
HOUSE BILL 1384

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Orcutt, Blake, Chandler, Taylor, Pike, Haler, and Buys

Read first time 01/24/13. Referred to Committee on Government Accountability & Oversight.

1 AN ACT Relating to streamlining natural resources management;
2 amending RCW 76.09.360, 77.55.191, 76.09.040, 76.09.050, 76.09.050,
3 76.09.060, 76.09.100, 76.09.150, 76.09.260, 76.09.470, 90.64.010,
4 90.64.020, 90.64.170, 90.48.260, 77.55.021, 77.12.755, 77.12.870,
5 77.12.878, 77.44.040, 77.55.121, 77.55.211, 77.55.131, 77.65.510,
6 77.70.210, 79.13.620, 79.19.080, 79.70.030, 79.71.120, 79.105.500,
7 79.125.710, 79.125.730, 79.135.130, 79.135.140, 79.135.150, 79.135.320,
8 79.135.410, 79A.05.351, 79A.05.360, 79A.60.520, 79A.60.550, 79A.60.620,
9 79A.05.285, 79A.30.050, 79A.50.090, 79A.50.100, 79A.15.110, 78.44.280,
10 78.52.125, 78.56.040, 78.56.050, 78.56.060, 78.56.080, 78.56.110,
11 78.56.160, 78.60.070, 78.60.080, 78.60.100, 90.03.247, 90.03.280,
12 90.03.290, 90.03.360, 90.03.590, 90.16.050, 90.16.090, 90.22.010,
13 90.22.020, 90.22.060, 90.24.010, 90.24.030, 90.24.060, 90.38.040,
14 90.48.170, 90.48.366, 90.48.445, 90.48.448, 90.74.020, 90.74.030,
15 90.82.048, 90.90.020, and 90.90.030; reenacting and amending RCW
16 43.30.411, 77.55.011, and 79A.05.255; adding a new section to chapter
17 77.12 RCW; adding a new section to chapter 43.21A RCW; adding a new
18 section to chapter 79A.05 RCW; adding a new section to chapter 89.08
19 RCW; adding a new section to chapter 43.23 RCW; adding a new section to
20 chapter 79A.25 RCW; adding new sections to chapter 76.09 RCW; adding a
21 new section to chapter 77.55 RCW; creating a new section; recodifying

1 RCW 77.55.121; repealing RCW 79.13.610, 79.105.220, 79.135.230,
2 79.135.310, 79.135.430, 79.145.030, 79A.05.670, 79A.05.735, 79A.50.070,
3 76.09.160, and 77.12.360; providing a contingent effective date; and
4 providing a contingent expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the state of
7 Washington maintains at least eleven state agencies that exist either
8 wholly or in part to manage, regulate, mediate, or enforce the state's
9 public and private natural resources, many of which have overlapping
10 jurisdiction and authorities.

11 (2) The legislature finds that the overlap of state natural
12 resources agencies creates unnecessary expenses for the state
13 government, confusion for the state's citizens, and hampers private
14 sector economic development.

15 (3) The legislature finds that it is important for state agencies
16 to communicate, share resources, and provide comments during each
17 other's rule-making processes. However, it is unnecessarily
18 duplicative for more than one state agency to be involved in the
19 implementation or enforcement of any one program.

20 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.12 RCW
21 to read as follows:

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

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21A RCW
30 to read as follows:

31 Unless expressly identified otherwise in statute, the department
32 shall administer all provisions of this title, and all other statutes
33 and chapters for which the department has been given administrative
34 authority, directly and without assistance, cooperation, advice,

1 counsel, notice, or interference with or from other state agencies.
2 Nothing in this section prohibits expertise from other state agencies
3 to be collected during the rule-making stage of statutory
4 implementation.

5 **Sec. 4.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1 are
6 each reenacted and amended to read as follows:

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

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

20 (3)(a) Except as provided in (b) of this subsection, and subject to
21 the limitations of RCW 4.24.115, the department, in the exercise of any
22 of its powers, may include in any authorized contract a provision for
23 indemnifying the other contracting party against loss or damages.

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

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 79A.05 RCW
29 to read as follows:

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 89.08 RCW
2 to read as follows:

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

10 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.23 RCW
11 to read as follows:

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

19 NEW SECTION. **Sec. 8.** A new section is added to chapter 79A.25 RCW
20 to read as follows:

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

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 76.09 RCW
30 to read as follows:

31 Unless expressly identified otherwise in statute, the board shall
32 ensure that all provisions of this title, and all other statutes
33 relating to forest practices, are to be administered by the department
34 of natural resources directly and without assistance, cooperation,
35 advice, counsel, notice, or interference with or from other state

1 agencies. Nothing in this section prohibits expertise from other state
2 agencies to be collected during the rule-making stage of statutory
3 implementation.

4 **Sec. 10.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read
5 as follows:

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

13 **Sec. 11.** RCW 77.55.011 and 2012 1st sp.s. c 1 s 101 are each
14 reenacted and amended to read as follows:

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

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

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

24 (3) (~~((("Commission" means the state fish and wildlife commission.~~
25 ~~(4))~~)) "Date of receipt" has the same meaning as defined in RCW
26 43.21B.001.

27 (~~((+5))~~) (4) "Department" means the department of (~~((fish and~~
28 ~~wildlife))~~) ecology.

29 (~~((+6))~~) (5) "Director" means the director of the department (~~((of~~
30 ~~fish and wildlife))~~).

31 (~~((+7))~~) (6) "Emergency" means an immediate threat to life, the
32 public, property, or of environmental degradation.

33 (~~((+8))~~) (7) "Emergency permit" means a verbal hydraulic project
34 approval or the written follow-up to the verbal approval issued to a
35 person under RCW 77.55.021(12).

1 ~~((+9+))~~ (8) "Expedited permit" means a hydraulic project approval
2 issued to a person under RCW 77.55.021 (14) and (16).
3 ~~((+10+))~~ (9) "Forest practices hydraulic project" means a hydraulic
4 project that requires a forest practices application or notification
5 under chapter 76.09 RCW.
6 ~~((+11+))~~ (10) "Hydraulic project" means the construction or
7 performance of work that will use, divert, obstruct, or change the
8 natural flow or bed of any of the salt or freshwaters of the state.
9 ~~((+12+))~~ (11) "Imminent danger" means a threat by weather, water
10 flow, or other natural conditions that is likely to occur within sixty
11 days of a request for a permit application.
12 ~~((+13+))~~ (12) "Marina" means a public or private facility providing
13 boat moorage space, fuel, or commercial services. Commercial services
14 include but are not limited to overnight or live-aboard boating
15 accommodations.
16 ~~((+14+))~~ (13) "Marine terminal" means a public or private
17 commercial wharf located in the navigable water of the state and used,
18 or intended to be used, as a port or facility for the storing,
19 handling, transferring, or transporting of goods to and from vessels.
20 ~~((+15+))~~ (14) "Multiple site permit" means a hydraulic project
21 approval issued to a person under RCW 77.55.021 for hydraulic projects
22 occurring at more than one specific location and which includes
23 site-specific requirements.
24 ~~((+16+))~~ (15) "Ordinary high water line" means the mark on the
25 shores of all water that will be found by examining the bed and banks
26 and ascertaining where the presence and action of waters are so common
27 and usual, and so long continued in ordinary years as to mark upon the
28 soil or vegetation a character distinct from the abutting upland.
29 Provided, that in any area where the ordinary high water line cannot be
30 found, the ordinary high water line adjoining saltwater is the line of
31 mean higher high water and the ordinary high water line adjoining
32 freshwater is the elevation of the mean annual flood.
33 ~~((+17+))~~ (16) "Pamphlet hydraulic project" means a hydraulic
34 project for the removal or control of aquatic noxious weeds conducted
35 under the aquatic plants and fish pamphlet authorized by RCW 77.55.081,
36 or for mineral prospecting and mining conducted under the gold and fish
37 pamphlet authorized by RCW 77.55.091.

1 ~~((+18+))~~ (17) "Permit" means a hydraulic project approval permit
2 issued under this chapter.

3 ~~((+19+))~~ (18) "Permit modification" means a hydraulic project
4 approval issued to a person under RCW 77.55.021 that extends, renews,
5 or changes the conditions of a previously issued hydraulic project
6 approval.

7 ~~((+20+))~~ (19) "Sandbars" includes, but is not limited to, sand,
8 gravel, rock, silt, and sediments.

9 ~~((+21+))~~ (20) "Small scale prospecting and mining" means the use of
10 only the following methods: Pans; nonmotorized sluice boxes;
11 concentrators; and minirocker boxes for the discovery and recovery of
12 minerals.

13 ~~((+22+))~~ (21) "Spartina," "purple loosestrife," and "aquatic
14 noxious weeds" have the same meanings as defined in RCW 17.26.020.

15 ~~((+23+))~~ (22) "Streambank stabilization" means those projects that
16 prevent or limit erosion, slippage, and mass wasting. These projects
17 include, but are not limited to, bank resloping, log and debris
18 relocation or removal, planting of woody vegetation, bank protection
19 using rock or woody material or placement of jetties or groins, gravel
20 removal, or erosion control.

21 ~~((+24+))~~ (23) "Tide gate" means a one-way check valve that prevents
22 the backflow of tidal water.

23 ~~((+25+))~~ (24) "Waters of the state" and "state waters" means all
24 salt and freshwaters waterward of the ordinary high water line and
25 within the territorial boundary of the state.

26 **Sec. 12.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to
27 read as follows:

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

34 (2) Within the sanctuary area:

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

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

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

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

12 NEW SECTION. **Sec. 13.** A new section is added to chapter 77.55 RCW
13 to read as follows:

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

19 **Sec. 14.** RCW 76.09.040 and 2012 1st sp.s. c 1 s 203 are each
20 amended to read as follows:

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

26 (i) Establish minimum standards for forest practices;

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

32 (iii) Set forth necessary administrative provisions;

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

35 (v) Allow for the development of watershed analyses.

