

**ESSB 5375** - H COMM AMD

By Committee on Appropriations

1 Strike everything after the enacting clause and insert the  
2 following:

3 "PART 1

4 **LEGISLATIVE INTENT AND DEFINITIONS**

5 NEW SECTION. **Sec. 101.** The legislature finds that the state has  
6 acted to plan for the protection and preservation of fish life by  
7 establishing policies that affect the protection of marine and  
8 freshwater habitat in the growth management act, the shorelines  
9 management act, the forest and fish plan, and the habitat conservation  
10 plan.

11 The legislature further finds that the state requires the  
12 examination of the environmental impacts of construction projects and  
13 work in Washington to minimize and mitigate the impact of those  
14 projects through the state environmental policy act.

15 The legislature further finds that while these various acts  
16 regulate the planning and design of upland projects, it is necessary to  
17 call on the expertise of the department of fish and wildlife to  
18 implement rules governing construction or work activities that occur  
19 below the ordinary high water line or other work specifically  
20 designated by the legislature in such a manner so as to protect fish  
21 life.

22 This policy recognizes that all such construction and work is to be  
23 permitted in a timely and efficient fashion with an aim toward  
24 preserving existing public and private property, preventing damage to  
25 the environment, protecting fish life, and permitting the efficient  
26 construction of new facilities.

27 NEW SECTION. **Sec. 102.** The definitions in this section apply  
28 throughout this chapter unless the context clearly requires otherwise.

- 1 (1) "Bed" means the land below the ordinary high water lines of  
2 state waters. This definition does not include irrigation ditches,  
3 canals, storm water runoff devices, or other artificial watercourses  
4 except where they exist in a natural watercourse that has been altered  
5 by man.
- 6 (2) "Board" means the hydraulic appeals board created in RCW  
7 77.55.170 (as recodified by this act).
- 8 (3) "Commission" means the state fish and wildlife commission.
- 9 (4) "Department" means the department of fish and wildlife.
- 10 (5) "Director" means the director of the department of fish and  
11 wildlife.
- 12 (6) "Emergency" means an immediate threat to life, the public,  
13 property, or of environmental degradation arising from weather or  
14 stream flow conditions or other natural conditions.
- 15 (7) "Hydraulic project" means the construction or performance of  
16 work that will use, divert, obstruct, or change the natural flow or bed  
17 of any of the salt or freshwaters of the state.
- 18 (8) "Imminent danger" means a threat by weather, water flow, or  
19 other natural conditions that is likely to occur within sixty days of  
20 a request for a permit application.
- 21 (9) "Marina" means a public or private facility providing boat  
22 moorage space, fuel, or commercial services. Commercial services  
23 include but are not limited to overnight or live-aboard boating  
24 accommodations.
- 25 (10) "Marine terminal" means a public or private commercial wharf  
26 located in the navigable water of the state and used, or intended to be  
27 used, as a port or facility for the storing, handling, transferring, or  
28 transporting of goods to and from vessels.
- 29 (11) "Ordinary high water line" means the mark on the shores of all  
30 water that will be found by examining the bed and banks and  
31 ascertaining where the presence and action of waters are so common and  
32 usual, and so long continued in ordinary years as to mark upon the soil  
33 or vegetation a character distinct from the abutting upland. Provided,  
34 that in any area where the ordinary high water line cannot be found,  
35 the ordinary high water line adjoining saltwater is the line of mean  
36 higher high water and the ordinary high water line adjoining fresh  
37 water is the line of mean high water.

1 (12) "Permit" means a hydraulic project approval permit issued  
2 under this chapter.

3 (13) "Sandbars" includes, but is not limited to, sand, gravel,  
4 rock, silt, and sediments.

5 (14) "Small scale prospecting and mining" means the use of only the  
6 following methods: Pans; nonmotorized sluice boxes; concentrators; and  
7 minirocker boxes for the discovery and recovery of minerals.

8 (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds"  
9 have the same meanings as defined in RCW 17.26.020.

10 (16) "Streambank stabilization" means those projects that prevent  
11 or limit erosion, slippage, and mass wasting. These projects are  
12 limited to bank resloping, log and debris relocation or removal,  
13 planting of woody vegetation, bank protection using rock or woody  
14 material or placement of jetties or groins, gravel removal, or erosion  
15 control.

16 (17) "Waters of the state" and "state waters" means all salt and  
17 fresh waters within the ordinary high water line and within the  
18 territorial boundary of the state.

19 **PART 2**

20 **DETERMINING HOW TO OBTAIN A HYDRAULIC PROJECT APPROVAL PERMIT**

21 NEW SECTION. **Sec. 201.** (1) In the event that any person or  
22 government agency desires to undertake a hydraulic project, the person  
23 or government agency shall, before commencing work thereon, secure the  
24 approval of the department in the form of a permit as to the adequacy  
25 of the means proposed for the protection of fish life.

26 (2) A complete written application for a permit may be submitted in  
27 person or by registered mail and must contain the following:

28 (a) General plans for the overall project;

29 (b) Complete plans and specifications of the proposed construction  
30 or work within the mean higher high water line in saltwater or within  
31 the ordinary high water line in freshwater;

32 (c) Complete plans and specifications for the proper protection of  
33 fish life;

34 (d) Notice of compliance with any applicable requirements of the  
35 state environmental policy act; and

1 (e) Provisions allowing for minor modifications to the plans and  
2 specifications without requiring reissuance of the permit as a  
3 condition of the application.

4 (3)(a) Protection of fish life is the only ground upon which  
5 approval of a permit may be denied or conditioned. Approval of a  
6 permit may not be unreasonably withheld or unreasonably conditioned.  
7 The department has forty-five calendar days upon receipt of a complete  
8 application to grant or deny approval of a permit. The forty-five day  
9 requirement is suspended if:

10 (i) After ten working days of receipt of the application, the  
11 applicant remains unavailable or unable to arrange for a timely field  
12 evaluation of the proposed project;

13 (ii) The site is physically inaccessible for inspection;

14 (iii) The applicant requests a delay; or

15 (iv) The application is not complete.

16 (b) Immediately upon determination that the forty-five day period  
17 is suspended, the department shall notify the applicant in writing of  
18 the reasons for the delay.

19 (4) If the department denies approval of a permit, the department  
20 shall provide the applicant a written statement of the specific reasons  
21 why and how the proposed project would adversely affect fish life.  
22 Issuance, denial, conditioning, or modification of a permit shall be  
23 appealable to the board within thirty days of the notice of decision.

24 (5)(a) The permittee must demonstrate substantial progress on  
25 construction of that portion of the project relating to the permit  
26 within two years of the date of issuance.

27 (b) Approval of a permit is valid for a period of up to five years  
28 from the date of issuance, except as provided in (c) of this subsection  
29 and in RCW 77.55.220.

30 (c) A permit remains in effect without need for periodic renewal  
31 for hydraulic projects that divert water for agricultural irrigation or  
32 stock watering purposes and that involve seasonal construction or other  
33 work. A permit for streambank stabilization projects to protect farm  
34 and agricultural land as defined in RCW 84.34.020 remains in effect  
35 without need for periodic renewal if the problem causing the need for  
36 the streambank stabilization occurs on an annual or more frequent

1 basis. The permittee must notify the appropriate agency before  
2 commencing the construction or other work within the area covered by  
3 the permit.

4 (6) The department may, after consultation with the permittee,  
5 modify a permit due to changed conditions. The modification becomes  
6 effective unless appealed to the board within thirty days from the  
7 notice of the proposed modification. The burden is on the department  
8 to show that changed conditions warrant the modification in order to  
9 protect fish life.

