

CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE HOUSE BILL 1346**

Chapter 146, Laws of 2005

59th Legislature  
2005 Regular Session

HYDRAULIC PROJECT APPROVAL PROGRAM

EFFECTIVE DATE: 7/24/05

Passed by the House March 11, 2005  
Yeas 94 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate April 14, 2005  
Yeas 43 Nays 6

BRAD OWEN

**President of the Senate**

Approved April 22, 2005.

CHRISTINE GREGOIRE

**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1346** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

**Chief Clerk**

FILED

April 22, 2005 - 3:42 p.m.

**Secretary of State  
State of Washington**



1        NEW SECTION.    **Sec. 101.**    The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

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

8        (2) "Board" means the hydraulic appeals board created in RCW  
9 77.55.170 (as recodified by this act).

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

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

12        (5) "Director" means the director of the department of fish and  
13 wildlife.

14        (6) "Emergency" means an immediate threat to life, the public,  
15 property, or of environmental degradation.

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

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

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

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

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

1 (12) "Permit" means a hydraulic project approval permit issued  
2 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.

8 (15) "Spartina," "purple loosestrife," and "aquatic noxious weeds"  
9 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 include,  
12 but are not limited to, bank resloping, log and debris relocation or  
13 removal, planting of woody vegetation, bank protection using rock or  
14 woody material or placement of jetties or groins, gravel removal, or  
15 erosion control.

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

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

## 21 PART 2

### 22 DETERMINING HOW TO OBTAIN A HYDRAULIC PROJECT APPROVAL PERMIT

23 NEW SECTION. **Sec. 201.** (1) Except as provided in sections 301 and  
24 303 of this act and RCW 77.55.330 (as recodified by this act), in the  
25 event that any person or government agency desires to undertake a  
26 hydraulic project, the person or government agency shall, before  
27 commencing work thereon, secure the approval of the department in the  
28 form of a permit as to the adequacy of the means proposed for the  
29 protection of fish life.

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

32 (a) General plans for the overall project;

33 (b) Complete plans and specifications of the proposed construction  
34 or work within the mean higher high water line in saltwater or within  
35 the ordinary high water line in freshwater;

1 (c) Complete plans and specifications for the proper protection of  
2 fish life; and

3 (d) Notice of compliance with any applicable requirements of the  
4 state environmental policy act, unless otherwise provided for in this  
5 chapter.

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

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

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

17 (iii) The applicant requests a delay; or

18 (iv) The department is issuing a permit for a storm water discharge  
19 and is complying with the requirements of RCW 77.55.340(3)(b) (as  
20 recodified by this act).

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

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

28 (4) If the department denies approval of a permit, the department  
29 shall provide the applicant a written statement of the specific reasons  
30 why and how the proposed project would adversely affect fish life.  
31 Issuance, denial, conditioning, or modification of a permit shall be  
32 appealable to the department or the board as specified in RCW 77.55.170  
33 (as recodified by this act) within thirty days of the notice of  
34 decision.

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

1 (b) Approval of a permit is valid for a period of up to five years  
2 from the date of issuance, except as provided in (c) of this subsection  
3 and in RCW 77.55.220 (as recodified by this act).

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

14 (6) The department may, after consultation with the permittee,  
15 modify a permit due to changed conditions. The modification becomes  
16 effective unless appealed to the department or the board as specified  
17 in RCW 77.55.170 (as recodified by this act) within thirty days from  
18 the notice of the proposed modification. For hydraulic projects that  
19 divert water for agricultural irrigation or stock watering purposes, or  
20 when the hydraulic project or other work is associated with streambank  
21 stabilization to protect farm and agricultural land as defined in RCW  
22 84.34.020, the burden is on the department to show that changed  
23 conditions warrant the modification in order to protect fish life.

24 (7) A permittee may request modification of a permit due to changed  
25 conditions. The request must be processed within forty-five calendar  
26 days of receipt of the written request. A decision by the department  
27 may be appealed to the board within thirty days of the notice of the  
28 decision. For hydraulic projects that divert water for agricultural  
29 irrigation or stock watering purposes, or when the hydraulic project or  
30 other work is associated with streambank stabilization to protect farm  
31 and agricultural land as defined in RCW 84.34.020, the burden is on the  
32 permittee to show that changed conditions warrant the requested  
33 modification and that such a modification will not impair fish life.

