
SUBSTITUTE SENATE BILL 6264

State of Washington

58th Legislature

2004 Regular Session

By Senate Committee on Parks, Fish & Wildlife (originally sponsored by Senators Swecker, Doumit, Oke, Mulliken, Horn, Jacobsen, Rasmussen and Murray)

READ FIRST TIME 02/03/04.

1 AN ACT Relating to general permits; amending RCW 77.55.100 and
2 90.58.030; adding a new section to chapter 77.55 RCW; adding a new
3 section to chapter 77.15 RCW; and adding a new section to chapter 90.58
4 RCW.

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

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

8 (1) The department may adopt general permits for activities if the
9 department determines that the activities are similar in nature, will
10 cause only minimal adverse impacts on fish life when performed
11 separately, and will have only a minimal cumulative impact on fish
12 life.

13 (2) "General permit," as it is used in this chapter, means a
14 hydraulic project approval that covers multiple projects within a
15 defined geographic area, in lieu of a standard permit being issued to
16 each applicant under RCW 77.55.100 or 77.55.110.

17 (3) The general permit must include the following:

- 18 (a) A precise description of the activities covered by the permit;
19 (b) The conditions to protect fish life;

1 (c) The time, manner, locations, and methods an applicant must
2 follow to receive coverage under the permit;

3 (d) The geographic scope of the permit;

4 (e) The method to obtain coverage under the general permit, which
5 may include an abbreviated application process; and

6 (f) Any requirements for reporting at project completion.

7 (4) Notice of any proposed adoption of a general permit and a
8 request for public comment must be published in the Washington State
9 Register, in a newspaper of general circulation in the geographic area
10 covered by the general permit, and on the department's web site. The
11 department must provide at least thirty days after the notice is
12 published before the general permit is finalized. The department may
13 provide an additional period for public comment and public hearings if
14 required by the complexity of the permit and degree of public interest.

15 (5) Any person aggrieved by the adoption of a general permit under
16 this section may appeal the decision according to the provisions of
17 chapter 34.05 RCW.

18 (6) To obtain coverage under a general permit, an applicant must
19 provide notice to the department, in the time and manner defined in the
20 general permit. The department must approve or deny the application
21 for coverage.

22 (7) A person aggrieved by the decision to approve or deny coverage
23 under a general permit for an individual project may appeal the
24 decision under the provisions of chapter 34.05 RCW. The appeal may
25 only be based on whether the individual project fits within the scope
26 of the general permit.

27 (8) The department may adopt rules under chapter 34.05 RCW to
28 implement this section. The department may adopt a general permit as
29 a rule under chapter 34.05 RCW if the department determines rule making
30 is required to address the complexity of the general permit.

31 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15 RCW
32 to read as follows:

33 (1) If any person or government agency fails to follow the
34 requirements of obtaining coverage under a general permit under section
35 1 of this act or fails to carry out any of the requirements or
36 conditions of a general permit issued under section 1 of this act, the
37 department may issue an order to that person or government agency. The

1 order may require the person or government agency to stop work on any
2 or all of the activities subject to the general permit, to correct or
3 to restore the nonconforming site, or to both stop work and to correct
4 or to restore the nonconforming site. Within twenty days of service of
5 such an order or as provided by rule of the department extending such
6 time, the person may file a written petition with the department
7 appealing the order, and this petition shall be treated as an
8 application for an adjudicative proceeding under chapter 34.05 RCW. In
9 the event of an appeal, a person or government agency may seek interim
10 relief from an order under this section as provided in chapter 34.05
11 RCW.

12 (2) The department may adopt rules to designate that certain
13 violations of the terms or conditions of a general permit under section
14 1 of this act are an infraction to be punished as provided by RCW
15 77.15.160. Application of the remedy provided in subsection (1) of
16 this section does not preclude any punishment under RCW 77.15.160.