10 (7) A permittee may request modification of a permit due to changed  
11 conditions. The request must be processed within forty-five calendar  
12 days of receipt of the written request. A decision by the department  
13 may be appealed to the board within thirty days of the notice of the  
14 decision. The burden is on the permittee to show that changed  
15 conditions warrant the requested modification and that such a  
16 modification will not impair fish life.

17 (8) The department or the county legislative authority may declare  
18 and continue an emergency. The county legislative authority shall  
19 immediately notify the department if it declares an emergency under  
20 this subsection. The department, through its authorized  
21 representatives, shall issue immediately, upon request, oral approval  
22 for a stream crossing, or work to remove any obstructions, repair  
23 existing structures, restore streambanks, protect fish life, or protect  
24 property threatened by the stream or a change in the stream flow  
25 without the necessity of obtaining a written permit prior to commencing  
26 work. Conditions of the emergency oral permit must be established by  
27 the department and reduced to writing within thirty days and complied  
28 with as provided for in this chapter. The department may not require  
29 the provisions of the state environmental policy act, chapter 43.21C  
30 RCW, to be met as a condition of issuing a permit under this  
31 subsection.

32 (9) All state and local agencies with authority under this chapter  
33 to issue permits or other authorizations in connection with emergency  
34 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
35 expedite the processing of such permits or authorizations in keeping  
36 with the emergency nature of such requests and shall provide a decision

1 to the applicant within fifteen calendar days of the date of  
2 application.

3 (10) The department or the county legislative authority may  
4 determine an imminent danger exists. The county legislative authority  
5 shall notify the department, in writing, if it determines that an  
6 imminent danger exists. In cases of imminent danger, the department  
7 shall issue an expedited written permit, upon request, for work to  
8 remove any obstructions, repair existing structures, restore banks,  
9 protect fish resources, or protect property. Expedited permit requests  
10 require a complete written application as provided in subsection (2) of  
11 this section and must be issued within fifteen calendar days of the  
12 receipt of a complete written application. Approval of an expedited  
13 permit is valid for up to sixty days from the date of issuance. The  
14 department may not require the provisions of the state environmental  
15 policy act, chapter 43.21C RCW, to be met as a condition of issuing a  
16 permit under this subsection.

17 (11) The department may issue an expedited written permit in those  
18 instances where normal permit processing would result in significant  
19 hardship for the applicant or unacceptable damage to the environment.  
20 Expedited permit requests require a complete written application as  
21 provided in subsection (2) of this section and must be issued within  
22 fifteen calendar days of the receipt of a complete written application.  
23 Approval of an expedited permit is valid for up to sixty days from the  
24 date of issuance. The department may not require the provisions of the  
25 state environmental policy act, chapter 43.21C RCW, to be met as a  
26 condition of issuing a permit under this subsection.

27 NEW SECTION. **Sec. 202.** (1)(a) The department must develop general  
28 permits for common or routine activities to improve the predictability  
29 and efficiency of the hydraulic project approval program. At a  
30 minimum, the department must, by December 2004, develop general permits  
31 for the following activities:

- 32 (i) Minor dredging of up to ten yards of sediment from an existing  
33 channel, berthing area, or boat ramp;
- 34 (ii) Routine repair and maintenance of tide gates;
- 35 (iii) Replacement of up to sixty pilings including construction of  
36 mooring dolphins and fender pilings;

1 (iv) Routine repair or maintenance of road and highway structures  
2 such as culverts and ditches;

3 (v) Routine repair and maintenance of bridge structures below the  
4 ordinary high water line; and

5 (vi) Geotechnical or exploratory work conducted as part of project  
6 planning or development.

7 (b) The department may develop additional general permits for in-  
8 water construction activities as available resources allow.

9 (2) General permits must contain conditions necessary to protect  
10 fish life, and must clearly delineate predictable conditions and  
11 restrictions that project applicants may incorporate into project  
12 design and construction. The department must develop, in consultation  
13 with an advisory committee, common technical provisions that must be  
14 incorporated into general conditions for each general permit.

15 (3) The department shall post electronically and otherwise make  
16 generally available the following information for each general permit:

17 (a) A description of activities covered;

18 (b) The conditions and practices a project applicant must follow to  
19 receive coverage under the permit; and

20 (c) A notice of intent form for use by applicants to include  
21 information on project location and habitat types affected.

22 (4) To receive coverage under a general permit, a project applicant  
23 must:

24 (a) Send a notice of intent to follow the conditions of a general  
25 permit to the department twenty-one days before construction is to  
26 begin; and

27 (b) Post the general permit prominently at the worksite.

28 (5) Within ten days of receipt of a notice of intent from a project  
29 applicant, the department must notify the applicant of the status of  
30 general permit coverage. Status includes permit approval, denial, or  
31 conditioning. Issuance, denial, conditioning, or modification of a  
32 permit shall be appealable to the board within thirty days of the  
33 notice of decision.

34 NEW SECTION. **Sec. 203.** (1) Certain federal and state regulatory  
35 review processes may provide review and protection of fish life that is  
36 equivalent to the review provided by the department under this chapter.

1 This may include, among other permits, federal review of a project  
2 under the endangered species act (16 U.S.C. Sec. 1531 et seq.), a  
3 federal permit under section 404 of the federal water pollution control  
4 act (33 U.S.C. Sec. 1251 et seq.), state review of a project under  
5 section 401 of the federal water pollution control act (33 U.S.C. Sec.  
6 1251 et seq.), or state review of shorelines under chapter 90.58 RCW.

7 (2) At any point in project development or permitting, an applicant  
8 may submit to the department a notice of intent to proceed under an  
9 equivalent regulatory review. The notice must include a description of  
10 the project, the habitat impacted, and the equivalent permits required  
11 for the project. The director or director's designee shall make a  
12 determination regarding the equivalency of other regulatory permits  
13 within fifteen days of receiving the notice. If the notice of  
14 equivalency is approved, the project is exempt from the requirement to  
15 receive hydraulic project approval under this chapter. If the notice  
16 of equivalency is denied, the department must provide the applicant, in  
17 writing, specific reasons why the other regulatory reviews will not  
18 adequately protect fish life. (3) Any person aggrieved by a decision  
19 under subsection (2) of this section may appeal the decision according  
20 to the provisions of chapter 34.05 RCW.

21 **PART 3**

22 **EXEMPTION FROM HYDRAULIC PROJECT APPROVAL**

23 NEW SECTION. **Sec. 301.** The act of driving across an established  
24 ford is exempt from a permit. Driving across streams or on wetted  
25 streambeds at areas other than established fords requires a permit.  
26 Work below the ordinary high water line of state waters to construct or  
27 repair a ford or crossing requires a permit.

28 **Sec. 302.** RCW 77.55.330 and 2002 c 20 s 4 are each amended to read  
29 as follows:

30 The removal of derelict fishing gear does not require (~~written~~  
31 ~~approval~~) a permit under this chapter if the gear is removed according  
32 to the guidelines described in RCW 77.12.865.



1 one or more pamphlets describing these methods of removal or control.  
2 Such a pamphlet serves as the (~~(hydraulic project approval)~~) permit for  
3 any project that is conducted solely for the removal or control of such  
4 aquatic noxious weeds and that is conducted as described in the  
5 pamphlet(~~(+)~~). No further (~~(hydraulic project approval)~~) permit is  
6 required for such a project.

7 (~~((4) As used in this section, "spartina," "purple loosestrife,"~~  
8 ~~and "aquatic noxious weeds" have the meanings prescribed by RCW~~  
9 ~~17.26.020.~~

10 ~~(5))~~ (3) Nothing in this section shall prohibit the department  
11 (~~(of fish and wildlife)~~) from requiring a (~~(hydraulic project~~  
12 ~~approval)~~) permit for those parts of hydraulic projects that are not  
13 specifically for the control or removal of spartina, purple  
14 loosestrife, or other aquatic noxious weeds.

