

2SSB 6578 - H AMD 1605

By Representative Orcutt

NOT ADOPTED 03/10/2010

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the state of
4 Washington maintains at least twelve state agencies that exist either
5 wholly or in part to manage, regulate, mediate, or enforce the state's
6 public and private natural resources, many of which have overlapping
7 jurisdiction and authorities.

8 (2) The legislature finds that the overlap of state natural
9 resources agencies creates unnecessary expenses for the state
10 government, confusion for the state's citizens, and hampers private
11 sector economic development.

12 (3) The legislature finds that it is important for state agencies
13 to communicate, share resources, and provide comments during each
14 other's rule-making processes. However, it is unnecessarily
15 duplicative for more than one state agency to be involved in the
16 implementation or enforcement of any one program.

17 **Sec. 2.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to read
18 as follows:

19 The department (~~((together with the department of fish and wildlife,~~
20 ~~and the department of ecology relating to water quality protection,))~~)
21 shall develop a suitable process to permit landowners to secure all
22 permits required for the conduct of forest practices (~~((in a single~~
23 ~~multiyear permit))~~) to be (~~((jointly))~~) issued only by the (~~((departments~~
24 ~~and the departments shall report their findings to the legislature not~~
25 ~~later than December 31, 2000))~~) department.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.55 RCW
27 to read as follows:

28 The requirements of RCW 77.55.021 are to be considered satisfied

1 for any project that is required under chapter 76.09 RCW to submit a
2 forest practices application or that is associated with any project
3 that is required under chapter 76.09 RCW to submit a forest practices
4 application.

5 **Sec. 4.** RCW 76.09.040 and 2009 c 246 s 1 are each amended to read
6 as follows:

7 (1) Where necessary to accomplish the purposes and policies stated
8 in RCW 76.09.010, and to implement the provisions of this chapter, the
9 board shall adopt forest practices rules pursuant to chapter 34.05 RCW
10 and in accordance with the procedures enumerated in this section that:

11 (a) Establish minimum standards for forest practices;

12 (b) Provide procedures for the voluntary development of resource
13 management plans which may be adopted as an alternative to the minimum
14 standards in (a) of this subsection if the plan is consistent with the
15 purposes and policies stated in RCW 76.09.010 and the plan meets or
16 exceeds the objectives of the minimum standards;

17 (c) Set forth necessary administrative provisions;

18 (d) Establish procedures for the collection and administration of
19 forest practice fees as set forth by this chapter; and

20 (e) Allow for the development of watershed analyses.

21 Forest practices rules pertaining to water quality protection shall
22 be adopted by the board after reaching agreement with the director of
23 the department of ecology or the director's designee on the board with
24 respect thereto. All other forest practices rules shall be adopted by
25 the board.

26 Forest practices rules shall be administered and enforced by either
27 the department or the local governmental entity as provided in this
28 chapter. Such rules shall be adopted and administered so as to give
29 consideration to all purposes and policies set forth in RCW 76.09.010.

30 (2) The board shall prepare proposed forest practices rules(~~(.—In~~
31 ~~addition to any forest practices rules relating to water quality~~
32 ~~protection proposed by the board, the department of ecology may submit~~
33 ~~to the board)) including proposed forest practices rules relating to
34 water quality protection.~~

35 Prior to initiating the rule-making process, the proposed rules
36 shall be submitted for review and comments to the department of fish
37 and wildlife, the department of ecology, and to the counties of the

1 state. After receipt of the proposed forest practices rules, the
2 department of fish and wildlife, the department of ecology, and the
3 counties of the state shall have thirty days in which to review and
4 submit comments to the board(~~(, and to the department of ecology with~~
5 ~~respect to its proposed rules relating to water quality protection)~~).
6 After the expiration of such thirty day period the board (~~(and the~~
7 ~~department of ecology)~~) shall jointly hold one or more hearings on the
8 proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any
9 county may propose specific forest practices rules relating to problems
10 existing within such county. The board may adopt (~~(and the department~~
11 ~~of ecology may approve)~~) such proposals if they find the proposals are
12 consistent with the purposes and policies of this chapter.

13 (3) The board shall establish by rule a program for the acquisition
14 of riparian open space and critical habitat for threatened or
15 endangered species as designated by the board. Acquisition must be a
16 conservation easement. Lands eligible for acquisition are forest lands
17 within unconfined channel migration zones or forest lands containing
18 critical habitat for threatened or endangered species as designated by
19 the board. Once acquired, these lands may be held and managed by the
20 department, transferred to another state agency, transferred to an
21 appropriate local government agency, or transferred to a private
22 nonprofit nature conservancy corporation, as defined in RCW 64.04.130,
23 in fee or transfer of management obligation. The board shall adopt
24 rules governing the acquisition by the state or donation to the state
25 of such interest in lands including the right of refusal if the lands
26 are subject to unacceptable liabilities. The rules shall include
27 definitions of qualifying lands, priorities for acquisition, and
28 provide for the opportunity to transfer such lands with limited
29 warranties and with a description of boundaries that does not require
30 full surveys where the cost of securing the surveys would be
31 unreasonable in relation to the value of the lands conveyed. The rules
32 shall provide for the management of the lands for ecological protection
33 or fisheries enhancement. For the purposes of conservation easements
34 entered into under this section, the following apply: (a) For
35 conveyances of a conservation easement in which the landowner conveys
36 an interest in the trees only, the compensation must include the timber
37 value component, as determined by the cruised volume of any timber
38 located within the channel migration zone or critical habitat for

1 threatened or endangered species as designated by the board, multiplied
2 by the appropriate quality code stumpage value for timber of the same
3 species shown on the appropriate table used for timber harvest excise
4 tax purposes under RCW 84.33.091; (b) for conveyances of a conservation
5 easement in which the landowner conveys interests in both land and
6 trees, the compensation must include the timber value component in (a)
7 of this subsection plus such portion of the land value component as
8 determined just and equitable by the department. The land value
9 component must be the acreage of qualifying channel migration zone or
10 critical habitat for threatened or endangered species as determined by
11 the board, to be conveyed, multiplied by the average per acre value of
12 all commercial forest land in western Washington or the average for
13 eastern Washington, whichever average is applicable to the qualifying
14 lands. The department must determine the western and eastern
15 Washington averages based on the land value tables established by RCW
16 84.33.140 and revised annually by the department of revenue.

17 (4) Subject to appropriations sufficient to cover the cost of such
18 an acquisition program and the related costs of administering the
19 program, the department must establish a conservation easement in land
20 that an owner tenders for purchase; provided that such lands have been
21 taxed as forest lands and are located within an unconfined channel
22 migration zone or contain critical habitat for threatened or endangered
23 species as designated by the board. Lands acquired under this section
24 shall become riparian or habitat open space. These acquisitions shall
25 not be deemed to trigger the compensating tax of chapters 84.33 and
26 84.34 RCW.

27 (5) Instead of offering to sell interests in qualifying lands,
28 owners may elect to donate the interests to the state.

29 (6) Any acquired interest in qualifying lands by the state under
30 this section shall be managed as riparian open space or critical
31 habitat.

32 **Sec. 5.** RCW 76.09.050 and 2005 c 146 s 1003 are each amended to
33 read as follows:

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

36 Class I: Minimal or specific forest practices that have no direct
37 potential for damaging a public resource and that may be conducted

1 without submitting an application or a notification except that when
2 the regulating authority is transferred to a local governmental entity,
3 those Class I forest practices that involve timber harvesting or road
4 construction within "urban growth areas," designated pursuant to
5 chapter 36.70A RCW, are processed as Class IV forest practices, but are
6 not subject to environmental review under chapter 43.21C RCW;

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

16 (a) On lands platted after January 1, 1960, as provided in chapter
17 58.17 RCW or on lands that have or are being converted to another use;

18 (b) Which require approvals under the provisions of the hydraulics
19 act, RCW 77.55.021;

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

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

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

25 Class III: Forest practices other than those contained in Class I,
26 II, or IV. A Class III application must be approved or disapproved by
27 the department within thirty calendar days from the date the department
28 receives the application. However, the applicant may not begin work on
29 that forest practice until all forest practice fees required under RCW
30 76.09.065 have been received by the department;

31 Class IV: Forest practices other than those contained in Class I
32 or II: (a) On lands platted after January 1, 1960, as provided in
33 chapter 58.17 RCW, (b) on lands that have or are being converted to
34 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
35 hereafter amended, are not to be reforested because of the likelihood
36 of future conversion to urban development, (d) involving timber
37 harvesting or road construction on lands that are contained within
38 "urban growth areas," designated pursuant to chapter 36.70A RCW, except

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

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

32 (2) Except for those forest practices being regulated by local
33 governmental entities as provided elsewhere in this chapter, no Class
34 II, Class III, or Class IV forest practice shall be commenced or
35 continued after January 1, 1975, unless the department has received a
36 notification with regard to a Class II forest practice or approved an
37 application with regard to a Class III or Class IV forest practice
38 containing all information required by RCW 76.09.060 as now or

1 hereafter amended. However, in the event forest practices regulations
2 necessary for the scheduled implementation of this chapter and RCW
3 90.48.420 have not been adopted in time to meet such schedules, the
4 department shall have the authority to regulate forest practices and
5 approve applications on such terms and conditions consistent with this
6 chapter and RCW 90.48.420 and the purposes and policies of RCW
7 76.09.010 until applicable forest practices regulations are in effect.

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

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

20 (5) Except for those forest practices being regulated by local
21 governmental entities as provided elsewhere in this chapter, the
22 department of natural resources shall notify the applicant in writing
23 of either its approval of the application or its disapproval of the
24 application and the specific manner in which the application fails to
25 comply with the provisions of this section or with the forest practices
26 regulations. Except as provided otherwise in this section, if the
27 department fails to either approve or disapprove an application or any
28 portion thereof within the applicable time limit, the application shall
29 be deemed approved and the operation may be commenced: PROVIDED, That
30 this provision shall not apply to applications which are neither
31 approved nor disapproved pursuant to the provisions of subsection (7)
32 of this section: PROVIDED, FURTHER, That if seasonal field conditions
33 prevent the department from being able to properly evaluate the
34 application, the department may issue an approval conditional upon
35 further review within sixty days: PROVIDED, FURTHER, That the
36 department shall have until April 1, 1975, to approve or disapprove an
37 application involving forest practices allowed to continue to April 1,
38 1975, under the provisions of subsection (2) of this section. Upon

1 receipt of any notification or any satisfactorily completed application
2 the department shall in any event no later than two business days after
3 such receipt transmit a copy to the (~~departments of ecology and fish~~
4 ~~and wildlife, and to the~~) county, city, or town in whose jurisdiction
5 the forest practice is to be commenced. (~~Any comments by such~~
6 ~~agencies shall be directed to the department of natural resources.~~)

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

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

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

21 (b) The objections relate to lands either:

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

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

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

37 (8) For those forest practices regulated by the board and the
38 department, in addition to any rights under the above paragraph, the

1 county, city, or town may appeal any department approval of an
2 application with respect to any lands within its jurisdiction. The
3 appeals board may suspend the department's approval in whole or in part
4 pending such appeal where there exists potential for immediate and
5 material damage to a public resource.

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

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

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

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

25 **Sec. 6.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
26 each reenacted and amended to read as follows:

27 (1) The department shall prescribe the form and contents of the
28 notification and application. The forest practices rules shall specify
29 by whom and under what conditions the notification and application
30 shall be signed or otherwise certified as acceptable. Activities
31 conducted by the department or a contractor under the direction of the
32 department under the provisions of RCW 76.04.660, shall be exempt from
33 the landowner signature requirement on any forest practice application
34 required to be filed. The application or notification shall be
35 delivered in person to the department, sent by first-class mail to the
36 department or electronically filed in a form defined by the department.

1 The form for electronic filing shall be readily convertible to a paper
2 copy, which shall be available to the public pursuant to chapter 42.56
3 RCW. The information required may include, but is not limited to:

4 (a) Name and address of the forest landowner, timber owner, and
5 operator;

6 (b) Description of the proposed forest practice or practices to be
7 conducted;

8 (c) Legal description and tax parcel identification numbers of the
9 land on which the forest practices are to be conducted;

10 (d) Planimetric and topographic maps showing location and size of
11 all lakes and streams and other public waters in and immediately
12 adjacent to the operating area and showing all existing and proposed
13 roads and major tractor roads;

14 (e) Description of the silvicultural, harvesting, or other forest
15 practice methods to be used, including the type of equipment to be used
16 and materials to be applied;

17 (f) Proposed plan for reforestation and for any revegetation
18 necessary to reduce erosion potential from roadsides and yarding roads,
19 as required by the forest practices rules;

20 (g) Soil, geological, and hydrological data with respect to forest
21 practices;

22 (h) The expected dates of commencement and completion of all forest
23 practices specified in the application;

24 (i) Provisions for continuing maintenance of roads and other
25 construction or other measures necessary to afford protection to public
26 resources;

27 (j) An affirmation that the statements contained in the
28 notification or application are true; and

29 (k) All necessary application or notification fees.

30 (2) Long range plans may be submitted to the department for review
31 and consultation.

32 (3) The application for a forest practice or the notification of a
33 forest practice is subject to the reforestation requirement of RCW
34 76.09.070.

35 (a) If the application states that any land will be or is intended
36 to be converted:

37 (i) The reforestation requirements of this chapter and of the

1 forest practices rules shall not apply if the land is in fact converted
2 unless applicable alternatives or limitations are provided in forest
3 practices rules issued under RCW 76.09.070;

4 (ii) Completion of such forest practice operations shall be deemed
5 conversion of the lands to another use for purposes of chapters 84.33
6 and 84.34 RCW unless the conversion is to a use permitted under a
7 current use tax agreement permitted under chapter 84.34 RCW;

8 (iii) The forest practices described in the application are subject
9 to applicable county, city, town, and regional governmental authority
10 permitted under RCW 76.09.240 as well as the forest practices rules.

11 (b) Except as provided elsewhere in this section, if the landowner
12 harvests without an approved application or notification or the
13 landowner does not state that any land covered by the application or
14 notification will be or is intended to be converted, and the department
15 or the county, city, town, or regional governmental entity becomes
16 aware of conversion activities to a use other than commercial timber
17 operations, as that term is defined in RCW 76.09.020, then the
18 department shall send to (~~the department of ecology and~~) the
19 appropriate county, city, town, and regional governmental entities the
20 following documents:

21 (i) A notice of a conversion to nonforestry use;

22 (ii) A copy of the applicable forest practices application or
23 notification, if any; and

24 (iii) Copies of any applicable outstanding final orders or
25 decisions issued by the department related to the forest practices
26 application or notification.

27 (c) Failure to comply with the reforestation requirements contained
28 in any final order or decision shall constitute a removal of
29 designation under the provisions of RCW 84.33.140, and a change of use
30 under the provisions of RCW 84.34.080, and, if applicable, shall
31 subject such lands to the payments and/or penalties resulting from such
32 removals or changes.

33 (d) Conversion to a use other than commercial forest product
34 operations within six years after approval of the forest practices
35 application or notification without the consent of the county, city, or
36 town shall constitute a violation of each of the county, municipal
37 city, town, and regional authorities to which the forest practice

1 operations would have been subject if the application had stated an
2 intent to convert.

3 (e) Land that is the subject of a notice of conversion to a
4 nonforestry use produced by the department and sent to the department
5 of ecology and a local government under this subsection is subject to
6 the development prohibition and conditions provided in RCW 76.09.460.

7 (f) Landowners who have not stated an intent to convert the land
8 covered by an application or notification and who decide to convert the
9 land to a nonforestry use within six years of receiving an approved
10 application or notification must do so in a manner consistent with RCW
11 76.09.470.

12 (g) The application or notification must include a statement
13 requiring an acknowledgment by the forest landowner of his or her
14 intent with respect to conversion and acknowledging that he or she is
15 familiar with the effects of this subsection.

16 (4) Whenever an approved application authorizes a forest practice
17 which, because of soil condition, proximity to a water course or other
18 unusual factor, has a potential for causing material damage to a public
19 resource, as determined by the department, the applicant shall, when
20 requested on the approved application, notify the department two days
21 before the commencement of actual operations.

22 (5) Before the operator commences any forest practice in a manner
23 or to an extent significantly different from that described in a
24 previously approved application or notification, there shall be
25 submitted to the department a new application or notification form in
26 the manner set forth in this section.

27 (6) Except as provided in RCW 76.09.350(4), the notification to or
28 the approval given by the department to an application to conduct a
29 forest practice shall be effective for a term of two years from the
30 date of approval or notification and shall not be renewed unless a new
31 application is filed and approved or a new notification has been filed.
32 At the option of the applicant, an application or notification may be
33 submitted to cover a single forest practice or a number of forest
34 practices within reasonable geographic or political boundaries as
35 specified by the department. An application or notification that
36 covers more than one forest practice may have an effective term of more
37 than two years. The board shall adopt rules that establish standards
38 and procedures for approving an application or notification that has an

1 effective term of more than two years. Such rules shall include
2 extended time periods for application or notification approval or
3 disapproval. On an approved application with a term of more than two
4 years, the applicant shall inform the department before commencing
5 operations.

6 (7) Notwithstanding any other provision of this section, no prior
7 application or notification shall be required for any emergency forest
8 practice necessitated by fire, flood, windstorm, earthquake, or other
9 emergency as defined by the board, but the operator shall submit an
10 application or notification, whichever is applicable, to the department
11 within forty-eight hours after commencement of such practice or as
12 required by local regulations.

13 (8) Forest practices applications or notifications are not required
14 for forest practices conducted to control exotic forest insect or
15 disease outbreaks, when conducted by or under the direction of the
16 department of agriculture in carrying out an order of the governor or
17 director of the department of agriculture to implement pest control
18 measures as authorized under chapter 17.24 RCW, and are not required
19 when conducted by or under the direction of the department in carrying
20 out emergency measures under a forest health emergency declaration by
21 the commissioner of public lands as provided in RCW 76.06.130.

22 (a) For the purposes of this subsection, exotic forest insect or
23 disease has the same meaning as defined in RCW 76.06.020.

24 (b) In order to minimize adverse impacts to public resources,
25 control measures must be based on integrated pest management, as
26 defined in RCW 17.15.010, and must follow forest practices rules
27 relating to road construction and maintenance, timber harvest, and
28 forest chemicals, to the extent possible without compromising control
29 objectives.

30 (c) Agencies conducting or directing control efforts must provide
31 advance notice to the appropriate regulatory staff of the department of
32 the operations that would be subject to exemption from forest practices
33 application or notification requirements.

34 (d) When the appropriate regulatory staff of the department are
35 notified under (c) of this subsection, they must consult with the
36 landowner, interested agencies, and affected tribes, and assist the
37 notifying agencies in the development of integrated pest management

1 plans that comply with forest practices rules as required under (b) of
2 this subsection.