17 **Sec. 3.** RCW 77.55.100 and 2003 c 391 s 2 are each amended to read
18 as follows:

19 (1) In the event that any person or government agency desires to
20 construct any form of hydraulic project or perform other work that will
21 use, divert, obstruct, or change the natural flow or bed of any of the
22 salt or fresh waters of the state, such person or government agency
23 shall, before commencing construction or work thereon and to ensure the
24 proper protection of fish life, secure the approval of the department
25 as to the adequacy of the means proposed for the protection of fish
26 life. This approval shall not be unreasonably withheld or unreasonably
27 conditioned.

28 (2)(a) The department shall grant or deny approval of a standard
29 permit within forty-five calendar days of the receipt of a complete
30 application and notice of compliance with any applicable requirements
31 of the state environmental policy act, made in the manner prescribed in
32 this section. The permit must contain provisions allowing for minor
33 modifications to the plans and specifications without requiring
34 reissuance of the permit.

35 (b) The applicant may document receipt of application by filing in
36 person or by registered mail. A complete application for approval
37 shall contain general plans for the overall project, complete plans and

1 specifications of the proposed construction or work within the mean
2 higher high water line in salt water or within the ordinary high water
3 line in fresh water, and complete plans and specifications for the
4 proper protection of fish life.

5 (c) The department may accept a complete, written application as
6 provided in (b) of this subsection for a standard permit for a project
7 with multiple job sites, or within a defined geographic area.

8 (d) The forty-five day requirement shall be 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~~) or sites are physically inaccessible for
13 inspection; or

14 (iii) The applicant requests delay. Immediately upon determination
15 that the forty-five day period is suspended, the department shall
16 notify the applicant in writing of the reasons for the delay.

17 (~~(d)~~) (e) For purposes of this section, "standard permit" means
18 a written permit issued by the department when the conditions under
19 subsections (3) and (5)(b) of this section are not met. Standard
20 permits may be issued for single or multiple job sites, or for work
21 within a defined geographic area.

22 (3)(a) The department may issue an expedited written permit in
23 those instances where normal permit processing would result in
24 significant hardship for the applicant or unacceptable damage to the
25 environment. In cases of imminent danger, the department shall issue
26 an expedited written permit, upon request, for work to repair existing
27 structures, move obstructions, restore banks, protect property, or
28 protect fish resources. Expedited permit requests require a complete
29 written application as provided in subsection (2)(b) of this section
30 and shall be issued within fifteen calendar days of the receipt of a
31 complete written application. Approval of an expedited permit is valid
32 for up to sixty days from the date of issuance.

33 (b) For the purposes of this subsection, "imminent danger" means a
34 threat by weather, water flow, or other natural conditions that is
35 likely to occur within sixty days of a request for a permit
36 application.

37 (c) The department may not require the provisions of the state

1 environmental policy act, chapter 43.21C RCW, to be met as a condition
2 of issuing a permit under this subsection.

3 (d) The department or the county legislative authority may
4 determine if an imminent danger exists. The county legislative
5 authority shall notify the department, in writing, if it determines
6 that an imminent danger exists.

7 (4) Approval of a standard permit is valid for a period of up to
8 five years from date of issuance. The permittee must demonstrate
9 substantial progress on construction of that portion of the project
10 relating to the approval within two years of the date of issuance. If
11 the department denies approval, the department shall provide the
12 applicant, in writing, a statement of the specific reasons why and how
13 the proposed project would adversely affect fish life. Protection of
14 fish life shall be the only ground upon which approval may be denied or
15 conditioned. Chapter 34.05 RCW applies to any denial of project
16 approval, conditional approval, or requirements for project
17 modification upon which approval may be contingent.

18 (5)(a) In case of an emergency arising from weather or stream flow
19 conditions or other natural conditions, the department, through its
20 authorized representatives, shall issue immediately, upon request, oral
21 approval for removing any obstructions, repairing existing structures,
22 restoring stream banks, or to protect property threatened by the stream
23 or a change in the stream flow without the necessity of obtaining a
24 written approval prior to commencing work. Conditions of an oral
25 approval to protect fish life shall be established by the department
26 and reduced to writing within thirty days and complied with as provided
27 for in this section. Oral approval shall be granted immediately, upon
28 request, for a stream crossing during an emergency situation.

