

Chapter 77.55 RCW
CONSTRUCTION PROJECTS IN STATE WATERS

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RCW 77.55.011 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Motorized or gravity siphon aquatic mining" means mining using any form of motorized equipment including, but not limited to, a motorized suction dredge or a gravity siphon suction dredge, for the

purpose of extracting gold, silver, or other precious metals, that involves a discharge to waters of the state, but does not include metals mining and milling operations as defined in RCW 78.56.020.

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

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

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

(19) "Permit" means a hydraulic project approval permit issued under this chapter.

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

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

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

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

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

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

(26) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state. [2020 c 10 s 3. Prior: 2012 1st sp.s. c 1 s 101; prior: 2010 c 210 s 26; 2009 c 549 s 1028; 2005 c 146 s 101.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—2020 c 10: See note following RCW 90.48.615.

Finding—Intent—2012 1st sp.s. c 1: "The legislature finds that significant opportunities exist to modify programs that provide for

management and protection of the state's natural resources, including the state's forests, fish, and wildlife, in order to streamline regulatory processes and achieve program efficiencies while at the same time increasing the sustainability of program funding and maintaining current levels of natural resource protection. The legislature intends to update provisions relating to natural resource management and regulatory programs including the hydraulic project approval program, forest practices act, and state environmental policy act, in order to achieve these opportunities." [2012 1st sp.s. c 1 s 1.]

Limitation—2012 1st sp.s. c 1: "Nothing in this act affects any rules, processes, or procedures of the department of fish and wildlife and the department of natural resources existing on July 10, 2012, that provide for regulatory integration of hydraulic projects and forest practices for projects in nonfish-bearing waters." [2012 1st sp.s. c 1 s 216.]

Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: "Nothing in this act affects the jurisdiction or other authority of a federally recognized Indian tribe within the boundary of its reservation or on other tribally owned lands." [2012 1st sp.s. c 1 s 218.]

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: "Part headings used in this act are not any part of the law." [2005 c 146 s 1007.]

RCW 77.55.021 Permit. (1) Except as provided in RCW 77.55.031, 77.55.051, 77.55.041, and 77.55.361, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

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

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water;

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

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

(e) In the event that any person or government agency desires to undertake mineral prospecting or mining using motorized or gravity siphon equipment or desires to discharge effluent from such an activity to waters of the state, the person or government agency must also provide proof of compliance with the requirements of the federal clean water act issued by the department of ecology.

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

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

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

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

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

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

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

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

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

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

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

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

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

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

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

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

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

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

(11) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request and payment of applicable fees under *RCW 77.55.321. A decision by the department is appealable as provided in subsection (8) of this section. For a hydraulic project that diverts water for agricultural irrigation or stock watering purposes, when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

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

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

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

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

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

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

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

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

(16) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection. [2020 c 10 s 4; 2012 1st sp.s. c 1 s 102; 2010 c 210 s 27; 2008 c 272 s 1; 2005 c 146 s 201.]

***Reviser's note:** RCW 77.55.321 expired June 30, 2017.

Findings—2020 c 10: See note following RCW 90.48.615.

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.031 Driving across established ford. The act of driving across an established ford is exempt from a permit. Driving across streams or on wetted streambeds at areas other than established fords requires a permit. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires a permit. [2005 c 146 s 301.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.041 Derelict fishing, crab, and other shellfish gear—Removal. (1) The removal of derelict fishing gear does not require a permit under this chapter if the gear is removed according to the guidelines described in RCW 77.12.865.

(2) The removal of crab and other shellfish gear does not require a permit under this chapter if the gear is removed under a permit issued pursuant to RCW 77.70.500. [2010 c 193 s 10; 2005 c 146 s 302; 2002 c 20 s 4. Formerly RCW 77.55.330.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Purpose—2002 c 20: See note following RCW 77.12.865.

RCW 77.55.051 Spartina/purple loosestrife—Removal or control. (1) An activity conducted solely for the removal or control of spartina does not require a permit.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with handheld tools, handheld equipment, or equipment carried by a person does not require a permit. [2005 c 146 s 303.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.061 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this

chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or to the department of ecology when it conducts a remedial action under chapter 70A.305 RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70A.305 RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70A.305.090. [2020 c 20 s 1465; 1994 c 257 s 18. Formerly RCW 77.55.030, 75.20.025.]

Severability—1994 c 257: See note following RCW 36.70A.270.

RCW 77.55.081 Removal or control of aquatic noxious weeds—Rules—Pamphlet. (1) By June 30, 1997, the department shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or hydraulic projects for controlling purple loosestrife not covered by RCW 77.55.051(2). Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

(2) From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by RCW 77.55.051 (1) and (2) and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

(3) Nothing in this section shall prohibit the department from requiring a permit for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds. [2005 c 146 s 401; 1995 c 255 s 4. Formerly RCW 77.55.150, 75.20.108.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—1995 c 255: See RCW 17.26.901.

