WAC sections 220-660-030 (Definitions) to refine and clarify the suction dredging definitions, and 220-660-300 (Mineral Prospecting) to remove suction dredging as an authorized activity under the Gold and Fish Pamphlet. Changes in these two sections correct errors and clarify language without changing the effect of that language and do not create compliance requirements for suction dredgers; because of this, these sections are not discussed further in this analysis. A proposed new WAC section 220-660-305 contains new rules for suction dredging that impose requirements that miners must comply with, and this WAC section is the subject of this SBEIS analysis.

Compliance requirements of the proposed rule are provided on Table 1.

**Table 1 Compliance requirements of proposed WAC 220-660-305**

<b>Rule</b>	<b>Requirement</b>	<b>WAC</b>
<b><i>“Suction Dredge HPA-Required Rule”</i></b>	All suction dredgers are required to apply for a standard written HPA.	WAC 220-660-305(3)(a)
<b><i>“Aquatic Invasive Species Rule”</i></b>	All suction dredge equipment that has been used in waters outside of Washington State must be inspected for the presence of aquatic invasive species prior to use in state waters; Suction dredgers are required to implement methods to prevent the spread of aquatic invasive species.	WAC 220-660-305(4)
<b><i>“Annual Reporting Rule”</i></b>	All suction dredge owners are required to submit an annual activity report.	WAC 220-660-305(8)

### **1.3 Professional Services Required**

One goal of WDFW’s HPA Application system is that applicants should not require the assistance of professional services in order to complete an application. WDFW provides free support services during normal business hours to persons having difficulty establishing an account, starting an application, completing an application, and submitting that application.

HPAs for mineral prospecting projects that move less than 50 cubic yards of material are exempt from SEPA under WAC 197-11-835(2)<sup>5</sup>. Applicants wishing to move less than 50 cubic yards can cite this exemption to complete the SEPA requirements of the HPA application. Applicants wishing to move 50 cubic yards or more of material must complete a SEPA checklist and submit it to the SEPA lead agency so that the lead agency can make a determination about the effects of the project on the environment.

<sup>5</sup> WAC 197-11-835 *“The following activities of the department of fish and wildlife are exempted:”... “(2) Hydraulic project approvals where there is no other agency with jurisdiction [besides the department of fish and wildlife] requiring a nonexempt permit, except for proposals involving removal of fifty or more cubic yards of streambed materials ...”*

One reason many HPA applicants might need professional services is to obtain engineering advice and engineer-certified plans and specifications to file with their HPA application. Because suction dredging is not a construction activity, engineered plans and specifications are not required to complete the application. As a result, applicants are unlikely to use professional services.

Professional services relating to maintaining a computer and internet connection would be included under “Administrative Costs.”

Refer to section 6 (cost-benefit analysis) of the Regulatory Analysis for more about economic considerations relating to the rule. The Regulatory Analysis document is available at <https://wdfw.wa.gov/licensing/hpa/rulemaking/>.

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## **SECTION 2 Identify Businesses - Minor Cost Threshold**

*RCW 19.85.040(2)(c) “Provide a list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.”*

*RCW 19.85.020(1) “‘Industry’ means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget.’*

*RCW 19.85.020(2) “‘Minor cost’ means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll.’*

This rule making activity regulates placer gold prospecting and mining in Washington using motorized and nonmotorized suction dredging equipment, including suction dredges, dryland dredges and suction dredge/highbanker combination equipment. Any business that would need an HPA to conduct motorized and nonmotorized suction dredging for placer mining would be required to comply with the proposed rules.

WDFW took several steps to attempt to identify businesses that would need an HPA to conduct suction dredging. The first step WDFW took was to identify industries by four-digit North American Industry Classification System (NAICS) codes. Mineral prospecting and mining businesses directly regulated by WDFW fit under the 4-digit NAICS code 2122 for metal ore mining.

WDFW collected and reviewed data relating to businesses under the 2122 industry code. WDFW learned by contacting NAICS 2122 businesses (Section 2.1) that most businesses under this code are not required to obtain an HPA in order to conduct their work because their work does not meet the definition of a hydraulic project<sup>6</sup>. Of the nineteen businesses we contacted, none

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<sup>6</sup> WAC 220-660-030(76) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

responded letting us know they are required to comply with WAC 220-660-300 or would be required to comply with the proposed rules.

These results led WDFW into several additional areas of inquiry, which are described further in sections 2.2 through 2.5. After searching for businesses using multiple criteria, and distributing two different surveys, only two people self-identified as owning a business for which a suction dredge HPA would be needed, and neither provided information that helped WDFW complete the analysis. This research led WDFW to conclude that identifying mineral prospecting businesses on the basis of business name, business owner, or 4-digit NAICS code does not help us identify the businesses required to comply with the proposed rule. Because of this, it is difficult to obtain the kinds of data needed to complete the SBEIS analysis.

