
SUBSTITUTE SENATE BILL 5862

State of Washington

62nd Legislature

2011 Regular Session

By Senate Natural Resources & Marine Waters (originally sponsored by Senators Hargrove, Pridemore, and Swecker; by request of Department of Fish and Wildlife and Department of Natural Resources)

READ FIRST TIME 04/04/11.

1 AN ACT Relating to the administration of natural resources
2 programs; amending RCW 77.55.021, 77.15.300, 77.55.151, 77.55.231,
3 76.09.040, 76.09.050, 76.09.150, 76.09.065, and 76.09.030; reenacting
4 and amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new
5 sections to chapter 77.55 RCW; adding a new section to chapter 76.09
6 RCW; adding a new section to chapter 43.30 RCW; creating new sections;
7 repealing RCW 77.55.291; prescribing penalties; and providing an
8 expiration date.

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

10 **PART ONE**

11 **Hydraulic Project Approvals**

12 **Sec. 101.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and
13 amended to read as follows:

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

16 (1) "Bed" means the land below the ordinary high water lines of
17 state waters. This definition does not include irrigation ditches,

1 canals, storm water runoff devices, or other artificial watercourses
2 except where they exist in a natural watercourse that has been altered
3 artificially.

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

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

7 (4) "Date of receipt" has the same meaning as defined in RCW
8 43.21B.001.

9 (5) "Department" means the department of fish and wildlife.

10 (6) "Director" means the director of the department of fish and
11 wildlife.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (20) "Emergency permit" means a verbal hydraulic project approval
20 or the written follow-up to the verbal approval issued to a person
21 under RCW 77.55.021(12).

22 (21) "Expedited permit" means a hydraulic project approval issued
23 to a person under RCW 77.55.021 (14) and (16).

24 (22) "General permit" means a hydraulic project approval issued to
25 a person under RCW 77.55.021 for multiple hydraulic projects occurring
26 over a defined geographic area but for which specific project sites
27 have not been designated, and for which impacts are well understood and
28 proven mitigation measures exist.

29 (23) "Multiple site permit" means a hydraulic project approval
30 issued to a person under RCW 77.55.021 for hydraulic projects occurring
31 at more than one specific location and which includes site-specific
32 requirements.

33 (24) "Permit modification" means a hydraulic project approval
34 issued to a person under RCW 77.55.021 that extends, renews, or changes
35 the conditions of a previously issued hydraulic project approval.

36 (25) "Sandbar" means a ridge of sediment built up by water
37 currents.

1 (26) "Pamphlet hydraulic project" means a hydraulic project for the
2 removal or control of aquatic noxious weeds conducted under the aquatic
3 plants and fish pamphlet authorized by RCW 77.55.081, or for mineral
4 prospecting and mining conducted under the gold and fish pamphlet
5 authorized by RCW 77.55.091.

6 (27) "Channel migration zone" means the area along a stream or
7 river within which the channel can reasonably be predicted to migrate
8 over time.

9 (28) "One hundred year floodplain" means those areas subject to a
10 base (one hundred year) flood and designated as special flood hazard
11 areas on the most recent maps provided by the federal emergency
12 management agency for the national flood insurance program. Best
13 available information must be used if these maps are not available or
14 sufficient as determined by the federal emergency management agency.

15 (29) "Shoreline or streambank protection project" means the
16 physical armoring of any surface that is within or adjoins a body of
17 water using materials including, but not limited to, concrete, rock, or
18 woody material.

19 (30) "Forest practices hydraulic project" means a hydraulic project
20 that: Meets the criteria established in RCW 77.55.021(1)(a)(ii); and
21 requires a forest practices application under chapter 76.09 RCW.

22 **Sec. 102.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to
23 read as follows:

24 (1)(a)(i) Except as provided in RCW 77.55.031, 77.55.041, and
25 77.55.051(~~(7)~~) and (~~(77.55.041)~~) section 201 of this act, in the event
26 that any person (~~(or government agency)~~) desires to undertake a
27 hydraulic project meeting the requirements of (a)(ii) of this
28 subsection, the person (~~(or government agency)~~) shall(~~(, before~~
29 commencing work thereon,)) secure the approval of the department in the
30 form of a permit as to the adequacy of the means proposed for the
31 protection of fish life before conducting work on that project.

32 (ii) A person must secure the approval of the department only for
33 a hydraulic project:

34 (A) Conducted at or below the ordinary high water line; or

35 (B) Meeting both of the following:

36 (I) A dike, levee, bridge, shoreline or streambank protection
37 project, or mineral prospecting and mining activity; and

1 (II) Conducted within a channel migration zone, one hundred year
2 floodplain, or within two hundred feet landward of the ordinary high
3 water line.

4 (b) When issuing approval for hydraulic projects, the department
5 shall provide for the protection of fish life.

6 (2) Except for pamphlet hydraulic projects, a complete written
7 application for a permit ((may)) must be submitted ((in person or by
8 registered mail)) to the department and must contain the following:

9 ~~((General plans for the overall project;~~
10 ~~(b))) Complete plans and specifications ~~((of the proposed~~
11 ~~construction or work within the mean higher high water line in~~
12 ~~saltwater or within the ordinary high water line in freshwater)) for~~
13 the hydraulic project;~~

14 ~~((c) Complete plans and specifications)) (b) Proposed measures for~~
15 the proper protection of fish life; ((and

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

19 (d) Payment of all applicable application submittal and permit
20 processing fees charged by the department under section 103 of this
21 act.

22 (3) The department may establish direct billing accounts or other
23 funds transfer methods with permit applicants to satisfy the fee
24 payment requirements of section 103 of this act.

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

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

36 (6) Except as provided for emergency permits in subsection (12) of
37 this section, the department may not proceed with permit review until
38 all fees are paid in full as required in section 103 of this act.

1 ~~((3))~~ (7)(a) Protection of fish life is the only ground upon
2 which approval of a permit may be denied or conditioned. Approval of
3 a permit may not be unreasonably withheld or unreasonably conditioned.
4 Except as provided in this subsection and subsections ~~((8), (10),~~
5 ~~and))~~ (12) through (14) and (16) of this section, the department has
6 forty-five calendar days upon receipt of a complete application to
7 grant or deny approval of a permit. The forty-five day requirement is
8 suspended if:

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

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

13 (iii) The applicant requests a delay; or

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

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

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

23 ~~((4))~~ (8) If the department denies approval of a permit, the
24 department shall provide the applicant a written statement of the
25 specific reasons why and how the proposed project would adversely
26 affect fish life.

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

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

1 ~~((+5))~~ (9)(a) ~~((The permittee must demonstrate substantial~~
2 ~~progress on construction of that portion of the project relating to the~~
3 ~~permit within two years of the date of issuance.~~

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

7 ~~((+e))~~ (b) A permit remains in effect without need for periodic
8 renewal for hydraulic projects that divert water for agricultural
9 irrigation or stock watering purposes and that involve seasonal
10 construction or other work. A permit for streambank stabilization
11 projects to protect farm and agricultural land as defined in RCW
12 84.34.020 remains in effect without need for periodic renewal if the
13 problem causing the need for the streambank stabilization occurs on an
14 annual or more frequent basis. The permittee must notify the
15 appropriate agency before commencing the construction or other work
16 within the area covered by the permit.

17 ~~((+6))~~ (10) The department may, after consultation with the
18 permittee, modify a permit due to changed conditions. The modification
19 is appealable as provided in subsection ~~((+4))~~ (8) of this section.
20 For a hydraulic project~~((s))~~ that diverts water for agricultural
21 irrigation or stock watering purposes, ~~((or))~~ when the hydraulic
22 project or other work is associated with streambank stabilization to
23 protect farm and agricultural land as defined in RCW 84.34.020, the
24 burden is on the department to show that changed conditions warrant the
25 modification in order to protect fish life.

26 ~~((+7))~~ (11) A permittee may request modification of a permit due
27 to changed conditions. The request must be processed within forty-five
28 calendar days of receipt of the written request and payment of
29 applicable fees under section 103 of this act. A decision by the
30 department is appealable as provided in subsection ~~((+4))~~ (8) of this
31 section. For a hydraulic project~~((s))~~ that diverts water for
32 agricultural irrigation or stock watering purposes, ~~((or))~~ when the
33 hydraulic project or other work is associated with streambank
34 stabilization to protect farm and agricultural land as defined in RCW
35 84.34.020, the burden is on the permittee to show that changed
36 conditions warrant the requested modification and that such a
37 modification will not impair fish life.