RCW 77.55.091 Small scale prospecting and mining—Rules. (1) Small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.

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

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods that require a permit under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter. [2005 c 146 s 402; 1997 c 415 s 2. Formerly RCW 77.55.270, 75.20.330.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Findings—1997 c 415: "The legislature finds that small scale prospecting and mining: (1) Is an important part of the heritage of the state; (2) provides economic benefits to the state; and (3) can be conducted in a manner that is beneficial to fish habitat and fish propagation. Now, therefore, the legislature declares that small scale prospecting and mining shall be regulated in the least burdensome manner that is consistent with the state's fish management objectives and the federal endangered species act." [1997 c 415 s 1.]

RCW 77.55.101 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 s 25. Formerly RCW 77.55.020, 75.20.015.]

Purpose—1997 c 381: See RCW 43.21K.005.

RCW 77.55.111 Habitat incentives agreement. When a private landowner is applying for a permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of natural resources as provided in RCW 77.55.121, the department shall comply with the terms of that agreement when evaluating the request for a permit. [2005 c 146 s 403; 2001 c 253 s 54; 1997 c 425 s 4. Formerly RCW 77.55.280, 75.20.340.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—1997 c 425: See note following RCW 77.55.121.

RCW 77.55.121 Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors. (1) Beginning in January 1998, the department and the department of natural resources shall implement a habitat incentives program based on the recommendations of federally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and

other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for a permit or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

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

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

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department of natural resources evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The department of natural resources' identification of these evaluation factors shall be in concurrence with the department and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

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

(6) If the department and the department of natural resources receive multiple requests for agreements with private landowners under the habitat incentives program, the departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources. [2005 c 146 s 404; 2000 c 107 s 229; 1997 c 425 s 3. Formerly RCW 77.55.300, 77.12.830.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—1997 c 425: "In an effort to increase the amount of habitat available for fish and wildlife, the legislature finds that it is desirable for the department of fish and wildlife, the department of natural resources, and other interested parties to work closely with private landowners to achieve habitat enhancements. In some instances, private landowners avoid enhancing habitat because of a concern that the presence of fish or wildlife may make future land management more difficult. It is the intent of this act to provide a mechanism that facilitates habitat development while avoiding an adverse impact on the landowner at a later date. The habitat incentives program is not intended to supersede any federal laws." [1997 c 425 s 1.]

RCW 77.55.131 Dike vegetation management guidelines—Memorandum of agreement. The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 77.55.021 are met. [2005 c 146 s 405; 2000 c 107 s 18; 1993 sp.s. c 2 s 34; 1991 c 322 s 19. Formerly RCW 77.55.130, 75.20.1041.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

RCW 77.55.151 Permit issued to a marina or marine terminal for regular maintenance activities. (1) Upon application under RCW 77.55.021, the department shall issue a renewable, five-year permit to a marina or marine terminal for its regular maintenance activities identified in the application.

(2) For the purposes of this section, regular maintenance activities may include, but are not limited to:

(a) Maintenance or repair of a boat ramp, launch, or float within the existing footprint;

(b) Maintenance or repair of an existing overwater structure within the existing footprint;

(c) Maintenance or repair of boat lifts or railway launches;

(d) Maintenance or repair of pilings, including the replacement of bumper pilings;

(e) Dredging of less than fifty cubic yards;

(f) Maintenance or repair of shoreline armoring or bank protection;

(g) Maintenance or repair of wetland, riparian, or estuarine habitat; and

(h) Maintenance or repair of an existing outfall.

(3) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin.

(4) A permit under this section is subject to the application fee provided in *RCW 77.55.321. [2012 1st sp.s. c 1 s 105; 2005 c 146 s 502; 2002 c 368 s 7; 1996 c 192 s 2. Formerly RCW 77.55.220, 75.20.180.]

***Reviser's note:** RCW 77.55.321 expired June 30, 2017.

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—2002 c 368: See note following RCW 77.55.161.

Finding—Intent—1996 c 192: "The legislature finds that initial construction of a marina and some maintenance activities change the natural flow or bed of the salt or freshwater body in which the marina is constructed. Because of this disturbance, it is appropriate that plans for initial marina construction as well as some maintenance activities undergo the hydraulic project review and approval process established in chapter 75.20 RCW.

It is the intent of the legislature that after a marina has received a hydraulic project approval and been constructed, a renewable, five-year hydraulic project approval be issued, upon request, for regular maintenance activities within the marina." [1996 c 192 s 1.]

RCW 77.55.161 Stormwater discharges. (1) Notwithstanding any other provision of this chapter, all permits related to stormwater discharges must follow the provisions established in this section.

