



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

7        The legislature further finds that the state requires the  
8 examination of the environmental impacts of construction projects and  
9 work in Washington to minimize and mitigate the impact of those  
10 projects through the state environmental policy act.

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

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

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

25        (1) "Bed" means the land below the ordinary high water lines of  
26 state waters. This definition does not include irrigation ditches,  
27 canals, storm water runoff devices, or other artificial watercourses  
28 except where they exist in a natural watercourse that has been altered  
29 by man.

30        (2) "Board" means the hydraulic appeals board created in RCW  
31 77.55.170 (as recodified by this act).

32        (3) "Commission" means the state fish and wildlife commission.

33        (4) "Department" means the department of fish and wildlife.

34        (5) "Director" means the director of the department of fish and  
35 wildlife.

36        (6) "Emergency" means an immediate threat to life, the public,

1 property, or of environmental degradation arising from weather or  
2 stream flow conditions or other natural conditions.

3 (7) "Hydraulic project" means the construction or performance of  
4 work that will use, divert, obstruct, or change the natural flow or bed  
5 of any of the salt or freshwaters of the state.

6 (8) "Imminent danger" means a threat by weather, water flow, or  
7 other natural conditions that is likely to occur within sixty days of  
8 a request for a permit application.

9 (9) "Marina" means a public or private facility providing boat  
10 moorage space, fuel, or commercial services. Commercial services  
11 include but are not limited to overnight or live-aboard boating  
12 accommodations.

13 (10) "Marine terminal" means a public or private commercial wharf  
14 located in the navigable water of the state and used, or intended to be  
15 used, as a port or facility for the storing, handling, transferring, or  
16 transporting of goods to and from vessels.

17 (11) "Ordinary high water line" means the mark on the shores of all  
18 water that will be found by examining the bed and banks and  
19 ascertaining where the presence and action of waters are so common and  
20 usual, and so long continued in ordinary years as to mark upon the soil  
21 or vegetation a character distinct from the abutting upland. Provided,  
22 that in any area where the ordinary high water line cannot be found,  
23 the ordinary high water line adjoining saltwater is the line of mean  
24 higher high water and the ordinary high water line adjoining fresh  
25 water is the line of mean high water.

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

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

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

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

35 (16) "Streambank stabilization" means those projects that prevent  
36 or limit erosion, slippage, and mass wasting. These projects are  
37 limited to bank resloping, log and debris relocation or removal,

1 planting of woody vegetation, bank protection using rock or woody  
2 material or placement of jetties or groins, gravel removal, or erosion  
3 control.

4 (17) "Tide gate" means a one-way check valve that prevents the  
5 backflow of tidal water.

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

9 **PART 2**

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

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

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

18 (a) General plans for the overall project;

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

22 (c) Complete plans and specifications for the proper protection of  
23 fish life;

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

26 (e) Provisions allowing for minor modifications to the plans and  
27 specifications without requiring reissuance of the permit as a  
28 condition of the application.

29 (3)(a) Protection of fish life is the only ground upon which  
30 approval of a permit may be denied or conditioned. Approval of a  
31 permit may not be unreasonably withheld or unreasonably conditioned.  
32 The department has forty-five calendar days upon receipt of a complete  
33 application to grant or deny approval of a permit. The forty-five day  
34 requirement is suspended if:

35 (i) After ten working days of receipt of the application, the

1 applicant remains unavailable or unable to arrange for a timely field  
2 evaluation of the proposed project;

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

4 (iii) The applicant requests a delay; or

5 (iv) The application is not complete.

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

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

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

17 (b) Approval of a permit is valid for a period of up to five years  
18 from the date of issuance, except as provided in (c) of this subsection  
19 and in RCW 77.55.220 (as recodified by this act).

20 (c) A permit remains in effect without need for periodic renewal  
21 for hydraulic projects that divert water for agricultural irrigation or  
22 stock watering purposes and that involve seasonal construction or other  
23 work. A permit for streambank stabilization projects to protect farm  
24 and agricultural land as defined in RCW 84.34.020 remains in effect  
25 without need for periodic renewal if the problem causing the need for  
26 the streambank stabilization occurs on an annual or more frequent  
27 basis. The permittee must notify the appropriate agency before  
28 commencing the construction or other work within the area covered by  
29 the permit.

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

36 (7) A permittee may request modification of a permit due to changed  
37 conditions. The request must be processed within forty-five calendar  
38 days of receipt of the written request. A decision by the department

1 may be appealed to the board within thirty days of the notice of the  
2 decision. The burden is on the permittee to show that changed  
3 conditions warrant the requested modification and that such a  
4 modification will not impair fish life.

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

20 (9) All state and local agencies with authority under this chapter  
21 to issue permits or other authorizations in connection with emergency  
22 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
23 expedite the processing of such permits or authorizations in keeping  
24 with the emergency nature of such requests and shall provide a decision  
25 to the applicant within fifteen calendar days of the date of  
26 application.

27 (10) The department or the county legislative authority may  
28 determine an imminent danger exists. The county legislative authority  
29 shall notify the department, in writing, if it determines that an  
30 imminent danger exists. In cases of imminent danger, the department  
31 shall issue an expedited written permit, upon request, for work to  
32 remove any obstructions, repair existing structures, restore banks,  
33 protect fish resources, or protect property. Expedited permit requests  
34 require a complete written application as provided in subsection (2) of  
35 this section and must be issued within fifteen calendar days of the  
36 receipt of a complete written application. Approval of an expedited  
37 permit is valid for up to sixty days from the date of issuance. The

1 department may not require the provisions of the state environmental  
2 policy act, chapter 43.21C RCW, to be met as a condition of issuing a  
3 permit under this subsection.

