

ESSB 5375 - H COMM AMD
By Committee on Appropriations

1 Strike everything after the enacting clause and insert the
2 following:

"PART 1

LEGISLATIVE INTENT AND DEFINITIONS

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

11 The legislature further finds that the state requires the
12 examination of the environmental impacts of construction projects and
13 work in Washington to minimize and mitigate the impact of those
14 projects through the state environmental policy act.

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

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

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

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

6 (2) "Board" means the hydraulic appeals board created in RCW
7 77.55.170 (as recodified by this act).

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

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

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

12 (6) "Emergency" means an immediate threat to life, the public,
13 property, or of environmental degradation arising from weather or
14 stream flow conditions or other natural conditions.

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

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

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

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

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

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

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

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

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

10 (16) "Streambank stabilization" means those projects that prevent
11 or limit erosion, slippage, and mass wasting. These projects are
12 limited to bank resloping, log and debris relocation or removal,
13 planting of woody vegetation, bank protection using rock or woody
14 material or placement of jetties or groins, gravel removal, or erosion
15 control.

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

PART 2

DETERMINING HOW TO OBTAIN A HYDRAULIC PROJECT APPROVAL PERMIT

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

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

- 28 (a) General plans for the overall project;

29 (b) Complete plans and specifications of the proposed construction

30 or work within the mean higher high water line in saltwater or within

31 the ordinary high water line in freshwater;

32 (c) Complete plans and specifications for the proper protection of

33 fish life;

34 (d) Notice of compliance with any applicable requirements of the

35 state environmental policy act; and

1 (e) Provisions allowing for minor modifications to the plans and
2 specifications without requiring reissuance of the permit as a
3 condition of the application.

4 (3)(a) Protection of fish life is the only ground upon which
5 approval of a permit may be denied or conditioned. Approval of a
6 permit may not be unreasonably withheld or unreasonably conditioned.
7 The department has forty-five calendar days upon receipt of a complete
8 application to grant or deny approval of a permit. The forty-five day
9 requirement is suspended if:

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

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

14 (iii) The applicant requests a delay; or

15 (iv) The application is not complete.

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

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

27 (b) Approval of a permit is valid for a period of up to five years
28 from the date of issuance, except as provided in (c) of this subsection
29 and in RCW 77.55.220.

30 (c) A permit remains in effect without need for periodic renewal
31 for hydraulic projects that divert water for agricultural irrigation or
32 stock watering purposes and that involve seasonal construction or other
33 work. A permit for streambank stabilization projects to protect farm
34 and agricultural land as defined in RCW 84.34.020 remains in effect
35 without need for periodic renewal if the problem causing the need for
36 the streambank stabilization occurs on an annual or more frequent

1 basis. The permittee must notify the appropriate agency before
2 commencing the construction or other work within the area covered by
3 the permit.

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

10 (7) A permittee may request modification of a permit due to changed
11 conditions. The request must be processed within forty-five calendar
12 days of receipt of the written request. A decision by the department
13 may be appealed to the board within thirty days of the notice of the
14 decision. The burden is on the permittee to show that changed
15 conditions warrant the requested modification and that such a
16 modification will not impair fish life.

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

32 (9) All state and local agencies with authority under this chapter
33 to issue permits or other authorizations in connection with emergency
34 water withdrawals and facilities authorized under RCW 43.83B.410 shall
35 expedite the processing of such permits or authorizations in keeping
36 with the emergency nature of such requests and shall provide a decision

1 to the applicant within fifteen calendar days of the date of
2 application.

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

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

27 **NEW SECTION.** **Sec. 202.** (1)(a) The department must develop general
28 permits for common or routine activities to improve the predictability
29 and efficiency of the hydraulic project approval program. At a
30 minimum, the department must, by December 2004, develop general permits
31 for the following activities:

- 32 (i) Minor dredging of up to ten yards of sediment from an existing
33 channel, berthing area, or boat ramp;
- 34 (ii) Routine repair and maintenance of tide gates;
- 35 (iii) Replacement of up to sixty pilings including construction of
36 mooring dolphins and fender pilings;

1 (iv) Routine repair or maintenance of road and highway structures
2 such as culverts and ditches;

3 (v) Routine repair and maintenance of bridge structures below the
4 ordinary high water line; and

5 (vi) Geotechnical or exploratory work conducted as part of project
6 planning or development.