34 (8) The department or the county legislative authority may declare  
35 and continue an emergency. The county legislative authority shall  
36 immediately notify the department if it declares an emergency under  
37 this subsection. The department, through its authorized  
38 representatives, shall issue immediately, upon request, oral approval

1 for a stream crossing, or work to remove any obstructions, repair  
2 existing structures, restore streambanks, protect fish life, or protect  
3 property threatened by the stream or a change in the stream flow  
4 without the necessity of obtaining a written permit prior to commencing  
5 work. Conditions of the emergency oral permit must be established by  
6 the department and reduced to writing within thirty days and complied  
7 with as provided for in this chapter. The department may not require  
8 the provisions of the state environmental policy act, chapter 43.21C  
9 RCW, to be met as a condition of issuing a permit under this  
10 subsection.

11 (9) All state and local agencies with authority under this chapter  
12 to issue permits or other authorizations in connection with emergency  
13 water withdrawals and facilities authorized under RCW 43.83B.410 shall  
14 expedite the processing of such permits or authorizations in keeping  
15 with the emergency nature of such requests and shall provide a decision  
16 to the applicant within fifteen calendar days of the date of  
17 application.

18 (10) The department or the county legislative authority may  
19 determine an imminent danger exists. The county legislative authority  
20 shall notify the department, in writing, if it determines that an  
21 imminent danger exists. In cases of imminent danger, the department  
22 shall issue an expedited written permit, upon request, for work to  
23 remove any obstructions, repair existing structures, restore banks,  
24 protect fish resources, or protect property. Expedited permit requests  
25 require a complete written application as provided in subsection (2) of  
26 this section and must be issued within fifteen calendar days of the  
27 receipt of a complete written application. Approval of an expedited  
28 permit is valid for up to sixty days from the date of issuance. The  
29 department may not require the provisions of the state environmental  
30 policy act, chapter 43.21C RCW, to be met as a condition of issuing a  
31 permit under this subsection.

32 (11) The department may issue an expedited written permit in those  
33 instances where normal permit processing would result in significant  
34 hardship for the applicant or unacceptable damage to the environment.  
35 Expedited permit requests require a complete written application as  
36 provided in subsection (2) of this section and must be issued within  
37 fifteen calendar days of the receipt of a complete written application.  
38 Approval of an expedited permit is valid for up to sixty days from the

1 date of issuance. The department may not require the provisions of the  
2 state environmental policy act, chapter 43.21C RCW, to be met as a  
3 condition of issuing a permit under this subsection.

4 **PART 3**

5 **EXEMPTION FROM HYDRAULIC PROJECT APPROVAL**

6 NEW SECTION. **Sec. 301.** The act of driving across an established  
7 ford is exempt from a permit. Driving across streams or on wetted  
8 streambeds at areas other than established fords requires a permit.  
9 Work within the ordinary high water line of state waters to construct  
10 or repair a ford or crossing requires a permit.

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

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

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

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

21 **PART 4**

22 **COMPLIANCE THROUGH GUIDELINES, AGREEMENTS, AND PAMPHLETS**

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

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

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

31 (~~3~~) By June 30, 1997, the department (~~of fish and wildlife~~)  
32 shall develop rules for projects conducted solely for the removal or



1 control of various aquatic noxious weeds other than spartina and purple  
2 loosestrife and for activities or hydraulic projects for controlling  
3 purple loosestrife not covered by (~~subsection (2)~~) section 303(2) of  
4 this (~~section, which projects will use, divert, obstruct, or change~~  
5 ~~the natural flow or bed of any of the salt or fresh waters of the~~  
6 ~~state~~) act. Following the adoption of the rules, the department shall  
7 produce and distribute a pamphlet describing the methods of removing or  
8 controlling the aquatic noxious weeds that are approved under the  
9 rules. The pamphlet serves as the (~~hydraulic project approval~~)  
10 permit for any project that is conducted solely for the removal or  
11 control of such aquatic noxious weeds and that is conducted as  
12 described in the pamphlet(~~(+)~~). No further (~~hydraulic project~~  
13 ~~approval~~) permit is required for such a project.