4 (11) The department may issue an expedited written permit in those  
5 instances where normal permit processing would result in significant  
6 hardship for the applicant or unacceptable damage to the environment.  
7 Expedited permit requests require a complete written application as  
8 provided in subsection (2) of this section and must be issued within  
9 fifteen calendar days of the receipt of a complete written application.  
10 Approval of an expedited permit is valid for up to sixty days from the  
11 date of issuance. The department may not require the provisions of the  
12 state environmental policy act, chapter 43.21C RCW, to be met as a  
13 condition of issuing a permit under this subsection.

14 NEW SECTION. **Sec. 202.** (1)(a) The department must develop general  
15 permits for common or routine activities to improve the predictability  
16 and efficiency of the hydraulic project approval program. At a  
17 minimum, the department must, by December 2006, develop general permits  
18 for the following activities:

- 19 (i) Minor dredging of up to ten yards of sediment from an existing  
20 channel, berthing area, or boat ramp;
- 21 (ii) Routine repair and maintenance of tide gates;
- 22 (iii) Replacement of up to sixty pilings including construction of  
23 mooring dolphins and fender pilings;
- 24 (iv) Routine repair or maintenance of road and highway structures  
25 such as culverts and ditches;
- 26 (v) Routine repair and maintenance of bridge structures below the  
27 ordinary high water line; and
- 28 (vi) Geotechnical or exploratory work conducted as part of project  
29 planning or development.

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

32 (2) General permits must contain conditions necessary to protect  
33 fish life, and must clearly delineate predictable conditions and  
34 restrictions that project applicants may incorporate into project  
35 design and construction. The department must develop, in consultation  
36 with an advisory committee, common technical provisions that must be  
37 incorporated into general conditions for each general permit.

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

3 (a) A description of activities covered;

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

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

8 (4) To receive coverage under a general permit, a project applicant  
9 must:

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

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

14 (5) Within ten days of receipt of a notice of intent from a project  
15 applicant, the department must notify the applicant of the status of  
16 general permit coverage. Status includes permit approval, denial, or  
17 conditioning. Issuance, denial, conditioning, or modification of a  
18 permit shall be appealable to the board within thirty days of the  
19 notice of decision.

20 NEW SECTION. **Sec. 203.** (1) Certain federal and state regulatory  
21 review processes may provide review and protection of fish life that is  
22 equivalent to the review provided by the department under this chapter.  
23 This may include, among other permits, federal review of a project  
24 under the endangered species act (16 U.S.C. Sec. 1531 et seq.), a  
25 federal permit under section 404 of the federal water pollution control  
26 act (33 U.S.C. Sec. 1251 et seq.), state review of a project under  
27 section 401 of the federal water pollution control act (33 U.S.C. Sec.  
28 1251 et seq.), or state review of shorelines under chapter 90.58 RCW.

29 (2) At any point in project development or permitting, an applicant  
30 may submit to the department a notice of intent to proceed under an  
31 equivalent regulatory review. The notice must include a description of  
32 the project, the habitat impacted, and the equivalent permits required  
33 for the project. The director or director's designee shall make a  
34 determination regarding the equivalency of other regulatory permits  
35 within fifteen days of receiving the notice. If the notice of  
36 equivalency is approved, the project is exempt from the requirement to  
37 receive hydraulic project approval under this chapter. If the notice

1 of equivalency is denied, the department must provide the applicant, in  
2 writing, specific reasons why the other regulatory reviews will not  
3 adequately protect fish life.

4 (3) Any person aggrieved by a decision under subsection (2) of this  
5 section may appeal the decision according to the provisions of chapter  
6 34.05 RCW.

7 **PART 3**  
8 **EXEMPTION FROM HYDRAULIC PROJECT APPROVAL**

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

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

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

19 NEW SECTION. **Sec. 303.** (1) An activity conducted solely for the  
20 removal or control of spartina does not require a permit.

21 (2) An activity conducted solely for the removal or control of  
22 purple loosestrife and which is performed with handheld tools, handheld  
23 equipment, or equipment carried by a person does not require a permit.

24 **PART 4**  
25 **COMPLIANCE THROUGH GUIDELINES, AGREEMENTS, AND PAMPHLETS**

26 **Sec. 401.** RCW 77.55.150 and 1995 c 255 s 4 are each amended to  
27 read as follows:

28 (~~(1) (An activity conducted solely for the removal or control of~~  
29 ~~spartina shall not require hydraulic project approval.~~

30 (~~(2) An activity conducted solely for the removal or control of~~  
31 ~~purple loosestrife and which is performed with hand held tools, hand-~~

1 ~~held equipment, or equipment carried by a person when used shall not~~  
2 ~~require hydraulic project approval.~~

3 ~~(3))~~ By June 30, 1997, the department ~~((of fish and wildlife))~~  
4 shall develop rules for projects conducted solely for the removal or  
5 control of various aquatic noxious weeds other than spartina and purple  
6 loosestrife and for activities or hydraulic projects for controlling  
7 purple loosestrife not covered by ~~((subsection (2)))~~ section 303(2) of  
8 this ~~((section, which projects will use, divert, obstruct, or change~~  
9 ~~the natural flow or bed of any of the salt or fresh waters of the~~  
10 ~~state))~~ act. Following the adoption of the rules, the department shall  
11 produce and distribute a pamphlet describing the methods of removing or  
12 controlling the aquatic noxious weeds that are approved under the  
13 rules. The pamphlet serves as the ~~((hydraulic project approval))~~  
14 permit for any project that is conducted solely for the removal or  
15 control of such aquatic noxious weeds and that is conducted as  
16 described in the pamphlet~~((+))~~. No further ~~((hydraulic project~~  
17 ~~approval))~~ permit is required for such a project.

