DEPARTMENT OF ECOLOGY
State of Washington

SEPA ENVIRONMENTAL CHECKLIST

A. Background

1. Name of proposed project, if applicable:
   New Rule Development: Chapter 173-228 WAC – Vessel Sewage No Discharge Zones.

2. Name of applicant: *Washington State Department of Ecology Water Quality Program*

3. Address and phone number of applicant and contact person:
   Heather R. Bartlett, Program Manager
   Water Quality Program
   Washington Department of Ecology
   PO Box 47600
   Olympia, WA 98504-7600
   Heather.Bartlett@ecy.wa.gov
   Phone: 360-407-6405

4. Date checklist prepared: *August 17, 2017*

5. Agency requesting checklist: *Washington State Department of Ecology*

6. Proposed timing or schedule (including phasing, if applicable):
   CR-101: July 2017
   CR-102: October 2017
   CR-103: February 2018
   Effective Date: March 2018

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
   Not at this time.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
   Ecology's Staff Report for the proposed rulemaking contains additional background and analysis. See Appendix A Staff Report.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
   N/A

10. List any government approvals or permits that will be needed for your proposal, if known.
    Adoption of this rule will need to comply with the requirements of the Washington State Administrative Procedures Act (Chapter 35.04 RCW).

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do

not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

Ecology proposes to adopt a new rule – Chapter 173-228 WAC – Vessel Sewage No Discharge Zones. The vessel sewage no discharge zone rule establishes prohibits the release of sewage (black water) from vessels, whether treated or not, for Puget Sound area waters.

Puget Sound is a unique, sensitive water body. Its limited tidal flushing makes it prone to poor water quality conditions. Federal law currently allows vessels to discharge treated sewage within three miles of shore.

This proposal follows the 5-year stakeholder process, the petition submittal to the Environmental Protection Agency (EPA), and the EPA's final affirmative determination that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage from vessels are reasonably available for the waters of Puget Sound. This information will all be used as part of this rulemaking.

The Puget Sound No Discharge Zone would cover 2,300 square miles of marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

Vessel sewage discharges have a high potential impact due to proximity, often directly over or near shellfish and other protected resources, such as swimming beaches. Shellfish beds are vulnerable to pathogen pollution (which comes from sewage), which threatens an important shellfish food supply in Washington State. Due to this risk, we have closed approximately 3,000 acres of shellfish harvesting areas that are in close proximity to marinas. We anticipate that under these rules the status of these shellfish harvesting restrictions would be reevaluated.

Our state has made large investments in sewage treatment, stormwater management, and in the prevention of industrial pollution and agricultural runoff. Making Puget Sound a No Discharge Zone for vessel sewage addresses a missing piece in our strategy to clean up and restore Puget Sound. It is a near-term action in the Puget Sound Action Agenda, and is a recommendation of the Washington Shellfish Initiative.

On February 21, 2017, the EPA made a final affirmative determination that the Puget Sound region, as described above, has adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels reasonably available. The EPA said the State may finalize its proposed designation.

Most of Puget Sound's estimated 156,600 recreational and commercial vessels with on-board toilets have sewage holding tanks and use pump-out stations, or wait to discharge more than three miles from shore or at sea. Roughly 2,200, or 2 percent, have limited treatment systems and would need to add holding tanks.

The rule will clarify requirements necessary to implement the No Discharge Zone determination by the EPA, which applies to all recreational and commercial vessels. Previous work in preparation for the petition to the EPA lead to including a delayed implementation of five years for some commercial vessels such as tugs, fishing, research, and small overnight passenger cruise vessels to add sewage holding tanks.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The proposed rulemaking applies to the marine waters of Washington State inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

B. ENVIRONMENTAL ELEMENTS

As specified in WAC 197-11-315(1)(e), for this nonproject proposal, the Department of Ecology determined that the questions in Part B do not aid in the review of the proposal. See Part D for nonproject actions and the associated Staff Report.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: Heather R. Bartlett

Name of signee: Heather R. Bartlett

Position and Agency Organization: Water Quality Program Manager, WA Department of Ecology