29 (b) For purposes of this section and RCW 77.55.110, "emergency"
30 means an immediate threat to life, the public, property, or of
31 environmental degradation.

32 (c) The department or the county legislative authority may declare
33 and continue an emergency when one or more of the criteria under (b) of
34 this subsection are met. The county legislative authority shall
35 immediately notify the department if it declares an emergency under
36 this subsection.

37 (6) The department shall, at the request of a county, develop five-
38 year maintenance approval agreements, consistent with comprehensive

1 flood control management plans adopted under the authority of RCW
2 86.12.200, or other watershed plan approved by a county legislative
3 authority, to allow for work on public and private property for bank
4 stabilization, bridge repair, removal of sand bars and debris, channel
5 maintenance, and other flood damage repair and reduction activity under
6 agreed-upon conditions and times without obtaining permits for specific
7 projects.

8 (7) This section shall not apply to the construction of any form of
9 hydraulic project or other work which diverts water for agricultural
10 irrigation or stock watering purposes authorized under or recognized as
11 being valid by the state's water codes, or when such hydraulic project
12 or other work is associated with streambank stabilization to protect
13 farm and agricultural land as defined in RCW 84.34.020. These
14 irrigation or stock watering diversion and streambank stabilization
15 projects shall be governed by RCW 77.55.110.

16 A landscape management plan approved by the department and the
17 department of natural resources under RCW 76.09.350(2), shall serve as
18 a hydraulic project approval for the life of the plan if fish are
19 selected as one of the public resources for coverage under such a plan.

20 (8) For the purposes of this section and RCW 77.55.110, "bed" means
21 the land below the ordinary high water lines of state waters. This
22 definition does not include irrigation ditches, canals, storm water
23 run-off devices, or other artificial watercourses except where they
24 exist in a natural watercourse that has been altered by man.

25 (9) The phrase "to construct any form of hydraulic project or
26 perform other work" does not include the act of driving across an
27 established ford. Driving across streams or on wetted stream beds at
28 areas other than established fords requires approval. Work within the
29 ordinary high water line of state waters to construct or repair a ford
30 or crossing requires approval.

31 (10) The department shall not require a fishway on a tide gate,
32 flood gate, or other associated man-made agricultural drainage
33 facilities as a condition of a hydraulic project approval if such
34 fishway was not originally installed as part of an agricultural
35 drainage system existing on or before May 20, 2003.

36 (11) Any condition requiring a self-regulating tide gate to achieve
37 fish passage in an existing hydraulic project approval under this
38 section may not be enforced.

1 **Sec. 4.** RCW 90.58.030 and 2003 c 321 s 2 are each amended to read
2 as follows:

3 As used in this chapter, unless the context otherwise requires, the
4 following definitions and concepts apply:

5 (1) Administration:

6 (a) "Department" means the department of ecology;

7 (b) "Director" means the director of the department of ecology;

8 (c) "Local government" means any county, incorporated city, or town
9 which contains within its boundaries any lands or waters subject to
10 this chapter;

11 (d) "Person" means an individual, partnership, corporation,
12 association, organization, cooperative, public or municipal
13 corporation, or agency of the state or local governmental unit however
14 designated;

15 (e) "Hearing board" means the shoreline hearings board established
16 by this chapter.

17 (2) Geographical:

18 (a) "Extreme low tide" means the lowest line on the land reached by
19 a receding tide;

20 (b) "Ordinary high water mark" on all lakes, streams, and tidal
21 water is that mark that will be found by examining the bed and banks
22 and ascertaining where the presence and action of waters are so common
23 and usual, and so long continued in all ordinary years, as to mark upon
24 the soil a character distinct from that of the abutting upland, in
25 respect to vegetation as that condition exists on June 1, 1971, as it
26 may naturally change thereafter, or as it may change thereafter in
27 accordance with permits issued by a local government or the department:
28 PROVIDED, That in any area where the ordinary high water mark cannot be
29 found, the ordinary high water mark adjoining salt water shall be the
30 line of mean higher high tide and the ordinary high water mark
31 adjoining fresh water shall be the line of mean high water;

32 (c) "Shorelines of the state" are the total of all "shorelines" and
33 "shorelines of statewide significance" within the state;