1 ~~((+8))~~ (12)(a) The department, the county legislative authority,
2 or the governor may declare and continue an emergency. If the county
3 legislative authority declares an emergency under this subsection, it
4 shall immediately notify the department. A declared state of emergency
5 by the governor under RCW 43.06.010 shall constitute a declaration
6 under this subsection.

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

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

19 (d) The department may not charge a person requesting an emergency
20 permit any of the fees authorized by section 103 of this act until
21 after the emergency permit is issued and reduced to writing.

22 ~~((+9))~~ (13) All state and local agencies with authority under this
23 chapter to issue permits or other authorizations in connection with
24 emergency water withdrawals and facilities authorized under RCW
25 43.83B.410 shall expedite the processing of such permits or
26 authorizations in keeping with the emergency nature of such requests
27 and shall provide a decision to the applicant within fifteen calendar
28 days of the date of application.

29 ~~((+10))~~ (14) The department or the county legislative authority
30 may determine an imminent danger exists. The county legislative
31 authority shall notify the department, in writing, if it determines
32 that an imminent danger exists. In cases of imminent danger, the
33 department shall issue an expedited written permit, upon request, for
34 work to remove any obstructions, repair existing structures, restore
35 banks, protect fish resources, or protect property. Expedited permit
36 requests require a complete written application as provided in
37 subsection (2) of this section and must be issued within fifteen
38 calendar days of the receipt of a complete written application.

1 Approval of an expedited permit is valid for up to sixty days from the
2 date of issuance. The department may not require the provisions of the
3 state environmental policy act, chapter 43.21C RCW, to be met as a
4 condition of issuing a permit under this subsection.

5 ~~((+11+))~~ (15)(a) For any property, except for property located on
6 a marine shoreline, that has experienced at least two consecutive years
7 of flooding or erosion that has damaged or has threatened to damage a
8 major structure, water supply system, septic system, or access to any
9 road or highway, the county legislative authority may determine that a
10 chronic danger exists. The county legislative authority shall notify
11 the department, in writing, when it determines that a chronic danger
12 exists. In cases of chronic danger, the department shall issue a
13 permit, upon request, for work necessary to abate the chronic danger by
14 removing any obstructions, repairing existing structures, restoring
15 banks, restoring road or highway access, protecting fish resources, or
16 protecting property. Permit requests must be made and processed in
17 accordance with subsections (2) and ~~((+3+))~~ (7) of this section.

18 (b) Any projects proposed to address a chronic danger identified
19 under (a) of this subsection that satisfies the project description
20 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
21 of the state environmental policy act, chapter 43.21C RCW. However,
22 the project is subject to the review process established in RCW
23 77.55.181(3) as if it were a fish habitat improvement project.

24 ~~((+12+))~~ (16) The department may issue an expedited written permit
25 in those instances where normal permit processing would result in
26 significant hardship for the applicant or unacceptable damage to the
27 environment. Expedited permit requests require a complete written
28 application as provided in subsection (2) of this section and must be
29 issued within fifteen calendar days of the receipt of a complete
30 written application. Approval of an expedited permit is valid for up
31 to sixty days from the date of issuance. The department may not
32 require the provisions of the state environmental policy act, chapter
33 43.21C RCW, to be met as a condition of issuing a permit under this
34 subsection.

35 NEW SECTION. **Sec. 103.** A new section is added to chapter 77.55
36 RCW to read as follows:

37 (1)(a) Except as otherwise provided in this section, the department

1 shall charge a one hundred fifty dollar submittal fee and a processing
2 fee, established by the department consistent with this section, for
3 all hydraulic project permits issued under RCW 77.55.021, to recover a
4 portion of the costs for processing and issuing decisions on permit
5 notifications and applications, administering fee collections, and
6 compliance and effectiveness monitoring and enforcement of projects
7 requiring a permit.

8 (b) The department shall charge a seventy-five dollar submittal fee
9 for single site low complexity hydraulic project permits.

10 (c) The department may not charge a submittal fee for permit
11 modifications or renewal of a general permit that relates to the same
12 project types and defined geographic area as the initial permit.

13 (2) When assessing fees for permits under this section, the
14 department must categorize the following hydraulic projects as low
15 complexity:

16 (a) Anchoring or mooring buoys and navigation aids;

17 (b) Water crossing structures in nonfish bearing waters
18 (maintenance or repair);

19 (c) Bridge repair or maintenance above the ordinary high water line
20 (cleaning, painting, or redecking);

21 (d) Conduit crossing using boring;

22 (e) Boat ramps or launches within the existing footprint
23 (maintenance, repair, or replacement);

24 (f) Temporary or permanent stream gauges or scientific instruments;

25 (g) Boom (installation or maintenance);

26 (h) Existing overwater structure within the existing footprint, not
27 including marinas or marine terminals (maintenance or repair);

28 (i) Beaver dam work;

29 (j) Riparian habitat (maintenance or repair);

30 (k) Existing outfall (maintenance or repair);

31 (l) Aquaculture (maintenance or repair);

32 (m) Habitat freshwater beach creation (maintenance or repair);

33 (n) Shoreline armoring or bank protection (maintenance or repair);

34 (o) Breeding substrate (maintenance or repair);

35 (p) Large woody material (maintenance or repair);

36 (q) Wetland and estuarine habitat work (maintenance or repair);

37 (r) Dredging of less than fifty cubic yards (maintenance or
38 repair);

1 (s) Boat lifts or railway launches (maintenance or repair);
2 (t) Existing pilings (maintenance or repair);
3 (u) Pump water diversions and fish screens (maintenance or repair);
4 (v) Gravity water diversions and fish screens (maintenance or
5 repair);
6 (w) Tidegates (maintenance or repair); and
7 (x) Temporary water crossing structures installed and removed
8 within one season in fish-bearing waters.
9 (3) When assessing fees for permits under this section, the
10 department must categorize the following hydraulic projects as medium
11 complexity:
12 (a) Water crossing structures in fish-bearing waters (maintenance
13 or repair);
14 (b) Aquaculture;
15 (c) Habitat freshwater beach creation (new, replacement, or
16 removal);
17 (d) Shoreline armoring or bank protection of less than one hundred
18 feet in length (new, replacement, or removal);
19 (e) Jetties, dikes, or levees (maintenance or repair);
20 (f) Breeding substrate (new, replacement, or removal);
21 (g) Large woody material (removal, placement, or repositioning);
22 (h) Off channel, side channel, or in channel enhancement or
23 restoration work (maintenance or repair);
24 (i) Riparian habitat work (new, replacement, or removal);
25 (j) Bed modification excluding enhancement (maintenance or repair);
26 (k) Channel realignment in fish-bearing waters (maintenance or
27 repair);
28 (l) Conduit and cable work using trenching (new, replacement, or
29 removal);
30 (m) Dredging of less than fifty cubic yards (new);
31 (n) Fish passage barrier removal with replacement or retrofit using
32 methods such as baffles or log controls for passage through or over a
33 structure;
34 (o) Fish passage not associated with a water crossing structure
35 such as to bypass a natural barrier or a dam;
36 (p) Boat lifts and railway launches (new, replacement, and
37 removal);