3 (e) Nothing under this subsection relieves agencies conducting or
4 directing control efforts from requirements of the federal clean water
5 act as administered by the department of ecology under RCW 90.48.260.

6 (f) Forest lands where trees have been cut as part of an exotic
7 forest insect or disease control effort under this subsection are
8 subject to reforestation requirements under RCW 76.09.070.

9 (g) The exemption from obtaining approved forest practices
10 applications or notifications does not apply to forest practices
11 conducted after the governor, the director of the department of
12 agriculture, or the commissioner of public lands have declared that an
13 emergency no longer exists because control objectives have been met,
14 that there is no longer an imminent threat, or that there is no longer
15 a good likelihood of control.

16 **Sec. 7.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each
17 amended to read as follows:

18 If the department (~~(of ecology)~~) determines that a person has
19 failed to comply with the forest practices regulations relating to
20 water quality protection, and (~~(that the department of natural~~
21 ~~resources has not issued a stop work order or notice to comply, the~~
22 ~~department of ecology shall inform the department thereof. If)~~) the
23 department of natural resources fails to take authorized enforcement
24 action within twenty-four hours under RCW 76.09.080, 76.09.090,
25 76.09.120, or 76.09.130, the (~~(department of ecology may petition to~~
26 ~~the chairman)~~) chair of the appeals board(~~(, who)~~) shall, within forty-
27 eight hours, either deny (~~(the petition)~~) further consideration or
28 direct the department of natural resources to immediately issue a stop
29 work order or notice to comply, or to impose a penalty. No civil or
30 criminal penalties shall be imposed for past actions or omissions if
31 such actions or omissions were conducted pursuant to an approval or
32 directive of the department of natural resources.

33 **Sec. 8.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to read
34 as follows:

35 (1) The department shall make inspections of forest lands, before,
36 during and after the conducting of forest practices as necessary for

1 the purpose of ensuring compliance with this chapter and the forest
2 practices rules and to ensure that no material damage occurs to the
3 natural resources of this state as a result of such practices.

4 (2) Any duly authorized representative of the department shall have
5 the right to enter upon forest land at any reasonable time to enforce
6 the provisions of this chapter and the forest practices rules.

7 (3) The department (~~(or the department of ecology)~~) may apply for
8 an administrative inspection warrant to either Thurston county superior
9 court, or the superior court in the county in which the property is
10 located. An administrative inspection warrant may be issued where:

11 (a) The department has attempted an inspection of forest lands
12 under this chapter to ensure compliance with this chapter and the
13 forest practices rules or to ensure that no potential or actual
14 material damage occurs to the natural resources of this state, and
15 access to all or part of the forest lands has been actually or
16 constructively denied; or

17 (b) The department has reasonable cause to believe that a violation
18 of this chapter or of rules adopted under this chapter is occurring or
19 has occurred.

20 (4) In connection with any watershed analysis, any review of a
21 pending application by an identification team appointed by the
22 department, any compliance studies, any effectiveness monitoring, or
23 other research that has been agreed to by a landowner, the department
24 may invite representatives of other agencies, tribes, and interest
25 groups to accompany a department representative and, at the landowner's
26 election, the landowner, on any such inspections. Reasonable efforts
27 shall be made by the department to notify the landowner of the persons
28 being invited onto the property and the purposes for which they are
29 being invited.

30 **Sec. 9.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each amended
31 to read as follows:

32 The department shall represent the state's interest in matters
33 pertaining to forestry and forest practices, including federal matters
34 and matters relating to representing the state for the purposes of the
35 federal water pollution control act as it relates to forest practices,
36 and may consult with and cooperate with the federal government and
37 other states, as well as other public agencies, in the study and

1 enhancement of forestry and forest practices. The department is
2 authorized to accept, receive, disburse, and administer grants or other
3 funds or gifts from any source, including private individuals or
4 agencies, the federal government, and other public agencies for the
5 purposes of carrying out the provisions of this chapter.

6 ~~((Nothing in this chapter shall modify the designation of the
7 department of ecology as the agency representing the state for all
8 purposes of the Federal Water Pollution Control Act.))~~

9 **Sec. 10.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to read
10 as follows:

11 (1) If a landowner who did not state an intent to convert his or
12 her land to a nonforestry use decides to convert his or her land to a
13 nonforestry use within six years of receiving an approved forest
14 practices application or notification under this chapter, the landowner
15 must:

16 (a) Stop all forest practices activities on the parcels subject to
17 the proposed land use conversion to a nonforestry use;

18 (b) Contact the ~~((department of ecology and the))~~ applicable
19 county, city, town, or regional governmental entity to begin the
20 permitting process; and

21 (c) Notify the department and withdraw any applicable applications
22 or notifications or request a new application for conversion.

23 (2) Upon being contacted by a landowner under this section, the
24 county, city, town, or regional governmental entity must:

25 (a) Notify the department and request from the department the
26 status of any applicable forest practices applications, notifications,
27 or final orders or decisions; and

28 (b) Complete the following activities:

29 (i) Require that the landowner be in full compliance with chapter
30 43.21C RCW, if applicable;

31 (ii) Receive notification from the department that the landowner
32 has resolved any outstanding final orders or decisions issued by the
33 department; and

34 (iii) Make a determination as to whether or not the condition of
35 the land in question is in full compliance with local ordinances and
36 regulations. If full compliance is not found, a mitigation plan to
37 address violations of local ordinances or regulations must be required

1 for the parcel in question by the county, city, town, or regional
2 governmental entity. Required mitigation plans must be prepared by the
3 landowner and approved by the county, city, town, or regional
4 governmental entity. Once approved, the mitigation plan must be
5 implemented by the landowner. Mitigation measures that may be required
6 include, but are not limited to, revegetation requirements to plant and
7 maintain trees of sufficient maturity and appropriate species
8 composition to restore critical area and buffer function or to be in
9 compliance with applicable local government regulations.

10 NEW SECTION. **Sec. 11.** A new section is added to chapter 90.48 RCW
11 to read as follows:

12 All responsibilities and duties of the department under this
13 chapter are transferred to the department of natural resources for any
14 discharge or other water quality issue related to a project required to
15 obtain a forest practices approval under chapter 76.09 RCW.

16 **Sec. 12.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to read
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

20 (1) "Advisory and oversight committee" means a balanced committee
21 of agency, dairy farm, and interest group representatives convened to
22 provide oversight and direction to the dairy nutrient management
23 program.

24 (2) "Bypass" means the intentional diversion of waste streams from
25 any portion of a treatment facility.

26 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,
27 or other extreme condition that causes an overflow from a required
28 waste retention structure.

29 (4) "Certification" means:

30 (a) The acknowledgment by a local conservation district that a
31 dairy producer has constructed or otherwise put in place the elements
32 necessary to implement his or her dairy nutrient management plan; and

33 (b) The acknowledgment by a dairy producer that he or she is
34 managing dairy nutrients as specified in his or her approved dairy
35 nutrient management plan.

1 (5) "Chronic" means a series of wet weather events that precludes
2 the proper operation of a dairy nutrient management system that is
3 designed for the current herd size.

4 (6) "Conservation commission" or "commission" means the
5 conservation commission under chapter 89.08 RCW.

6 (7) "Conservation districts" or "district" means a subdivision of
7 state government organized under chapter 89.08 RCW.

8 (8) "Concentrated dairy animal feeding operation" means a dairy
9 animal feeding operation subject to regulation under this chapter which
10 the director designates under RCW 90.64.020 or meets the following
11 criteria:

12 (a) Has more than seven hundred mature dairy cows, whether milked
13 or dry cows, that are confined; or

14 (b) Has more than two hundred head of mature dairy cattle, whether
15 milked or dry cows, that are confined and either:

16 (i) From which pollutants are discharged into navigable waters
17 through a manmade ditch, flushing system, or other similar manmade
18 device; or

19 (ii) From which pollutants are discharged directly into surface or
20 ground waters of the state that originate outside of and pass over,
21 across, or through the facility or otherwise come into direct contact
22 with the animals confined in the operation.

23 (9) "Dairy animal feeding operation" means a lot or facility where
24 the following conditions are met:

25 (a) Dairy animals that have been, are, or will be stabled or
26 confined and fed for a total of forty-five days or more in any twelve-
27 month period; and

28 (b) Crops, vegetation forage growth, or postharvest residues are
29 not sustained in the normal growing season over any portion of the lot
30 or facility. Two or more dairy animal feeding operations under common
31 ownership are considered, for the purposes of this chapter, to be a
32 single dairy animal feeding operation if they adjoin each other or if
33 they use a common area for land application of wastes.

34 (10) "Dairy farm" means any farm that is licensed to produce milk
35 under chapter 15.36 RCW.

36 (11) "Dairy nutrient" means any organic waste produced by dairy
37 cows or a dairy farm operation.

1 (12) "Dairy nutrient management plan" means a plan meeting the
2 requirements established under RCW 90.64.026.

3 (13) "Dairy producer" means a person who owns or operates a dairy
4 farm.

5 (14) "Department" means the department of (~~ecology under chapter~~
6 ~~43.21A RCW~~) agriculture.

7 (15) "Director" means the director of the department (~~of~~
8 ~~ecology,~~) or his or her designee.

9 (16) "Upset" means an exceptional incident in which there is an
10 unintentional and temporary noncompliance with technology-based permit
11 effluent limitations because of factors beyond the reasonable control
12 of the dairy. An upset does not include noncompliance to the extent
13 caused by operational error, improperly designed treatment facilities,
14 inadequate treatment facilities, lack of preventive maintenance, or
15 careless or improper operation.

16 (17) "Violation" means the following acts or omissions:

17 (a) A discharge of pollutants into the waters of the state, except
18 those discharges that are due to a chronic or catastrophic event, or to
19 an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as
20 provided in 40 C.F.R. Sec. 122.41, and that occur when:

21 (i) A dairy producer has a current national pollutant discharge
22 elimination system permit with a wastewater system designed, operated,
23 and maintained for the current herd size and that contains all process-
24 generated wastewater plus average annual precipitation minus
25 evaporation plus contaminated storm water runoff from a twenty-five
26 year, twenty-four hour rainfall event for that specific location, and
27 the dairy producer has complied with all permit conditions, including
28 dairy nutrient management plan conditions for appropriate land
29 application practices; or

30 (ii) A dairy producer does not have a national pollutant discharge
31 elimination system permit, but has complied with all of the elements of
32 a dairy nutrient management plan that: Prevents the discharge of
33 pollutants to waters of the state, is commensurate with the dairy
34 producer's current herd size, and is approved and certified under RCW
35 90.64.026;

36 (b) Failure to register as required under RCW 90.64.017;

37 (c)(i) Until July 1, 2011, failure to keep for a period of three

1 years all records necessary to show that applications of nutrients to
2 the land were within acceptable agronomic rates, unless otherwise
3 required by law; and

4 (ii) Beginning July 1, 2011, failure to keep for a period of five
5 years all records necessary to show that applications of nutrients to
6 the land were within acceptable agronomic rates;

7 (d) The lack of an approved dairy nutrient management plan by July
8 1, 2002; or

9 (e) The lack of a certified dairy nutrient management plan for a
10 dairy farm after December 31, 2003.

11 **Sec. 13.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to read
12 as follows:

13 (1) The director of the department (~~(of ecology)~~) may designate any
14 dairy animal feeding operation as a concentrated dairy animal feeding
15 operation upon determining that it is a significant contributor of
16 pollution to the surface or ground waters of the state. In making this
17 designation the director shall consider the following factors:

18 (a) The size of the animal feeding operation and the amount of
19 wastes reaching waters of the state;

20 (b) The location of the animal feeding operation relative to waters
21 of the state;

22 (c) The means of conveyance of animal wastes and process waters
23 into the waters of the state;

24 (d) The slope, vegetation, rainfall, and other factors affecting
25 the likelihood or frequency of discharge of animal wastes and process
26 waste waters into the waters of the state; and

27 (e) Other relevant factors as established by the department by
28 rule.

29 (2) A notice of intent to apply for a permit shall not be required
30 from a concentrated dairy animal feeding operation designated under
31 this section until the director has conducted an on-site inspection of
32 the operation and determined that the operation should and could be
33 regulated under the permit program.

34 **Sec. 14.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to read
35 as follows:

1 (1) The legislature finds that a livestock nutrient management
2 program is essential to protecting the quality of the waters of the
3 state and ensuring a healthy and productive livestock industry.

4 (2) The department(~~(s of agriculture and ecology)~~) shall examine
5 (~~(their)~~) its current statutory authorities and provide the legislature
6 with recommendations for statutory changes to fully implement a
7 livestock nutrient management program within the department (~~(of~~
8 ~~agriculture)~~) for concentrated animal feeding operations, animal
9 feeding operations, and dairies, as authorized in RCW 90.48.260(~~(~~
10 ~~90.64.813,~~) and 90.64.901. (~~(In developing recommended statutory~~
11 ~~changes, the departments shall consult with the livestock nutrient~~
12 ~~management program development and oversight committee created in RCW~~
13 ~~90.64.813.)~~) The recommendations must be submitted to the legislature
14 by the department(~~(s of agriculture and ecology)~~) prior to applying to
15 the environmental protection agency for delegated authority to
16 administer the CAFO portion of the national pollutant discharge
17 elimination system permit program under the federal clean water act.

18 (3) For purposes of chapter 510, Laws of 2005, animal feeding
19 operations (AFOs) and concentrated animal feeding operations (CAFOs)
20 have the same meaning as defined in 40 C.F.R. 122.23.

21 (4) This section applies to all operations that meet the definition
22 of an AFO. This section does not apply to true pasture and rangeland
23 operations that do not meet the definition of AFO, however, such
24 operations may have confinement areas that may qualify as an AFO.

25 NEW SECTION. **Sec. 15.** A new section is added to chapter 90.48 RCW
26 to read as follows:

27 All responsibilities and duties of the department under this
28 chapter are transferred to the department of agriculture with regard to
29 any matters falling within the scope of chapter 90.64 RCW.

30 **Sec. 16.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to
31 read as follows:

32 Unless otherwise designated in this chapter, the department of
33 ecology is hereby designated as the state water pollution control
34 agency for all purposes of the federal clean water act as it exists on
35 February 4, 1987, and is hereby authorized to participate fully in the
36 programs of the act as well as to take all action necessary to secure

1 to the state the benefits and to meet the requirements of that act.
2 With regard to the national estuary program established by section 320
3 of that act, the department shall exercise its responsibility jointly
4 with the Puget Sound partnership, created in RCW 90.71.210. The
5 department of ecology may delegate its authority under this chapter,
6 including its national pollutant discharge elimination permit system
7 authority and duties regarding animal feeding operations and
8 concentrated animal feeding operations, to the department of
9 agriculture through a memorandum of understanding. Until any such
10 delegation receives federal approval, the department of agriculture's
11 adoption or issuance of animal feeding operation and concentrated
12 animal feeding operation rules, permits, programs, and directives
13 pertaining to water quality shall be accomplished after reaching
14 agreement with the director of the department of ecology. Adoption or
15 issuance and implementation shall be accomplished so that compliance
16 with such animal feeding operation and concentrated animal feeding
17 operation rules, permits, programs, and directives will achieve
18 compliance with all federal and state water pollution control laws.
19 The powers granted herein include, among others, and notwithstanding
20 any other provisions of chapter 90.48 RCW or otherwise, the following:

21 (1) Complete authority to establish and administer a comprehensive
22 state point source waste discharge or pollution discharge elimination
23 permit program which will enable the department to qualify for full
24 participation in any national waste discharge or pollution discharge
25 elimination permit system and will allow the department to be the sole
26 agency issuing permits required by such national system operating in
27 the state of Washington subject to the provisions of RCW 90.48.262(2).
28 Program elements authorized herein may include, but are not limited to:

29 (a) Effluent treatment and limitation requirements together with timing
30 requirements related thereto; (b) applicable receiving water quality
31 standards requirements; (c) requirements of standards of performance
32 for new sources; (d) pretreatment requirements; (e) termination and
33 modification of permits for cause; (f) requirements for public notices
34 and opportunities for public hearings; (g) appropriate relationships
35 with the secretary of the army in the administration of his
36 responsibilities which relate to anchorage and navigation, with the
37 administrator of the environmental protection agency in the performance
38 of his duties, and with other governmental officials under the federal

1 clean water act; (h) requirements for inspection, monitoring, entry,
2 and reporting; (i) enforcement of the program through penalties,
3 emergency powers, and criminal sanctions; (j) a continuing planning
4 process; and (k) user charges.

5 (2) The power to establish and administer state programs in a
6 manner which will insure the procurement of moneys, whether in the form
7 of grants, loans, or otherwise; to assist in the construction,
8 operation, and maintenance of various water pollution control
9 facilities and works; and the administering of various state water
10 pollution control management, regulatory, and enforcement programs.

11 (3) The power to develop and implement appropriate programs
12 pertaining to continuing planning processes, area-wide waste treatment
13 management plans, and basin planning.

14 The governor shall have authority to perform those actions required
15 of him or her by the federal clean water act.

16 **Sec. 17.** RCW 77.55.021 and 2008 c 272 s 1 are each amended to read
17 as follows:

18 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
19 77.55.041, and section 3 of this act, in the event that any person or
20 government agency desires to undertake a hydraulic project, the person
21 or government agency shall, before commencing work thereon, secure the
22 approval of the department in the form of a permit as to the adequacy
23 of the means proposed for the protection of fish life.

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

- 26 (a) General plans for the overall project;
- 27 (b) Complete plans and specifications of the proposed construction
28 or work within the mean higher high water line in saltwater or within
29 the ordinary high water line in freshwater;
- 30 (c) Complete plans and specifications for the proper protection of
31 fish life; and
- 32 (d) Notice of compliance with any applicable requirements of the
33 state environmental policy act, unless otherwise provided for in this
34 chapter.

35 (3)(a) Protection of fish life is the only ground upon which
36 approval of a permit may be denied or conditioned. Approval of a
37 permit may not be unreasonably withheld or unreasonably conditioned.

1 Except as provided in this subsection and subsections (8), (10), and
2 (12) of this section, the department has forty-five calendar days upon
3 receipt of a complete application to grant or deny approval of a
4 permit. The forty-five day requirement is suspended if:

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

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

9 (iii) The applicant requests a delay; or

10 (iv) The department is issuing a permit for a storm water discharge
11 and is complying with the requirements of RCW 77.55.161(3)(b).

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

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

19 (4) If the department denies approval of a permit, the department
20 shall provide the applicant a written statement of the specific reasons
21 why and how the proposed project would adversely affect fish life.
22 Issuance, denial, conditioning, or modification of a permit shall be
23 appealable to the department or the board as specified in RCW 77.55.301
24 within thirty days of the notice of decision.