34 (d) "Shorelines" means all of the water areas of the state,
35 including reservoirs, and their associated shorelands, together with
36 the lands underlying them; except (i) shorelines of statewide
37 significance; (ii) shorelines on segments of streams upstream of a
38 point where the mean annual flow is twenty cubic feet per second or

1 less and the wetlands associated with such upstream segments; and (iii)
2 shorelines on lakes less than twenty acres in size and wetlands
3 associated with such small lakes;

4 (e) "Shorelines of statewide significance" means the following
5 shorelines of the state:

6 (i) The area between the ordinary high water mark and the western
7 boundary of the state from Cape Disappointment on the south to Cape
8 Flattery on the north, including harbors, bays, estuaries, and inlets;

9 (ii) Those areas of Puget Sound and adjacent salt waters and the
10 Strait of Juan de Fuca between the ordinary high water mark and the
11 line of extreme low tide as follows:

- 12 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
- 13 (B) Birch Bay--from Point Whitehorn to Birch Point,
- 14 (C) Hood Canal--from Tala Point to Foulweather Bluff,
- 15 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
- 16 and
- 17 (E) Padilla Bay--from March Point to William Point;

18 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
19 adjacent salt waters north to the Canadian line and lying seaward from
20 the line of extreme low tide;

21 (iv) Those lakes, whether natural, artificial, or a combination
22 thereof, with a surface acreage of one thousand acres or more measured
23 at the ordinary high water mark;

24 (v) Those natural rivers or segments thereof as follows:

25 (A) Any west of the crest of the Cascade range downstream of a
26 point where the mean annual flow is measured at one thousand cubic feet
27 per second or more,

28 (B) Any east of the crest of the Cascade range downstream of a
29 point where the annual flow is measured at two hundred cubic feet per
30 second or more, or those portions of rivers east of the crest of the
31 Cascade range downstream from the first three hundred square miles of
32 drainage area, whichever is longer;

33 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
34 this subsection (2)(e);

35 (f) "Shorelands" or "shoreland areas" means those lands extending
36 landward for two hundred feet in all directions as measured on a
37 horizontal plane from the ordinary high water mark; floodways and
38 contiguous floodplain areas landward two hundred feet from such

1 floodways; and all wetlands and river deltas associated with the
2 streams, lakes, and tidal waters which are subject to the provisions of
3 this chapter; the same to be designated as to location by the
4 department of ecology.

5 (i) Any county or city may determine that portion of a one-hundred-
6 year-flood plain to be included in its master program as long as such
7 portion includes, as a minimum, the floodway and the adjacent land
8 extending landward two hundred feet therefrom.

9 (ii) Any city or county may also include in its master program land
10 necessary for buffers for critical areas, as defined in chapter 36.70A
11 RCW, that occur within shorelines of the state, provided that forest
12 practices regulated under chapter 76.09 RCW, except conversions to
13 nonforest land use, on lands subject to the provisions of this
14 subsection (2)(f)(ii) are not subject to additional regulations under
15 this chapter;

16 (g) "Floodway" means those portions of the area of a river valley
17 lying streamward from the outer limits of a watercourse upon which
18 flood waters are carried during periods of flooding that occur with
19 reasonable regularity, although not necessarily annually, said floodway
20 being identified, under normal condition, by changes in surface soil
21 conditions or changes in types or quality of vegetative ground cover
22 condition. The floodway shall not include those lands that can
23 reasonably be expected to be protected from flood waters by flood
24 control devices maintained by or maintained under license from the
25 federal government, the state, or a political subdivision of the state;

26 (h) "Wetlands" means areas that are inundated or saturated by
27 surface water or ground water at a frequency and duration sufficient to
28 support, and that under normal circumstances do support, a prevalence
29 of vegetation typically adapted for life in saturated soil conditions.
30 Wetlands generally include swamps, marshes, bogs, and similar areas.
31 Wetlands do not include those artificial wetlands intentionally created
32 from nonwetland sites, including, but not limited to, irrigation and
33 drainage ditches, grass-lined swales, canals, detention facilities,
34 wastewater treatment facilities, farm ponds, and landscape amenities,
35 or those wetlands created after July 1, 1990, that were unintentionally
36 created as a result of the construction of a road, street, or highway.
37 Wetlands may include those artificial wetlands intentionally created
38 from nonwetland areas to mitigate the conversion of wetlands.

