AN ACT Relating to the administration of natural resources programs; amending RCW 77.55.021, 77.15.300, 77.55.151, 77.55.231, 76.09.040, 76.09.050, 76.09.150, 76.09.065, and 76.09.030; reenacting and amending RCW 77.55.011, 76.09.060, and 76.09.020; adding new sections to chapter 77.55 RCW; adding a new section to chapter 76.09 RCW; adding a new section to chapter 43.30 RCW; creating new sections; repealing RCW 77.55.291; prescribing penalties; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

PART ONE

Hydraulic Project Approvals

Sec. 101. RCW 77.55.011 and 2010 c 210 s 26 are each reenacted and amended to read as follows:

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, storm water 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) "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 freshwaters of the state.

(9) "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.

(10) "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.

(11) "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.

(12) "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 freshwater is the elevation of the mean annual flood.

(13) "Permit" means a hydraulic project approval ((permit)) issued under this chapter.
"Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

"Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

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

"Streambank 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.

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

"Waters of the state" and "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

"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).

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

"General permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for multiple hydraulic projects occurring over a defined geographic area but for which specific project sites have not been designated, and for which impacts are well understood and proven mitigation measures exist.

"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.

"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.

"Sandbar" means a ridge of sediment built up by water currents.
(26) "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.

(27) "Channel migration zone" means the area along a stream or river within which the channel can reasonably be predicted to migrate over time.

(28) "One hundred year floodplain" means those areas subject to a base (one hundred year) flood and designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Best available information must be used if these maps are not available or sufficient as determined by the federal emergency management agency.

(29) "Shoreline or streambank protection project" means the physical armoring of any surface that is within or adjoins a body of water using materials including, but not limited to, concrete, rock, or woody material.

(30) "Forest practices hydraulic project" means a hydraulic project that: Meets the criteria established in RCW 77.55.021(1)(a)(ii); and requires a forest practices application under chapter 76.09 RCW.

Sec. 102. RCW 77.55.021 and 2010 c 210 s 27 are each amended to read as follows:

(1)(a)(i) Except as provided in RCW 77.55.031, 77.55.041, and 77.55.051((7)) and ((77.55.041)) section 201 of this act, in the event that any person ((or government agency)) desires to undertake a hydraulic project meeting the requirements of (a)(ii) of this subsection, 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 before conducting work on that project.

(ii) A person must secure the approval of the department only for a hydraulic project:

(A) Conducted at or below the ordinary high water line; or

(B) Meeting both of the following:

(I) A dike, levee, bridge, shoreline or streambank protection project, or mineral prospecting and mining activity; and
(II) Conducted within a channel migration zone, one hundred year floodplain, or within two hundred feet landward of the ordinary high water line.

(b) When issuing approval for hydraulic projects, the department shall provide for the protection of fish life.

(2) Except for pamphlet hydraulic projects, a complete written application for a permit (may) must be submitted (in person or by registered mail) to the department 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 saltwater or within the ordinary high water line in freshwater) for the hydraulic project;

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

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

(d) Payment of all applicable application submittal and permit processing fees charged by the department under section 103 of this act.

(3) The department may establish direct billing accounts or other funds transfer methods with permit applicants to satisfy the fee payment requirements of section 103 of this act.

(4) The department may accept complete, written applications as provided in this section for multiple site permits and general 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 section 103 of this act.
(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. Except as provided in this subsection and subsections (8), (10), and (12) through (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 storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

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

(c) 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.
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.

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

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 streambank 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 streambank 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.

The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification is appealable as provided in subsection 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 streambank 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.

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 section 103 of this act. A decision by the department is appealable as provided in subsection 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 streambank 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.
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 streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow 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 section 103 of this act until after the emergency permit is issued and reduced to writing.

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.

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.

((11)) (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 ((3)) (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.

((12)) (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.

NEW SECTION. Sec. 103. A new section is added to chapter 77.55 RCW to read as follows:

(1)(a) Except as otherwise provided in this section, the department
shall charge a one hundred fifty dollar submittal fee and a processing fee, established by the department consistent with this section, for all hydraulic project permits issued under RCW 77.55.021, to recover a portion of the costs for processing and issuing decisions on permit notifications and applications, administering fee collections, and compliance and effectiveness monitoring and enforcement of projects requiring a permit.