14 (2) From time to time as information becomes available, the  
15 department shall adopt similar rules for additional aquatic noxious  
16 weeds or additional activities for removing or controlling aquatic  
17 noxious weeds not governed by (~~subsection (1) or (2) of this section~~)  
18 sections 303 (1) and (2) of this act and shall produce and distribute  
19 one or more pamphlets describing these methods of removal or control.  
20 Such a pamphlet serves as the (~~hydraulic project approval~~) permit for  
21 any project that is conducted solely for the removal or control of such  
22 aquatic noxious weeds and that is conducted as described in the  
23 pamphlet(~~(+)~~). No further (~~hydraulic project approval~~) permit is  
24 required for such a project.

25 (~~(4) As used in this section, "spartina," "purple loosestrife,"~~  
26 ~~and "aquatic noxious weeds" have the meanings prescribed by RCW~~  
27 ~~17.26.020.~~

28 (~~(5)~~) (3) Nothing in this section shall prohibit the department  
29 (~~of fish and wildlife~~) from requiring a (~~hydraulic project~~  
30 ~~approval~~) permit for those parts of hydraulic projects that are not  
31 specifically for the control or removal of spartina, purple  
32 loosestrife, or other aquatic noxious weeds.

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

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

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

5 (3) Within two months of adoption of the rules, the department  
6 shall distribute an updated gold and fish pamphlet that describes  
7 methods of mineral prospecting that are consistent with the  
8 department's rule. The pamphlet shall be written to clearly indicate  
9 the prospecting methods that require ~~((written approval))~~ a permit  
10 under this chapter and the prospecting methods that require compliance  
11 with the pamphlet. To the extent possible, the department shall use  
12 the provisions of the gold and fish pamphlet to minimize the number of  
13 specific provisions of a written ~~((approval))~~ permit issued under this  
14 chapter.

15 ~~((4) For the purposes of this chapter, "small scale prospecting  
16 and mining" means only the use of the following methods: Pans,  
17 nonmotorized sluice boxes, concentrators, and minirocker boxes for the  
18 discovery and recovery of minerals.))~~

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

21 When a private landowner is applying for ~~((hydraulic project  
22 approval))~~ a permit under this chapter and that landowner has entered  
23 into a habitat incentives agreement with the department and the  
24 department of natural resources as provided in RCW 77.55.300 (as  
25 recodified by this act), the department shall comply with the terms of  
26 that agreement when evaluating the request for ~~((hydraulic project  
27 approval))~~ a permit.

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

30 (1) Beginning in January 1998, the department ~~((of fish and  
31 wildlife))~~ and the department of natural resources shall implement a  
32 habitat incentives program based on the recommendations of federally  
33 recognized Indian tribes, landowners, the regional fisheries  
34 enhancement groups, the timber, fish, and wildlife cooperators, and  
35 other interested parties. The program shall allow a private landowner  
36 to enter into an agreement with the departments to enhance habitat on

1 the landowner's property for food fish, game fish, or other wildlife  
2 species. In exchange, the landowner shall receive state regulatory  
3 certainty with regard to future applications for (~~hydraulic project~~  
4 ~~approval~~) a permit or a forest practices permit on the property  
5 covered by the agreement. The overall goal of the program is to  
6 provide a mechanism that facilitates habitat development on private  
7 property while avoiding an adverse state regulatory impact to the  
8 landowner at some future date. A single agreement between the  
9 departments and a landowner may encompass up to one thousand acres. A  
10 landowner may enter into multiple agreements with the departments,  
11 provided that the total acreage covered by such agreements with a  
12 single landowner does not exceed ten thousand acres. The departments  
13 are not obligated to enter into an agreement unless the departments  
14 find that the agreement is in the best interest of protecting fish or  
15 wildlife species or their habitat.