15 **Sec. 402.** RCW 77.55.270 and 1997 c 415 s 2 are each amended to  
16 read as follows:

17 (1) Small scale prospecting and mining shall not require (~~(written~~  
18 ~~approval)~~) a permit under this chapter if the prospecting is conducted  
19 in accordance with (~~(provisions)~~) rules established by the department.

20 (2) By December 31, 1998, the department shall adopt rules  
21 applicable to small scale prospecting and mining activities subject to  
22 this section. The department shall develop the rules in cooperation  
23 with the recreational mining community and other interested parties.

24 (3) Within two months of adoption of the rules, the department  
25 shall distribute an updated gold and fish pamphlet that describes  
26 methods of mineral prospecting that are consistent with the  
27 department's rule. The pamphlet shall be written to clearly indicate  
28 the prospecting methods that require (~~(written approval)~~) a permit  
29 under this chapter and the prospecting methods that require compliance  
30 with the pamphlet. To the extent possible, the department shall use  
31 the provisions of the gold and fish pamphlet to minimize the number of  
32 specific provisions of a written (~~(approval)~~) permit issued under this  
33 chapter.

34 (~~((4) For the purposes of this chapter, "small scale prospecting~~  
35 ~~and mining" means only the use of the following methods: Pans,~~

1 ~~nonmotorized sluice boxes, concentrators, and minirocker boxes for the~~  
2 ~~discovery and recovery of minerals.))~~

3 **Sec. 403.** RCW 77.55.280 and 2001 c 253 s 54 are each amended to  
4 read as follows:

5 When a private landowner is applying for (~~hydraulic project~~  
6 ~~approval~~) a permit under this chapter and that landowner has entered  
7 into a habitat incentives agreement with the department and the  
8 department of natural resources as provided in RCW 77.55.300 (as  
9 recodified by this act), the department shall comply with the terms of  
10 that agreement when evaluating the request for (~~hydraulic project~~  
11 ~~approval~~) a permit.

12 **Sec. 404.** RCW 77.55.300 and 2000 c 107 s 229 are each amended to  
13 read as follows:

14 (1) Beginning in January 1998, the department (~~of fish and~~  
15 ~~wildlife~~) and the department of natural resources shall implement a  
16 habitat incentives program based on the recommendations of federally  
17 recognized Indian tribes, landowners, the regional fisheries  
18 enhancement groups, the timber, fish, and wildlife cooperators, and  
19 other interested parties. The program shall allow a private landowner  
20 to enter into an agreement with the departments to enhance habitat on  
21 the landowner's property for food fish, game fish, or other wildlife  
22 species. In exchange, the landowner shall receive state regulatory  
23 certainty with regard to future applications for (~~hydraulic project~~  
24 ~~approval~~) a permit or a forest practices permit on the property  
25 covered by the agreement. The overall goal of the program is to  
26 provide a mechanism that facilitates habitat development on private  
27 property while avoiding an adverse state regulatory impact to the  
28 landowner at some future date. A single agreement between the  
29 departments and a landowner may encompass up to one thousand acres. A  
30 landowner may enter into multiple agreements with the departments,  
31 provided that the total acreage covered by such agreements with a  
32 single landowner does not exceed ten thousand acres. The departments  
33 are not obligated to enter into an agreement unless the departments  
34 find that the agreement is in the best interest of protecting fish or  
35 wildlife species or their habitat.

1 (2) A habitat incentives agreement shall be in writing and shall  
2 contain at least the following: (a) A description of the property  
3 covered by the agreement~~((τ))~~; (b) an expiration date~~((τ))~~; (c) a  
4 description of the condition of the property prior to the  
5 implementation of the agreement~~((τ))~~; and (d) other information needed  
6 by the landowner and the departments for future reference and  
7 decisions.

8 (3) As part of the agreement, the department ~~((of fish and  
9 wildlife))~~ may stipulate the factors that will be considered when the  
10 department evaluates a landowner's application for ~~((hydraulic project  
11 approval under RCW 77.55.100 or 77.55.110))~~ a permit on property  
12 covered by the agreement. The department's identification of these  
13 evaluation factors shall be in concurrence with the department of  
14 natural resources and affected federally recognized Indian tribes. In  
15 general, future decisions related to the issuance, conditioning, or  
16 denial of ~~((hydraulic project approval shall))~~ a permit must be based  
17 on the conditions present on the landowner's property at the time of  
18 the agreement, unless all parties agree otherwise.

19 (4) As part of the agreement, the department of natural resources  
20 may stipulate the factors that will be considered when the department  
21 of natural resources evaluates a landowner's application for a forest  
22 practices permit under chapter 76.09 RCW on property covered by the  
23 agreement. The ~~((department's))~~ department of natural resources'  
24 identification of these evaluation factors shall be in concurrence with  
25 the department ~~((of fish and wildlife))~~ and affected federally  
26 recognized Indian tribes. In general, future decisions related to the  
27 issuance, conditioning, or denial of forest practices permits shall be  
28 based on the conditions present on the landowner's property at the time  
29 of the agreement, unless all parties agree otherwise.

30 (5) The agreement is binding on and may be used by only the  
31 landowner who entered into the agreement with the department. The  
32 agreement shall not be appurtenant with the land. However, if a new  
33 landowner chooses to maintain the habitat enhancement efforts on the  
34 property, the new landowner and the departments may jointly choose to  
35 retain the agreement on the property.

36 (6) If the departments receive multiple requests for agreements

1 with private landowners under the habitat incentives program, the  
2 departments shall prioritize these requests and shall enter into as  
3 many agreements as possible within available budgetary resources.

4 **Sec. 405.** RCW 77.55.130 and 2000 c 107 s 18 are each amended to  
5 read as follows:

6 The department and the department of ecology will work  
7 cooperatively with the United States army corps of engineers to develop  
8 a memorandum of agreement outlining dike vegetation management  
9 guidelines so that dike owners are eligible for coverage under P.L.  
10 84-99, and state requirements established pursuant to ((RCW 77.55.100  
11 and 77.55.110)) section 202 of this act are met.

12 **PART 5**  
13 **SPECIAL PERMITS**

14 **Sec. 501.** RCW 77.55.200 and 1991 c 279 s 1 are each amended to  
15 read as follows:

16 (1) In order to protect the property of marine waterfront shoreline  
17 owners it is necessary to facilitate issuance of ((hydraulic)) permits  
18 for bulkheads or rockwalls under certain conditions.

19 (2) The department shall issue a ((hydraulic)) permit with or  
20 without conditions within forty-five days of receipt of a complete and  
21 accurate application which authorizes commencement of construction,  
22 replacement, or repair of a marine beach front protective bulkhead or  
23 rockwall for single-family type residences or property under the  
24 following conditions:

25 (a) The waterward face of a new bulkhead or rockwall shall be  
26 located only as far waterward as is necessary to excavate for footings  
27 or place base rock for the structure and under no conditions shall be  
28 located more than six feet waterward of the ordinary high water line;

29 (b) Any bulkhead or rockwall to replace or repair an existing  
30 bulkhead or rockwall shall be placed along the same alignment as the  
31 bulkhead or rockwall it is replacing((+)). However, the replaced or  
32 repaired bulkhead or rockwall may be placed waterward of and directly  
33 abutting the existing structure only in cases where removal of the

1 existing bulkhead or rockwall would result in environmental degradation  
2 or removal problems related to geological, engineering, or safety  
3 considerations; and

4 (c) Construction of a new bulkhead or rockwall, or replacement or  
5 repair of an existing bulkhead or rockwall waterward of the existing  
6 structure shall not result in the permanent loss of critical food fish  
7 or shellfish habitats; and

8 (d) Timing constraints shall be applied on a case-by-case basis for  
9 the protection of critical habitats, including but not limited to  
10 migration corridors, rearing and feeding areas, and spawning habitats,  
11 for the proper protection of fish life.