(b) The department shall charge a seventy-five dollar submittal fee for single site low complexity hydraulic project permits.

(c) The department may not charge a submittal fee for permit modifications or renewal of a general permit that relates to the same project types and defined geographic area as the initial permit.

(2) When assessing fees for permits under this section, the department must categorize the following hydraulic projects as low complexity:

(a) Anchoring or mooring buoys and navigation aids;
(b) Water crossing structures in nonfish bearing waters (maintenance or repair);
(c) Bridge repair or maintenance above the ordinary high water line (cleaning, painting, or redecking);
(d) Conduit crossing using boring;
(e) Boat ramps or launches within the existing footprint (maintenance, repair, or replacement);
(f) Temporary or permanent stream gauges or scientific instruments;
(g) Boom (installation or maintenance);
(h) Existing overwater structure within the existing footprint, not including marinas or marine terminals (maintenance or repair);
(i) Beaver dam work;
(j) Riparian habitat (maintenance or repair);
(k) Existing outfall (maintenance or repair);
(l) Aquaculture (maintenance or repair);
(m) Habitat freshwater beach creation (maintenance or repair);
(n) Shoreline armoring or bank protection (maintenance or repair);
(o) Breeding substrate (maintenance or repair);
(p) Large woody material (maintenance or repair);
(q) Wetland and estuarine habitat work (maintenance or repair);
(r) Dredging of less than fifty cubic yards (maintenance or repair);
(s) Boat lifts or railway launches (maintenance or repair);
(t) Existing pilings (maintenance or repair);
(u) Pump water diversions and fish screens (maintenance or repair);
(v) Gravity water diversions and fish screens (maintenance or repair);
(w) Tidegates (maintenance or repair); and
(x) Temporary water crossing structures installed and removed within one season in fish-bearing waters.

(3) When assessing fees for permits under this section, the department must categorize the following hydraulic projects as medium complexity:
(a) Water crossing structures in fish-bearing waters (maintenance or repair);
(b) Aquaculture;
(c) Habitat freshwater beach creation (new, replacement, or removal);
(d) Shoreline armoring or bank protection of less than one hundred feet in length (new, replacement, or removal);
(e) Jetties, dikes, or levees (maintenance or repair);
(f) Breeding substrate (new, replacement, or removal);
(g) Large woody material (removal, placement, or repositioning);
(h) Off channel, side channel, or in channel enhancement or restoration work (maintenance or repair);
(i) Riparian habitat work (new, replacement, or removal);
(j) Bed modification excluding enhancement (maintenance or repair);
(k) Channel realignment in fish-bearing waters (maintenance or repair);
(l) Conduit and cable work using trenching (new, replacement, or removal);
(m) Dredging of less than fifty cubic yards (new);
(n) Fish passage barrier removal with replacement or retrofit using methods such as baffles or log controls for passage through or over a structure;
(o) Fish passage not associated with a water crossing structure such as to bypass a natural barrier or a dam;
(p) Boat lifts and railway launches (new, replacement, and removal);
(q) Boat ramps or launches outside of the footprint of any existing
(new, replacement, or removal);
(r) Work on pilings (new, replacement, or removal);
(s) Pump water diversions or fish screens (new, replacement, or
removal);
(t) Gravity water diversions or fish screens (new, replacement, or
removal);
(u) Outfalls (new, replacement, or removal);
(v) Tidegates (new, replacement, or removal);
(w) Mechanical aquatic plant control that is not a pamphlet
hydraulic project;
(x) Overwater structure outside of the footprint of any existing
structure, not including marinas or marine terminals (new or
replacement);
(y) Marinas or marine terminals (maintenance or repair);
(z) Dams not under jurisdiction of the federal energy regulatory
commission (maintenance or repair);
(aa) New water crossing structures in nonfish-bearing waters (new,
replacement, or removal); and
(bb) Temporary water crossing structures present for multiple
seasons in fish-bearing waters.
(4) When assessing fees for permits under this section, the
department must categorize the following hydraulic projects as high
complexity:
(a) Water crossing structures in fish-bearing waters (new,
replacement, removal, or modification);
(b) Shoreline armoring or bank protection of greater than one
hundred feet in length (new, replacement, or removal);
(c) Jetties, dikes, or levees (new, replacement, or removal);
(d) Off channel, side channel, or in channel enhancement or
restoration work (new, replacement, or removal);
(e) Wetland or estuarine habitat work (new, replacement, or
removal);
(f) Bed modification excluding enhancement (new, replacement, or
removal);
(g) Channel realignment in fish-bearing waters (new, replacement,
or removal);
(h) Dredging of more than fifty cubic yards (new, replacement, removal, or maintenance);