16 (2) A habitat incentives agreement shall be in writing and shall  
17 contain at least the following: (a) A description of the property  
18 covered by the agreement(~~(7)~~); (b) an expiration date(~~(7)~~); (c) a  
19 description of the condition of the property prior to the  
20 implementation of the agreement(~~(7)~~); and (d) other information needed  
21 by the landowner and the departments for future reference and  
22 decisions.

23 (3) As part of the agreement, the department (~~of fish and~~  
24 ~~wildlife~~) may stipulate the factors that will be considered when the  
25 department evaluates a landowner's application for (~~hydraulic project~~  
26 ~~approval under RCW 77.55.100 or 77.55.110~~) a permit on property  
27 covered by the agreement. The department's identification of these  
28 evaluation factors shall be in concurrence with the department of  
29 natural resources and affected federally recognized Indian tribes. In  
30 general, future decisions related to the issuance, conditioning, or  
31 denial of (~~hydraulic project approval shall~~) a permit must be based  
32 on the conditions present on the landowner's property at the time of  
33 the agreement, unless all parties agree otherwise.

34 (4) As part of the agreement, the department of natural resources  
35 may stipulate the factors that will be considered when the department  
36 of natural resources evaluates a landowner's application for a forest  
37 practices permit under chapter 76.09 RCW on property covered by the  
38 agreement. The (~~department's~~) department of natural resources'

1 identification of these evaluation factors shall be in concurrence with  
2 the department (~~(of fish and wildlife)~~) and affected federally  
3 recognized Indian tribes. In general, future decisions related to the  
4 issuance, conditioning, or denial of forest practices permits shall be  
5 based on the conditions present on the landowner's property at the time  
6 of the agreement, unless all parties agree otherwise.

7 (5) The agreement is binding on and may be used by only the  
8 landowner who entered into the agreement with the department. The  
9 agreement shall not be appurtenant with the land. However, if a new  
10 landowner chooses to maintain the habitat enhancement efforts on the  
11 property, the new landowner and the (~~(departments)~~) department and the  
12 department of natural resources may jointly choose to retain the  
13 agreement on the property.

14 (6) If the (~~(departments)~~) department and the department of natural  
15 resources receive multiple requests for agreements with private  
16 landowners under the habitat incentives program, the departments shall  
17 prioritize these requests and shall enter into as many agreements as  
18 possible within available budgetary resources.

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

21 The department and the department of ecology will work  
22 cooperatively with the United States army corps of engineers to develop  
23 a memorandum of agreement outlining dike vegetation management  
24 guidelines so that dike owners are eligible for coverage under P.L.  
25 84-99, and state requirements established pursuant to (~~(RCW 77.55.100~~  
26 ~~and 77.55.110)~~) section 201 of this act are met.

27 **Sec. 406.** RCW 77.55.010 and 1993 sp.s. c 2 s 28 are each amended  
28 to read as follows:

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

PART 5  
SPECIAL PERMITS

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

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

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

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be 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

1 modification of a (~~hydraulic~~) permit (~~approval~~) under this section  
2 may formally appeal the decision to the (~~hydraulic appeals~~) board  
3 pursuant to this chapter.

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

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

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

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

16 (~~2~~) For a marina or marine terminal in existence on June 6, 1996,  
17 or a marina or marine terminal that has received a (~~hydraulic project~~  
18 ~~approval~~) permit for its initial construction, a renewable, five-year  
19 (~~hydraulic project approval~~) permit shall be issued, upon request,  
20 for regular maintenance activities of the marina or marine terminal.

21 (~~3~~) (2) Upon construction of a new marina or marine terminal  
22 that has received (~~hydraulic project approval~~) a permit, a renewable,  
23 five-year (~~hydraulic project approval~~) permit shall be issued, upon  
24 request, for regular maintenance activities of the marina or marine  
25 terminal.

26 (~~4~~) (3) For the purposes of this section, regular maintenance  
27 activities are only those activities necessary to restore the marina or  
28 marine terminal to the conditions approved in the initial (~~hydraulic~~  
29 ~~project approval~~) permit. These activities may include, but are not  
30 limited to, dredging, piling replacement, and float replacement.