12 (3) Any bulkhead or rockwall construction, replacement, or repair  
13 not meeting the conditions in this section shall be processed under  
14 this chapter in the same manner as any other application.

15 (4) Any person aggrieved by the approval, denial, conditioning, or  
16 modification of a ~~((hydraulic))~~ permit ~~((approval))~~ under this section  
17 may formally appeal the decision to the ~~((hydraulic appeals))~~ board  
18 pursuant to this chapter.

19 **Sec. 502.** RCW 77.55.220 and 2002 c 368 s 7 are each amended to  
20 read as follows:

21 ~~((The definitions in this subsection apply throughout this  
22 section unless the context clearly requires otherwise.~~

23 ~~(a) "Marina" means a public or private facility providing boat  
24 moorage space, fuel, or commercial services. Commercial services  
25 include but are not limited to overnight or live aboard boating  
26 accommodations.~~

27 ~~(b) "Marine terminal" means a public or private commercial wharf  
28 located in the navigable water of the state and used, or intended to be  
29 used, as a port or facility for the storing, handling, transferring, or  
30 transporting of goods to and from vessels.~~

31 ~~(2))~~ For a marina or marine terminal in existence on June 6, 1996,  
32 or a marina or marine terminal that has received a ~~((hydraulic project  
33 approval))~~ permit for its initial construction, a renewable, five-year  
34 ~~((hydraulic project approval))~~ permit shall be issued, upon request,  
35 for regular maintenance activities of the marina or marine terminal.

1       (~~(3)~~) (2) Upon construction of a new marina or marine terminal  
2 that has received (~~(hydraulic project approval)~~) a permit, a renewable,  
3 five-year (~~(hydraulic project approval)~~) permit shall be issued, upon  
4 request, for regular maintenance activities of the marina or marine  
5 terminal.

6       (~~(4)~~) (3) For the purposes of this section, regular maintenance  
7 activities are only those activities necessary to restore the marina or  
8 marine terminal to the conditions approved in the initial (~~(hydraulic  
9 project approval)~~) permit. These activities may include, but are not  
10 limited to, dredging, piling replacement, and float replacement.

11       (~~(5)~~) (4) The five-year permit must include a requirement that a  
12 fourteen-day notice be given to the department before regular  
13 maintenance activities begin.

14       **Sec. 503.** RCW 77.55.340 and 2002 c 368 s 4 are each amended to  
15 read as follows:

16       (1) Notwithstanding any other provision of this chapter, all  
17 (~~(hydraulic project approvals)~~) permits related to storm water  
18 discharges must follow the provisions established in this section.

19       (2) (~~(Hydraulic project approvals)~~) Permits issued in locations  
20 covered by a national pollution discharge elimination system municipal  
21 storm water general permit may not be conditioned or denied for water  
22 quality or quantity impacts arising from storm water discharges. A  
23 (~~(hydraulic project approval)~~) permit is required only for the actual  
24 construction of any storm water outfall or associated structures  
25 pursuant to this chapter.

26       (3)(a) In locations not covered by a national pollution discharge  
27 elimination system municipal storm water general permit, the department  
28 may issue (~~(hydraulic project approvals)~~) permits that contain  
29 provisions that protect fish life from adverse effects, such as  
30 scouring or erosion of the bed of the water body, resulting from the  
31 direct hydraulic impacts of the discharge.

32       (b) Prior to the issuance of a (~~(hydraulic project approval)~~)  
33 permit issued under this subsection (3), the department must:

34       (i) Make a finding that the discharge from the outfall will cause  
35 harmful effects to fish life;

1 (ii) Transmit the findings to the applicant and to the city or  
2 county where the project is being proposed; and

3 (iii) Allow the applicant an opportunity to use local ordinances or  
4 other mechanisms to avoid the adverse effects resulting from the direct  
5 hydraulic discharge. The forty-five day requirement for (~~hydraulic~~  
6 ~~project approval~~) permit issuance (~~pursuant to RCW 77.55.100~~) under  
7 section 201 of this act is suspended during the time period the  
8 department is meeting the requirements of this subsection (3)(b).

9 (c) After following the procedures set forth in (b) of this  
10 subsection, the department may issue a (~~hydraulic project approval~~)  
11 permit that prescribes the discharge rates from an outfall structure  
12 that will prevent adverse effects to the bed or flow of the waterway.  
13 The department may recommend, but not specify, the measures required to  
14 meet these discharge rates. The department may not require changes to  
15 the project design above the mean higher high water mark of marine  
16 waters, or the ordinary high water mark of freshwaters of the state.  
17 Nothing in this section alters any authority the department may have to  
18 regulate other types of projects under this chapter.

19 **Sec. 504.** RCW 77.55.210 and 1995 c 378 s 14 are each amended to  
20 read as follows:

21 A (~~hydraulic project approval~~) permit required by the department  
22 for a watershed restoration project as defined in RCW 89.08.460 shall  
23 be processed in compliance with RCW 89.08.450 through 89.08.510.

24 **Sec. 505.** RCW 77.55.290 and 2001 c 253 s 55 are each amended to  
25 read as follows:

26 (1) In order to receive the permit review and approval process  
27 created in this section, a fish habitat enhancement project must meet  
28 the criteria under (a) and (b) of this subsection:

29 (a) A fish habitat enhancement project must be a project to  
30 accomplish one or more of the following tasks:

31 (i) Elimination of human-made fish passage barriers, including  
32 culvert repair and replacement;

33 (ii) Restoration of an eroded or unstable streambank employing the  
34 principle of bioengineering, including limited use of rock as a

1 stabilization only at the toe of the bank, and with primary emphasis on  
2 using native vegetation to control the erosive forces of flowing water;  
3 or

4 (iii) Placement of woody debris or other instream structures that  
5 benefit naturally reproducing fish stocks.

6 The department shall develop size or scale threshold tests to  
7 determine if projects accomplishing any of these tasks should be  
8 evaluated under the process created in this section or under other  
9 project review and approval processes. A project proposal shall not be  
10 reviewed under the process created in this section if the department  
11 determines that the scale of the project raises concerns regarding  
12 public health and safety; and

13 (b) A fish habitat enhancement project must be approved in one of  
14 the following ways:

15 (i) By the department pursuant to chapter 77.95 or 77.100 RCW;

16 (ii) By the sponsor of a watershed restoration plan as provided in  
17 chapter 89.08 RCW;

18 (iii) By the department as a department-sponsored fish habitat  
19 enhancement or restoration project;

20 (iv) Through the review and approval process for the jobs for the  
21 environment program;

22 (v) Through the review and approval process for conservation  
23 district-sponsored projects, where the project complies with design  
24 standards established by the conservation commission through  
25 interagency agreement with the United States fish and wildlife service  
26 and the natural resource conservation service;

27 (vi) Through a formal grant program established by the legislature  
28 or the department for fish habitat enhancement or restoration; and

29 (vii) Through other formal review and approval processes  
30 established by the legislature.

31 (2) Fish habitat enhancement projects meeting the criteria of  
32 subsection (1) of this section are expected to result in beneficial  
33 impacts to the environment. Decisions pertaining to fish habitat  
34 enhancement projects meeting the criteria of subsection (1) of this  
35 section and being reviewed and approved according to the provisions of  
36 this section are not subject to the requirements of RCW  
37 43.21C.030(2)(c).