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

6 (c) Forest practices rules shall be administered and enforced by
7 either the department or the local governmental entity as provided in
8 this chapter. Such rules shall be adopted and administered so as to
9 give consideration to all purposes and policies set forth in RCW
10 76.09.010.

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

17 (b)(i) The board shall hold one or more hearings on the proposed
18 rules pursuant to chapter 34.05 RCW. Any county representative may
19 propose specific forest practices rules relating to problems existing
20 within the county at the hearings.

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

24 (3)(a) The board shall incorporate into the forest practices rules
25 those fish protection standards in the rules adopted under chapter
26 77.55 RCW, as the rules existed on July 10, 2012, that are applicable
27 to activities regulated under the forest practices rules. If fish
28 protection standards are incorporated by reference, the board shall
29 minimize administrative processes by utilizing the exception from the
30 administrative procedures controlling significant legislative rules
31 under RCW 34.05.328(5)(b)(iii) for the incorporation of rules adopted
32 by other state agencies.

33 (b) Thereafter, the board shall incorporate into the forest
34 practices rules any changes to those fish protection standards in the
35 rules adopted under chapter 77.55 RCW that are: (i) Adopted consistent
36 with RCW 77.55.361; and (ii) applicable to activities regulated under
37 the forest practices rules. If fish protection standards are
38 incorporated by reference, the board shall minimize administrative

1 processes by utilizing the exception from the administrative procedures
2 controlling significant legislative rules under RCW
3 34.05.328(5)(b)(iii) for the incorporation of rules adopted by other
4 state agencies.

5 (c) The board shall establish and maintain technical guidance in
6 the forest practices board manual, as provided under WAC 222-12-090 as
7 it existed on July 10, 2012, to assist with implementation of the
8 standards incorporated into the forest practices rules under this
9 section. The guidance must include best management practices and
10 standard techniques to ensure fish protection.

11 (d) The board must complete the requirements of (a) of this
12 subsection and establish initial technical guidance under (c) of this
13 subsection by December 31, 2013.

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

36 (i) For conveyances of a conservation easement in which the
37 landowner conveys an interest in the trees only, the compensation must
38 include the timber value component, as determined by the cruised volume

1 of any timber located within the channel migration zone or critical
2 habitat for threatened or endangered species as designated by the
3 board, multiplied by the appropriate quality code stumpage value for
4 timber of the same species shown on the appropriate table used for
5 timber harvest excise tax purposes under RCW 84.33.091;

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

19 (b) Subject to appropriations sufficient to cover the cost of such
20 an acquisition program and the related costs of administering the
21 program, the department must establish a conservation easement in land
22 that an owner tenders for purchase; provided that such lands have been
23 taxed as forest lands and are located within an unconfined channel
24 migration zone or contain critical habitat for threatened or endangered
25 species as designated by the board. Lands acquired under this section
26 shall become riparian or habitat open space. These acquisitions shall
27 not be deemed to trigger the compensating tax of chapters 84.33 and
28 84.34 RCW.

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

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

34 **Sec. 15.** RCW 76.09.050 and 2011 c 207 s 1 are each amended to read
35 as follows:

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

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

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

18 (a) On forest lands that are being converted to another use;

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

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

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

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

26 Class III: Forest practices other than those contained in Class I,
27 II, or IV. A Class III application must be approved or disapproved by
28 the department within thirty calendar days from the date the department
29 receives the application. However, the applicant may not begin work on
30 that forest practice until all forest practice fees required under RCW
31 76.09.065 have been received by the department;

32 Class IV: Forest practices other than those contained in Class I
33 or II:

34 (a) On forest lands that are being converted to another use;

35 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
36 amended, are not to be reforested because of the likelihood of future
37 conversion to urban development;

1 (c) That involve timber harvesting or road construction on forest
2 lands that are contained within "urban growth areas," designated
3 pursuant to chapter 36.70A RCW, except where the forest landowner
4 provides:

5 (i) A written statement of intent signed by the forest landowner
6 not to convert to a use other than commercial forest product operations
7 for ten years, accompanied by either a written forest management plan
8 acceptable to the department or documentation that the land is enrolled
9 under the provisions of chapter 84.33 or 84.34 RCW; or

10 (ii) A conversion option harvest plan approved by the local
11 governmental entity and submitted to the department as part of the
12 application; and/or

13 (d) Which have a potential for a substantial impact on the
14 environment and therefore require an evaluation by the department as to
15 whether or not a detailed statement must be prepared pursuant to the
16 state environmental policy act, chapter 43.21C RCW. Such evaluation
17 shall be made within ten days from the date the department receives the
18 application: PROVIDED, That nothing herein shall be construed to
19 prevent any local or regional governmental entity from determining that
20 a detailed statement must be prepared for an action pursuant to a Class
21 IV forest practice taken by that governmental entity concerning the
22 land on which forest practices will be conducted. A Class IV
23 application must be approved or disapproved by the department within
24 thirty calendar days from the date the department receives the
25 application, unless the department determines that a detailed statement
26 must be made, in which case the application must be approved or
27 disapproved by the department within sixty calendar days from the date
28 the department receives the application, unless the commissioner of
29 public lands, through the promulgation of a formal order, determines
30 that the process cannot be completed within such period. However, the
31 applicant may not begin work on that forest practice until all forest
32 practice fees required under RCW 76.09.065 have been received by the
33 department.

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

37 (2) Except for those forest practices being regulated by local
38 governmental entities as provided elsewhere in this chapter, no Class

1 II, Class III, or Class IV forest practice shall be commenced or
2 continued after January 1, 1975, unless the department has received a
3 notification with regard to a Class II forest practice or approved an
4 application with regard to a Class III or Class IV forest practice
5 containing all information required by RCW 76.09.060 as now or
6 hereafter amended. However, in the event forest practices regulations
7 necessary for the scheduled implementation of this chapter and RCW
8 90.48.420 have not been adopted in time to meet such schedules, the
9 department shall have the authority to regulate forest practices and
10 approve applications on such terms and conditions consistent with this
11 chapter and RCW 90.48.420 and the purposes and policies of RCW
12 76.09.010 until applicable forest practices regulations are in effect.

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

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

25 (5) Except for those forest practices being regulated by local
26 governmental entities as provided elsewhere in this chapter, the
27 department of natural resources shall notify the applicant in writing
28 of either its approval of the application or its disapproval of the
29 application and the specific manner in which the application fails to
30 comply with the provisions of this section or with the forest practices
31 regulations. Except as provided otherwise in this section, if the
32 department fails to either approve or disapprove an application or any
33 portion thereof within the applicable time limit, the application shall
34 be deemed approved and the operation may be commenced: PROVIDED, That
35 this provision shall not apply to applications which are neither
36 approved nor disapproved pursuant to the provisions of subsection (7)
37 of this section: PROVIDED, FURTHER, That if seasonal field conditions
38 prevent the department from being able to properly evaluate the

1 application, the department may issue an approval conditional upon
2 further review within sixty days: PROVIDED, FURTHER, That the
3 department shall have until April 1, 1975, to approve or disapprove an
4 application involving forest practices allowed to continue to April 1,
5 1975, under the provisions of subsection (2) of this section. Upon
6 receipt of any notification or any satisfactorily completed application
7 the department shall in any event no later than two business days after
8 such receipt transmit a copy to the (~~departments of ecology and fish~~
9 ~~and wildlife, and to the~~) county, city, or town in whose jurisdiction
10 the forest practice is to be commenced. (~~Any comments by such~~
11 ~~agencies shall be directed to the department of natural resources.~~)

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

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

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

26 (b) The objections relate to forest lands that are being converted
27 to another use.

28 The department shall either disapprove those portions of such
29 application or appeal the county, city, or town objections to the
30 appeals board. If the objections related to (b) of this subsection are
31 based on local authority consistent with RCW 76.09.240 as now or
32 hereafter amended, the department shall disapprove the application
33 until such time as the county, city, or town consents to its approval
34 or such disapproval is reversed on appeal. The applicant shall be a
35 party to all department appeals of county, city, or town objections.
36 Unless the county, city, or town either consents or has waived its
37 rights under this subsection, the department shall not approve portions

1 of an application affecting such lands until the minimum time for
2 county, city, or town objections has expired.