Date Submitted: 10/3/17

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

   The intention of the proposed rule is to prevent and decrease discharges of sewage to water. To comply with the proposed ban on vessel sewage, vessels will either hold and discharge sewage outside of the proposed no discharge zone, pumpout at stationary or portable pumpout stations, or pumpout to mobile pumpout boats, barges, or pumper trucks. The proposal would decrease discharges of sewage to water. There is a potential that increased usage of mobile pumpout boats, barges and pumper trucks would require more usage of fuel and therefore fuel exhaust emissions to air, though not significantly.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

   Chapter 173-228 WAC – Vessel Sewage No Discharge Zones proposes to prevent and decrease sewage discharges which have a high potential impact resources due to proximity, often directly over or near shellfish and other protected resources and habitat, such as swimming beaches, eelgrass and kelp beds. Shellfish beds are vulnerable to pathogen pollution (which comes from sewage), which threatens an important shellfish food supply in Washington State. It is anticipated that with this rule, the status of beds closed to shellfish harvesting restrictions would be reevaluated. The proposal would be beneficial to environmental resources.

3. How would the proposal be likely to deplete energy or natural resources?

   See discussion under D1 above.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

   See discussion under D2 above.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

   This rule does not propose or encourage any uses that are incompatible with land or shoreline areas.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

   See discussion under D1 above.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

   No conflicts have been identified.

STAFF REPORT
For SEPA DNS/Checklist
Rulemaking for Chapter 173-228 WAC, Vessel sewage no discharge zones

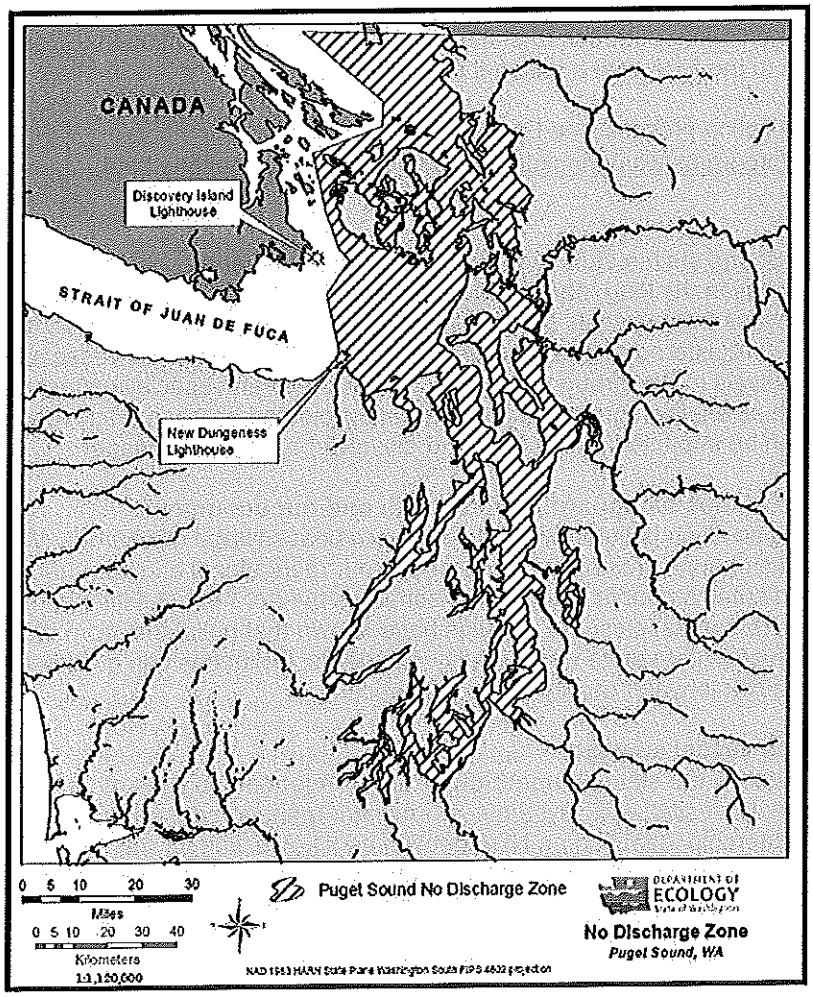
August 2, 2017

Introduction

Ecology has prepared this staff report to aid in understanding the potential impacts from the adoption of this rule to establish no discharge zones for vessel sewage. The goal of this document is to provide analysis to support the SEPA determination and environmental checklist for the proposed rule.