(i) Fish passage barrier removal with replacement or retrofit using methods such as baffles or log controls for passage through or over a structure (new, replacement, or removal);

(j) Fish passage not associated with a water crossing structure such as to bypass a natural barrier or a dam (new, replacement, or removal);

(k) Marinas or marine terminals (new, replacement, or removal);

(l) Dams not under jurisdiction of the federal energy regulatory commission (new, replacement, or removal);

(m) New project types not identified as low or medium complexity; and

(n) Perpetual agriculture hydraulic projects.

(5) If the department receives applications for project types not identified in subsections (2) through (4) of this section, it shall categorize them as low, medium, or high complexity and charge fees based on those categories consistent with the most similar project types identified in subsections (2) through (4) of this section.

(6)(a) Unless the department establishes a lower fee consistent with this section, a hydraulic project permit application must be assessed one of the following processing fees:

(i) Seventy-five dollars for a single site low complexity hydraulic project;

(ii) Five hundred dollars for a single site medium complexity hydraulic project;

(iii) One thousand one hundred fifty dollars for a single site high complexity hydraulic project;

(iv) For a multiple site permit, the applicable permit processing fee assessed under this subsection for one of the hydraulic project sites identified in the permit application, and twenty percent of the applicable permit processing fee assessed under this subsection for each additional site; and

(v) Four thousand eight hundred fifty dollars for a general permit authorizing up to three types of hydraulic projects, and twenty percent of the applicable permit processing fee assessed under this subsection for each additional type of hydraulic project. The fee charged for
renewal of a general permit that relates to the same project types and
defined geographic area as the initial permit is one hundred dollars.

(b) An application for mineral prospecting and mining activities is
exempt from permit processing fees.

(7) In cases where hydraulic projects include work that falls into
more than one of the permit categories outlined in this section, the
fee charged must be based on the most complex component of the project.

(8) Unless the department establishes a lower fee consistent with
this section, all permit modifications must be assessed a one hundred
dollar processing fee, except for those modified under RCW
77.55.021(10), and those for mineral prospecting and mining activities.

(9) The following hydraulic projects are exempt from all fees
listed under this section:

(a) Approved fish habitat enhancement projects authorized under RCW
77.55.181;

(b) Hydraulic projects approved under applicant-funded contracts
with the department that pay for the costs of processing those
projects; and

(c) Projects approved under the cost-sharing program for fish
passage barriers authorized under RCW 76.13.150.

(10) The fees assessed in this section must be based on the scale
and complexity of the project and the relative effort required for
department staff to review the application, conduct site visits, and
consult with applicants as necessary. As such, at its discretion, the
department may reduce the fees charged to a person under this section
when the work required by the department to receive and process that
person's application or modify a permit is substantially less than
typically required. Decisions made by the department under this
subsection are not subject to appeal under RCW 77.55.021(8).

(11) The department shall refund fifty percent of the permit
processing fee to any person that properly applies for any permit or
permit modification under RCW 77.55.021 if the department:

(a) Fails to process the application or request within the
timelines required by RCW 77.55.021; or

(b) Denies the permit because the proposed project would adversely
affect fish life.

(12) The department shall refund one hundred percent of all fees
if:
(a) No permit is required for the proposed work; or
(b) The hydraulic project is exempted from substantial development permit requirements under RCW 90.58.147 and the project proponent provides to the department a copy of the letter documenting exemption approval by the local government.

(13) On September 30th of each year, the department shall calculate adjusted fees by the rate of inflation. The adjusted fees must be calculated to the nearest dollar using the consumer price index for the twelve months prior to each September 1st as calculated by the United States department of labor. Each adjusted fee calculated under this section takes effect on the following January 1st.

