

**ESSB 5322** - H COMM AMD

By Committee on Environment & Energy

**NOT CONSIDERED 12/23/2019**

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that under RCW  
4 90.48.260, the department of ecology is directed to implement and  
5 comply with the federal clean water act. The legislature further  
6 finds that Washington state, unlike other states and the  
7 environmental protection agency, has taken no action to regulate or  
8 limit water quality impacts from motorized or gravity siphon aquatic  
9 mining. The legislature also finds that federal courts have  
10 determined that discharges from this activity require regulation  
11 under the clean water act and that Washington's attorney general has  
12 supported such regulations in other states as necessary to protect  
13 water quality and fish species, even though such protections do not  
14 exist in Washington state. The legislature further finds that harmful  
15 water quality impacts are occurring in areas designated as critical  
16 habitat for threatened or endangered steelhead, salmon, and bull  
17 trout, including spawning areas for chinook salmon relied on by  
18 southern resident orcas.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48  
20 RCW to read as follows:

21 (1) A discharge to waters of the state from a motorized or  
22 gravity siphon aquatic mining operation is subject to the  
23 department's authority under this chapter and the federal clean water  
24 act. The department shall evaluate whether the number of dischargers  
25 subject to this section warrants the adoption of a general permit for  
26 motorized or gravity siphon aquatic mining. If so, the department is  
27 directed to minimize the cost to permit applicants by basing general  
28 permit provisions on existing general permits adopted in other states  
29 to comply with the federal clean water act.

30 (2) The following act or acts are prohibited: Motorized or  
31 gravity siphon aquatic mining or discharge of effluent from such

1 activity to any waters of the state that has been designated under  
2 the endangered species act as critical habitat, or would impact  
3 critical habitat for salmon, steelhead, or bull trout. This includes  
4 all fresh waters with designated uses of: Salmonid spawning, rearing,  
5 and migration.

6 (3) A person commits the offense of unlawful motorized or gravity  
7 siphon aquatic mining if the person engages in such an activity in  
8 violation of this chapter or the federal clean water act. Such an  
9 offense is subject to enforcement under this chapter.

10 (4) For the purposes of this section, "motorized or gravity  
11 siphon aquatic mining" means mining using any form of motorized  
12 equipment, including but not limited to a motorized suction dredge,  
13 or a gravity siphon suction dredge, for the purpose of extracting  
14 gold, silver, or other precious metals, that involves a discharge to  
15 waters of the state.

16 (5) This section does not apply to:

17 (a) Aquatic mining using nonmotorized methods, such as gold  
18 panning, if the nonmotorized method does not involve use of a gravity  
19 siphon suction dredge;

20 (b) Mining operations where no part of the operation or discharge  
21 of effluent from the operation is to waters of the state;

22 (c) Surface mining operations regulated by the department of  
23 natural resources under Title 78 RCW;

24 (d) Metals mining and milling operations as defined in chapter  
25 78.56 RCW;

26 (e) Activities related to an industrial facility, dredging  
27 related to navigability, or activities subject to a clean water act  
28 section 404 individual permit; or

29 (f) Dredging operations undertaken by a diking or drainage  
30 district pursuant to Title 85 RCW.

31 **Sec. 3.** RCW 77.55.011 and 2012 1st sp.s. c 1 s 101 are each  
32 reenacted and amended to read as follows:

33 The definitions in this section apply throughout this chapter  
34 unless the context clearly requires otherwise.

35 (1) "Bed" means the land below the ordinary high water lines of  
36 state waters. This definition does not include irrigation ditches,  
37 canals, stormwater runoff devices, or other artificial watercourses  
38 except where they exist in a natural watercourse that has been  
39 altered artificially.

1 (2) "Board" means the pollution control hearings board created in  
2 chapter 43.21B RCW.

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

4 (4) "Date of receipt" has the same meaning as defined in RCW  
5 43.21B.001.

6 (5) "Department" means the department of fish and wildlife.

7 (6) "Director" means the director of the department of fish and  
8 wildlife.

9 (7) "Emergency" means an immediate threat to life, the public,  
10 property, or of environmental degradation.

11 (8) "Emergency permit" means a verbal hydraulic project approval  
12 or the written follow-up to the verbal approval issued to a person  
13 under RCW 77.55.021(12).