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

9 (2) General permits must contain conditions necessary to protect
10 fish life, and must clearly delineate predictable conditions and
11 restrictions that project applicants may incorporate into project
12 design and construction. The department must develop, in consultation
13 with an advisory committee, common technical provisions that must be
14 incorporated into general conditions for each general permit.

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

17 (a) A description of activities covered;

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

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

22 (4) To receive coverage under a general permit, a project applicant
23 must:

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

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

28 (5) Within ten days of receipt of a notice of intent from a project
29 applicant, the department must notify the applicant of the status of
30 general permit coverage. Status includes permit approval, denial, or
31 conditioning. Issuance, denial, conditioning, or modification of a
32 permit shall be appealable to the board within thirty days of the
33 notice of decision.

34 NEW SECTION. **Sec. 203.** (1) Certain federal and state regulatory
35 review processes may provide review and protection of fish life that is
36 equivalent to the review provided by the department under this chapter.

1 This may include, among other permits, federal review of a project
2 under the endangered species act (16 U.S.C. Sec. 1531 et seq.), a
3 federal permit under section 404 of the federal water pollution control
4 act (33 U.S.C. Sec. 1251 et seq.), state review of a project under
5 section 401 of the federal water pollution control act (33 U.S.C. Sec.
6 1251 et seq.), or state review of shorelines under chapter 90.58 RCW.

7 (2) At any point in project development or permitting, an applicant
8 may submit to the department a notice of intent to proceed under an
9 equivalent regulatory review. The notice must include a description of
10 the project, the habitat impacted, and the equivalent permits required
11 for the project. The director or director's designee shall make a
12 determination regarding the equivalency of other regulatory permits
13 within fifteen days of receiving the notice. If the notice of
14 equivalency is approved, the project is exempt from the requirement to
15 receive hydraulic project approval under this chapter. If the notice
16 of equivalency is denied, the department must provide the applicant, in
17 writing, specific reasons why the other regulatory reviews will not
18 adequately protect fish life. (3) Any person aggrieved by a decision
19 under subsection (2) of this section may appeal the decision according
20 to the provisions of chapter 34.05 RCW.

21 **PART 3**

22 **EXEMPTION FROM HYDRAULIC PROJECT APPROVAL**

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

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

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

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

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

PART 4

COMPLIANCE THROUGH GUIDELINES, AGREEMENTS, AND PAMPHLETS

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

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

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand held tools, hand held equipment, or equipment carried by a person when used shall not require hydraulic project approval.

16 (3)) By June 30, 1997, the department ((of fish and wildlife))
17 shall develop rules for projects conducted solely for the removal or
18 control of various aquatic noxious weeds other than spartina and purple
19 loosestrife and for activities or hydraulic projects for controlling
20 purple loosestrife not covered by ((subsection (2))) section 303(2) of
21 this ((section, which projects will use, divert, obstruct, or change
22 the natural flow or bed of any of the salt or fresh waters of the
23 state)) act. Following the adoption of the rules, the department shall
24 produce and distribute a pamphlet describing the methods of removing or
25 controlling the aquatic noxious weeds that are approved under the
26 rules. The pamphlet serves as the ((hydraulic project approval))
27 permit for any project that is conducted solely for the removal or
28 control of such aquatic noxious weeds and that is conducted as
29 described in the pamphlet((+)). No further ((hydraulic project
30 approval)) permit is required for such a project.

31 (2) From time to time as information becomes available, the
32 department shall adopt similar rules for additional aquatic noxious
33 weeds or additional activities for removing or controlling aquatic
34 noxious weeds not governed by ((subsection (1) or (2) of this section))
35 sections 303 (1) and (2) of this act and shall produce and distribute

1 one or more pamphlets describing these methods of removal or control.
2 Such a pamphlet serves as the ((hydraulic project approval)) permit for
3 any project that is conducted solely for the removal or control of such
4 aquatic noxious weeds and that is conducted as described in the
5 pamphlet((+)). No further ((hydraulic project approval)) permit is
6 required for such a project.

7 ((4) As used in this section, "spartina," "purple loosestrife,"
8 and "aquatic noxious weeds" have the meanings prescribed by RCW
9 17.26.020.