(2) Permits issued in locations covered by a national pollution discharge elimination system municipal stormwater general permit may not be conditioned or denied for water quality or quantity impacts arising from stormwater discharges. A permit is required only for the actual construction of any stormwater outfall or associated structures pursuant to this chapter.

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

(b) Prior to the issuance of a permit issued under this subsection (3), the department must:

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

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

(iii) Allow the applicant an opportunity to use local ordinances or other mechanisms to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for permit issuance under RCW 77.55.021 is suspended during the time period the department is meeting the requirements of this subsection (3)(b).

(c) After following the procedures set forth in (b) of this subsection, the department may issue a permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design above the mean higher high water mark of marine waters, or the ordinary high water mark of fresh waters of the state. Nothing in this section alters any authority the department may have to regulate other types of projects under this chapter. [2005 c 146 s 503; 2002 c 368 s 4. Formerly RCW 77.55.340.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—2002 c 368: "The legislature finds that hydraulic project approvals should ensure that fish life is properly protected, but conditions attached to the approval of these permits must reasonably relate to the potential harm that the projects may produce. The legislature is particularly concerned over the current overlap of agency jurisdiction regarding stormwater projects, and believes that there is an immediate need to address this issue to ensure that project applicants are not given conflicting directions over project design. Requiring a major redesign of a project results in major delays, produces exponentially rising costs for both public and private project applicants, and frequently produces only marginal benefits for fish.

The legislature recognizes that the department of ecology is primarily responsible for the approval of stormwater projects. The legislature believes that once the department of ecology approves a proposed stormwater project, it is inappropriate for the department of fish and wildlife to require a major redesign of that project in order for the applicant to obtain hydraulic project approval. The legislature further believes that it is more appropriate for the department of fish and wildlife to defer the design elements of a stormwater project to the department of ecology and focus its own efforts on determining reasonable mitigation or conditions for the project based upon the project's potential harm to fish. It is the intent of the legislature to restore some balance over conditions attached to hydraulic permits, and to minimize overlapping state regulatory authority regarding stormwater projects in order to reduce waste in both time and money while still providing ample protection for fish life." [2002 c 368 s 1.]

RCW 77.55.171 Watershed restoration projects—Permit processing. A permit required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [2005 c 146 s 504; 1995 c 378 s 14. Formerly RCW 77.55.210, 75.20.170.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.181 Fish habitat enhancement project—Permit review and approval process—Fees—Limitation of liability. (1)(a) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under this section and must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made or caused fish passage barriers, including:

(A) Culvert repair and replacement; and

(B) Fish passage barrier removal projects that comply with the forest practices rules, as the term "forest practices rules" is defined in RCW 76.09.020;

(ii) Restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water;

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; or

(iv) Restoration of native kelp and eelgrass beds and restoring native oysters.

(b) The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety.

(c) A fish habitat enhancement project must be approved in one of the following ways in order to receive the permit review and approval process created in this section:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) By conservation districts as conservation district-sponsored fish habitat enhancement or restoration projects;

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

(vii) By federally recognized tribes as tribally sponsored fish habitat enhancement projects or restoration projects;

(viii) Through the department of transportation's environmental retrofit program as a stand-alone fish passage barrier correction project, or the fish passage barrier correction portion of a larger transportation project;

(ix) Through a local, state, or federally approved fish barrier removal grant program designed to assist local governments in implementing stand-alone fish passage barrier corrections;

(x) By a city or county for a stand-alone fish passage barrier correction project funded by the city or county;

(xi) Through the approval process established for forest practices hydraulic projects in chapter 76.09 RCW; or

(xii) Through other formal review and approval processes established by the legislature.

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

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. The department of transportation shall use the department's online permit application system or a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Applicants for a forest practices hydraulic project that are not otherwise required to submit a joint aquatic resource permit application must submit a copy of their forest practices application to the appropriate local government on the same day that they submit the forest practices application to the department of natural resources.

(b) Local governments shall accept the application identified in this section as notice of the proposed project. A local government shall be provided with a 15-day comment period during which it may transmit comments regarding environmental impacts to the department or, for forest practices hydraulic projects, to the department of natural resources.

(c)(i) Except for forest practices hydraulic projects, the department shall, within 45 days, either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. Permitting decisions over forest practices hydraulic approvals must be made consistent with chapter 76.09 RCW.

(ii) For department of transportation fish passage barrier correction projects, the department of fish and wildlife shall, within 30 days, either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project.

(d) If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(e) Any person aggrieved by the approval, denial, conditioning, or modification of a permit other than a forest practices hydraulic project under this section may appeal the decision as provided in RCW

77.55.021(8). Appeals of a forest practices hydraulic project may be made as provided in chapter 76.09 RCW.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section, except that, pursuant to chapter 86.16 RCW, a local government may impose such requirements, or charge such fees, or both, only as may be necessary in order for the local government to administer the national flood insurance program regulation requirements.