1 (q) Boat ramps or launches outside of the footprint of any existing
2 (new, replacement, or removal);
3 (r) Work on pilings (new, replacement, or removal);
4 (s) Pump water diversions or fish screens (new, replacement, or
5 removal);
6 (t) Gravity water diversions or fish screens (new, replacement, or
7 removal);
8 (u) Outfalls (new, replacement, or removal);
9 (v) Tidegates (new, replacement, or removal);
10 (w) Mechanical aquatic plant control that is not a pamphlet
11 hydraulic project;
12 (x) Overwater structure outside of the footprint of any existing
13 structure, not including marinas or marine terminals (new or
14 replacement);
15 (y) Marinas or marine terminals (maintenance or repair);
16 (z) Dams not under jurisdiction of the federal energy regulatory
17 commission (maintenance or repair);
18 (aa) New water crossing structures in nonfish-bearing waters (new,
19 replacement, or removal); and
20 (bb) Temporary water crossing structures present for multiple
21 seasons in fish-bearing waters.
22 (4) When assessing fees for permits under this section, the
23 department must categorize the following hydraulic projects as high
24 complexity:
25 (a) Water crossing structures in fish-bearing waters (new,
26 replacement, removal, or modification);
27 (b) Shoreline armoring or bank protection of greater than one
28 hundred feet in length (new, replacement, or removal);
29 (c) Jetties, dikes, or levees (new, replacement, or removal);
30 (d) Off channel, side channel, or in channel enhancement or
31 restoration work (new, replacement, or removal);
32 (e) Wetland or estuarine habitat work (new, replacement, or
33 removal);
34 (f) Bed modification excluding enhancement (new, replacement, or
35 removal);
36 (g) Channel realignment in fish-bearing waters (new, replacement,
37 or removal);

1 (h) Dredging of more than fifty cubic yards (new, replacement,
2 removal, or maintenance);

3 (i) Fish passage barrier removal with replacement or retrofit using
4 methods such as baffles or log controls for passage through or over a
5 structure (new, replacement, or removal);

6 (j) Fish passage not associated with a water crossing structure
7 such as to bypass a natural barrier or a dam (new, replacement, or
8 removal);

9 (k) Marinas or marine terminals (new, replacement, or removal);

10 (l) Dams not under jurisdiction of the federal energy regulatory
11 commission (new, replacement, or removal);

12 (m) New project types not identified as low or medium complexity;
13 and

14 (n) Perpetual agriculture hydraulic projects.

15 (5) If the department receives applications for project types not
16 identified in subsections (2) through (4) of this section, it shall
17 categorize them as low, medium, or high complexity and charge fees
18 based on those categories consistent with the most similar project
19 types identified in subsections (2) through (4) of this section.

20 (6)(a) Unless the department establishes a lower fee consistent
21 with this section, a hydraulic project permit application must be
22 assessed one of the following processing fees:

23 (i) Seventy-five dollars for a single site low complexity hydraulic
24 project;

25 (ii) Five hundred dollars for a single site medium complexity
26 hydraulic project;

27 (iii) One thousand one hundred fifty dollars for a single site high
28 complexity hydraulic project;

29 (iv) For a multiple site permit, the applicable permit processing
30 fee assessed under this subsection for one of the hydraulic project
31 sites identified in the permit application, and twenty percent of the
32 applicable permit processing fee assessed under this subsection for
33 each additional site; and

34 (v) Four thousand eight hundred fifty dollars for a general permit
35 authorizing up to three types of hydraulic projects, and twenty percent
36 of the applicable permit processing fee assessed under this subsection
37 for each additional type of hydraulic project. The fee charged for

1 renewal of a general permit that relates to the same project types and
2 defined geographic area as the initial permit is one hundred dollars.

3 (b) An application for mineral prospecting and mining activities is
4 exempt from permit processing fees.

5 (7) In cases where hydraulic projects include work that falls into
6 more than one of the permit categories outlined in this section, the
7 fee charged must be based on the most complex component of the project.

8 (8) Unless the department establishes a lower fee consistent with
9 this section, all permit modifications must be assessed a one hundred
10 dollar processing fee, except for those modified under RCW
11 77.55.021(10), and those for mineral prospecting and mining activities.

12 (9) The following hydraulic projects are exempt from all fees
13 listed under this section:

14 (a) Approved fish habitat enhancement projects authorized under RCW
15 77.55.181;

16 (b) Hydraulic projects approved under applicant-funded contracts
17 with the department that pay for the costs of processing those
18 projects; and

19 (c) Projects approved under the cost-sharing program for fish
20 passage barriers authorized under RCW 76.13.150.

21 (10) The fees assessed in this section must be based on the scale
22 and complexity of the project and the relative effort required for
23 department staff to review the application, conduct site visits, and
24 consult with applicants as necessary. As such, at its discretion, the
25 department may reduce the fees charged to a person under this section
26 when the work required by the department to receive and process that
27 person's application or modify a permit is substantially less than
28 typically required. Decisions made by the department under this
29 subsection are not subject to appeal under RCW 77.55.021(8).

30 (11) The department shall refund fifty percent of the permit
31 processing fee to any person that properly applies for any permit or
32 permit modification under RCW 77.55.021 if the department:

33 (a) Fails to process the application or request within the
34 timelines required by RCW 77.55.021; or

35 (b) Denies the permit because the proposed project would adversely
36 affect fish life.

37 (12) The department shall refund one hundred percent of all fees
38 if:

1 (a) No permit is required for the proposed work; or

2 (b) The hydraulic project is exempted from substantial development
3 permit requirements under RCW 90.58.147 and the project proponent
4 provides to the department a copy of the letter documenting exemption
5 approval by the local government.

6 (13) On September 30th of each year, the department shall calculate
7 adjusted fees by the rate of inflation. The adjusted fees must be
8 calculated to the nearest dollar using the consumer price index for the
9 twelve months prior to each September 1st as calculated by the United
10 States department of labor. Each adjusted fee calculated under this
11 section takes effect on the following January 1st.

12 (14) All fees collected under this section must be deposited in the
13 hydraulic project approval account created in section 106 of this act.

14 NEW SECTION. **Sec. 104.** A new section is added to chapter 77.55
15 RCW to read as follows:

16 To ensure that all hydraulic project approvals provide for the
17 protection of fish life, by January 1, 2012, the department shall
18 develop and implement a program to monitor the effectiveness of the
19 approvals it grants under this chapter. For the purposes of this
20 chapter, effectiveness monitoring must evaluate if project standards
21 are adequate to protect overall fish life. If the department
22 identifies approvals that do not meet standards and provide for
23 protection of fish life, the department shall use adaptive management
24 principles to ensure protection under this chapter.

25 NEW SECTION. **Sec. 105.** (1) By December 31, 2013, the department
26 of fish and wildlife shall report to the legislature consistent with
27 RCW 43.01.036 on the impact of fee collection on the department's
28 hydraulic project approval permit program, and recommendations,
29 developed in consultation with affected stakeholders, for improving the
30 department's permit streamlining efforts and permit fee schedule.

31 (2) This section expires July 31, 2014.

32 NEW SECTION. **Sec. 106.** A new section is added to chapter 77.55
33 RCW to read as follows:

34 (1) The hydraulic project approval account is created in the state

1 treasury. All receipts from submittal fees and permit processing fees
2 for hydraulic project approval applications collected under section 103
3 of this act must be deposited into the account.

4 (2) Except for unanticipated receipts under RCW 43.79.260 through
5 43.79.282, moneys in the hydraulic project approval account may be
6 spent only after appropriation.

7 (3) Expenditures from the hydraulic project approval account may be
8 used only to fund department activities relating to processing and
9 issuing hydraulic project approval decisions, compliance and
10 effectiveness monitoring, enforcement activities related to this
11 chapter, conducting informal appeals or participating in administrative
12 or judicial appeals of hydraulic project approval decisions, providing
13 technical assistance by biologists and environmental engineers on
14 project design and implementation that provides for the protection of
15 fish life, and for the associated management and administrative costs
16 incurred to implement and operate the hydraulic project approval
17 program.

18 **Sec. 107.** RCW 77.15.300 and 2000 c 107 s 239 are each amended to
19 read as follows:

20 (1) A person is guilty of unlawfully undertaking hydraulic project
21 activities if the person (~~constructs any form of hydraulic project or~~
22 ~~performs other work on a hydraulic project and:~~

23 ~~(a) Fails to have a hydraulic project approval required under~~
24 ~~chapter 77.55 RCW for such construction or work; or~~

25 ~~(b) Violates any requirements or conditions of the hydraulic~~
26 ~~project approval for such construction or work.~~

27 ~~(2) Unlawfully undertaking hydraulic project activities is a gross~~
28 ~~misdemeanor)):~~

29 (a) Constructs any form of hydraulic project or performs other work
30 on a hydraulic project that requires a hydraulic project approval under
31 chapter 77.55 RCW and fails to have a hydraulic project approval for
32 the construction or work;

33 (b) Violates any requirements or conditions of the hydraulic
34 project approval for the construction or other activities;

35 (c) Violates any notice to comply or stop work order issued under
36 section 108 of this act; or

1 (d) Violates any department rule that identifies the conditions
2 under which a hydraulic project is approved.