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

28 (b) Approval of a permit is valid for a period of up to five years
29 from the date of issuance, except as provided in (c) of this subsection
30 and in RCW 77.55.151.

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

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

4 (6) The department may, after consultation with the permittee,
5 modify a permit due to changed conditions. The modification becomes
6 effective unless appealed to the department or the board as specified
7 in RCW 77.55.301 within thirty days from the notice of the proposed
8 modification. For hydraulic projects that divert water for
9 agricultural irrigation or stock watering purposes, or when the
10 hydraulic project or other work is associated with streambank
11 stabilization to protect farm and agricultural land as defined in RCW
12 84.34.020, the burden is on the department to show that changed
13 conditions warrant the modification in order to protect fish life.

14 (7) A permittee may request modification of a permit due to changed
15 conditions. The request must be processed within forty-five calendar
16 days of receipt of the written request. A decision by the department
17 may be appealed to the board within thirty days of the notice of the
18 decision. For hydraulic projects that divert water for agricultural
19 irrigation or stock watering purposes, or when the hydraulic project or
20 other work is associated with streambank stabilization to protect farm
21 and agricultural land as defined in RCW 84.34.020, the burden is on the
22 permittee to show that changed conditions warrant the requested
23 modification and that such a modification will not impair fish life.

24 (8)(a) The department, the county legislative authority, or the
25 governor may declare and continue an emergency. If the county
26 legislative authority declares an emergency under this subsection, it
27 shall immediately notify the department. A declared state of emergency
28 by the governor under RCW 43.06.010 shall constitute a declaration
29 under this subsection.

30 (b) The department, through its authorized representatives, shall
31 issue immediately, upon request, oral approval for a stream crossing,
32 or work to remove any obstructions, repair existing structures, restore
33 streambanks, protect fish life, or protect property threatened by the
34 stream or a change in the stream flow without the necessity of
35 obtaining a written permit prior to commencing work. Conditions of the
36 emergency oral permit must be established by the department and reduced
37 to writing within thirty days and complied with as provided for in this
38 chapter.

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

4 (9) All state and local agencies with authority under this chapter
5 to issue permits or other authorizations in connection with emergency
6 water withdrawals and facilities authorized under RCW 43.83B.410 shall
7 expedite the processing of such permits or authorizations in keeping
8 with the emergency nature of such requests and shall provide a decision
9 to the applicant within fifteen calendar days of the date of
10 application.

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

25 (11)(a) For any property, except for property located on a marine
26 shoreline, that has experienced at least two consecutive years of
27 flooding or erosion that has damaged or has threatened to damage a
28 major structure, water supply system, septic system, or access to any
29 road or highway, the county legislative authority may determine that a
30 chronic danger exists. The county legislative authority shall notify
31 the department, in writing, when it determines that a chronic danger
32 exists. In cases of chronic danger, the department shall issue a
33 permit, upon request, for work necessary to abate the chronic danger by
34 removing any obstructions, repairing existing structures, restoring
35 banks, restoring road or highway access, protecting fish resources, or
36 protecting property. Permit requests must be made and processed in
37 accordance with subsections (2) and (3) of this section.

1 (b) Any projects proposed to address a chronic danger identified
2 under (a) of this subsection that satisfies the project description
3 identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions
4 of the state environmental policy act, chapter 43.21C RCW. However,
5 the project is subject to the review process established in RCW
6 77.55.181(3) as if it were a fish habitat improvement project.

7 (12) The department may issue an expedited written permit in those
8 instances where normal permit processing would result in significant
9 hardship for the applicant or unacceptable damage to the environment.
10 Expedited permit requests require a complete written application as
11 provided in subsection (2) of this section and must be issued within
12 fifteen calendar days of the receipt of a complete written application.
13 Approval of an expedited permit is valid for up to sixty days from the
14 date of issuance. The department may not require the provisions of the
15 state environmental policy act, chapter 43.21C RCW, to be met as a
16 condition of issuing a permit under this subsection.

17 **Sec. 18.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to
18 read as follows:

19 ~~((In coordination with the department of natural resources and lead~~
20 ~~entity groups,))~~ The department must establish a ranked inventory of
21 fish passage barriers on land owned by small forest landowners based on
22 the principle of fixing the worst first within a watershed consistent
23 with the fish passage priorities of the forest and fish report. The
24 department shall first gather and synthesize all available existing
25 information about the locations and impacts of fish passage barriers in
26 Washington. This information must include, but not be limited to, the
27 most recently available limiting factors analysis conducted pursuant to
28 RCW 77.85.060(2), the stock status information contained in the
29 department of fish and wildlife salmonid stock inventory (SASSI), the
30 salmon and steelhead habitat inventory and assessment project (SSHIAP),
31 and any comparable science-based assessment when available. The
32 inventory of fish passage barriers must be kept current and at a
33 minimum be updated by the beginning of each calendar year. Nothing in
34 this section grants the department or others additional right of entry
35 onto private property.

1 **Sec. 19.** RCW 77.12.870 and 2009 c 333 s 21 are each amended to
2 read as follows:

3 (1) The department(~~(, in consultation with the Northwest straits~~
4 ~~commission, the department of natural resources, and other interested~~
5 ~~parties,)) must create and maintain a database of known derelict
6 fishing gear, including the type of gear and its location.~~

7 (2) A person who loses or abandons commercial fishing gear within
8 the waters of the state is encouraged to report the location of the
9 loss and the type of gear lost to the department within forty-eight
10 hours of the loss.

11 **Sec. 20.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to read
12 as follows:

13 (1) The director shall create a rapid response plan in cooperation
14 with the aquatic nuisance species committee and its member agencies
15 that describes actions to be taken when a prohibited aquatic animal
16 species is found to be infesting a water body. These actions include
17 eradication or control programs where feasible and containment of
18 infestation where practical through notification, public education, and
19 the enforcement of regulatory programs.

20 (2) The commission may adopt rules to implement the rapid response
21 plan.

22 (3) The director(~~(, the department of ecology, and the Washington~~
23 ~~state parks and recreation commission)) may post signs at water bodies
24 that are infested with aquatic animal species that are classified as
25 prohibited aquatic animal species under RCW 77.12.020 or with invasive
26 species of the plant kingdom. The signs should identify the prohibited
27 plant and animal species present and warn users of the water body of
28 the hazards and penalties for possessing and transporting these
29 species. Educational signs may be placed at uninfested sites.~~

30 **Sec. 21.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to
31 read as follows:

32 (1) A person is guilty of unlawful taking of seaweed if the person
33 takes, possesses, or harvests seaweed and:

34 (a) The person does not have and possess the license required by
35 chapter 77.32 RCW for taking seaweed; or

1 (b) The action violates any rule of the department (~~or the~~
2 ~~department of natural resources~~) regarding seasons, possession limits,
3 closed areas, closed times, or any other rule addressing the manner or
4 method of taking, possessing, or harvesting of seaweed.

5 (2) Unlawful taking of seaweed is a misdemeanor. This does not
6 affect rights of the state to recover civilly for trespass, conversion,
7 or theft of state-owned valuable materials.

8 **Sec. 22.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to read
9 as follows:

10 The goals of the warm water game fish enhancement program are to
11 improve the fishing for warm water game fish using cost-effective
12 management. Development of new ponds and lakes shall be an important
13 and integral part of the program. The department shall work (~~with the~~
14 ~~department of natural resources~~) to coordinate the reclamation of
15 surface mines and the development of warm water game fish ponds.
16 Improvement of warm water fishing shall be coordinated with the
17 protection and conservation of cold water fish populations. This shall
18 be accomplished by carefully designing the warm water projects to have
19 minimal adverse effects upon the cold water fish populations. New pond
20 and lake development should have beneficial effects upon wildlife due
21 to the increase in lacustrine and wetland habitat that will accompany
22 the improvement of warm water fish habitat. The department shall not
23 develop projects that will increase the populations of undesirable or
24 deleterious fish species such as carp, squawfish, walking catfish, and
25 others.

26 Fish culture programs shall be used in conditions where they will
27 prove to be cost-effective, and may include the purchase of warm water
28 fish from aquatic farmers defined in RCW 15.85.020. Consideration
29 should be made for development of urban area enhancement of fishing
30 opportunity for put-and-take species, such as channel catfish, that are
31 amenable to production by low-cost fish culture methods. Fish culture
32 shall also be used for stocking of high value species, such as walleye,
33 smallmouth bass, and tiger musky. Introduction of special genetic
34 strains that show high potential for recreational fishing improvement,
35 including Florida strain largemouth bass and striped bass, shall be
36 considered.

1 Transplantation and introduction of exotic warm water fish shall be
2 carefully reviewed to assure that adverse effects to native fish and
3 wildlife populations do not occur. This review shall include an
4 analysis of consequences from disease and parasite introduction.

5 Population management through the use of fish toxicants, including
6 rotenone or derris root, shall be an integral part of the warm water
7 game fish enhancement program. However, any use of fish toxicants
8 shall be subject to a thorough review to prevent adverse effects to
9 cold water fish, desirable warm water fish, and other biota.
10 Eradication of deleterious fish species shall be a goal of the program.

11 Habitat improvement shall be a major aspect of the warm water game
12 fish enhancement program. Habitat improvement opportunities shall be
13 defined with scientific investigations, field surveys, and by using the
14 extensive experience of other state management entities. Installation
15 of cover, structure, water flow control structures, screens, spawning
16 substrate, vegetation control, and other management techniques shall be
17 fully used. The department shall work to gain access to privately
18 owned waters that can be developed with habitat improvements to improve
19 the warm water resource for public fishing.

20 The department shall use the resources of cooperative groups to
21 assist in the planning and implementation of the warm water game fish
22 enhancement program. In the development of the program the department
23 shall actively involve the organized fishing clubs that primarily fish
24 for warm water fish. The warm water fish enhancement program shall be
25 cooperative between the department and private landowners; private
26 landowners shall not be required to alter the uses of their private
27 property to fulfill the purposes of the warm water fish enhancement
28 program. The director shall not impose restrictions on the use of
29 private property, or take private property, for the purpose of the warm
30 water fish enhancement program.

31 **Sec. 23.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to
32 read as follows:

33 (1) Beginning in January 1998, the department (~~and the department~~
34 ~~of natural resources~~) shall implement a habitat incentives program
35 based on the recommendations of federally recognized Indian tribes,
36 landowners, the regional fisheries enhancement groups, the timber,
37 fish, and wildlife cooperators, and other interested parties. The

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

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

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

32 (4) As part of the agreement, the department (~~(of natural~~
33 ~~resources)~~) may stipulate the factors that will be considered when the
34 department (~~(of natural resources)~~) evaluates a landowner's application
35 for a forest practices permit under chapter 76.09 RCW on property
36 covered by the agreement. The department's (~~(of natural resources¹)~~)
37 identification of these evaluation factors shall be in concurrence with
38 (~~(the department and)~~) affected federally recognized Indian tribes. In

1 general, future decisions related to the issuance, conditioning, or
2 denial of forest practices permits shall be based on the conditions
3 present on the landowner's property at the time of the agreement,
4 unless all parties agree otherwise.

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

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

17 **Sec. 24.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to
18 read as follows:

19 The department(~~(, the department of ecology, and the department of~~
20 ~~natural resources)~~) shall (~~(jointly)~~) develop an informational brochure
21 that describes when permits and any other authorizations are required
22 for flood damage prevention and reduction projects, and recommend(~~(s)~~)
23 ways to best proceed through the various regulatory permitting
24 processes.

25 **Sec. 25.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to
26 read as follows:

27 The department (~~(and the department of ecology)~~) will work
28 cooperatively with the United States army corps of engineers to develop
29 a memorandum of agreement outlining dike vegetation management
30 guidelines so that dike owners are eligible for coverage under P.L. 84-
31 99, and state requirements established pursuant to RCW 77.55.021 are
32 met.

33 **Sec. 26.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to read
34 as follows:

35 (1) The department must establish and administer a direct retail

1 endorsement to serve as a single license that permits a Washington
2 license holder or alternate operator to commercially harvest retail-
3 eligible species and to clean, dress, and sell his or her catch
4 directly to consumers at retail, including over the internet. The
5 direct retail endorsement must be issued as an optional addition to all
6 holders of: (a) A commercial fishing license for retail-eligible
7 species that the department offers under this chapter; and (b) an
8 alternate operator license who are designated as an alternate operator
9 on a commercial fishing license for retail eligible species.

10 (2) The direct retail endorsement must be offered at the time of
11 application for the qualifying commercial fishing license. Individuals
12 in possession of a qualifying commercial fishing license issued under
13 this chapter, and alternate operators designated on such a license, may
14 add a direct retail endorsement to their current license at any time.
15 Individuals who do not have a commercial fishing license for retail-
16 eligible species issued under this chapter, and who are not designated
17 as alternate operators on such a license, may not receive a direct
18 retail endorsement. The costs, conditions, responsibilities, and
19 privileges associated with the endorsed commercial fishing license is
20 not affected or altered in any way by the addition of a direct retail
21 endorsement. These costs include the base cost of the license and any
22 revenue and excise taxes.

23 (3) An individual need only add one direct retail endorsement to
24 his or her license portfolio. If a direct retail endorsement is
25 selected by an individual holding more than one commercial fishing
26 license issued under this chapter, a single direct retail endorsement
27 is considered to be added to all qualifying commercial fishing licenses
28 held by that individual, and is the only license required for the
29 individual to sell at retail any retail-eligible species permitted by
30 all of the underlying endorsed licenses. If a direct retail
31 endorsement is selected by an individual designated as an alternate
32 operator on more than one commercial license issued under this chapter,
33 a single direct retail endorsement is the only license required for the
34 individual to sell at retail any retail-eligible species permitted by
35 all of the underlying endorsed licenses on which the individual is
36 designated as an alternate operator. The direct retail endorsement
37 applies only to the Washington license holder or alternate operator
38 obtaining the endorsement.

1 (4) In addition to any fees charged for the endorsed licenses and
2 harvest documentation as required by this chapter or the rules of the
3 department, the department may set a reasonable annual fee not to
4 exceed the administrative costs to the department for a direct retail
5 endorsement.

6 (5) The holder of a direct retail endorsement is responsible for
7 documenting the commercial harvest of salmon and crab according to the
8 provisions of this chapter, the rules of the department for a wholesale
9 fish dealer, and the reporting requirements of the endorsed license.
10 Any retail-eligible species caught by the holder of a direct retail
11 endorsement must be documented on fish tickets.

12 (6) The direct retail endorsement must be displayed in a readily
13 visible manner by the seller wherever and whenever a sale to someone
14 other than a licensed wholesale dealer occurs. The commission may
15 require that the holder of a direct retail endorsement notify the
16 department up to eighteen hours before conducting an in-person sale of
17 retail-eligible species, except for in-person sales that have a
18 cumulative retail sales value of less than one hundred fifty dollars in
19 a twenty-four hour period that are sold directly from the vessel. For
20 sales occurring in a venue other than in person, such as over the
21 internet, through a catalog, or on the phone, the direct retail
22 endorsement number of the seller must be provided to the buyer both at
23 the time of sale and the time of delivery. All internet sales must be
24 conducted in accordance with federal laws and regulations.

25 (7) The direct retail endorsement is to be held by a natural person
26 and is not transferrable or assignable. If the endorsed license is
27 transferred, the direct retail endorsement immediately becomes void,
28 and the transferor is not eligible for a full or prorated reimbursement
29 of the annual fee paid for the direct retail endorsement. Upon
30 becoming void, the holder of a direct retail endorsement must surrender
31 the physical endorsement to the department.

32 (8) The holder of a direct retail endorsement must abide by the
33 provisions of Title 69 RCW as they apply to the processing and retail
34 sale of seafood. The department must distribute a pamphlet(~~(, provided~~
35 ~~by the department of agriculture,)~~) with the direct retail endorsement
36 generally describing the labeling requirements set forth in chapter
37 69.04 RCW as they apply to seafood.

1 (9) The holder of a qualifying commercial fishing license issued
2 under this chapter, or an alternate operator designated on such a
3 license, must either possess a direct retail endorsement or a wholesale
4 dealer license provided for in RCW 77.65.280 in order to lawfully sell
5 their catch or harvest in the state to anyone other than a licensed
6 wholesale dealer.

7 (10) The direct retail endorsement entitles the holder to sell a
8 retail-eligible species only at a temporary food service establishment
9 as that term is defined in RCW 69.06.045, or directly to a restaurant
10 or other similar food service business.

11 **Sec. 27.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to
12 read as follows:

13 (1) A herring spawn on kelp fishery license is required to
14 commercially take herring eggs which have been deposited on vegetation
15 of any type.

16 (2) A herring spawn on kelp fishery license may be issued only to
17 a person who:

18 (a) Holds a herring fishery license issued under RCW 77.65.200 and
19 77.70.120; and

20 (b) Is the highest bidder in an auction conducted under subsection
21 (3) of this section.

22 (3) The department shall sell herring spawn on kelp commercial
23 fishery licenses at auction to the highest bidder. Bidders shall
24 identify their sources of kelp. ~~((Kelp harvested from state-owned
25 aquatic lands as defined in RCW 79.90.465 requires the written consent
26 of the department of natural resources.))~~ The department shall give
27 all holders of herring fishery licenses thirty days' notice of the
28 auction.

29 **Sec. 28.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to
30 read as follows:

31 The department shall ~~((work with the department of ecology and
32 local government entities to))~~ streamline the siting process for new
33 enhancement projects. The department is encouraged to work with the
34 legislature to develop statutory changes that enable expeditious
35 processing and granting of permits for fish enhancement projects.

1 **Sec. 29.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to
2 read as follows:

3 (1) It is the purpose of (~~chapter 163, Laws of 1996~~) this section
4 that all state agricultural lands, grazing lands, and grazeable
5 woodlands (~~shall~~) be managed in keeping with the statutory and
6 constitutional mandates under which each agency operates. (~~Chapter~~
7 ~~163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993~~
8 ~~sp. sess.~~)

9 (2) (~~The ecosystem standards developed under chapter 4, Laws of~~
10 ~~1993 sp. sess. for state owned agricultural and grazing lands are~~
11 ~~defined as desired ecological conditions. The standards are not~~
12 ~~intended to prescribe practices. For this reason,~~) Land managers are
13 encouraged to use an adaptive management approach in selecting and
14 implementing practices that work towards meeting the standards based on
15 the best available science and evaluation tools.