1           (3) (~~Hydraulic project approval~~) (a) A permit is required for  
2 projects that meet the criteria of subsection (1) of this section and  
3 are being reviewed and approved under this section. An applicant shall  
4 use a joint aquatic resource permit application form developed by the  
5 (~~department of ecology~~) permit assistance center to apply for  
6 approval under this chapter. On the same day, the applicant shall  
7 provide copies of the completed application form to the department and  
8 to each appropriate local government. Local governments shall accept  
9 the application as notice of the proposed project. The department  
10 shall provide a fifteen-day comment period during which it will receive  
11 comments regarding environmental impacts. (~~In no more than~~) Within  
12 forty-five days, the department shall either issue (~~hydraulic project~~  
13 ~~approval~~) a permit, with or without conditions, deny approval, or make  
14 a determination that the review and approval process created by this  
15 section is not appropriate for the proposed project. The department  
16 shall base this determination on identification during the comment  
17 period of adverse impacts that cannot be mitigated by (~~hydraulic~~  
18 ~~project approval~~) the conditioning of a permit. If the department  
19 determines that the review and approval process created by this section  
20 is not appropriate for the proposed project, the department shall  
21 notify the applicant and the appropriate local governments of its  
22 determination. The applicant may reapply for approval of the project  
23 under other review and approval processes.

24           (b) Any person aggrieved by the approval, denial, conditioning, or  
25 modification of (~~hydraulic project approval~~) a permit under this  
26 section may formally appeal the decision to the (~~hydraulic appeals~~)  
27 board pursuant to the provisions of this chapter.

28           (4) No local government may require permits or charge fees for fish  
29 habitat enhancement projects that meet the criteria of subsection (1)  
30 of this section and that are reviewed and approved according to the  
31 provisions of this section.

32           **Sec. 506.** RCW 77.55.160 and 1998 c 190 s 89 are each amended to  
33 read as follows:

34           (1) Except for the north fork of the Lewis river and the White  
35 Salmon river, all streams and rivers tributary to the Columbia river  
36 downstream from McNary dam are established as an anadromous fish

1 sanctuary. This sanctuary is created to preserve and develop the food  
2 fish and game fish resources in these streams and rivers and to protect  
3 them against undue industrial encroachment.

4 (2) Within the sanctuary area:

5 (a) The department shall not issue (~~hydraulic project approval~~)  
6 a permit to construct a dam greater than twenty-five feet high within  
7 the migration range of anadromous fish as determined by the department.

8 (b) A person shall not divert water from rivers and streams in  
9 quantities that will reduce the respective stream flow below the annual  
10 average low flow, based upon data published in United States geological  
11 survey reports.

12 (3) The commission may acquire and abate a dam or other  
13 obstruction, or acquire any water right vested on a sanctuary stream or  
14 river, which is in conflict with the provisions of subsection (2) of  
15 this section.

16 (4) Subsection (2)(a) of this section does not apply to the  
17 sediment retention structure to be built on the North Fork Toutle river  
18 by the United States army corps of engineers.

19 NEW SECTION. **Sec. 507.** A landscape management plan approved by  
20 the department and the department of natural resources under RCW  
21 76.09.350(2) shall serve as a permit for the life of the plan if fish  
22 are selected as one of the public resources for coverage under such a  
23 plan.

24 **Sec. 508.** RCW 77.55.010 and 1993 sp.s. c 2 s 28 are each amended  
25 to read as follows:

26 The department (~~of fish and wildlife~~), the department of ecology,  
27 and the department of natural resources shall jointly develop an  
28 informational brochure that describes when permits and any other  
29 authorizations are required for flood damage prevention and reduction  
30 projects, and recommends ways to best proceed through the various  
31 regulatory permitting processes.

32 NEW SECTION. **Sec. 509.** (1) The department shall, at the request  
33 of a county, develop five-year maintenance permit agreements,  
34 consistent with comprehensive flood control management plans adopted

1 under the authority of RCW 86.12.200, or other watershed plan approved  
2 by a county legislative authority, to allow for work on public and  
3 private property for bank stabilization, bridge repair, removal of  
4 sandbars and debris, channel maintenance, and other flood damage repair  
5 and reduction activity under agreed-upon conditions and times without  
6 obtaining permits for specific projects.

7 (2) The department shall, at the request of any person or  
8 government agency, develop a renewable five-year maintenance permit  
9 agreement or a permit mitigation agreement to allow for work on public  
10 and private property for bank stabilization, bridge repair, removal of  
11 sandbars and debris, channel maintenance, and other flood damage repair  
12 and reduction activity under reasonable, agreed-upon conditions and  
13 times without obtaining permits for specific projects.

14 **PART 6**

15 **DENIAL OR CONDITIONING OF PERMIT**

16 **Sec. 601.** RCW 77.55.350 and 2002 c 368 s 5 are each amended to  
17 read as follows:

18 Conditions imposed upon (~~hydraulic project approvals~~) a permit  
19 must be reasonably related to the project. The permit conditions must  
20 ensure that the project provides proper protection for fish life, but  
21 the department may not impose conditions that attempt to optimize  
22 conditions for fish life that are out of proportion to the impact of  
23 the proposed project.

24 **Sec. 602.** RCW 77.55.230 and 1996 c 276 s 1 are each amended to  
25 read as follows:

26 (1) The legislature finds that the construction of hydraulic  
27 projects may require mitigation for the protection of fish life, and  
28 that the mitigation may be most cost-effective and provide the most  
29 benefit to the fish resource if the mitigation is allowed to be applied  
30 in locations that are off-site of the hydraulic project location. The  
31 department may approve off-site mitigation plans that are submitted by  
32 hydraulic project permit applicants.

33 (2) If a hydraulic project permit applicant proposes off-site  
34 mitigation and the department does not approve the hydraulic permit or

1 conditions the permit approval in such a manner as to render off-site  
2 mitigation unpracticable, the hydraulic project proponent must be given  
3 the opportunity to submit the hydraulic project permit application to  
4 the ((~~hydraulic appeals~~)) board for approval.

5 **Sec. 603.** RCW 77.55.090 and 2000 c 107 s 15 are each amended to  
6 read as follows:

7 When reviewing a mitigation plan under ((~~RCW 77.55.100 or~~  
8 ~~77.55.110~~)) section 201 of this act, the department shall, at the  
9 request of the project proponent, follow the guidance contained in RCW  
10 90.74.005 through 90.74.030.

11 **Sec. 604.** RCW 77.55.120 and 2000 c 107 s 17 are each amended to  
12 read as follows:

13 Whenever the placement of woody debris is required as a condition  
14 of a ((~~hydraulic~~)) permit ((~~approval~~)) issued ((~~pursuant to RCW~~  
15 ~~77.55.100 or 77.55.110~~)) under section 201 of this act, the department,  
16 upon request, shall invite comment regarding that placement from the  
17 local governmental authority, affected tribes, affected federal and  
18 state agencies, and the project applicant.

19 **Sec. 605.** RCW 77.55.250 and 2000 c 107 s 21 are each amended to  
20 read as follows:

21 The department may not require mitigation for adverse impacts on  
22 fish life or habitat that occurred at the time a wetland was filled, if  
23 the wetland was filled ((~~under the provisions of RCW 75.20.300~~)) prior  
24 to 1995 for flood control and dredging projects located in the Cowlitz  
25 river from mile twenty-two to the confluence with the Columbia river,  
26 and in the Toutle river from the mouth to the North Fork Toutle  
27 sediment dam site at North Fork mile twelve, and to river mile three on  
28 the South Fork Toutle river, and volcano-affected areas of the Columbia  
29 river.