(5) 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 enhancement project permitted by the department or the department of natural resources under the criteria of this section except upon proof of gross negligence or willful or wanton misconduct. [2021 c 289 s 1; 2020 c 166 s 1; 2019 c 150 s 1; 2017 c 241 s 1; 2014 c 120 s 1; 2010 c 210 s 29; 2005 c 146 s 505; 2001 c 253 s 55; 1998 c 249 s 3. Formerly RCW 77.55.290, 75.20.350.]

Intent—Effective dates—Application—Pending cases and rules—
2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Findings—Purpose—1998 c 249: "The legislature finds that fish habitat enhancement projects play a key role in the state's salmon and steelhead recovery efforts. The legislature finds that there are over two thousand barriers to fish passage at road crossings throughout the state, blocking fish access to as much as three thousand miles of freshwater spawning and rearing habitat. The legislature further finds that removal of these barriers and completion of other fish habitat enhancement projects should be done in a cost-effective manner, which includes providing technical assistance and training to people who will undertake projects such as removal of barriers to salmon passage and minimizing the expense and delays of various permitting processes. The purpose of this act is to take immediate action to facilitate the review and approval of fish habitat enhancement projects, to encourage efforts that will continue to improve the process in the future, to address known fish passage barriers immediately, and to develop over time a comprehensive system to inventory and prioritize barriers on a statewide basis." [1998 c 249 s 1.]

Joint aquatic resource permit application form—Modification—1998 c 249: "The department of ecology permit assistant [assistance] center shall immediately modify the joint aquatic resource permit application form to incorporate the permit process established in section 3 of this act." [1998 c 249 s 2.]

Finding—Report—1998 c 249: "The legislature finds that, while the process created in this act can improve the speed with which fish habitat enhancement projects are put into place, additional efforts can improve the review and approval process for the future. The legislature directs the department of fish and wildlife, the conservation commission, local governments, fish habitat enhancement project applicants, and other interested parties to work together to

continue to improve the permitting review and approval process. Specific efforts shall include the following:

- (1) Development of common acceptable design standards, best management practices, and standardized hydraulic project approval conditions for each type of fish habitat enhancement project;
- (2) An evaluation of the potential for using technical evaluation teams in evaluating specific project proposals or stream reaches;
- (3) An evaluation of techniques appropriate for restoration and enhancement of pasture and crop land adjacent to riparian areas;
- (4) A review of local government shoreline master plans to identify and correct instances where the local plan does not acknowledge potentially beneficial instream work;
- (5) An evaluation of the potential for local governments to incorporate fish habitat enhancement projects into their comprehensive planning process; and
- (6) Continued work with the federal government agencies on federal permitting for fish habitat enhancement projects.

The department of fish and wildlife shall coordinate this joint effort and shall report back to the legislature on the group's progress by December 1, 1998." [1998 c 249 s 15.]

Effective date—1998 c 249: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]." [1998 c 249 s 18.]

RCW 77.55.191 Columbia river anadromous fish sanctuary—

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

(2) Within the sanctuary area:

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

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

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

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [2005 c 146 s 506; 1998 c 190 s 89; 1995 1st sp.s. c 2 s 27 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 s 36; 1988 c 36 s 36; 1985 c 307 s 5; 1983 1st ex.s. c 46 s 76; 1961 c 4 s 1 (Initiative Measure No. 25, approved November 8, 1960). Formerly RCW 77.55.160, 75.20.110.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 s 3 (Initiative Measure No. 25, approved November 8, 1960).]

RCW 77.55.201 Landscape management plan. A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2) shall serve as a permit for the life of the plan if fish are selected as one of the public resources for coverage under such a plan. [2005 c 146 s 507.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.211 Informational brochure. The department, the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes. [2005 c 146 s 406; 1993 sp.s. c 2 s 28; 1991 c 322 s 21. Formerly RCW 77.55.010, 75.20.005.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

RCW 77.55.221 Flood damage repair and reduction activities—Five-year maintenance permit agreements. The department shall, at the request of a county, develop five-year maintenance permit agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sandbars and debris, channel maintenance, and other flood damage

repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects. [2005 c 146 s 508.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.231 Conditions imposed upon a permit—Reasonably related to project—Least impactful modifications—Minor modifications to plans/work timing. (1) (a) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) In the event that any person desires to replace residential marine shoreline stabilization or armoring, a person must use the least impacting technically feasible bank protection alternative for the protection of fish life. Unless the department provides an exemption depending on the scale and nature of the project, a person that desires to replace residential marine shoreline stabilization or armoring must conduct a site assessment to consider the least impactful alternatives. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an analysis of alternatives. The common alternatives identified in (b) (i) through (vii) of this subsection are in order from most preferred to least preferred:

- (i) Remove the structure and restore the beach;
- (ii) Remove the structure and install native vegetation;
- (iii) Remove the structure and control upland drainage;
- (iv) Remove the structure and replace it with a soft structure constructed of natural materials, including bioengineering;
- (v) Remove the hard structure and construct upland retaining walls;
- (vi) Remove the hard structure and replace it with a hard structure located landward of the existing structure, preferably at or above the ordinary high water line; or
- (vii) Remove the hard structure and replace it with hard shoreline structure in the same footprint as the existing structure.