Considering these information constraints, WDFW decided to rely upon survey data (section 2.5) from the mineral prospectors themselves to estimate the costs to comply with the rule, and to otherwise do the best we could to make the estimates required in the SBEIS with the available data. Ultimately, WDFW relies upon steps to lessen impacts imposed by the proposed rule on small businesses and other persons (section 6).

The following subsections provide more detail on the research WDFW conducted to identify businesses that might be required to comply with the proposed rule, and our conclusions based on that research.

## **2.1 *Metal ore mining businesses - NAICS 2122***

WDFW looked at two aspects for businesses in the NAICS industry code 2122 for metal ore mining.

### **2.1.1 SBEIS tools**

To identify businesses that might be affected by the suction dredge rule proposals, WDFW first examined the NAICS list of industries to identify which industries are directly regulated by WAC 220-660-300. Mineral prospecting and mining businesses directly regulated by WDFW fit under the 4-digit NAICS code 2122 for metal ore mining. Table 2 presents data from the SBEIS tools<sup>7</sup> for the NAICS code 2122 for metal ore mining.

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<sup>7</sup> "SBEIS Tools" include document templates, spreadsheets, examples, and other guidance provided by the Governor's Office of Regulatory Innovation and Assistance, the state Auditor's Office, and the Office of Financial Management: [https://www.oria.wa.gov/site/alias\\_oria/934/Regulatory-Fairness-Act-Support.aspx](https://www.oria.wa.gov/site/alias_oria/934/Regulatory-Fairness-Act-Support.aspx)

**Table 2 Businesses data for businesses identified under industry classification code 2122**

Industry 4-digit or 6-digit 2012 NAICS Code	NAICS Code Definition	Number of Establishments	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Annual Payroll	<0.3% of annual revenue or income or \$100
2122	Metal ore mining	11	D	\$455,958,000.	D	\$41,450,727	D	\$124,352

Source: Washington State Auditor *PA\_RegReform4\_minor\_cost\_tool.xlsx*, which uses data from the 2012 Economic Census of the United States.

Codes: “D” means data are withheld to avoid disclosing data for individual companies; data are included in higher level totals.

Numbers of employees in Washington under this NAICS code is range “e”: 250 to 499 employees. The actual number is withheld to avoid disclosing data for individual companies.

Note: There are 30 nonemployer establishments with a nonemployer value for of sales, receipts, revenue, or business done of \$1,581,000, according to the census data. These data were not carried forward into the “Minor Cost Calculator” tab.

According to the U.S. Census Bureau QuickFacts, “a nonemployer business is one that has no paid employees, has annual business receipts of \$1,000 or more (\$1 or more in the construction industries), and is subject to federal income taxes.

Nonemployer businesses are generally small, such as real estate agents and independent contractors. Nonemployers constitute nearly three-quarters of all businesses, but they contribute less than four percent of overall sales and receipts data.

Nonemployers are not included in the counts of establishments from the Economic Census or County Business Patterns.

“Generally, an establishment is a single physical location at which business is conducted or services or industrial operations are performed. However, for nonemployers, each distinct business income tax return filed by a nonemployer business is counted as an establishment. Nonemployer businesses may operate from a home address or a separate physical location. A business is assigned to a county location based on the business owner’s mailing address, which may not be the same as the physical location of the business.

“Nonemployer statistics data originate chiefly from administrative records of the Internal Revenue Service, Bureau of Labor Statistics, and the Social Security Administration. Data are primarily comprised of sole proprietorship businesses, although a portion of the data is derived from partnership and corporation businesses. These data undergo complex processing, editing, and analytical review at the Census Bureau to distinguish nonemployers from employers, correct and complete data items, and form the final nonemployer universe.” <https://www.census.gov/quickfacts/fact/note/US/NES010216>

WDFW made several observations about this information. First, there are so few businesses in this industry in Washington that employment and payroll data are masked by the U.S. Census Bureau to avoid disclosing information for individual companies. Second, the provided revenue data (e.g., average annual business revenue of \$41 million) do not seem to fit the kind of business WDFW assumes would be required to comply with the proposed suction dredging rule. This determination is based on anecdotal information provided by miners in 2017<sup>8</sup> indicating that the average miner yields 3 grams of gold per day and that miners average 20 days of suction dredging per year. 3 grams of gold times 20 days per year equals 60 grams of gold per year, worth

<sup>8</sup> Wheeler, S. and W.S. Brown. October and November 2017. Personal Communications.

\$2,495.40 today<sup>9</sup>. WDFW would expect the average annual revenue for a business involving suction dredging to be closer to \$2,500 than \$41 million. Because of this, WDFW determined that data from the SBEIS tools were of limited utility in developing the SBEIS analysis.