3 (2) Violation of a notice to comply or a stop work order under
4 section 108 of this act must be punished as a separate offense from the
5 underlying hydraulic code violation.

6 (3) Unlawfully undertaking hydraulic project activities is a gross
7 misdemeanor.

8 (4) Notwithstanding the provisions of subsection (3) of this
9 section, the commission may by rule identify certain acts that violate
10 the hydraulic code as being of minimal impact to fish life, and may
11 classify these acts, on an individual basis, as infractions, punishable
12 under RCW 77.15.160 and chapter 7.84 RCW.

13 (5) Nothing in this section applies to a forest practices hydraulic
14 project or to any activities that are associated with such a project.

15 NEW SECTION. Sec. 108. A new section is added to chapter 77.55
16 RCW to read as follows:

17 (1)(a) The department may issue a notice to comply or a stop work
18 order to a person who:

19 (i) Constructs any form of hydraulic project or performs other work
20 on a hydraulic project that requires a hydraulic project approval under
21 this chapter and fails to have a hydraulic project approval for the
22 construction or work;

23 (ii) Violates any requirements or conditions of the hydraulic
24 project approval for the construction or other activities; or

25 (iii) Violates any department rule that identifies the conditions
26 under which a hydraulic project is approved.

27 (b) The notice to comply may require that the person take
28 corrective action to prevent, correct, or mitigate for adverse impacts
29 to fish life. The notice to comply must:

30 (i) Be served upon the person and any known agents and applicants;

31 (ii) Specify the nature, extent, date, and time of the violation;

32 (iii) Specify any necessary corrective action; and

33 (iv) Specify the right of the person to an appeal.

34 (c) The stop work order may require that the person stop all work
35 connected with the violation or stop work until corrective action is
36 taken. A stop work order is effective immediately and remains in

1 effect until withdrawn by the department or the board orders otherwise.

2 The stop work order must:

3 (i) Be served upon the person and any known agents;

4 (ii) Specify the nature, extent, date, and time of the violation;

5 (iii) Include an order to stop all work connected with the
6 violation;

7 (iv) Specify any necessary action before work may resume; and

8 (v) Specify the right of the person to an appeal.

9 (d) Within thirty days from the date of receipt of a notice to
10 comply or stop work order issued under this section, a person may file
11 a written request appealing the notice or order to the board.

12 (e) A notice to comply or stop work order may be informally
13 appealed to the department within thirty days from the date of receipt
14 of the decision. Requests for informal appeals must be filed in the
15 form and manner prescribed by the department by rule. A notice to
16 comply or stop work order that has been informally appealed to the
17 department is appealable to the board within thirty days from the date
18 of receipt of the department's decision on the informal appeal.

19 (2)(a) Consistent with the penalty schedule described in this
20 subsection, the department may levy civil penalties of up to:

21 (i) Two thousand five hundred dollars for a violation of this
22 chapter or rules adopted under this chapter relating to a hydraulic
23 project categorized or that would be categorized as a low complexity
24 hydraulic project under section 103 of this act;

25 (ii) Five thousand dollars for a violation of this chapter or rules
26 adopted under this chapter relating to a hydraulic project categorized
27 or that would be categorized as a medium complexity hydraulic project
28 under section 103 of this act; and

29 (iii) Ten thousand dollars for a violation of this chapter or rules
30 adopted under this chapter relating to a hydraulic project categorized
31 or that would be categorized as a high complexity hydraulic project
32 under section 103 of this act.

33 (b) Each and every violation of this chapter or rules adopted under
34 this chapter is a separate and distinct civil offense.

35 (c) The penalty provided must be imposed by notice in writing by
36 the department describing the violation. The civil penalty notice must
37 specify the:

38 (i) Basis for the penalty and the amount levied; and

1 (ii) Right of the person to an appeal.

2 (d) Within thirty days from the date of receipt of a civil penalty
3 order issued under this section, a person may file a written request
4 appealing the order to the board.

5 (e) Issuance of a civil penalty may be informally appealed to the
6 department within thirty days from the date of receipt of the penalty.
7 Requests for informal appeal must be filed in the form and manner
8 prescribed by the department by rule. A civil penalty that has been
9 informally appealed to the department is appealable to the board within
10 thirty days from the date of receipt of the department's decision on
11 the informal appeal.

12 (f) The penalty imposed becomes due and payable thirty days after
13 receipt of a notice imposing the penalty unless an appeal is filed.
14 Whenever an appeal of any penalty incurred under this chapter is filed,
15 the penalty becomes due and payable only upon completion of all
16 administrative and judicial review proceedings and the issuance of a
17 final decision confirming the penalty in whole or in part. When the
18 penalty becomes past due, it is also subject to interest at the rate
19 allowed by RCW 43.17.240 for debts owed to the state.

20 (g) If the amount of any penalty is not paid within thirty days
21 after it becomes due and payable, the attorney general, upon the
22 request of the director, shall bring an action in the name of the state
23 of Washington in the superior court of Thurston county or of any county
24 in which the violator may do business, to recover the penalty. In all
25 such actions, the procedure and rules of evidence are the same as an
26 ordinary civil action. All penalties received or recovered by state
27 agency action for violations as prescribed in subsection (1) of this
28 section must be deposited in the hydraulic project approval account as
29 described in section 106 of this act. The department is also entitled
30 to recover reasonable attorneys' fees and costs incurred in connection
31 with the penalty.

32 (h) The department shall establish by rule a penalty schedule. The
33 schedule must be developed in consideration of the following:

34 (i) Previous violation history;

35 (ii) Severity of the impact on fish and fish habitat;

36 (iii) Whether the violation of this chapter or its rules was
37 intentional;

38 (iv) Cooperation with the department;

1 (v) Reparability of the adverse effect from the violation; and
2 (vi) The extent to which a penalty to be imposed on a person for a
3 violation committed by another should be reduced if the person was
4 unaware of the violation and has not received a substantial economic
5 benefit from the violation.

6 (3) The department may apply for an administrative inspection
7 warrant in either Thurston county superior court or the superior court
8 in the county where the project is located. The court may issue an
9 administrative inspection warrant where:

10 (a) Department personnel need to inspect the project site to ensure
11 that a person:

12 (i) Possesses a hydraulic project approval required under this
13 chapter for the construction of any form of hydraulic project or
14 performance of other work on a hydraulic project;

15 (ii) Complies with any requirements or conditions of the hydraulic
16 project approval for the construction or other activities;

17 (iii) Complies with any notice to comply or stop work order issued
18 under subsection (1) of this section; or

19 (iv) Complies with any department rule that identifies the
20 conditions under which a hydraulic project is approved; or

21 (b) Department personnel have reasonable cause to believe that a
22 person:

23 (i) Is constructing or has constructed any form of hydraulic
24 project or performs other work on a hydraulic project and fails to have
25 a hydraulic project approval required under this chapter for the
26 construction or work;

27 (ii) Is violating or has violated any requirements or conditions of
28 the hydraulic project approval for the construction or other
29 activities;

30 (iii) Is violating or has violated any notice to comply or stop
31 work order issued under subsection (1) of this section; or

32 (iv) Is violating or has violated any department rule that
33 identifies the conditions under which a hydraulic project is approved.

34 (4) Nothing in this section applies to a forest practices hydraulic
35 project or to any activities that are associated with such a project.

36 **Sec. 109.** RCW 77.55.151 and 2005 c 146 s 502 are each amended to
37 read as follows:

1 ~~(1) ((For a marina or marine terminal in existence on June 6, 1996,~~
2 ~~or a marina or marine terminal that has received a permit for its~~
3 ~~initial construction, a renewable, five-year permit shall be issued,~~
4 ~~upon request, for regular maintenance activities of the marina or~~
5 ~~marine terminal.~~

6 ~~(2) Upon construction of a new marina or marine terminal that has~~
7 ~~received a permit, a renewable, five-year permit shall be issued, upon~~
8 ~~request, for regular maintenance activities of the marina or marine~~
9 ~~terminal.~~

10 ~~(3) For the purposes of this section, regular maintenance~~
11 ~~activities are only those activities necessary to restore the marina or~~
12 ~~marine terminal to the conditions approved in the initial permit.~~
13 ~~These activities may include, but are not limited to, dredging, piling~~
14 ~~replacement, and float replacement.~~

15 ~~(4))~~ Upon application under RCW 77.55.021, the department shall
16 issue a renewable, five-year general permit to a marina or marine
17 terminal for its regular maintenance activities identified in the
18 application.

