

Chapter 77.57 RCW
FISHWAYS, FLOW, AND SCREENING

Sections

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RCW 77.57.010 Fish guards required on diversion devices—Penalties, remedies for failure. (1) A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device.

(2) Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken. [2005 c 146 s 901; 1998 c 190 s 85; 1983 1st ex.s. c 46 s 70; 1955 c 12 s 75.20.040. Prior: 1949 c 112 s 45; Rem. Supp. 1949 s 5780-319. Formerly RCW 77.55.040, 75.20.040.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.57.020 Review of permit applications to divert or store water—Water flow policy. It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

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

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

The provisions of this section shall in no way affect existing water rights. [2005 c 146 s 902; 1993 sp.s. c 2 s 29; 1988 c 36 s 32; 1986 c 173 s 7; 1983 1st ex.s. c 46 s 71; 1955 c 12 s 75.20.050. Prior: 1949 c 112 s 46; Rem. Supp. 1949 s 5780-320. Formerly RCW 77.55.050, 75.20.050.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

RCW 77.57.030 Fishways required in dams, obstructions—Penalties, remedies for failure. (1) Subject to subsection (3) of this section, a dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.

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

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

(3) For the purposes of this section, "other obstruction" does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates. [2005 c 146 s 903; 2003 c 391 s 1; 1998 c 190 s 86; 1983 1st ex.s. c 46 s 72; 1955 c 12 s 75.20.060. Prior: 1949 c 112 s 47; Rem. Supp. 1949 s 5780-321. Formerly RCW 77.55.060, 75.20.060.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Severability—2003 c 391: "If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 391 s 8.]

Effective date—2003 c 391: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 391 s 9.]

RCW 77.57.040 Director may modify inadequate fishways and fish guards. If the director determines that a fishway or fish guard described in *RCW 77.55.040 and 77.55.060 and in existence on September 1, 1963, is inadequate, in addition to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways and fish guards shall be operated and maintained at the expense of the owner in accordance with *RCW 77.55.040 and 77.55.060. [2000 c 107 s 14; 1983 1st ex.s. c 46 s 73; 1963 c 153 s 1. Formerly RCW 77.55.070, 75.20.061.]

***Reviser's note:** RCW 77.55.040 and 77.55.060 were recodified as RCW 77.57.010 and 77.57.030, respectively, pursuant to 2005 c 146 s 1002.

Director of fish and wildlife may modify, etc., inadequate fishways and protective devices: RCW 77.57.060.

RCW 77.57.050 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu. Before a person commences construction on a dam or other hydraulic project for which the director determines that a fishway is impractical, the person shall at the option of the director:

(1) Convey to the state a fish cultural facility on a site satisfactory to the director and constructed according to plans and specifications approved by the director, and enter into an agreement with the director secured by sufficient bond, to furnish water and electricity, without expense, and funds necessary to operate and maintain the facilities; or

(2) Enter into an agreement with the director secured by sufficient bond to make payments to the state as the director determines are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or other hydraulic work to compensate for the damages caused by the dam or other hydraulic work.

(3) A decision of the director under this section is subject to review in the superior court of the state for Thurston county. Each day that a person carries on construction work or operates a dam or hydraulic project without complying with this section is a separate offense. [1983 1st ex.s. c 46 s 74; 1955 c 12 s 75.20.090. Prior: 1949 c 112 s 48; Rem. Supp. 1949 s 5780-322. Formerly RCW 77.55.080, 75.20.090.]

RCW 77.57.060 Director may modify inadequate fishways and protective devices. The director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish protective device required by *RCW 77.55.320 which device was in existence on September 1, 1963, without cost to the owner for materials and labor. The modification may not materially alter the amount of water flowing through the fishway or fish protective device. Following modification, the fishway or fish protective device shall be maintained at the expense of the person or governmental agency owning the obstruction or water diversion device. [2001 c 253 s 21; 1980 c 78 s 90; 1963 c 152 s 1. Formerly RCW 77.55.310, 77.12.425, 77.16.221.]

***Reviser's note:** RCW 77.55.320 was recodified as RCW 77.57.070 pursuant to 2005 c 146 s 1002.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Director of fish and wildlife may modify inadequate fishways and fish guards: RCW 77.57.040.

RCW 77.57.070 Diversion of water—Screen, bypass required. (1) A person shall not divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person who was, on June 11, 1947, otherwise lawfully diverting water from a lake, river, or stream shall not be deemed guilty of a violation of this section.

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

(3) The director or the director's designee may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass. [2005 c 146 s 904; 2001 c 253 s 48; 1998 c 190 s 122; 1980 c 78 s 89; 1955 c 36 s 77.16.220. Prior: 1947 c 275 s 61; Rem. Supp. 1947 s 5992-70. Formerly RCW 77.55.320, 77.16.220.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

RCW 77.57.080 Operation and maintenance of fish collection facility on Toutle river. The legislature recognizes the need to mitigate the effects of sedimentary build-up and resultant damage to fish population in the Toutle river resulting from the Mt. St. Helens eruption. The state has entered into a contractual agreement with the United States army corps of engineers designed to minimize fish habitat disruption created by the sediment retention structure on the Toutle river, under which the corps has agreed to construct a fish

collection facility at the sediment retention structure site conditional upon the state assuming the maintenance and operation costs of the facility. The department shall operate and maintain a fish collection facility on the Toutle river. [1993 sp.s. c 2 s 39; 1988 c 36 s 39; 1987 c 506 s 101. Formerly RCW 77.55.240, 75.20.310.]

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.