1 (3) Procedural terms:

2 (a) "Guidelines" means those standards adopted to implement the
3 policy of this chapter for regulation of use of the shorelines of the
4 state prior to adoption of master programs. Such standards shall also
5 provide criteria to local governments and the department in developing
6 master programs;

7 (b) "Master program" shall mean the comprehensive use plan for a
8 described area, and the use regulations together with maps, diagrams,
9 charts, or other descriptive material and text, a statement of desired
10 goals, and standards developed in accordance with the policies
11 enunciated in RCW 90.58.020;

12 (c) "State master program" is the cumulative total of all master
13 programs approved or adopted by the department of ecology;

14 (d) "Development" means a use consisting of the construction or
15 exterior alteration of structures; dredging; drilling; dumping;
16 filling; removal of any sand, gravel, or minerals; bulkheading; driving
17 of piling; placing of obstructions; or any project of a permanent or
18 temporary nature which interferes with the normal public use of the
19 surface of the waters overlying lands subject to this chapter at any
20 state of water level;

21 (e) "Substantial development" shall mean any development of which
22 the total cost or fair market value exceeds five thousand dollars, or
23 any development which materially interferes with the normal public use
24 of the water or shorelines of the state. The dollar threshold
25 established in this subsection (3)(e) must be adjusted for inflation by
26 the office of financial management every five years, beginning July 1,
27 2007, based upon changes in the consumer price index during that time
28 period. "Consumer price index" means, for any calendar year, that
29 year's annual average consumer price index, Seattle, Washington area,
30 for urban wage earners and clerical workers, all items, compiled by the
31 bureau of labor and statistics, United States department of labor. The
32 office of financial management must calculate the new dollar threshold
33 and transmit it to the office of the code reviser for publication in
34 the Washington State Register at least one month before the new dollar
35 threshold is to take effect. The following shall not be considered
36 substantial developments for the purpose of this chapter:

37 (i) Normal maintenance or repair of existing structures or
38 developments, including damage by accident, fire, or elements;

1 (ii) Construction of the normal protective bulkhead common to
2 single family residences;

3 (iii) Emergency construction necessary to protect property from
4 damage by the elements;

5 (iv) Construction and practices normal or necessary for farming,
6 irrigation, and ranching activities, including agricultural service
7 roads and utilities on shorelands, and the construction and maintenance
8 of irrigation structures including but not limited to head gates,
9 pumping facilities, and irrigation channels. A feedlot of any size,
10 all processing plants, other activities of a commercial nature,
11 alteration of the contour of the shorelands by leveling or filling
12 other than that which results from normal cultivation, shall not be
13 considered normal or necessary farming or ranching activities. A
14 feedlot shall be an enclosure or facility used or capable of being used
15 for feeding livestock hay, grain, silage, or other livestock feed, but
16 shall not include land for growing crops or vegetation for livestock
17 feeding and/or grazing, nor shall it include normal livestock wintering
18 operations;

19 (v) Construction or modification of navigational aids such as
20 channel markers and anchor buoys;

21 (vi) Construction on shorelands by an owner, lessee, or contract
22 purchaser of a single family residence for his own use or for the use
23 of his or her family, which residence does not exceed a height of
24 thirty-five feet above average grade level and which meets all
25 requirements of the state agency or local government having
26 jurisdiction thereof, other than requirements imposed pursuant to this
27 chapter;

28 (vii) Construction of a dock, including a community dock, designed
29 for pleasure craft only, for the private noncommercial use of the
30 owner, lessee, or contract purchaser of single and multiple family
31 residences. This exception applies if either: (A) In salt waters, the
32 fair market value of the dock does not exceed two thousand five hundred
33 dollars; or (B) in fresh waters, the fair market value of the dock does
34 not exceed ten thousand dollars, but if subsequent construction having
35 a fair market value exceeding two thousand five hundred dollars occurs
36 within five years of completion of the prior construction, the
37 subsequent construction shall be considered a substantial development
38 for the purpose of this chapter;