19 (2) For the purposes of this section, regular maintenance
20 activities may include, but are not limited to:

21 (a) Maintenance, repair, or replacement of a boat ramp, launch, or
22 float within the existing footprint;

23 (b) Maintenance or repair of an existing overwater structure within
24 the existing footprint;

25 (c) Maintenance or repair of boat lifts or railway launches;

26 (d) New, maintenance, or removal of pilings;

27 (e) Dredging of less than fifty cubic yards;

28 (f) Maintenance or repair of shoreline armoring or bank protection;

29 (g) Maintenance or repair of wetland, riparian, or estuarine
30 habitat; and

31 (h) Maintenance or repair of an existing outfall.

32 (3) The five-year permit must include a requirement that a
33 fourteen-day notice be given to the department before regular
34 maintenance activities begin.

35 (4) A permit under this section is subject to the fee for a general
36 permit provided in section 103 of this act.

1 NEW SECTION. **Sec. 110.** A new section is added to chapter 77.55
2 RCW to read as follows:

3 (1) By December 31, 2011, the department must make examples of
4 complete, high quality applications and the resulting issued hydraulic
5 project approvals readily available to the public on its internet site,
6 as well as the internet site of the office of regulatory assistance
7 established in RCW 43.42.010.

8 (2) The department must regularly review and update the examples
9 required to be made available on the internet under subsection (1) of
10 this section.

11 (3) The department must obtain the written permission of a permit
12 applicant or permittee before making publicly available that applicant
13 or permittee's application or permit and must work cooperatively with
14 the permit applicant or permittee to ensure that no personal or
15 proprietary information is made available.

16 **Sec. 111.** RCW 77.55.231 and 2005 c 146 s 601 are each amended to
17 read as follows:

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

23 (2) The permit must contain provisions allowing for minor
24 modifications to the plans and specifications without requiring
25 reissuance of the permit.

26 (3) The permit must contain provisions that allow for minor
27 modifications to the required work timing without requiring the
28 reissuance of the permit. Minor modifications to the required work
29 timing means a minor deviation from the timing window set forth in the
30 permit when there are no spawning or incubating fish present within the
31 vicinity of the project.

32 NEW SECTION. **Sec. 112.** A new section is added to chapter 77.55
33 RCW to read as follows:

34 The department shall prepare and distribute technical and
35 educational information to the general public to assist the public in
36 complying with the requirements of this chapter.

1 (1) The department retains its authority to manage and protect the
2 state's fish resources as provided under this title, this chapter, this
3 section, and sections 203 through 205 of this act.

4 (2) The department shall notify the forest practices board when
5 rule making regarding the protection of fish life within fish-bearing
6 waters is being considered by the commission.

7 (3)(a) The department may review and provide comments on any forest
8 practices applications. The department's review may include a site
9 visit. Prior to commenting and whenever reasonably practicable, the
10 department shall communicate with the applicant regarding the substance
11 of the project. Any comments must be submitted within thirty days of
12 the date the forest practices application is accepted as complete by
13 the department of natural resources.

14 (b) The department shall review forest practices applications and
15 conduct a review of any forest practices hydraulic projects consistent
16 with the determination of the forest practices board under section 204
17 of this act.

18 (c) For a review under (b) of this subsection, the department of
19 natural resources must provide additional weight to any comments made
20 by the department following a site visit.

21 (4) The department shall participate in effectiveness monitoring
22 for forest practices hydraulic projects through its role in the review
23 processes provided under WAC 222-08-160 as it existed on the effective
24 date of this section.

25 (5) Nothing in this section provides for the department to assume
26 authority over approval, disapproval, or conditioning of forest
27 practices applications submitted under chapter 76.09 RCW. Authority
28 over these applications rests with the department of natural resources
29 under chapter 76.09 RCW.

30 (6) Nothing in this chapter authorizes the department to exercise
31 enforcement authority regarding a forest practices hydraulic project or
32 for any activities that are associated with such a project. The
33 department of natural resources shall exercise enforcement authority
34 over these projects under the authority of chapter 76.09 RCW.

35 **Sec. 203.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to
36 read as follows:

37 (1)(a) Where necessary to accomplish the purposes and policies

1 stated in RCW 76.09.010, and to implement the provisions of this
2 chapter, the board shall adopt forest practices rules pursuant to
3 chapter 34.05 RCW and in accordance with the procedures enumerated in
4 this section that:

5 (i) Establish minimum standards for forest practices;

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

11 (iii) Set forth necessary administrative provisions;

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

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

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

20 (c) Forest practices rules shall be administered and enforced by
21 either the department or the local governmental entity as provided in
22 this chapter. Such rules shall be adopted and administered so as to
23 give consideration to all purposes and policies set forth in RCW
24 76.09.010.

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

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

1 (ii) After the expiration of the thirty day period, the board, and
2 the department of ecology with respect to proposed rules relating to
3 water quality protection, shall jointly hold one or more hearings on
4 the proposed rules pursuant to chapter 34.05 RCW. Any county
5 representative may propose specific forest practices rules relating to
6 problems existing within the county at the hearings.

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

10 (3)(a) The board shall integrate into the forest practices rules
11 those portions of chapter 220-110 WAC, as it existed on the effective
12 date of this section, that are applicable to activities regulated under
13 the forest practices rules.

14 (b) Thereafter, upon notification by the department of fish and
15 wildlife of changes to those portions of chapter 220-110 WAC that are
16 applicable to activities regulated under the forest practices rules,
17 the board shall integrate those changes into the forest practices
18 rules.

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

1 shall provide for the management of the lands for ecological protection
2 or fisheries enhancement. For the purposes of conservation easements
3 entered into under this section, the following apply:

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

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

25 (b) Subject to appropriations sufficient to cover the cost of such
26 an acquisition program and the related costs of administering the
27 program, the department must establish a conservation easement in land
28 that an owner tenders for purchase; provided that such lands have been
29 taxed as forest lands and are located within an unconfined channel
30 migration zone or contain critical habitat for threatened or endangered
31 species as designated by the board. Lands acquired under this section
32 shall become riparian or habitat open space. These acquisitions shall
33 not be deemed to trigger the compensating tax of chapters 84.33 and
34 84.34 RCW.

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

37 (d) Any acquired interest in qualifying lands by the state under

1 this section shall be managed as riparian open space or critical
2 habitat.

3 NEW SECTION. **Sec. 204.** A new section is added to chapter 76.09
4 RCW to read as follows:

5 (1) The board shall:

6 (a)(i) Integrate into the forest practices rules those portions of
7 chapter 220-110 WAC, as it existed on the effective date of this
8 section, that are applicable to activities regulated under the forest
9 practices rules as required under RCW 76.09.040; and

10 (ii) Thereafter, upon notification by the department of fish and
11 wildlife of changes to those portions of chapter 220-110 WAC that are
12 applicable to activities regulated under the forest practices rules,
13 integrate those changes into the forest practices rules as required
14 under RCW 76.09.040;

15 (b) Establish and maintain technical guidance to supplement the
16 rules the board must integrate as required under RCW 76.09.040. The
17 guidance must include best management practices and common
18 prescriptions for forest practices hydraulic projects. The board must
19 include this guidance in the manual maintained pursuant to WAC 222-12-
20 090 as it existed on the effective date of this section; and

21 (c) Determine those types of forest practices hydraulic projects
22 that must be reviewed by the department of fish and wildlife. The
23 board shall determine that review by the department of fish and
24 wildlife is required for a project type if it affects fish-bearing
25 waters and poses a significant risk to fish or fish habitat. In
26 determining project types that pose a significant risk, the board shall
27 limit its consideration to projects meeting one or more of the
28 following criteria:

29 (i) The presence of fish listed as threatened or endangered under
30 the federal endangered species act, 16 U.S.C. 1531 et seq.;

31 (ii) The importance of affected habitat to one or more fish
32 populations; and

33 (iii) Whether the project involves uncommon terrain, new or
34 uncommon forest practices methods or equipment, or other factors for
35 which habitat impacts are not well understood.