14 (9) "Expedited permit" means a hydraulic project approval issued  
15 to a person under RCW 77.55.021 (14) and (16).

16 (10) "Forest practices hydraulic project" means a hydraulic  
17 project that requires a forest practices application or notification  
18 under chapter 76.09 RCW.

19 (11) "Hydraulic project" means the construction or performance of  
20 work that will use, divert, obstruct, or change the natural flow or  
21 bed of any of the salt or freshwaters of the state.

22 (12) "Imminent danger" means a threat by weather, water flow, or  
23 other natural conditions that is likely to occur within sixty days of  
24 a request for a permit application.

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

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

33 (15) "Multiple site permit" means a hydraulic project approval  
34 issued to a person under RCW 77.55.021 for hydraulic projects  
35 occurring at more than one specific location and which includes  
36 site-specific requirements.

37 (16) "Ordinary high water line" means the mark on the shores of  
38 all water that will be found by examining the bed and banks and  
39 ascertaining where the presence and action of waters are so common  
40 and usual, and so long continued in ordinary years as to mark upon

1 the soil or vegetation a character distinct from the abutting upland.  
2 Provided, that in any area where the ordinary high water line cannot  
3 be found, the ordinary high water line adjoining saltwater is the  
4 line of mean higher high water and the ordinary high water line  
5 adjoining freshwater is the elevation of the mean annual flood.

6 (17) "Pamphlet hydraulic project" means a hydraulic project for  
7 the removal or control of aquatic noxious weeds conducted under the  
8 aquatic plants and fish pamphlet authorized by RCW 77.55.081, or for  
9 mineral prospecting and mining conducted under the gold and fish  
10 pamphlet authorized by RCW 77.55.091.

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

13 (19) "Permit modification" means a hydraulic project approval  
14 issued to a person under RCW 77.55.021 that extends, renews, or  
15 changes the conditions of a previously issued hydraulic project  
16 approval.

17 (20) "Sandbars" includes, but is not limited to, sand, gravel,  
18 rock, silt, and sediments.

19 (21) "Small scale prospecting and mining" means the use of only  
20 the following methods: Pans; nonmotorized sluice boxes; nonmotorized  
21 concentrators; and minirocker boxes for the discovery and recovery of  
22 minerals, but does not include metals mining and milling operations  
23 as defined in RCW 78.56.020.

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

26 (23) "Stream bank stabilization" means those projects that  
27 prevent or limit erosion, slippage, and mass wasting. These projects  
28 include, but are not limited to, bank resloping, log and debris  
29 relocation or removal, planting of woody vegetation, bank protection  
30 using rock or woody material or placement of jetties or groins,  
31 gravel removal, or erosion control.

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

34 (25) "Waters of the state" and "state waters" means all salt and  
35 freshwaters waterward of the ordinary high water line and within the  
36 territorial boundary of the state.

37 (26) "Motorized or gravity siphon aquatic mining" means mining  
38 using any form of motorized equipment including, but not limited to,  
39 a motorized suction dredge or a gravity siphon suction dredge, for  
40 the purpose of extracting gold, silver, or other precious metals,

1 that involves a discharge to waters of the state, but does not  
2 include metals mining and milling operations as defined in RCW  
3 78.56.020.

4 **Sec. 4.** RCW 77.55.021 and 2012 1st sp.s. c 1 s 102 are each  
5 amended to read as follows:

6 (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041,  
7 and 77.55.361, in the event that any person or government agency  
8 desires to undertake a hydraulic project, the person or government  
9 agency shall, before commencing work thereon, secure the approval of  
10 the department in the form of a permit as to the adequacy of the  
11 means proposed for the protection of fish life.

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

14 (a) General plans for the overall project;

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

18 (c) Complete plans and specifications for the proper protection  
19 of fish life;

20 (d) Notice of compliance with any applicable requirements of the  
21 state environmental policy act, unless otherwise provided for in this  
22 chapter; and

23 ~~(e) ((Payment of all applicable application fees charged by the~~  
24 ~~department under RCW 77.55.321))~~ In the event that any person or  
25 government agency desires to undertake mineral prospecting or mining  
26 using motorized or gravity siphon equipment or desires to discharge  
27 effluent from such an activity to waters of the state, the person or  
28 government agency must also provide proof of compliance with the  
29 requirements of the federal clean water act as administered by the  
30 department of ecology.

