

HOUSE BILL REPORT

ESSB 5624

*As Passed House
April 19, 1991*

Title: An act relating to the protection of the food fish resource.

Brief Description: Protecting food fish resources by the department of fisheries.

Sponsor(s): Senate Committee on Environment & Natural Resources (originally sponsored by Senators Craswell, Conner and Metcalf).

Brief History:

Reported by House Committee on:
Fisheries & Wildlife, April 2, 1991, DPA;
Passed House, April 19, 1991, 90-5.

**HOUSE COMMITTEE ON
FISHERIES & WILDLIFE**

Majority Report: *Do pass as amended.* Signed by 8 members: Representatives R. King, Chair; Morris, Vice Chair; Wilson, Ranking Minority Member; Fuhrman, Assistant Ranking Minority Member; Basich; Hochstatter; Orr; and Padden.

Minority Report: *Do not pass.* Signed by 3 members: Representatives Cole; Haugen; and Spanel.

Staff: Keitlyn Watson (786-7310).

Background: The hydraulic code was passed into law in 1949. It is intended to protect fish life from damage by construction and other activities in all marine and fresh waters of the state. The hydraulic code is implemented through a permit called the Hydraulic Project Approval (HPA) obtained from the Washington Department of Fisheries for saltwaters or freshwaters containing salmon; or obtained from the Department of Wildlife for freshwaters without salmon. Agency rules with extensive technical provisions have been adopted by both departments to guide their administration of the code. Types of activities that require an HPA include streambank protection, construction of bridges, piers, bulkheads, ponds, marinas, docks, pile driving, channel change, culvert installation, dredging, logjam removal, and mineral prospecting.

Permit Process

An individual requiring an HPA makes application to the Department of Fisheries or the Department of Wildlife. The appropriate agency is required under current law to process these applications within 45 calendar days of receipt and the receipt of evidence of compliance with the State Environmental Policy Act. Many applications are reviewed on site by a biologist and, based on office and field review, conditions may be required by the agency with jurisdiction. The sole consideration in conditioning, issuing, or denying of a permit is the protection of fish life. Conditions may be based on the technical provisions in the rules, site-specific data, relevant research and literature, or the biologist's professional knowledge. Conditions may include timing restrictions.

Informal appeals processes are available to applicants who wish to contest denial of an HPA or permit conditions on an HPA. A formal appeals process is available for project applicants that divert water for stock watering or agricultural irrigation or are associated with streambank stabilization to protect farm and agricultural land. Formal appeals are made to the Hydraulic Appeals Board.

Summary of Bill: The amended bill applies to permit applications to the Department of Fisheries for hydraulic project approvals for construction, replacement, or repair of marine beachfront protective bulkheads or rockwalls for single-family residences. The Department of Fisheries must approve applications that meet the following conditions, within 45 days of receipt of the application, and regardless of whether the process for compliance with the State Environmental Policy Act has been completed:

- (1) The waterward face of a new bulkhead or rockwall must be only as far waterward as necessary to excavate for footings or place base rock but may not be located more than six feet waterward of the ordinary high water line.
- (2) Any bulkhead or rockwall that replaces an existing structure must be placed along the same alignment as the existing structure, unless removal of the existing structure will cause environmental damage or is difficult to remove because of geologic, engineering, or safety considerations. In these situations, the replacement bulkhead may be placed waterward and abut the existing structure.
- (3) Construction, replacement, or repair of a bulkhead or rockwall that must extend waterward of the existing

structure shall not result in the permanent loss of critical food fish or shellfish habitats.

- (4) Timing restrictions as permit conditions may be applied on a case by case basis for the protection of critical habitats, including migration corridors, rearing and feeding areas, and spawning habitats.

Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic project approval under the act may seek review from the hydraulic appeals board.

Fiscal Note: Requested March 21, 1991.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is needed to expedite the permit process. Content of legislation is agreeable to all parties.

Testimony Against: None.

Witnesses: John Woodring, Bainbridge Marine Services (in favor); Bill Jones, Hub Sportsmen's Club and Wildcat Steelhead Club (in favor); Ed Manary, Department of Fisheries (does not oppose with amendment to clarify that all conditions must be met); and Floyd Japhet, Japhet Bulkhead, Incorporated (in favor).