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

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

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

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

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

29 **Sec. 16.** RCW 76.09.050 and 2012 1st sp.s. c 1 s 205 are each
30 amended to read as follows:

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

33 Class I: Minimal or specific forest practices that have no direct
34 potential for damaging a public resource and that may be conducted
35 without submitting an application or a notification except that when
36 the regulating authority is transferred to a local governmental entity,
37 those Class I forest practices that involve timber harvesting or road

1 construction within "urban growth areas," designated pursuant to
2 chapter 36.70A RCW, are processed as Class IV forest practices, but are
3 not subject to environmental review under chapter 43.21C RCW;

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

- 13 (a) On forest lands that are being converted to another use;
- 14 (b) Within "shorelines of the state" as defined in RCW 90.58.030;
- 15 (c) Excluded from Class II by the board; or
- 16 (d) Including timber harvesting or road construction within "urban
17 growth areas," designated pursuant to chapter 36.70A RCW, which are
18 Class IV;

19 Class III: Forest practices other than those contained in Class I,
20 II, or IV. A Class III application must be approved or disapproved by
21 the department according to the following timelines; however, the
22 applicant may not begin work on the forest practice until all forest
23 practice fees required under RCW 76.09.065 have been received by the
24 department:

25 (a) Within thirty calendar days from the date the department
26 receives the application if the application is not subject to
27 concurrence review by the department of fish and wildlife under RCW
28 76.09.490; and

29 (b) Within thirty days of the completion of the concurrence review
30 by the department of fish and wildlife if the application is subject to
31 concurrence review by the department of fish and wildlife under RCW
32 76.09.490;

33 Class IV: Forest practices other than those contained in Class I
34 or II:

- 35 (a) On forest lands that are being converted to another use;
- 36 (b) On lands which, pursuant to RCW 76.09.070 as now or hereafter
37 amended, are not to be reforested because of the likelihood of future
38 conversion to urban development;

1 (c) That involve timber harvesting or road construction on forest
2 lands that are contained within "urban growth areas," designated
3 pursuant to chapter 36.70A RCW, except where the forest landowner
4 provides:

5 (i) A written statement of intent signed by the forest landowner
6 not to convert to a use other than commercial forest product operations
7 for ten years, accompanied by either a written forest management plan
8 acceptable to the department or documentation that the land is enrolled
9 under the provisions of chapter 84.33 or 84.34 RCW; or

10 (ii) A conversion option harvest plan approved by the local
11 governmental entity and submitted to the department as part of the
12 application; and/or

13 (d) Which have a potential for a substantial impact on the
14 environment and therefore require an evaluation by the department as to
15 whether or not a detailed statement must be prepared pursuant to the
16 state environmental policy act, chapter 43.21C RCW. Such evaluation
17 shall be made within the timelines established in RCW 43.21C.037;
18 however, nothing herein shall be construed to prevent any local or
19 regional governmental entity from determining that a detailed statement
20 must be prepared for an action pursuant to a Class IV forest practice
21 taken by that governmental entity concerning the land on which forest
22 practices will be conducted. Unless the application is subject to
23 concurrence review by the department of fish and wildlife under RCW
24 76.09.490, a Class IV application must be approved or disapproved by
25 the department within thirty calendar days from the date the department
26 receives the application. If a Class IV application is subject to
27 concurrence review by the department of fish and wildlife under RCW
28 76.09.490, then the application must be approved or disapproved by the
29 department within thirty calendar days from the completion of the
30 concurrence review by the department of fish and wildlife. However,
31 the department may extend the timelines applicable to the approval or
32 disapproval of the application an additional thirty calendar days if
33 the department determines that a detailed statement must be made,
34 unless the commissioner of public lands, through the promulgation of a
35 formal order, determines that the process cannot be completed within
36 such a period. However, the applicant may not begin work on that
37 forest practice until all forest practice fees required under RCW
38 76.09.065 have been received by the department.

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

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

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

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

30 (5) Except for those forest practices being regulated by local
31 governmental entities as provided elsewhere in this chapter, the
32 department of natural resources shall notify the applicant in writing
33 of either its approval of the application or its disapproval of the
34 application and the specific manner in which the application fails to
35 comply with the provisions of this section or with the forest practices
36 regulations. Except as provided otherwise in this section, if the
37 department fails to either approve or disapprove an application or any
38 portion thereof within the applicable time limit, the application shall

1 be deemed approved and the operation may be commenced: PROVIDED, That
2 this provision shall not apply to applications which are neither
3 approved nor disapproved pursuant to the provisions of subsection (7)
4 of this section: PROVIDED, FURTHER, That if seasonal field conditions
5 prevent the department from being able to properly evaluate the
6 application, the department may issue an approval conditional upon
7 further review within sixty days. Upon receipt of any notification or
8 any satisfactorily completed application the department shall in any
9 event no later than two business days after such receipt transmit a
10 copy to the ((departments of ecology and fish and wildlife, and to
11 the)) county, city, or town in whose jurisdiction the forest practice
12 is to be commenced. ((Any comments by such agencies shall be directed
13 to the department of natural resources.))

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

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

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

28 (b) The objections relate to forest lands that are being converted
29 to another use.

30 The department shall either disapprove those portions of such
31 application or appeal the county, city, or town objections to the
32 appeals board. If the objections related to (b) of this subsection are
33 based on local authority consistent with RCW 76.09.240 as now or
34 hereafter amended, the department shall disapprove the application
35 until such time as the county, city, or town consents to its approval
36 or such disapproval is reversed on appeal. The applicant shall be a
37 party to all department appeals of county, city, or town objections.
38 Unless the county, city, or town either consents or has waived its

1 rights under this subsection, the department shall not approve portions
2 of an application affecting such lands until the minimum time for
3 county, city, or town objections has expired.

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

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

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

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

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

30 **Sec. 17.** RCW 76.09.060 and 2012 1st sp.s. c 1 s 206 are each
31 amended to read as follows:

32 (1) The department shall prescribe the form and contents of the
33 notification and application. The forest practices rules shall specify
34 by whom and under what conditions the notification and application
35 shall be signed or otherwise certified as acceptable. Activities
36 conducted by the department or a contractor under the direction of the
37 department under the provisions of RCW 76.04.660, shall be exempt from

1 the landowner signature requirement on any forest practices application
2 required to be filed. The application or notification shall be
3 delivered in person to the department, sent by first-class mail to the
4 department or electronically filed in a form defined by the department.
5 The form for electronic filing shall be readily convertible to a paper
6 copy, which shall be available to the public pursuant to chapter 42.56
7 RCW. The information required may include, but is not limited to:

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

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

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

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

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

21 (f) For an application or notification submitted on or after July
22 10, 2012, that includes a forest practices hydraulic project, plans and
23 specifications for the forest practices hydraulic project to ensure the
24 proper protection of fish life;

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

28 (h) Soil, geological, and hydrological data with respect to forest
29 practices;

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

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

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

37 (l) All necessary application or notification fees.

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

3 (3) The application for a forest practice or the notification of a
4 forest practice is subject to the reforestation requirement of RCW
5 76.09.070.

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

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

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

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

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

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

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

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

35 (c) Failure to comply with the reforestation requirements contained
36 in any final order or decision shall constitute a removal of
37 designation under the provisions of RCW 84.33.140, and a change of use

1 under the provisions of RCW 84.34.080, and, if applicable, shall
2 subject such lands to the payments and/or penalties resulting from such
3 removals or changes.

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

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

15 (f) Landowners who have not stated an intent to convert the land
16 covered by an application or notification and who decide to convert the
17 land to a nonforestry use within six years of receiving an approved
18 application or notification must do so in a manner consistent with RCW
19 76.09.470.

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

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

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

35 (6)(a) Except as provided in RCW 76.09.350(4), the notification to
36 or the approval given by the department to an application to conduct a
37 forest practice shall be effective for a term of three years from the
38 date of approval or notification.

1 (b) A notification or application may be renewed for an additional
2 three-year term by the filing and approval of a notification or
3 application, as applicable, prior to the expiration of the original
4 application or notification. A renewal application or notification is
5 subject to the forest practices rules in effect at the time the renewal
6 application or notification is filed. Nothing in this section
7 precludes the applicant from applying for a new application or
8 notification after the renewal period has lapsed.

9 (c) At the option of the applicant, an application or notification
10 may be submitted to cover a single forest practice or a number of
11 forest practices within reasonable geographic or political boundaries
12 as specified by the department. An application or notification that
13 covers more than one forest practice may have an effective term of more
14 than three years.

15 (d) The board shall adopt rules that establish standards and
16 procedures for approving an application or notification that has an
17 effective term of more than three years. Such rules shall include
18 extended time periods for application or notification approval or
19 disapproval. The department may require the applicant to provide
20 advance notice before commencing operations on an approved application
21 or notification.

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

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

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

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

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

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

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

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

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

32 **Sec. 18.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each
33 amended to read as follows:

34 If the department (~~of ecology~~) determines that a person has
35 failed to comply with the forest practices regulations relating to
36 water quality protection, and (~~that the department of natural~~
37 ~~resources has not issued a stop work order or notice to comply, the~~

1 ~~department of ecology shall inform the department thereof. If~~) the
2 department of natural resources fails to take authorized enforcement
3 action within twenty-four hours under RCW 76.09.080, 76.09.090,
4 76.09.120, or 76.09.130, the (~~department of ecology may petition to~~
5 ~~the chairman~~) chair of the appeals board(~~(, who)~~) shall, within forty-
6 eight hours, either deny (~~the petition~~) further consideration or
7 direct the department of natural resources to immediately issue a stop
8 work order or notice to comply, or to impose a penalty. No civil or
9 criminal penalties shall be imposed for past actions or omissions if
10 such actions or omissions were conducted pursuant to an approval or
11 directive of the department of natural resources.

12 **Sec. 19.** RCW 76.09.150 and 2012 1st sp.s. c 1 s 207 are each
13 amended to read as follows:

14 (1) The department shall make inspections of forest lands, before,
15 during, and after the conducting of forest practices as necessary for
16 the purpose of ensuring compliance with this chapter, the forest
17 practices rules, including forest practices rules incorporated under
18 RCW 76.09.040(3), and to ensure that no material damage occurs to the
19 natural resources of this state as a result of forest practices.

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

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

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

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

36 (4) In connection with any watershed analysis, any review of a
37 pending application by an identification team appointed by the

1 department, any compliance studies, any effectiveness monitoring, or
2 other research that has been agreed to by a landowner, the department
3 may invite representatives of other agencies, tribes, and interest
4 groups to accompany a department representative and, at the landowner's
5 election, the landowner, on any such inspections. Reasonable efforts
6 shall be made by the department to notify the landowner of the persons
7 being invited onto the property and the purposes for which they are
8 being invited.