(14) All fees collected under this section must be deposited in the hydraulic project approval account created in section 106 of this act.

NEW SECTION. Sec. 104. A new section is added to chapter 77.55 RCW to read as follows:

To ensure that all hydraulic project approvals provide for the protection of fish life, by January 1, 2012, the department shall develop and implement a program to monitor the effectiveness of the approvals it grants under this chapter. For the purposes of this chapter, effectiveness monitoring must evaluate if project standards are adequate to protect overall fish life. If the department identifies approvals that do not meet standards and provide for protection of fish life, the department shall use adaptive management principles to ensure protection under this chapter.

NEW SECTION. Sec. 105. (1) By December 31, 2013, the department of fish and wildlife shall report to the legislature consistent with RCW 43.01.036 on the impact of fee collection on the department's hydraulic project approval permit program, and recommendations, developed in consultation with affected stakeholders, for improving the department's permit streamlining efforts and permit fee schedule.

(2) This section expires July 31, 2014.

NEW SECTION. Sec. 106. A new section is added to chapter 77.55 RCW to read as follows:

(1) The hydraulic project approval account is created in the state
treasury. All receipts from submittal fees and permit processing fees for hydraulic project approval applications collected under section 103 of this act 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 processing and issuing hydraulic project approval decisions, compliance and effectiveness monitoring, enforcement activities related to this chapter, conducting informal appeals or participating in administrative or judicial appeals of hydraulic project approval decisions, providing technical assistance by biologists and environmental engineers on project design and implementation that provides for the protection of fish life, and for the associated management and administrative costs incurred to implement and operate the hydraulic project approval program.

Sec. 107. RCW 77.15.300 and 2000 c 107 s 239 are each amended to read as follows:

(1) A person is guilty of unlawfully undertaking hydraulic project activities if the person ((constructs any form of hydraulic project or performs other work on a hydraulic project and:)

(a) Fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work; or

(b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor)

(a) Constructs any form of hydraulic project or performs other work on a hydraulic project that requires a hydraulic project approval under chapter 77.55 RCW and fails to have a hydraulic project approval for the construction or work;

(b) Violates any requirements or conditions of the hydraulic project approval for the construction or other activities;

(c) Violates any notice to comply or stop work order issued under section 108 of this act; or
(d) Violates any department rule that identifies the conditions under which a hydraulic project is approved.

(2) Violation of a notice to comply or a stop work order under section 108 of this act must be punished as a separate offense from the underlying hydraulic code violation.

(3) Unlawfully undertaking hydraulic project activities is a gross misdemeanor.

(4) Notwithstanding the provisions of subsection (3) of this section, the commission may by rule identify certain acts that violate the hydraulic code as being of minimal impact to fish life, and may classify these acts, on an individual basis, as infractions, punishable under RCW 77.15.160 and chapter 7.84 RCW.

(5) Nothing in this section applies to a forest practices hydraulic project or to any activities that are associated with such a project.

NEW SECTION. Sec. 108. A new section is added to chapter 77.55 RCW to read as follows:

(1)(a) The department may issue a notice to comply or a stop work order to a person who:

(i) Constructs any form of hydraulic project or performs other work on a hydraulic project that requires a hydraulic project approval under this chapter and fails to have a hydraulic project approval for the construction or work;

(ii) Violates any requirements or conditions of the hydraulic project approval for the construction or other activities; or

(iii) Violates any department rule that identifies the conditions under which a hydraulic project is approved.

(b) The notice to comply may require that the person take corrective action to prevent, correct, or mitigate for adverse impacts to fish life. The notice to comply must:

(i) Be served upon the person and any known agents and applicants;

(ii) Specify the nature, extent, date, and time of the violation;

(iii) Specify any necessary corrective action; and

(iv) Specify the right of the person to an appeal.

(c) The stop work order may require that the person stop all work connected with the violation or stop work until corrective action is taken. A stop work order is effective immediately and remains in
The stop work order must:

(i) Be served upon the person and any known agents;
(ii) Specify the nature, extent, date, and time of the violation;
(iii) Include an order to stop all work connected with the violation;
(iv) Specify any necessary action before work may resume; and
(v) Specify the right of the person to an appeal.