### **2.1.2 Business search by NAICS code**

After reviewing the Census Bureau data, WDFW decided to contact the businesses under the 2122 NAICS code and ask them directly about their expected costs to comply with the proposed rule. Washington Department of Revenue (Revenue) maintains a database of businesses<sup>10</sup> that are registered with Revenue or the Secretary of State. WDFW requested a listing and contact information for NAICS 2122 businesses from Revenue, and a list of nineteen businesses was received from Revenue on September 12, 2018. The records request returned businesses in categories including corporations, limited liability companies or partnerships, and sole proprietorships. We developed a survey to determine whether the businesses on the list conduct suction dredging, which is currently regulated under the Gold and Fish Pamphlet or standard HPA. The survey also asked the businesses to provide their number of employees and payroll, their income, and the business costs they would associate with compliance with the rule proposals.

WDFW mailed certified letters on October 8, 2018 to each of the nineteen businesses asking them to return a survey with questions about their business to help us determine whether and how they would be impacted by the rule proposals. We included pre-paid return envelopes for the surveys and mailed the letters with certified letter tracking and return receipts.

Each of the nineteen mailings has been accounted for: six were undeliverable, either because the address is no longer valid or because no one was able to accept the letter; eleven were received by the business but they have not responded; and two survey responses were received by WDFW indicating the businesses are not currently regulated under WAC 220-660-300.

Of the NAICS 2122 businesses we contacted, none responded letting us know they are required to comply with WAC 220-660-300. Because of this, WDFW determined that even though NAICS code 2122 seems to be most closely aligned with the business activity regulated by WDFW, data associated with this code did not identify affected businesses.

## **2.2 Business research**

In October 2017, WDFW conducted further research to find businesses with “prospecting” or “gold mining” in the business name. Primary online tools were business data bases maintained by Department of Licensing, Department of Revenue, and Office of the Secretary of State<sup>11</sup>, and web searches using Google. On September 10, 2018, we reviewed information on these businesses

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<sup>9</sup> <https://goldprice.org/> Gold spot price at \$41.59 U.S. dollars per gram. Accessed on January 16, 2019 at 5:15pm Eastern Standard Time.

<sup>10</sup> Department of Licensing: <http://www.dol.wa.gov/business/checkstatus.html?hcwp>  
Department of Revenue: <https://secure.dor.wa.gov/gteunauth/#1>

<sup>11</sup> Note that business information from Licensing, Revenue, and Secretary of State is now available using the Revenue “Business Lookup” tool instead of the separate searches conducted in 2017.

with the Department of Revenue business lookup tool<sup>12</sup> to note “closed” or “inactive” businesses and to collect the NAICS codes registered for those businesses.

For the thirty businesses we reviewed, eleven have been closed, administratively dissolved, or no records could be found, and NAICS codes were not provided for six of the active businesses. None of the other businesses identified with NAICS codes are associated with the NAICS 2122 (metal ore mining) industry, and the codes they are associated with vary widely, including 813410, Civic and Social Organizations; 339999, All other miscellaneous manufacturing; 423810, Construction and mining (except oil well) machinery and equipment merchant wholesalers; 443142, Electronics Stores; 451110, Sporting goods stores; 453998, All other misc. store retailers; 453998, All other miscellaneous store retailers (except tobacco stores); 531390, Other activities related to Real Estate; 532412, Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing; 561499, All other business support services; 611710, Educational Support Services; 812990, All other personal services; 926110, Administration of general economic programs; and 999990, Non-Revenue.

### **2.3 HPA holders' business status**

Another approach WDFW used to identify businesses was to begin with a list of suction dredge HPA holders (i.e. persons who requested exceptions to the Gold and Fish Pamphlet). WDFW searched the Revenue Business Lookup Tool to determine whether any of the 159 current<sup>13</sup> suction dredge HPA holders have registered businesses that would require a suction dredge HPA.

The search located five current businesses and one former business that could be directly related to mineral prospecting because they are mineral prospecting clubs or nonprofit organizations; none are for-profit businesses.

None of the other businesses that were identified with an NAICS code were associated with the NAICS 2122 (metal ore mining) industry and, again, the industries represented varied widely. Industry codes included 111998 - All Other Miscellaneous Crop Farming, 112519 - Other Aquaculture, 115210 - Support Activities for Animal Production, 236115 - New Single-Family Housing Construction (except For-Sale Builders), 236118 - Residential Remodelers, 238990 - All Other Specialty Trade Contractors, 325411 - Medicinal and Botanical Manufacturing, 336611 - Ship Building and Repairing, 524298 - All Other Insurance Related Activities, 531210 - Offices of Real Estate Agents and Brokers, 561730 - Landscaping Services, 561790 - Other Services to Buildings and Dwellings, 811111 - General Automotive Repair, 811420 - Reupholstery and Furniture Repair, and 813110 - Religious Organizations. WDFW is unable to determine whether businesses on this list are impacted by the proposed rules.