9 **Sec. 20.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended
10 to read as follows:

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

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

26 **Sec. 21.** RCW 76.09.470 and 2012 1st sp.s. c 1 s 210 are each
27 amended to read as follows:

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

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

35 (b) Contact ~~((the department of ecology and))~~ the applicable

1 county, city, town, or regional governmental entity to begin the
2 permitting process; and

3 (c) Notify the department, withdraw any applicable applications or
4 notifications, and submit a new application for the conversion. The
5 fee for a new application for conversion under this subsection (1)(c)
6 is the difference between the applicable fee for the new application
7 under RCW 76.09.065 and the fee previously paid for the original
8 application or notification, which must be deposited in the forest
9 practices application account created in RCW 76.09.065.

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

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

15 (b) Complete the following activities:

16 (i) Require that the landowner be in full compliance with chapter
17 43.21C RCW, if applicable;

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

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

34 **Sec. 22.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read
35 as follows:

36 (~~Unless the context clearly requires otherwise,~~) The definitions

1 in this section apply throughout this chapter unless the context
2 clearly requires otherwise.

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

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

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

12 (4) "Certification" means:

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

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

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

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

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

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

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

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

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

37 (ii) From which pollutants are discharged directly into surface or

1 ground waters of the state that originate outside of and pass over,
2 across, or through the facility or otherwise come into direct contact
3 with the animals confined in the operation.

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

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

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

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

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

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

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

23 (14) "Department" means the department of (~~ecology under chapter~~
24 ~~43.21A RCW~~) agriculture.

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

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

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

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

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

10 (ii) A dairy producer does not have a national pollutant discharge
11 elimination system permit, but has complied with all of the elements of
12 a dairy nutrient management plan that: Prevents the discharge of
13 pollutants to waters of the state, is commensurate with the dairy
14 producer's current herd size, and is approved and certified under RCW
15 90.64.026;

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

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

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

24 (d) The lack of an approved dairy nutrient management plan by July
25 1, 2002; or

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

28 **Sec. 23.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read
29 as follows:

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

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

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

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

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

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

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

15 **Sec. 24.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read
16 as follows:

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

20 (2) The department(~~(s of agriculture and ecology)~~) shall examine
21 (~~(their)~~) its current statutory authorities and provide the legislature
22 with recommendations for statutory changes to fully implement a
23 livestock nutrient management program within the department (~~(of~~
24 ~~agriculture)~~) for concentrated animal feeding operations, animal
25 feeding operations, and dairies, as authorized in RCW 90.48.260(~~(7~~
26 ~~90.64.813,)~~) and 90.64.901. (~~(In developing recommended statutory~~
27 ~~changes, the departments shall consult with the livestock nutrient~~
28 ~~management program development and oversight committee created in RCW~~
29 ~~90.64.813.)) The recommendations must be submitted to the legislature
30 by the department(~~(s of agriculture and ecology)~~) prior to applying to
31 the environmental protection agency for delegated authority to
32 administer the CAFO portion of the national pollutant discharge
33 elimination system permit program under the federal clean water act.~~

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

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

5 **Sec. 25.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
6 amended to read as follows:

7 (1) Unless otherwise designated by law, the department of ecology
8 is hereby designated as the state water pollution control agency for
9 all purposes of the federal clean water act as it exists on February 4,
10 1987, and is hereby authorized to participate fully in the programs of
11 the act as well as to take all action necessary to secure to the state
12 the benefits and to meet the requirements of that act. ((With regard
13 to the national estuary program established by section 320 of that act,
14 the department shall exercise its responsibility jointly with the Puget
15 Sound partnership, created in RCW 90.71.210.))

16 (2)(a) The department of ecology ((may)) shall delegate its
17 authority under this chapter, including its national pollutant
18 discharge elimination permit system authority and other duties
19 regarding water quality to the following agencies for the following
20 programs:

21 (i) Animal feeding operations and concentrated animal feeding
22 operations((7)) to the department of agriculture; and

23 (ii) Forest practices to the department of natural resources and
24 the forest practices board.

25 (b) All delegations of authority must be executed through a
26 memorandum of understanding. Until any such delegation receives
27 federal approval, the department of agriculture's adoption or issuance
28 of animal feeding operation and concentrated animal feeding operation
29 rules, permits, programs, and directives pertaining to water quality
30 and the adoption of forest practices rules, permits programs, or
31 directions pertaining to water quality shall be accomplished after
32 reaching agreement with the director of the department of ecology.

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

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

4 (a) Complete authority to establish and administer a comprehensive
5 state point source waste discharge or pollution discharge elimination
6 permit program which will enable the department to qualify for full
7 participation in any national waste discharge or pollution discharge
8 elimination permit system and will allow the department to be the sole
9 agency issuing permits required by such national system operating in
10 the state of Washington subject to the provisions of RCW 90.48.262(2).

11 Program elements authorized herein may include, but are not limited to:

12 (i) Effluent treatment and limitation requirements together with timing
13 requirements related thereto; (ii) applicable receiving water quality
14 standards requirements; (iii) requirements of standards of performance
15 for new sources; (iv) pretreatment requirements; (v) termination and
16 modification of permits for cause; (vi) requirements for public notices
17 and opportunities for public hearings; (vii) appropriate relationships
18 with the secretary of the army in the administration of his or her
19 responsibilities which relate to anchorage and navigation, with the
20 administrator of the environmental protection agency in the performance
21 of his or her duties, and with other governmental officials under the
22 federal clean water act; (viii) requirements for inspection,
23 monitoring, entry, and reporting; (ix) enforcement of the program
24 through penalties, emergency powers, and criminal sanctions; (x) a
25 continuing planning process; and (xi) user charges.

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

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

35 (~~(+2)~~) (4) The governor shall have authority to perform those
36 actions required of him or her by the federal clean water act.

37 (~~(+3)~~) (5) By July 31, 2012, the department shall:

1 (a) Reissue without modification and for a term of one year any
2 national pollutant discharge elimination system municipal storm water
3 general permit applicable to western Washington municipalities first
4 issued on January 17, 2007; and

5 (b) Issue an updated national pollutant discharge elimination
6 system municipal storm water general permit applicable to western
7 Washington municipalities for any permit first issued on January 17,
8 2007. An updated permit issued under this subsection shall become
9 effective beginning August 1, 2013.

10 (i) Provisions of the updated permit issued under (b) of this
11 subsection relating to new requirements for low-impact development and
12 review and revision of local development codes, rules, standards, or
13 other enforceable documents to incorporate low-impact development
14 principles must be implemented simultaneously. These requirements may
15 go into effect no earlier than December 31, 2016, or the time of the
16 scheduled update under RCW 36.70A.130(5), as existing on July 10, 2012,
17 whichever is later.

18 (ii) Provisions of the updated permit issued under (b) of this
19 subsection related to increased catch basin inspection and illicit
20 discharge detection frequencies and application of new storm water
21 controls to projects smaller than one acre may go into effect no
22 earlier than December 31, 2016, or the time of the scheduled update
23 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is
24 later.

25 ((+4)) (6) By July 31, 2012, the department shall:

26 (a) Reissue without modification and for a term of two years any
27 national pollutant discharge elimination system municipal storm water
28 general permit applicable to eastern Washington municipalities first
29 issued on January 17, 2007; and

30 (b) Issue an updated national pollutant discharge elimination
31 system municipal storm water general permit for any permit first issued
32 on January 17, 2007, applicable to eastern Washington municipalities.
33 An updated permit issued under this subsection becomes effective August
34 1, 2014.

35 **Sec. 26.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each
36 amended to read as follows:

37 (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041,

1 ((and)) 77.55.361, and section 13 of this act, in the event that any
2 person or government agency desires to undertake a hydraulic project,
3 the person or government agency shall, before commencing work thereon,
4 secure the approval of the department in the form of a permit as to the
5 adequacy of the means proposed for the protection of fish life.

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

8 (a) General plans for the overall project;

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

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

14 (d) Notice of compliance with any applicable requirements of the
15 state environmental policy act, unless otherwise provided for in this
16 chapter; and

17 (e) Payment of all applicable application fees charged by the
18 department under RCW 77.55.321.

19 (3) The department may establish direct billing accounts or other
20 funds transfer methods with permit applicants to satisfy the fee
21 payment requirements of RCW 77.55.321.

22 (4) The department may accept complete, written applications as
23 provided in this section for multiple site permits and may issue these
24 permits. For multiple site permits, each specific location must be
25 identified.

26 (5) With the exception of emergency permits as provided in
27 subsection (12) of this section, applications for permits must be
28 submitted to the department's headquarters office in Olympia. Requests
29 for emergency permits as provided in subsection (12) of this section
30 may be made to the permitting biologist assigned to the location in
31 which the emergency occurs, to the department's regional office in
32 which the emergency occurs, or to the department's headquarters office.

33 (6) Except as provided for emergency permits in subsection (12) of
34 this section, the department may not proceed with permit review until
35 all fees are paid in full as required in RCW 77.55.321.

36 (7)(a) Protection of fish life is the only ground upon which
37 approval of a permit may be denied or conditioned. Approval of a
38 permit may not be unreasonably withheld or unreasonably conditioned.

1 (b) Except as provided in this subsection and subsections (12)
2 through (14) and (16) of this section, the department has forty-five
3 calendar days upon receipt of a complete application to grant or deny
4 approval of a permit. The forty-five day requirement is suspended if:

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

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

9 (iii) The applicant requests a delay; or

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

12 (c) Immediately upon determination that the forty-five day period
13 is suspended under (b) of this subsection, the department shall notify
14 the applicant in writing of the reasons for the delay.