36 (2) For each of the requirements of this section, the board shall
37 direct the timber, fish, and wildlife policy committee, as described in

1 WAC 222-12-045 as it existed on the effective date of this section, to
2 develop recommendations for its consideration and adoption. The
3 requirements of this section are not subject to the adaptive management
4 process established under RCW 76.09.370(7).

5 (3) The board must complete the requirements of subsection
6 (1)(a)(i) and (c) of this section and the initial guidance required
7 under subsection (1)(b) of this section by December 31, 2011.

8 NEW SECTION. **Sec. 205.** A new section is added to chapter 77.55
9 RCW to read as follows:

10 (1) The department and the department of natural resources shall
11 enter into and maintain a memorandum of agreement between the two
12 agencies that describes how to implement integration of hydraulic
13 project approvals into forest practices applications consistent with
14 this act.

15 (2) The initial memorandum of agreement between the two departments
16 must be executed by October 31, 2011. The memorandum of agreement may
17 be amended as agreed to by the two departments.

18 **Sec. 206.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to
19 read as follows:

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

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

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

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

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

6 (b) Which ~~((require approvals under the provisions of the~~
7 ~~hydraulics act, RCW 77.55.021))~~ include a forest practices hydraulic
8 project and require adherence to forest practices rules integrated
9 under RCW 76.09.040(3);

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

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

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

15 Class III: Forest practices other than those contained in Class I,
16 II, or IV. A Class III application must be approved or disapproved by
17 the department within thirty calendar days from the date the department
18 receives the application, except that the department has forty-five
19 calendar days to approve or disapprove an application that includes a
20 forest practices hydraulic project. However, the applicant may not
21 begin work on that forest practice until all forest practice fees
22 required under RCW 76.09.065 have been received by the department;

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

1 impact on the environment and therefore require an evaluation by the
2 department as to whether or not a detailed statement must be prepared
3 pursuant to the state environmental policy act, chapter 43.21C RCW.
4 Such evaluation shall be made within ten days from the date the
5 department receives the application: PROVIDED, That nothing herein
6 shall be construed to prevent any local or regional governmental entity
7 from determining that a detailed statement must be prepared for an
8 action pursuant to a Class IV forest practice taken by that
9 governmental entity concerning the land on which forest practices will
10 be conducted. A Class IV application must be approved or disapproved
11 by the department within thirty calendar days from the date the
12 department receives the application, (~~unless the department determines
13 that a detailed statement must be made, in which case the application
14 must be approved or disapproved by the department within sixty calendar
15 days from the date the department receives the application, unless the
16 commissioner of public lands, through the promulgation of a formal
17 order, determines that the process cannot be completed within such
18 period~~) except that the department must: Approve or disapprove an
19 application that includes a forest practices hydraulic project within
20 forty-five calendar days from the date the department receives the
21 application; and approve or disapprove an application within sixty
22 calendar days from the date the department receives the application if
23 the department determines that a detailed statement must be made,
24 unless the commissioner of public lands, through the promulgation of a
25 formal order, determines that the process cannot be completed within
26 such a period. However, the applicant may not begin work on that
27 forest practice until all forest practice fees required under RCW
28 76.09.065 have been received by the department.

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

32 (2) Except for those forest practices being regulated by local
33 governmental entities as provided elsewhere in this chapter, no Class
34 II, Class III, or Class IV forest practice shall be commenced or
35 continued after January 1, 1975, unless the department has received a
36 notification with regard to a Class II forest practice or approved an
37 application with regard to a Class III or Class IV forest practice
38 containing all information required by RCW 76.09.060 as now or

1 hereafter amended. However, in the event forest practices regulations
2 necessary for the scheduled implementation of this chapter and RCW
3 90.48.420 have not been adopted in time to meet such schedules, the
4 department shall have the authority to regulate forest practices and
5 approve applications on such terms and conditions consistent with this
6 chapter and RCW 90.48.420 and the purposes and policies of RCW
7 76.09.010 until applicable forest practices regulations are in effect.

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

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

20 (5) Except for those forest practices being regulated by local
21 governmental entities as provided elsewhere in this chapter, the
22 department of natural resources shall notify the applicant in writing
23 of either its approval of the application or its disapproval of the
24 application and the specific manner in which the application fails to
25 comply with the provisions of this section or with the forest practices
26 regulations. Except as provided otherwise in this section, if the
27 department fails to either approve or disapprove an application or any
28 portion thereof within the applicable time limit, the application shall
29 be deemed approved and the operation may be commenced: PROVIDED, That
30 this provision shall not apply to applications which are neither
31 approved nor disapproved pursuant to the provisions of subsection (7)
32 of this section: PROVIDED, FURTHER, That if seasonal field conditions
33 prevent the department from being able to properly evaluate the
34 application, the department may issue an approval conditional upon
35 further review within sixty days(~~(:—PROVIDED, FURTHER, That the~~
36 ~~department shall have until April 1, 1975, to approve or disapprove an~~
37 ~~application involving forest practices allowed to continue to April 1,~~
38 ~~1975, under the provisions of subsection (2) of this section)). Upon~~

1 receipt of any notification or any satisfactorily completed application
2 the department shall in any event no later than two business days after
3 such receipt transmit a copy to the departments of ecology and fish and
4 wildlife, and to the county, city, or town in whose jurisdiction the
5 forest practice is to be commenced. Any comments by such agencies
6 shall be directed to the department of natural resources.

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

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

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

21 (b) The objections relate to lands either:

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

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

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

37 (8) For those forest practices regulated by the board and the
38 department, in addition to any rights under the above paragraph, the

1 county, city, or town may appeal any department approval of an
2 application with respect to any lands within its jurisdiction. The
3 appeals board may suspend the department's approval in whole or in part
4 pending such appeal where there exists potential for immediate and
5 material damage to a public resource.

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

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

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

21 (12) Notwithstanding subsections (2) through (5) of this section,
22 forest practices applications or notifications are not required for
23 exotic insect and disease control operations conducted in accordance
24 with RCW 76.09.060(~~((+8+))~~) (9) where eradication can reasonably be
25 expected.

26 **Sec. 207.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
27 each reenacted and amended to read as follows:

28 (1) The department shall prescribe the form and contents of the
29 notification and application. The forest practices rules shall specify
30 by whom and under what conditions the notification and application
31 shall be signed or otherwise certified as acceptable. Activities
32 conducted by the department or a contractor under the direction of the
33 department under the provisions of RCW 76.04.660, shall be exempt from
34 the landowner signature requirement on any forest practice application
35 required to be filed. The application or notification shall be
36 delivered in person to the department, sent by first-class mail to the
37 department or electronically filed in a form defined by the department.

1 The form for electronic filing shall be readily convertible to a paper
2 copy, which shall be available to the public pursuant to chapter 42.56
3 RCW. The information required may include, but is not limited to:

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

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

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

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

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

17 (f) If the application includes a forest practices hydraulic
18 project, the following information is required:

19 (i) Plans and specifications for the forest practices hydraulic
20 project; and

21 (ii) Proposed measures for the proper protection of fish life;

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

25 (~~(g)~~) (h) Soil, geological, and hydrological data with respect to
26 forest practices;

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

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

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

34 (~~(k)~~) (l) All necessary application or notification fees.

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

37 (3) The application for a forest practice or the notification of a

1 forest practice is subject to the reforestation requirement of RCW
2 76.09.070.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (6)(a) Except as provided in RCW 76.09.350(4), the notification to
33 or the approval given by the department to an application to conduct a
34 forest practice shall be effective for a term of ~~((two))~~ four years
35 from the date of approval or notification ~~((and shall not be renewed
36 unless a new application is filed and approved or a new notification
37 has been filed))~~.