10 ((5)) (3) Nothing in this section shall prohibit the department
11 ((of fish and wildlife)) from requiring a ((hydraulic project
12 approval)) permit for those parts of hydraulic projects that are not
13 specifically for the control or removal of spartina, purple
14 loosestrife, or other aquatic noxious weeds.

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

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

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

24 (3) Within two months of adoption of the rules, the department
25 shall distribute an updated gold and fish pamphlet that describes
26 methods of mineral prospecting that are consistent with the
27 department's rule. The pamphlet shall be written to clearly indicate
28 the prospecting methods that require ((written approval)) a permit
29 under this chapter and the prospecting methods that require compliance
30 with the pamphlet. To the extent possible, the department shall use
31 the provisions of the gold and fish pamphlet to minimize the number of
32 specific provisions of a written ((approval)) permit issued under this
33 chapter.

34 ((4) For the purposes of this chapter, "small scale prospecting
35 and mining" means only the use of the following methods: Pans,

1 nonmotorized sluice boxes, concentrators, and minirocker boxes for the
2 discovery and recovery of minerals.))

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

5 When a private landowner is applying for ((hydraulic project
6 approval)) a permit under this chapter and that landowner has entered
7 into a habitat incentives agreement with the department and the
8 department of natural resources as provided in RCW 77.55.300 (as
9 recodified by this act), the department shall comply with the terms of
10 that agreement when evaluating the request for ((hydraulic project
11 approval)) a permit.

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

14 (1) Beginning in January 1998, the department ((of fish and
15 wildlife)) and the department of natural resources shall implement a
16 habitat incentives program based on the recommendations of federally
17 recognized Indian tribes, landowners, the regional fisheries
18 enhancement groups, the timber, fish, and wildlife cooperators, and
19 other interested parties. The program shall allow a private landowner
20 to enter into an agreement with the departments to enhance habitat on
21 the landowner's property for food fish, game fish, or other wildlife
22 species. In exchange, the landowner shall receive state regulatory
23 certainty with regard to future applications for ((hydraulic project
24 approval)) a permit or a forest practices permit on the property
25 covered by the agreement. The overall goal of the program is to
26 provide a mechanism that facilitates habitat development on private
27 property while avoiding an adverse state regulatory impact to the
28 landowner at some future date. A single agreement between the
29 departments and a landowner may encompass up to one thousand acres. A
30 landowner may enter into multiple agreements with the departments,
31 provided that the total acreage covered by such agreements with a
32 single landowner does not exceed ten thousand acres. The departments
33 are not obligated to enter into an agreement unless the departments
34 find that the agreement is in the best interest of protecting fish or
35 wildlife species or their habitat.

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

8 (3) As part of the agreement, the department ~~((of fish and~~
9 ~~wildlife))~~ may stipulate the factors that will be considered when the
10 department evaluates a landowner's application for ~~((hydraulic project~~
11 ~~approval under RCW 77.55.100 or 77.55.110))~~ a permit on property
12 covered by the agreement. The department's identification of these
13 evaluation factors shall be in concurrence with the department of
14 natural resources and affected federally recognized Indian tribes. In
15 general, future decisions related to the issuance, conditioning, or
16 denial of ~~((hydraulic project approval shall))~~ a permit must be based
17 on the conditions present on the landowner's property at the time of
18 the agreement, unless all parties agree otherwise.

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

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

36 (6) If the departments receive multiple requests for agreements

1 with private landowners under the habitat incentives program, the
2 departments shall prioritize these requests and shall enter into as
3 many agreements as possible within available budgetary resources.

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

6 The department and the department of ecology will work
7 cooperatively with the United States army corps of engineers to develop
8 a memorandum of agreement outlining dike vegetation management
9 guidelines so that dike owners are eligible for coverage under P.L.
10 84-99, and state requirements established pursuant to ((RCW 77.55.100
11 and 77.55.110)) section 202 of this act are met.

PART 5

SPECIAL PERMITS

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

16 (1) In order to protect the property of marine waterfront shoreline
17 owners it is necessary to facilitate issuance of ((hydraulic)) permits
18 for bulkheads or rockwalls under certain conditions.