18 (2) From time to time as information becomes available, the  
19 department shall adopt similar rules for additional aquatic noxious  
20 weeds or additional activities for removing or controlling aquatic  
21 noxious weeds not governed by ~~((subsection (1) or (2) of this section))~~  
22 sections 303 (1) and (2) of this act and shall produce and distribute  
23 one or more pamphlets describing these methods of removal or control.  
24 Such a pamphlet serves as the ~~((hydraulic project approval))~~ permit for  
25 any project that is conducted solely for the removal or control of such  
26 aquatic noxious weeds and that is conducted as described in the  
27 pamphlet~~((+))~~. No further ~~((hydraulic project approval))~~ permit is  
28 required for such a project.

29 ~~((4) As used in this section, "spartina," "purple loosestrife,"~~  
30 ~~and "aquatic noxious weeds" have the meanings prescribed by RCW~~  
31 ~~17.26.020.~~

32 ~~(5))~~ (3) Nothing in this section shall prohibit the department  
33 ~~((of fish and wildlife))~~ from requiring a ~~((hydraulic project~~  
34 ~~approval))~~ permit for those parts of hydraulic projects that are not  
35 specifically for the control or removal of spartina, purple  
36 loosestrife, or other aquatic noxious weeds.

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

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

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

10       (3) Within two months of adoption of the rules, the department  
11 shall distribute an updated gold and fish pamphlet that describes  
12 methods of mineral prospecting that are consistent with the  
13 department's rule. The pamphlet shall be written to clearly indicate  
14 the prospecting methods that require (~~written approval~~) a permit  
15 under this chapter and the prospecting methods that require compliance  
16 with the pamphlet. To the extent possible, the department shall use  
17 the provisions of the gold and fish pamphlet to minimize the number of  
18 specific provisions of a written (~~approval~~) permit issued under this  
19 chapter.

20       (~~(4) For the purposes of this chapter, "small scale prospecting~~  
21 ~~and mining" means only the use of the following methods: Pans,~~  
22 ~~nonmotorized sluice boxes, concentrators, and minirocker boxes for the~~  
23 ~~discovery and recovery of minerals.))~~

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

26       When a private landowner is applying for (~~hydraulic project~~  
27 ~~approval~~) a permit under this chapter and that landowner has entered  
28 into a habitat incentives agreement with the department and the  
29 department of natural resources as provided in RCW 77.55.300 (as  
30 recodified by this act), the department shall comply with the terms of  
31 that agreement when evaluating the request for (~~hydraulic project~~  
32 ~~approval~~) a permit.

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

35       (1) Beginning in January 1998, the department (~~of fish and~~  
36 ~~wildlife~~) and the department of natural resources shall implement a

1 habitat incentives program based on the recommendations of federally  
2 recognized Indian tribes, landowners, the regional fisheries  
3 enhancement groups, the timber, fish, and wildlife cooperators, and  
4 other interested parties. The program shall allow a private landowner  
5 to enter into an agreement with the departments to enhance habitat on  
6 the landowner's property for food fish, game fish, or other wildlife  
7 species. In exchange, the landowner shall receive state regulatory  
8 certainty with regard to future applications for (~~hydraulic project~~  
9 ~~approval~~) a permit or a forest practices permit on the property  
10 covered by the agreement. The overall goal of the program is to  
11 provide a mechanism that facilitates habitat development on private  
12 property while avoiding an adverse state regulatory impact to the  
13 landowner at some future date. A single agreement between the  
14 departments and a landowner may encompass up to one thousand acres. A  
15 landowner may enter into multiple agreements with the departments,  
16 provided that the total acreage covered by such agreements with a  
17 single landowner does not exceed ten thousand acres. The departments  
18 are not obligated to enter into an agreement unless the departments  
19 find that the agreement is in the best interest of protecting fish or  
20 wildlife species or their habitat.

21 (2) A habitat incentives agreement shall be in writing and shall  
22 contain at least the following: (a) A description of the property  
23 covered by the agreement(~~(7)~~); (b) an expiration date(~~(7)~~); (c) a  
24 description of the condition of the property prior to the  
25 implementation of the agreement(~~(7)~~); and (d) other information needed  
26 by the landowner and the departments for future reference and  
27 decisions.

28 (3) As part of the agreement, the department (~~of fish and~~  
29 ~~wildlife~~) may stipulate the factors that will be considered when the  
30 department evaluates a landowner's application for (~~hydraulic project~~  
31 ~~approval under RCW 77.55.100 or 77.55.110~~) a permit on property  
32 covered by the agreement. The department's identification of these  
33 evaluation factors shall be in concurrence with the department of  
34 natural resources and affected federally recognized Indian tribes. In  
35 general, future decisions related to the issuance, conditioning, or  
36 denial of (~~hydraulic project approval shall~~) a permit must be based  
37 on the conditions present on the landowner's property at the time of  
38 the agreement, unless all parties agree otherwise.

1 (4) As part of the agreement, the department of natural resources  
2 may stipulate the factors that will be considered when the department  
3 of natural resources evaluates a landowner's application for a forest  
4 practices permit under chapter 76.09 RCW on property covered by the  
5 agreement. The (~~department's~~) department of natural resources'  
6 identification of these evaluation factors shall be in concurrence with  
7 the department (~~of fish and wildlife~~) and affected federally  
8 recognized Indian tribes. In general, future decisions related to the  
9 issuance, conditioning, or denial of forest practices permits shall be  
10 based on the conditions present on the landowner's property at the time  
11 of the agreement, unless all parties agree otherwise.

12 (5) The agreement is binding on and may be used by only the  
13 landowner who entered into the agreement with the department. The  
14 agreement shall not be appurtenant with the land. However, if a new  
15 landowner chooses to maintain the habitat enhancement efforts on the  
16 property, the new landowner and the departments may jointly choose to  
17 retain the agreement on the property.