31 (~~5~~) (4) The five-year permit must include a requirement that a  
32 fourteen-day notice be given to the department before regular  
33 maintenance activities begin.

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

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

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

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

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

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

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

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

29 (c) After following the procedures set forth in (b) of this  
30 subsection, the department may issue a (~~hydraulic project approval~~)  
31 permit that prescribes the discharge rates from an outfall structure  
32 that will prevent adverse effects to the bed or flow of the waterway.  
33 The department may recommend, but not specify, the measures required to  
34 meet these discharge rates. The department may not require changes to  
35 the project design above the mean higher high water mark of marine  
36 waters, or the ordinary high water mark of freshwaters of the state.  
37 Nothing in this section alters any authority the department may have to  
38 regulate other types of projects under this chapter.





1 (v) Through the review and approval process for conservation  
2 district-sponsored projects, where the project complies with design  
3 standards established by the conservation commission through  
4 interagency agreement with the United States fish and wildlife service  
5 and the natural resource conservation service;

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

8 (vii) Through other formal review and approval processes  
9 established by the legislature.

10 (2) Fish habitat enhancement projects meeting the criteria of  
11 subsection (1) of this section are expected to result in beneficial  
12 impacts to the environment. Decisions pertaining to fish habitat  
13 enhancement projects meeting the criteria of subsection (1) of this  
14 section and being reviewed and approved according to the provisions of  
15 this section are not subject to the requirements of RCW  
16 43.21C.030(2)(c).

17 (3) (~~Hydraulic project approval~~) (a) A permit is required for  
18 projects that meet the criteria of subsection (1) of this section and  
19 are being reviewed and approved under this section. An applicant shall  
20 use a joint aquatic resource permit application form developed by the  
21 (~~department of ecology permit~~) office of regulatory assistance  
22 (~~center~~) to apply for approval under this chapter. On the same day,  
23 the applicant shall provide copies of the completed application form to  
24 the department and to each appropriate local government. Local  
25 governments shall accept the application as notice of the proposed  
26 project. The department shall provide a fifteen-day comment period  
27 during which it will receive comments regarding environmental impacts.  
28 (~~In no more than~~) Within forty-five days, the department shall either  
29 issue (~~hydraulic project approval~~) a permit, with or without  
30 conditions, deny approval, or make a determination that the review and  
31 approval process created by this section is not appropriate for the  
32 proposed project. The department shall base this determination on  
33 identification during the comment period of adverse impacts that cannot  
34 be mitigated by (~~hydraulic project approval~~) the conditioning of a  
35 permit. If the department determines that the review and approval  
36 process created by this section is not appropriate for the proposed  
37 project, the department shall notify the applicant and the appropriate

1 local governments of its determination. The applicant may reapply for  
2 approval of the project under other review and approval processes.

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

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

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

13 (1) Except for the north fork of the Lewis river and the White  
14 Salmon river, all streams and rivers tributary to the Columbia river  
15 downstream from McNary dam are established as an anadromous fish  
16 sanctuary. This sanctuary is created to preserve and develop the food  
17 fish and game fish resources in these streams and rivers and to protect  
18 them against undue industrial encroachment.

19 (2) Within the sanctuary area:

20 (a) The department shall not issue (~~hydraulic project approval~~)  
21 a permit to construct a dam greater than twenty-five feet high within  
22 the migration range of anadromous fish as determined by the department.

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

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

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

34 NEW SECTION. **Sec. 507.** A landscape management plan approved by  
35 the department and the department of natural resources under RCW

1 76.09.350(2) shall serve as a permit for the life of the plan if fish  
2 are selected as one of the public resources for coverage under such a  
3 plan.

4 NEW SECTION. **Sec. 508.** The department shall, at the request of a  
5 county, develop five-year maintenance permit agreements, consistent  
6 with comprehensive flood control management plans adopted under the  
7 authority of RCW 86.12.200, or other watershed plan approved by a  
8 county legislative authority, to allow for work on public and private  
9 property for bank stabilization, bridge repair, removal of sandbars and  
10 debris, channel maintenance, and other flood damage repair and  
11 reduction activity under agreed-upon conditions and times without  
12 obtaining permits for specific projects.