19 (2) The department shall issue a ((hydraulic)) permit with or
20 without conditions within forty-five days of receipt of a complete and
21 accurate application which authorizes commencement of construction,
22 replacement, or repair of a marine beach front protective bulkhead or
23 rockwall for single-family type residences or property under the
24 following conditions:

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

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing((+)). However, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the

existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

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

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

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

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

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

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

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

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

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

1 ((+3))) (2) Upon construction of a new marina or marine terminal
2 that has received ((~~hydraulic project approval~~)) a permit, a renewable,
3 five-year ((~~hydraulic project approval~~)) permit shall be issued, upon
4 request, for regular maintenance activities of the marina or marine
5 terminal.

6 ((+4))) (3) For the purposes of this section, regular maintenance
7 activities are only those activities necessary to restore the marina or
8 marine terminal to the conditions approved in the initial ((~~hydraulic~~
9 ~~project approval~~)) permit. These activities may include, but are not
10 limited to, dredging, piling replacement, and float replacement.

11 ((+5))) (4) The five-year permit must include a requirement that a
12 fourteen-day notice be given to the department before regular
13 maintenance activities begin.

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

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

19 (2) ((~~Hydraulic project approvals~~)) Permits issued in locations
20 covered by a national pollution discharge elimination system municipal
21 storm water general permit may not be conditioned or denied for water
22 quality or quantity impacts arising from storm water discharges. A
23 ((~~hydraulic project approval~~)) permit is required only for the actual
24 construction of any storm water outfall or associated structures
25 pursuant to this chapter.

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

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

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

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

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

9 (c) After following the procedures set forth in (b) of this
10 subsection, the department may issue a ((~~hydraulic project approval~~)
11 permit that prescribes the discharge rates from an outfall structure
12 that will prevent adverse effects to the bed or flow of the waterway.
13 The department may recommend, but not specify, the measures required to
14 meet these discharge rates. The department may not require changes to
15 the project design above the mean higher high water mark of marine
16 waters, or the ordinary high water mark of freshwaters of the state.
17 Nothing in this section alters any authority the department may have to
18 regulate other types of projects under this chapter.

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

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

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

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

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

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

33 (ii) Restoration of an eroded or unstable streambank employing the
34 principle of bioengineering, including limited use of rock as a

1 stabilization only at the toe of the bank, and with primary emphasis on
2 using native vegetation to control the erosive forces of flowing water;
3 or

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

6 The department shall develop size or scale threshold tests to
7 determine if projects accomplishing any of these tasks should be
8 evaluated under the process created in this section or under other
9 project review and approval processes. A project proposal shall not be
10 reviewed under the process created in this section if the department
11 determines that the scale of the project raises concerns regarding
12 public health and safety; and

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

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

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

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

20 (iv) Through the review and approval process for the jobs for the
21 environment program;

22 (v) Through the review and approval process for conservation
23 district-sponsored projects, where the project complies with design
24 standards established by the conservation commission through
25 interagency agreement with the United States fish and wildlife service
26 and the natural resource conservation service;

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

29 (vii) Through other formal review and approval processes
30 established by the legislature.

31 (2) Fish habitat enhancement projects meeting the criteria of
32 subsection (1) of this section are expected to result in beneficial
33 impacts to the environment. Decisions pertaining to fish habitat
34 enhancement projects meeting the criteria of subsection (1) of this
35 section and being reviewed and approved according to the provisions of
36 this section are not subject to the requirements of RCW
37 43.21C.030(2)(c).

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

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

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

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

34 (1) Except for the north fork of the Lewis river and the White
35 Salmon river, all streams and rivers tributary to the Columbia river
36 downstream from McNary dam are established as an anadromous fish

1 sanctuary. This sanctuary is created to preserve and develop the food
2 fish and game fish resources in these streams and rivers and to protect
3 them against undue industrial encroachment.

4 (2) Within the sanctuary area:

5 (a) The department shall not issue ((~~hydraulic project approval~~))
6 [permit](#) to construct a dam greater than twenty-five feet high within
7 the migration range of anadromous fish as determined by the department.

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

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

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

19 NEW SECTION. **Sec. 507.** A landscape management plan approved by
20 the department and the department of natural resources under RCW
21 76.09.350(2) shall serve as a permit for the life of the plan if fish
22 are selected as one of the public resources for coverage under such a
23 plan.