16 (3) (~~For as long as the chapter 4, Laws of 1993 sp. sess.~~
17 ~~ecosystem standards remain in effect, they~~) Land shall be (~~applied~~)
18 managed through a collaborative process that incorporates the following
19 principles:

20 (a) The land manager and lessee or permittee shall look at the land
21 together and make every effort to reach agreement on management and
22 resource objectives for the land under consideration;

23 (b) They will then discuss management options and make every effort
24 to reach agreement on which of the available options will be used to
25 achieve the agreed-upon objectives;

26 (c) No land manager or owner ever gives up his or her management
27 prerogative;

28 (d) Efforts will be made to make land management plans economically
29 feasible for landowners, managers, and lessees and to make the land
30 management plan compatible with the lessee's entire operation;

31 (e) Coordinated resource management planning is encouraged where
32 either multiple ownerships, or management practices, or both, are
33 involved;

34 (f) The department of fish and wildlife shall consider multiple
35 use, including grazing, on lands owned or managed by the department of
36 fish and wildlife where it is compatible with the management objectives
37 of the land; and

1 (g) The department shall allow multiple use on lands owned or
2 managed by the department where multiple use can be demonstrated to be
3 compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

4 (4) The ecosystem standards are to be achieved by applying
5 appropriate land management practices on riparian lands and on the
6 uplands in order to reach the desired ecological conditions.

7 ~~((5) The legislature urges that state agencies that manage grazing
8 lands make planning and implementation of chapter 163, Laws of 1996,
9 using the coordinated resource management and planning process, a high
10 priority, especially where either multiple ownerships, or multiple use
11 resources objectives, or both, are involved. In all cases, the choice
12 of using the coordinated resource management planning process will be
13 a voluntary decision by all concerned parties including agencies,
14 private landowners, lessees, permittees, and other interests.))~~

15 **Sec. 30.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to
16 read as follows:

17 Periodically, at intervals to be determined by the board, the
18 department shall identify trust lands which are expected to convert to
19 commercial, residential, or industrial uses within ten years. The
20 department shall adhere to existing local comprehensive plans, zoning
21 classifications, and duly adopted local policies when making this
22 identification and determining the fair market value of the property.

23 The department shall hold a public hearing on the proposal in the
24 county where the state land is located. At least fifteen days but not
25 more than thirty days before the hearing, the department shall publish
26 a public notice of reasonable size in display advertising form, setting
27 forth the date, time, and place of the hearing, at least once in one or
28 more daily newspapers of general circulation in the county and at least
29 once in one or more weekly newspapers circulated in the area where the
30 trust land is located. At the same time that the published notice is
31 given, the department shall give written notice of the hearings to the
32 ~~((departments of fish and wildlife and general administration, to the
33 parks and recreation commission, and to the))~~ county, city, or town in
34 which the property is situated. The department shall disseminate a
35 news release pertaining to the hearing among printed and electronic
36 media in the area where the trust land is located. The public notice

1 and news release also shall identify trust lands in the area which are
2 expected to convert to commercial, residential, or industrial uses
3 within ten years.

4 A summary of the testimony presented at the hearings shall be
5 prepared for the board's consideration. The board shall designate
6 trust lands which are expected to convert to commercial, residential,
7 or industrial uses as urban land. Descriptions of lands designated by
8 the board shall be made available to the county and city or town in
9 which the land is situated and for public inspection and copying at the
10 department's administrative office in Olympia, Washington and at each
11 area office.

12 The hearing and notice requirements of this section apply to those
13 trust lands which have been identified by the department prior to July
14 1, 1984, as being expected to convert to commercial, residential, or
15 industrial uses within the next ten years, and which have not been sold
16 or exchanged prior to July 1, 1984.

17 **Sec. 31.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to
18 read as follows:

19 In order to set aside, preserve, and protect natural areas within
20 the state, the department is authorized, in addition to any other
21 powers, to:

22 (1) Establish the criteria for selection, acquisition, management,
23 protection, and use of such natural areas, including:

24 (a) Limiting public access to natural area preserves consistent
25 with the purposes of this chapter. Where appropriate, and on a case-
26 by-case basis, a buffer zone with an increased low level of public
27 access may be created around the environmentally sensitive areas;

28 (b) Developing a management plan for each designated natural area
29 preserve. The plan must identify the significant resources to be
30 conserved consistent with the purposes of this chapter and identify the
31 areas with potential for low-impact public and environmental
32 educational uses. The plan must specify the types of management
33 activities and public uses that are permitted, consistent with the
34 purposes of this chapter. The department must make the plans available
35 for review and comment by the public, and state, tribal, and local
36 agencies, prior to final approval;

1 (2) Cooperate or contract with any federal, state, or local
2 governmental agency, private organizations, or individuals in carrying
3 out the purpose of this chapter;

4 (3) Consistent with the plan, acquire by gift, devise, purchase,
5 grant, dedication, or means other than eminent domain, the fee or any
6 lesser right or interest in real property which shall be held and
7 managed as a natural area;

8 (4) Acquire by gift, devise, grant, or donation any personal
9 property to be used in the acquisition and/or management of natural
10 areas;

11 (5) Inventory existing public, state, and private lands in
12 cooperation with the council to assess possible natural areas to be
13 preserved within the state;

14 (6) Maintain a natural heritage program to provide assistance in
15 the selection and nomination of areas containing natural heritage
16 resources for registration or dedication. The program shall maintain
17 a classification of natural heritage resources, an inventory of their
18 locations, and a data bank for such information. (~~The department
19 shall cooperate with the department of fish and wildlife in the
20 selection and nomination of areas from the data bank that relate to
21 critical wildlife habitats.~~) Information from the data bank shall be
22 made available to public and private agencies and individuals for
23 environmental assessment and proprietary land management purposes.
24 Usage of the classification, inventory, or data bank of natural
25 heritage resources for any purpose inconsistent with the natural
26 heritage program is not authorized;

27 (7) Prepare a natural heritage plan which shall govern the natural
28 heritage program in the conduct of activities to create and manage a
29 system of natural areas that includes natural resources conservation
30 areas, and may include areas designated under the research natural area
31 program on federal lands in the state;

32 (a) The plan shall list the natural heritage resources to be
33 considered for registration and shall provide criteria for the
34 selection and approval of natural areas under this chapter;

35 (b) The department shall provide opportunities for input, comment,
36 and review to the public, other public agencies, and private groups
37 with special interests in natural heritage resources during preparation
38 of the plan;

1 (c) Upon approval by the council and adoption by the department,
2 the plan shall be updated and submitted biennially to the appropriate
3 committees of the legislature for their information and review. The
4 plan shall take effect ninety days after the adjournment of the
5 legislative session in which it is submitted unless the reviewing
6 committees suggest changes or reject the plan; and

7 (8) Maintain a state register of natural areas containing
8 significant natural heritage resources to be called the Washington
9 register of natural area preserves. Selection of natural areas for
10 registration shall be in accordance with criteria listed in the natural
11 heritage plan and accomplished through voluntary agreement between the
12 owner of the natural area and the department. No privately owned lands
13 may be proposed to the council for registration without prior notice to
14 the owner or registered without voluntary consent of the owner. No
15 state or local governmental agency may require such consent as a
16 condition of any permit or approval of or settlement of any civil or
17 criminal proceeding or to penalize any landowner in any way for failure
18 to give, or for withdrawal of, such consent.

19 (a) The department shall adopt rules as authorized by RCW 43.12.065
20 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural
21 area registration.

22 (b) After approval by the council, the department may place sites
23 onto the register or remove sites from the register.

24 (c) The responsibility for management of registered natural area
25 preserves shall be with the preserve owner. A voluntary management
26 agreement may be developed between the department and the owners of the
27 sites on the register.

28 (d) Any public agency may register lands under provisions of this
29 chapter.

30 **Sec. 32.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to read
31 as follows:

32 The property currently designated as the Elk river natural area
33 preserve is transferred from management under chapter 79.70 RCW as a
34 natural area preserve to management under chapter 79.71 RCW as a
35 natural resources conservation area. The legislature finds that
36 hunting is a suitable low-impact public use within the Elk river
37 natural resources conservation area. The department of natural

1 resources shall incorporate this legislative direction into the
2 management plan developed for the Elk river natural resources
3 conservation area. (~~The department shall work with the department of~~
4 ~~fish and wildlife to identify hunting opportunities compatible with the~~
5 ~~area's conservation purposes.~~)

6 **Sec. 33.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to
7 read as follows:

8 The legislature finds that the department provides, manages, and
9 monitors aquatic land dredged material disposal sites on state-owned
10 aquatic lands for materials dredged from rivers, harbors, and shipping
11 lanes. These disposal sites (~~are~~) should be approved through a
12 cooperative planning process by the department(~~s of natural resources~~
13 ~~and ecology~~), the United States army corps of engineers, and the
14 United States environmental protection agency (~~in cooperation with the~~
15 ~~Puget Sound partnership~~). These disposal sites are essential to the
16 commerce and well-being of the citizens of the state of Washington.
17 Management and environmental monitoring of these sites are necessary to
18 protect environmental quality and to (~~assure~~) ensure appropriate use
19 of state-owned aquatic lands. The creation of an aquatic land dredged
20 material disposal site account is a reasonable means to enable and
21 facilitate proper management and environmental monitoring of these
22 disposal sites.

23 **Sec. 34.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to
24 read as follows:

25 Whenever application is made to the department by any incorporated
26 city or town or metropolitan park district for the use of any state-
27 owned tidelands or shorelands within the corporate limits of the city
28 or town or metropolitan park district for municipal park and/or
29 playground purposes, the department shall cause the application to be
30 entered in the records of its office, and shall then forward the
31 application to the governor, who shall appoint a committee of five
32 representative citizens of the city or town, in addition to the
33 commissioner (~~and the director of ecology, both of~~), whom shall be an
34 ex officio member(~~s~~) of the committee, to investigate the lands and
35 determine whether they are suitable and needed for park or playground
36 purposes; and, if they so find, the commissioner shall certify to the

1 governor that the property shall be deeded, when in accordance with RCW
2 79.125.200 and 79.125.700, to the city or town or metropolitan park
3 district and the governor shall then execute a deed in the name of the
4 state of Washington, attested by the secretary of state, conveying the
5 use of the lands to the city or town or metropolitan park district for
6 park or playground purposes for so long as it shall continue to hold,
7 use, and maintain the lands for park or playground purposes.

8 **Sec. 35.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to
9 read as follows:

10 The (~~director of ecology~~) commissioner, in addition to serving as
11 an ex officio member of the committee, is authorized and directed to
12 assist the city or town or metropolitan park district in the
13 development and decoration of any lands so conveyed and to furnish
14 trees, grass, flowers, and shrubs (~~therefor~~).

15 **Sec. 36.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to
16 read as follows:

17 (1) The department, upon the receipt of an application for a lease
18 for the purpose of planting and cultivating oyster beds or for the
19 purpose of cultivating clams or other edible shellfish, shall (~~notify~~
20 ~~the director of fish and wildlife of the filing of the application~~
21 ~~describing the tidelands or beds of navigable waters applied for. The~~
22 ~~director of fish and wildlife shall~~) cause an inspection of the lands
23 applied for (~~to be made and shall make a full report to the department~~
24 ~~of the director's findings as to whether it is necessary,~~) in order to
25 protect existing natural oyster beds, and to secure adequate seeding of
26 the lands, to retain the lands described in the application for lease
27 or any part of the lands, and in the event the (~~director~~) department
28 deems it advisable to retain the lands or any part of the lands for the
29 protection of existing natural oyster beds or to guarantee the
30 continuance of an adequate seed stock for existing natural oyster beds,
31 the lands shall not be subject to lease. However, if the (~~director~~)
32 department determines that the lands applied for or any part of the
33 lands may be leased, the (~~director~~) department shall (~~so notify the~~
34 ~~department and the director shall~~) cause an examination of the lands
35 to be made to determine the presence, if any, of natural oysters,
36 clams, or other edible shellfish on the lands, and to fix the rental

1 value of the lands for use for oyster, clam, or other edible shellfish
2 cultivation. In the report ~~((to))~~, the department ~~((, the director))~~
3 shall recommend a minimum rental for the lands and an estimation of the
4 value of the oysters, clams, or other edible shellfish, if any, then
5 present on the lands applied for. The lands approved by the
6 ~~((director))~~ department for lease may then be leased to the applicant
7 for a period of not less than five years nor more than ten years at a
8 rental not less than the minimum ~~((rental))~~ recommended ~~((by the~~
9 ~~director of fish and wildlife))~~ rent. In addition, before entering
10 upon possession of the land, the applicant shall pay the value of the
11 oysters, clams, or other edible shellfish, if any, then present on the
12 land as determined by the ~~((director))~~ department, plus the expense
13 incurred by the ~~((director))~~ department in investigating the quantity
14 of oysters, clams, or other edible shellfish, present on the land
15 applied for.

16 (2) When issuing new leases or reissuing existing leases the
17 department shall not permit the commercial harvest of subtidal
18 hardshell clams by means of hydraulic escalating when the upland within
19 five hundred feet of any lease tract is zoned for residential
20 development.

21 **Sec. 37.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to
22 read as follows:

23 Before entering into possession of any leased tidelands or beds of
24 navigable waters, the applicant shall have the lands surveyed by a
25 registered land surveyor, and the applicant shall furnish to the
26 department ~~((and to the director of fish and wildlife,))~~ a map of the
27 leased premises signed and certified by the registered land surveyor.
28 The lessee shall also mark the boundaries of the leased premises by
29 piling monuments or other markers of a permanent nature ~~((as the~~
30 ~~director of fish and wildlife may direct))~~.

31 **Sec. 38.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to
32 read as follows:

33 The department may, upon the filing of an application for a renewal
34 lease, inspect the tidelands or beds of navigable waters, and if the
35 department deems it in the best interests of the state to re-lease the
36 lands, the department shall issue to the applicant a renewal lease for

1 a further period not exceeding thirty years and under the terms and
2 conditions as may be determined by the department. However, in the
3 case of an application for a renewal lease it shall not be necessary
4 for the lands to be inspected and reported upon by the (~~director of~~
5 ~~fish and wildlife~~) department.

6 **Sec. 39.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to
7 read as follows:

8 (1) (~~In the event that the fish and wildlife commission approves~~
9 ~~the vacation of the whole or any part of a reserve,~~) The department
10 may vacate and offer for lease the parts or all of the reserve as it
11 deems to be for the best interest of the state, and all moneys received
12 for the lease of the lands shall be paid to the department.

13 (2) Notwithstanding RCW 77.60.020, subsection (1) of this section,
14 or any other provision of state law, the state oyster reserves in Eld
15 Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston
16 counties shall permanently be designated as state oyster reserve lands.

17 **Sec. 40.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to
18 read as follows:

19 (1) The maximum daily wet weight harvest or possession of seaweed
20 for personal use from all state-owned aquatic lands and all privately
21 owned tidelands is ten pounds per person. The department (~~in~~
22 ~~cooperation with the department of fish and wildlife~~) may establish
23 seaweed harvest limits of less than ten pounds for conservation
24 purposes. This section shall in no way affect the ability of any state
25 agency to prevent harvest of any species of marine aquatic plant from
26 lands under its control, ownership, or management.

27 (2) Except as provided under subsection (3) of this section,
28 commercial harvesting of seaweed from state-owned aquatic lands, and
29 all privately owned tidelands is prohibited. This subsection shall in
30 no way affect commercial seaweed aquaculture.

31 (3) Upon (~~mutual~~) approval by the department (~~and the department~~
32 ~~of fish and wildlife~~), seaweed species of the genus *Macrocystis* may be
33 commercially harvested for use in the herring spawn-on-kelp fishery.

34 (4) Importation of seaweed species of the genus *Macrocystis* into
35 Washington state for the herring spawn-on-kelp fishery is subject to
36 the fish and shellfish disease control policies (~~of the department of~~

1 ~~fish and wildlife~~)). Macrocyctis shall not be imported from areas with
2 fish or shellfish diseases associated with organisms that are likely to
3 be transported with Macrocyctis. The department shall incorporate this
4 policy on Macrocyctis importation into its overall fish and shellfish
5 disease control policies.

6 **Sec. 41.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are
7 each reenacted and amended to read as follows:

8 (1) There is created a winter recreation advisory committee to
9 advise the parks and recreation commission in the administration of
10 this chapter and to assist and advise the commission in the development
11 of winter recreation facilities and programs.

12 (2) The committee shall consist of:

13 (a) Six representatives of the nonsnowmobiling winter recreation
14 public appointed by the commission, including a resident of each of the
15 six geographical areas of this state where nonsnowmobiling winter
16 recreation activity occurs, as defined by the commission.

17 (b) Three representatives of the snowmobiling public appointed by
18 the commission.

19 (c) One (~~representative of the department of natural resources,~~
20 ~~one representative of the department of fish and wildlife, and one~~)
21 representative of (~~the Washington state association of counties, each~~
22 ~~of whom shall be~~) a statewide private association generally
23 representing the interests of county legislative bodies and executives
24 appointed by the director (~~of the particular department or~~
25 ~~association~~)).

26 (3) The terms of the members appointed under subsection (2)(a) and
27 (b) of this section shall begin on October 1st of the year of
28 appointment and shall be for three years or until a successor is
29 appointed, except in the case of appointments to fill vacancies for the
30 remainder of the unexpired term: PROVIDED, That the first of these
31 members shall be appointed for terms as follows: Three members shall
32 be appointed for one year, three members shall be appointed for two
33 years, and three members shall be appointed for three years.

34 (4) Members of the committee shall be reimbursed from the winter
35 recreational program account created by RCW 79A.05.235 for travel
36 expenses as provided in RCW 43.03.050 and 43.03.060.

1 (5) The committee shall meet at times and places it determines not
2 less than twice each year and additionally as required by the committee
3 chair or by majority vote of the committee. The chair of the committee
4 shall be chosen under procedures adopted by the committee. The
5 committee shall adopt any other procedures necessary to govern its
6 proceedings.

7 (6) The director of parks and recreation or the director's designee
8 shall serve as secretary to the committee and shall be a nonvoting
9 member.

10 **Sec. 42.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to
11 read as follows:

12 (1) The outdoor education and recreation grant program is hereby
13 created, subject to the availability of funds in the outdoor education
14 and recreation account. The commission shall establish and implement
15 the program by rule to provide opportunities for public agencies,
16 private nonprofit organizations, formal school programs, nonformal
17 after-school programs, and community-based programs to receive grants
18 from the account. Programs that provide outdoor education
19 opportunities to schools shall be fully aligned with the state's
20 essential academic learning requirements.

21 (2) The program shall be phased in beginning with the schools and
22 students with the greatest needs in suburban, rural, and urban areas of
23 the state. The program shall focus on students who qualify for free
24 and reduced-price lunch, who are most likely to fail academically, or
25 who have the greatest potential to drop out of school.