18 (6) If the departments receive multiple requests for agreements  
19 with private landowners under the habitat incentives program, the  
20 departments shall prioritize these requests and shall enter into as  
21 many agreements as possible within available budgetary resources.

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

24 The department and the department of ecology will work  
25 cooperatively with the United States army corps of engineers to develop  
26 a memorandum of agreement outlining dike vegetation management  
27 guidelines so that dike owners are eligible for coverage under P.L.  
28 84-99, and state requirements established pursuant to (~~RCW 77.55.100~~  
29 ~~and 77.55.110~~) section 202 of this act are met.

## 30 PART 5

### 31 SPECIAL PERMITS

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

34 (1) In order to protect the property of marine waterfront shoreline

1 owners it is necessary to facilitate issuance of (~~hydraulic~~) permits  
2 for bulkheads or rockwalls under certain conditions.

3 (2) The department shall issue a (~~hydraulic~~) permit with or  
4 without conditions within forty-five days of receipt of a complete and  
5 accurate application which authorizes commencement of construction,  
6 replacement, or repair of a marine beach front protective bulkhead or  
7 rockwall for single-family type residences or property under the  
8 following conditions:

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

13 (b) Any bulkhead or rockwall to replace or repair an existing  
14 bulkhead or rockwall shall be placed along the same alignment as the  
15 bulkhead or rockwall it is replacing(~~+~~). However, the replaced or  
16 repaired bulkhead or rockwall may be placed waterward of and directly  
17 abutting the existing structure only in cases where removal of the  
18 existing bulkhead or rockwall would result in environmental degradation  
19 or removal problems related to geological, engineering, or safety  
20 considerations; and

21 (c) Construction of a new bulkhead or rockwall, or replacement or  
22 repair of an existing bulkhead or rockwall waterward of the existing  
23 structure shall not result in the permanent loss of critical food fish  
24 or shellfish habitats; and

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

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

32 (4) Any person aggrieved by the approval, denial, conditioning, or  
33 modification of a (~~hydraulic~~) permit (~~approval~~) under this section  
34 may formally appeal the decision to the (~~hydraulic-appeals~~) board  
35 pursuant to this chapter.

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

1           (1) ~~((The definitions in this subsection apply throughout this~~  
2 ~~section unless the context clearly requires otherwise.~~

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

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

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

16           ~~((3))~~ (2) Upon construction of a new marina or marine terminal  
17 that has received ~~((hydraulic project approval))~~ a permit, a renewable,  
18 five-year ~~((hydraulic project approval))~~ permit shall be issued, upon  
19 request, for regular maintenance activities of the marina or marine  
20 terminal.

21           ~~((4))~~ (3) For the purposes of this section, regular maintenance  
22 activities are only those activities necessary to restore the marina or  
23 marine terminal to the conditions approved in the initial ~~((hydraulic~~  
24 ~~project approval))~~ permit. These activities may include, but are not  
25 limited to, dredging, piling replacement, and float replacement.

26           ~~((5))~~ (4) The five-year permit must include a requirement that a  
27 fourteen-day notice be given to the department before regular  
28 maintenance activities begin.

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

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

34           (2) ~~((Hydraulic project approvals))~~ Permits issued in locations  
35 covered by a national pollution discharge elimination system municipal  
36 storm water general permit may not be conditioned or denied for water  
37 quality or quantity impacts arising from storm water discharges. A

1 ((~~hydraulic project approval~~)) permit is required only for the actual  
2 construction of any storm water outfall or associated structures  
3 pursuant to this chapter.

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

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

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

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

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

22 (c) After following the procedures set forth in (b) of this  
23 subsection, the department may issue a ((~~hydraulic project approval~~))  
24 permit that prescribes the discharge rates from an outfall structure  
25 that will prevent adverse effects to the bed or flow of the waterway.  
26 The department may recommend, but not specify, the measures required to  
27 meet these discharge rates. The department may not require changes to  
28 the project design above the mean higher high water mark of marine  
29 waters, or the ordinary high water mark of freshwaters of the state.  
30 Nothing in this section alters any authority the department may have to  
31 regulate other types of projects under this chapter.

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

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

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

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

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

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

10       (ii) Restoration of an eroded or unstable streambank employing the  
11 principle of bioengineering, including limited use of rock as a  
12 stabilization only at the toe of the bank, and with primary emphasis on  
13 using native vegetation to control the erosive forces of flowing water;  
14 or

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

17       The department shall develop size or scale threshold tests to  
18 determine if projects accomplishing any of these tasks should be  
19 evaluated under the process created in this section or under other  
20 project review and approval processes. A project proposal shall not be  
21 reviewed under the process created in this section if the department  
22 determines that the scale of the project raises concerns regarding  
23 public health and safety; and

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

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

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

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

31       (iv) Through the review and approval process for the jobs for the  
32 environment program;

33       (v) Through the review and approval process for conservation  
34 district-sponsored projects, where the project complies with design  
35 standards established by the conservation commission through  
36 interagency agreement with the United States fish and wildlife service  
37 and the natural resource conservation service;

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

3 (vii) Through other formal review and approval processes  
4 established by the legislature.

5 (2) Fish habitat enhancement projects meeting the criteria of  
6 subsection (1) of this section are expected to result in beneficial  
7 impacts to the environment. Decisions pertaining to fish habitat  
8 enhancement projects meeting the criteria of subsection (1) of this  
9 section and being reviewed and approved according to the provisions of  
10 this section are not subject to the requirements of RCW  
11 43.21C.030(2)(c).