(c) For the purposes of this subsection, "feasible" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

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

(3) The permit must contain provisions that allow for minor modifications to the required work timing without requiring the reissuance of the permit. "Minor modifications to the required work timing" means a minor deviation from the timing window set forth in the permit when there are no spawning or incubating fish present within the vicinity of the project. [2021 c 279 s 2; 2012 1st sp.s. c 1 s 106; 2005 c 146 s 601; 2002 c 368 s 5. Formerly RCW 77.55.350.]

Findings—2021 c 279: "The legislature finds that the state of Washington will continue to be negatively impacted by the effects of climate change, including reduced winter snowpack, drought, increased frequencies of forest fires, and acidifying oceans that disrupt marine ecosystem viability. In the nearshore environment, climate change contributes to the rise in average sea-surface temperatures and rising sea levels. Hardened shoreline structures are not always well-suited for their intended purpose and may have unintended consequences in the nearshore environment. Soft shorelines or natural shorelines may protect and restore shoreline ecosystems through the use of natural plants and materials, and the legislature finds that landowners must consider alternatives to hardening shorelines to restore ecosystem function and recover threatened and endangered species to help address the impacts of climate change in the nearshore environment." [2021 c 279 s 1.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Finding—Intent—2002 c 368: See note following RCW 77.55.161.

RCW 77.55.241 Off-site mitigation. (1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project proponent may appeal the decision as provided in *RCW 77.55.021(4). [2010 c 210 s 30; 2005 c 146 s 602; 1996 c 276 s 1. Formerly RCW 77.55.230, 75.20.190.]

***Reviser's note:** RCW 77.55.021 was amended by 2012 1st sp.s. c 1 s 102, changing subsection (4) to subsection (8).

Intent—Effective dates—Application—Pending cases and rules—2010 c 210: See notes following RCW 43.21B.001.

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.251 Mitigation plan review. When reviewing a mitigation plan under RCW 77.55.021, the department shall, at the request of the project proponent, follow the guidance contained in RCW

90.74.005 through 90.74.030. [2005 c 146 s 603; 2000 c 107 s 15; 1997 c 424 s 6. Formerly RCW 77.55.090, 75.20.098.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.261 Placement of woody debris as condition of permit. Whenever the placement of woody debris is required as a condition of a permit issued under RCW 77.55.021, the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant. [2005 c 146 s 604; 2000 c 107 s 17; 1993 sp.s. c 2 s 33; 1991 c 322 s 18. Formerly RCW 77.55.120, 75.20.104.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

Effective date—1993 sp.s. c 2 ss 1-6, 8-59, and 61-79: See RCW 43.300.900.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

RCW 77.55.271 Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required. The department shall not require mitigation for sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions and values, if the actions are taken under a state or federal cleanup action.

This chapter shall not be construed to require habitat mitigation for navigation and maintenance dredging of existing channels and berthing areas. [1997 c 424 s 5. Formerly RCW 77.55.260, 75.20.325.]

RCW 77.55.281 Fishways on certain agricultural drainage facilities. (1) The department may not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(2) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing permit under this chapter may not be enforced. [2005 c 146 s 605.]

Part headings not law—2005 c 146: See note following RCW 77.55.011.

RCW 77.55.331 Hydraulic project approval account. (1) The hydraulic project approval account is created in the state treasury. All receipts from application fees for hydraulic project approval applications collected under *RCW 77.55.321 must be deposited into the account.

(2) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the hydraulic project approval account may be spent only after appropriation.

(3) Expenditures from the hydraulic project approval account may be used only to fund department activities relating to implementing and operating the hydraulic project approval program. [2012 1st sp.s. c 1 s 104.]

