

RCW 77.55.480 Habitat recovery pilot program. (Expires June 30, 2025.) (1) The habitat recovery pilot program is created.

(2) (a) In order to be included in this statewide pilot program and qualify for the permit review and approval process created in this section, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on, and must be included on a list of projects reviewed, approved, or funded by one of the following restoration programs:

- (i) The Bonneville power administration restoration program;
- (ii) The Brian Abbott fish barrier removal board;
- (iii) The estuary and salmon restoration program;
- (iv) The floodplains by design program;
- (v) The office of Chehalis basin aquatic species restoration program;
- (vi) The office of Columbia river habitat recovery projects;
- (vii) The Puget Sound acquisition and restoration fund;
- (viii) The Puget Sound national estuary program;
- (ix) The salmon recovery funding board;
- (x) The Washington coast restoration and resiliency initiative;
- (xi) The Yakima tributary access and habitat program;
- (xii) Fish recovery projects sponsored by a federally recognized tribe; and
- (xiii) Fish acclimation facility projects sponsored or operated by a federally recognized tribe.

(b) A project application reviewed under this section must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed under the process created in this section if the local government within whose geographical jurisdiction the project will be located determines that the project does not meet applicable flood risk reduction requirements, or otherwise determines that the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to the department.

(c) (i) With regard to cultural resources, a project applicant or funding agency must review the project with the department of archaeology and historic preservation and complete any required site surveys before the project applicant files an application under this section. A project applicant must document consistency in the application with applicable cultural resource protection requirements.

(ii) A project applicant must provide a copy of its application to the department of archaeology and historic preservation, and to affected federally recognized tribes, no fewer than 60 days before the application may be filed with the department.

(iii) The department may not review a project under the expedited process created in this section if a cultural resource site is identified at the project site or if an affected federally recognized tribe withholds its consent that the project should be expedited according to the process set forth in this section. Such consent may be withheld upon a determination that the project may adversely impact cultural resources. Notice of such a determination must be provided to the department by the affected federally recognized tribe in a timely manner.

(iv) In the event of an inadvertent discovery of cultural resources or human remains, the project applicant shall immediately notify the department, the department of archaeology and historic preservation, and affected federally recognized tribes. In the event of an inadvertent discovery of cultural resources or human remains,

existing requirements applicable to inadvertent discoveries of cultural resources and human remains, including those set forth in chapters 27.53, 27.44, and 68.60 RCW, apply.

(d) For those projects that require a lease or other land use authorization from the department of natural resources, the project applicant must include in its application for a permit under this section a signed joint aquatic resources permit application, attachment E. The project applicant must provide a copy of a completed application to the department of natural resources no fewer than 30 days before the application may be filed with the department. The department of natural resources must make a final decision on applications for projects under this section within 30 days of the issuance of a permit under this section.

(3) Fish recovery and fish habitat restoration projects meeting the criteria of subsection (2) of this section are expected to result in beneficial impacts to the aquatic environment. Projects approved for inclusion in this pilot program and that are reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2) and are not required to obtain local or state permits or approvals other than the permit issued under this section, except permits minimally necessary as a requirement of participation in a federal program.

(4) (a) A permit under this chapter is required for projects that meet the criteria of subsection (2) of this section and must be reviewed and, if appropriate, approved under this section. An applicant shall use the department's online permitting system to apply for approval under this section and shall at the same time provide a copy of the application to the local government within whose geographical jurisdiction the project will be located, to the members of the multiagency permitting team created in this section, and to potentially affected federally recognized tribes.

(b) When the department concludes that a complete application has been submitted under this section and copies of the application have been provided as required in this section, the department shall provide notice to the local government within whose geographical jurisdiction the project will be located, to potentially affected federally recognized tribes, and to the members of the multiagency permitting team of receipt of a complete permit application.

(i) Unless the multiagency permitting team process described in this section is invoked, the department shall evaluate and make a decision on the application not sooner than 25 days, and not later than 45 days, after receipt of a complete permit application.

(ii) Within 25 days of receiving a copy of the complete project application, the local government within whose geographical jurisdiction the project would be located, any member of the multiagency permitting team, or a potentially affected federally recognized tribe may request that the department place the application on hold and immediately convene a meeting with the requesting entity and the multiagency permitting team to review and evaluate the project.

(iii) All parties involved in this review process shall work in good faith to expedite permitting and any party with concerns shall provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting shall provide a written basis for its objections to the department or the multiagency permitting team.

(iv) The multiagency review process may not exceed 45 days from the request for review.

(c) The multiagency permitting team consists of representatives of the local government in whose geographical jurisdiction the project would be located, the department, the department of ecology, the recreation and conservation office, the governor's salmon recovery office, the department of natural resources, and, when the project in question is located in the Puget Sound basin, the Puget Sound partnership. For projects located in the Puget Sound basin, meetings of the multiagency permitting team must be facilitated by the Puget Sound partnership. All other meetings of the multiagency permitting team must be facilitated by the recreation and conservation office.

(d) The department or, where applicable, the multiagency permitting team, shall exclude any project from the review and approval process created by this section if it concludes that the project may adversely impact human health, public safety, or the environment, or that the project's scope or complexity renders it inappropriate for expedited review.

(e) If the department or the multiagency permitting team determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant, the appropriate local government, and potentially affected federally recognized tribes of its determination. The applicant may reapply for approval of the project under generally applicable review and approval processes. If the multiagency permitting team determines that the review and approval process created by this section is appropriate for the proposed project, the hold on the application must be lifted and the department shall make a decision within the time that remains of the original 45-day decision deadline.

(f) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may appeal the decision as provided in RCW 77.55.021(8).

(g) The department shall, in a timely manner, provide a copy of any application seeking review under this section and shall thereafter coordinate with affected federally recognized tribes as it implements this section.

(5) No local or state government may require permits or charge fees other than the permit issued under this section, except permits minimally necessary as a requirement of participation in a federal program, for fish recovery pilot projects that meet the criteria of subsection (2) of this section and that are reviewed and approved according to the provisions of this section.

(6) No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery stimulus pilot project permitted by the department under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct.

(7) This section expires June 30, 2025. [2021 c 75 § 2.]

Findings—Intent—2021 c 75: "The legislature finds that, particularly in times of economic hardship, it is in the interest of the citizens and natural resources of the state to promote and implement habitat restoration projects that have been determined to contribute to the recovery of watersheds throughout the state. The legislature further finds that habitat recovery projects that

contribute to the recovery of orca, salmon, steelhead, bull trout, rock fish, and other fish species and habitat they rely on are particularly valuable. It is the legislature's intent that these projects advance to construction as quickly and efficiently as possible, thereby creating jobs and further bolstering the natural resources and natural resource economy of Washington." [2021 c 75 § 1.]