Location

The proposed rulemaking applies to the marine waters of Washington State inward from the line between New Dungeness Lighthouse (N 48° 10' 54.454", 123° 06' 37.004" W) and the Discovery Island Lighthouse (N 48° 25' 26.456", 123° 13' 29.554" W) to the Canadian border (intersecting at: N 48° 20' 05.782", 123° 11' 58.636" W), and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.



Legal authority

On July 21, 2016, per 33 USC § 1322, Ecology issued a petition to the U.S. Environmental Protection Agency (EPA) to establish a no discharge zone (NDZ) ban on vessel sewage in Puget Sound area waters. The EPA reviewed our petition and on February 21, 2017 issued a final determination that a no discharge zone can be established for Puget Sound. The EPA found that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage from vessels are reasonably available in the waters of Puget Sound.

The Water Pollution Control Act, Chapter 90.48, provides authority for this proposal including:

- RCW 90.48.030 Jurisdiction of department
- RCW 90.48.035 Rule-making authority
- RCW 90.48.260 Federal clean water act—Department designated as state agency, authority—Delegation of authority—Powers, duties, and functions.

Purpose, Evaluation, Stakeholder Outreach

The vessel sewage no discharge zone proposed rule establishes a prohibition on the release of sewage (black water) from vessels, whether treated or not, for Puget Sound area waters. This proposal follows more than four and a half years of evaluation and outreach which included gathering data on Puget Sound vessels, pumpout facilities, the conditions of Puget Sound, marine sanitation device (MSD) performance, boater surveys, research on other states with NDZs, an analysis of pollutant movement in areas of Puget Sound, an evaluation of implementation, outreach to stakeholders, a 2014 draft petition that went out for comment, and the final petition to the EPA with additional public comment.

For more detail on the NDZ evaluation process, see Ecology's NDZ website:

- http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/nodischargezone.html

Why it matters:
The features that make Puget Sound such a stunning scenic, environmental and economic resource also make it uniquely sensitive to pollution. Its long, narrow shape limits the circulation of water, especially in the bays and narrow inlets. Sewage from vessels can potentially affect water quality and pose a risk to public health. There are 153,000 registered recreational vessels and 3,600 commercial vessels in the Puget Sound area. Because vessels move throughout Puget Sound, they can especially affect sensitive resources in Puget Sound such as shellfish growing areas, marine protected areas, aquatic reserves and public beaches. Such areas can be impacted by bacteria and dissolved oxygen in sewage.

Protecting shellfish resources helps safeguard public health and our economy:
People can get sick from eating shellfish polluted with bacteria from boat sewage discharges. When bacterial pollution makes shellfish harvest restrictions necessary, our recreational and commercial shellfish industries suffer. Even small amounts of sewage discharges over or near shellfish beds can cause enough pollution to require harvest closures. Studies have shown that pollutants from vessel discharges are typically much higher than state water quality standards. Pollutants can quickly reach sensitive resources and pose a risk to water quality and public health.

Washington needs to address vessel sewage:
An NDZ connects a missing piece in the state's Puget Sound Action Agenda and joins other larger investments in sewage treatment: on-site septic systems, stormwater management and agricultural runoff control. The Puget Sound Partnership identified an NDZ petition as a key action for the Shellfish Restoration initiative in the Action Agenda. Federal law pre-empts states from regulating vessel sewage, but states may request an NDZ from the U.S. Environmental Protection Agency. More than 90 NDZs exist in 26 states to address pollution problems. The proposed Puget Sound NDZ would be the first in Washington.

