



*Friends of the Clearwater*  
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Technical Records Specialist 2  
Idaho Department of Water Resources  
208-287-4800

**RE: Proposed Rule 37.03.07 – Stream Channel Alteration Rules**

Sent VIA Email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) and [kensie.thorneycroft@idwr.idaho.gov](mailto:kensie.thorneycroft@idwr.idaho.gov)

The following comments on the proposed rule are submitted on behalf of Friends of the Clearwater. Friends of the Clearwater is a conservation organization concerned about the public wildlands, watersheds, and wildlife in and immediately around the Clearwater Basin in north-central Idaho.

#### Introduction

Friends of the Clearwater has participated in the public involvement processes by the US Forest Service (USFS) and the Bureau of Land Management (BLM) on suction dredge mining. FOC has commented on suction dredge mining proposals on the South Fork Clearwater, Lolo, and Moose Creeks in the Clearwater Basin, the joint state/federal public involvement process for NPDES permits in 2012, and made comments directly to IDWR in recent years. The decline of wild steelhead in the Clearwater Basin is of significant concern and the Biological Assessment found that suction dredging on the South Fork likely adversely affects threatened steelhead.

When the EPA developed a general National Pollution Discharge Elimination System (NPDES) permit for recreational placer mining activities in the State of Idaho, small-scale suction dredging was found to negatively affect the habitat of salmon, steelhead, and bull trout as well as the fish themselves. Steelhead, fall Chinook, and bull trout are listed for ESA protections in the Clearwater and Salmon Basins and their tributaries. These streams also contain other sensitive species such as westslope cutthroat trout and Pacific lamprey. This general permit excluded these streams from coverage.

#### Concerns Over Rule Changes

There is lack of clarity over the changes, specifically as to what can occur below the high water mark and what constitutes powered equipment. The definitions in part 010 (items 11 and 13) and the exemption of non-powered equipment in part 025 (item 05) set the stage for confusion in part/rule 061 item 03. For example, under the proposed rule changes, a hand operated/powered winch or come-along could be used above the high water mark (where it would normally be placed anyway), with the cables moving large rocks that rest below the high-water mark. This would cause tremendous stream alteration and bed scouring. It evades the purpose of any rule regulating such activity. The proposed rule must be

clarified to make sure that any equipment (powered or mechanized), including cables, should not move rocks below the high-water mark. The existing rule is clearer and should be retained.

The removal of  $\frac{1}{4}$  cubic yard per hour threshold for small mining permits (rule part 061 item 02) is also highly problematic. It opens to the door to much greater impact. It should be retained.

The proposed regulations would not comply with various decisions and conclusions made by federal agencies including NOAA Fisheries, the US Fish and Wildlife Service, USFS, BLM, and EPA regarding suction dredge mining because of the proposed changes noted above. The actions taken by the federal agencies were predicated on minimizing disturbance to streams, including limitations of the amount of material moved per hour, the number of dredging or sluicing operations, and the prohibition of moving large rocks in streams, even if the equipment (mechanized or motorized) is outside of the stream.

In other words, if this proposed rule change goes forward, IDWR must consult with the US Fish and Wildlife Service and NOAA Fisheries to develop incidental take permits for steelhead, bull trout, sockeye (migrating up the Salmon), and Chinook (spring/summer and fall) as the changes in the rule would be likely to adversely affect those species, especially steelhead. Further, the land management agencies must be consulted and new analyses and decisions issued on site-specific proposals. It is unlikely any of the agencies mentioned above would agree with IDWR and undertake the tasks to redo the NEPA analyses, Biological Opinions, and create new incidental take statements.

In sum, we urge you to keep the existing regulations, as they are much clearer and better. The proposed changes could create significant additional impacts on federally listed species and fragile riparian habitats.

Please keep us updated on this rule change.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Macfarlane".

Gary Macfarlane