31 (3) The department may establish direct billing accounts or other  
32 funds transfer methods with permit applicants to satisfy the fee  
33 payment requirements of RCW 77.55.321.

34 (4) The department may accept complete, written applications as  
35 provided in this section for multiple site permits and may issue  
36 these permits. For multiple site permits, each specific location must  
37 be identified.

38 (5) With the exception of emergency permits as provided in  
39 subsection (12) of this section, applications for permits must be

1 submitted to the department's headquarters office in Olympia.  
2 Requests for emergency permits as provided in subsection (12) of this  
3 section may be made to the permitting biologist assigned to the  
4 location in which the emergency occurs, to the department's regional  
5 office in which the emergency occurs, or to the department's  
6 headquarters office.

7 (6) Except as provided for emergency permits in subsection (12)  
8 of this section, the department may not proceed with permit review  
9 until all fees are paid in full as required in RCW 77.55.321.

10 (7) (a) Protection of fish life is the only ground upon which  
11 approval of a permit may be denied or conditioned. Approval of a  
12 permit may not be unreasonably withheld or unreasonably conditioned.

13 (b) Except as provided in this subsection and subsections (12)  
14 through (14) and (16) of this section, the department has forty-five  
15 calendar days upon receipt of a complete application to grant or deny  
16 approval of a permit. The forty-five day requirement is suspended if:

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

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

21 (iii) The applicant requests a delay; or

22 (iv) The department is issuing a permit for a stormwater  
23 discharge and is complying with the requirements of RCW  
24 77.55.161(3)(b).

25 (c) Immediately upon determination that the forty-five day period  
26 is suspended under (b) of this subsection, the department shall  
27 notify the applicant in writing of the reasons for the delay.

28 (d) The period of forty-five calendar days may be extended if the  
29 permit is part of a multiagency permit streamlining effort and all  
30 participating permitting agencies and the permit applicant agree to  
31 an extended timeline longer than forty-five calendar days.

32 (8) If the department denies approval of a permit, the department  
33 shall provide the applicant a written statement of the specific  
34 reasons why and how the proposed project would adversely affect fish  
35 life.

36 (a) Except as provided in (b) of this subsection, issuance,  
37 denial, conditioning, or modification of a permit shall be appealable  
38 to the board within thirty days from the date of receipt of the  
39 decision as provided in RCW 43.21B.230.

1 (b) Issuance, denial, conditioning, or modification of a permit  
2 may be informally appealed to the department within thirty days from  
3 the date of receipt of the decision. Requests for informal appeals  
4 must be filed in the form and manner prescribed by the department by  
5 rule. A permit decision that has been informally appealed to the  
6 department is appealable to the board within thirty days from the  
7 date of receipt of the department's decision on the informal appeal.

8 (9) (a) The permittee must demonstrate substantial progress on  
9 construction of that portion of the project relating to the permit  
10 within two years of the date of issuance.

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

14 (c) A permit remains in effect without need for periodic renewal  
15 for hydraulic projects that divert water for agricultural irrigation  
16 or stock watering purposes and that involve seasonal construction or  
17 other work. A permit for stream bank stabilization projects to  
18 protect farm and agricultural land as defined in RCW 84.34.020  
19 remains in effect without need for periodic renewal if the problem  
20 causing the need for the stream bank stabilization occurs on an  
21 annual or more frequent basis. The permittee must notify the  
22 appropriate agency before commencing the construction or other work  
23 within the area covered by the permit.

24 (10) The department may, after consultation with the permittee,  
25 modify a permit due to changed conditions. A modification under this  
26 subsection is not subject to the fees provided under RCW 77.55.321.  
27 The modification is appealable as provided in subsection (8) of this  
28 section. For a hydraulic project that diverts water for agricultural  
29 irrigation or stock watering purposes, when the hydraulic project or  
30 other work is associated with stream bank stabilization to protect  
31 farm and agricultural land as defined in RCW 84.34.020, the burden is  
32 on the department to show that changed conditions warrant the  
33 modification in order to protect fish life.