Relevant environmental documents/studies/models which have been identified as necessary to support decision making for this proposal include but are not limited to:

State of Washington Department of Ecology. Water Quality Program. July 2016. Final Petition to

Designate the Waters of Puget Sound as a No Discharge Zone. Available at: https://fortress.wa.gov/ecy/publications/SummaryPages/1610020.html. This is the Department of Ecology's Final Petition requesting that the United States Environmental Protection Agency designate the Puget Sound as defined in the petition a No Discharge Zone for vessel sewage.

State of Washington Department of Ecology. Water Quality Program. October 2016. Supplementary information on vessel pumpout availability to the Final Petition to Designate the Waters of Puget Sound as a No Discharge Zone. Available at: http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/EPALetterVesselPumpoutAvailabilityOct2016.pdf. This is Department of Ecology's supplemental information on commercial vessel pumpout availability per the United States Environmental Protection Agency's request.

United States Environmental Protection Agency Federal Register Notice. February 2017. Washington State Department of Ecology Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination. Available at: https://www.federalregister.gov/documents/2017/02/21/2017-03353/washington-state-department-of-ecology-prohibition-of-discharges-of-vessel-sewage-final-affirmative. This is the Federal Register Notice of the Environmental Protection Agency's final determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for waters of Puget Sound.

United States Environmental Protection Agency. January 2017. Puget Sound No-Discharge Zone Response to Comments. Available at: https://www.epa.gov/sites/production/files/2017-02/documents/puget-sound-ndz-response-to-comments-01192017.pdf. This is a response to the 40,462 comments received on the preliminary affirmative determination.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. March 2012. No Discharge Zone Petition Requirements and Petition Research. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part1.pdf. This report summarizes the requirements and approaches to petition EPA for a NDZ and an overview of research on some other states petitions.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. April 2012. Puget Sound Condition, Vessel Sewage Discharge, and the Costs and Benefits of Establishing an NDZ. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part2.pdf. This report provides an inventory of Puget Sound conditions and identifies areas that are sensitive to nutrients and pathogens. It also has an overview of existing regulations and agreements governing vessel sewage discharges in Puget Sound and a basic assessment of the types of efficacy of MSDs. It summarizes the costs and benefits of establishing an NDZ.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. April 2012. Puget Sound Vessel Populations and Pumpout Facility Report. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part3.pdf. This report provides an assessment of Puget Sound's vessel population and the availability of pumpout facilities.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. June 2013. Phase 2 Vessel Population and Pumpout Facility Estimates. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part4.pdf. This report provides an assessment of Puget Sound's vessel population and the availability of pumpout facilities.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. April 2013. Puget Sound Recreational Boater Survey Results. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part5.pdf. This report summarizes the Puget Sound Boater Survey for recreational boats that was conducted in the summer of 2012 to collect data about sewage management practices and habits.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. November 2013. Phase 2 Commercial Vessel Sewage Management and Pumpout. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part6.pdf. This report summarizes the results

of an information gathering effort about wastewater management practices of commercial vessels operating in Puget Sound.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. November 2013. A Review of Implementation Strategies in Other States. Available at: https://fortress.wa.gov/ecy/publications/parts/1210031part7.pdf. This report provides a summary of NDZ implementation done in other NDZ areas and recommendations for implementation of an NDZ in Puget Sound.

State of Washington Department of Ecology. Water Quality Program. 2013. Advisory Group Meeting Notes. Available at: http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/NDZadvisorymtgnotes1-2.pdf. This report summarizes Ecology convened stakeholder meetings that reviewed the available research and addressed other potential issues related to the NDZ.

State of Washington Department of Ecology. Water Quality Program. February 2014. Draft Petition to Designate the Waters of Puget Sound as a No Discharge Zone. Available at: https://fortress.wa.gov/ecy/publications/documents/1410008.pdf. This draft petition was submitted to the United States Environmental Protection Agency and for public comment.