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

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

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

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

7 (1) Except for the north fork of the Lewis river and the White  
8 Salmon river, all streams and rivers tributary to the Columbia river  
9 downstream from McNary dam are established as an anadromous fish  
10 sanctuary. This sanctuary is created to preserve and develop the food  
11 fish and game fish resources in these streams and rivers and to protect  
12 them against undue industrial encroachment.

13 (2) Within the sanctuary area:

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

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

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

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

28 NEW SECTION. **Sec. 507.** A landscape management plan approved by  
29 the department and the department of natural resources under RCW  
30 76.09.350(2) shall serve as a permit for the life of the plan if fish  
31 are selected as one of the public resources for coverage under such a  
32 plan.

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

35 The department (~~of fish and wildlife~~), the department of ecology,

1 and the department of natural resources shall jointly develop an  
2 informational brochure that describes when permits and any other  
3 authorizations are required for flood damage prevention and reduction  
4 projects, and recommends ways to best proceed through the various  
5 regulatory permitting processes.

6 NEW SECTION. **Sec. 509.** (1) The department shall, at the request  
7 of a county, develop five-year maintenance permit agreements,  
8 consistent with comprehensive flood control management plans adopted  
9 under the authority of RCW 86.12.200, or other watershed plan approved  
10 by a county legislative authority, to allow for work on public and  
11 private property for bank stabilization, bridge repair, removal of  
12 sandbars and debris, channel maintenance, and other flood damage repair  
13 and reduction activity under agreed-upon conditions and times without  
14 obtaining permits for specific projects.

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

22 **PART 6**  
23 **DENIAL OR CONDITIONING OF PERMIT**

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

26 Conditions imposed upon (~~hydraulic project approvals~~) a permit  
27 must be reasonably related to the project. The permit conditions must  
28 ensure that the project provides proper protection for fish life, but  
29 the department may not impose conditions that attempt to optimize  
30 conditions for fish life that are out of proportion to the impact of  
31 the proposed project.

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

34 (1) The legislature finds that the construction of hydraulic

1 projects may require mitigation for the protection of fish life, and  
2 that the mitigation may be most cost-effective and provide the most  
3 benefit to the fish resource if the mitigation is allowed to be applied  
4 in locations that are off-site of the hydraulic project location. The  
5 department may approve off-site mitigation plans that are submitted by  
6 hydraulic project permit applicants.

7 (2) If a hydraulic project permit applicant proposes off-site  
8 mitigation and the department does not approve the hydraulic permit or  
9 conditions the permit approval in such a manner as to render off-site  
10 mitigation unpracticable, the hydraulic project proponent must be given  
11 the opportunity to submit the hydraulic project permit application to  
12 the ((~~hydraulic appeals~~)) board for approval.

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

15 When reviewing a mitigation plan under ((~~RCW 77.55.100 or~~  
16 ~~77.55.110~~)) section 201 of this act, the department shall, at the  
17 request of the project proponent, follow the guidance contained in RCW  
18 90.74.005 through 90.74.030.

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

21 Whenever the placement of woody debris is required as a condition  
22 of a ((~~hydraulic~~)) permit ((~~approval~~)) issued ((~~pursuant to RCW~~  
23 ~~77.55.100 or 77.55.110~~)) under section 201 of this act, the department,  
24 upon request, shall invite comment regarding that placement from the  
25 local governmental authority, affected tribes, affected federal and  
26 state agencies, and the project applicant.

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

29 The department may not require mitigation for adverse impacts on  
30 fish life or habitat that occurred at the time a wetland was filled, if  
31 the wetland was filled ((~~under the provisions of RCW 75.20.300~~)) prior  
32 to 1995 for flood control and dredging projects located in the Cowlitz  
33 river from mile twenty-two to the confluence with the Columbia river,  
34 and in the Toutle river from the mouth to the North Fork Toutle

1 sediment dam site at North Fork mile twelve, and to river mile three on  
2 the South Fork Toutle river, and volcano-affected areas of the Columbia  
3 river.

4 NEW SECTION. **Sec. 606.** (1) The department may not require a  
5 fishway on a tide gate, flood gate, or other associated man-made  
6 agricultural drainage facilities as a condition of a hydraulic project  
7 approval if such a fishway was not originally installed as part of an  
8 agricultural drainage system existing on or before May 20, 2003.

9 (2) Any condition requiring a self-regulating tide gate to achieve  
10 fish passage in an existing hydraulic project approval under this  
11 chapter may not be enforced.

12 **PART 7**  
13 **PENALTIES**

14 **Sec. 701.** RCW 77.55.140 and 2000 c 107 s 19 are each amended to  
15 read as follows:

16 (1) The department may levy civil penalties of up to one hundred  
17 dollars per day for violation of any provisions of (~~RCW 77.55.100 or~~  
18 ~~77.55.110~~) section 201 of this act. The penalty provided shall be  
19 imposed by notice in writing, either by certified mail or personal  
20 service to the person incurring the penalty, from the director or the  
21 director's designee describing the violation.

22 (2) Any person incurring any penalty under this chapter may appeal  
23 the same under chapter 34.05 RCW to the director. Appeals shall be  
24 filed within thirty days of receipt of notice imposing any penalty.

25 (3) The penalty imposed shall become due and payable thirty days  
26 after receipt of a notice imposing the penalty unless an appeal is  
27 filed. Whenever an appeal of any penalty incurred under this chapter  
28 is filed, the penalty shall become due and payable only upon completion  
29 of all review proceedings and the issuance of a final order confirming  
30 the penalty in whole or in part.

31 (4) If the amount of any penalty is not paid within thirty days  
32 after it becomes due and payable, the attorney general, upon the  
33 request of the director, shall bring an action in the name of the state  
34 of Washington in the superior court of Thurston county or of any county  
35 in which such violator may do business, to recover such penalty. In

1 all such actions the procedure and rules of evidence shall be the same  
2 as an ordinary civil action. All penalties recovered under this  
3 section shall be paid into the state's general fund.