13 **PART 6**

14 **DENIAL OR CONDITIONING OF PERMIT**

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

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

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

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

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



1 dollars per day for violation of any provisions of (~~RCW 77.55.100 or~~  
2 ~~77.55.110~~) section 201 of this act. The penalty provided shall be  
3 imposed by notice in writing, either by certified mail or personal  
4 service to the person incurring the penalty, from the director or the  
5 director's designee describing the violation.

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

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

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

23 **PART 8**  
24 **APPEALS**

25 **Sec. 801.** RCW 77.55.170 and 2003 c 393 s 21 are each amended to  
26 read as follows:

27 (1) There is (~~hereby~~) created within the environmental hearings  
28 office under RCW 43.21B.005 the hydraulic appeals board of the state of  
29 Washington.

30 (2) The (~~hydraulic appeals~~) board (~~shall~~) consists of three  
31 members: The director of the department of ecology or the director's  
32 designee, the director of the department of agriculture or the  
33 director's designee, and the director or the director's designee of the  
34 department (~~whose action is appealed under subsection (6) of this~~  
35 ~~section~~). A decision must be agreed to by at least two members of the  
36 board to be final.

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

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

9 (5) The board has exclusive jurisdiction to hear appeals arising  
10 from the approval, denial, conditioning, or modification of a  
11 (~~hydraulic approval~~) permit issued by the department: (a) Under the  
12 authority granted in (~~RCW 77.55.110~~) section 201 of this act for the  
13 diversion of water for agricultural irrigation or stock watering  
14 purposes or when associated with streambank stabilization to protect  
15 farm and agricultural land as defined in RCW 84.34.020; (~~(or)~~) (b)  
16 under the authority granted in RCW 77.55.230 (as recodified by this  
17 act) for off-site mitigation proposals; (c) under the authority granted  
18 in RCW 77.55.200 (as recodified by this act); or (d) under the  
19 authority granted in RCW 77.55.290 (as recodified by this act).

20 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
21 or modification of a (~~hydraulic approval pursuant to RCW 77.55.110~~)  
22 permit under section 201 of this act may, except as otherwise provided  
23 in chapter 43.21L RCW, seek review from the board by filing a request  
24 for the same within thirty days of notice of the approval, denial,  
25 conditioning, or modification of (~~such approval~~) the permit.

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

29 **Sec. 802.** RCW 77.55.180 and 1995 c 382 s 7 are each amended to  
30 read as follows:

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

35 (2) In all appeals, the (~~hydraulic appeals~~) board, and each  
36 member thereof, shall be subject to all duties imposed upon and shall

1 have all powers granted to, an agency by those provisions of chapter  
2 34.05 RCW relating to adjudicative proceedings.

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

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

9 **PART 9**

10 **FISHWAYS, FLOW, AND SCREENING**

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

13 (1) A diversion device used for conducting water from a lake,  
14 river, or stream for any purpose shall be equipped with a fish guard  
15 approved by the director to prevent the passage of fish into the  
16 diversion device. The fish guard shall be maintained at all times when  
17 water is taken into the diversion device. The fish guards shall be  
18 installed at places and times prescribed by the director upon thirty  
19 days' notice to the owner of the diversion device.

20 (2) Each day the diversion device is not equipped with an approved  
21 fish guard is a separate offense. If within thirty days after notice  
22 to equip a diversion device the owner fails to do so, the director may  
23 take possession of the diversion device and close the device until it  
24 is properly equipped. Expenses incurred by the department constitute  
25 the value of a lien upon the diversion device and upon the real and  
26 personal property of the owner. Notice of the lien shall be filed and  
27 recorded in the office of the county auditor of the county in which the  
28 action is taken.

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

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

34 The director of ecology shall give the director notice of each  
35 application for a permit to divert or store water. The director has

1 thirty days after receiving the notice to state his or her objections  
2 to the application. The permit shall not be issued until the thirty-  
3 day period has elapsed.