1 (viii) Operation, maintenance, or construction of canals,
2 waterways, drains, reservoirs, or other facilities that now exist or
3 are hereafter created or developed as a part of an irrigation system
4 for the primary purpose of making use of system waters, including
5 return flow and artificially stored ground water for the irrigation of
6 lands;

7 (ix) The marking of property lines or corners on state owned lands,
8 when such marking does not significantly interfere with normal public
9 use of the surface of the water;

10 (x) Operation and maintenance of any system of dikes, ditches,
11 drains, or other facilities existing on September 8, 1975, which were
12 created, developed, or utilized primarily as a part of an agricultural
13 drainage or diking system;

14 (xi) Site exploration and investigation activities that are
15 prerequisite to preparation of an application for development
16 authorization under this chapter, if:

17 (A) The activity does not interfere with the normal public use of
18 the surface waters;

19 (B) The activity will have no significant adverse impact on the
20 environment including, but not limited to, fish, wildlife, fish or
21 wildlife habitat, water quality, and aesthetic values;

22 (C) The activity does not involve the installation of a structure,
23 and upon completion of the activity the vegetation and land
24 configuration of the site are restored to conditions existing before
25 the activity;

26 (D) A private entity seeking development authorization under this
27 section first posts a performance bond or provides other evidence of
28 financial responsibility to the local jurisdiction to ensure that the
29 site is restored to preexisting conditions; and

30 (E) The activity is not subject to the permit requirements of RCW
31 90.58.550;

32 (xii) The process of removing or controlling an aquatic noxious
33 weed, as defined in RCW 17.26.020, through the use of an herbicide or
34 other treatment methods applicable to weed control that are recommended
35 by a final environmental impact statement published by the department
36 of agriculture or the department jointly with other state agencies
37 under chapter 43.21C RCW;

1 (f) "General permit" means a permit that covers multiple projects
2 within a defined geographic area, in lieu of a substantial development
3 permit being issued to each applicant under RCW 90.58.140.

4 NEW SECTION. Sec. 5. A new section is added to chapter 90.58 RCW
5 to read as follows:

6 (1) A local government may adopt general permits for any activities
7 subject to the requirements for a substantial development permit under
8 RCW 90.58.140 if the local government determines that the activities
9 are similar in nature, will cause only minimal adverse impacts on
10 shorelines when performed separately, will have only a minimal
11 cumulative impact on shorelines, and are consistent with the local
12 master program.

13 (2) The general permit must include the following:

14 (a) A precise description of the activities covered by the permit;

15 (b) The conditions and practices an applicant must follow to
16 receive coverage under the permit;

17 (c) The geographic scope of the permit;

18 (d) The method to obtain coverage under the permit, which may
19 include an abbreviated application process; and

20 (e) Any requirements for reporting at project completion.

21 (3) Notice of any proposed general permit and a request for public
22 comment must be published in a newspaper of general circulation in the
23 geographic area covered by the general permit, or in any other manner
24 deemed appropriate by the local government. The local government must
25 provide at least thirty days after the notice is published before the
26 general permit is finalized. The local government may provide an
27 additional period for public comment and public hearings if required by
28 the complexity of the permit and degree of public interest.

29 (4) Any person aggrieved by the adoption of a general permit under
30 this section may appeal the general permit to the shorelines hearings
31 board according to the procedures in RCW 90.58.180. Coverage under the
32 general permit for individual projects is not subject to appeal.

33 (5) To obtain coverage under a general permit, an applicant must
34 provide notice to the local government and to the public, in the time
35 and manner defined in the general permit. The local government may
36 approve or deny the application for coverage.

1 (6) A person aggrieved by the decision to approve or deny coverage
2 under a general permit for an individual project may appeal the
3 decision to the shorelines hearings board according to the procedures
4 in RCW 90.58.180. The appeal may only be based on whether the
5 individual project fits within the scope of the general permit.

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