1000 AMH CODY RJRJ 779

**HB 1000** - H AMD **9995**

By Representative Cody

On page 63, after line 16, insert the following:

"**SUBPART E**

**PROVIDING DIRECTION TO AGENCIES TO BE THE SOLE IMPLEMENTER OF PROGRAMS UNDER THEIR JURISDICTION**

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes and chapters for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are each reenacted and amended to read as follows:

(1) The department shall exercise all of the powers, duties, and functions now vested in the commissioner of public lands and such powers, duties, and functions are hereby transferred to the department. However, nothing contained in this section shall effect the commissioner's ex officio membership on any committee provided by law.

(2) Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.  
 (3)(a) Except as provided in (b) of this subsection, and subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against loss or damages.

(b) When executing a right-of-way or easement contract over private land that involves forest management activities, the department shall indemnify the private landowner if the landowner does not receive a direct benefit from the contract.

NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08 RCW to read as follows:

Unless expressly identified otherwise in statute, the commission shall administer all provisions of this title, and all other statutes for which the commission has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23 RCW to read as follows:

Unless expressly identified otherwise in statute, the department shall administer all provisions of this title, and all other statutes for which the department has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25 RCW to read as follows:

Unless expressly identified otherwise in statute, the recreation and conservation office shall administer all provisions of this title, and all other statutes for which the office has been given administrative authority, directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09 RCW to read as follows:

Unless expressly identified otherwise in statute, the board shall ensure that all provisions of this title, and all other statutes relating to forest practices, are to be administered by the department of natural resources directly and without assistance, cooperation, advice, counsel, notice, or interference with or from other state agencies. Nothing in this section prohibits expertise from other state agencies to be collected during the rule-making stage of statutory implementation.

**Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read as follows:

The department ((~~together with the department of fish and wildlife, and the department of ecology relating to water quality protection,~~)) shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices ((~~in a single multiyear permit~~)) to be ((~~jointly~~)) issued only by the ((~~departments and the departments shall report their findings to the legislature not later than December 31, 2000~~)) department.

**Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(3) ((~~"Commission" means the state fish and wildlife commission.~~  
 ~~(4)~~)) "Date of receipt" has the same meaning as defined in RCW 43.21B.001.

((~~(5)~~)) (4) "Department" means the department of ((~~fish and wildlife~~)) ecology.

((~~(6)~~)) (5) "Director" means the director of the department ((~~of fish and wildlife~~)).

((~~(7)~~)) (6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

((~~(8)~~)) (7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

((~~(9)~~)) (8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

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

((~~(11)~~)) (10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

((~~(12)~~)) (11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

((~~(13)~~)) (12) "Permit" means a hydraulic project approval permit issued under this chapter.

((~~(14)~~)) (13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

((~~(15)~~)) (14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

((~~(16)~~)) (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

((~~(17)~~)) (16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

((~~(18)~~)) (17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

((~~(19)~~)) (18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state.

**272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read as follows:

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

(2) Within the sanctuary area:

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

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

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

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

NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55 RCW to read as follows:

The requirements of RCW 77.55.021 are to be considered satisfied for any project that is required under chapter 76.09 RCW to submit a forest practices application or that is associated with any project that is required under chapter 76.09 RCW to submit a forest practices application.

**Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

(1)(a) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(i) Establish minimum standards for forest practices;

(ii) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a)(i) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(iii) Set forth necessary administrative provisions;

(iv) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

(c) Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2)(a) The board shall prepare proposed forest practices rules ((~~consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board~~)) including proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife, the department of ecology, and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife, the department of ecology, and the counties of the state shall have thirty days in which to review and submit comments to the board((~~, and to the department of ecology with respect to its proposed rules relating to water quality protection~~)).

(ii) After the expiration of the thirty-day period, the board ((~~and the department of ecology~~)) shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt ((~~and the department of ecology may approve~~)) such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

(b) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department must establish a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined channel migration zone or contain critical habitat for threatened or endangered species as designated by the board. Lands acquired under this section shall become riparian or habitat open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(c) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(d) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space or critical habitat.

**Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

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

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

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

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

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

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

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

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

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

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

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

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

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

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

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

(b) The objections relate to lands either:

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

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

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

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

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.205. In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

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

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

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

**Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

(a) Name and address of the forest landowner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;

(j) An affirmation that the statements contained in the notification or application are true; and

(k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to ((~~the department of ecology and~~)) the appropriate county, city, town, and regional governmental entities the following documents:

(i) A notice of a conversion to nonforestry use;

(ii) A copy of the applicable forest practices application or notification, if any; and

(iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

**Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each amended to read as follows:

If the department ((~~of ecology~~)) determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and ((~~that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If~~)) the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the ((~~department of ecology may petition to the chairman~~)) chair of the appeals board((~~, who~~)) shall, within forty- eight hours, either deny ((~~the petition~~)) further consideration or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

**Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department ((~~or the department of ecology~~)) may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited.

**Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended to read as follows:

The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters and, except as otherwise provided in RCW 90.48.260, matters relating to representing the state for the purposes of the federal water pollution control act as it relates to forest practices, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

((~~Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act.~~))

**Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read as follows:

(1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the ((~~department of ecology and the~~)) applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations.

**Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve- month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) "Dairy producer" means a person who owns or operates a dairy farm.

(14) "Department" means the department of ((~~ecology under chapter 43.21A RCW~~)) agriculture.

(15) "Director" means the director of the department ((~~of ecology,~~)) or his or her designee.

(16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process- generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017;

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

**Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read as follows:

(1) The director of the department ((~~of ecology~~)) may designate any dairy animal feeding operation as a concentrated dairy animal feeding operation upon determining that it is a significant contributor of pollution to the surface or ground waters of the state. In making this designation the director shall consider the following factors:

(a) The size of the animal feeding operation and the amount of wastes reaching waters of the state;

(b) The location of the animal feeding operation relative to waters of the state;

(c) The means of conveyance of animal wastes and process waters into the waters of the state;

(d) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into the waters of the state; and

(e) Other relevant factors as established by the department by rule.

(2) A notice of intent to apply for a permit shall not be required from a concentrated dairy animal feeding operation designated under this section until the director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

**Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read as follows:

(1) The legislature finds that a livestock nutrient management program is essential to protecting the quality of the waters of the state and ensuring a healthy and productive livestock industry.