(d) Within thirty days from the date of receipt of a notice to comply or stop work order issued under this section, a person may file a written request appealing the notice or order to the board.

(e) A notice to comply or stop work order 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 notice to comply or 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.

(2)(a) Consistent with the penalty schedule described in this subsection, the department may levy civil penalties of up to:

(i) Two thousand five hundred dollars for a violation of this chapter or rules adopted under this chapter relating to a hydraulic project categorized or that would be categorized as a low complexity hydraulic project under section 103 of this act;
(ii) Five thousand dollars for a violation of this chapter or rules adopted under this chapter relating to a hydraulic project categorized or that would be categorized as a medium complexity hydraulic project under section 103 of this act; and
(iii) Ten thousand dollars for a violation of this chapter or rules adopted under this chapter relating to a hydraulic project categorized or that would be categorized as a high complexity hydraulic project under section 103 of this act.

(b) Each and every violation of this chapter or rules adopted under this chapter is a separate and distinct civil offense.

(c) The penalty provided must be imposed by notice in writing by the department describing the violation. The civil penalty notice must specify the:

(i) Basis for the penalty and the amount levied; and
(ii) Right of the person to an appeal.

(d) Within thirty days from the date of receipt of a civil penalty order issued under this section, a person may file a written request appealing the order to the board.

(e) Issuance of a civil penalty may be informally appealed to the department within thirty days from the date of receipt of the 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.

(f) 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 administrative and judicial review proceedings and the issuance of a final decision 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.

(g) 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 any county in which the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence are the same as an ordinary civil action. All penalties received or recovered by state agency action for violations as prescribed in subsection (1) of this section must be deposited in the hydraulic project approval account as described in section 106 of this act. The department is also entitled to recover reasonable attorneys' fees and costs incurred in connection with the penalty.

(h) The department shall establish by rule a penalty schedule. The schedule must be developed in consideration of the following:

   (i) Previous violation history;
   (ii) Severity of the impact on fish and fish habitat;
   (iii) Whether the violation of this chapter or its rules was intentional;
   (iv) Cooperation with the department;
(v) Reparability of the adverse effect from the violation; and
(vi) 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.

(3) The department may apply for an administrative inspection warrant in either Thurston county superior court or the superior court in the county where the project is located. The court may issue an administrative inspection warrant where:

(a) Department personnel need to inspect the project site to ensure that a person:
   (i) Possesses a hydraulic project approval required under this chapter for the construction of any form of hydraulic project or performance of other work on a hydraulic project;
   (ii) Complies with any requirements or conditions of the hydraulic project approval for the construction or other activities;
   (iii) Complies with any notice to comply or stop work order issued under subsection (1) of this section; or
   (iv) Complies with any department rule that identifies the conditions under which a hydraulic project is approved; or
(b) Department personnel have reasonable cause to believe that a person:
   (i) Is constructing or has constructed any form of hydraulic project or performs other work on a hydraulic project and fails to have a hydraulic project approval required under this chapter for the construction or work;
   (ii) Is violating or has violated any requirements or conditions of the hydraulic project approval for the construction or other activities;
   (iii) Is violating or has violated any notice to comply or stop work order issued under subsection (1) of this section; or
   (iv) Is violating or has violated any department rule that identifies the conditions under which a hydraulic project is approved.

(4) Nothing in this section applies to a forest practices hydraulic project or to any activities that are associated with such a project.

Sec. 109. RCW 77.55.151 and 2005 c 146 s 502 are each amended to read as follows:
For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

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

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

(a) Maintenance, repair, or replacement 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) New, maintenance, or removal of 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.

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

A permit under this section is subject to the fee for a general permit provided in section 103 of this act.
NEW SECTION. Sec. 110. A new section is added to chapter 77.55 RCW to read as follows:

(1) By December 31, 2011, the department must make examples of complete, high quality applications and the resulting issued hydraulic project approvals readily available to the public on its internet site, as well as the internet site of the office of regulatory assistance established in RCW 43.42.010.

(2) The department must regularly review and update the examples required to be made available on the internet under subsection (1) of this section.

(3) The department must obtain the written permission of a permit applicant or permittee before making publicly available that applicant or permittee's application or permit and must work cooperatively with the permit applicant or permittee to ensure that no personal or proprietary information is made available.