When we conducted the research described in sections 2.2 and 2.3, we expected the results would add to our list of businesses involved in metal ore mining (NAICS 2122) or we would discover other NAICS codes to include in our small business analysis. Instead, we observed that most of the businesses among these results are identified in widely differing industries (i.e. have

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<sup>12</sup> <https://secure.dor.wa.gov/gteunauth/#1>

<sup>13</sup> Persons with HPA permits for mineral prospecting in freshwater with suction dredge equipment as of 11/14/2018.

NAICS codes that indicate primary activities that are very different from gold mining or metals mining) or have no identified industry.

At this point, WDFW concluded that 1) Even though NAICS code 2122 seems to be most closely aligned with the business activity regulated by WDFW, “2122” businesses don’t adequately represent mineral prospecting conducted under WAC 220-660-300; 2) it’s impractical to determine whether a business is affected under this proposal based solely on searches using the Department of Revenue Business Lookup Tool, and 3) suction dredge-related businesses in non-mining industry codes are not likely to be fairly represented by using payroll and income census data for those industry codes in the SBEIS analysis.

Because of the data limitations experienced to this point, WDFW decided to try a survey approach to reach individuals more likely to own businesses required to comply with suction dredging rules (Section 2.4).

#### **2.4 Survey 1 - Collect data on effort and costs**

In September 2018, WDFW distributed about 100 surveys to collect data about suction dredging effort and costs, and to identify suction dredging businesses. Surveys were emailed to miners who attended public listening sessions in 2016 and in summer 2018 (and who provided their email addresses to WDFW). We also sent emails to mining organization officers (whose email addresses were found online) requesting that they distribute the survey to organization members (industry representatives report over 1,100 active miners in seven non-profit mining organizations<sup>14</sup>). Email survey distribution totaled 46 recipients. In addition, WDFW handed out about 50 surveys at three organization meetings attended in October 2018. The survey was also available online via Survey Monkey from September 19 through October 31, 2018. Most who participated in the survey submitted their responses using the online version.

The surveys requested such information as the amount of time it would take miners to complete the HPA application (under the new rules), number of days and number of different sites mined, and information about payroll and income for mineral prospecting businesses.

In order to promote the survey, WDFW staff attended three mining organization meetings (Table 7). WDFW explained the rule proposals to club members, answered questions, and explained the surveys and the importance of survey data in rule development.

WDFW received nineteen survey responses. Of the nineteen respondents, eleven provided data relating to hours to apply for an HPA, number of sites, number of days spent dredging, costs to report, and costs to suction dredge; the other responses were blank or included only a comment. None of the respondents indicated they own businesses engaged in suction dredging, and no information on business costs, payroll, or business income was received from respondents.

#### **2.5 Survey 2 - costs to comply with proposed rules**

WDFW determined that a broader survey distribution approach was necessary, with survey questions focusing on the data needed to determine costs to comply with the proposed rule. This second survey was distributed on January 4, 2019. This survey was sent to the same email list as

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<sup>14</sup> Wheeler, S. and W.S. Brown. October and November 2017. Personal Communications.

the initial survey, including club officers for distribution to club members, and was also sent to every suction dredger having an HPA who had provided WDFW with an email address. A total of 154 surveys were directly emailed to HPA holders, individual mineral prospectors, and representatives of mineral prospecting interests. WDFW assumed this approach would be more likely than the research described in sections 2.1 through 2.4 to have reached businesses required to comply with suction dredging rules in order to conduct their business activities.

Survey 2 results presented in Section 3 provide most of the data for the SBEIS analysis.

## 2.6 Minor cost threshold

WDFW concluded that neither the SBEIS tools nor the research completed in steps described in sections 2.1 through 2.5 can help us identify the minor cost thresholds.

### *Identify the minor cost thresholds for that industry.*

Pursuant to RCW 19.85.020(2), "Minor cost" means *"a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll."*

WDFW determined that neither industry code 2122 nor any other industry identified during our research provides data that are representative of the businesses required to comply with the proposed rule. WDFW does not have payroll, employment, or business revenue data for businesses of any size required to comply with the proposed rule. Therefore, the minor cost threshold for this analysis is determined to be \$100 (Table 3). Any costs imposed on a small business that are over \$100 would be considered for this analysis to be more than minor and potentially disproportionate.

**Table 3 Small Business Industry Classification and Minor Cost Thresholds**

North American Industry Classification System (NAICS) code	2122
NAICS Business Description	Metal ore mining
# of businesses in Washington	Nineteen (from Revenue on September 12, 2018)
Minor Cost Threshold = the greater of <0.3% of annual revenue or income, or \$100	Average annual receipts for businesses that would be regulated under proposed WAC 220-660-305 are unknown, so we use \$100 for this analysis.
Minor Cost Threshold = 1% of annual payroll	Average annual payroll for businesses that would be regulated under proposed WAC 220-660-305 is unknown, so we use \$0.00 for this analysis.
Applicable minor cost threshold	\$100

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## SECTION 3 Costs of Compliance

***RCW 19.85.040(1) “...It [the SBEIS] shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, professional services, and increased administrative costs...”***

WDFW offers two estimates for costs to comply for each of the proposals. The first (“*Direct survey results*”) uses Survey 2 responses for costs to comply and the second method (“*Hourly-cost method*”) uses estimates based on Survey 2 responses for hours per task and a cost per hour established by WDFW.