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

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

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

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

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

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

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

11 (10) The department may, after consultation with the permittee,
12 modify a permit due to changed conditions. A modification under this
13 subsection is not subject to the fees provided under RCW 77.55.321.
14 The modification is appealable as provided in subsection (8) of this
15 section. For a hydraulic project that diverts water for agricultural
16 irrigation or stock watering purposes, when the hydraulic project or
17 other work is associated with streambank stabilization to protect farm
18 and agricultural land as defined in RCW 84.34.020, the burden is on the
19 department to show that changed conditions warrant the modification in
20 order to protect fish life.

21 (11) A permittee may request modification of a permit due to
22 changed conditions. The request must be processed within forty-five
23 calendar days of receipt of the written request and payment of
24 applicable fees under RCW 77.55.321. A decision by the department is
25 appealable as provided in subsection (8) of this section. For a
26 hydraulic project that diverts water for agricultural irrigation or
27 stock watering purposes, when the hydraulic project or other work is
28 associated with streambank stabilization to protect farm and
29 agricultural land as defined in RCW 84.34.020, the burden is on the
30 permittee to show that changed conditions warrant the requested
31 modification and that such a modification will not impair fish life.

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

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

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

12 (d) The department may not charge a person requesting an emergency
13 permit any of the fees authorized by RCW 77.55.321 until after the
14 emergency permit is issued and reduced to writing.

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

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

36 (15)(a) For any property, except for property located on a marine
37 shoreline, that has experienced at least two consecutive years of
38 flooding or erosion that has damaged or has threatened to damage a

1 major structure, water supply system, septic system, or access to any
2 road or highway, the county legislative authority may determine that a
3 chronic danger exists. The county legislative authority shall notify
4 the department, in writing, when it determines that a chronic danger
5 exists. In cases of chronic danger, the department shall issue a
6 permit, upon request, for work necessary to abate the chronic danger by
7 removing any obstructions, repairing existing structures, restoring
8 banks, restoring road or highway access, protecting fish resources, or
9 protecting property. Permit requests must be made and processed in
10 accordance with subsections (2) and (7) of this section.

11 (b) Any projects proposed to address a chronic danger identified
12 under (a) of this subsection that satisfies the project description
13 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
14 of the state environmental policy act, chapter 43.21C RCW. However,
15 the project is subject to the review process established in RCW
16 77.55.181(3) as if it were a fish habitat improvement project.

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

27 **Sec. 27.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to
28 read as follows:

29 ~~((In coordination with the department of natural resources and lead~~
30 ~~entity groups,))~~ The department must establish a ranked inventory of
31 fish passage barriers on land owned by small forest landowners based on
32 the principle of fixing the worst first within a watershed consistent
33 with the fish passage priorities of the forest and fish report. The
34 department shall first gather and synthesize all available existing
35 information about the locations and impacts of fish passage barriers in
36 Washington. This information must include, but not be limited to, the
37 most recently available limiting factors analysis conducted pursuant to

1 RCW 77.85.060(2), the stock status information contained in the
2 department of fish and wildlife salmonid stock inventory (SASSI), the
3 salmon and steelhead habitat inventory and assessment project (SSHIAP),
4 and any comparable science-based assessment when available. The
5 inventory of fish passage barriers must be kept current and at a
6 minimum be updated by the beginning of each calendar year. Nothing in
7 this section grants the department or others additional right of entry
8 onto private property.

9 **Sec. 28.** RCW 77.12.870 and 2012 c 190 s 2 are each amended to read
10 as follows:

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

16 (2) A person who loses or abandons commercial net fishing gear
17 within the waters of the state is required to report the location of
18 the loss and the type of gear lost to the department within twenty-four
19 hours of the loss.

20 (3) A person who loses or abandons shellfish pots within the waters
21 of the state is encouraged to report the location of the loss and the
22 type of gear lost to the department.

23 **Sec. 29.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read
24 as follows:

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

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

34 (3) The director(~~(, the department of ecology, and the Washington~~
35 ~~state parks and recreation commission))~~ may post signs at water bodies
36 that are infested with aquatic animal species that are classified as

1 prohibited aquatic animal species under RCW 77.12.020 or with invasive
2 species of the plant kingdom. The signs should identify the prohibited
3 plant and animal species present and warn users of the water body of
4 the hazards and penalties for possessing and transporting these
5 species. Educational signs may be placed at uninfested sites.

6 **Sec. 30.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read
7 as follows:

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

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

35 Transplantation and introduction of exotic warm water fish shall be
36 carefully reviewed to assure that adverse effects to native fish and

1 wildlife populations do not occur. This review shall include an
2 analysis of consequences from disease and parasite introduction.

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

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

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

29 **Sec. 31.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to
30 read as follows:

31 (1) Beginning in January 1998, the department (~~(and the department~~
32 ~~of natural resources))~~) shall implement a habitat incentives program
33 based on the recommendations of federally recognized Indian tribes,
34 landowners, the regional fisheries enhancement groups, the timber,
35 fish, and wildlife cooperators, and other interested parties. The
36 program shall allow a private landowner to enter into an agreement with
37 the department(~~(s)~~) to enhance habitat on the landowner's property for

1 food fish, game fish, or other wildlife species. In exchange, the
2 landowner shall receive state regulatory certainty with regard to
3 future applications for a permit or a forest practices permit on the
4 property covered by the agreement. The overall goal of the program is
5 to provide a mechanism that facilitates habitat development on private
6 property while avoiding an adverse state regulatory impact to the
7 landowner at some future date. A single agreement between the
8 department(~~(s)~~) and a landowner may encompass up to one thousand acres.
9 A landowner may enter into multiple agreements with the
10 department(~~(s)~~), provided that the total acreage covered by such
11 agreements with a single landowner does not exceed ten thousand acres.
12 The department(~~(s-are)~~) is not obligated to enter into an agreement
13 unless the department(~~(s)~~) finds that the agreement is in the best
14 interest of protecting fish or wildlife species or their habitat.

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

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

30 (4) As part of the agreement, the department (~~(of natural~~
31 ~~resources)~~) may stipulate the factors that will be considered when the
32 department (~~(of natural resources)~~) evaluates a landowner's application
33 for a forest practices permit under chapter 76.09 RCW on property
34 covered by the agreement. The department's (~~(of natural resources)~~)
35 identification of these evaluation factors shall be in concurrence with
36 (~~(the department and)~~) affected federally recognized Indian tribes. In
37 general, future decisions related to the issuance, conditioning, or

1 denial of forest practices permits shall be based on the conditions
2 present on the landowner's property at the time of the agreement,
3 unless all parties agree otherwise.

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

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

16 **Sec. 32.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to
17 read as follows:

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

24 **Sec. 33.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to
25 read as follows:

26 The department (~~(and the department of ecology)~~) will work
27 cooperatively with the United States army corps of engineers to develop
28 a memorandum of agreement outlining dike vegetation management
29 guidelines so that dike owners are eligible for coverage under P.L. 84-
30 99, and state requirements established pursuant to RCW 77.55.021 are
31 met.

32 **Sec. 34.** RCW 77.65.510 and 2011 c 339 s 31 are each amended to
33 read as follows:

34 (1) The department must establish and administer a direct retail
35 endorsement to serve as a single license that permits a Washington

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

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

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

1 (4) In addition to any fees charged for the endorsed licenses and
2 harvest documentation as required by this chapter or the rules of the
3 department, the department may set a reasonable annual fee not to
4 exceed the administrative costs to the department for a direct retail
5 endorsement. The application fee is one hundred five dollars.

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

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

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

32 (8) The holder of a direct retail endorsement must abide by the
33 provisions of Title 69 RCW as they apply to the processing and retail
34 sale of seafood. The department must distribute a pamphlet(~~(, provided~~
35 ~~by the department of agriculture,)~~) with the direct retail endorsement
36 generally describing the labeling requirements set forth in chapter
37 69.04 RCW as they apply to seafood.

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

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

11 **Sec. 35.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to
12 read as follows:

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

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

18 (a) Holds a herring fishery license issued under RCW 77.65.200 and
19 77.70.120; and

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

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

29 **Sec. 36.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to
30 read as follows:

31 (1) It is the purpose of ~~((chapter 163, Laws of 1996))~~ this section
32 that all state agricultural lands, grazing lands, and grazeable
33 woodlands ~~((shall))~~ be managed in keeping with the statutory and
34 constitutional mandates under which each agency operates. ~~((Chapter
35 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993
36 sp. sess.))~~

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

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

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

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

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

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

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

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

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

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

36 (~~(5) The legislature urges that state agencies that manage grazing~~
37 ~~lands make planning and implementation of chapter 163, Laws of 1996,~~
38 ~~using the coordinated resource management and planning process, a high~~

1 ~~priority, especially where either multiple ownerships, or multiple use~~
2 ~~resources objectives, or both, are involved. In all cases, the choice~~
3 ~~of using the coordinated resource management planning process will be~~
4 ~~a voluntary decision by all concerned parties including agencies,~~
5 ~~private landowners, lessees, permittees, and other interests.))~~

6 **Sec. 37.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to
7 read as follows:

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

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

31 A summary of the testimony presented at the hearings shall be
32 prepared for the board's consideration. The board shall designate
33 trust lands which are expected to convert to commercial, residential,
34 or industrial uses as urban land. Descriptions of lands designated by
35 the board shall be made available to the county and city or town in
36 which the land is situated and for public inspection and copying at the

1 department's administrative office in Olympia, Washington and at each
2 area office.

3 The hearing and notice requirements of this section apply to those
4 trust lands which have been identified by the department prior to July
5 1, 1984, as being expected to convert to commercial, residential, or
6 industrial uses within the next ten years, and which have not been sold
7 or exchanged prior to July 1, 1984.