Sec. 111. RCW 77.55.231 and 2005 c 146 s 601 are each amended to read as follows:

(1) 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.

(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.

NEW SECTION. Sec. 112. A new section is added to chapter 77.55 RCW to read as follows:

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.
NEW SECTION. **Sec. 113.** A new section is added to chapter 77.55 RCW to read as follows:

This chapter may be known and cited as the hydraulic code.

NEW SECTION. **Sec. 114.** The fee provisions contained in section 103 of this act are prospective only. The department of fish and wildlife may not charge fees for hydraulic project permits issued under Title 77 RCW prior to the effective date of this section. However, if a person requests modification of a hydraulic project permit that was issued by the department of fish and wildlife prior to the effective date of this section, the department of fish and wildlife shall charge all applicable fees as provided in section 103 of this act.

**PART TWO**

Hydraulic Project Approval and Forest Practices Integration

NEW SECTION. **Sec. 201.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The requirements of RCW 77.55.021 and this chapter do not apply to any forest practices hydraulic project or to any activities that are associated with such a project. These projects are regulated under chapter 76.09 RCW.

(2) The commission shall amend chapter 220-110 WAC as necessary to ensure consistency with subsection (1) of this section.

(3) Until the forest practices board integrates the applicable provisions of chapter 220-110 WAC and carries out the requirements of section 204 of this act, this chapter and those rules apply to projects described in subsection (1) of this section.

(4) Nothing in this act affects any rules, processes, or procedures of the department and the department of natural resources existing on the effective date of this section that provide for integration of hydraulic projects and forest practices for projects in nonfish-bearing waters.

NEW SECTION. **Sec. 202.** A new section is added to chapter 77.55 RCW to read as follows:
(1) The department retains its authority to manage and protect the state's fish resources as provided under this title, this chapter, this section, and sections 203 through 205 of this act.

(2) The department shall notify the forest practices board when rule making regarding the protection of fish life within fish-bearing waters is being considered by the commission.

(3)(a) The department may review and provide comments on any forest practices applications. The department's review may include a site visit. Prior to commenting and whenever reasonably practicable, the department shall communicate with the applicant regarding the substance of the project. Any comments must be submitted within thirty days of the date the forest practices application is accepted as complete by the department of natural resources.

(b) The department shall review forest practices applications and conduct a review of any forest practices hydraulic projects consistent with the determination of the forest practices board under section 204 of this act.

(c) For a review under (b) of this subsection, the department of natural resources must provide additional weight to any comments made by the department following a site visit.

(4) 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 the effective date of this section.

(5) Nothing in this section provides for the department to assume authority over approval, disapproval, or conditioning of forest practices applications submitted under chapter 76.09 RCW. Authority over these applications rests with the department of natural resources under chapter 76.09 RCW.

(6) Nothing in this chapter authorizes the department to exercise enforcement authority regarding a forest practices hydraulic project or for any activities that are associated with such a project. The department of natural resources shall exercise enforcement authority over these projects under the authority of chapter 76.09 RCW.

Sec. 203. RCW 76.09.040 and 2010 c 188 s 4 are each amended to read as follows:

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

(i) Establish minimum standards for forest practices;

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

(iii) Set forth necessary administrative provisions;

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

(v) Allow for the development of watershed analyses.

(b) Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect to these rules. All other forest practices rules shall be adopted by the board.

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

(2)(a) The board shall prepare proposed forest practices rules consistent with this section and chapter 34.05 RCW. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

(b)(i) Prior to initiating the rule-making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection.
(ii) After the expiration of the thirty day period, the board, and the department of ecology with respect to proposed rules relating to water quality protection, shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. Any county representative may propose specific forest practices rules relating to problems existing within the county at the hearings.

(iii) The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3)(a) The board shall integrate into the forest practices rules those portions of chapter 220-110 WAC, as it existed on the effective date of this section, that are applicable to activities regulated under the forest practices rules.

(b) Thereafter, upon notification by the department of fish and wildlife of changes to those portions of chapter 220-110 WAC that are applicable to activities regulated under the forest practices rules, the board shall integrate those changes into the forest practices rules.