1 (b) A notification or application is eligible for renewal if the
2 forest practice has not been completed after the permitted four-year
3 period by the filing and approval of a new application or notification.
4 A renewal application or notification is subject to the forest
5 practices rules in effect at the time the renewal application or
6 notification is filed. Nothing in this section precludes the applicant
7 from applying for a new application or notification after the renewal
8 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 ((two)) four 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 ((two)) four years. Such rules shall
18 include extended time periods for application or notification approval
19 or disapproval. On an approved application with a term of more than
20 ((two)) four years, the applicant shall inform the department before
21 commencing operations.

22 (7) If the United States fish and wildlife service or national
23 marine fisheries service provides written notice to the state, pursuant
24 to the procedures described in the state forest practices habitat
25 conservation plan implementation agreement signed on June 5, 2006, that
26 compliance with the habitat conservation plan or associated incidental
27 take permits requires review during the effective term of a previously
28 approved four-year forest practices application based on a change in
29 the forest practices rules, the informal dispute resolution process
30 provided in the implementation agreement must be utilized. The board
31 may only authorize the department to review and specify further
32 conditions on a previously approved four-year forest practices
33 application in order to implement an agreement under the dispute
34 resolution process. The department may not specify further conditions
35 on a previously approved four-year forest practices application prior
36 to the date specified in the agreement.

37 (8) Notwithstanding any other provision of this section, no prior
38 application or notification shall be required for any emergency forest

1 practice necessitated by fire, flood, windstorm, earthquake, or other
2 emergency as defined by the board, but the operator shall submit an
3 application or notification, whichever is applicable, to the department
4 within forty-eight hours after commencement of such practice or as
5 required by local regulations.

6 ((+8)) (9) Forest practices applications or notifications are not
7 required for forest practices conducted to control exotic forest insect
8 or disease outbreaks, when conducted by or under the direction of the
9 department of agriculture in carrying out an order of the governor or
10 director of the department of agriculture to implement pest control
11 measures as authorized under chapter 17.24 RCW, and are not required
12 when conducted by or under the direction of the department in carrying
13 out emergency measures under a forest health emergency declaration by
14 the commissioner of public lands as provided in RCW 76.06.130.

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

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

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

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

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

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

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

8 (10) The department of fish and wildlife and affected tribes may
9 review and comment on any forest practices application.

10 **Sec. 208.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
11 as follows:

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

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

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

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

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

35 (4) In connection with any watershed analysis, any review of a
36 pending application by an identification team appointed by the
37 department, any compliance studies, any effectiveness monitoring, or

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

8 NEW SECTION. **Sec. 209.** A new section is added to chapter 43.30
9 RCW to read as follows:

10 (1) By December 31, 2011, the department must make examples of
11 complete, high quality forest practices applications and the resulting
12 issued permits readily available to the public on its internet site, as
13 well as the internet site of the office of regulatory assistance
14 established in RCW 43.42.010.

15 (2) The department must regularly review and update the examples
16 required to be made available on the internet under subsection (1) of
17 this section.

18 (3) The department must obtain the written permission of a permit
19 applicant or permittee before making publicly available that
20 applicant's or permittee's application or permit and must work
21 cooperatively with the permit applicant or permittee to ensure that no
22 personal or proprietary information is made available.

23 **Sec. 210.** RCW 76.09.065 and 2000 c 11 s 5 are each amended to read
24 as follows:

25 (1) Effective July 1, 1997, an applicant shall pay an application
26 fee (~~((and a recording fee, if applicable,))~~) at the time an application
27 or notification is submitted to the department or to the local
28 governmental entity as provided in this chapter.

29 (2) For applications and notifications submitted to the department,
30 the application fee shall be (~~((fifty))~~) one hundred dollars for class
31 II(~~(, III, and IV forest practices applications or notifications~~
32 ~~relating to the commercial harvest of timber. However, the fee shall~~
33 ~~be five hundred))~~ notifications and class III applications involving
34 twenty acres or less of commercial harvest of timber. The fee shall be
35 one hundred fifty dollars for class III applications involving from
36 more than twenty to one hundred twenty acres of commercial harvest of

1 timber. The fee shall be five hundred fifty dollars for class III
2 applications involving more than one hundred twenty acres of commercial
3 harvest of timber. The fee shall be seven hundred fifty dollars for
4 class IV forest practices that have a potential for a substantial
5 impact on the environment and therefore require an evaluation by the
6 department as to whether or not a detailed statement must be prepared
7 pursuant to the state environmental policy act, chapter 43.21C RCW.
8 The fee shall be five thousand dollars for class IV forest practices
9 applications on lands being converted to other uses or on lands which
10 are not to be reforested because of the likelihood of future conversion
11 to urban development or on lands that are contained within "urban
12 growth areas," designated pursuant to chapter 36.70A RCW, except the
13 fee shall be ((fifty dollars)) the same as for a class III forest
14 practice involving the same acreage of commercial harvest of timber on
15 those lands where the forest landowner provides:

16 (a) A written statement of intent signed by the forest landowner
17 not to convert to a use other than commercial forest product operations
18 for ten years, accompanied by either a written forest management plan
19 acceptable to the department or documentation that the land is enrolled
20 under the provisions of chapter 84.33 RCW; or

21 (b) A conversion option harvest plan approved by the local
22 governmental entity and submitted to the department as part of the
23 forest practices application.

24 (3) The forest practices application account is created in the
25 state treasury. Moneys in the account may be spent only after
26 appropriation. All money collected from fees under ((this)) subsection
27 (2) of this section shall be deposited in the ((state general fund))
28 account for the purposes of implementing this chapter, chapter 76.13
29 RCW, and Title 222 WAC.

30 ((+3)) (4) For applications submitted to ((the)) a local
31 governmental entity as provided in this chapter, the fee shall be
32 ((five hundred dollars for class IV forest practices on lands being
33 converted to other uses or lands that are contained within "urban
34 growth areas," designated pursuant to chapter 36.70A RCW, except as
35 otherwise provided in this section, unless a different fee is otherwise
36 provided)) determined by the local governmental entity.

37 ((+4) Recording fees shall be as provided in chapter 36.18 RCW.

1 ~~(5) An application fee under subsection (2) of this section shall~~
2 ~~be refunded or credited to the applicant if either the application or~~
3 ~~notification is disapproved by the department or the application or~~
4 ~~notification is withdrawn by the applicant due to restrictions imposed~~
5 ~~by the department.)~~)

6 **Sec. 211.** RCW 76.09.030 and 2008 c 46 s 1 are each amended to read
7 as follows:

8 (1) There is hereby created the forest practices board of the state
9 of Washington as an agency of state government consisting of members as
10 follows:

11 (a) The commissioner of public lands or the commissioner's
12 designee;

13 (b) The director of the department of ~~((community, trade, and~~
14 ~~economic development))~~ commerce or the director's designee;

15 (c) The director of the department of agriculture or the director's
16 designee;

17 (d) The director of the department of ecology or the director's
18 designee;

19 (e) The director of the department of fish and wildlife or the
20 director's designee;

21 (f) An elected member of a county legislative authority appointed
22 by the governor(~~(:—PROVIDED, That such))~~). However, the county
23 member's service on the board shall be conditioned on the member's
24 continued service as an elected county official;

25 (g) One member representing a timber products union, appointed by
26 the governor from a list of three names submitted by a timber labor
27 coalition affiliated with a statewide labor organization that
28 represents a majority of the timber product unions in the state; and

29 (h) Six members of the general public appointed by the governor,
30 one of whom shall be a small forest landowner who actively manages his
31 or her land, and one of whom shall be an independent logging
32 contractor.