30 **PART 7**  
31 **PENALTIES**



1 (2) When a project applicant requests the expedited dispute  
2 resolution process, the department must convene an expedited dispute  
3 resolution process committee within fourteen days. The expedited  
4 dispute resolution process committee consists of four members:

5 (a) The project contractor or engineer;

6 (b) A department engineer;

7 (c) The department's regional program manager; and

8 (d) An engineer or public works official designated by the local  
9 government with jurisdiction over the project.

10 (3) The expedited dispute resolution process committee must conduct  
11 a project review to determine whether the conditions in the proposed  
12 permit are reasonable and necessary to protect fish life. By majority  
13 vote, the committee may accept the permit conditions, reject the permit  
14 conditions and return the permit to the department for subsequent  
15 review, or determine alternative conditions to be included in the final  
16 permit.

17 (4) The department must provide to each project applicant notice of  
18 the applicant's right to an expedited dispute resolution process, and  
19 the procedures for informal and formal appeal. This information must  
20 also include:

21 (a) Contact information for the department employee who will be  
22 reviewing the project;

23 (b) Contact information for the department's regional program  
24 manager responsible for overseeing the regional hydraulic project  
25 activities at any point prior to the approval or denial of a permit;

26 (c) The proper address to which requests for expedited dispute  
27 resolution must be sent; and

28 (d) The proper address to which informal or formal appeals must be  
29 sent.

30 NEW SECTION. **Sec. 802.** (1) Issuance, denial, conditioning, or  
31 modification of a permit is appealable to the board within thirty days  
32 of the notice of decision.

33 (2) The burden of proof shall be upon the department to show that  
34 the denial or conditioning of a permit is solely aimed at the  
35 protection of fish life.

1           **Sec. 803.** RCW 77.55.170 and 2000 c 107 s 20 are each amended to  
2 read as follows:

3           (1) There is (~~hereby~~) created within the environmental hearings  
4 office under RCW 43.21B.005 the hydraulic appeals board of the state of  
5 Washington.

6           (2) The hydraulic appeals board (~~shall~~) consists of three  
7 members: The director of the department of ecology or the director's  
8 designee, the director of the department of agriculture or the  
9 director's designee, and the director or the director's designee of the  
10 department (~~whose action is appealed under subsection (6) of this~~  
11 ~~section~~). A decision must be agreed to by at least two members of the  
12 board to be final.

13           (3) The board may adopt rules necessary for the conduct of its  
14 powers and duties or for transacting other official business.

15           (4) The board shall make findings of fact and prepare a written  
16 decision in each case decided by it(~~, and that~~). The finding and  
17 decision shall be effective upon being signed by two or more board  
18 members and upon being filed at the hydraulic appeals board's principal  
19 office, and shall be open to public inspection at all reasonable times.

20           (5) The board has exclusive jurisdiction to hear appeals arising  
21 from the approval, denial, conditioning, or modification of a  
22 (~~hydraulic approval~~) permit issued by the department(~~:(a) Under~~  
23 ~~the authority granted in RCW 77.55.110 for the diversion of water for~~  
24 ~~agricultural irrigation or stock watering purposes or when associated~~  
25 ~~with streambank stabilization to protect farm and agricultural land as~~  
26 ~~defined in RCW 84.34.020; or (b) under the authority granted in RCW~~  
27 ~~77.55.230 for off-site mitigation proposals~~)).

28           (6)(a) Any person aggrieved by the approval, denial, conditioning,  
29 or modification of a (~~hydraulic approval pursuant to RCW 77.55.110~~)  
30 permit under section 201 of this act may seek review from the board by  
31 filing a request for the same within thirty days of notice of the  
32 approval, denial, conditioning, or modification of (~~such approval~~)  
33 the permit.

34           (b) The review proceedings authorized in (a) of this subsection are  
35 subject to the provisions of chapter 34.05 RCW pertaining to procedures  
36 in adjudicative proceedings.



1 recorded in the office of the county auditor of the county in which the  
2 action is taken.

3 **Sec. 902.** RCW 77.55.050 and 1993 sp.s. c 2 s 29 are each amended  
4 to read as follows:

5 It is the policy of this state that a flow of water sufficient to  
6 support game fish and food fish populations be maintained at all times  
7 in the streams of this state.

8 The director of ecology shall give the director notice of each  
9 application for a permit to divert or store water. The director has  
10 thirty days after receiving the notice to state his or her objections  
11 to the application. The permit shall not be issued until the thirty-  
12 day period has elapsed.

13 The director of ecology may refuse to issue a permit if, in the  
14 opinion of the director of ecology, issuing the permit might result in  
15 lowering the flow of water in a stream below the flow necessary to  
16 adequately support food fish and game fish populations in the stream.

17 The provisions of this section shall in no way affect existing  
18 water rights.

19 **Sec. 903.** RCW 77.55.060 and 1998 c 190 s 86 are each amended to  
20 read as follows:

21 (1) A dam or other obstruction across or in a stream shall be  
22 provided with a durable and efficient fishway approved by the director.  
23 Plans and specifications shall be provided to the department prior to  
24 the director's approval. The fishway shall be maintained in an  
25 effective condition and continuously supplied with sufficient water to  
26 freely pass fish.

27 (2) If a person fails to construct and maintain a fishway or to  
28 remove the dam or obstruction in a manner satisfactory to the director,  
29 then within thirty days after written notice to comply has been served  
30 upon the owner, his or her agent, or the person in charge, the director  
31 may construct a fishway or remove the dam or obstruction. Expenses  
32 incurred by the department constitute the value of a lien upon the dam  
33 and upon the personal property of the person owning the dam. Notice of  
34 the lien shall be filed and recorded in the office of the county

1 auditor of the county in which the dam or obstruction is situated. The  
2 lien may be foreclosed in an action brought in the name of the state.

3 (3) If, within thirty days after notice to construct a fishway or  
4 remove a dam or obstruction, the owner, his or her agent, or the person  
5 in charge fails to do so, the dam or obstruction is a public nuisance  
6 and the director may take possession of the dam or obstruction and  
7 destroy it. No liability shall attach for the destruction.

8 **Sec. 904.** RCW 77.55.320 and 2001 c 253 s 48 are each amended to  
9 read as follows:

10 (1) A person shall not divert water from a lake, river, or stream  
11 containing game fish unless the water diversion device is equipped at  
12 or near its intake with a fish guard or screen to prevent the passage  
13 of game fish into the device and, if necessary, with a means of  
14 returning game fish from immediately in front of the fish guard or  
15 screen to the waters of origin. A person who was, on June 11, 1947,  
16 otherwise lawfully diverting water from a lake, river, or stream shall  
17 not be deemed guilty of a violation of this section.

18 (2) Plans for the fish guard, screen, and bypass shall be approved  
19 by the director prior to construction. The installation shall be  
20 approved by the director prior to the diversion of water.

21 (3) The director or the director's designee may close a water  
22 diversion device operated in violation of this section and keep it  
23 closed until it is properly equipped with a fish guard, screen, or  
24 bypass.