(2) The department((~~s of agriculture and ecology~~)) shall examine ((~~their~~)) its current statutory authorities and provide the legislature with recommendations for statutory changes to fully implement a livestock nutrient management program within the department ((~~of agriculture~~)) for concentrated animal feeding operations, animal feeding operations, and dairies, as authorized in RCW 90.48.260((~~, 90.64.813,~~)) and 90.64.901. ((~~In developing recommended statutory changes, the departments shall consult with the livestock nutrient management program development and oversight committee created in RCW 90.64.813.~~)) The recommendations must be submitted to the legislature by the department((~~s of agriculture and ecology~~)) prior to applying to the environmental protection agency for delegated authority to administer the CAFO portion of the national pollutant discharge elimination system permit program under the federal clean water act.

(3) For purposes of chapter 510, Laws of 2005, animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs) have the same meaning as defined in 40 C.F.R. 122.23.

(4) This section applies to all operations that meet the definition of an AFO. This section does not apply to true pasture and rangeland operations that do not meet the definition of AFO, however, such operations may have confinement areas that may qualify as an AFO.

**Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to read as follows:

(1) Unless otherwise designated by law, the department of ecology is hereby designated as the state water pollution control agency for all purposes of the federal clean water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. ((~~With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210.~~))

(2)(a) The department of ecology ((~~may~~)) shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and other duties regarding water quality to the following agencies for the following programs:   
 (i) Animal feeding operations and concentrated animal feeding operations((~~,~~)) to the department of agriculture; and  
 (ii) Forest practices to the department of natural resources and the forest practices board.  
 (b) All delegations of authority must be executed through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality and the adoption of forest practices rules, permits programs, or directions pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology.

(c) Adoption or issuance and implementation of this subsection shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation and forest practices rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws.

(3) The powers granted ((~~herein~~)) by this section include, among others, and notwithstanding any other provisions of chapter 90.48 RCW or otherwise, the following:

((~~(1)~~)) (a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department to qualify for full participation in any national waste discharge or pollution discharge elimination permit system and will allow the department to be the sole agency issuing permits required by such national system operating in the state of Washington subject to the provisions of RCW 90.48.262(2). Program elements authorized herein may include, but are not limited to: ((~~(a)~~)) (i) Effluent treatment and limitation requirements together with timing requirements related thereto; ((~~(b)~~)) (ii) applicable receiving water quality standards requirements; ((~~(c)~~)) (iii) requirements of standards of performance for new sources; ((~~(d)~~)) (iv) pretreatment requirements; ((~~(e)~~)) (v) termination and modification of permits for cause; ((~~(f)~~)) (vi) requirements for public notices and opportunities for public hearings; ((~~(g)~~)) (vii) appropriate relationships with the secretary of the army in the administration of ((~~his~~)) the secretary of the army's responsibilities which relate to anchorage and navigation, with the administrator of the environmental protection agency in the performance of ((~~his~~)) the administrator's duties, and with other governmental officials under the federal clean water act; ((~~(h)~~)) (viii) requirements for inspection, monitoring, entry, and reporting; ((~~(i)~~)) (ix) enforcement of the program through penalties, emergency powers, and criminal sanctions; ((~~(j)~~)) (x) a continuing planning process; and ((~~(k)~~)) (xi) user charges.

((~~(2)~~)) (b) The power to establish and administer state programs in a manner which will ((~~insure~~)) ensure the procurement of moneys, whether in the form of grants, loans, or otherwise; to assist in the construction, operation, and maintenance of various water pollution control facilities and works; and the administering of various state water pollution control management, regulatory, and enforcement programs.

((~~(3)~~)) (c) The power to develop and implement appropriate programs pertaining to continuing planning processes, area-wide waste treatment management plans, and basin planning.

(4) The governor shall have authority to perform those actions required of him or her by the federal clean water act.

**Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, ((~~and~~)) 77.55.041, and section 13 of this act, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

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

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

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life.

(a) Except as provided in (b) of this subsection, issuance, denial, conditioning, or modification of a permit shall be appealable to the board within thirty days from the date of receipt of the decision as provided in RCW 43.21B.230.

(b) Issuance, denial, conditioning, or modification of a permit may be informally appealed to the department within thirty days from the date of receipt of the decision. Requests for informal appeals must be filed in the form and manner prescribed by the department by rule. A permit decision that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

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

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

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

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department is appealable as provided in subsection (4) of this section. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

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

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

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

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

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

**Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to read as follows:

((~~In coordination with the department of natural resources and lead entity groups,~~)) The department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property.

**Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to read as follows:

(1) The department((~~, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties,~~)) must create and ensure the maintenance of a database of known derelict fishing gear and shellfish pots, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear or shellfish pots within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

**Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read as follows:

(1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director((~~, the department of ecology, and the Washington state parks and recreation commission~~)) may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites.

**Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to read as follows:

(1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department ((~~or the department of natural resources~~)) regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials.

**Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read as follows:

The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work ((~~with the department of natural resources~~)) to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure, water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program.

**Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to read as follows:

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

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

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with ((~~the department of natural resources and~~)) affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

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

(6) If the department ((~~and the department of natural resources~~)) receives multiple requests for agreements with private landowners under the habitat incentives program, the department((~~s~~)) shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources.

**Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to read as follows:

The department((~~, the department of ecology, and the department of natural resources~~)) shall ((~~jointly~~)) develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommend((~~s~~)) ways to best proceed through the various regulatory permitting processes.

**Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to read as follows:

The department ((~~and the department of ecology~~)) will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84- 99, and state requirements established pursuant to RCW 77.55.021 are met.

**Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read as follows:

(1) The department must establish and administer a direct retail endorsement to serve as a single license that permits a Washington license holder or alternate operator to commercially harvest retail- eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of: (a) A commercial fishing license for retail-eligible species that the department offers under this chapter; and (b) an alternate operator license who are designated as an alternate operator on a commercial fishing license for retail eligible species.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter, and alternate operators designated on such a license, may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail- eligible species issued under this chapter, and who are not designated as alternate operators on such a license, may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. If a direct retail endorsement is selected by an individual designated as an alternate operator on more than one commercial license issued under this chapter, a single direct retail endorsement is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses on which the individual is designated as an alternate operator. The direct retail endorsement applies only to the Washington license holder or alternate operator obtaining the endorsement.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet((~~, provided by the department of agriculture,~~)) with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter, or an alternate operator designated on such a license, must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business.

**Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to read as follows:

(1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. ((~~Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources.~~)) The department shall give all holders of herring fishery licenses thirty days' notice of the auction.

**Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to read as follows:

The department shall ((~~work with the department of ecology and local government entities to~~)) streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects.

**Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to read as follows:

(1) It is the purpose of ((~~chapter 163, Laws of 1996~~)) this section that all state agricultural lands, grazing lands, and grazeable woodlands ((~~shall~~)) be managed in keeping with the statutory and constitutional mandates under which each agency operates. ((~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.~~))

(2) ((~~The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this reason,~~)) Land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) ((~~For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they~~)) Land shall be ((~~applied~~)) managed through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

((~~(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests.~~))

**Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to read as follows:

Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the ((~~departments of fish and wildlife and general administration, to the parks and recreation commission, and to the~~)) county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984.

**Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to read as follows:

In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case- by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. ((~~The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats.~~)) Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter.

**Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read as follows:

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. ((~~The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes.~~))

**Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to read as follows:

The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites ((~~are~~)) should be approved through a cooperative planning process by the department((~~s of natural resources and ecology~~)), the United States army corps of engineers, and the United States environmental protection agency ((~~in cooperation with the Puget Sound partnership~~)). These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to ((~~assure~~)) ensure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites.

**Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to read as follows:

Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state- owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner ((~~and the director of ecology, both of~~)), whom shall be an ex officio member((~~s~~)) of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes.

**Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to read as follows:

The ((~~director of ecology~~)) commissioner, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs ((~~therefor~~)).

**Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to read as follows:

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall ((~~notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall~~)) cause an inspection of the lands applied for ((~~to be made and shall make a full report to the department of the director's findings as to whether it is necessary,~~)) in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the ((~~director~~)) department deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the ((~~director~~)) department determines that the lands applied for or any part of the lands may be leased, the ((~~director~~)) department shall ((~~so notify the department and the director shall~~)) cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report ((~~to~~)), the department((~~, the director~~)) shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the ((~~director~~)) department for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum ((~~rental~~)) recommended ((~~by the director of fish and wildlife~~)) rent. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the ((~~director~~)) department, plus the expense incurred by the ((~~director~~)) department in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development.

**Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to read as follows:

Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department ((~~and to the director of fish and wildlife,~~)) a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature ((~~as the director of fish and wildlife may direct~~)).

**Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to read as follows:

The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to re-lease the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the ((~~director of fish and wildlife~~)) department.

**Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to read as follows:

(1) ((~~In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve,~~)) The department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands.

**Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to read as follows:

(1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The ((~~department in cooperation with the~~)) department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon ((~~mutual~~)) approval by ((~~the department and~~)) the department of fish and wildlife, seaweed species of the genus Macrocystis may be commercially harvested for use in the herring spawn- on-kelp fishery.

(4) Importation of seaweed species of the genus Macrocystis into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies ((~~of the department of fish and wildlife~~)). Macrocystis shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with Macrocystis. The department shall incorporate this policy on Macrocystis importation into its overall fish and shellfish disease control policies.

**Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are each reenacted and amended to read as follows:

(1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One ((~~representative of the department of natural resources, one representative of the department of fish and wildlife, and one~~)) representative of ((~~the Washington state association of counties, each of whom shall be~~)) a statewide private association generally representing the interests of county legislative bodies and executives appointed by the director ((~~of the particular department or association~~)).

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member.

**Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to read as follows:

(1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced‑price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

(a) Programs that contribute to the reduction of academic failure and dropout rates;

(b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource- based education curriculum;

(c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;

(d) Various Washington state parks as venues and use of the commission's personnel as a resource;

(e) Programs that maximize the number of participants that can be served;

(f) Programs that will commit matching and in-kind resources;

(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from ((~~the office of the superintendent of public instruction, the department of fish and wildlife,~~)) the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

**Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to read as follows:

The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

(1) Plan, construct, and maintain underwater parks;

(2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;

(3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;

(4) Accept gifts and donations for the benefit of underwater parks;

(5) Facilitate private efforts to construct artificial reefs and underwater parks;

(6) Work with the federal government((~~,~~)) and local governments ((~~and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council~~)) to carry out the purposes of this chapter; and

(7) Contract with other state agencies or local governments for the management of an underwater park unit.

**Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to read as follows:

The commission((~~, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership~~)) shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only.

**Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to read as follows:

The ((~~department of ecology, in consultation with the~~)) commission((~~,~~)) shall, for initiation of the statewide program only, develop criteria by rule for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. ((~~The department of ecology may adopt rules to administer the provisions of this section.~~))

**Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to read as follows:

(1) The Washington sea grant program((~~, in consultation with the department of ecology,~~)) shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials.

**Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to read as follows:

The commission is authorized to evaluate and acquire land under RCW ((~~79.01.612 in cooperation with the department of natural resources~~)) 79.10.030.

**Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to read as follows:

((~~(1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.~~  
 ~~(2)~~)) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and ((~~the disabled~~)) individuals with disabilities at nominal cost.

**Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended to read as follows:

The department of natural resources shall ((~~not rescind the withdrawal of~~)) have reasonable access across all public land in any existing and future state park ((~~nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon, except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.~~  
 ~~The department of natural resources shall have reasonable access across such lands~~)) in order to reach other public lands administered by the department of natural resources.

**Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to read as follows:

(1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources ((~~or by other state agencies~~)).

(2) The department of natural resources shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. ((~~Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development.~~))

**Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to read as follows:

((~~A state~~)) The recreation and conservation office or a local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070.

**Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read as follows:

Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department ((~~of ecology~~)) shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999((~~, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter~~)).

**Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended to read as follows:

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ((~~ecology~~)) natural resources shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ((~~ecology~~)) natural resources shall ((~~prepare and submit to the department of natural resources a report examining~~)) examine the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the department of natural resources determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department of natural resources shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department of natural resources cannot be provided the drilling permit shall be denied.

**Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ((~~ecology~~)) natural resources. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section.

**Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read as follows:

(1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ((~~ecology~~)) natural resources shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ((~~ecology, after consultation with the department of fish and wildlife,~~)) natural resources shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the ((~~department of ecology's~~)) department's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ((~~ecology~~)) natural resources shall cooperate with all affected local governments to the fullest extent practicable.

**Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read as follows:

The department of ((~~ecology~~)) natural resources will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on postclosure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities.

**Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read as follows:

(1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)((~~(a)~~)) As part of its normal budget development process and in consultation with the metals mining industry, the department of ((~~ecology~~)) natural resources shall estimate the costs required ((~~for the department~~)) to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

((~~(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.~~))

(3) Based on the cost estimates generated by the department of ((~~ecology and the department of~~)) natural resources, the department ((~~of ecology~~)) shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the ((~~agency~~)) department's responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department ((~~of ecology~~)) may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet ((~~agencies'~~)) the agency's inspection responsibilities.

(4) The department of ((~~ecology~~)) natural resources shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account.

**Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read as follows:

(1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) ((~~Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However,~~)) A single performance security, when acceptable to ((~~both the department of ecology and~~)) the department of natural resources, may be utilized ((~~by both agencies~~)) to satisfy the requirements of this section and RCW 78.44.087.

**Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to read as follows:

(1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources ((~~and the department of ecology~~)) shall ((~~jointly~~)) review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington.

**Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read as follows:

(1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. ((~~The department shall forward a duplicate copy to the department of ecology within ten days of filing.~~))

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund.

**Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to read as follows:

A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for beneficial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

((~~The department shall forward a copy of the permit to the department of ecology within five days of issuance.~~))

**Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read as follows:

Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department ((~~of natural resources and with the concurrence and approval of the department of ecology~~)), jurisdiction over the well may be transferred to the department ((~~of ecology~~)) and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department ((~~of ecology~~)) by the applicant.

**Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read as follows:

Whenever an application for a permit to make beneficial use of public waters is approved relating to a stream or other water body for which minimum flows or levels have been adopted and are in effect at the time of approval, the permit shall be conditioned to protect the levels or flows. No agency may establish minimum flows and levels or similar water flow or level restrictions for any stream or lake of the state other than the department of ecology whose authority to establish is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and 90.54.040. The provisions of other statutes, including but not limited to RCW ((~~77.55.100~~)) 77.55.021 and chapter 43.21C RCW, may not be interpreted in a manner that is inconsistent with this section. In establishing such minimum flows, levels, or similar restrictions, the department shall, during all stages of development ((~~by the department of ecology~~)) of minimum flow proposals, consult with, and carefully consider the recommendations of((~~, the department of fish and wildlife, the department of community, trade, and economic development, the department of agriculture, and representatives of the~~)) affected Indian tribes. ((~~Nothing herein shall preclude the department of fish and wildlife, the department of community, trade, and economic development, or the department of agriculture from presenting its views on minimum flow needs at any public hearing or to any person or agency, and the department of fish and wildlife, the department of community, trade, and economic development, and the department of agriculture are each empowered to participate in proceedings of the federal energy regulatory commission and other agencies to present its views on minimum flow needs.~~))

**Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. ((~~Upon receipt by the department of an application it shall send notice thereof containing pertinent information to the director of fish and wildlife.~~))

**Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read as follows:

(1) When an application complying with the provisions of this chapter and with the rules of the department has been filed, the same shall be placed on record with the department, and it shall be its duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the department shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the department shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public.

(2)(a) If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the department may issue a preliminary permit, for a period of not to exceed three years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the department may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically canceled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the department a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the department, establishes the good faith, intent, and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the governor, be extended, but not to exceed a maximum period of five years from the date of the issuance of the preliminary permit.

(b) For any application for which a preliminary permit was issued and for which the availability of water was directly affected by a moratorium on further diversions from the Columbia river during the years from 1990 to 1998, the preliminary permit is extended through June 30, 2002. If such an application and preliminary permit were canceled during the moratorium, the application and preliminary permit shall be reinstated until June 30, 2002, if the application and permit: (i) Are for providing regional water supplies in more than one urban growth area designated under chapter 36.70A RCW and in one or more areas near such urban growth areas, or the application and permit are modified for providing such supplies, and (ii) provide or are modified to provide such regional supplies through the use of existing intake or diversion structures. The authority to modify such a canceled application and permit to accomplish the objectives of (b)(i) and (ii) of this subsection is hereby granted.

(3) The department shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, it shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: PROVIDED, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be duty of the department to reject such application and to refuse to issue the permit asked for.

(4) If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under RCW 90.03.040, the department may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the department to investigate all facts relevant and material to the application. After the department approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in RCW 90.03.470((~~: PROVIDED FURTHER, That in the event a permit is issued by the department upon any application, it shall be its duty to notify the director of fish and wildlife of such issuance~~)).

**Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to read as follows:

(1) The owner or owners of any water diversion shall maintain, to the satisfaction of the department of ecology, substantial controlling works and a measuring device constructed and maintained to permit accurate measurement and practical regulation of the flow of water diverted. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the department, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Metering of diversions or measurement by other approved methods shall be required as a condition for all new surface water right permits, and except as provided in subsection (2) of this section, may be required as a condition for all previously existing surface water rights. The department may also require, as a condition for all water rights, metering of diversions, and reports regarding such metered diversions as to the amount of water being diverted. Such reports shall be in a form prescribed by the department.

(2) Where water diversions are from waters in which the salmonid stock status is depressed or critical, as determined by the department of fish and wildlife, or where the volume of water being diverted exceeds one cubic foot per second, the department shall require metering or measurement by other approved methods as a condition for all new and previously existing water rights or claims. The department shall attempt to integrate the requirements of this subsection into its existing compliance workload priorities, but shall prioritize the requirements of this subsection ahead of the existing compliance workload where a delay may cause the decline of wild salmonids. ((~~The department shall notify the department of fish and wildlife of the status of fish screens associated with these diversions.~~)) This subsection (2) shall not apply to diversions for public or private hatcheries or fish rearing facilities if the diverted water is returned directly to the waters from which it was diverted.

**Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each amended to read as follows:

(1) On a pilot project basis, the department may enter into a watershed agreement with one or more municipal water suppliers in water resource inventory area number one to meet the objectives established in a water resource management program approved or being developed under chapter 90.82 RCW with the consent of the initiating governments of the water resource inventory area. The term of an agreement may not exceed ten years, but the agreement may be renewed or amended upon agreement of the parties.

(2) A watershed agreement must be consistent with:

(a) Growth management plans developed under chapter 36.70A RCW where these plans are adopted and in effect;

(b) Water supply plans and small water system management programs approved under chapter 43.20 or 70.116 RCW;

(c) Coordinated water supply plans approved under chapter 70.116 RCW; and

(d) Water use efficiency and conservation requirements and standards established by the state department of health or such requirements and standards as are provided in an approved watershed plan, whichever are the more stringent.

(3) A watershed agreement must:

(a) Require the public water system operated by the participating municipal water supplier to meet obligations under the watershed plan;

(b) Establish performance measures and timelines for measures to be completed;

(c) Provide for monitoring of stream flows and metering of water use as needed to ensure that the terms of the agreement are met; and

(d) Require annual reports from the water users regarding performance under the agreement.

(4) As needed to implement watershed agreement activities, the department may provide or receive funding, or both, under its existing authorities.

(5) The department must provide opportunity for public review of a proposed agreement before it is executed. The department must make proposed and executed watershed agreements and annual reports available on the department's internet web site.

(6) The department must consult with affected local governments ((~~and the state departments of health and fish and wildlife~~)) before executing an agreement.

(7) Before executing a watershed agreement, the department must conduct a government-to-government consultation with affected tribal governments. The municipal water suppliers operating the public water systems that are proposing to enter into the agreements must be invited to participate in the consultations. During these consultations, the department and the municipal water suppliers shall explore the potential interest of the tribal governments or governments in participating in the agreement.

(8) Any person aggrieved by the department's failure to satisfy the requirements in subsection (3) of this section as embodied in the department's decision to enter into a watershed agreement under this section may, within thirty days of the execution of such an agreement, appeal the department's decision to the pollution control hearings board under chapter 43.21B RCW.

(9) Any projects implemented by a municipal water system under the terms of an agreement reached under this section may be continued and maintained by the municipal water system after the agreement expires or is terminated as long as the conditions of the agreement under which they were implemented continue to be met.

(10) Before December 31, 2003, and December 31, 2004, the department must report to the appropriate committees of the legislature the results of the pilot project provided for in this section. Based on the experience of the pilot project, the department must offer any suggested changes in law that would improve, facilitate, and maximize the implementation of watershed plans adopted under this chapter.

**Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read as follows:

(1) Every person, firm, private or municipal corporation, or association hereinafter called "claimant", claiming the right to the use of water within or bordering upon the state of Washington for power development, shall on or before the first day of January of each year pay to the state of Washington in advance an annual license fee, based upon the theoretical water power claimed under each and every separate claim to water according to the following schedule:

(a) For projects in operation: For each and every theoretical horsepower claimed up to and including one thousand horsepower, at the rate of eighteen cents per horsepower; for each and every theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of three and six-tenths cents per horsepower; for each and every theoretical horsepower in excess of ten thousand horsepower, at the rate of one and eight-tenths cents per horsepower.

(b) For federal energy regulatory commission projects in operation, the following fee schedule applies in addition to the fees in (a) of this subsection: For each theoretical horsepower of capacity up to and including one thousand horsepower, at the rate of thirty‑two cents per horsepower; for each theoretical horsepower in excess of one thousand horsepower, up to and including ten thousand horsepower, at the rate of six and four-tenths cents per horsepower; for each theoretical horsepower in excess of ten thousand horsepower, at the rate of three and two-tenths cents per horsepower.

(c) To justify the appropriate use of fees collected under (b) of this subsection, the department of ecology shall submit a progress report to the appropriate committees of the legislature prior to December 31, 2009, and biennially thereafter until December 31, 2017.

(i) The progress report will: (A) Describe how license fees were expended in the federal energy regulatory commission licensing process during the current biennium, and expected workload and full-time equivalent employees for federal energy regulatory commission licensing in the next biennium; (B) include any recommendations based on consultation with ((~~the departments of ecology and fish and wildlife,~~)) hydropower project operators((~~,~~)) and other interested parties; and (C) recognize hydropower operators that exceed their environmental regulatory requirements.

(ii) The fees required in (b) of this subsection expire June 30, 2017. The biennial progress reports submitted by the department of ecology will serve as a record for considering the extension of the fee structure in (b) of this subsection.

(2) The following are exceptions to the fee schedule in subsection (1) of this section:

(a) For undeveloped projects, the fee shall be at one-half the rates specified for projects in operation; for projects partly developed and in operation the fees paid on that portion of any project that shall have been developed and in operation shall be the full annual license fee specified in subsection (1) of this section for projects in operation, and for the remainder of the power claimed under such project the fees shall be the same as for undeveloped projects.

(b) The fees required in subsection (1) of this section do not apply to any hydropower project owned by the United States.

(c) The fees required in subsection (1) of this section do not apply to the use of water for the generation of fifty horsepower or less.

(d) The fees required in subsection (1) of this section for projects developed by an irrigation district in conjunction with the irrigation district's water conveyance system shall be reduced by fifty percent to reflect the portion of the year when the project is not operable.

(e) Any irrigation district or other municipal subdivision of the state, developing power chiefly for use in pumping of water for irrigation, upon the filing of a statement showing the amount of power used for irrigation pumping, is exempt from the fees in subsection (1) of this section to the extent of the power used for irrigation pumping.

**Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read as follows:

(1) All fees paid under provisions of this chapter, shall be credited by the state treasurer to the reclamation account created in RCW 89.16.020 and subject to legislative appropriation, be allocated and expended by the director of ecology for:

(a) Investigations and surveys of natural resources in cooperation with the federal government, or independently thereof, including stream gaging, hydrographic, topographic, river, underground water, mineral and geological surveys; and

(b) Expenses associated with staff at the department((~~s~~)) of ecology ((~~and fish and wildlife~~)) working on federal energy regulatory commission relicensing and license implementation.