4 **PART 8**  
5 **APPEALS**

6 NEW SECTION. **Sec. 801.** (1) An expedited dispute resolution  
7 process is created to resolve disputes regarding permits issued or  
8 denied under this chapter. The expedited dispute resolution process  
9 may be initiated by a project applicant at any point prior to issuance  
10 or denial of the final permit. The forty-five day period for permit  
11 issuance or denial shall not be suspended while the dispute is  
12 resolved.

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

- 17 (a) The project contractor or engineer;
- 18 (b) A department engineer;
- 19 (c) The department's regional program manager; and
- 20 (d) An engineer or public works official designated by the local  
21 government with jurisdiction over the project.

22 (3) The expedited dispute resolution process committee must conduct  
23 a project review to determine whether the conditions in the proposed  
24 permit are reasonable and necessary to protect fish life. By majority  
25 vote, the committee may accept the permit conditions, reject the permit  
26 conditions and return the permit to the department for subsequent  
27 review, or determine alternative conditions to be included in the final  
28 permit.

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

- 33 (a) Contact information for the department employee who will be  
34 reviewing the project;
- 35 (b) Contact information for the department's regional program

1 manager responsible for overseeing the regional hydraulic project  
2 activities at any point prior to the approval or denial of a permit;

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

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

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

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

13 **Sec. 803.** RCW 77.55.170 and 2003 c 393 s 21 are each amended to  
14 read as follows:

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

18 (2) The hydraulic appeals board (~~shall~~) consists of three  
19 members: The director of the department of ecology or the director's  
20 designee, the director of the department of agriculture or the  
21 director's designee, and the director or the director's designee of the  
22 department (~~whose action is appealed under subsection (6) of this~~  
23 ~~section~~). A decision must be agreed to by at least two members of the  
24 board to be final.

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

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

32 (5) The board has exclusive jurisdiction to hear appeals arising  
33 from the approval, denial, conditioning, or modification of a  
34 (~~hydraulic approval~~) permit issued by the department(~~:(a) Under~~  
35 ~~the authority granted in RCW 77.55.110 for the diversion of water for~~  
36 ~~agricultural irrigation or stock watering purposes or when associated~~

1 ~~with streambank stabilization to protect farm and agricultural land as~~  
2 ~~defined in RCW 84.34.020; or (b) under the authority granted in RCW~~  
3 ~~77.55.230 for off-site mitigation proposals)).~~

4 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
5 or modification of a ~~((hydraulic approval pursuant to RCW 77.55.110))~~  
6 permit under section 201 of this act may, except as otherwise provided  
7 in chapter 43.21L RCW, seek review from the board by filing a request  
8 for the same within thirty days of notice of the approval, denial,  
9 conditioning, or modification of ~~((such approval))~~ the permit.

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

13 **Sec. 804.** RCW 77.55.180 and 1995 c 382 s 7 are each amended to  
14 read as follows:

15 (1) In all appeals, the ~~((hydraulic appeals))~~ board shall have all  
16 powers relating to administration of oaths, issuance of subpoenas, and  
17 taking of depositions, but such powers shall be exercised in conformity  
18 with chapter 34.05 RCW.

19 (2) In all appeals, the ~~((hydraulic appeals))~~ board, and each  
20 member thereof, shall be subject to all duties imposed upon and shall  
21 have all powers granted to, an agency by those provisions of chapter  
22 34.05 RCW relating to adjudicative proceedings.

23 (3) All proceedings before the ~~((hydraulic appeals))~~ board or any  
24 of its members shall be conducted in accordance with such rules of  
25 practice and procedure as the board may prescribe. Such rules shall be  
26 published and distributed.

27 (4) Judicial review of a decision of the ~~((hydraulic appeals))~~  
28 board may be obtained only pursuant to RCW 34.05.510 through 34.05.598.

## 29 PART 9

### 30 FISHWAYS, FLOW, AND SCREENING

31 **Sec. 901.** RCW 77.55.040 and 1998 c 190 s 85 are each amended to  
32 read as follows:

33 (1) A diversion device used for conducting water from a lake,  
34 river, or stream for any purpose shall be equipped with a fish guard  
35 approved by the director to prevent the passage of fish into the

1 diversion device. The fish guard shall be maintained at all times when  
2 water is taken into the diversion device. The fish guards shall be  
3 installed at places and times prescribed by the director upon thirty  
4 days' notice to the owner of the diversion device.

5 (2) Each day the diversion device is not equipped with an approved  
6 fish guard is a separate offense. If within thirty days after notice  
7 to equip a diversion device the owner fails to do so, the director may  
8 take possession of the diversion device and close the device until it  
9 is properly equipped. Expenses incurred by the department constitute  
10 the value of a lien upon the diversion device and upon the real and  
11 personal property of the owner. Notice of the lien shall be filed and  
12 recorded in the office of the county auditor of the county in which the  
13 action is taken.

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

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

19 The director of ecology shall give the director notice of each  
20 application for a permit to divert or store water. The director has  
21 thirty days after receiving the notice to state his or her objections  
22 to the application. The permit shall not be issued until the thirty-  
23 day period has elapsed.

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

28 The provisions of this section shall in no way affect existing  
29 water rights.

30 **Sec. 903.** RCW 77.55.060 and 2003 c 391 s 1 are each amended to  
31 read as follows:

32 (1) Subject to subsection (3) of this section, a dam or other  
33 obstruction across or in a stream shall be provided with a durable and  
34 efficient fishway approved by the director. Plans and specifications  
35 shall be provided to the department prior to the director's approval.

1 The fishway shall be maintained in an effective condition and  
2 continuously supplied with sufficient water to freely pass fish.