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

26 The department ((~~of fish and wildlife~~)), the department of ecology,
27 and the department of natural resources shall jointly develop an
28 informational brochure that describes when permits and any other
29 authorizations are required for flood damage prevention and reduction
30 projects, and recommends ways to best proceed through the various
31 regulatory permitting processes.

32 NEW SECTION. **Sec. 509.** (1) The department shall, at the request
33 of a county, develop five-year maintenance permit agreements,
34 consistent with comprehensive flood control management plans adopted

under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sandbars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

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

PART 6

DENIAL OR CONDITIONING OF PERMIT

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

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

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

26 (1) The legislature finds that the construction of hydraulic
27 projects may require mitigation for the protection of fish life, and
28 that the mitigation may be most cost-effective and provide the most
29 benefit to the fish resource if the mitigation is allowed to be applied
30 in locations that are off-site of the hydraulic project location. The
31 department may approve off-site mitigation plans that are submitted by
32 hydraulic project permit applicants.

33 (2) If a hydraulic project permit applicant proposes off-site
34 mitigation and the department does not approve the hydraulic permit or

1 conditions the permit approval in such a manner as to render off-site
2 mitigation unpracticable, the hydraulic project proponent must be given
3 the opportunity to submit the hydraulic project permit application to
4 the ((hydraulic appeals)) board for approval.

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

7 When reviewing a mitigation plan under ((RCW 77.55.100 or
8 77.55.110)) section 201 of this act, the department shall, at the
9 request of the project proponent, follow the guidance contained in RCW
10 90.74.005 through 90.74.030.

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

13 Whenever the placement of woody debris is required as a condition
14 of a ((hydraulic)) permit ((approval)) issued ((pursuant to RCW
15 77.55.100 or 77.55.110)) under section 201 of this act, the department,
16 upon request, shall invite comment regarding that placement from the
17 local governmental authority, affected tribes, affected federal and
18 state agencies, and the project applicant.

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

21 The department may not require mitigation for adverse impacts on
22 fish life or habitat that occurred at the time a wetland was filled, if
23 the wetland was filled ((under the provisions of RCW 75.20.300)) prior
24 to 1995 for flood control and dredging projects located in the Cowlitz
25 river from mile twenty-two to the confluence with the Columbia river,
26 and in the Toutle river from the mouth to the North Fork Toutle
27 sediment dam site at North Fork mile twelve, and to river mile three on
28 the South Fork Toutle river, and volcano-affected areas of the Columbia
29 river.

30
31

PART 7
PENALTIES

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

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

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

12 (3) The penalty imposed shall become due and payable thirty days
13 after receipt of a notice imposing the penalty unless an appeal is
14 filed. Whenever an appeal of any penalty incurred under this chapter
15 is filed, the penalty shall become due and payable only upon completion
16 of all review proceedings and the issuance of a final order confirming
17 the penalty in whole or in part.

18 (4) If the amount of any penalty is not paid within thirty days
19 after it becomes due and payable, the attorney general, upon the
20 request of the director, shall bring an action in the name of the state
21 of Washington in the superior court of Thurston county or of any county
22 in which such violator may do business, to recover such penalty. In
23 all such actions the procedure and rules of evidence shall be the same
24 as an ordinary civil action. All penalties recovered under this
25 section shall be paid into the state's general fund.

PART 8 APPEALS

28 NEW SECTION. **SEC. 801.** (1) An expedited dispute resolution
29 process is created to resolve disputes regarding permits issued or
30 denied under this chapter. The expedited dispute resolution process
31 may be initiated by a project applicant at any point prior to issuance
32 or denial of the final permit. The forty-five day period for permit
33 issuance or denial shall not be suspended while the dispute is
34 resolved.

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

- 5 (a) The project contractor or engineer;
6 (b) A department engineer;
7 (c) The department's regional program manager; and
8 (d) An engineer or public works official designated by the local
9 government with jurisdiction over the project.

10 (3) The expedited dispute resolution process committee must conduct
11 a project review to determine whether the conditions in the proposed
12 permit are reasonable and necessary to protect fish life. By majority
13 vote, the committee may accept the permit conditions, reject the permit
14 conditions and return the permit to the department for subsequent
15 review, or determine alternative conditions to be included in the final
16 permit.