Because there are no industry records of annual payroll to help us estimate costs per hour for the suction dredging industry, WDFW referenced mining labor data provided by the Bureau of Labor Statistics<sup>15</sup>. We chose the worker type we think mostly closely matches the work of a suction dredger - Continuous Mining Machine Operator - which earned an average hourly wage of \$28.19 in 2017. We are using this figure to estimate hourly costs per individual for the time taken to comply with the proposals.

Most HPAs are issued for a 5-year period pursuant to WAC 220-660-050(14)(a). Pursuant to WAC 220-660-050(b)(ii)(A), a standard multi-site HPA can authorize work at multiple project sites if: (I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area; (II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and (III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

### **3.1 Summary of survey responses - costs to comply**

WDFW surveyed suction dredgers to determine what they think their costs will be to comply with the rule proposals. A summary of survey responses is provided on Table 4. We use the median of responses (the middle value in the list of responses) because the data received contained outliers that would influence a standard mean or average (sum of responses divided by the number of responses).

We asked survey respondents to provide costs to comply with the “*Suction Dredge HPA-Required Rule*,” the “*Aquatic Invasive Species Rule*,” and the “*Annual Reporting Rule*.” Cost categories on the survey included equipment, supplies, labor, professional services, administrative costs, and “other” costs. We did not ask respondents to explain what they included for each cost estimate. Most respondents left answers blank if the question did not apply to them or they did not wish to respond.

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<sup>15</sup> Bureau of Labor Statistics. Industries at a Glance Statistics for Metals Ore Mining NAICS 2122. Occupation: Continuous Mining Machine Operator (a worker who extracts raw materials from the ground for commercial and other uses by operating self-propelled mining machines that rip coal, metal and nonmetal ores, rock, stone, or sand from the mine face and load it onto conveyors or into shuttle cars in a continuous operation.) Downloaded October 25, 2018 from [https://www.bls.gov/oes/current/naics4\\_212200.htm#47-0000](https://www.bls.gov/oes/current/naics4_212200.htm#47-0000). Note that the machine referenced for this occupation is nothing like the suction dredge equipment used in Washington, but it was the closest occupation we could find for the U.S. metal ore mining industry as a whole.

**Table 4 Median suction dredge survey responses - January 2019**

Item	Median Responses	
Survey respondents	25	
Time to apply for an HPA	2 hours 15 minutes	
Number of sites in an average year	4.5 sites	
Time to decontaminate (Aquatic Invasive Species)	2 hours 30 minutes	
Time to record and submit reports	4 hours	
Costs (& jobs lost) to comply with “ <i>Suction Dredge HPA-Required Rule</i> ”	\$784	6 jobs lost
Costs (& jobs lost) to comply with “ <i>Aquatic Invasive Species Rule</i> ”	\$500	4 jobs lost
Costs (& jobs lost) to comply with “ <i>Annual Reporting Rule</i> ”	\$695	6 jobs lost
Percent of respondents who decontaminated in 2018	84%	
Own a business for which a written suction dredge HPA would be required	1 person responded “yes” <sup>16</sup>	
Number of employees	[no responses]	
Average annual payroll	[no responses]	
Average annual income/revenue	[no responses]	
Costs to comply would reduce income	1 person responded “yes”	
Average annual value of minerals	\$300	

### 3.1.1 Costs to comply with the *Suction Dredge HPA-Required Rule*

Each person wishing to lawfully conduct suction dredging in Washington State will be required to obtain an HPA. A person is not required to apply for an HPA; however, an HPA is required if a person wishes to conduct the activity. The median response for number of sites was 4.5, so we are assuming for these analyses that only one HPA is needed per person. WDFW also assumes that each of those HPAs would be issued for a 5-year period as allowed under WAC 220-660-050(14)(a).

#### Direct survey results

The median of survey responses was \$784 to comply with the *Suction Dredge HPA-Required Rule*. If each HPA is valid for 5 years, and each person needs only one HPA, then the annual cost per person to complete the application process would be \$784 divided by 5, or \$156.80 per year.

#### Hourly-cost method

If a person takes 2 hours and 15 minutes (median survey response) to complete an HPA application, that costs \$63.43 in labor. If each HPA is valid for 5 years, and each person needs only one HPA, then the annual cost per person to complete the application process would be \$63.43 divided by 5, or \$12.69 per year.

<sup>16</sup> Another individual contacted WDFW to say he owns a mining business and did not receive the survey. We mailed him the survey, but as of February 19, 2019 WDFW had not received a completed survey from him.