(4)(a) The board shall establish by rule a program for the acquisition of riparian open space and critical habitat for threatened or endangered species as designated by the board. Acquisition must be a conservation easement. Lands eligible for acquisition are forest lands within unconfined channel migration zones or forest lands containing critical habitat for threatened or endangered species as designated by the board. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules
shall provide for the management of the lands for ecological protection or fisheries enhancement. For the purposes of conservation easements entered into under this section, the following apply:

(i) For conveyances of a conservation easement in which the landowner conveys an interest in the trees only, the compensation must include the timber value component, as determined by the cruised volume of any timber located within the channel migration zone or critical habitat for threatened or endangered species as designated by the board, multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091;

(ii) For conveyances of a conservation easement in which the landowner conveys interests in both land and trees, the compensation must include the timber value component in (a)(i) of this subsection plus such portion of the land value component as determined just and equitable by the department. The land value component must be the acreage of qualifying channel migration zone or critical habitat for threatened or endangered species as determined by the board, to be conveyed, multiplied by the average per acre value of all commercial forest land in western Washington or the average for eastern Washington, whichever average is applicable to the qualifying lands. The department must determine the western and eastern Washington averages based on the land value tables established by RCW 84.33.140 and revised annually by the department of revenue.

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

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

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

NEW SECTION. Sec. 204. A new section is added to chapter 76.09
RCW to read as follows:

(1) The board shall:

(a)(i) Integrate into the forest practices rules those portions of
chapter 220-110 WAC, as it existed on the effective date of this
section, that are applicable to activities regulated under the forest
practices rules as required under RCW 76.09.040; and

(ii) Thereafter, upon notification by the department of fish and
wildlife of changes to those portions of chapter 220-110 WAC that are
applicable to activities regulated under the forest practices rules,
integrate those changes into the forest practices rules as required
under RCW 76.09.040;

(b) Establish and maintain technical guidance to supplement the
rules the board must integrate as required under RCW 76.09.040. The
guidance must include best management practices and common
prescriptions for forest practices hydraulic projects. The board must
include this guidance in the manual maintained pursuant to WAC 222-12-
090 as it existed on the effective date of this section; and

(c) Determine those types of forest practices hydraulic projects
that must be reviewed by the department of fish and wildlife. The
board shall determine that review by the department of fish and
wildlife is required for a project type if it affects fish-bearing
waters and poses a significant risk to fish or fish habitat. In
determining project types that pose a significant risk, the board shall
limit its consideration to projects meeting one or more of the
following criteria:

(i) The presence of fish listed as threatened or endangered under
the federal endangered species act, 16 U.S.C. 1531 et seq.;

(ii) The importance of affected habitat to one or more fish
populations; and

(iii) Whether the project involves uncommon terrain, new or
uncommon forest practices methods or equipment, or other factors for
which habitat impacts are not well understood.

(2) For each of the requirements of this section, the board shall
direct the timber, fish, and wildlife policy committee, as described in
WAC 222-12-045 as it existed on the effective date of this section, to develop recommendations for its consideration and adoption. The requirements of this section are not subject to the adaptive management process established under RCW 76.09.370(7).

(3) The board must complete the requirements of subsection (1)(a)(i) and (c) of this section and the initial guidance required under subsection (1)(b) of this section by December 31, 2011.

NEW SECTION. Sec. 205. A new section is added to chapter 77.55 RCW to read as follows:

(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 this act.

(2) The initial memorandum of agreement between the two departments must be executed by October 31, 2011. The memorandum of agreement may be amended as agreed to by the two departments.

Sec. 206. RCW 76.09.050 and 2010 c 210 s 20 are each amended to read as follows:

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

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

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

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

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021) include a forest practices hydraulic project and require adherence to forest practices rules integrated under RCW 76.09.040(3);

