
Environment & Energy Committee

HB 1261

Brief Description: Ensuring compliance with the federal clean water act by prohibiting certain discharges into waters of the state.

Sponsors: Representatives Peterson, Fitzgibbon, Stanford, Tarleton, Ortiz-Self, Lekanoff, Doglio, Macri and Pollet.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Prohibits motorized or gravity siphon aquatic mining or discharge of effluent from such an activity within the ordinary high water mark of certain waters of the state.

Hearing Date: 2/4/19

Staff: Robert Hatfield (786-7117).

Background:

Water Pollution Regulation in Washington State under Federal and State Laws.

The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates discharges of pollutants to surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing the Department of Ecology (Ecology) to issue NPDES permits. In addition to delegated NPDES permitting authority, state law provides Ecology with parallel authority to regulate discharges to state waters, which includes a more expansive scope of waters than are covered under the federal Clean Water Act, including groundwater.

Endangered Species Act—Critical Habitat.

When a species is proposed for listing as endangered or threatened under the Endangered Species Act, the United States Fish and Wildlife Service, or the National Marine Fisheries Service, depending on the species, must consider whether there are areas of habitat believed to be essential to the species' conservation. Those areas may be proposed for designation as critical

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habitat. A critical habitat designation requires federal agencies to ensure that actions they plan to undertake, fund, or authorize to not destroy or adversely modify that habitat.

Waters of the State.

Waters of the state means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

Summary of Bill:

A discharge to waters of the state from a motorized or gravity siphon aquatic mining operation is subject to the authority of the Department of Ecology pursuant to the federal Clean Water Act and the state Water Pollution Control Act.

Motorized or gravity siphon aquatic mining or discharge of effluent from such an activity is prohibited within the ordinary high water mark of any waters of the state that have been designated under the Endangered Species Act as critical habitat, or that would impact critical habitat for salmon, steelhead, or bull trout. This prohibition includes fresh waters with the designated uses of salmonid spawning, rearing, and migration.

A person commits the offense of unlawful motorized or gravity siphon aquatic mining if the person engages in such an activity in violation of the Water Pollution Control Act or the Clean Water Act. Such an offense is subject to enforcement under the Water Pollution Control Act.

"Motorized or gravity siphon aquatic mining" is defined as mining using any form of motorized equipment, including but not limited to a motorized suction dredge or a gravity siphon suction dredge for the purpose of extracting gold, silver, or other precious metals, that involves a discharge within the ordinary high water mark of waters of the state.

The prohibition on motorized or gravity siphon aquatic mining does not apply to the following:

- aquatic mining using nonmotorized methods, such as gold panning, if the nonmotorized method does not involve the use of a gravity siphon suction dredge;
- mining operations where no part of the operation or discharge of effluent from the operation is within the ordinary high water mark of waters of the state;
- surface mining operations regulated by the Department of Natural Resources under Title 78 RCW; or
- metals mining and milling operations as defined in chapter 78.56 RCW.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.