25 **PART 10**  
26 **MISCELLANEOUS**

27 NEW SECTION. **Sec. 1001.** The following sections are each codified  
28 or recodified in chapter 77.55 RCW in the following order:

- 29 Section 101 of this act
- 30 Section 102 of this act
- 31 Section 201 of this act
- 32 Section 202 of this act
- 33 Section 203 of this act
- 34 Section 301 of this act

1 RCW 77.55.330  
2 Section 303 of this act  
3 RCW 77.55.030  
4 RCW 77.55.360  
5 RCW 77.55.150  
6 RCW 77.55.270  
7 RCW 77.55.020  
8 RCW 77.55.280  
9 RCW 77.55.300  
10 RCW 77.55.130  
11 RCW 77.55.200  
12 RCW 77.55.220  
13 RCW 77.55.340  
14 RCW 77.55.210  
15 RCW 77.55.290  
16 RCW 77.55.160  
17 Section 507 of this act  
18 RCW 77.55.010  
19 Section 509 of this act  
20 RCW 77.55.350  
21 RCW 77.55.230  
22 RCW 77.55.090  
23 RCW 77.55.120  
24 RCW 77.55.260  
25 RCW 77.55.250  
26 RCW 77.55.140  
27 Section 801 of this act  
28 Section 802 of this act  
29 RCW 77.55.170  
30 RCW 77.55.180.

31 NEW SECTION. **Sec. 1002.** The following sections are each  
32 recodified as a new chapter in Title 77 RCW in the following order:

33 RCW 77.55.040  
34 RCW 77.55.050  
35 RCW 77.55.060  
36 RCW 77.55.070

1 RCW 77.55.080  
2 RCW 77.55.310  
3 RCW 77.55.320  
4 RCW 77.55.240.

5 **Sec. 1003.** RCW 76.09.050 and 2002 c 121 s 1 are each amended to  
6 read as follows:

7 (1) The board shall establish by rule which forest practices shall  
8 be included within each of the following classes:

9 Class I: Minimal or specific forest practices that have no direct  
10 potential for damaging a public resource and that may be conducted  
11 without submitting an application or a notification except that when  
12 the regulating authority is transferred to a local governmental entity,  
13 those Class I forest practices that involve timber harvesting or road  
14 construction within "urban growth areas," designated pursuant to  
15 chapter 36.70A RCW, are processed as Class IV forest practices, but are  
16 not subject to environmental review under chapter 43.21C RCW;

17 Class II: Forest practices which have a less than ordinary  
18 potential for damaging a public resource that may be conducted without  
19 submitting an application and may begin five calendar days, or such  
20 lesser time as the department may determine, after written notification  
21 by the operator, in the manner, content, and form as prescribed by the  
22 department, is received by the department. However, the work may not  
23 begin until all forest practice fees required under RCW 76.09.065 have  
24 been received by the department. Class II shall not include forest  
25 practices:

26 (a) On lands platted after January 1, 1960, as provided in chapter  
27 58.17 RCW or on lands that have or are being converted to another use;

28 (b) Which require approvals under the provisions of the hydraulics  
29 act, (~~RCW 77.55.100~~) section 201 of this act;

30 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

31 (d) Excluded from Class II by the board; or

32 (e) Including timber harvesting or road construction within "urban  
33 growth areas," designated pursuant to chapter 36.70A RCW, which are  
34 Class IV;

35 Class III: Forest practices other than those contained in Class I,  
36 II, or IV. A Class III application must be approved or disapproved by

1 the department within thirty calendar days from the date the department  
2 receives the application. However, the applicant may not begin work on  
3 that forest practice until all forest practice fees required under RCW  
4 76.09.065 have been received by the department;

5 Class IV: Forest practices other than those contained in Class I  
6 or II: (a) On lands platted after January 1, 1960, as provided in  
7 chapter 58.17 RCW, (b) on lands that have or are being converted to  
8 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or  
9 hereafter amended, are not to be reforested because of the likelihood  
10 of future conversion to urban development, (d) involving timber  
11 harvesting or road construction on lands that are contained within  
12 "urban growth areas," designated pursuant to chapter 36.70A RCW, except  
13 where the forest landowner provides: (i) A written statement of intent  
14 signed by the forest landowner not to convert to a use other than  
15 commercial forest product operations for ten years, accompanied by  
16 either a written forest management plan acceptable to the department or  
17 documentation that the land is enrolled under the provisions of chapter  
18 84.33 RCW; or (ii) a conversion option harvest plan approved by the  
19 local governmental entity and submitted to the department as part of  
20 the application, and/or (e) which have a potential for a substantial  
21 impact on the environment and therefore require an evaluation by the  
22 department as to whether or not a detailed statement must be prepared  
23 pursuant to the state environmental policy act, chapter 43.21C RCW.  
24 Such evaluation shall be made within ten days from the date the  
25 department receives the application: PROVIDED, That nothing herein  
26 shall be construed to prevent any local or regional governmental entity  
27 from determining that a detailed statement must be prepared for an  
28 action pursuant to a Class IV forest practice taken by that  
29 governmental entity concerning the land on which forest practices will  
30 be conducted. A Class IV application must be approved or disapproved  
31 by the department within thirty calendar days from the date the  
32 department receives the application, unless the department determines  
33 that a detailed statement must be made, in which case the application  
34 must be approved or disapproved by the department within sixty calendar  
35 days from the date the department receives the application, unless the  
36 commissioner of public lands, through the promulgation of a formal  
37 order, determines that the process cannot be completed within such

1 period. However, the applicant may not begin work on that forest  
2 practice until all forest practice fees required under RCW 76.09.065  
3 have been received by the department.

4 Forest practices under Classes I, II, and III are exempt from the  
5 requirements for preparation of a detailed statement under the state  
6 environmental policy act.

7 (2) Except for those forest practices being regulated by local  
8 governmental entities as provided elsewhere in this chapter, no Class  
9 II, Class III, or Class IV forest practice shall be commenced or  
10 continued after January 1, 1975, unless the department has received a  
11 notification with regard to a Class II forest practice or approved an  
12 application with regard to a Class III or Class IV forest practice  
13 containing all information required by RCW 76.09.060 as now or  
14 hereafter amended. However, in the event forest practices regulations  
15 necessary for the scheduled implementation of this chapter and RCW  
16 90.48.420 have not been adopted in time to meet such schedules, the  
17 department shall have the authority to regulate forest practices and  
18 approve applications on such terms and conditions consistent with this  
19 chapter and RCW 90.48.420 and the purposes and policies of RCW  
20 76.09.010 until applicable forest practices regulations are in effect.

21 (3) Except for those forest practices being regulated by local  
22 governmental entities as provided elsewhere in this chapter, if a  
23 notification or application is delivered in person to the department by  
24 the operator or the operator's agent, the department shall immediately  
25 provide a dated receipt thereof. In all other cases, the department  
26 shall immediately mail a dated receipt to the operator.

27 (4) Except for those forest practices being regulated by local  
28 governmental entities as provided elsewhere in this chapter, forest  
29 practices shall be conducted in accordance with the forest practices  
30 regulations, orders and directives as authorized by this chapter or the  
31 forest practices regulations, and the terms and conditions of any  
32 approved applications.

33 (5) Except for those forest practices being regulated by local  
34 governmental entities as provided elsewhere in this chapter, the  
35 department of natural resources shall notify the applicant in writing  
36 of either its approval of the application or its disapproval of the  
37 application and the specific manner in which the application fails to

1 comply with the provisions of this section or with the forest practices  
2 regulations. Except as provided otherwise in this section, if the  
3 department fails to either approve or disapprove an application or any  
4 portion thereof within the applicable time limit, the application shall  
5 be deemed approved and the operation may be commenced: PROVIDED, That  
6 this provision shall not apply to applications which are neither  
7 approved nor disapproved pursuant to the provisions of subsection (7)  
8 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
9 prevent the department from being able to properly evaluate the  
10 application, the department may issue an approval conditional upon  
11 further review within sixty days: PROVIDED, FURTHER, That the  
12 department shall have until April 1, 1975, to approve or disapprove an  
13 application involving forest practices allowed to continue to April 1,  
14 1975, under the provisions of subsection (2) of this section. Upon  
15 receipt of any notification or any satisfactorily completed application  
16 the department shall in any event no later than two business days after  
17 such receipt transmit a copy to the departments of ecology and fish and  
18 wildlife, and to the county, city, or town in whose jurisdiction the  
19 forest practice is to be commenced. Any comments by such agencies  
20 shall be directed to the department of natural resources.