(2) Unless otherwise required by the omnibus biennial appropriations acts, the expenditures for these purposes must be proportional to the revenues collected under RCW 90.16.050(1).

**Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read as follows:

The department of ecology may establish minimum water flows or levels for streams, lakes or other public waters for the purposes of protecting fish, game, birds or other wildlife resources, or recreational or aesthetic values of said public waters whenever it appears to be in the public interest to establish the same. In addition, the department of ecology shall((~~, when requested by the department of fish and wildlife to~~)) protect fish, game, or other wildlife resources ((~~under the jurisdiction of the requesting state agency~~)), or if the department of ecology finds it necessary to preserve water quality, establish such minimum flows or levels as are required to protect the resource or preserve the water quality ((~~described in the request or determination~~)). ((~~Any request submitted by the department of fish and wildlife shall include a statement setting forth the need for establishing a minimum flow or level.~~)) When the department acts to preserve water quality, it shall include a ((~~similar~~)) statement setting forth the need for establishing a minimum flow or level with the proposed rule filed with the code reviser. This section shall not apply to waters artificially stored in reservoirs, provided that in the granting of storage permits by the department of ecology in the future, full recognition shall be given to downstream minimum flows, if any there may be, which have theretofore been established hereunder.

**Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to read as follows:

Flows or levels authorized for establishment under RCW 90.22.010, or subsequent modification thereof by the department shall be provided for through the adoption of rules. Before the establishment or modification of a water flow or level for any stream or lake or other public water, the department shall hold a public hearing in the county in which the stream, lake, or other public water is located. If it is located in more than one county the department shall determine the location or locations therein and the number of hearings to be conducted. Notice of the hearings shall be given by publication in a newspaper of general circulation in the county or counties in which the stream, lake, or other public waters is located, once a week for two consecutive weeks before the hearing. The notice shall include the following:

(1) The name of each stream, lake, or other water source under consideration;

(2) The place and time of the hearing;

(3) A statement that any person, including any private citizen or public official, may present his or her views either orally or in writing.

((~~Notice of the hearing shall also be served upon the administrators of the departments of social and health services, natural resources, fish and wildlife, and transportation.~~))

**Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to read as follows:

By December 31, 1993, the department of ecology shall, in cooperation with the Indian tribes, ((~~and the department of fish and wildlife,~~)) establish a statewide list of priorities for evaluation of instream flows. In establishing these priorities, the department shall consider the achievement of wild salmonid production as its primary goal.

**Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read as follows:

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after ((~~notice to the department of fish and wildlife and~~)) a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

**Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to read as follows:

The petition shall be entitled "In the matter of fixing the level of Lake . . . . . . in . . . . . . county, Washington", and shall be filed with the clerk of the court and a copy thereof, together with a copy of the order fixing the time for hearing the petition, shall be served on each owner of property abutting on the lake, not less than ten days before the hearing. Like copies shall also be served upon ((~~the director of fish and wildlife and~~)) the director of ecology. The copy of the petition and of the order fixing time for hearing shall be served in the manner provided by law for the service of summons in civil actions, or in such other manner as may be prescribed by order of the court. For the benefit of every riparian owner abutting on a stream or river flowing from such lake, a copy of the notice of hearing shall be published at least once a week for two consecutive weeks before the time set for hearing in a newspaper in each county or counties wherein located, said notice to contain a brief statement of the reasons and necessity for such application.

**Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to read as follows:

Such improvement or device in said lake for the protection of the fish and game fish therein shall be installed by and under the direction of the board of county commissioners of said county with the approval of the ((~~respective directors of the department of fish and wildlife and~~)) director of the department of ecology of the state of Washington and paid for out of the special fund provided for in RCW 90.24.050.

**Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to read as follows:

(1) All trust water rights acquired by the department shall be placed in the Yakima river basin trust water rights program to be managed by the department. The department shall issue a water right certificate in the name of the state of Washington for each trust water right it acquires.

(2) Trust water rights shall retain the same priority date as the water right from which they originated. Trust water rights may be modified as to purpose or place of use or point of diversion, including modification from a diversionary use to a nondiversionary instream use.

(3) Trust water rights may be held by the department for instream flows, irrigation use, or other beneficial use. Trust water rights may be acquired on a temporary or permanent basis. To the extent practicable and subject to legislative appropriation, trust water rights acquired in an area with an approved watershed plan developed under chapter 90.82 RCW shall be consistent with that plan if the plan calls for such acquisition.

(4) A schedule of the amount of net water saved as a result of water conservation projects carried out in accordance with this chapter, shall be developed annually to reflect the predicted hydrologic and water supply conditions, as well as anticipated water demands, for the upcoming irrigation season. This schedule shall serve as the basis for the distribution and management of trust water rights each year.

(5)(a) No exercise of a trust water right may be authorized unless the department first determines that no existing water rights, junior or senior in priority, will be impaired as to their exercise or injured in any manner whatever by such authorization.

(b) Before any trust water right is exercised, the department shall publish notice thereof in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use are to be made, and in such other newspapers as the department determines are necessary, once a week for two consecutive weeks. ((~~At the same time the department may also send notice thereof containing pertinent information to the director of fish and wildlife.~~))

(c) Subsections (4) and (5)(b) of this section do not apply to a trust water right resulting from a donation for instream flows described in RCW 90.38.020(1)(b) or from the lease of a water right under RCW 90.38.020(6) if the period of the lease does not exceed five years. However, the department shall provide the notice described in (b) of this subsection the first time the trust water right resulting from the donation is exercised.

(6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no applicability to trust water rights held by the department under this chapter or exercised under this section.

**Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to read as follows:

Applications for permits shall be made on forms prescribed by the department and shall contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other relevant information deemed necessary by the department. Application for permits shall be made at least sixty days prior to commencement of any proposed discharge or permit expiration date, whichever is applicable. Upon receipt of a proper application relating to a new operation, or an operation previously under permit for which an increase in volume of wastes or change in character of effluent is requested over that previously authorized, the department shall instruct the applicant to publish notices thereof by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the disposal of waste material is proposed to be made and in such other appropriate information media as the department may direct. Said notice shall include a statement that any person desiring to present his or her views to the department with regard to said application may do so in writing to the department, or any person interested in the department's action on an application for a permit, may submit his or her views or notify the department of his or her interest within thirty days of the last date of publication of notice. Such notification or submission of views to the department shall entitle said persons to a copy of the action taken on the application. ((~~Upon receipt by the department of an application, it shall immediately send notice thereof containing pertinent information to the director of fish and wildlife and to the secretary of social and health services.~~)) When an application complying with the provisions of this chapter and the rules and regulations of the department has been filed with the department, it shall be its duty to investigate the application, and determine whether the use of public waters for waste disposal as proposed will pollute the same in violation of the public policy of the state.

**Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read as follows:

The department((~~, in consultation with the departments of fish and wildlife and natural resources, and the parks and recreation commission,~~)) shall adopt rules establishing a compensation schedule for the discharge of oil in violation of this chapter and chapter 90.56 RCW. The amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than one hundred dollars per gallon of oil spilled. The compensation schedule shall reflect adequate compensation for unquantifiable damages or for damages not quantifiable at reasonable cost for any adverse environmental, recreational, aesthetic, or other effects caused by the spill and shall take into account:

(1) Characteristics of any oil spilled, such as toxicity, dispersibility, solubility, and persistence, that may affect the severity of the effects on the receiving environment, living organisms, and recreational and aesthetic resources;

(2) The sensitivity of the affected area as determined by such factors as: (a) The location of the spill; (b) habitat and living resource sensitivity; (c) seasonal distribution or sensitivity of living resources; (d) areas of recreational use or aesthetic importance; (e) the proximity of the spill to important habitats for birds, aquatic mammals, fish, or to species listed as threatened or endangered under state or federal law; (f) significant archaeological resources as determined by the department of archaeology and historic preservation; and (g) other areas of special ecological or recreational importance, as determined by the department; and

(3) Actions taken by the party who spilled oil or any party liable for the spill that: (a) Demonstrate a recognition and affirmative acceptance of responsibility for the spill, such as the immediate removal of oil and the amount of oil removed from the environment; or (b) enhance or impede the detection of the spill, the determination of the quantity of oil spilled, or the extent of damage, including the unauthorized removal of evidence such as injured fish or wildlife.

**Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to read as follows:

(1) The director shall issue or approve water quality permits for use by federal, state, or local governmental agencies and licensed applicators for the purpose of using, for aquatic noxious weed control, herbicides and surfactants registered under state or federal pesticide control laws, and for the purpose of experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the permits shall be subject only to compliance with: Federal and state pesticide label requirements, the requirements of the federal insecticide, fungicide, and rodenticide act, the Washington pesticide control act, the Washington pesticide application act, and the state environmental policy act, except that:

(a) When the director issues water quality permits for the purpose of using glyphosate and surfactants registered by the department of agriculture to control spartina, as defined by RCW 17.26.020, the water quality permits shall contain the following criteria:

(i) Spartina treatment shall occur between June 1st and October 31st of each year unless the department((~~, the department of agriculture, and the department of fish and wildlife agree to add~~)) authorizes additional dates beyond this period, except that no aerial application shall be allowed on July 4th or Labor Day and for ground application on those days the applicator shall post signs at each corner of the treatment area;

(ii) The applicator shall take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas;

(iii) A period of fourteen days between treatments is required prior to re-treating the previously treated areas;

(iv) Aerial or ground broadcast application shall not be made when the wind speed exceeds ten miles per hour; and

(v) An application shall not be made when a tidal regime leaves the plants dry for less than four hours.

(b) The director shall issue water quality permits for the purpose of using herbicides or surfactants registered by the department of agriculture to control aquatic noxious weeds, other than spartina, and the permit shall state that aerial and ground broadcast applications may not be made when the wind speed exceeds ten miles per hour.

(c) The director shall issue water quality permits for the experimental use of herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, when the department of agriculture has issued an experimental use permit, under the authority of RCW 15.58.405(3). Because of the small geographic areas involved and the short duration of herbicide application, water quality permits issued under this subsection are not subject to state environmental policy act review.

(2) Applicable requirements established in an option or options recommended for controlling the noxious weed by a final environmental impact statement published under chapter 43.21C RCW by the department prior to May 5, 1995, by the department of agriculture, or by the department of agriculture jointly with other state agencies shall be considered guidelines for the purpose of granting the permits issued under this chapter. This section may not be construed as requiring the preparation of a new environmental impact statement to replace a final environmental impact statement published before May 5, 1995, but instead shall authorize the department of agriculture, as lead agency for the control of spartina under RCW 17.26.015, to supplement, amend, or issue addenda to the final environmental impact statement published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes as the department of agriculture deems appropriate.

(3) The director of ecology may not utilize this permit authority to otherwise condition or burden weed control efforts. Except for permits issued by the director under subsection (1)(c) of this section, permits issued under this section are effective for five years, unless a shorter duration is requested by the applicant. The director's authority to issue water quality modification permits for activities other than the application of surfactants and approved herbicides, to control aquatic noxious weeds or the experimental use of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is unaffected by this section.

(4) As used in this section, "aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080.

**Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read as follows:

(1) Subject to restrictions in this section, a government entity seeking to control a limited infestation of Eurasian water milfoil may use the pesticide 2,4-D to treat the milfoil infestation, without obtaining a permit under RCW 90.48.445, if the milfoil infestation is either recently documented or remaining after the application of other control measures, and is limited to twenty percent or less of the littoral zone of the lake. Any pesticide application made under this section must be made according to all label requirements for the product and must meet the public notice requirements of subsection (2) of this section.

(2) Before applying 2,4-D, the government entity shall: (a) Provide at least twenty-one days' notice to the department of ecology((~~, the department of fish and wildlife, the department of agriculture, the department of health,~~)) and all lake residents; (b) post notices of the intent to apply 2,4-D at all public access points; and (c) place informational buoys around the treatment area.

(3) The department ((~~of fish and wildlife~~)) may impose timing restrictions on the use of 2,4-D to protect salmon and other fish and wildlife.

(4) The department may prohibit the use of 2,4-D if the department finds the product contains dioxin in excess of the standard allowed by the United States environmental protection agency. Sampling protocols and analysis used by the department under this section must be consistent with those used by the United States environmental protection agency for testing this product.