8 **Sec. 38.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to
9 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (8) Maintain a state register of natural areas containing
36 significant natural heritage resources to be called the Washington
37 register of natural area preserves. Selection of natural areas for
38 registration shall be in accordance with criteria listed in the natural

1 heritage plan and accomplished through voluntary agreement between the
2 owner of the natural area and the department. No privately owned lands
3 may be proposed to the council for registration without prior notice to
4 the owner or registered without voluntary consent of the owner. No
5 state or local governmental agency may require such consent as a
6 condition of any permit or approval of or settlement of any civil or
7 criminal proceeding or to penalize any landowner in any way for failure
8 to give, or for withdrawal of, such consent.

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

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

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

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

20 **Sec. 39.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read
21 as follows:

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

33 **Sec. 40.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to
34 read as follows:

35 The legislature finds that the department provides, manages, and
36 monitors aquatic land dredged material disposal sites on state-owned

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

14 **Sec. 41.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to
15 read as follows:

16 Whenever application is made to the department by any incorporated
17 city or town or metropolitan park district for the use of any state-
18 owned tidelands or shorelands within the corporate limits of the city
19 or town or metropolitan park district for municipal park and/or
20 playground purposes, the department shall cause the application to be
21 entered in the records of its office, and shall then forward the
22 application to the governor, who shall appoint a committee of five
23 representative citizens of the city or town, in addition to the
24 commissioner (~~(and the director of ecology, both of)~~), whom shall be an
25 ex officio member((s)) of the committee, to investigate the lands and
26 determine whether they are suitable and needed for park or playground
27 purposes; and, if they so find, the commissioner shall certify to the
28 governor that the property shall be deeded, when in accordance with RCW
29 79.125.200 and 79.125.700, to the city or town or metropolitan park
30 district and the governor shall then execute a deed in the name of the
31 state of Washington, attested by the secretary of state, conveying the
32 use of the lands to the city or town or metropolitan park district for
33 park or playground purposes for so long as it shall continue to hold,
34 use, and maintain the lands for park or playground purposes.

35 **Sec. 42.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to
36 read as follows:

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

6 **Sec. 43.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to
7 read as follows:

8 (1) The department, upon the receipt of an application for a lease
9 for the purpose of planting and cultivating oyster beds or for the
10 purpose of cultivating clams or other edible shellfish, shall (~~notify~~
11 ~~the director of fish and wildlife of the filing of the application~~
12 ~~describing the tidelands or beds of navigable waters applied for. The~~
13 ~~director of fish and wildlife shall~~) cause an inspection of the lands
14 applied for (~~to be made and shall make a full report to the department~~
15 ~~of the director's findings as to whether it is necessary,~~) in order to
16 protect existing natural oyster beds, and to secure adequate seeding of
17 the lands, to retain the lands described in the application for lease
18 or any part of the lands, and in the event the (~~director~~) department
19 deems it advisable to retain the lands or any part of the lands for the
20 protection of existing natural oyster beds or to guarantee the
21 continuance of an adequate seed stock for existing natural oyster beds,
22 the lands shall not be subject to lease. However, if the (~~director~~)
23 department determines that the lands applied for or any part of the
24 lands may be leased, the (~~director~~) department shall (~~so notify the~~
25 ~~department and the director shall~~) cause an examination of the lands
26 to be made to determine the presence, if any, of natural oysters,
27 clams, or other edible shellfish on the lands, and to fix the rental
28 value of the lands for use for oyster, clam, or other edible shellfish
29 cultivation. In the report (~~to~~), the department(~~, the director~~)
30 shall recommend a minimum rental for the lands and an estimation of the
31 value of the oysters, clams, or other edible shellfish, if any, then
32 present on the lands applied for. The lands approved by the
33 (~~director~~) department for lease may then be leased to the applicant
34 for a period of not less than five years nor more than ten years at a
35 rental not less than the minimum (~~rental~~) recommended (~~by the~~
36 ~~director of fish and wildlife~~) rent. In addition, before entering
37 upon possession of the land, the applicant shall pay the value of the

1 oysters, clams, or other edible shellfish, if any, then present on the
2 land as determined by the (~~director~~) department, plus the expense
3 incurred by the (~~director~~) department in investigating the quantity
4 of oysters, clams, or other edible shellfish, present on the land
5 applied for.

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

11 **Sec. 44.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to
12 read as follows:

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

21 **Sec. 45.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to
22 read as follows:

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

32 **Sec. 46.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to
33 read as follows:

34 (1) (~~In the event that the fish and wildlife commission approves~~
35 ~~the vacation of the whole or any part of a reserve,~~) The department

1 may vacate and offer for lease the parts or all of the reserve as it
2 deems to be for the best interest of the state, and all moneys received
3 for the lease of the lands shall be paid to the department.

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

8 **Sec. 47.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to
9 read as follows:

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

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

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

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

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

36 (1) There is created a winter recreation advisory committee to

1 advise the parks and recreation commission in the administration of
2 this chapter and to assist and advise the commission in the development
3 of winter recreation facilities and programs.

4 (2) The committee shall consist of:

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

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

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

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

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

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

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

1 **Sec. 49.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 50.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to
28 read as follows:

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

- 34 (1) Plan, construct, and maintain underwater parks;
- 35 (2) Acquire property and enter management agreements with other
36 units of state government for the management of lands, tidelands, and
37 bedlands as underwater parks;

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

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

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

6 (6) Work with the federal government(~~(7)~~) and local governments
7 (~~and other appropriate agencies of state government, including but not~~
8 ~~limited to: The department of natural resources, the department of~~
9 ~~fish and wildlife and the natural heritage council~~) to carry out the
10 purposes of this chapter; and

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

13 **Sec. 51.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to
14 read as follows:

15 The commission(~~(, in consultation with the departments of ecology,~~
16 ~~fish and wildlife, natural resources, social and health services, and~~
17 ~~the Puget Sound partnership)~~) shall conduct a literature search and
18 analyze pertinent studies to identify areas which are polluted or
19 environmentally sensitive within the state's waters. Based on this
20 review the commission shall designate appropriate areas as polluted or
21 environmentally sensitive, for the purposes of chapter 393, Laws of
22 1989 only.

23 **Sec. 52.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to
24 read as follows:

25 The (~~department of ecology, in consultation with the~~)
26 commission(~~(7)~~) shall, for initiation of the statewide program only,
27 develop criteria by rule for the design, installation, and operation of
28 sewage pumpout and dump units, taking into consideration the ease of
29 access to the unit by the boating public. (~~The department of ecology~~
30 ~~may adopt rules to administer the provisions of this section.~~)

31 **Sec. 53.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to
32 read as follows:

33 (1) The Washington sea grant program(~~(, in consultation with the~~
34 ~~department of ecology,~~) shall develop and conduct a voluntary spill
35 prevention education program that targets small spills from commercial

1 fishing vessels, ferries, cruise ships, ports, and marinas. Washington
2 sea grant shall coordinate the spill prevention education program with
3 recreational boater education performed by the state parks and
4 recreation commission.

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

13 **Sec. 54.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to
14 read as follows:

15 The commission is authorized to evaluate and acquire land under RCW
16 (~~(79.01.612 in cooperation with the department of natural resources)~~)
17 79.10.030.

18 **Sec. 55.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to
19 read as follows:

20 (~~((1) If the authority and state agencies find it mutually~~
21 ~~beneficial to do so, they are authorized to collaborate and cooperate~~
22 ~~on projects of shared interest. Agencies authorized to collaborate~~
23 ~~with the authority include but are not limited to: The commission for~~
24 ~~activities and projects related to public recreation; the department of~~
25 ~~agriculture for projects related to the equine agricultural industry;~~
26 ~~the department of community, trade, and economic development with~~
27 ~~respect to community and economic development and tourism issues~~
28 ~~associated with development of the state horse park; Washington State~~
29 ~~University with respect to opportunities for animal research,~~
30 ~~education, and extension; the department of ecology with respect to~~
31 ~~opportunities for making the state horse park's waste treatment~~
32 ~~facilities a demonstration model for the handling of waste to protect~~
33 ~~water quality; and with local community colleges with respect to~~
34 ~~programs related to horses, economic development, business, and~~
35 ~~tourism.~~

1 (2)) The authority shall cooperate with 4-H clubs, pony clubs,
2 youth groups, and local park departments to provide youth recreational
3 activities. The authority shall also provide for preferential use of
4 an area of the horse park facility for youth and (~~the disabled~~)
5 individuals with disabilities at nominal cost.

6 **Sec. 56.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended
7 to read as follows:

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

14 ~~The department of natural resources shall have reasonable access~~
15 ~~across such lands~~) in order to reach other public lands administered
16 by the department of natural resources.

17 **Sec. 57.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to
18 read as follows:

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

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

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

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

9 **Sec. 58.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to
10 read as follows:

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

21 **Sec. 59.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read
22 as follows:

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

1 **Sec. 60.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended
2 to read as follows:

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

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

22 **Sec. 61.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read
23 as follows:

24 The department of ((ecology)) natural resources shall require each
25 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
26 metals mining and milling operation to disclose the ownership and each
27 controlling interest in the proposed operation. The applicant shall
28 also disclose all other mining operations within the United States
29 which the applicant operates or in which the applicant has an ownership
30 or controlling interest. In addition, the applicant shall disclose and
31 may enumerate and describe the circumstances of: (1) Any past or
32 present bankruptcies involving the ownerships and their subsidiaries,
33 (2) any abandonment of sites regulated by the model toxics control act,
34 chapter 70.105D RCW, or other similar state remedial cleanup programs,
35 or the federal comprehensive environmental response, compensation, and
36 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any
37 penalties in excess of ten thousand dollars assessed for violations of

1 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et
2 seq., and (4) any previous forfeitures of financial assurance due to
3 noncompliance with reclamation or remediation requirements. This
4 information shall be available for public inspection and copying at the
5 department of ((ecology)) natural resources. Ownership or control of
6 less than ten percent of the stock of a corporation shall not by itself
7 constitute ownership or a controlling interest under this section.