3 (2)(a) If a person fails to construct and maintain a fishway or to  
4 remove the dam or obstruction in a manner satisfactory to the director,  
5 then within thirty days after written notice to comply has been served  
6 upon the owner, his or her agent, or the person in charge, the director  
7 may construct a fishway or remove the dam or obstruction. Expenses  
8 incurred by the department constitute the value of a lien upon the dam  
9 and upon the personal property of the person owning the dam. Notice of  
10 the lien shall be filed and recorded in the office of the county  
11 auditor of the county in which the dam or obstruction is situated. The  
12 lien may be foreclosed in an action brought in the name of the state.

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

18 (3) For the purposes of this section, "other obstruction" does not  
19 include tide gates, flood gates, and associated man-made agricultural  
20 drainage facilities that were originally installed as part of an  
21 agricultural drainage system on or before May 20, 2003, or the repair,  
22 replacement, or improvement of such tide gates or flood gates.

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

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

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

36 (3) The director or the director's designee may close a water

1 diversion device operated in violation of this section and keep it  
2 closed until it is properly equipped with a fish guard, screen, or  
3 bypass.

4 **PART 10**  
5 **MISCELLANEOUS**

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

8 Section 101 of this act

9 Section 102 of this act

10 Section 201 of this act

11 Section 202 of this act

12 Section 203 of this act

13 Section 301 of this act

14 RCW 77.55.330

15 Section 303 of this act

16 RCW 77.55.030

17 RCW 77.55.360

18 RCW 77.55.150

19 RCW 77.55.270

20 RCW 77.55.020

21 RCW 77.55.280

22 RCW 77.55.300

23 RCW 77.55.130

24 RCW 77.55.200

25 RCW 77.55.220

26 RCW 77.55.340

27 RCW 77.55.210

28 RCW 77.55.290

29 RCW 77.55.160

30 Section 507 of this act

31 RCW 77.55.010

32 Section 509 of this act

33 RCW 77.55.350

34 RCW 77.55.230

35 RCW 77.55.090

36 RCW 77.55.120

1 RCW 77.55.260  
2 RCW 77.55.250  
3 Section 606 of this act  
4 RCW 77.55.140  
5 Section 801 of this act  
6 Section 802 of this act  
7 RCW 77.55.170  
8 RCW 77.55.180.

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

11 RCW 77.55.040  
12 RCW 77.55.050  
13 RCW 77.55.060  
14 RCW 77.55.070  
15 RCW 77.55.080  
16 RCW 77.55.310  
17 RCW 77.55.320  
18 RCW 77.55.240.

19 **Sec. 1003.** RCW 76.09.050 and 2003 c 314 s 4 are each amended to  
20 read as follows:

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

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

31 Class II: Forest practices which have a less than ordinary  
32 potential for damaging a public resource that may be conducted without  
33 submitting an application and may begin five calendar days, or such  
34 lesser time as the department may determine, after written notification  
35 by the operator, in the manner, content, and form as prescribed by the  
36 department, is received by the department. However, the work may not

1 begin until all forest practice fees required under RCW 76.09.065 have  
2 been received by the department. Class II shall not include forest  
3 practices:

4 (a) On lands platted after January 1, 1960, as provided in chapter  
5 58.17 RCW or on lands that have or are being converted to another use;

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

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

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

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

13 Class III: Forest practices other than those contained in Class I,  
14 II, or IV. A Class III application must be approved or disapproved by  
15 the department within thirty calendar days from the date the department  
16 receives the application. However, the applicant may not begin work on  
17 that forest practice until all forest practice fees required under RCW  
18 76.09.065 have been received by the department;

19 Class IV: Forest practices other than those contained in Class I  
20 or II: (a) On lands platted after January 1, 1960, as provided in  
21 chapter 58.17 RCW, (b) on lands that have or are being converted to  
22 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or  
23 hereafter amended, are not to be reforested because of the likelihood  
24 of future conversion to urban development, (d) involving timber  
25 harvesting or road construction on lands that are contained within  
26 "urban growth areas," designated pursuant to chapter 36.70A RCW, except  
27 where the forest landowner provides: (i) A written statement of intent  
28 signed by the forest landowner not to convert to a use other than  
29 commercial forest product operations for ten years, accompanied by  
30 either a written forest management plan acceptable to the department or  
31 documentation that the land is enrolled under the provisions of chapter  
32 84.33 RCW; or (ii) a conversion option harvest plan approved by the  
33 local governmental entity and submitted to the department as part of  
34 the application, and/or (e) which have a potential for a substantial  
35 impact on the environment and therefore require an evaluation by the  
36 department as to whether or not a detailed statement must be prepared  
37 pursuant to the state environmental policy act, chapter 43.21C RCW.  
38 Such evaluation shall be made within ten days from the date the

1 department receives the application: PROVIDED, That nothing herein  
2 shall be construed to prevent any local or regional governmental entity  
3 from determining that a detailed statement must be prepared for an  
4 action pursuant to a Class IV forest practice taken by that  
5 governmental entity concerning the land on which forest practices will  
6 be conducted. A Class IV application must be approved or disapproved  
7 by the department within thirty calendar days from the date the  
8 department receives the application, unless the department determines  
9 that a detailed statement must be made, in which case the application  
10 must be approved or disapproved by the department within sixty calendar  
11 days from the date the department receives the application, unless the  
12 commissioner of public lands, through the promulgation of a formal  
13 order, determines that the process cannot be completed within such  
14 period. However, the applicant may not begin work on that forest  
15 practice until all forest practice fees required under RCW 76.09.065  
16 have been received by the department.