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

8 The provisions of this section shall in no way affect existing  
9 water rights.

10 **Sec. 903.** RCW 77.55.060 and 2003 c 391 s 1 are each amended to  
11 read as follows:

12 (1) Subject to subsection (3) of this section, a dam or other  
13 obstruction across or in a stream shall be provided with a durable and  
14 efficient fishway approved by the director. Plans and specifications  
15 shall be provided to the department prior to the director's approval.  
16 The fishway shall be maintained in an effective condition and  
17 continuously supplied with sufficient water to freely pass fish.

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

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

33 (3) For the purposes of this section, "other obstruction" does not  
34 include tide gates, flood gates, and associated man-made agricultural  
35 drainage facilities that were originally installed as part of an  
36 agricultural drainage system on or before May 20, 2003, or the repair,  
37 replacement, or improvement of such tide gates or flood gates.





1 RCW 77.55.340  
2 RCW 77.55.210  
3 RCW 77.55.290  
4 RCW 77.55.160  
5 Section 507 of this act  
6 RCW 77.55.010  
7 Section 508 of this act  
8 RCW 77.55.350  
9 RCW 77.55.230  
10 RCW 77.55.090  
11 RCW 77.55.120  
12 RCW 77.55.260  
13 Section 605 of this act  
14 RCW 77.55.140  
15 RCW 77.55.170  
16 RCW 77.55.180.

17 NEW SECTION. **Sec. 1002.** The following sections are each  
18 recodified as a new chapter in Title 77 RCW in the following order:

19 RCW 77.55.040  
20 RCW 77.55.050  
21 RCW 77.55.060  
22 RCW 77.55.070  
23 RCW 77.55.080  
24 RCW 77.55.310  
25 RCW 77.55.320  
26 RCW 77.55.240.

27 **Sec. 1003.** RCW 76.09.050 and 2003 c 314 s 4 are each amended to  
28 read as follows:

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

31 Class I: Minimal or specific forest practices that have no direct  
32 potential for damaging a public resource and that may be conducted  
33 without submitting an application or a notification except that when  
34 the regulating authority is transferred to a local governmental entity,  
35 those Class I forest practices that involve timber harvesting or road

1 construction within "urban growth areas," designated pursuant to  
2 chapter 36.70A RCW, are processed as Class IV forest practices, but are  
3 not subject to environmental review under chapter 43.21C RCW;

4 Class II: Forest practices which have a less than ordinary  
5 potential for damaging a public resource that may be conducted without  
6 submitting an application and may begin five calendar days, or such  
7 lesser time as the department may determine, after written notification  
8 by the operator, in the manner, content, and form as prescribed by the  
9 department, is received by the department. However, the work may not  
10 begin until all forest practice fees required under RCW 76.09.065 have  
11 been received by the department. Class II shall not include forest  
12 practices:

13 (a) On lands platted after January 1, 1960, as provided in chapter  
14 58.17 RCW or on lands that have or are being converted to another use;

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

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

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

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

22 Class III: Forest practices other than those contained in Class I,  
23 II, or IV. A Class III application must be approved or disapproved by  
24 the department within thirty calendar days from the date the department  
25 receives the application. However, the applicant may not begin work on  
26 that forest practice until all forest practice fees required under RCW  
27 76.09.065 have been received by the department;

28 Class IV: Forest practices other than those contained in Class I  
29 or II: (a) On lands platted after January 1, 1960, as provided in  
30 chapter 58.17 RCW, (b) on lands that have or are being converted to  
31 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or  
32 hereafter amended, are not to be reforested because of the likelihood  
33 of future conversion to urban development, (d) involving timber  
34 harvesting or road construction on lands that are contained within  
35 "urban growth areas," designated pursuant to chapter 36.70A RCW, except  
36 where the forest landowner provides: (i) A written statement of intent  
37 signed by the forest landowner not to convert to a use other than  
38 commercial forest product operations for ten years, accompanied by