### 3.1.2 Costs to comply with the Aquatic Invasive Species Rule

New rules are proposed specifying that all suction dredge equipment that has been used in waters outside of Washington State must be inspected for the presence of aquatic invasive species. Further, all suction dredge equipment used in any water of the state must be decontaminated according to department specification prior to use in a different water of the state.

“Clean-Drain-Dry” decontamination steps published on the WDFW web site can be undertaken by the average person using supplies commonly available: hot water, brushes, and household cleaning liquid<sup>17</sup>. Dredgers report that cleaning and drying out their equipment is a regular activity associated with dredging because they want to ensure that all the gold collected by the equipment is recovered. Eighty-four percent of survey respondents indicated they took decontamination steps in 2018.

The proposed rules also require persons bringing a suction dredge into Washington from out-of-state to have their equipment inspected for the presence of aquatic invasive species prior to using that equipment to suction dredge in Washington. Inspections for the presence of aquatic invasive species are available at major highway entry points into the state, so persons bringing a suction dredge into Washington can arrange their entry so they are inspected as they cross the state line. Certificates of inspection are available on request at the time the inspection is completed. Inspections and certificates are provided at no cost.

#### Direct survey results

The median survey response is \$500 per year to comply with the proposed aquatic invasive species decontamination rule.

#### Hourly-cost method

If a person takes 2 hours and 30 minutes (median survey response) to comply with the proposed aquatic invasive species decontamination rule, that costs \$70.47 in labor.

### 3.1.3 Costs to comply with the Annual Reporting Rule

The proposal contains a reporting requirement indicating that HPA holders must report annually to WDFW regarding the date, amount, type, and location of any suction dredging activity conducted during the preceding calendar year for which the HPA is in effect.

#### Direct survey results

The median survey response is \$695 to create and return annual activity reports under the proposal.

#### Hourly-cost method

If a person takes 4 hours (median survey response) to complete and submit an annual report, that costs \$112.76 in labor.

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<sup>17</sup> <https://wdfw.wa.gov/ais/youcanhelp.html>

### 3.2 Lost sales or revenues and lost jobs

**RCW 19.85.040(1)** "...It [The SBEIS] shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue..."

One survey respondent indicated they owned a business<sup>17</sup> that would require a suction dredge HPA under the proposed rules. No respondents provided number of employees, annual payroll, or annual revenue or income information. One respondent indicated that the costs to comply would reduce his/her revenue or income, but did not provide any details or estimates for the amount of the reduction. Some respondents indicated that jobs would be lost because of complying with the rule, but provided no detail for those losses. Results are summarized on Table 4.

### 3.3 Summary of costs to comply

Based on two methods used to estimate costs to comply with the rule proposals, total annual cost might range from \$195.92 to \$1,351.80 per person (Table 5).

**Table 5 Annual Costs of the Three Rule Proposals**

Rule	Lost Jobs	First-year Cost per Person	Annual Cost per Person
"Suction Dredge HPA-Required Rule"	6	\$63.43 to \$784	\$12.69 to \$156.80
"Aquatic Invasive Species Rule"	4	\$70.47 to \$500	\$70.47 to \$500
"Annual Reporting Rule"	6	\$112.76 to \$695	\$112.76 to \$695
TOTAL ANNUAL COST			\$195.92 to \$1,351.80
Annual Lost Revenue	[no information provided]		
Lost jobs	16	Sum of jobs reported lost by 25 survey respondents	

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## SECTION 4 More than Minor Costs

**RCW 19.85.030(1)(a)** "In the adoption of a rule under chapter [34.05 RCW](#), an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; ..."

**RCW 19.85.020(2)** "'Minor cost' means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll...'

Based on the costs of compliance estimated in section 3 and summarized on Table 5, the estimated costs for an individual or business to comply with the proposal surpass the minor cost threshold of \$100 shown on Table 3.

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## **SECTION 5 Disproportionate Impact on Small Businesses**

*RCW 19.85.040(1) “...To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) Cost per hour of labor; or (c) Cost per one hundred dollars of sales.”*

Two persons identified themselves as businesses require to comply with the proposed rule; no other survey respondents self-identified as businesses. One survey respondent identified as a small business but did not report employee numbers. Another person contacted WDFW to identify himself as a mining business, but did not return a survey<sup>17</sup>. WDFW is unable to distinguish the cost of compliance between small businesses and the ten percent of businesses that are the largest businesses required to comply.