8 **Sec. 62.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read
9 as follows:

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

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

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

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

31 **Sec. 63.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read
32 as follows:

33 The department of ((ecology)) natural resources will appoint a
34 metals mining coordinator. The coordinator will maintain current
35 information on the status of any metals mining and milling operation
36 regulated under this chapter from the preparation of the environmental

1 impact statement through the permitting, construction, operation, and
2 reclamation phases of the project or until the proposal is no longer
3 active. The coordinator shall also maintain current information on
4 postclosure activities. The coordinator will act as a contact person
5 for the applicant, the operator, and interested members of the public.
6 The coordinator may also assist agencies with coordination of their
7 inspection and monitoring responsibilities.

8 **Sec. 64.** RCW 78.56.080 and 2012 c 198 s 15 are each amended to
9 read as follows:

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

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

22 (2) Based on the cost estimates generated by ~~((the department of~~
23 ~~ecology and))~~ the department of natural resources, the department ~~((of~~
24 ~~ecology))~~ shall establish the amount of a fee to be paid by each active
25 metals mining and milling operation regulated under this chapter. The
26 fee shall be established at a level to fully recover the direct and
27 indirect costs of the ~~((agency))~~ department's responsibilities
28 identified in subsection (1) of this section. The amount of the fee
29 for each operation shall be proportional to the number of visits
30 required per site. Each applicant for a metals mining and milling
31 operation shall also be assessed the fee based on the same criterion.
32 The department ~~((of ecology))~~ may adjust the fees established in this
33 subsection if unanticipated activity in the industry increases or
34 decreases the amount of funding necessary to meet ~~((agencies))~~ the
35 agency's inspection responsibilities.

36 (3) The department of ~~((ecology))~~ natural resources shall collect

1 the fees established in subsection (2) of this section. All moneys
2 from these fees shall be deposited into the general fund.

3 **Sec. 65.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read
4 as follows:

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

11 (a) Bank letters of credit;

12 (b) A cash deposit;

13 (c) Negotiable securities;

14 (d) An assignment of a savings account;

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 66.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to
32 read as follows:

33 (1) Until June 30, 1996, there shall be a moratorium on metals
34 mining and milling operations using the heap leach extraction process.
35 The department of natural resources ~~((and the department of ecology))~~
36 shall ~~((jointly))~~ review the existing laws and regulations pertaining

1 to the heap leach extraction process for their adequacy in safeguarding
2 the environment.

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

5 **Sec. 67.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read
6 as follows:

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

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

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

1 this chapter, including a bond or other security as specified in RCW
2 78.60.130.

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

5 **Sec. 68.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to
6 read as follows:

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

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

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

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

23 **Sec. 69.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read
24 as follows:

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

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

30 (2) Usable minerals cannot be derived, or the owner or operator has
31 no intention of deriving usable minerals, shall be plugged and
32 abandoned as provided in this chapter or, upon the owner's or
33 operator's written application to the department ~~((of natural resources
34 and with the concurrence and approval of the department of ecology))~~,
35 jurisdiction over the well may be transferred to the department ~~((of
36 ecology))~~ and, in such case, the well shall no longer be subject to the

1 provisions of this chapter but shall be subject to any applicable laws
2 and rules relating to wells drilled for appropriation and use of
3 groundwaters. If an application is made to transfer jurisdiction, a
4 copy of all logs, records, histories, and descriptions shall be
5 provided to the department (~~(of ecology)~~) by the applicant.

6 **Sec. 70.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read
7 as follows:

8 Whenever an application for a permit to make beneficial use of
9 public waters is approved relating to a stream or other water body for
10 which minimum flows or levels have been adopted and are in effect at
11 the time of approval, the permit shall be conditioned to protect the
12 levels or flows. No agency may establish minimum flows and levels or
13 similar water flow or level restrictions for any stream or lake of the
14 state other than the department of ecology whose authority to establish
15 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
16 90.54.040. The provisions of other statutes, including but not limited
17 to RCW (~~(77.55.100)~~) 77.55.021 and chapter 43.21C RCW, may not be
18 interpreted in a manner that is inconsistent with this section. In
19 establishing such minimum flows, levels, or similar restrictions, the
20 department shall, during all stages of development (~~(by the department~~
21 ~~of ecology)~~) of minimum flow proposals, consult with, and carefully
22 consider the recommendations of (~~(, the department of fish and wildlife,~~
23 ~~the department of community, trade, and economic development, the~~
24 ~~department of agriculture, and representatives of the)~~) affected Indian
25 tribes. (~~(Nothing herein shall preclude the department of fish and~~
26 ~~wildlife, the department of community, trade, and economic development,~~
27 ~~or the department of agriculture from presenting its views on minimum~~
28 ~~flow needs at any public hearing or to any person or agency, and the~~
29 ~~department of fish and wildlife, the department of community, trade,~~
30 ~~and economic development, and the department of agriculture are each~~
31 ~~empowered to participate in proceedings of the federal energy~~
32 ~~regulatory commission and other agencies to present its views on~~
33 ~~minimum flow needs.)~~)

34 **Sec. 71.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
35 read as follows:

36 Upon receipt of a proper application, the department shall instruct

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

9 **Sec. 72.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read
10 as follows:

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

24 (2)(a) If the application does not contain, and the applicant does
25 not promptly furnish sufficient information on which to base such
26 findings, the department may issue a preliminary permit, for a period
27 of not to exceed three years, requiring the applicant to make such
28 surveys, investigations, studies, and progress reports, as in the
29 opinion of the department may be necessary. If the applicant fails to
30 comply with the conditions of the preliminary permit, it and the
31 application or applications on which it is based shall be automatically
32 canceled and the applicant so notified. If the holder of a preliminary
33 permit shall, before its expiration, file with the department a
34 verified report of expenditures made and work done under the
35 preliminary permit, which, in the opinion of the department,
36 establishes the good faith, intent, and ability of the applicant to
37 carry on the proposed development, the preliminary permit may, with the

1 approval of the governor, be extended, but not to exceed a maximum
2 period of five years from the date of the issuance of the preliminary
3 permit.

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

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

36 (4) If the permit is refused because of conflict with existing
37 rights and such applicant shall acquire same by purchase or
38 condemnation under RCW 90.03.040, the department may thereupon grant

1 such permit. Any application may be approved for a less amount of
2 water than that applied for, if there exists substantial reason
3 therefor, and in any event shall not be approved for more water than
4 can be applied to beneficial use for the purposes named in the
5 application. In determining whether or not a permit shall issue upon
6 any application, it shall be the duty of the department to investigate
7 all facts relevant and material to the application. After the
8 department approves said application in whole or in part and before any
9 permit shall be issued thereon to the applicant, such applicant shall
10 pay the fee provided in RCW 90.03.470(~~(: PROVIDED FURTHER, That in the~~
11 ~~event a permit is issued by the department upon any application, it~~
12 ~~shall be its duty to notify the director of fish and wildlife of such~~
13 ~~issuance))~~).

14 **Sec. 73.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
15 read as follows:

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

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

32 (2) Where water diversions are from waters in which the salmonid
33 stock status is depressed or critical, as determined by the department
34 of fish and wildlife, or where the volume of water being diverted
35 exceeds one cubic foot per second, the department shall require
36 metering or measurement by other approved methods as a condition for
37 all new and previously existing water rights or claims. The department

1 shall attempt to integrate the requirements of this subsection into its
2 existing compliance workload priorities, but shall prioritize the
3 requirements of this subsection ahead of the existing compliance
4 workload where a delay may cause the decline of wild salmonids. (~~The~~
5 ~~department shall notify the department of fish and wildlife of the~~
6 ~~status of fish screens associated with these diversions.~~) This
7 subsection (2) shall not apply to diversions for public or private
8 hatcheries or fish rearing facilities if the diverted water is returned
9 directly to the waters from which it was diverted.

10 **Sec. 74.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each
11 amended to read as follows:

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

20 (2) A watershed agreement must be consistent with:

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

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

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

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

31 (3) A watershed agreement must:

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 75.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read
2 as follows:

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

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

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

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

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

1 recognize hydropower operators that exceed their environmental
2 regulatory requirements.

3 (ii) The fees required in (b) of this subsection expire June 30,
4 2017. The biennial progress reports submitted by the department of
5 ecology will serve as a record for considering the extension of the fee
6 structure in (b) of this subsection.

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

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

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

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

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

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

31 **Sec. 76.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read
32 as follows:

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

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

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

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

11 **Sec. 77.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read
12 as follows:

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

35 **Sec. 78.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
36 read as follows:

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

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

16 (2) The place and time of the hearing;

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

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

23 **Sec. 79.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to
24 read as follows:

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

31 **Sec. 80.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read
32 as follows:

33 Ten or more owners of real property abutting on a lake may petition
34 the superior court of the county in which the lake is situated, for an
35 order to provide for the regulation of the outflow of the lake in order
36 to maintain a certain water level therein. If there are fewer than ten

1 owners, a majority of the owners abutting on a lake may petition the
2 superior court for such an order. The court, after (~~notice to the~~
3 ~~department of fish and wildlife and~~) a hearing, is authorized to make
4 an order fixing the water level thereof and directing the department of
5 ecology to regulate the outflow therefrom in accordance with the
6 purposes described in the petition. This section shall not apply to
7 any lake or reservoir used for the storage of water for irrigation or
8 other beneficial purposes, or to lakes navigable from the sea.