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

20 (2) Except for those forest practices being regulated by local  
21 governmental entities as provided elsewhere in this chapter, no Class  
22 II, Class III, or Class IV forest practice shall be commenced or  
23 continued after January 1, 1975, unless the department has received a  
24 notification with regard to a Class II forest practice or approved an  
25 application with regard to a Class III or Class IV forest practice  
26 containing all information required by RCW 76.09.060 as now or  
27 hereafter amended. However, in the event forest practices regulations  
28 necessary for the scheduled implementation of this chapter and RCW  
29 90.48.420 have not been adopted in time to meet such schedules, the  
30 department shall have the authority to regulate forest practices and  
31 approve applications on such terms and conditions consistent with this  
32 chapter and RCW 90.48.420 and the purposes and policies of RCW  
33 76.09.010 until applicable forest practices regulations are in effect.

34 (3) Except for those forest practices being regulated by local  
35 governmental entities as provided elsewhere in this chapter, if a  
36 notification or application is delivered in person to the department by  
37 the operator or the operator's agent, the department shall immediately

1 provide a dated receipt thereof. In all other cases, the department  
2 shall immediately mail a dated receipt to the operator.

3 (4) Except for those forest practices being regulated by local  
4 governmental entities as provided elsewhere in this chapter, forest  
5 practices shall be conducted in accordance with the forest practices  
6 regulations, orders and directives as authorized by this chapter or the  
7 forest practices regulations, and the terms and conditions of any  
8 approved applications.

9 (5) Except for those forest practices being regulated by local  
10 governmental entities as provided elsewhere in this chapter, the  
11 department of natural resources shall notify the applicant in writing  
12 of either its approval of the application or its disapproval of the  
13 application and the specific manner in which the application fails to  
14 comply with the provisions of this section or with the forest practices  
15 regulations. Except as provided otherwise in this section, if the  
16 department fails to either approve or disapprove an application or any  
17 portion thereof within the applicable time limit, the application shall  
18 be deemed approved and the operation may be commenced: PROVIDED, That  
19 this provision shall not apply to applications which are neither  
20 approved nor disapproved pursuant to the provisions of subsection (7)  
21 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
22 prevent the department from being able to properly evaluate the  
23 application, the department may issue an approval conditional upon  
24 further review within sixty days: PROVIDED, FURTHER, That the  
25 department shall have until April 1, 1975, to approve or disapprove an  
26 application involving forest practices allowed to continue to April 1,  
27 1975, under the provisions of subsection (2) of this section. Upon  
28 receipt of any notification or any satisfactorily completed application  
29 the department shall in any event no later than two business days after  
30 such receipt transmit a copy to the departments of ecology and fish and  
31 wildlife, and to the county, city, or town in whose jurisdiction the  
32 forest practice is to be commenced. Any comments by such agencies  
33 shall be directed to the department of natural resources.

34 (6) For those forest practices regulated by the board and the  
35 department, if the county, city, or town believes that an application  
36 is inconsistent with this chapter, the forest practices regulations, or  
37 any local authority consistent with RCW 76.09.240 as now or hereafter

1 amended, it may so notify the department and the applicant, specifying  
2 its objections.

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

6 (a) The department receives written notice from the county, city,  
7 or town of such objections within fourteen business days from the time  
8 of transmittal of the application to the county, city, or town, or one  
9 day before the department acts on the application, whichever is later;  
10 and

11 (b) The objections relate to lands either:

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

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

15 The department shall either disapprove those portions of such  
16 application or appeal the county, city, or town objections to the  
17 appeals board. If the objections related to subparagraphs (b)(i) and  
18 (ii) of this subsection are based on local authority consistent with  
19 RCW 76.09.240 as now or hereafter amended, the department shall  
20 disapprove the application until such time as the county, city, or town  
21 consents to its approval or such disapproval is reversed on appeal.  
22 The applicant shall be a party to all department appeals of county,  
23 city, or town objections. Unless the county, city, or town either  
24 consents or has waived its rights under this subsection, the department  
25 shall not approve portions of an application affecting such lands until  
26 the minimum time for county, city, or town objections has expired.

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

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

1 (10) For those forest practices regulated by the board and the  
2 department, the department shall, within four business days notify the  
3 county, city, or town of all notifications, approvals, and disapprovals  
4 of an application affecting lands within the county, city, or town,  
5 except to the extent the county, city, or town has waived its right to  
6 such notice.

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

11 (12) Notwithstanding subsections (2) through (5) of this section,  
12 forest practices applications or notifications are not required for  
13 exotic insect and disease control operations conducted in accordance  
14 with RCW 76.09.060(8) where eradication can reasonably be expected.

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

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

21 (2) The department, in partnership with the Northwest straits  
22 commission, the department of natural resources, and other interested  
23 parties, must publish guidelines for the safe removal and disposal of  
24 derelict fishing gear. The guidelines must be completed by August 31,  
25 2002, and made available to any person interested in derelict fishing  
26 gear removal.

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

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

32 A hardshell clam mechanical harvester fishery license is required  
33 to operate a mechanical or hydraulic device for commercially harvesting  
34 clams, other than geoduck clams, unless the requirements of (~~RCW  
35 77.55.100~~) section 201 of this act are fulfilled for the proposed  
36 activity.

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

3        (1) RCW 77.55.100 (Hydraulic projects or other work--Plans and  
4 specifications--Permits--Approval--Emergencies--Tide gates) and 2004 c  
5 32 s 2, 2003 c 391 s 2, 2002 c 368 s 2, 2000 c 107 s 16, & 1998 c 190  
6 s 87;

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

12        (3) RCW 77.55.190 (Processing of permits or authorizations for  
13 emergency water withdrawal and facilities to be expedited) and 1989 c  
14 171 s 8 & 1987 c 343 s 6; and

15        (4) RCW 77.55.370 ("Tide gate" defined) and 2003 c 391 s 6.

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

--- END ---