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## **SECTION 6 Steps to Reduce Costs to Individuals or Small Businesses**

*RCW 19.85.030(2) “Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW [19.85.040](#) [i.e. in Section 5 of this document], the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:” [Note: RCW 19.85.030(2)(a) through (f) lists the methods, which are also listed under items (a) through (f) in Table 6 of this document ].*

*RCW 19.85.030(3) “If a proposed rule affects only small businesses, the proposing agency must consider all mitigation options defined in this chapter.”*

*RCW 19.85.030(4) “In the absence of sufficient data to calculate disproportionate impacts, an agency whose rule imposes more than minor costs must mitigate the costs to small businesses, where legal and feasible, as defined in this chapter.”*

*RCW 19.85.030(5) “If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency must provide a clear explanation of why it has made that determination.”*

*RCW 19.85.040(2) “A small business economic impact statement must also include: (a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses...”*

The goals and objectives of the statutes that the proposed rule is intended to implement are discussed fully in section 3 of the Regulatory Analysis, available at:

<https://wdfw.wa.gov/licensing/hpa/rulemaking/> .

**Table 6 Required methods of reducing costs imposed by the rule on small businesses**

RCW 19.85.030 (2) Requirements		WDFW response
Sub-section	Method	
a)	Reducing, modifying, or eliminating substantive regulatory requirements	WDFW considered reducing, modifying, or eliminating substantive regulatory requirements in the proposal. None of these elements can be further reduced and still meet the stated objective of the statute upon which the rule is based - that is, to ensure adequate protection of fish life.
b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements	WDFW has worked with miners to reduce reporting requirements and will continue to work on ways to minimize reporting while still achieving the stated objective of the statute upon which the rule is based - to ensure adequate protection of fish life.
c)	Reducing the frequency of inspections	The rule serves to clarify the inspection requirement of the Aquatic Invasive Species statute <sup>18</sup> , and does not address the frequency with which inspections are required.
d)	Delaying compliance timetables	The rule does not address the compliance timetables.
e)	Reducing or modifying fine schedules for noncompliance; or	The rule does not affect fines for noncompliance.
f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	WDFW has been and will continue working with miners to identify and implement actions to lessen impacts to miners; Other techniques are discussed in Section 6.1.

**6.1 Other actions considered to lessen costs to businesses**

- 1) WDFW considered issuing HPAs to nonprofit associations (clubs) on claim areas intended to be used only by club members. This approach could potentially reduce the number of HPAs individuals would need to obtain and therefore the number of applications WDFW would need to review. Each club’s executive officers would be accepting responsibility for compliance with all HPA conditions and applicable rules by everyone using the club claim (instead of responsibility for compliance lying with the individual doing the mining under

<sup>18</sup> [Chapter 77.135 RCW - Invasive Species](#)

their own HPAs). Upon hearing this proposal, mineral prospecting club executive officers expressed concern over this approach, and it is no longer being actively pursued.

Clubs are entities that can legally apply for HPAs under current rules (no change to the definition of “person” is being proposed), so this alternative is still available if clubs choose to implement this approach. Nothing in the proposed rule prohibits a club from applying for an HPA.

- 2) Mineral prospectors suggested that WDFW continue to allow suction dredging under the Gold and Fish Pamphlet.

This approach does not meet the goal of the statute upon which the rule is based - that is, to ensure adequate protection of fish life - because the Commission concluded that enumerating the number of suction dredging HPAs and knowing where the work is occurring is necessary to ensure protection of fish life.

- 3) Prospectors suggested that WDFW issue statewide HPAs if an applicant agrees to adhere to the provisions and timing restrictions that currently apply under the Gold and Fish Pamphlet.

This approach does not meet the objective of the statute upon which the rule is based - that is, to ensure adequate protection of fish life - because the Commission concluded that knowing where the work is occurring is necessary in order to ensure protection of fish life.

- 4) Prospectors suggest that aquatic invasive species decontamination measures aren't needed in rule because every mining club requires decontamination as a condition of the use of club resources.

Statute and rule for implementation of clean and drain requirements (Chapter 77.135 RCW and Chapter 220-640 WAC) place this responsibility on the owner/operator of the aquatic conveyance or equipment involved.

- 5) Mineral prospectors suggested that WDFW not require reporting.

Reporting is needed so WDFW can determine how many dredges were operated statewide on a given date; where and when they were operated, and how much bed material was dredged. This information is important to ensure protection of fish life. Reporting is necessary in order to understand if there are potential unaddressed effects to fish life.

## **6.2 Additional steps WDFW has taken to lessen impacts**

Several steps were taken during the preproposal period and prior to reduce costs to comply with the proposal:

- WDFW will continue to offer an HPA application that is easier to complete than the Joint Aquatic Resources Permit Application (JARPA) used by other agencies.
- The Commission limited the scope of the rule change proposal to suction dredge equipment and methods, thus reducing the proportion of the regulated community required to comply with the proposal.

- The Commission declined an early recommendation to prohibit suction dredging in federally-designated Endangered Species Act Critical Habitat, a proposal that would limit this activity in a significant portion of the state.
- After considering a more extensive annual reporting scheme, WDFW reduced the required elements of annual reporting to the minimum needed to meet the statutory objectives.