34 (11) A permittee may request modification of a permit due to  
35 changed conditions. The request must be processed within forty-five  
36 calendar days of receipt of the written request and payment of  
37 applicable fees under RCW 77.55.321. A decision by the department is  
38 appealable as provided in subsection (8) of this section. For a  
39 hydraulic project that diverts water for agricultural irrigation or  
40 stock watering purposes, when the hydraulic project or other work is

1 associated with stream bank stabilization to protect farm and  
2 agricultural land as defined in RCW 84.34.020, the burden is on the  
3 permittee to show that changed conditions warrant the requested  
4 modification and that such a modification will not impair fish life.

5 (12)(a) The department, the county legislative authority, or the  
6 governor may declare and continue an emergency. If the county  
7 legislative authority declares an emergency under this subsection, it  
8 shall immediately notify the department. A declared state of  
9 emergency by the governor under RCW 43.06.010 shall constitute a  
10 declaration under this subsection.

11 (b) The department, through its authorized representatives, shall  
12 issue immediately, upon request, verbal approval for a stream  
13 crossing, or work to remove any obstructions, repair existing  
14 structures, restore stream banks, protect fish life, or protect  
15 property threatened by the stream or a change in the streamflow  
16 without the necessity of obtaining a written permit prior to  
17 commencing work. Conditions of the emergency verbal permit must be  
18 reduced to writing within thirty days and complied with as provided  
19 for in this chapter.

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

23 (d) The department may not charge a person requesting an  
24 emergency permit any of the fees authorized by RCW 77.55.321 until  
25 after the emergency permit is issued and reduced to writing.

26 (13) All state and local agencies with authority under this  
27 chapter to issue permits or other authorizations in connection with  
28 emergency water withdrawals and facilities authorized under RCW  
29 43.83B.410 shall expedite the processing of such permits or  
30 authorizations in keeping with the emergency nature of such requests  
31 and shall provide a decision to the applicant within fifteen calendar  
32 days of the date of application.

33 (14) The department or the county legislative authority may  
34 determine an imminent danger exists. The county legislative authority  
35 shall notify the department, in writing, if it determines that an  
36 imminent danger exists. In cases of imminent danger, the department  
37 shall issue an expedited written permit, upon request, for work to  
38 remove any obstructions, repair existing structures, restore banks,  
39 protect fish resources, or protect property. Expedited permit  
40 requests require a complete written application as provided in



1 subsection (2) of this section and must be issued within fifteen  
2 calendar days of the receipt of a complete written application.  
3 Approval of an expedited permit is valid for up to sixty days from  
4 the date of issuance. The department may not require the provisions  
5 of the state environmental policy act, chapter 43.21C RCW, to be met  
6 as a condition of issuing a permit under this subsection.

7 (15)(a) For any property, except for property located on a marine  
8 shoreline, that has experienced at least two consecutive years of  
9 flooding or erosion that has damaged or has threatened to damage a  
10 major structure, water supply system, septic system, or access to any  
11 road or highway, the county legislative authority may determine that  
12 a chronic danger exists. The county legislative authority shall  
13 notify the department, in writing, when it determines that a chronic  
14 danger exists. In cases of chronic danger, the department shall issue  
15 a permit, upon request, for work necessary to abate the chronic  
16 danger by removing any obstructions, repairing existing structures,  
17 restoring banks, restoring road or highway access, protecting fish  
18 resources, or protecting property. Permit requests must be made and  
19 processed in accordance with subsections (2) and (7) of this section.

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

26 (16) The department may issue an expedited written permit in  
27 those instances where normal permit processing would result in  
28 significant hardship for the applicant or unacceptable damage to the  
29 environment. Expedited permit requests require a complete written  
30 application as provided in subsection (2) of this section and must be  
31 issued within fifteen calendar days of the receipt of a complete  
32 written application. Approval of an expedited permit is valid for up  
33 to sixty days from the date of issuance. The department may not  
34 require the provisions of the state environmental policy act, chapter  
35 43.21C RCW, to be met as a condition of issuing a permit under this  
36 subsection."

37 Correct the title.

EFFECT: Removes a reference to ordinary high water mark within definition of motorized or gravity siphon aquatic mining.

Makes technical change in reference to federal Clean Water Act.

Makes technical change in definition of motorized or gravity siphon aquatic mining.

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