26 (3) The director shall set priorities and develop criteria for the
27 awarding of grants to outdoor environmental, ecological, agricultural,
28 or other natural resource-based education and recreation programs
29 considering at least the following:

30 (a) Programs that contribute to the reduction of academic failure
31 and dropout rates;

32 (b) Programs that make use of research-based, effective
33 environmental, ecological, agricultural, or other natural resource-
34 based education curriculum;

35 (c) Programs that contribute to healthy life styles through outdoor
36 recreation and sound nutrition;

1 (d) Various Washington state parks as venues and use of the
2 commission's personnel as a resource;

3 (e) Programs that maximize the number of participants that can be
4 served;

5 (f) Programs that will commit matching and in-kind resources;

6 (g) Programs that create partnerships with public and private
7 entities;

8 (h) Programs that provide students with opportunities to directly
9 experience and understand nature and the natural world; and

10 (i) Programs that include ongoing program evaluation, assessment,
11 and reporting of their effectiveness.

12 (4) The director shall create an advisory committee to assist and
13 advise the commission in the development and administration of the
14 outdoor education and recreation program. The director should solicit
15 representation on the committee from (~~the office of the superintendent~~
16 ~~of public instruction, the department of fish and wildlife,~~) the
17 business community, outdoor organizations with an interest in
18 education, and any others the commission deems sufficient to ensure a
19 cross section of stakeholders. When the director creates such an
20 advisory committee, its members shall be reimbursed from the outdoor
21 education and recreation program account for travel expenses as
22 provided in RCW 43.03.050 and 43.03.060.

23 (5) The outdoor education and recreation program account is created
24 in the custody of the state treasurer. Funds deposited in the outdoor
25 education and recreation program account shall be transferred only to
26 the commission to be used solely for the commission's outdoor education
27 and recreation program purposes identified in this section including
28 the administration of the program. The director may accept gifts,
29 grants, donations, or moneys from any source for deposit in the outdoor
30 education and recreation program account. Any public agency in this
31 state may develop and implement outdoor education and recreation
32 programs. The director may make grants to public agencies and contract
33 with any public or private agency or person to develop and implement
34 outdoor education and recreation programs. The outdoor education and
35 recreation program account is subject to allotment procedures under
36 chapter 43.88 RCW, but an appropriation is not required for
37 expenditures.

1 **Sec. 43.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended to
2 read as follows:

3 The commission may establish a system of underwater parks to
4 provide for diverse recreational diving opportunities and to conserve
5 and protect unique marine resources of the state of Washington. In
6 establishing and maintaining an underwater park system, the commission
7 may:

8 (1) Plan, construct, and maintain underwater parks;

9 (2) Acquire property and enter management agreements with other
10 units of state government for the management of lands, tidelands, and
11 bedlands as underwater parks;

12 (3) Construct artificial reefs and other underwater features to
13 enhance marine life and recreational uses of an underwater park;

14 (4) Accept gifts and donations for the benefit of underwater parks;

15 (5) Facilitate private efforts to construct artificial reefs and
16 underwater parks;

17 (6) Work with the federal government(~~(7)~~) and local governments
18 (~~(and other appropriate agencies of state government, including but not~~
19 ~~limited to: The department of natural resources, the department of~~
20 ~~fish and wildlife and the natural heritage council)) to carry out the
21 purposes of this chapter; and~~

22 (7) Contract with other state agencies or local governments for the
23 management of an underwater park unit.

24 **Sec. 44.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to
25 read as follows:

26 The commission(~~(, in consultation with the departments of ecology,~~
27 ~~fish and wildlife, natural resources, social and health services, and~~
28 ~~the Puget Sound partnership)) shall conduct a literature search and
29 analyze pertinent studies to identify areas which are polluted or
30 environmentally sensitive within the state's waters. Based on this
31 review the commission shall designate appropriate areas as polluted or
32 environmentally sensitive, for the purposes of chapter 393, Laws of
33 1989 only.~~

34 **Sec. 45.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to
35 read as follows:

36 The (~~(department of ecology, in consultation with the))~~

1 commission((7)) shall, for initiation of the statewide program only,
2 develop criteria by rule for the design, installation, and operation of
3 sewage pumpout and dump units, taking into consideration the ease of
4 access to the unit by the boating public. ((The department of ecology
5 may adopt rules to administer the provisions of this section.))

6 **Sec. 46.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to
7 read as follows:

8 (1) The Washington sea grant program((, in consultation with the
9 department of ecology,)) shall develop and conduct a voluntary spill
10 prevention education program that targets small spills from commercial
11 fishing vessels, ferries, cruise ships, ports, and marinas. Washington
12 sea grant shall coordinate the spill prevention education program with
13 recreational boater education performed by the state parks and
14 recreation commission.

15 (2) The spill prevention education program shall illustrate ways to
16 reduce oil contamination of bilge water, accidental spills of hydraulic
17 fluid and other hazardous substances during routine maintenance, and
18 reduce spillage during refueling. The program shall illustrate proper
19 disposal of oil and hazardous substances and promote strategies to meet
20 shoreside oil and hazardous substance handling, and disposal needs of
21 the targeted groups. The program shall include a series of training
22 workshops and the development of educational materials.

23 **Sec. 47.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to
24 read as follows:

25 The commission is authorized to evaluate and acquire land under RCW
26 ((79.01.612 in cooperation with the department of natural resources))
27 79.10.030.

28 **Sec. 48.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to
29 read as follows:

30 ((1) If the authority and state agencies find it mutually
31 beneficial to do so, they are authorized to collaborate and cooperate
32 on projects of shared interest. Agencies authorized to collaborate
33 with the authority include but are not limited to: The commission for
34 activities and projects related to public recreation; the department of
35 agriculture for projects related to the equine agricultural industry;

1 ~~the department of community, trade, and economic development with~~
2 ~~respect to community and economic development and tourism issues~~
3 ~~associated with development of the state horse park; Washington State~~
4 ~~University with respect to opportunities for animal research,~~
5 ~~education, and extension; the department of ecology with respect to~~
6 ~~opportunities for making the state horse park's waste treatment~~
7 ~~facilities a demonstration model for the handling of waste to protect~~
8 ~~water quality; and with local community colleges with respect to~~
9 ~~programs related to horses, economic development, business, and~~
10 ~~tourism.~~

11 (2)) The authority shall cooperate with 4-H clubs, pony clubs,
12 youth groups, and local park departments to provide youth recreational
13 activities. The authority shall also provide for preferential use of
14 an area of the horse park facility for youth and ((~~the disabled~~))
15 individuals with disabilities at nominal cost.

16 **Sec. 49.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each amended
17 to read as follows:

18 The department of natural resources shall ((~~not rescind the~~
19 ~~withdrawal of~~)) have reasonable access across all public land in any
20 existing and future state park ((~~nor sell any timber or other valuable~~
21 ~~material therefrom or grant any right of way or easement thereon,~~
22 ~~except as provided in the withdrawal order or for off-site drilling,~~
23 ~~without the concurrence of the state parks and recreation commission.~~

24 ~~The department of natural resources shall have reasonable access~~
25 ~~across such lands~~)) in order to reach other public lands administered
26 by the department of natural resources.

27 **Sec. 50.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to
28 read as follows:

29 (1) A public hearing may be held prior to any withdrawal of state
30 trust lands and shall be held prior to any revocation of withdrawal or
31 modification of withdrawal of state trust lands used for recreational
32 purposes by the department of natural resources ((~~or by other state~~
33 ~~agencies~~)).

34 (2) The department of natural resources shall cause notice of the
35 withdrawal, revocation of withdrawal or modification of withdrawal of
36 state trust lands as described in subsection (1) of this section to be

1 published by advertisement once a week for four weeks prior to the
2 public hearing in at least one newspaper published and of general
3 circulation in the county or counties in which the state trust lands
4 are situated, and by causing a copy of said notice to be posted in a
5 conspicuous place in the department's Olympia office, in the district
6 office in which the land is situated, and in the office of the county
7 auditor in the county where the land is situated thirty days prior to
8 the public hearing. The notice shall specify the time and place of the
9 public hearing and shall describe with particularity each parcel of
10 state trust lands involved in said hearing.

11 (3) The board of natural resources shall administer the hearing
12 according to its prescribed rules and regulations.

13 (4) The board of natural resources shall determine the most
14 beneficial use or combination of uses of the state trust lands. (~~Its~~
15 ~~decision will be conclusive as to the matter: PROVIDED, HOWEVER, That~~
16 ~~said decisions as to uses shall conform to applicable state plans and~~
17 ~~policy guidelines adopted by the department of community, trade, and~~
18 ~~economic development.))~~

19 **Sec. 51.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to
20 read as follows:

21 (~~A state~~) The recreation and conservation office or a local
22 agency shall review the proposed project application with the county or
23 city with jurisdiction over the project area prior to applying for
24 funds for the acquisition of property under this chapter. The
25 appropriate county or city legislative authority may, at its
26 discretion, submit a letter to the board identifying the authority's
27 position with regard to the acquisition project. The board shall make
28 the letters received under this section available to the governor and
29 the legislature when the prioritized project list is submitted under
30 RCW 79A.15.120, 79A.15.060, and 79A.15.070.

31 **Sec. 52.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to read
32 as follows:

33 Surface disturbances caused by an underground metals mining and
34 milling operation are subject to the requirements of this chapter if
35 the operation is proposed after June 30, 1999. An operation is
36 proposed when an agency is presented with an application for an

1 operation or expansion of an existing operation having a probable
2 significant adverse environmental impact under chapter 43.21C RCW. The
3 department (~~(of ecology)~~) shall retain authority for reclamation of
4 surface disturbances caused by an underground operation operating at
5 any time prior to June 30, 1999(~~(, unless the operator requests that~~
6 ~~authority for reclamation of surface disturbances caused by such~~
7 ~~operation be transferred to the department under the requirements of~~
8 ~~this chapter)~~).

9 **Sec. 53.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended
10 to read as follows:

11 Any person desiring or proposing to drill any well in search of oil
12 or gas, when such drilling would be conducted through or under any
13 surface waters of the state, shall prepare and submit an environmental
14 impact statement upon such form as the department of ~~((ecology))~~
15 natural resources shall prescribe at least one hundred and twenty days
16 prior to commencing the drilling of any such well. Within ninety days
17 after receipt of such environmental statement the department of
18 ~~((ecology))~~ natural resources shall ~~((prepare and submit to the~~
19 ~~department of natural resources a report examining))~~ examine the
20 potential environmental impact of the proposed well and recommendations
21 for department action thereon. If after consideration of the report
22 the department of natural resources determines that the proposed well
23 is likely to have a substantial environmental impact the drilling
24 permit for such well may be denied.

25 The department of natural resources shall require sufficient
26 safeguards to minimize the hazards of pollution of all surface and
27 ground waters of the state. If safeguards acceptable to the department
28 of natural resources cannot be provided the drilling permit shall be
29 denied.

30 **Sec. 54.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to read
31 as follows:

32 The department of ~~((ecology))~~ natural resources shall require each
33 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
34 metals mining and milling operation to disclose the ownership and each
35 controlling interest in the proposed operation. The applicant shall
36 also disclose all other mining operations within the United States

1 which the applicant operates or in which the applicant has an ownership
2 or controlling interest. In addition, the applicant shall disclose and
3 may enumerate and describe the circumstances of: (1) Any past or
4 present bankruptcies involving the ownerships and their subsidiaries,
5 (2) any abandonment of sites regulated by the model toxics control act,
6 chapter 70.105D RCW, or other similar state remedial cleanup programs,
7 or the federal comprehensive environmental response, compensation, and
8 liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any
9 penalties in excess of ten thousand dollars assessed for violations of
10 the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et
11 seq., and (4) any previous forfeitures of financial assurance due to
12 noncompliance with reclamation or remediation requirements. This
13 information shall be available for public inspection and copying at the
14 department of ((ecology)) natural resources. Ownership or control of
15 less than ten percent of the stock of a corporation shall not by itself
16 constitute ownership or a controlling interest under this section.

17 **Sec. 55.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to read
18 as follows:

19 (1) An environmental impact statement must be prepared for any
20 proposed metals mining and milling operation. The department of
21 ((ecology)) natural resources shall be the lead agency in coordinating
22 the environmental review process under chapter 43.21C RCW and in
23 preparing the environmental impact statement, except for uranium and
24 thorium operations regulated under Title 70 RCW.

25 (2) As part of the environmental review of metals mining and
26 milling operations regulated under this chapter, the applicant shall
27 provide baseline data adequate to document the premining conditions at
28 the proposed site of the metals mining and milling operation. The
29 baseline data shall contain information on the elements of the natural
30 environment identified in rules adopted pursuant to chapter 43.21C RCW.

31 (3) The department of ((ecology, after consultation with the
32 department of fish and wildlife,)) natural resources shall incorporate
33 measures to mitigate significant probable adverse impacts to fish and
34 wildlife as part of the ((department of ecology's)) department's permit
35 requirements for the proposed operation.

36 (4) In conducting the environmental review and preparing the

1 environmental impact statement, the department of ((ecology)) natural
2 resources shall cooperate with all affected local governments to the
3 fullest extent practicable.

4 **Sec. 56.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to read
5 as follows:

6 The department of ((ecology)) natural resources will appoint a
7 metals mining coordinator. The coordinator will maintain current
8 information on the status of any metals mining and milling operation
9 regulated under this chapter from the preparation of the environmental
10 impact statement through the permitting, construction, operation, and
11 reclamation phases of the project or until the proposal is no longer
12 active. The coordinator shall also maintain current information on
13 postclosure activities. The coordinator will act as a contact person
14 for the applicant, the operator, and interested members of the public.
15 The coordinator may also assist agencies with coordination of their
16 inspection and monitoring responsibilities.

17 **Sec. 57.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to read
18 as follows:

19 (1) The metals mining account is created in the state treasury.
20 Expenditures from this account are subject to appropriation.
21 Expenditures from this account may only be used for: (a) The
22 additional inspections of metals mining and milling operations required
23 by RCW 78.56.070 and (b) the metals mining coordinator established in
24 RCW 78.56.060.

25 (2)((+a)) As part of its normal budget development process and in
26 consultation with the metals mining industry, the department of
27 ((ecology)) natural resources shall estimate the costs required ((for
28 the department)) to meet its obligations for the additional inspections
29 of metals mining and milling operations required by chapter 232, Laws
30 of 1994. The department shall also estimate the cost of employing the
31 metals mining coordinator established in RCW 78.56.060.

32 ((b) As part of its normal budget development process and in
33 consultation with the metals mining industry, the department of natural
34 resources shall estimate the costs required for the department to meet
35 its obligations for the additional inspections of metals mining and
36 milling operations required by chapter 232, Laws of 1994.))

1 (3) Based on the cost estimates generated by the department of
2 (~~ecology and the department of~~) natural resources, the department
3 (~~of ecology~~) shall establish the amount of a fee to be paid by each
4 active metals mining and milling operation regulated under this
5 chapter. The fee shall be established at a level to fully recover the
6 direct and indirect costs of the (~~agency~~) department's
7 responsibilities identified in subsection (2) of this section. The
8 amount of the fee for each operation shall be proportional to the
9 number of visits required per site. Each applicant for a metals mining
10 and milling operation shall also be assessed the fee based on the same
11 criterion. The department (~~of ecology~~) may adjust the fees
12 established in this subsection if unanticipated activity in the
13 industry increases or decreases the amount of funding necessary to meet
14 (~~agencies'~~) the agency's inspection responsibilities.

15 (4) The department of (~~ecology~~) natural resources shall collect
16 the fees established in subsection (3) of this section. All moneys
17 from these fees shall be deposited into the metals mining account.

18 **Sec. 58.** RCW 78.56.090 and 1994 c 232 s 9 are each amended to read
19 as follows:

20 (1) In the processing of an application for an initial waste
21 discharge permit for a tailings facility pursuant to the requirements
22 of chapter 90.48 RCW, the department of (~~ecology~~) natural resources
23 shall consider site-specific criteria in determining a preferred
24 location of tailings facilities of metals mining and milling operations
25 and incorporate the requirements of all known available and reasonable
26 methods in order to maintain the highest possible standards to insure
27 the purity of all waters of the state in accordance with the public
28 policy identified by RCW 90.48.010.

29 In implementing the siting criteria, the department shall take into
30 account the objectives of the proponent's application relating to
31 mining and milling operations. These objectives shall consist of, but
32 not be limited to (a) operational feasibility, (b) compatibility with
33 optimum tailings placement methods, (c) adequate volume capacity, (d)
34 availability of construction materials, and (e) an optimized embankment
35 volume.

36 (2) To meet the mandate of subsection (1) of this section, siting

1 of tailings facilities shall be accomplished through a two-stage
2 process that consists of a primary alternatives screening phase, and a
3 secondary technical site investigation phase.

4 (3) The primary screening phase will consist of, but not be limited
5 to, siting criteria based on considerations as to location as follows:

6 (a) Proximity to the one hundred year floodplain, as indicated in
7 the most recent federal emergency management agency maps;

8 (b) Proximity to surface and ground water;

9 (c) Topographic setting;

10 (d) Identifiable adverse geologic conditions, such as landslides
11 and active faults; and

12 (e) Visibility impacts of the public generally and residents more
13 particularly.

14 (4) The department of ((ecology)) natural resources, through the
15 primary screening process, shall reduce the available tailings facility
16 sites to one or more feasible locations whereupon a technical site
17 investigation phase shall be conducted by the department for the
18 purpose of verifying the adequacy of the remaining potential sites.
19 The technical site investigations phase shall consist of, but not be
20 limited to, the following:

21 (a) Soil characteristics;

22 (b) Hydrologic characteristics;

23 (c) A local and structural geology evaluation, including seismic
24 conditions and related geotechnical investigations;

25 (d) A surface water control analysis; and

26 (e) A slope stability analysis.

27 (5) Upon completion of the two phase evaluation process set forth
28 in this section, the department of ((ecology)) natural resources shall
29 issue a site selection report on the preferred location. This report
30 shall address the above criteria as well as analyze the feasibility of
31 reclamation and stabilization of the tailings facility. The siting
32 report may recommend mitigation or engineering factors to address
33 siting concerns. The report shall be developed in conjunction with the
34 preparation of and contained in an environmental impact statement
35 prepared pursuant to chapter 43.21C RCW. The report may be utilized by
36 the department of ecology for the purpose of providing information
37 related to the suitability of the site and for ruling on an application
38 for a waste discharge permit.

1 (6) The department of ((ecology)) natural resources may, at its
2 discretion, require the applicant to provide the information required
3 in either phase one or phase two as described in subsections (3) and
4 (4) of this section.