33 (2) ~~((The director of the department of fish and wildlife's service~~
34 ~~on the board may be terminated two years after August 18, 1999, if the~~
35 ~~legislature finds that after two years the department has not made~~
36 ~~substantial progress toward integrating the laws, rules, and programs~~
37 ~~governing forest practices, chapter 76.09 RCW, and the laws, rules, and~~

1 ~~programs governing hydraulic projects, chapter 77.55 RCW. Such a~~
2 ~~finding shall be based solely on whether the department of fish and~~
3 ~~wildlife makes substantial progress as defined in this subsection, and~~
4 ~~will not be based on other actions taken as a member of the board.~~
5 ~~Substantial progress shall include recommendations to the legislature~~
6 ~~for closer integration of the existing rule-making authorities of the~~
7 ~~board and the department of fish and wildlife, and closer integration~~
8 ~~of the forest practices and hydraulics permitting processes, including~~
9 ~~exploring the potential for a consolidated permitting process. These~~
10 ~~recommendations shall be designed to resolve problems currently~~
11 ~~associated with the existing dual regulatory and permitting processes.~~

12 ~~(3))~~) The members of the initial board appointed by the governor
13 shall be appointed so that the term of one member shall expire December
14 31, 1975, the term of one member shall expire December 31, 1976, the
15 term of one member shall expire December 31, 1977, the terms of two
16 members shall expire December 31, 1978, and the terms of two members
17 shall expire December 31, 1979. Thereafter, each member shall be
18 appointed for a term of four years. Vacancies on the board shall be
19 filled in the same manner as the original appointments. Each member of
20 the board shall continue in office until his or her successor is
21 appointed and qualified. The commissioner of public lands or the
22 commissioner's designee shall be the chair of the board.

23 ~~((4))~~) (3) The board shall meet at such times and places as shall
24 be designated by the chair or upon the written request of the majority
25 of the board. The principal office of the board shall be at the state
26 capital.

27 ~~((5))~~) (4) Members of the board, except public employees and
28 elected officials, shall be compensated in accordance with RCW
29 43.03.250. Each member shall be entitled to reimbursement for travel
30 expenses incurred in the performance of their duties as provided in RCW
31 43.03.050 and 43.03.060.

32 ~~((6))~~) (5) The board may employ such clerical help and staff
33 pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

34 **Sec. 212.** RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are
35 each reenacted and amended to read as follows:

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

1 (1) "Adaptive management" means reliance on scientific methods to
2 test the results of actions taken so that the management and related
3 policy can be changed promptly and appropriately.

4 (2) "Appeals board" means the pollution control hearings board
5 created by RCW 43.21B.010.

6 (3) "Application" means the application required pursuant to RCW
7 76.09.050.

8 (4) "Aquatic resources" includes water quality, salmon, other
9 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
10 identified in the forests and fish report, the Columbia torrent
11 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
12 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
13 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
14 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
15 their respective habitats.

16 (5) "Board" means the forest practices board created in RCW
17 76.09.030.

18 (6) "Commissioner" means the commissioner of public lands.

19 (7) "Contiguous" means land adjoining or touching by common corner
20 or otherwise. Land having common ownership divided by a road or other
21 right-of-way shall be considered contiguous.

22 (8) "Conversion to a use other than commercial timber operation"
23 means a bona fide conversion to an active use which is incompatible
24 with timber growing and as may be defined by forest practices rules.

25 (9) "Date of receipt" has the same meaning as defined in RCW
26 43.21B.001.

27 (10) "Department" means the department of natural resources.

28 (11) "Ecosystem services" means the benefits that the public enjoys
29 as a result of natural processes and biological diversity.

30 (12) "Ecosystem services market" means a system in which providers
31 of ecosystem services can access financing or market capital to
32 protect, restore, and maintain ecological values, including the full
33 spectrum of regulatory, quasiregulatory, and voluntary markets.

34 (13) "Fish passage barrier" means any artificial instream structure
35 that impedes the free passage of fish.

36 (14) "Forest land" means all land which is capable of supporting a
37 merchantable stand of timber and is not being actively used for a use
38 which is incompatible with timber growing. Forest land does not

1 include agricultural land that is or was enrolled in the conservation
2 reserve enhancement program by contract if such agricultural land was
3 historically used for agricultural purposes and the landowner intends
4 to continue to use the land for agricultural purposes in the future.
5 As it applies to the operation of the road maintenance and abandonment
6 plan element of the forest practices rules on small forest landowners,
7 the term "forest land" excludes:

8 (a) Residential home sites, which may include up to five acres; and

9 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
10 and the land on which appurtenances necessary to the production,
11 preparation, or sale of crops, fruit, dairy products, fish, and
12 livestock exist.

13 (15) "Forest landowner" means any person in actual control of
14 forest land, whether such control is based either on legal or equitable
15 title, or on any other interest entitling the holder to sell or
16 otherwise dispose of any or all of the timber on such land in any
17 manner. However, any lessee or other person in possession of forest
18 land without legal or equitable title to such land shall be excluded
19 from the definition of "forest landowner" unless such lessee or other
20 person has the right to sell or otherwise dispose of any or all of the
21 timber located on such forest land.

22 (16) "Forest practice" means any activity conducted on or directly
23 pertaining to forest land and relating to growing, harvesting, or
24 processing timber, including but not limited to:

25 (a) Road and trail construction;

26 (b) Harvesting, final and intermediate;

27 (c) Precommercial thinning;

28 (d) Reforestation;

29 (e) Fertilization;

30 (f) Prevention and suppression of diseases and insects;

31 (g) Salvage of trees; and

32 (h) Brush control.

33 "Forest practice" shall not include preparatory work such as tree
34 marking, surveying and road flagging, and removal or harvesting of
35 incidental vegetation from forest lands such as berries, ferns,
36 greenery, mistletoe, herbs, mushrooms, and other products which cannot
37 normally be expected to result in damage to forest soils, timber, or
38 public resources.

- 1 (17) "Forest practices rules" means any rules adopted pursuant to
2 RCW 76.09.040.
- 3 (18) "Forest road," as it applies to the operation of the road
4 maintenance and abandonment plan element of the forest practices rules
5 on small forest landowners, means a road or road segment that crosses
6 land that meets the definition of forest land, but excludes residential
7 access roads.
- 8 (19) "Forest trees" does not include hardwood trees cultivated by
9 agricultural methods in growing cycles shorter than fifteen years if
10 the trees were planted on land that was not in forest use immediately
11 before the trees were planted and before the land was prepared for
12 planting the trees. "Forest trees" includes Christmas trees, but does
13 not include Christmas trees that are cultivated by agricultural
14 methods, as that term is defined in RCW 84.33.035.
- 15 (20) "Forests and fish report" means the forests and fish report to
16 the board dated April 29, 1999.
- 17 (21) "Operator" means any person engaging in forest practices
18 except an employee with wages as his or her sole compensation.
- 19 (22) "Person" means any individual, partnership, private, public,
20 or municipal corporation, county, the department or other state or
21 local governmental entity, or association of individuals of whatever
22 nature.
- 23 (23) "Public resources" means water, fish and wildlife, and in
24 addition shall mean capital improvements of the state or its political
25 subdivisions.
- 26 (24) "Small forest landowner" has the same meaning as defined in
27 RCW 76.09.450.
- 28 (25) "Timber" means forest trees, standing or down, of a commercial
29 species, including Christmas trees. However, "timber" does not include
30 Christmas trees that are cultivated by agricultural methods, as that
31 term is defined in RCW 84.33.035.
- 32 (26) "Timber owner" means any person having all or any part of the
33 legal interest in timber. Where such timber is subject to a contract
34 of sale, "timber owner" shall mean the contract purchaser.
- 35 (27) "Unconfined channel migration zone" means the area within
36 which the active channel of an unconfined stream is prone to move and
37 where the movement would result in a potential near-term loss of

1 riparian forest adjacent to the stream. Sizeable islands with
2 productive timber may exist within the zone.

3 (28) "Unconfined stream" means generally fifth order or larger
4 waters that experience abrupt shifts in channel location, creating a
5 complex floodplain characterized by extensive gravel bars, disturbance
6 species of vegetation of variable age, numerous side channels, wall-
7 based channels, oxbow lakes, and wetland complexes. Many of these
8 streams have dikes and levees that may temporarily or permanently
9 restrict channel movement.

10 (29) "Forest practices hydraulic project" means a hydraulic
11 project, as defined under RCW 77.55.011, that: (a) Meets the criteria
12 established in RCW 77.55.021(1)(a)(ii); and (b) requires a forest
13 practices application under this chapter.

14 NEW SECTION. Sec. 213. RCW 77.55.291 (Civil penalty) and 2010 c
15 210 s 31, 2005 c 146 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988
16 c 36 s 35, & 1986 c 173 s 6 are each repealed.

17 NEW SECTION. Sec. 214. If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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