***Reviser's note:** RCW 77.55.321 expired June 30, 2017.

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

RCW 77.55.341 Department to prepare and distribute information to the public. The department shall prepare and distribute technical and educational information to the general public to assist the public in complying with the requirements of this chapter, including the changes resulting from chapter 1, Laws of 2012 1st sp. sess. [2012 1st sp.s. c 1 s 107.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

RCW 77.55.351 Department to develop system to provide access to hydraulic project approval applications. The department shall develop a system to provide local governments, affected tribes, and other interested parties with access to hydraulic project approval applications. [2012 1st sp.s. c 1 s 108.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

RCW 77.55.361 Limitations of chapter to a forest practices hydraulic project—Adoption of rules for concurrent review process—Department's duties regarding chapter 76.09 RCW. (1) The requirements of this chapter do not apply to any forest practices hydraulic project, or to any activities that are associated with such a project, upon incorporation of fish protection standards adopted under this chapter into the forest practices rules and approval of technical guidance as required under RCW 76.09.040, at which time these projects are regulated under chapter 76.09 RCW.

(2) The department must continue to conduct regulatory and enforcement activities under this chapter for forest practices hydraulic projects until the forest practices board incorporates fish protection standards adopted under this chapter into the forest practices rules and approves technical guidance as required under RCW 76.09.040.

(3) By December 31, 2013, the department shall adopt rules establishing the procedures for the concurrence review process consistent with RCW 76.09.490. The concurrence review process must allow the department up to thirty days to review forest practices hydraulic projects meeting the criteria under RCW 76.09.490(2) (a) and (b) for consistency with fish protection standards.

(4) The department shall notify the department of natural resources prior to beginning a rule-making process that may affect activities regulated under chapter 76.09 RCW.

(5) The department shall act consistent with appendix M of the forest and fish report, as the term "forests and fish report" is defined in RCW 76.09.020, when modifying fish protection rules that may affect activities regulated under chapter 76.09 RCW.

(6) The department may review and provide comments on any forest practices application. The department shall review, and either verify that the review has occurred or comment on, forest practices applications that include a forest practices hydraulic project involving fish bearing waters or shorelines of the state, as that term is defined in RCW 90.58.030. Prior to commenting and whenever reasonably practicable, the department shall communicate with the applicant regarding the substance of the project.

(7) The department shall participate in effectiveness monitoring for forest practices hydraulic projects through its role in the review processes provided under WAC 222-08-160 as it existed on July 10, 2012. [2012 1st sp.s. c 1 s 201.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

RCW 77.55.371 Memorandum of agreement to implement integration of hydraulic project approvals into forest practices applications—Interagency contract. (1) The department and the department of natural resources shall enter into and maintain a memorandum of agreement between the two agencies that describes how to implement integration of hydraulic project approvals into forest practices applications consistent with chapter 1, Laws of 2012 1st sp. sess.

(2) The initial memorandum of agreement required under subsection (1) of this section between the two departments must be executed by December 31, 2012. The memorandum of agreement may be amended as agreed to by the two departments.

(3) The department and the department of natural resources shall enter into and maintain an interagency contract to ensure implementation of chapter 1, Laws of 2012 1st sp. sess. and the memorandum of agreement between the two agencies required under subsection (1) of this section. The contract must include funding

provisions for the department's review of forest practices hydraulic projects. [2012 1st sp.s. c 1 s 204.]

Finding—Intent—Limitation—Jurisdiction/authority of Indian tribe under act—2012 1st sp.s. c 1: See notes following RCW 77.55.011.

Authority of department of fish and wildlife under act—2012 1st sp.s. c 1: See note following RCW 76.09.040.

RCW 77.55.400 Determination as to whether construction is a hydraulic project—Preapplication determination—Review and comment period—Written determination. (1) A person proposing construction or other work landward of the ordinary high water line that will use, divert, obstruct, or change the natural flow or bed of state waters shall submit a permit application to the department. However, if a person is unsure about whether the work requires a permit, they may request a preapplication determination from the department. The department must evaluate the proposed work and determine if the work is a hydraulic project and, if so, whether a permit from the department is required to ensure adequate protection of fish life.

(2) The preapplication determination request must be submitted through the department's online permitting system and must contain:

- (a) A description of the proposed project;
- (b) A map showing the location of the project site; and
- (c) Preliminary plans and specifications of the proposed construction or work, if available.

(3) The department shall provide tribes and local governments a seven calendar day review and comment period. The department shall consider all applicable written comments received before issuing a determination.

(4) The department shall issue a written determination, including the rationale for the decision, within twenty-one calendar days of receiving the request.

(5) Determinations made according to the provisions of this section are not subject to the requirements of chapter 43.21C RCW. [2019 c 290 s 4.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.410 Violation of chapter. (1) When the department determines that a violation of this chapter, or of any of the rules that implement this chapter, has occurred or is about to occur, it shall first attempt to achieve voluntary compliance. The department shall offer information and technical assistance to the project proponent, identifying one or more means to accomplish the project proponent's purposes within the framework of the law. The department shall provide a reasonable timeline to achieve voluntary compliance that takes into consideration factors specific to the violation, such as the complexity of the hydraulic project, the actual or potential harm to fish life or fish habitat, and the environmental conditions at the time.