5 **Sec. 59.** RCW 78.56.100 and 1994 c 232 s 10 are each amended to
6 read as follows:

7 (1) In order to receive a waste discharge permit from the
8 department of ((ecology)) natural resources pursuant to the
9 requirements of chapter 90.48 RCW or in order to operate a metals
10 mining and milling tailing facility, an applicant proposing a metals
11 mining and milling operation regulated under this chapter must meet the
12 following additional requirements:

13 (a) Any tailings facility shall be designed and operated to prevent
14 the release of pollution and must meet the following standards:

15 (i) Operators shall apply all known available and reasonable
16 technology to limit the concentration of potentially toxic materials in
17 the tailings facility to assure the protection of wildlife and human
18 health;

19 (ii) The tailings facility shall have a containment system that
20 includes an engineered liner system, leak detection and leak collection
21 elements, and a seepage collection impoundment to assure that a leak of
22 any regulated substance under chapter 90.48 RCW will be detected before
23 escaping from the containment system. The design and management of the
24 facility must ensure that any leaks from the tailings facility are
25 detected in a manner which allows for remediation pursuant to chapter
26 90.48 RCW. The applicant shall prepare a detailed engineering report
27 setting forth the facility design and construction. The applicant
28 shall submit the report to the department of ((ecology)) natural
29 resources for its review and approval of a design as determined by the
30 department. Natural conditions, such as depth to groundwater or net
31 rainfall, shall be taken into account in the facility design, but not
32 in lieu of the protection required by the engineered liner system;

33 (iii) The toxicity of mine or mill tailings and the potential for
34 long-term release of regulated substances from mine or mill tailings
35 shall be reduced to the greatest extent practicable through
36 stabilization, removal, or reuse of the substances; and

1 (iv) The closure of the tailings facility shall provide for
2 isolation or containment of potentially toxic materials and shall be
3 designed to prevent future release of regulated substances contained in
4 the impoundment;

5 (b) The applicant must develop a waste rock management plan
6 approved by the department of (~~ecology and the department of~~) natural
7 resources which emphasizes pollution prevention. At a minimum, the
8 plan must contain the following elements:

9 (i) An accurate identification of the acid generating properties of
10 the waste rock;

11 (ii) A strategy for encapsulating potentially toxic material from
12 the environment, when appropriate, in order to prevent the release of
13 heavy metals and acidic drainage; and

14 (iii) A plan for reclaiming and closing waste rock sites which
15 minimizes infiltration of precipitation and runoff into the waste rock
16 and which is designed to prevent future releases of regulated
17 substances contained within the waste rock;

18 (c) If an interested citizen or citizen group so requests of the
19 department of (~~ecology~~) natural resources, the metals mining and
20 milling operator or applicant shall work with the department (~~of~~
21 ~~ecology~~) and the interested party to make arrangements for citizen
22 observation and verification in the taking of required water samples.
23 While it is the intent of this subsection to provide for citizen
24 observation and verification of water sampling activities, it is not
25 the intent of this subsection to require additional water sampling and
26 analysis on the part of the mining and milling operation or the
27 department. The citizen observation and verification program shall be
28 incorporated into the applicant's, operator's, or department's normal
29 sampling regimen and shall occur at least once every six months. There
30 is no duty of care on the part of the state or its employees to any
31 person who participates in the citizen observation and verification of
32 water sampling under chapter 232, Laws of 1994 and the state and its
33 employees shall be immune from any civil lawsuit based on any injuries
34 to or claims made by any person as a result of that person's
35 participation in such observation and verification of water sampling
36 activities. The metals mining and milling operator or applicant shall
37 not be liable for any injuries to or claims made by any person which
38 result from that person coming onto the property of the metals mining

1 and milling operator or applicant as an observer pursuant to chapter
2 232, Laws of 1994. The results from these and all other relevant water
3 sampling activities shall be kept on file with the relevant county and
4 shall be available for public inspection during normal working hours;
5 and

6 (d) An operator or applicant for a metals mining and milling
7 operation must complete a voluntary reduction plan in accordance with
8 RCW 70.95C.200.

9 (2) Only those tailings facilities constructed after April 1, 1994,
10 must meet the requirement established in subsection (1)(a) of this
11 section. Only those waste rock holdings constructed after April 1,
12 1994, must meet the requirement established in subsection (1)(b) of
13 this section.

14 **Sec. 60.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to read
15 as follows:

16 (1) The department of (~~ecology~~) natural resources shall not issue
17 necessary permits to an applicant for a metals mining and milling
18 operation until the applicant has deposited with the department (~~of~~
19 ~~ecology~~) a performance security which is acceptable to the department
20 (~~of—ecology~~) based on the requirements of subsection (2) of this
21 section. This performance security may be:

- 22 (a) Bank letters of credit;
- 23 (b) A cash deposit;
- 24 (c) Negotiable securities;
- 25 (d) An assignment of a savings account;
- 26 (e) A savings certificate in a Washington bank; or
- 27 (f) A corporate surety bond executed in favor of the department of
28 ecology by a corporation authorized to do business in the state of
29 Washington under Title 48 RCW.

30 The department of (~~ecology~~) natural resources may, for any
31 reason, refuse any performance security not deemed adequate.

32 (2) The performance security shall be conditioned on the faithful
33 performance of the applicant or operator in meeting the following
34 obligations:

- 35 (a) Compliance with the environmental protection laws of the state
36 of Washington administered by the department of (~~ecology~~) natural
37 resources, or permit conditions administered by the department (~~of~~

1 ~~ecology~~)), associated with the construction, operation, and closure
2 pertaining to metals mining and milling operations, and with the
3 related environmental protection ordinances and permit conditions
4 established by local government when requested by local government;

5 (b) Reclamation of metals mining and milling operations that do not
6 meet the threshold of surface mining as defined by RCW 78.44.031(17);

7 (c) Postclosure environmental monitoring as determined by the
8 department of (~~ecology~~) natural resources; and

9 (d) Provision of sufficient funding as determined by the department
10 of (~~ecology~~) natural resources for cleanup of potential problems
11 revealed during or after closure.

12 (3) The department of (~~ecology~~) natural resources may, if it
13 deems appropriate, adopt rules for determining the amount of the
14 performance security, requirements for the performance security,
15 requirements for the issuer of the performance security, and any other
16 requirements necessary for the implementation of this section.

17 (4) The department of (~~ecology~~) natural resources may increase or
18 decrease the amount of the performance security at any time to
19 compensate for any alteration in the operation that affects meeting the
20 obligations in subsection (2) of this section. At a minimum, the
21 department shall review the adequacy of the performance security every
22 two years.

23 (5) Liability under the performance security shall be maintained
24 until the obligations in subsection (2) of this section are met to the
25 satisfaction of the department of (~~ecology~~) natural resources.
26 Liability under the performance security may be released only upon
27 written notification by the department (~~of ecology~~).

28 (6) Any interest or appreciation on the performance security shall
29 be held by the department of (~~ecology~~) natural resources until the
30 obligations in subsection (2) of this section have been met to the
31 satisfaction of the department (~~of ecology~~). At such time, the
32 interest shall be remitted to the applicant or operator. However, if
33 the applicant or operator fails to comply with the obligations of
34 subsection (2) of this section, the interest or appreciation may be
35 used by the department (~~of ecology~~) to comply with the obligations.

36 (~~(7) (Only one agency may require a performance security to satisfy~~
37 ~~the deposit requirements of RCW 78.44.087, and only one agency may~~
38 ~~require a performance security to satisfy the deposit requirements of~~

1 ~~this section. However,~~) A single performance security, when
2 acceptable to (~~both the department of ecology and~~) the department of
3 natural resources, may be utilized (~~by both agencies~~) to satisfy the
4 requirements of this section and RCW 78.44.087.

5 **Sec. 61.** RCW 78.56.120 and 1995 c 223 s 2 are each amended to read
6 as follows:

7 The department of (~~ecology~~) natural resources may, with staff,
8 equipment, and material under its control, or by contract with others,
9 remediate or mitigate any impact of a metals mining and milling
10 operation when it finds that the operator or permit holder has failed
11 to comply with relevant statutes, rules, or permits, and the operator
12 or permit holder has failed to take adequate or timely action to
13 rectify these impacts.

14 If the department intends to remediate or mitigate such impacts,
15 the department shall issue an order to submit performance security
16 requiring the permit holder or surety to submit to the department the
17 amount of moneys posted pursuant to RCW 78.56.110. If the amount
18 specified in the order to submit performance security is not paid
19 within twenty days after issuance of the notice, the attorney general
20 upon request of the department shall bring an action on behalf of the
21 state in a superior court to recover the amount specified and
22 associated legal fees.

23 The department may proceed at any time after issuing the order to
24 submit performance security to remediate or mitigate adverse impacts.

25 The department shall keep a record of all expenses incurred in
26 carrying out any remediation or mitigation activities authorized under
27 this section, including:

- 28 (1) Remediation or mitigation;
- 29 (2) A reasonable charge for the services performed by the state's
30 personnel and the state's equipment and materials utilized; and
- 31 (3) Administrative and legal expenses related to remediation or
32 mitigation.

33 The department shall refund to the surety or permit holder all
34 amounts received in excess of the amount of expenses incurred. If the
35 amount received is less than the expenses incurred, the attorney
36 general, upon request of the department of (~~ecology~~) natural

1 resources, may bring an action against the permit holder on behalf of
2 the state in the superior court to recover the remaining costs listed
3 in this section.

4 **Sec. 62.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to
5 read as follows:

6 (1) Until June 30, 1996, there shall be a moratorium on metals
7 mining and milling operations using the heap leach extraction process.
8 The department of natural resources (~~and the department of ecology~~)
9 shall (~~jointly~~) review the existing laws and regulations pertaining
10 to the heap leach extraction process for their adequacy in safeguarding
11 the environment.

12 (2) Metals mining using the process of in situ extraction is
13 permanently prohibited in the state of Washington.

14 **Sec. 63.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to read
15 as follows:

16 (1) Any person proposing to drill a well or redrill an abandoned
17 well for geothermal resources shall file with the department a written
18 application for a permit to commence such drilling or redrilling on a
19 form prescribed by the department accompanied by a permit fee of two
20 hundred dollars. (~~The department shall forward a duplicate copy to~~
21 ~~the department of ecology within ten days of filing.~~)

22 (2) Upon receipt of a proper application relating to drilling or
23 redrilling the department shall set a date, time, and place for a
24 public hearing on the application, which hearing shall be in the county
25 in which the drilling or redrilling is proposed to be made, and shall
26 instruct the applicant to publish notices of such application and
27 hearing by such means and within such time as the department shall
28 prescribe. The department shall require that the notice so prescribed
29 shall be published twice in a newspaper of general circulation within
30 the county in which the drilling or redrilling is proposed to be made
31 and in such other appropriate information media as the department may
32 direct.

33 (3) Any person proposing to drill a core hole for the purpose of
34 gathering geothermal data, including but not restricted to heat flow,
35 temperature gradients, and rock conductivity, shall be required to
36 obtain a single permit for each core hole according to subsection (1)

1 of this section, including a permit fee for each core hole, but no
2 notice need be published, and no hearing need be held. Such core holes
3 that penetrate more than seven hundred and fifty feet into bedrock
4 shall be deemed geothermal test wells and subject to the payment of a
5 permit fee and to the requirement in subsection (2) of this section for
6 public notices and hearing. In the event geothermal energy is
7 discovered in a core hole, the hole shall be deemed a geothermal well
8 and subject to the permit fee, notices, and hearing. Such core holes
9 as described by this subsection are subject to all other provisions of
10 this chapter, including a bond or other security as specified in RCW
11 78.60.130.

12 (4) All moneys paid to the department under this section shall be
13 deposited with the state treasurer for credit to the general fund.

14 **Sec. 64.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended to
15 read as follows:

16 A permit shall be granted only if the department is satisfied that
17 the area is suitable for the activities applied for; that the applicant
18 will be able to comply with the provisions of this chapter and the
19 rules and regulations enacted hereunder; and that a permit would be in
20 the best interests of the state.

21 The department shall not allow operation of a well under permit if
22 it finds that the operation of any well will unreasonably decrease
23 groundwater available for prior water rights in any aquifer or other
24 groundwater source for water for beneficial uses, unless such affected
25 water rights are acquired by condemnation, purchase or other means.

26 The department shall have the authority to condition the permit as
27 it deems necessary to carry out the provisions of this chapter,
28 including but not limited to conditions to reduce any environmental
29 impact.

30 ~~((The department shall forward a copy of the permit to the
31 department of ecology within five days of issuance.))~~

32 **Sec. 65.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to read
33 as follows:

34 Any well or core hole drilled under authority of this chapter from
35 which:

1 (1) It is not technologically practical to derive the energy to
2 produce electricity commercially, or the owner or operator has no
3 intention of deriving energy to produce electricity commercially, and

4 (2) Usable minerals cannot be derived, or the owner or operator has
5 no intention of deriving usable minerals, shall be plugged and
6 abandoned as provided in this chapter or, upon the owner's or
7 operator's written application to the department (~~(of natural resources~~
8 ~~and with the concurrence and approval of the department of ecology)~~),
9 jurisdiction over the well may be transferred to the department (~~(of~~
10 ~~ecology)~~) and, in such case, the well shall no longer be subject to the
11 provisions of this chapter but shall be subject to any applicable laws
12 and rules relating to wells drilled for appropriation and use of
13 groundwaters. If an application is made to transfer jurisdiction, a
14 copy of all logs, records, histories, and descriptions shall be
15 provided to the department (~~(of ecology)~~) by the applicant.

16 **Sec. 66.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to read
17 as follows:

18 Whenever an application for a permit to make beneficial use of
19 public waters is approved relating to a stream or other water body for
20 which minimum flows or levels have been adopted and are in effect at
21 the time of approval, the permit shall be conditioned to protect the
22 levels or flows. No agency may establish minimum flows and levels or
23 similar water flow or level restrictions for any stream or lake of the
24 state other than the department of ecology whose authority to establish
25 is exclusive, as provided in chapter 90.03 RCW and RCW 90.22.010 and
26 90.54.040. The provisions of other statutes, including but not limited
27 to RCW (~~(77.55.100)~~) 77.55.021 and chapter 43.21C RCW, may not be
28 interpreted in a manner that is inconsistent with this section. In
29 establishing such minimum flows, levels, or similar restrictions, the
30 department shall, during all stages of development (~~(by the department~~
31 ~~of ecology)~~) of minimum flow proposals, consult with, and carefully
32 consider the recommendations of (~~(, the department of fish and wildlife,~~
33 ~~the department of community, trade, and economic development, the~~
34 ~~department of agriculture, and representatives of the)~~) affected Indian
35 tribes. (~~(Nothing herein shall preclude the department of fish and~~
36 ~~wildlife, the department of community, trade, and economic development,~~
37 ~~or the department of agriculture from presenting its views on minimum~~

1 ~~flow needs at any public hearing or to any person or agency, and the~~
2 ~~department of fish and wildlife, the department of community, trade,~~
3 ~~and economic development, and the department of agriculture are each~~
4 ~~empowered to participate in proceedings of the federal energy~~
5 ~~regulatory commission and other agencies to present its views on~~
6 ~~minimum flow needs.))~~

7 **Sec. 67.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
8 read as follows:

9 Upon receipt of a proper application, the department shall instruct
10 the applicant to publish notice thereof in a form and within a time
11 prescribed by the department in a newspaper of general circulation
12 published in the county or counties in which the storage, diversion,
13 and use is to be made, and in such other newspapers as the department
14 may direct, once a week for two consecutive weeks. (~~Upon receipt by~~
15 ~~the department of an application it shall send notice thereof~~
16 ~~containing pertinent information to the director of fish and~~
17 ~~wildlife.))~~

18 **Sec. 68.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to read
19 as follows:

20 (1) When an application complying with the provisions of this
21 chapter and with the rules of the department has been filed, the same
22 shall be placed on record with the department, and it shall be its duty
23 to investigate the application, and determine what water, if any, is
24 available for appropriation, and find and determine to what beneficial
25 use or uses it can be applied. If it is proposed to appropriate water
26 for irrigation purposes, the department shall investigate, determine
27 and find what lands are capable of irrigation by means of water found
28 available for appropriation. If it is proposed to appropriate water
29 for the purpose of power development, the department shall investigate,
30 determine and find whether the proposed development is likely to prove
31 detrimental to the public interest, having in mind the highest feasible
32 use of the waters belonging to the public.

33 (2)(a) If the application does not contain, and the applicant does
34 not promptly furnish sufficient information on which to base such
35 findings, the department may issue a preliminary permit, for a period
36 of not to exceed three years, requiring the applicant to make such

1 surveys, investigations, studies, and progress reports, as in the
2 opinion of the department may be necessary. If the applicant fails to
3 comply with the conditions of the preliminary permit, it and the
4 application or applications on which it is based shall be automatically
5 canceled and the applicant so notified. If the holder of a preliminary
6 permit shall, before its expiration, file with the department a
7 verified report of expenditures made and work done under the
8 preliminary permit, which, in the opinion of the department,
9 establishes the good faith, intent, and ability of the applicant to
10 carry on the proposed development, the preliminary permit may, with the
11 approval of the governor, be extended, but not to exceed a maximum
12 period of five years from the date of the issuance of the preliminary
13 permit.

14 (b) For any application for which a preliminary permit was issued
15 and for which the availability of water was directly affected by a
16 moratorium on further diversions from the Columbia river during the
17 years from 1990 to 1998, the preliminary permit is extended through
18 June 30, 2002. If such an application and preliminary permit were
19 canceled during the moratorium, the application and preliminary permit
20 shall be reinstated until June 30, 2002, if the application and permit:
21 (i) Are for providing regional water supplies in more than one urban
22 growth area designated under chapter 36.70A RCW and in one or more
23 areas near such urban growth areas, or the application and permit are
24 modified for providing such supplies, and (ii) provide or are modified
25 to provide such regional supplies through the use of existing intake or
26 diversion structures. The authority to modify such a canceled
27 application and permit to accomplish the objectives of (b)(i) and (ii)
28 of this subsection is hereby granted.

29 (3) The department shall make and file as part of the record in the
30 matter, written findings of fact concerning all things investigated,
31 and if it shall find that there is water available for appropriation
32 for a beneficial use, and the appropriation thereof as proposed in the
33 application will not impair existing rights or be detrimental to the
34 public welfare, it shall issue a permit stating the amount of water to
35 which the applicant shall be entitled and the beneficial use or uses to
36 which it may be applied: PROVIDED, That where the water applied for is
37 to be used for irrigation purposes, it shall become appurtenant only to
38 such land as may be reclaimed thereby to the full extent of the soil

1 for agricultural purposes. But where there is no unappropriated water
2 in the proposed source of supply, or where the proposed use conflicts
3 with existing rights, or threatens to prove detrimental to the public
4 interest, having due regard to the highest feasible development of the
5 use of the waters belonging to the public, it shall be duty of the
6 department to reject such application and to refuse to issue the permit
7 asked for.

