

FINAL BILL REPORT

ESHB 1261

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Synopsis as Enacted

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

Sponsors: House Committee on Environment & Energy (originally sponsored by Representatives Peterson, Fitzgibbon, Stanford, Tarleton, Ortiz-Self, Lekanoff, Doglio, Macri and Pollet).

House Committee on Environment & Energy
Senate Committee on Environment, Energy & Technology

Background:

Water Pollution Regulation.

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 Department of Ecology (Ecology). 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 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.

Hydraulic Project Approvals.

A person must obtain a hydraulic project approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic project approvals are issued by the Washington Department of Fish and Wildlife (WDFW) to ensure the proper protection of fish life.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Small scale prospecting and mining activities are not required to be permitted by the WDFW with an individual HPA. Instead, the WDFW maintains rules for small scale prospecting and mining that are published in the "Gold and Fish Pamphlet." These rules describe small scale prospecting and mining activities that may be lawfully engaged in so long as the prospector complies with the terms of the Gold and Fish Pamphlet.

Small scale prospecting is defined as discovering and recovering minerals using pans, nonmotorized sluice boxes, concentrators, and mini-rocker boxes.

Waters of the State.

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

Summary:

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 (Ecology) pursuant to the federal Clean Water Act and the state Water Pollution Control Act. "Motorized or gravity siphon aquatic mining" is defined in the Water Pollution Control Act and the Hydraulic Code 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.

Motorized or gravity siphon aquatic mining or discharge of effluent from such an activity is prohibited to 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. Before Ecology may take any enforcement action, Ecology must first attempt to achieve voluntary compliance. As part of this first response, Ecology must offer information and technical assistance to the person identifying one or more means to accomplish the person's purposes within the framework of the law.

The definition of "small scale prospecting and mining" in the Hydraulic Code is amended to refer to nonmotorized concentrators.

A complete application for a Hydraulic Project Approval to undertake mineral prospecting using motorized or gravity siphon equipment, or to discharge effluent from such an activity to the waters of the state, requires proof of compliance with the requirements of the federal Clean Water Act as administered by Ecology.

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 to the waters of the state;
- surface mining operations regulated by the Department of Natural Resources;
- activities related to an industrial facility, dredging related to navigability, or activities subject to a Clean Water Act Section 404 individual permit;
- dredging operations undertaken by a diking or drainage district; and
- metals mining and milling operations.

Votes on Final Passage:

House	60	35
Senate	37	10

Effective: June 11, 2020