Additional steps WDFW plans to take to minimize costs to those who must comply with the new rules:

- WDFW will provide outreach and training materials to individuals and mining clubs for how to apply for an HPA and comply with reporting requirements.
- WDFW will work to implement an online annual reporting mechanism and other methods that minimize the impact of the requirement to file annual activity reports.

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## **SECTION 7 Involving stakeholders in rule development**

*RCW 19.85.040(2) “A small business economic impact statement must also include:…  
(b) A description of how the agency will involve small businesses in the development of the rule.”*

*RCW 19.85.040(3) “To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW [34.05.310\(2\)](#) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business.”*

Because requiring applications and reporting are integral to the objectives for rule making, WDFW took advantage of many opportunities to communicate the objectives of rule making to those affected, and to obtain information from affected persons about how the rules would impact them. WDFW mounted a significant outreach effort during the preproposal period in the summer of 2018 to get input about how the rule should be written and what the impacts would be from meeting the Commission’s rule making objectives; those events are summarized on Table 7.

**Table 7 Stakeholder contact events**

<b>Date(s)</b>	<b>Person(s)</b>	<b>Activity</b>
7/13/2018	News Release	Advertising public meeting dates, purpose, and locations
7/16/2018 - Wenatchee 7/17/2018 - Spokane 7/19/2018 - Olympia 7/25/2018 - Everett	Public	<b>Public listening sessions:</b> WDFW held four public listening sessions around the state that were attended by mineral prospectors, mining group representatives, and other diverse interests. WDFW presented the general objectives and timeline for rule making, answered questions, and sought

Date(s)	Person(s)	Activity
		feedback from attendees about how rules can be crafted to meet the rule making objectives.
8/8/2018 - Olympia 9/12/2018 - Olympia	Ad hoc stakeholder work group	<p>WDFW assembled an ad hoc working group [pursuant to RCW <a href="#">34.05.310(2)</a>] to help the agency develop proposed rules, discuss how rules could be crafted to meet the rule making objectives, and assist in the assessment of the costs of the proposed rule. The working group included seven miners (including Citizens Alliance for Property Rights) and eight persons representing other interests (Trout Unlimited, Fish Not Gold, Cascade Forest Conservancy, Snoqualmie Tribe, and Clark-Skamania Flyfishers). Two six-hour meetings were held, facilitated by Rachel Aronson of Triangle Associates.</p> <p>The dynamics of the group did not allow for extensive exploration of the costs of the proposed rule.</p> <p>WDFW worked with the miner group to determine ways to shape the application and reporting requirements to minimize the impact to those affected by the new rules.</p>
9/10/2018 9/12/2018	Washington Department of Revenue	Contacted Revenue Research and Fiscal Analysis Division for list of businesses registered under NAICS 2122 and contact information. Received list on 9/12. Refer to section 2.1 for more information about this topic.
9/19/2018	Mineral prospectors attending public listening sessions in 2016 and earlier in 2018; Mining organization leaders for distribution to members.	WDFW distributed an initial survey to mineral prospectors to collect data about current levels of suction dredge mining activity, the time it will take for miners to complete an application (under new rules), and other information about mineral prospecting costs and benefits. See section 2.4 for discussions of the survey and results.
10/4/2018 - Tacoma 10/12/2018 - Everett 10/15/2018 - Puyallup	Washington Prospectors Mining Association, South Sound Chapter; Gold Prospectors of Association of America, Everett	Staff met with three mining associations at their regular monthly meetings to present information about the rule proposals, respond to questions, explain the mineral prospector surveys and request survey participation. See section 2.4 for a discussion of these visits.

Date(s)	Person(s)	Activity
	Chapter; and Bedrock Prospectors	
10/8/2018	Businesses identified by Department of Revenue under North American Industry Classification System (NAICS) code 2122	Distributed a survey to businesses identified under NAICS industry code 2122. Refer to section 2.1 for a discussion of this survey and results.
1/4/2019	Distributed Survey 2 to mineral prospectors	WDFW distributed a second survey to mineral prospectors to collect data about costs to comply with aspects of proposed rules. See section 2.5 for a discussion of the survey and results.

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## SECTION 8 Number of jobs created or lost

*RCW 19.85.040(2) “A small business economic impact statement must also include... (d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.”*

Survey respondents identified that 16 jobs would be lost as a result of compliance with the proposed rules. No other information was provided by survey respondents about the nature of these jobs or the reason for the loss.

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## SECTION 9 Summarize results of small business analysis

Costs to comply with the proposal currently surpass the small business minor cost threshold of \$100. Costs to comply range from \$195.92 to \$1,351.80 per person per year. There is insufficient information to determine disproportionate impacts between small businesses and larger businesses. Mitigation steps taken are presented in Section 6. Survey respondents indicate 16 jobs would be lost.

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## SECTION 10 Report Preparation

This report was prepared by:

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