8 (4) If the permit is refused because of conflict with existing
9 rights and such applicant shall acquire same by purchase or
10 condemnation under RCW 90.03.040, the department may thereupon grant
11 such permit. Any application may be approved for a less amount of
12 water than that applied for, if there exists substantial reason
13 therefor, and in any event shall not be approved for more water than
14 can be applied to beneficial use for the purposes named in the
15 application. In determining whether or not a permit shall issue upon
16 any application, it shall be the duty of the department to investigate
17 all facts relevant and material to the application. After the
18 department approves said application in whole or in part and before any
19 permit shall be issued thereon to the applicant, such applicant shall
20 pay the fee provided in RCW 90.03.470(~~(: PROVIDED FURTHER, That in the~~
21 ~~event a permit is issued by the department upon any application, it~~
22 ~~shall be its duty to notify the director of fish and wildlife of such~~
23 ~~issuance))~~).

24 **Sec. 69.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
25 read as follows:

26 (1) The owner or owners of any water diversion shall maintain, to
27 the satisfaction of the department of ecology, substantial controlling
28 works and a measuring device constructed and maintained to permit
29 accurate measurement and practical regulation of the flow of water
30 diverted. Every owner or manager of a reservoir for the storage of
31 water shall construct and maintain, when required by the department,
32 any measuring device necessary to ascertain the natural flow into and
33 out of said reservoir.

34 Metering of diversions or measurement by other approved methods
35 shall be required as a condition for all new surface water right
36 permits, and except as provided in subsection (2) of this section, may
37 be required as a condition for all previously existing surface water

1 rights. The department may also require, as a condition for all water
2 rights, metering of diversions, and reports regarding such metered
3 diversions as to the amount of water being diverted. Such reports
4 shall be in a form prescribed by the department.

5 (2) Where water diversions are from waters in which the salmonid
6 stock status is depressed or critical, as determined by the department
7 of fish and wildlife, or where the volume of water being diverted
8 exceeds one cubic foot per second, the department shall require
9 metering or measurement by other approved methods as a condition for
10 all new and previously existing water rights or claims. The department
11 shall attempt to integrate the requirements of this subsection into its
12 existing compliance workload priorities, but shall prioritize the
13 requirements of this subsection ahead of the existing compliance
14 workload where a delay may cause the decline of wild salmonids. (~~The
15 department shall notify the department of fish and wildlife of the
16 status of fish screens associated with these diversions.~~) This
17 subsection (2) shall not apply to diversions for public or private
18 hatcheries or fish rearing facilities if the diverted water is returned
19 directly to the waters from which it was diverted.

20 **Sec. 70.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each
21 amended to read as follows:

22 (1) On a pilot project basis, the department may enter into a
23 watershed agreement with one or more municipal water suppliers in water
24 resource inventory area number one to meet the objectives established
25 in a water resource management program approved or being developed
26 under chapter 90.82 RCW with the consent of the initiating governments
27 of the water resource inventory area. The term of an agreement may not
28 exceed ten years, but the agreement may be renewed or amended upon
29 agreement of the parties.

30 (2) A watershed agreement must be consistent with:

31 (a) Growth management plans developed under chapter 36.70A RCW
32 where these plans are adopted and in effect;

33 (b) Water supply plans and small water system management programs
34 approved under chapter 43.20 or 70.116 RCW;

35 (c) Coordinated water supply plans approved under chapter 70.116
36 RCW; and

1 (d) Water use efficiency and conservation requirements and
2 standards established by the state department of health or such
3 requirements and standards as are provided in an approved watershed
4 plan, whichever are the more stringent.

5 (3) A watershed agreement must:

6 (a) Require the public water system operated by the participating
7 municipal water supplier to meet obligations under the watershed plan;

8 (b) Establish performance measures and timelines for measures to be
9 completed;

10 (c) Provide for monitoring of stream flows and metering of water
11 use as needed to ensure that the terms of the agreement are met; and

12 (d) Require annual reports from the water users regarding
13 performance under the agreement.

14 (4) As needed to implement watershed agreement activities, the
15 department may provide or receive funding, or both, under its existing
16 authorities.

17 (5) The department must provide opportunity for public review of a
18 proposed agreement before it is executed. The department must make
19 proposed and executed watershed agreements and annual reports available
20 on the department's internet web site.

21 (6) The department must consult with affected local governments
22 (~~(and the state departments of health and fish and wildlife)~~) before
23 executing an agreement.

24 (7) Before executing a watershed agreement, the department must
25 conduct a government-to-government consultation with affected tribal
26 governments. The municipal water suppliers operating the public water
27 systems that are proposing to enter into the agreements must be invited
28 to participate in the consultations. During these consultations, the
29 department and the municipal water suppliers shall explore the
30 potential interest of the tribal governments or governments in
31 participating in the agreement.

32 (8) Any person aggrieved by the department's failure to satisfy the
33 requirements in subsection (3) of this section as embodied in the
34 department's decision to enter into a watershed agreement under this
35 section may, within thirty days of the execution of such an agreement,
36 appeal the department's decision to the pollution control hearings
37 board under chapter 43.21B RCW.

1 (9) Any projects implemented by a municipal water system under the
2 terms of an agreement reached under this section may be continued and
3 maintained by the municipal water system after the agreement expires or
4 is terminated as long as the conditions of the agreement under which
5 they were implemented continue to be met.

6 (10) Before December 31, 2003, and December 31, 2004, the
7 department must report to the appropriate committees of the legislature
8 the results of the pilot project provided for in this section. Based
9 on the experience of the pilot project, the department must offer any
10 suggested changes in law that would improve, facilitate, and maximize
11 the implementation of watershed plans adopted under this chapter.

12 **Sec. 71.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to read
13 as follows:

14 (1) Every person, firm, private or municipal corporation, or
15 association hereinafter called "claimant", claiming the right to the
16 use of water within or bordering upon the state of Washington for power
17 development, shall on or before the first day of January of each year
18 pay to the state of Washington in advance an annual license fee, based
19 upon the theoretical water power claimed under each and every separate
20 claim to water according to the following schedule:

21 (a) For projects in operation: For each and every theoretical
22 horsepower claimed up to and including one thousand horsepower, at the
23 rate of eighteen cents per horsepower; for each and every theoretical
24 horsepower in excess of one thousand horsepower, up to and including
25 ten thousand horsepower, at the rate of three and six-tenths cents per
26 horsepower; for each and every theoretical horsepower in excess of ten
27 thousand horsepower, at the rate of one and eight-tenths cents per
28 horsepower.

29 (b) For federal energy regulatory commission projects in operation,
30 the following fee schedule applies in addition to the fees in (a) of
31 this subsection: For each theoretical horsepower of capacity up to and
32 including one thousand horsepower, at the rate of thirty-two cents per
33 horsepower; for each theoretical horsepower in excess of one thousand
34 horsepower, up to and including ten thousand horsepower, at the rate of
35 six and four-tenths cents per horsepower; for each theoretical
36 horsepower in excess of ten thousand horsepower, at the rate of three
37 and two-tenths cents per horsepower.

1 (c) To justify the appropriate use of fees collected under (b) of
2 this subsection, the department of ecology shall submit a progress
3 report to the appropriate committees of the legislature prior to
4 December 31, 2009, and biennially thereafter until December 31, 2017.

5 (i) The progress report will: (A) Describe how license fees were
6 expended in the federal energy regulatory commission licensing process
7 during the current biennium, and expected workload and full-time
8 equivalent employees for federal energy regulatory commission licensing
9 in the next biennium; (B) include any recommendations based on
10 consultation with (~~the departments of ecology and fish and wildlife,~~)
11 hydropower project operators(~~(7)~~) and other interested parties; and (C)
12 recognize hydropower operators that exceed their environmental
13 regulatory requirements.

14 (ii) The fees required in (b) of this subsection expire June 30,
15 2017. The biennial progress reports submitted by the department of
16 ecology will serve as a record for considering the extension of the fee
17 structure in (b) of this subsection.

18 (2) The following are exceptions to the fee schedule in subsection
19 (1) of this section:

20 (a) For undeveloped projects, the fee shall be at one-half the
21 rates specified for projects in operation; for projects partly
22 developed and in operation the fees paid on that portion of any project
23 that shall have been developed and in operation shall be the full
24 annual license fee specified in subsection (1) of this section for
25 projects in operation, and for the remainder of the power claimed under
26 such project the fees shall be the same as for undeveloped projects.

27 (b) The fees required in subsection (1) of this section do not
28 apply to any hydropower project owned by the United States.

29 (c) The fees required in subsection (1) of this section do not
30 apply to the use of water for the generation of fifty horsepower or
31 less.

32 (d) The fees required in subsection (1) of this section for
33 projects developed by an irrigation district in conjunction with the
34 irrigation district's water conveyance system shall be reduced by fifty
35 percent to reflect the portion of the year when the project is not
36 operable.

37 (e) Any irrigation district or other municipal subdivision of the
38 state, developing power chiefly for use in pumping of water for

1 irrigation, upon the filing of a statement showing the amount of power
2 used for irrigation pumping, is exempt from the fees in subsection (1)
3 of this section to the extent of the power used for irrigation pumping.

4 **Sec. 72.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to read
5 as follows:

6 (1) All fees paid under provisions of this chapter, shall be
7 credited by the state treasurer to the reclamation account created in
8 RCW 89.16.020 and subject to legislative appropriation, be allocated
9 and expended by the director of ecology for:

10 (a) Investigations and surveys of natural resources in cooperation
11 with the federal government, or independently thereof, including stream
12 gaging, hydrographic, topographic, river, underground water, mineral
13 and geological surveys; and

14 (b) Expenses associated with staff at the department(~~(s)~~) of
15 ecology (~~(and fish and wildlife)~~) working on federal energy regulatory
16 commission relicensing and license implementation.

17 (2) Unless otherwise required by the omnibus biennial
18 appropriations acts, the expenditures for these purposes must be
19 proportional to the revenues collected under RCW 90.16.050(1).

20 **Sec. 73.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to read
21 as follows:

22 The department of ecology may establish minimum water flows or
23 levels for streams, lakes or other public waters for the purposes of
24 protecting fish, game, birds or other wildlife resources, or
25 recreational or aesthetic values of said public waters whenever it
26 appears to be in the public interest to establish the same. In
27 addition, the department of ecology shall(~~(, when requested by the~~
28 ~~department of fish and wildlife to)~~) protect fish, game, or other
29 wildlife resources (~~(under the jurisdiction of the requesting state~~
30 ~~agency)~~), or if the department of ecology finds it necessary to
31 preserve water quality, establish such minimum flows or levels as are
32 required to protect the resource or preserve the water quality
33 (~~(described in the request or determination)~~). (~~(Any request submitted~~
34 ~~by the department of fish and wildlife shall include a statement~~
35 ~~setting forth the need for establishing a minimum flow or level.)~~)
36 When the department acts to preserve water quality, it shall include a

1 ((similar)) statement setting forth the need for establishing a minimum
2 flow or level with the proposed rule filed with the code reviser. This
3 section shall not apply to waters artificially stored in reservoirs,
4 provided that in the granting of storage permits by the department of
5 ecology in the future, full recognition shall be given to downstream
6 minimum flows, if any there may be, which have theretofore been
7 established hereunder.

8 **Sec. 74.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
9 read as follows:

10 Flows or levels authorized for establishment under RCW 90.22.010,
11 or subsequent modification thereof by the department shall be provided
12 for through the adoption of rules. Before the establishment or
13 modification of a water flow or level for any stream or lake or other
14 public water, the department shall hold a public hearing in the county
15 in which the stream, lake, or other public water is located. If it is
16 located in more than one county the department shall determine the
17 location or locations therein and the number of hearings to be
18 conducted. Notice of the hearings shall be given by publication in a
19 newspaper of general circulation in the county or counties in which the
20 stream, lake, or other public waters is located, once a week for two
21 consecutive weeks before the hearing. The notice shall include the
22 following:

23 (1) The name of each stream, lake, or other water source under
24 consideration;

25 (2) The place and time of the hearing;

26 (3) A statement that any person, including any private citizen or
27 public official, may present his or her views either orally or in
28 writing.

29 ~~((Notice of the hearing shall also be served upon the~~
30 ~~administrators of the departments of social and health services,~~
31 ~~natural resources, fish and wildlife, and transportation.))~~

32 **Sec. 75.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to
33 read as follows:

34 By December 31, 1993, the department of ecology shall, in
35 cooperation with the Indian tribes, ~~((and the department of fish and~~
36 ~~wildlife,))~~ establish a statewide list of priorities for evaluation of

1 instream flows. In establishing these priorities, the department shall
2 consider the achievement of wild salmonid production as its primary
3 goal.

4 **Sec. 76.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to read
5 as follows:

6 Ten or more owners of real property abutting on a lake may petition
7 the superior court of the county in which the lake is situated, for an
8 order to provide for the regulation of the outflow of the lake in order
9 to maintain a certain water level therein. If there are fewer than ten
10 owners, a majority of the owners abutting on a lake may petition the
11 superior court for such an order. The court, after (~~notice to the~~
12 ~~department of fish and wildlife and~~) a hearing, is authorized to make
13 an order fixing the water level thereof and directing the department of
14 ecology to regulate the outflow therefrom in accordance with the
15 purposes described in the petition. This section shall not apply to
16 any lake or reservoir used for the storage of water for irrigation or
17 other beneficial purposes, or to lakes navigable from the sea.

18 **Sec. 77.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to
19 read as follows:

20 The petition shall be entitled "In the matter of fixing the level
21 of Lake in county, Washington", and shall be
22 filed with the clerk of the court and a copy thereof, together with a
23 copy of the order fixing the time for hearing the petition, shall be
24 served on each owner of property abutting on the lake, not less than
25 ten days before the hearing. Like copies shall also be served upon
26 (~~the director of fish and wildlife and~~) the director of ecology. The
27 copy of the petition and of the order fixing time for hearing shall be
28 served in the manner provided by law for the service of summons in
29 civil actions, or in such other manner as may be prescribed by order of
30 the court. For the benefit of every riparian owner abutting on a
31 stream or river flowing from such lake, a copy of the notice of hearing
32 shall be published at least once a week for two consecutive weeks
33 before the time set for hearing in a newspaper in each county or
34 counties wherein located, said notice to contain a brief statement of
35 the reasons and necessity for such application.

1 **Sec. 78.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to
2 read as follows:

3 Such improvement or device in said lake for the protection of the
4 fish and game fish therein shall be installed by and under the
5 direction of the board of county commissioners of said county with the
6 approval of the (~~respective directors of the department of fish and~~
7 ~~wildlife and~~) director of the department of ecology of the state of
8 Washington and paid for out of the special fund provided for in RCW
9 90.24.050.

10 **Sec. 79.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to
11 read as follows:

12 (1) All trust water rights acquired by the department shall be
13 placed in the Yakima river basin trust water rights program to be
14 managed by the department. The department shall issue a water right
15 certificate in the name of the state of Washington for each trust water
16 right it acquires.

17 (2) Trust water rights shall retain the same priority date as the
18 water right from which they originated. Trust water rights may be
19 modified as to purpose or place of use or point of diversion, including
20 modification from a diversionary use to a nondiversionary instream use.

21 (3) Trust water rights may be held by the department for instream
22 flows, irrigation use, or other beneficial use. Trust water rights may
23 be acquired on a temporary or permanent basis. To the extent
24 practicable and subject to legislative appropriation, trust water
25 rights acquired in an area with an approved watershed plan developed
26 under chapter 90.82 RCW shall be consistent with that plan if the plan
27 calls for such acquisition.

28 (4) A schedule of the amount of net water saved as a result of
29 water conservation projects carried out in accordance with this
30 chapter, shall be developed annually to reflect the predicted
31 hydrologic and water supply conditions, as well as anticipated water
32 demands, for the upcoming irrigation season. This schedule shall serve
33 as the basis for the distribution and management of trust water rights
34 each year.

35 (5)(a) No exercise of a trust water right may be authorized unless
36 the department first determines that no existing water rights, junior

1 or senior in priority, will be impaired as to their exercise or injured
2 in any manner whatever by such authorization.

3 (b) Before any trust water right is exercised, the department shall
4 publish notice thereof in a newspaper of general circulation published
5 in the county or counties in which the storage, diversion, and use are
6 to be made, and in such other newspapers as the department determines
7 are necessary, once a week for two consecutive weeks. (~~At the same
8 time the department may also send notice thereof containing pertinent
9 information to the director of fish and wildlife.~~)

10 (c) Subsections (4) and (5)(b) of this section do not apply to a
11 trust water right resulting from a donation for instream flows
12 described in RCW 90.38.020(1)(b) or from the lease of a water right
13 under RCW 90.38.020(6) if the period of the lease does not exceed five
14 years. However, the department shall provide the notice described in
15 (b) of this subsection the first time the trust water right resulting
16 from the donation is exercised.

17 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
18 applicability to trust water rights held by the department under this
19 chapter or exercised under this section.

20 **Sec. 80.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to
21 read as follows:

22 Applications for permits shall be made on forms prescribed by the
23 department and shall contain the name and address of the applicant, a
24 description of the applicant's operations, the quantity and type of
25 waste material sought to be disposed of, the proposed method of
26 disposal, and any other relevant information deemed necessary by the
27 department. Application for permits shall be made at least sixty days
28 prior to commencement of any proposed discharge or permit expiration
29 date, whichever is applicable. Upon receipt of a proper application
30 relating to a new operation, or an operation previously under permit
31 for which an increase in volume of wastes or change in character of
32 effluent is requested over that previously authorized, the department
33 shall instruct the applicant to publish notices thereof by such means
34 and within such time as the department shall prescribe. The department
35 shall require that the notice so prescribed shall be published twice in
36 a newspaper of general circulation within the county in which the
37 disposal of waste material is proposed to be made and in such other

1 appropriate information media as the department may direct. Said
2 notice shall include a statement that any person desiring to present
3 his or her views to the department with regard to said application may
4 do so in writing to the department, or any person interested in the
5 department's action on an application for a permit, may submit his or
6 her views or notify the department of his or her interest within thirty
7 days of the last date of publication of notice. Such notification or
8 submission of views to the department shall entitle said persons to a
9 copy of the action taken on the application. (~~Upon receipt by the~~
10 ~~department of an application, it shall immediately send notice thereof~~
11 ~~containing pertinent information to the director of fish and wildlife~~
12 ~~and to the secretary of social and health services.)) When an
13 application complying with the provisions of this chapter and the rules
14 and regulations of the department has been filed with the department,
15 it shall be its duty to investigate the application, and determine
16 whether the use of public waters for waste disposal as proposed will
17 pollute the same in violation of the public policy of the state.~~

18 **Sec. 81.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
19 as follows:

20 The department(~~(, in consultation with the departments of fish and~~
21 ~~wildlife and natural resources, and the parks and recreation~~
22 ~~commission,)) shall adopt rules establishing a compensation schedule
23 for the discharge of oil in violation of this chapter and chapter 90.56
24 RCW. The amount of compensation assessed under this schedule shall be
25 no less than one dollar per gallon of oil spilled and no greater than
26 one hundred dollars per gallon of oil spilled. The compensation
27 schedule shall reflect adequate compensation for unquantifiable damages
28 or for damages not quantifiable at reasonable cost for any adverse
29 environmental, recreational, aesthetic, or other effects caused by the
30 spill and shall take into account:~~

31 (1) Characteristics of any oil spilled, such as toxicity,
32 dispersibility, solubility, and persistence, that may affect the
33 severity of the effects on the receiving environment, living organisms,
34 and recreational and aesthetic resources;

35 (2) The sensitivity of the affected area as determined by such
36 factors as: (a) The location of the spill; (b) habitat and living
37 resource sensitivity; (c) seasonal distribution or sensitivity of

1 living resources; (d) areas of recreational use or aesthetic
2 importance; (e) the proximity of the spill to important habitats for
3 birds, aquatic mammals, fish, or to species listed as threatened or
4 endangered under state or federal law; (f) significant archaeological
5 resources as determined by the department of archaeology and historic
6 preservation; and (g) other areas of special ecological or recreational
7 importance, as determined by the department; and

8 (3) Actions taken by the party who spilled oil or any party liable
9 for the spill that: (a) Demonstrate a recognition and affirmative
10 acceptance of responsibility for the spill, such as the immediate
11 removal of oil and the amount of oil removed from the environment; or
12 (b) enhance or impede the detection of the spill, the determination of
13 the quantity of oil spilled, or the extent of damage, including the
14 unauthorized removal of evidence such as injured fish or wildlife.