1 either a written forest management plan acceptable to the department or  
2 documentation that the land is enrolled under the provisions of chapter  
3 84.33 RCW; or (ii) a conversion option harvest plan approved by the  
4 local governmental entity and submitted to the department as part of  
5 the application, and/or (e) which have a potential for a substantial  
6 impact on the environment and therefore require an evaluation by the  
7 department as to whether or not a detailed statement must be prepared  
8 pursuant to the state environmental policy act, chapter 43.21C RCW.  
9 Such evaluation shall be made within ten days from the date the  
10 department receives the application: PROVIDED, That nothing herein  
11 shall be construed to prevent any local or regional governmental entity  
12 from determining that a detailed statement must be prepared for an  
13 action pursuant to a Class IV forest practice taken by that  
14 governmental entity concerning the land on which forest practices will  
15 be conducted. A Class IV application must be approved or disapproved  
16 by the department within thirty calendar days from the date the  
17 department receives the application, unless the department determines  
18 that a detailed statement must be made, in which case the application  
19 must be approved or disapproved by the department within sixty calendar  
20 days from the date the department receives the application, unless the  
21 commissioner of public lands, through the promulgation of a formal  
22 order, determines that the process cannot be completed within such  
23 period. However, the applicant may not begin work on that forest  
24 practice until all forest practice fees required under RCW 76.09.065  
25 have been received by the department.

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

29 (2) Except for those forest practices being regulated by local  
30 governmental entities as provided elsewhere in this chapter, no Class  
31 II, Class III, or Class IV forest practice shall be commenced or  
32 continued after January 1, 1975, unless the department has received a  
33 notification with regard to a Class II forest practice or approved an  
34 application with regard to a Class III or Class IV forest practice  
35 containing all information required by RCW 76.09.060 as now or  
36 hereafter amended. However, in the event forest practices regulations  
37 necessary for the scheduled implementation of this chapter and RCW  
38 90.48.420 have not been adopted in time to meet such schedules, the

1 department shall have the authority to regulate forest practices and  
2 approve applications on such terms and conditions consistent with this  
3 chapter and RCW 90.48.420 and the purposes and policies of RCW  
4 76.09.010 until applicable forest practices regulations are in effect.

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

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

17 (5) Except for those forest practices being regulated by local  
18 governmental entities as provided elsewhere in this chapter, the  
19 department of natural resources shall notify the applicant in writing  
20 of either its approval of the application or its disapproval of the  
21 application and the specific manner in which the application fails to  
22 comply with the provisions of this section or with the forest practices  
23 regulations. Except as provided otherwise in this section, if the  
24 department fails to either approve or disapprove an application or any  
25 portion thereof within the applicable time limit, the application shall  
26 be deemed approved and the operation may be commenced: PROVIDED, That  
27 this provision shall not apply to applications which are neither  
28 approved nor disapproved pursuant to the provisions of subsection (7)  
29 of this section: PROVIDED, FURTHER, That if seasonal field conditions  
30 prevent the department from being able to properly evaluate the  
31 application, the department may issue an approval conditional upon  
32 further review within sixty days: PROVIDED, FURTHER, That the  
33 department shall have until April 1, 1975, to approve or disapprove an  
34 application involving forest practices allowed to continue to April 1,  
35 1975, under the provisions of subsection (2) of this section. Upon  
36 receipt of any notification or any satisfactorily completed application  
37 the department shall in any event no later than two business days after  
38 such receipt transmit a copy to the departments of ecology and fish and

1 wildlife, and to the county, city, or town in whose jurisdiction the  
2 forest practice is to be commenced. Any comments by such agencies  
3 shall be directed to the department of natural resources.

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

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

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

18 (b) The objections relate to lands either:

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

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

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

34 (8) For those forest practices regulated by the board and the  
35 department, in addition to any rights under the above paragraph, the  
36 county, city, or town may appeal any department approval of an  
37 application with respect to any lands within its jurisdiction. The

1 appeals board may suspend the department's approval in whole or in part  
2 pending such appeal where there exists potential for immediate and  
3 material damage to a public resource.

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

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

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

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

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

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

29 (2) The department, in partnership with the Northwest straits  
30 commission, the department of natural resources, and other interested  
31 parties, must publish guidelines for the safe removal and disposal of  
32 derelict fishing gear. The guidelines must be completed by August 31,  
33 2002, and made available to any person interested in derelict fishing  
34 gear removal.

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