(2) If a person violates this chapter, or any of the rules that implement this chapter, or deviates from a permit, the department may

issue a notice of correction in accordance with chapter 43.05 RCW, a notice of violation in accordance with chapter 43.05 RCW, a stop work order, a notice to comply, or a notice of civil penalty as authorized by law and subject to chapter 43.05 RCW and RCW 34.05.110.

(3) For purposes of this section, the term "project proponent" means a person who has applied for a hydraulic project approval, a person identified as an authorized agent on an application for a hydraulic project approval, a person who has obtained a hydraulic project approval, or a person who undertakes a hydraulic project without a hydraulic project approval.

(4) This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project permit from the department of natural resources pursuant to chapter 76.09 RCW. [2019 c 290 s 5.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.420 Stop work order—Notice—Appeal. (1) The department may serve upon a project proponent a stop work order, which is a final order of the department, if:

(a) There is any severe violation of this chapter or of the rules implementing this chapter or there is a deviation from the hydraulic project approval that may cause significant harm to fish life; and

(b) Immediate action is necessary to prevent continuation of or to avoid more than minor harm to fish life or fish habitat.

(2) (a) The stop work order must set forth:

(i) A description of the condition that is not in compliance and the text of the specific section or subsection of this chapter or the rules that implement this chapter;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the department requires compliance;

(iv) Notice of the means to contact any technical assistance services provided by the department or others;

(v) Notice of when, where, and to whom the request to extend the time to achieve compliance for good cause may be filed with the department; and

(vi) The right to an appeal.

(b) A stop work order may require that any project proponent stop all work connected with the violation until corrective action is taken. A stop work order may also require that any project proponent take corrective action to prevent, correct, or compensate for adverse impacts to fish life and fish habitat.

(c) A stop work order must be authorized by senior or executive department personnel. The department shall initiate rule making to identify the appropriate level of senior and executive level staff approval for these actions based on the level of financial effect on the violator and the scope and scale of the impact to fish life and habitat.

(3) Within five business days of issuing the stop work order, the department shall mail a copy of the stop work order to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all measures reasonably calculated to ensure that the project proponent actually receives notice of the stop work order.

(4) Issuance of a stop work order may be informally appealed by a project proponent who was served with the stop work order or who received a copy of the stop work order from the department, or by the owner of the land on which the hydraulic project is located, to the department within thirty days from the date of receipt of the stop work order. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A stop work order that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(5) The project proponent who was served with the stop work order or who received a copy of the stop work order from the department, or the owner of the land on which the hydraulic project is located, may commence an appeal to the board within thirty days from the date of receipt of the stop work order. If such an appeal is commenced, the proceeding is an adjudicative proceeding under the administrative procedure act, chapter 34.05 RCW. The recipient of the stop work order must comply with the order of the department immediately upon being served, but the board may stay, modify, or discontinue the order, upon motion, under such conditions as the board may impose.

(6) This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project permit from the department of natural resources pursuant to chapter 76.09 RCW.

(7) For the purposes of this section, "project proponent" has the same meaning as defined in RCW 77.55.410(3). [2019 c 290 s 6.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.430 Notice to comply—Notice—Appeal. (1)(a) If a violation of this chapter or of the rules implementing this chapter, a deviation from the hydraulic project approval, damage to fish life or fish habitat, or potential damage to fish life or fish habitat, has occurred and the department determines that a stop work order is unnecessary, the department may issue and serve upon a project proponent a notice to comply, which must clearly set forth:

(i) A description of the condition that is not in compliance and the text of the specific section or subsection of this chapter or the rules that implement this chapter;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department or others;

(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department; and

(vi) The right to an appeal.

(b) The notice to comply may require that any project proponent take corrective action to prevent, correct, or compensate for adverse impacts to fish life or fish habitat.

(2) Within five business days of issuing the notice to comply, the department shall mail a copy of the notice to comply to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and

to the local jurisdiction in which the hydraulic project is located. The department must take all measures reasonably calculated to ensure that the project proponent actually receives notice of the notice to comply.

(3) Issuance of a notice to comply may be informally appealed by a project proponent who was served with the notice to comply or who received a copy of the notice to comply from the department, or by the owner of the land on which the hydraulic project is located, to the department within thirty days from the date of receipt of the notice to comply. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A notice to comply that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(4) The project proponent who was served with the notice to comply, the project proponent who received a copy of the notice to comply from the department, or the owner of the land on which the hydraulic project is located may commence an appeal to the board within thirty days from the date of receipt of the notice to comply. If such an appeal is commenced, the proceeding is an adjudicative proceeding under the administrative procedure act, chapter 34.05 RCW. The recipient of the notice to comply must comply with the notice to comply immediately upon being served, but the board may stay, modify, or discontinue the notice to comply, upon motion, under such conditions as the board may impose.