15 **Sec. 82.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended to
16 read as follows:

17 (1) The director shall issue or approve water quality permits for
18 use by federal, state, or local governmental agencies and licensed
19 applicators for the purpose of using, for aquatic noxious weed control,
20 herbicides and surfactants registered under state or federal pesticide
21 control laws, and for the purpose of experimental use of herbicides on
22 aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The issuance of the
23 permits shall be subject only to compliance with: Federal and state
24 pesticide label requirements, the requirements of the federal
25 insecticide, fungicide, and rodenticide act, the Washington pesticide
26 control act, the Washington pesticide application act, and the state
27 environmental policy act, except that:

28 (a) When the director issues water quality permits for the purpose
29 of using glyphosate and surfactants registered by the department of
30 agriculture to control spartina, as defined by RCW 17.26.020, the water
31 quality permits shall contain the following criteria:

32 (i) Spartina treatment shall occur between June 1st and October
33 31st of each year unless the department(~~(, the department of~~
34 ~~agriculture, and the department of fish and wildlife agree to add)~~)
35 authorizes additional dates beyond this period, except that no aerial
36 application shall be allowed on July 4th or Labor Day and for ground

1 application on those days the applicator shall post signs at each
2 corner of the treatment area;

3 (ii) The applicator shall take all reasonable precautions to
4 prevent the spraying of nontarget vegetation and nonvegetated areas;

5 (iii) A period of fourteen days between treatments is required
6 prior to re-treating the previously treated areas;

7 (iv) Aerial or ground broadcast application shall not be made when
8 the wind speed exceeds ten miles per hour; and

9 (v) An application shall not be made when a tidal regime leaves the
10 plants dry for less than four hours.

11 (b) The director shall issue water quality permits for the purpose
12 of using herbicides or surfactants registered by the department of
13 agriculture to control aquatic noxious weeds, other than spartina, and
14 the permit shall state that aerial and ground broadcast applications
15 may not be made when the wind speed exceeds ten miles per hour.

16 (c) The director shall issue water quality permits for the
17 experimental use of herbicides on aquatic sites, as defined in 40
18 C.F.R. Sec. 172.3, when the department of agriculture has issued an
19 experimental use permit, under the authority of RCW 15.58.405(3).
20 Because of the small geographic areas involved and the short duration
21 of herbicide application, water quality permits issued under this
22 subsection are not subject to state environmental policy act review.

23 (2) Applicable requirements established in an option or options
24 recommended for controlling the noxious weed by a final environmental
25 impact statement published under chapter 43.21C RCW by the department
26 prior to May 5, 1995, by the department of agriculture, or by the
27 department of agriculture jointly with other state agencies shall be
28 considered guidelines for the purpose of granting the permits issued
29 under this chapter. This section may not be construed as requiring the
30 preparation of a new environmental impact statement to replace a final
31 environmental impact statement published before May 5, 1995, but
32 instead shall authorize the department of agriculture, as lead agency
33 for the control of spartina under RCW 17.26.015, to supplement, amend,
34 or issue addenda to the final environmental impact statement published
35 before May 5, 1995, which may assess the environmental impact of the
36 application of stronger concentrations of active ingredients, altered
37 application patterns, or other changes as the department of agriculture
38 deems appropriate.

1 (3) The director of ecology may not utilize this permit authority
2 to otherwise condition or burden weed control efforts. Except for
3 permits issued by the director under subsection (1)(c) of this section,
4 permits issued under this section are effective for five years, unless
5 a shorter duration is requested by the applicant. The director's
6 authority to issue water quality modification permits for activities
7 other than the application of surfactants and approved herbicides, to
8 control aquatic noxious weeds or the experimental use of herbicides
9 used on aquatic sites, as defined in 40 C.F.R. Sec. 172.3, is
10 unaffected by this section.

11 (4) As used in this section, "aquatic noxious weed" means an
12 aquatic weed on the state noxious weed list adopted under RCW
13 17.10.080.

14 **Sec. 83.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to read
15 as follows:

16 (1) Subject to restrictions in this section, a government entity
17 seeking to control a limited infestation of Eurasian water milfoil may
18 use the pesticide 2,4-D to treat the milfoil infestation, without
19 obtaining a permit under RCW 90.48.445, if the milfoil infestation is
20 either recently documented or remaining after the application of other
21 control measures, and is limited to twenty percent or less of the
22 littoral zone of the lake. Any pesticide application made under this
23 section must be made according to all label requirements for the
24 product and must meet the public notice requirements of subsection (2)
25 of this section.

26 (2) Before applying 2,4-D, the government entity shall: (a)
27 Provide at least twenty-one days' notice to the department of
28 ecology(~~(, the department of fish and wildlife, the department of~~
29 ~~agriculture, the department of health,)~~) and all lake residents; (b)
30 post notices of the intent to apply 2,4-D at all public access points;
31 and (c) place informational buoys around the treatment area.

32 (3) The department (~~(of fish and wildlife)~~) may impose timing
33 restrictions on the use of 2,4-D to protect salmon and other fish and
34 wildlife.

35 (4) The department may prohibit the use of 2,4-D if the department
36 finds the product contains dioxin in excess of the standard allowed by
37 the United States environmental protection agency. Sampling protocols

1 and analysis used by the department under this section must be
2 consistent with those used by the United States environmental
3 protection agency for testing this product.

4 (5) Government entities using this section to apply 2,4-D may apply
5 for funds from the freshwater aquatic weeds account consistent with the
6 freshwater aquatic weeds management program as provided in RCW
7 43.21A.660.

8 (6) Government entities using this section shall consider
9 development of long-term control strategies for eradication and control
10 of the Eurasian water milfoil.

11 (7) For the purpose of this section, "government entities" includes
12 cities, counties, state agencies, tribes, special purpose districts,
13 and county weed boards.

14 **Sec. 84.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to read
15 as follows:

16 (1) Project proponents may use a mitigation plan to propose
17 compensatory mitigation within a watershed. A mitigation plan shall:

18 (a) Contain provisions that guarantee the long-term viability of
19 the created, restored, enhanced, or preserved habitat, including
20 assurances for protecting any essential biological functions and values
21 defined in the mitigation plan;

22 (b) Contain provisions for long-term monitoring of any created,
23 restored, or enhanced mitigation site; and

24 (c) Be consistent with the local comprehensive land use plan and
25 any other applicable planning process in effect for the development
26 area, such as an adopted subbasin or watershed plan.

27 (2) The department(~~s~~) of ecology (~~and fish and wildlife~~) may
28 not limit the scope of options in a mitigation plan to areas on or near
29 the project site, or to habitat types of the same type as contained on
30 the project site. The department(~~s~~) of ecology (~~and fish and
31 wildlife~~) shall fully review and give due consideration to
32 compensatory mitigation proposals that improve the overall biological
33 functions and values of the watershed or bay and accommodate the
34 mitigation needs of infrastructure development.

35 The department(~~s~~) of ecology (~~and fish and wildlife are~~) is not
36 required to grant approval to a mitigation plan that the

1 department(~~s~~) finds does not provide equal or better biological
2 functions and values within the watershed or bay.

3 (3) When making a permit or other regulatory decision under the
4 guidance of this chapter, the department(~~s of ecology and fish and~~
5 ~~wildlife~~) shall consider whether the mitigation plan provides equal or
6 better biological functions and values, compared to the existing
7 conditions, for the target resources or species identified in the
8 mitigation plan. This consideration shall be based upon the following
9 factors:

10 (a) The relative value of the mitigation for the target resources,
11 in terms of the quality and quantity of biological functions and values
12 provided;

13 (b) The compatibility of the proposal with the intent of broader
14 resource management and habitat management objectives and plans, such
15 as existing resource management plans, watershed plans, critical areas
16 ordinances, and shoreline master programs;

17 (c) The ability of the mitigation to address scarce functions or
18 values within a watershed;

19 (d) The benefits of the proposal to broader watershed landscape,
20 including the benefits of connecting various habitat units or providing
21 population-limiting habitats or functions for target species;

22 (e) The benefits of early implementation of habitat mitigation for
23 projects that provide compensatory mitigation in advance of the
24 project's planned impacts; and

25 (f) The significance of any negative impacts to nontarget species
26 or resources.

27 (4) A mitigation plan may be approved through a memorandum of
28 agreement between the project proponent and (~~either~~) the department
29 of ecology (~~or the department of fish and wildlife, or both~~).

30 **Sec. 85.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to read
31 as follows:

32 (1) In making regulatory decisions relating to wetland or aquatic
33 resource mitigation, the department(~~s of ecology and fish and~~
34 ~~wildlife~~) shall, at the request of the project proponent, follow the
35 guidance of RCW 90.74.005 through 90.74.020.

36 (2) If the department of ecology (~~or the department of fish and~~

1 wildlife)) receives multiple requests for review of mitigation plans,
2 ((each)) the department may schedule its review of these proposals to
3 conform to available budgetary resources.

4 **Sec. 86.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each amended
5 to read as follows:

6 (1) The timelines and interim milestones in a detailed
7 implementation plan required by RCW 90.82.043 must address the planned
8 future use of existing water rights for municipal water supply
9 purposes, as defined in RCW 90.03.015, that are inchoate, including how
10 these rights will be used to meet the projected future needs identified
11 in the watershed plan, and how the use of these rights will be
12 addressed when implementing instream flow strategies identified in the
13 watershed plan.

14 (2) The watershed planning unit or other authorized lead agency
15 shall ensure that holders of water rights for municipal water supply
16 purposes not currently in use are asked to participate in defining the
17 timelines and interim milestones to be included in the detailed
18 implementation plan.

19 (3) The department of health shall annually compile a list of water
20 system plans and plan updates to be reviewed by the department during
21 the coming year and shall ~~((consult with the departments of community,~~
22 ~~trade, and economic development, ecology, and fish and wildlife to))~~:
23 (a) Identify watersheds where further coordination is needed between
24 water system planning and local watershed planning under this chapter;
25 and (b) develop a work plan for conducting the necessary coordination.

26 **Sec. 87.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read
27 as follows:

28 (1)(a) Water supplies secured through the development of new
29 storage facilities made possible with funding from the Columbia river
30 basin water supply development account shall be allocated as follows:

31 (i) Two-thirds of active storage shall be available for
32 appropriation for out-of-stream uses; and

33 (ii) One-third of active storage shall be available to augment
34 instream flows and shall be managed by the department of ecology. The
35 timing of releases of this water shall be determined by the department

1 of ecology, in cooperation with the (~~department of fish and wildlife~~
2 ~~and~~) fisheries comanagers, to maximize benefits to salmon and
3 steelhead populations.

4 (b) Water available for appropriation under (a)(i) of this
5 subsection but not yet appropriated shall be temporarily available to
6 augment instream flows to the extent that it does not impair existing
7 water rights.

8 (2) Water developed under the provisions of this section to offset
9 out-of-stream uses and for instream flows is deemed adequate mitigation
10 for the issuance of new water rights provided for in subsection (1)(a)
11 of this section and satisfies all consultation requirements under state
12 law related to the issuance of new water rights.

13 (3) The department of ecology shall focus its efforts to develop
14 water supplies for the Columbia river basin on the following needs:

15 (a) Alternatives to groundwater for agricultural users in the
16 Odessa subarea aquifer;

17 (b) Sources of water supply for pending water right applications;

18 (c) A new uninterruptible supply of water for the holders of
19 interruptible water rights on the Columbia river mainstem that are
20 subject to instream flows or other mitigation conditions to protect
21 stream flows; and

22 (d) New municipal, domestic, industrial, and irrigation water needs
23 within the Columbia river basin.

24 (4) The one-third/two-thirds allocation of water resources between
25 instream and out-of-stream uses established in this section does not
26 apply to applications for changes or transfers of existing water rights
27 in the Columbia river basin.

28 **Sec. 88.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read
29 as follows:

30 (1) The department of ecology may enter into voluntary regional
31 agreements for the purpose of providing new water for out-of-stream
32 use, streamlining the application process, and protecting instream
33 flow.

34 (2) Such agreements shall ensure that:

35 (a) For water rights issued from the Columbia river mainstem, there
36 is no negative impact on Columbia river mainstem instream flows in the

1 months of July and August as a result of the new appropriations issued
2 under the agreement;

3 (b) For water rights issued from the lower Snake river mainstem,
4 there is no negative impact on Snake river mainstem instream flows from
5 April through August as a result of the new appropriations issued under
6 the agreement; and

7 (c) Efforts are made to harmonize such agreements with watershed
8 plans adopted under the authority of chapter 90.82 RCW that are
9 applicable to the area covered by the agreement.

10 (3) The protection of instream flow as set forth in subsection (2)
11 of this section is adequate for purposes of mitigating instream flow
12 impacts resulting from any appropriations for out-of-stream use made
13 under a voluntary regional agreement, and the only applicable
14 consultation provisions under state law regarding instream flow impacts
15 shall be those set forth in subsection (4) of this section.

16 (4) Before executing a voluntary agreement under this section, the
17 department of ecology shall:

18 (a) Provide a sixty-day period for consultation with county
19 legislative authorities and watershed planning groups with jurisdiction
20 over the area where the water rights included in the agreement are
21 located, ~~((the department of fish and wildlife,))~~ and affected tribal
22 governments, and federal agencies. ~~((The department of fish and
23 wildlife shall provide written comments within that time period.))~~ The
24 consultation process for voluntary regional agreements developed under
25 the provisions of this section is deemed adequate for the issuance of
26 new water rights provided for in this section and satisfies all
27 consultation requirements under state law related to the issuance of
28 new water rights; and

29 (b) Provide a thirty-day public review and comment period for a
30 draft agreement, and publish a summary of any public comments received.
31 The thirty-day review period shall not begin until after the department
32 of ecology has concluded its consultation under (a) of this subsection
33 and the comments that have been received by the department are made
34 available to the public.

35 (5) The provisions of subsection (4) of this section satisfy all
36 applicable consultation requirements under state law.

37 (6) The provisions of this section and any voluntary regional

1 agreements developed under such provisions may not be relied upon by
2 the department of ecology as a precedent, standard, or model that must
3 be followed in any other voluntary regional agreements.

4 (7) Nothing in this section may be interpreted or administered in
5 a manner that precludes the processing of water right applications
6 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
7 regional agreement.

8 (8) Nothing in this section may be interpreted or administered in
9 a manner that impairs or diminishes a valid water right or a habitat
10 conservation plan approved for purposes of compliance with the federal
11 endangered species act.

12 (9) The department of ecology shall monitor and evaluate the water
13 allocated to instream and out-of-stream uses under this section,
14 evaluate the program, and provide an interim report to the appropriate
15 committees of the legislature by June 30, 2008. A final report shall
16 be provided to the appropriate committees of the legislature by June
17 30, 2011.

18 (10) If the department of ecology executes a voluntary agreement
19 under this section that includes water rights appropriated from the
20 lower Snake river mainstem, the department shall develop aggregate data
21 in accordance with the provisions of RCW 90.90.050 for the lower Snake
22 river mainstem.

23 (11) Any agreement entered into under this section shall remain in
24 full force and effect through the term of the agreement regardless of
25 the expiration of this section.

26 (12) The definitions in this subsection apply to this section and
27 RCW 90.90.050, and may only be used for purposes of implementing these
28 sections.

29 (a) "Columbia river mainstem" means all water in the Columbia river
30 within the ordinary high water mark of the main channel of the Columbia
31 river between the border of the United States and Canada and the
32 Bonneville dam, and all groundwater within one mile of the high water
33 mark.

34 (b) "Lower Snake river mainstem" means all water in the lower Snake
35 river within the ordinary high water mark of the main channel of the
36 lower Snake river from the head of Ice Harbor pool to the confluence of
37 the Snake and Columbia rivers, and all groundwater within one mile of
38 the high water mark.

1 (13) This section expires June 30, 2012.

2 NEW SECTION. **Sec. 89.** RCW 77.55.121 is recodified as a section in
3 chapter 76.09 RCW.

4 NEW SECTION. **Sec. 90.** The following acts or parts of acts are
5 each repealed:

6 (1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals--
7 Technical advisory committee--Implementation) and 1998 c 245 s 162 &
8 1993 sp.s. c 4 s 5;

9 (2) RCW 79.105.220 (Lease of tidelands in front of public parks)
10 and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

11 (3) RCW 79.135.230 (Intensive management plan for geoducks) and
12 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

13 (4) RCW 79.135.310 (Inspection by director of fish and wildlife)
14 and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

15 (5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717,
16 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

17 (6) RCW 79.145.030 (Coordinating implementation--Rules) and 2005 c
18 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

19 (7) RCW 79A.05.670 (Consultation with government agencies required)
20 and 1999 c 249 s 1102 & 1988 c 75 s 8;

21 (8) RCW 79A.05.735 (Mt. Si conservation area--Management) and 2000
22 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

23 (9) RCW 79A.50.070 (State lands used for state parks--Certain funds
24 appropriated for rental to be deposited without deduction for
25 management purposes) and 1969 ex.s. c 189 s 3;

26 (10) RCW 76.09.160 (Right of entry by department of ecology) and
27 1974 ex.s. c 137 s 16; and

28 (11) RCW 77.12.360 (Withdrawal of state land from lease--
29 Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s
30 77.12.360."

31 Correct the title.

--- END ---