21 (6) For those forest practices regulated by the board and the  
22 department, if the county, city, or town believes that an application  
23 is inconsistent with this chapter, the forest practices regulations, or  
24 any local authority consistent with RCW 76.09.240 as now or hereafter  
25 amended, it may so notify the department and the applicant, specifying  
26 its objections.

27 (7) For those forest practices regulated by the board and the  
28 department, the department shall not approve portions of applications  
29 to which a county, city, or town objects if:

30 (a) The department receives written notice from the county, city,  
31 or town of such objections within fourteen business days from the time  
32 of transmittal of the application to the county, city, or town, or one  
33 day before the department acts on the application, whichever is later;  
34 and

35 (b) The objections relate to lands either:

36 (i) Platted after January 1, 1960, as provided in chapter 58.17  
37 RCW; or

1 (ii) On lands that have or are being converted to another use.

2 The department shall either disapprove those portions of such  
3 application or appeal the county, city, or town objections to the  
4 appeals board. If the objections related to subparagraphs (b)(i) and  
5 (ii) of this subsection are based on local authority consistent with  
6 RCW 76.09.240 as now or hereafter amended, the department shall  
7 disapprove the application until such time as the county, city, or town  
8 consents to its approval or such disapproval is reversed on appeal.  
9 The applicant shall be a party to all department appeals of county,  
10 city, or town objections. Unless the county, city, or town either  
11 consents or has waived its rights under this subsection, the department  
12 shall not approve portions of an application affecting such lands until  
13 the minimum time for county, city, or town objections has expired.

14 (8) For those forest practices regulated by the board and the  
15 department, in addition to any rights under the above paragraph, the  
16 county, city, or town may appeal any department approval of an  
17 application with respect to any lands within its jurisdiction. The  
18 appeals board may suspend the department's approval in whole or in part  
19 pending such appeal where there exists potential for immediate and  
20 material damage to a public resource.

21 (9) For those forest practices regulated by the board and the  
22 department, appeals under this section shall be made to the appeals  
23 board in the manner and time provided in RCW 76.09.220(8). In such  
24 appeals there shall be no presumption of correctness of either the  
25 county, city, or town or the department position.

26 (10) For those forest practices regulated by the board and the  
27 department, the department shall, within four business days notify the  
28 county, city, or town of all notifications, approvals, and disapprovals  
29 of an application affecting lands within the county, city, or town,  
30 except to the extent the county, city, or town has waived its right to  
31 such notice.

32 (11) For those forest practices regulated by the board and the  
33 department, a county, city, or town may waive in whole or in part its  
34 rights under this section, and may withdraw or modify any such waiver,  
35 at any time by written notice to the department.

1           **Sec. 1004.** RCW 77.12.865 and 2002 c 20 s 2 are each amended to  
2 read as follows:

3           (1) As used in this section and RCW 77.12.870, "derelict fishing  
4 gear" includes lost or abandoned fishing nets, fishing lines, crab  
5 pots, shrimp pots, and other commercial and recreational fishing  
6 equipment. The term does not include lost or abandoned vessels.

7           (2) The department, in partnership with the Northwest straits  
8 commission, the department of natural resources, and other interested  
9 parties, must publish guidelines for the safe removal and disposal of  
10 derelict fishing gear. The guidelines must be completed by August 31,  
11 2002, and made available to any person interested in derelict fishing  
12 gear removal.

13           (3) Derelict fishing gear removal conducted in accordance with the  
14 guidelines prepared in subsection (2) of this section is not subject to  
15 permitting under (~~RCW 77.55.100~~) section 201 of this act.

16           **Sec. 1005.** RCW 77.65.250 and 2000 c 107 s 46 are each amended to  
17 read as follows:

18           A hardshell clam mechanical harvester fishery license is required  
19 to operate a mechanical or hydraulic device for commercially harvesting  
20 clams, other than geoduck clams, unless the requirements of (~~RCW~~  
21 ~~77.55.100~~) section 201 of this act are fulfilled for the proposed  
22 activity.

23           NEW SECTION. **Sec. 1006.** The following acts or parts of acts are  
24 each repealed:

25           (1) RCW 77.55.100 (Hydraulic projects or other work--Plans and  
26 specifications--Permits--Approval--Emergencies) and 2002 c 368 s 2,  
27 2000 c 107 s 16, & 1998 c 190 s 87;

28           (2) RCW 77.55.110 (Hydraulic projects for irrigation, stock  
29 watering, or streambank stabilization--Plans and specifications--  
30 Approval--Emergencies) and 2002 c 368 s 3, 1998 c 190 s 88, 1993 sp.s.  
31 c 2 s 32, 1991 c 322 s 31, 1988 c 272 s 2, 1988 c 36 s 34, & 1986 c 173  
32 s 2; and

33           (3) RCW 77.55.190 (Processing of permits or authorizations for  
34 emergency water withdrawal and facilities to be expedited) and 1989 c  
35 171 s 8 & 1987 c 343 s 6.

1        NEW SECTION.    **Sec. 1007.**    Part headings used in this act are not  
2 any part of the law.

3        NEW SECTION.    **Sec. 1008.**    If specific funding for the purposes of  
4 this act, referencing this act by bill or chapter number, is not  
5 provided by June 30, 2003, in the omnibus appropriations act, this act  
6 is null and void."

7        Correct the title.

EFFECT:            Chapter 77.55 RCW is amended, reorganized, and recodified. Several sections relating to fish passage and screening are moved to a new chapter in Title 77 RCW. An intent section and a definition section are created. RCW 77.55.100 and 77.55.110 which currently authorize the Department of Fish and Wildlife (DFW) to issue hydraulic permits, are repealed and rewritten into one section.

Policy changes contained in the proposed striking amendment that are not part of ESSB 5375 include:

(1) Appeals of all hydraulic permit decisions, not just projects granted for diversion of water for agricultural irrigation, stock watering, streambank stabilization, or off-site mitigation are the jurisdiction of the Hydraulic Appeals Board;

(2) The Department of Fish and Wildlife (DFW) has the burden of proof to show that the denial or conditioning of a permit is solely to protect fish life for all applicants, not just those applying for a permit under RCW 77.55.110;

(3) The definition of streambank stabilization is restricted to specific projects;

(4) Provisions allowing the DFW to modify a permit due to changed conditions applies to all hydraulic permits, not just those issued under RCW 77.55.110;

(5) Provisions allowing a permittee to request modification of a permit due to changed conditions applies to all hydraulic permits, not just to those issued under RCW 77.55.110; and

(6) The 45-day requirement for DFW to grant or deny approval of a permit is suspended if an application is not complete.

Policy changes in ESSB 5375 that are not contained in the proposed striking amendment include:

(1) General permits developed for routine repair and maintenance of existing over-water structures is removed;

(2) General permits for routine repair and maintenance of bridges is restricted to activities below the ordinary high water line;

(3) The provision allowing local governments to apply for certification for critical areas or shoreline regulations as equivalent hydraulic permit requirements is removed;

(4) The requirement that the DFW must develop procedures to ensure consistency of hydraulic permit conditions is removed;

(5) The 45-day period for permit issuance is not suspended when a project applicant requests review under the expedited dispute resolution process;

(6) Language restricting other work to "within the bed of any state waters" for the purpose of obtaining a hydraulic project permit is removed; and

(7) Expedited dispute resolution committee decisions are not binding on the DFW.

--- END ---