(5) Government entities using this section to apply 2,4-D may apply for funds from the freshwater aquatic weeds account consistent with the freshwater aquatic weeds management program as provided in RCW 43.21A.660.

(6) Government entities using this section shall consider development of long-term control strategies for eradication and control of the Eurasian water milfoil.

(7) For the purpose of this section, "government entities" includes cities, counties, state agencies, tribes, special purpose districts, and county weed boards.

**Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read as follows:

(1) Project proponents may use a mitigation plan to propose compensatory mitigation within a watershed. A mitigation plan shall:

(a) Contain provisions that guarantee the long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential biological functions and values defined in the mitigation plan;

(b) Contain provisions for long-term monitoring of any created, restored, or enhanced mitigation site; and

(c) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(2) The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) may not limit the scope of options in a mitigation plan to areas on or near the project site, or to habitat types of the same type as contained on the project site. The department((~~s~~)) of ecology ((~~and fish and wildlife~~)) shall fully review and give due consideration to compensatory mitigation proposals that improve the overall biological functions and values of the watershed or bay and accommodate the mitigation needs of infrastructure development.

The department((~~s~~)) of ecology ((~~and fish and wildlife are~~)) is not required to grant approval to a mitigation plan that the department((~~s~~)) finds does not provide equal or better biological functions and values within the watershed or bay.

(3) When making a permit or other regulatory decision under the guidance of this chapter, the department((~~s of ecology and fish and wildlife~~)) shall consider whether the mitigation plan provides equal or better biological functions and values, compared to the existing conditions, for the target resources or species identified in the mitigation plan. This consideration shall be based upon the following factors:

(a) The relative value of the mitigation for the target resources, in terms of the quality and quantity of biological functions and values provided;

(b) The compatibility of the proposal with the intent of broader resource management and habitat management objectives and plans, such as existing resource management plans, watershed plans, critical areas ordinances, and shoreline master programs;

(c) The ability of the mitigation to address scarce functions or values within a watershed;

(d) The benefits of the proposal to broader watershed landscape, including the benefits of connecting various habitat units or providing population-limiting habitats or functions for target species;

(e) The benefits of early implementation of habitat mitigation for projects that provide compensatory mitigation in advance of the project's planned impacts; and

(f) The significance of any negative impacts to nontarget species or resources.

(4) A mitigation plan may be approved through a memorandum of agreement between the project proponent and ((~~either~~)) the department of ecology ((~~or the department of fish and wildlife, or both~~)).

**Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read as follows:

(1) In making regulatory decisions relating to wetland or aquatic resource mitigation, the department((~~s of ecology and fish and wildlife~~)) shall, at the request of the project proponent, follow the guidance of RCW 90.74.005 through 90.74.020.

(2) If the department of ecology ((~~or the department of fish and wildlife~~)) receives multiple requests for review of mitigation plans, ((~~each~~)) the department may schedule its review of these proposals to conform to available budgetary resources.

**Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended to read as follows:

(1) The timelines and interim milestones in a detailed implementation plan required by RCW 90.82.043 must address the planned future use of existing water rights for municipal water supply purposes, as defined in RCW 90.03.015, that are inchoate, including how these rights will be used to meet the projected future needs identified in the watershed plan, and how the use of these rights will be addressed when implementing instream flow strategies identified in the watershed plan.

(2) The watershed planning unit or other authorized lead agency shall ensure that holders of water rights for municipal water supply purposes not currently in use are asked to participate in defining the timelines and interim milestones to be included in the detailed implementation plan.

(3) The department of health shall annually compile a list of water system plans and plan updates to be reviewed by the department during the coming year and shall ((~~consult with the departments of community, trade, and economic development, ecology, and fish and wildlife to~~)): (a) Identify watersheds where further coordination is needed between water system planning and local watershed planning under this chapter; and (b) develop a work plan for conducting the necessary coordination.

**Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read as follows:

(1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two‑thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One‑third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the ((~~department of fish and wildlife and~~)) fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out‑of‑stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to groundwater for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one‑third/two‑thirds allocation of water resources between instream and out‑of‑stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

**Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read as follows:

(1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out‑of‑stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out‑of‑stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty‑day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, ((~~the department of fish and wildlife,~~)) and affected tribal governments, and federal agencies. ((~~The department of fish and wildlife shall provide written comments within that time period.~~)) The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty‑day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty‑day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out‑of‑stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river mainstem, the department shall develop aggregate data in accordance with the provisions of RCW 90.90.050 for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and RCW 90.90.050, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all groundwater within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section in chapter 76.09 RCW.

NEW SECTION. **Sec. 355.** The following acts or parts of acts are each repealed:

(1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals-- Technical advisory committee--Implementation) and 1998 c 245 s 162 & 1993 sp.s. c 4 s 5;

(2) RCW 79.105.220 (Lease of tidelands in front of public parks) and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

(3) RCW 79.135.230 (Intensive management plan for geoducks) and 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

(4) RCW 79.135.310 (Inspection by director of fish and wildlife) and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

(5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717, 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

(6) RCW 79.145.030 (Coordinating implementation‑-Rules) and 2005 c 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

(7) RCW 79A.05.670 (Consultation with government agencies required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

(8) RCW 79A.05.735 (Mt. Si conservation area‑-Management) and 2000 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

(9) RCW 79A.50.070 (State lands used for state parks‑-Certain funds appropriated for rental to be deposited without deduction for management purposes) and 1969 ex.s. c 189 s 3;

(10) RCW 76.09.160 (Right of entry by department of ecology) and 1974 ex.s. c 137 s 16; and

(11) RCW 77.12.360 (Withdrawal of state land from lease‑- Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s 77.12.360."

Renumber the remaining sections and subparts consecutively and correct any internal references accordingly.

Correct the title.

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|  | EFFECT:  Provides direction to the following agencies to implement the programs under their jurisdiction directly and without assistance, cooperation, advice, counsel, notice, or interference from other state agencies: The Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the State Parks and Recreation Commission, the Department of Agriculture, the Recreation and Conservation Office, and the State Conservation Commission.  Makes the statutory changes necessary to implement the policy of one agency implementing each natural resources program. |

**--- END ---**