(5) This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project permit from the department of natural resources pursuant to chapter 76.09 RCW.

(6) For the purposes of this section, "project proponent" has the same meaning as defined in RCW 77.55.410(3). [2019 c 290 s 7.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.440 Penalties—Notice—Appeal—Authority of attorney general to recover penalty—Penalty schedule. (b) *[(1)] Penalties must be authorized by senior or executive department personnel. The department shall initiate rule making to identify the appropriate level of senior and executive level staff approval for these actions based on the level of financial effect on the violator and the scope and scale of the impact to fish life and habitat.

(2) The penalty provided must be imposed by notice in writing by the department, provided either by certified mail or by personal service, to the person incurring the penalty and to the local jurisdiction in which the hydraulic project is located, describing the violation. The department must take all measures reasonably calculated to ensure that the project proponent actually receives notice of the notice of penalty. The civil penalty notice must set forth:

(a) The basis for the penalty;
(b) The amount of the penalty; and
(c) The right of the person incurring the penalty to appeal the civil penalty.

(3)(a) Except as provided in (b) of this subsection, any person incurring any penalty under this chapter may appeal the penalty to the board pursuant to chapter 34.05 RCW. Appeals must be filed within

thirty days from the date of receipt of the notice of civil penalty in accordance with RCW 43.21B.230.

(b) Issuance of a civil penalty may be informally appealed by the person incurring the penalty to the department within thirty days from the date of receipt of the notice of civil penalty. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A civil penalty that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

(4) The penalty imposed becomes due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty becomes due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. When the penalty becomes past due, it is also subject to interest at the rate allowed by RCW 43.17.240 for debts owed to the state.

(5) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of the county in which such a violation occurred, to recover the penalty. In all such actions, the rules of civil procedure and the rules of evidence are the same as in an ordinary civil action. The department is also entitled to recover reasonable attorneys' fees and costs incurred in connection with the penalty recovered under this section. All civil penalties received or recovered by state agency action for violations as prescribed in subsection (1) of this section must be deposited into the state's general fund. The department is authorized to retain any attorneys' fees and costs it may be awarded in connection with an action brought to recover a civil penalty issued pursuant to this section.

(6) The department shall adopt by rule a penalty schedule to be effective by January 1, 2020. The penalty schedule must be developed in consideration of the following:

- (a) Previous violation history;
- (b) Severity of the impact on fish life and fish habitat;
- (c) Whether the violation of this chapter or of its rules was intentional;
- (d) Cooperation with the department;
- (e) Reparability of any adverse effects resulting from the violation; and

(f) The extent to which a penalty to be imposed on a person for a violation committed by another should be reduced if the person was unaware of the violation and has not received a substantial economic benefit from the violation.

(7) This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project permit from the department of natural resources pursuant to chapter 76.09 RCW. [2019 c 290 s 8.]

***Reviser's note:** The governor partially vetoed section 8, chapter 290, Laws of 2019.

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.450 Administrative inspection warrant. (1) The department may apply for an administrative inspection warrant in either Thurston county superior court or the superior court in the county in which the hydraulic project is located. The court may issue an administrative inspection warrant where:

(a) Department personnel need to inspect the hydraulic project site to ensure compliance with this chapter or with rules adopted to implement this chapter; or

(b) Department personnel have probable cause to believe that a violation of this chapter or of the rules that implement this chapter is occurring or has occurred.

(2) This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project permit from the department of natural resources pursuant to chapter 76.09 RCW. [2019 c 290 s 9.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.460 Disapproval of an application—Notice—Review. (1) The department may disapprove an application for hydraulic project approval submitted by a person who has failed to comply with a final order issued pursuant to RCW 77.55.420 or 77.55.430 or who has failed to pay civil penalties issued pursuant to RCW 77.55.440. Applications may be disapproved for up to one year from the issuance of a notice of intent to disapprove applications under this section, or until all outstanding civil penalties are paid and all outstanding notices to comply and stop work orders are complied with, whichever is longer.

(2) The department shall provide written notice of its intent to disapprove an application under this section to the applicant and to any authorized agent or landowner identified in the application.

(3) The disapproval period runs from thirty days following the date of actual notice of intent or when all administrative and judicial appeals, if any, have been exhausted.

(4) Any person provided the notice may seek review from the board by filing a request for review within thirty days of the date of the notice of intent to disapprove applications. [2019 c 290 s 10.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.

RCW 77.55.470 Remedies under chapter not exclusive. The remedies under this chapter are not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right available in law, equity, or statute. [2019 c 290 s 11.]

Finding—Intent—2019 c 290: See note following RCW 77.12.085.