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

21 (a) Contact information for the department employee who will be
22 reviewing the project;

23 (b) Contact information for the department's regional program
24 manager responsible for overseeing the regional hydraulic project
25 activities at any point prior to the approval or denial of a permit;

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

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

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

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

1 **Sec. 803.** RCW 77.55.170 and 2000 c 107 s 20 are each amended to
2 read as follows:

3 (1) There is ((hereby)) created within the environmental hearings
4 office under RCW 43.21B.005 the hydraulic appeals board of the state of
5 Washington.

6 (2) The hydraulic appeals board ((shall)) consists of three
7 members: The director of the department of ecology or the director's
8 designee, the director of the department of agriculture or the
9 director's designee, and the director or the director's designee of the
10 department ((whose action is appealed under subsection (6) of this
11 section)). A decision must be agreed to by at least two members of the
12 board to be final.

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

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

20 (5) The board has exclusive jurisdiction to hear appeals arising
21 from the approval, denial, conditioning, or modification of a
22 ((hydraulic approval)) permit issued by the department((:(a) Under
23 the authority granted in RCW 77.55.110 for the diversion of water for
24 agricultural irrigation or stock watering purposes or when associated
25 with streambank stabilization to protect farm and agricultural land as
26 defined in RCW 84.34.020; or (b) under the authority granted in RCW
27 77.55.230 for off site mitigation proposals)).

28 (6)(a) Any person aggrieved by the approval, denial, conditioning,
29 or modification of a ((hydraulic approval pursuant to RCW 77.55.110))
30 permit under section 201 of this act may seek review from the board by
31 filing a request for the same within thirty days of notice of the
32 approval, denial, conditioning, or modification of ((such approval))
33 the permit.

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

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

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

7 (2) In all appeals, the ((~~hydraulic~~ appeals)) board, and each
8 member thereof, shall be subject to all duties imposed upon and shall
9 have all powers granted to, an agency by those provisions of chapter
10 34.05 RCW relating to adjudicative proceedings.

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

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

PART 9

FISHWAYS, FLOW, AND SCREENING

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

21 (1) A diversion device used for conducting water from a lake,
22 river, or stream for any purpose shall be equipped with a fish guard
23 approved by the director to prevent the passage of fish into the
24 diversion device. The fish guard shall be maintained at all times when
25 water is taken into the diversion device. The fish guards shall be
26 installed at places and times prescribed by the director upon thirty
27 days' notice to the owner of the diversion device.

28 (2) Each day the diversion device is not equipped with an approved
29 fish guard is a separate offense. If within thirty days after notice
30 to equip a diversion device the owner fails to do so, the director may
31 take possession of the diversion device and close the device until it
32 is properly equipped. Expenses incurred by the department constitute
33 the value of a lien upon the diversion device and upon the real and
34 personal property of the owner. Notice of the lien shall be filed and

1 recorded in the office of the county auditor of the county in which the
2 action is taken.

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

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

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

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

17 The provisions of this section shall in no way affect existing
18 water rights.

19 **Sec. 903.** RCW 77.55.060 and 1998 c 190 s 86 are each amended to
20 read as follows:

21 (1) A dam or other obstruction across or in a stream shall be
22 provided with a durable and efficient fishway approved by the director.
23 Plans and specifications shall be provided to the department prior to
24 the director's approval. The fishway shall be maintained in an
25 effective condition and continuously supplied with sufficient water to
26 freely pass fish.

27 (2) If a person fails to construct and maintain a fishway or to
28 remove the dam or obstruction in a manner satisfactory to the director,
29 then within thirty days after written notice to comply has been served
30 upon the owner, his or her agent, or the person in charge, the director
31 may construct a fishway or remove the dam or obstruction. Expenses
32 incurred by the department constitute the value of a lien upon the dam
33 and upon the personal property of the person owning the dam. Notice of
34 the lien shall be filed and recorded in the office of the county

1 auditor of the county in which the dam or obstruction is situated. The
2 lien may be foreclosed in an action brought in the name of the state.

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

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

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

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

21 (3) The director or the director's designee may close a water
22 diversion device operated in violation of this section and keep it
23 closed until it is properly equipped with a fish guard, screen, or
24 bypass.