State of Washington Department of Ecology. Water Quality Program. January 2015. Response to Comments: 2014 Draft Petition to Designate the Waters of Puget Sound as a No Discharge Zone. Available at: https://fortress.wa.gov/ecy/publications/documents/1510001.pdf. This is a response to the more than 26,000 comments received on the draft petition was submitted to the United States Environmental Protection Agency and for public comment.

Herrera Environmental Consultants Inc. for the Washington State Department of Ecology. November 2013. Puget Sound NDZ Commercial Vessel Economic Evaluation Memorandum. Available at: https://fortress.wa.gov/ecy/publications/documents/1610015.pdf. This memorandum summarizes an evaluation of potential cost impacts of an NDZ for commercial tugboats, commercial fishing, and small passenger vessels.

State of Washington Department of Ecology. February 2016. No Discharge Zone Implementation Strategy, a Framework for Action. Available at: https://fortress.wa.gov/ecy/publications/documents/1610016.pdf. This report lays out the education, outreach and enforcement strategy for implementing an NDZ in Puget Sound.

Alaska Department of Environmental Conservation. 2013. Small Cruiseship sample reports. Available at: http://dec.alaska.gov/water/cruise_ships/reports.htm. Includes sample results including fecal coliform for type II Marine Sanitation Devices for blackwater from small cruise ships in Alaska for each year.

Washington State Department of Health and University of Washington. November 2007. Assessment of Potential Health Impacts of Virus Discharge from Cruise Ships to Shellfish Growing Areas in Puget Sound. Available at: http://www.doh.wa.gov/Portals/1/Documents/4400/332-062-cruise-ship-report.pdf. This is a study of potential human health impacts from virus discharges from large passenger vessels.

United States Environmental Protection Agency. December 2008. Cruise Ship Discharge Assessment Report. Available at: https://nepis.epa.gov/Exe/ZyNET.exe/P1002SVS.txt?ZyActionD=ZyDocument&Client=EPA&Index=1995%20Thru%201999%7C1976%20Thru%201980%7C2006%20Thru%202010%7C1991%20Thru%201994%7CHardcopy%20Publications%7C2000%20Thru%202005%7C1986%20Thru%201990%7C2011%20Thru%202015%7C1981%20Thru%201985%7CPrior%20to%201976&Docs=&Query=EPA842%2007%20005%20&Time=&EndTime=&SearchMethod=2&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C06THRU10%5CTXT%5C00000006%5CP1002SVS.txt&User=ANONYMOUS&Password=anonymous&SortMethod=-f%3Apubnumber&MaximumDocuments=15&FuzzyDegree=-1&ImageQuality=r85g16/r85g16/x150y150g16/i500&Display=hpfr&DefSeekPage=x&SearchBack=Z

yActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x. This is an assessment of cruise ship waste streams indicating average fecal coliform concentrations in traditional type II Marine Sanitation Devices blackwater effluent.

Washington State Department of Ecology. Environmental Assessment Program and Water Quality Program. April 2016, January 2016. Tracer simulations to investigate how waters move in Puget Sound and the Salish Sea to address questions related to the draft proposed No Discharge Zone petition; addendum to memo – CORMIX Modeling. Available at: http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/TracerMemo-NDZ-EAP_041216.pdf. http://www.ecy.wa.gov/programs/wq/nonpoint/CleanBoating/TracerMemoCORMIXAddendum.pdf. This memorandum and addendum summarizes results from computer modeling that simulates potential vessel discharges of contaminants in Puget Sound and the Salish Sea using a conservative tracer, evaluating areas influenced by those discharges.

United States Environmental Protection Agency. January 2010. Evaluation of Improved Type 1 Marine Sanitation Devices: Performance Evaluation Report. Available at: https://nepis.epa.gov/Adobe/PDF/P1007JT5.PDF. This is a study of performance testing of type I Marine Sanitation Devices in a simulated laboratory setting.

Kitsap County Public Health. 2010. Liberty Bay Marina Study. Available at: http://www.kitsappublichealth.org/environment/files/reports/Liberty_Marina_Study_2010.pdf. This is an assessment of the impact to water quality from untreated sewage discharges and differences in water quality inside versus outside the marina.