9 **Sec. 81.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to
10 read as follows:

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

27 **Sec. 82.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to
28 read as follows:

29 Such improvement or device in said lake for the protection of the
30 fish and game fish therein shall be installed by and under the
31 direction of the board of county commissioners of said county with the
32 approval of the (~~respective directors of the department of fish and~~
33 ~~wildlife and~~) director of the department of ecology of the state of
34 Washington and paid for out of the special fund provided for in RCW
35 90.24.050.

1 **Sec. 83.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to
2 read as follows:

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

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

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

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

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

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

37 (c) Subsections (4) and (5)(b) of this section do not apply to a
38 trust water right resulting from a donation for instream flows

1 described in RCW 90.38.020(1)(b) or from the lease of a water right
2 under RCW 90.38.020(6) if the period of the lease does not exceed five
3 years. However, the department shall provide the notice described in
4 (b) of this subsection the first time the trust water right resulting
5 from the donation is exercised.

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

9 **Sec. 84.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to
10 read as follows:

11 Applications for permits shall be made on forms prescribed by the
12 department and shall contain the name and address of the applicant, a
13 description of the applicant's operations, the quantity and type of
14 waste material sought to be disposed of, the proposed method of
15 disposal, and any other relevant information deemed necessary by the
16 department. Application for permits shall be made at least sixty days
17 prior to commencement of any proposed discharge or permit expiration
18 date, whichever is applicable. Upon receipt of a proper application
19 relating to a new operation, or an operation previously under permit
20 for which an increase in volume of wastes or change in character of
21 effluent is requested over that previously authorized, the department
22 shall instruct the applicant to publish notices thereof by such means
23 and within such time as the department shall prescribe. The department
24 shall require that the notice so prescribed shall be published twice in
25 a newspaper of general circulation within the county in which the
26 disposal of waste material is proposed to be made and in such other
27 appropriate information media as the department may direct. Said
28 notice shall include a statement that any person desiring to present
29 his or her views to the department with regard to said application may
30 do so in writing to the department, or any person interested in the
31 department's action on an application for a permit, may submit his or
32 her views or notify the department of his or her interest within thirty
33 days of the last date of publication of notice. Such notification or
34 submission of views to the department shall entitle said persons to a
35 copy of the action taken on the application. (~~Upon receipt by the~~
36 ~~department of an application, it shall immediately send notice thereof~~
37 ~~containing pertinent information to the director of fish and wildlife~~

1 ~~and to the secretary of social and health services.))~~ When an
2 application complying with the provisions of this chapter and the rules
3 and regulations of the department has been filed with the department,
4 it shall be its duty to investigate the application, and determine
5 whether the use of public waters for waste disposal as proposed will
6 pollute the same in violation of the public policy of the state.

7 **Sec. 85.** RCW 90.48.366 and 2011 c 122 s 9 are each amended to read
8 as follows:

9 (1) The department(~~(, in consultation with the departments of fish~~
10 ~~and wildlife and natural resources, and the parks and recreation~~
11 ~~commission,))~~ shall adopt rules establishing a compensation schedule
12 for the discharge of oil in violation of this chapter and chapter 90.56
13 RCW. The amount of compensation assessed under this schedule shall be:

14 (a) For spills totaling one thousand gallons or more in any one
15 event, no less than three dollars per gallon of oil spilled and no
16 greater than three hundred dollars per gallon of oil spilled; and

17 (b) For spills totaling less than one thousand gallons in any one
18 event, no less than one dollar per gallon of oil spilled and no greater
19 than one hundred dollars per gallon of oil spilled.

20 (2) Persistent oil recovered from the surface of the water within
21 forty-eight hours of a discharge must be deducted from the total spill
22 volume for purposes of determining the amount of compensation assessed
23 under the compensation schedule.

24 (3) The compensation schedule adopted under this section shall
25 reflect adequate compensation for unquantifiable damages or for damages
26 not quantifiable at reasonable cost for any adverse environmental,
27 recreational, aesthetic, or other effects caused by the spill and shall
28 take into account:

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

33 (b) The sensitivity of the affected area as determined by such
34 factors as:

35 (i) The location of the spill;

36 (ii) Habitat and living resource sensitivity;

37 (iii) Seasonal distribution or sensitivity of living resources;

1 (iv) Areas of recreational use or aesthetic importance;

2 (v) The proximity of the spill to important habitats for birds,
3 aquatic mammals, fish, or to species listed as threatened or endangered
4 under state or federal law;

5 (vi) Significant archaeological resources as determined by the
6 department of archaeology and historic preservation; and

7 (vii) Other areas of special ecological or recreational importance,
8 as determined by the department; and

9 (c) Actions taken by the party who spilled oil or any party liable
10 for the spill that:

11 (i) Demonstrate a recognition and affirmative acceptance of
12 responsibility for the spill, such as the immediate removal of oil and
13 the amount of oil removed from the environment; or

14 (ii) Enhance or impede the detection of the spill, the
15 determination of the quantity of oil spilled, or the extent of damage,
16 including the unauthorized removal of evidence such as injured fish or
17 wildlife.

18 **Sec. 86.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to
19 read as follows:

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

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

35 (i) Spartina treatment shall occur between June 1st and October
36 31st of each year unless the department(~~(, the department of~~
37 ~~agriculture, and the department of fish and wildlife agree to add))~~)

1 authorizes additional dates beyond this period, except that no aerial
2 application shall be allowed on July 4th or Labor Day and for ground
3 application on those days the applicator shall post signs at each
4 corner of the treatment area;

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

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

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

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

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

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

25 (2) Applicable requirements established in an option or options
26 recommended for controlling the noxious weed by a final environmental
27 impact statement published under chapter 43.21C RCW by the department
28 prior to May 5, 1995, by the department of agriculture, or by the
29 department of agriculture jointly with other state agencies shall be
30 considered guidelines for the purpose of granting the permits issued
31 under this chapter. This section may not be construed as requiring the
32 preparation of a new environmental impact statement to replace a final
33 environmental impact statement published before May 5, 1995, but
34 instead shall authorize the department of agriculture, as lead agency
35 for the control of spartina under RCW 17.26.015, to supplement, amend,
36 or issue addenda to the final environmental impact statement published
37 before May 5, 1995, which may assess the environmental impact of the

1 application of stronger concentrations of active ingredients, altered
2 application patterns, or other changes as the department of agriculture
3 deems appropriate.

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

14 (4) As used in this section, "aquatic noxious weed" means an
15 aquatic weed on the state noxious weed list adopted under RCW
16 17.10.080.

17 **Sec. 87.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read
18 as follows:

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

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

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

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

7 (5) Government entities using this section to apply 2,4-D may apply
8 for funds from the freshwater aquatic weeds account consistent with the
9 freshwater aquatic weeds management program as provided in RCW
10 43.21A.660.

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

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

17 **Sec. 88.** RCW 90.74.020 and 2012 c 62 s 4 are each amended to read
18 as follows:

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

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

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

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

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

1 mitigation needs of the infrastructure development or noninfrastructure
2 development, including proposals or portions of proposals that are
3 explored or developed in RCW 90.74.040.

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

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

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

18 (b) The compatibility of the proposal with the intent of broader
19 resource management and habitat management objectives and plans, such
20 as existing resource management plans, watershed plans, critical areas
21 ordinances, the forestry riparian easement program, the riparian open
22 space program, the family forest fish passage program, and shoreline
23 master programs;

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

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

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

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

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

1 **Sec. 89.** RCW 90.74.030 and 2012 c 62 s 7 are each amended to read
2 as follows:

3 (1) In making regulatory decisions relating to wetland or aquatic
4 resource mitigation, the department(~~(s)~~) of ecology (~~(and fish and~~
5 ~~wildlife)~~) shall, at the request of the project proponent, follow the
6 guidance of this chapter.

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

11 **Sec. 90.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended
12 to read as follows:

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

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

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

33 **Sec. 91.** RCW 90.90.020 and 2011 c 83 s 4 are each amended to read
34 as follows:

35 (1)(a) Water supplies secured through the development of new
36 storage facilities made possible with funding from the Columbia river

1 basin water supply development account, the Columbia river basin
2 taxable bond water supply development account, and the Columbia river
3 basin water supply revenue recovery account shall be allocated as
4 follows:

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

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

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

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

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

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

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

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

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

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

1 **Sec. 92.** RCW 90.90.030 and 2012 c 161 s 1 are each amended to read
2 as follows:

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

7 (2) Such agreements shall ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) "Lower Snake river mainstem" means all water in the lower Snake
38 river within the ordinary high water mark of the main channel of the

1 lower Snake river from the head of Ice Harbor pool to the confluence of
2 the Snake and Columbia rivers, and all groundwater within one mile of
3 the high water mark.

4 (12) This section expires June 30, 2018.

5 NEW SECTION. **Sec. 93.** RCW 77.55.121 is recodified as a section in
6 chapter 76.09 RCW.

7 NEW SECTION. **Sec. 94.** Section 15 of this act expires if the
8 requirements of section 215, chapter 1, Laws of 2012 1st sp. sess. are
9 met.

10 NEW SECTION. **Sec. 95.** Section 16 of this act takes effect if the
11 requirements of section 215, chapter 1, Laws of 2012 1st sp. sess. are
12 met.

13 NEW SECTION. **Sec. 96.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals--
16 Technical advisory committee--Implementation) and 1998 c 245 s 162 &
17 1993 sp.s. c 4 s 5;

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

20 (3) RCW 79.135.230 (Intensive management plan for geoducks) and
21 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

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

24 (5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717,
25 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

26 (6) RCW 79.145.030 (Coordinating implementation--Rules) and 2005 c
27 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

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

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

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

1 (10) RCW 76.09.160 (Right of entry by department of ecology) and
2 1974 ex.s. c 137 s 16; and

3 (11) RCW 77.12.360 (Withdrawal of state land from lease--
4 Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s
5 77.12.360.

--- END ---