25 **PART 10**
26 **MISCELLANEOUS**

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

29 Section 101 of this act
30 Section 102 of this act
31 Section 201 of this act
32 Section 202 of this act
33 Section 203 of this act
34 Section 301 of this act

1 RCW 77.55.330
2 Section 303 of this act
3 RCW 77.55.030
4 RCW 77.55.360
5 RCW 77.55.150
6 RCW 77.55.270
7 RCW 77.55.020
8 RCW 77.55.280
9 RCW 77.55.300
10 RCW 77.55.130
11 RCW 77.55.200
12 RCW 77.55.220
13 RCW 77.55.340
14 RCW 77.55.210
15 RCW 77.55.290
16 RCW 77.55.160
17 Section 507 of this act
18 RCW 77.55.010
19 Section 509 of this act
20 RCW 77.55.350
21 RCW 77.55.230
22 RCW 77.55.090
23 RCW 77.55.120
24 RCW 77.55.260
25 RCW 77.55.250
26 RCW 77.55.140
27 Section 801 of this act
28 Section 802 of this act
29 RCW 77.55.170
30 RCW 77.55.180.

31 NEW SECTION. **Sec. 1002.** The following sections are each
32 recodified as a new chapter in Title 77 RCW in the following order:
33 RCW 77.55.040
34 RCW 77.55.050
35 RCW 77.55.060
36 RCW 77.55.070

1 RCW 77.55.080
2 RCW 77.55.310
3 RCW 77.55.320
4 RCW 77.55.240.

5 **Sec. 1003.** RCW 76.09.050 and 2002 c 121 s 1 are each amended to
6 read as follows:

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

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

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

26 (a) On lands platted after January 1, 1960, as provided in chapter
27 58.17 RCW or on lands that have or are being converted to another use;

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

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

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

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

35 Class III: Forest practices other than those contained in Class I,
36 II, or IV. A Class III application must be approved or disapproved by

1 the department within thirty calendar days from the date the department
2 receives the application. However, the applicant may not begin work on
3 that forest practice until all forest practice fees required under RCW
4 76.09.065 have been received by the department;

5 Class IV: Forest practices other than those contained in Class I
6 or II: (a) On lands platted after January 1, 1960, as provided in
7 chapter 58.17 RCW, (b) on lands that have or are being converted to
8 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
9 hereafter amended, are not to be reforested because of the likelihood
10 of future conversion to urban development, (d) involving timber
11 harvesting or road construction on lands that are contained within
12 "urban growth areas," designated pursuant to chapter 36.70A RCW, except
13 where the forest landowner provides: (i) A written statement of intent
14 signed by the forest landowner not to convert to a use other than
15 commercial forest product operations for ten years, accompanied by
16 either a written forest management plan acceptable to the department or
17 documentation that the land is enrolled under the provisions of chapter
18 84.33 RCW; or (ii) a conversion option harvest plan approved by the
19 local governmental entity and submitted to the department as part of
20 the application, and/or (e) which have a potential for a substantial
21 impact on the environment and therefore require an evaluation by the
22 department as to whether or not a detailed statement must be prepared
23 pursuant to the state environmental policy act, chapter 43.21C RCW.
24 Such evaluation shall be made within ten days from the date the
25 department receives the application: PROVIDED, That nothing herein
26 shall be construed to prevent any local or regional governmental entity
27 from determining that a detailed statement must be prepared for an
28 action pursuant to a Class IV forest practice taken by that
29 governmental entity concerning the land on which forest practices will
30 be conducted. A Class IV application must be approved or disapproved
31 by the department within thirty calendar days from the date the
32 department receives the application, unless the department determines
33 that a detailed statement must be made, in which case the application
34 must be approved or disapproved by the department within sixty calendar
35 days from the date the department receives the application, unless the
36 commissioner of public lands, through the promulgation of a formal
37 order, determines that the process cannot be completed within such

1 period. However, the applicant may not begin work on that forest
2 practice until all forest practice fees required under RCW 76.09.065
3 have been received by the department.

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

7 (2) Except for those forest practices being regulated by local
8 governmental entities as provided elsewhere in this chapter, no Class
9 II, Class III, or Class IV forest practice shall be commenced or
10 continued after January 1, 1975, unless the department has received a
11 notification with regard to a Class II forest practice or approved an
12 application with regard to a Class III or Class IV forest practice
13 containing all information required by RCW 76.09.060 as now or
14 hereafter amended. However, in the event forest practices regulations
15 necessary for the scheduled implementation of this chapter and RCW
16 90.48.420 have not been adopted in time to meet such schedules, the
17 department shall have the authority to regulate forest practices and
18 approve applications on such terms and conditions consistent with this
19 chapter and RCW 90.48.420 and the purposes and policies of RCW
20 76.09.010 until applicable forest practices regulations are in effect.

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

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

33 (5) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, the
35 department of natural resources shall notify the applicant in writing
36 of either its approval of the application or its disapproval of the
37 application and the specific manner in which the application fails to

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

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

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

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

35 (b) The objections relate to lands either:

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

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

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

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

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

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

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

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

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

7 (2) The department, in partnership with the Northwest straits
8 commission, the department of natural resources, and other interested
9 parties, must publish guidelines for the safe removal and disposal of
10 derelict fishing gear. The guidelines must be completed by August 31,
11 2002, and made available to any person interested in derelict fishing
12 gear removal.

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

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

18 A hardshell clam mechanical harvester fishery license is required
19 to operate a mechanical or hydraulic device for commercially harvesting
20 clams, other than geoduck clams, unless the requirements of ((RCW
21 77.55.100)) section 201 of this act are fulfilled for the proposed
22 activity.

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

25 (1) RCW 77.55.100 (Hydraulic projects or other work--Plans and
26 specifications--Permits--Approval--Emergencies) and 2002 c 368 s 2,
27 2000 c 107 s 16, & 1998 c 190 s 87;

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

33 (3) RCW 77.55.190 (Processing of permits or authorizations for
34 emergency water withdrawal and facilities to be expedited) and 1989 c
35 171 s 8 & 1987 c 343 s 6.

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

3 NEW SECTION. **Sec. 1008.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 2003, in the omnibus appropriations act, this act
6 is null and void."

7 Correct the title.

EFFECT: Chapter 77.55 RCW is amended, reorganized, and recodified. Several sections relating to fish passage and screening are moved to a new chapter in Title 77 RCW. An intent section and a definition section are created. RCW 77.55.100 and 77.55.110 which currently authorize the Department of Fish and Wildlife (DFW) to issue hydraulic permits, are repealed and rewritten into one section.

Policy changes contained in the proposed striking amendment that are not part of ESSB 5375 include:

(1) Appeals of all hydraulic permit decisions, not just projects granted for diversion of water for agricultural irrigation, stock watering, streambank stabilization, or off-site mitigation are the jurisdiction of the Hydraulic Appeals Board;

(2) The Department of Fish and Wildlife (DFW) has the burden of proof to show that the denial or conditioning of a permit is solely to protect fish life for all applicants, not just those applying for a permit under RCW 77.55.110;

(3) The definition of streambank stabilization is restricted to specific projects;

(4) Provisions allowing the DFW to modify a permit due to changed conditions applies to all hydraulic permits, not just those issued under RCW 77.55.110;

(5) Provisions allowing a permittee to request modification of a permit due to changed conditions applies to all hydraulic permits, not just to those issued under RCW 77.55.110; and

(6) The 45-day requirement for DFW to grant or deny approval of a permit is suspended if an application is not complete.

Policy changes in ESSB 5375 that are not contained in the proposed striking amendment include:

(1) General permits developed for routine repair and maintenance of existing over-water structures is removed;

(2) General permits for routine repair and maintenance of bridges is restricted to activities below the ordinary high water line;

(3) The provision allowing local governments to apply for certification for critical areas or shoreline regulations as equivalent hydraulic permit requirements is removed;

(4) The requirement that the DFW must develop procedures to ensure consistency of hydraulic permit conditions is removed;

(5) The 45-day period for permit issuance is not suspended when a project applicant requests review under the expedited dispute resolution process;

(6) Language restricting other work to "within the bed of any state waters" for the purpose of obtaining a hydraulic project permit is removed; and

(7) Expedited dispute resolution committee decisions are not binding on the DFW.

--- END ---