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

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

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

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, except that the department has forty-five calendar days to approve or disapprove an application that includes a forest practices hydraulic project. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial
impact on the environment and therefore require an evaluation by the
department as to whether or not a detailed statement must be prepared
pursuant to the state environmental policy act, chapter 43.21C RCW.
Such evaluation shall be made within ten days from the date the
department receives the application: PROVIDED, That nothing herein
shall be construed to prevent any local or regional governmental entity
from determining that a detailed statement must be prepared for an
action pursuant to a Class IV forest practice taken by that
governmental entity concerning the land on which forest practices will
be conducted. A Class IV application must be approved or disapproved
by the department within thirty calendar days from the date the
department receives the application, ((unless the department determines
that a detailed statement must be made, in which case the application
must be approved or disapproved by the department within sixty calendar
days from the date the department receives the application, unless the
commissioner of public lands, through the promulgation of a formal
order, determines that the process cannot be completed within such
period)) except that the department must: Approve or disapprove an
application that includes a forest practices hydraulic project within
forty-five calendar days from the date the department receives the
application; and approve or disapprove an application within sixty
calendar days from the date the department receives the application if
the department determines that a detailed statement must be made,
unless the commissioner of public lands, through the promulgation of a
formal order, determines that the process cannot be completed within
such a period. However, the applicant may not begin work on that
forest practice until all forest practice fees required under RCW
76.09.065 have been received by the department.

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

(2) Except for those forest practices being regulated by local
governmental entities as provided elsewhere in this chapter, no Class
II, Class III, or Class IV forest practice shall be commenced or
continued after January 1, 1975, unless the department has received a
notification with regard to a Class II forest practice or approved an
application with regard to a Class III or Class IV forest practice
containing all information required by RCW 76.09.060 as now or
hereafter amended. However, in the event forest practices regulations
necessary for the scheduled implementation of this chapter and RCW
90.48.420 have not been adopted in time to meet such schedules, the
department shall have the authority to regulate forest practices and
approve applications on such terms and conditions consistent with this
chapter and RCW 90.48.420 and the purposes and policies of RCW
76.09.010 until applicable forest practices regulations are in effect.

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

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

(5) Except for those forest practices being regulated by local
governmental entities as provided elsewhere in this chapter, the
department of natural resources shall notify the applicant in writing
of either its approval of the application or its disapproval of the
application and the specific manner in which the application fails to
comply with the provisions of this section or with the forest practices
regulations. Except as provided otherwise in this section, if the
department fails to either approve or disapprove an application or any
portion thereof within the applicable time limit, the application shall
be deemed approved and the operation may be commenced: PROVIDED, That
this provision shall not apply to applications which are neither
approved nor disapproved pursuant to the provisions of subsection (7)
of this section: PROVIDED, FURTHER, That if seasonal field conditions
prevent the department from being able to properly evaluate the
application, the department may issue an approval conditional upon
further review within sixty days((: PROVIDED, FURTHER, That the
department shall have until April 1, 1975, to approve or disapprove an
application involving forest practices allowed to continue to April 1,
1975, under the provisions of subsection (2) of this section)). Upon
receipt of any notification or any satisfactorily completed application
the department shall in any event no later than two business days after
such receipt transmit a copy to the departments of ecology and fish and
wildlife, and to the county, city, or town in whose jurisdiction the
forest practice is to be commenced. Any comments by such agencies
shall be directed to the department of natural resources.

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

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

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

(b) The objections relate to lands either:

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

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

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

(8) For those forest practices regulated by the board and the
department, in addition to any rights under the above paragraph, the
county, city, or town may appeal any department approval of an
application with respect to any lands within its jurisdiction. The
appeals board may suspend the department's approval in whole or in part
pending such appeal where there exists potential for immediate and
material damage to a public resource.

(9) For those forest practices regulated by the board and the
department, appeals under this section shall be made to the appeals
board in the manner and time provided in RCW 76.09.205. In such
appeals there shall be no presumption of correctness of either the
county, city, or town or the department position.

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

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

(12) Notwithstanding subsections (2) through (5) of this section,
forest practices applications or notifications are not required for
exotic insect and disease control operations conducted in accordance
with RCW 76.09.060((9)) where eradication can reasonably be
expected.

Sec. 207. RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1 are
each reenacted and amended to read as follows:

(1) The department shall prescribe the form and contents of the
notification and application. The forest practices rules shall specify
by whom and under what conditions the notification and application
shall be signed or otherwise certified as acceptable. Activities
conducted by the department or a contractor under the direction of the
department under the provisions of RCW 76.04.660, shall be exempt from
the landowner signature requirement on any forest practice application
required to be filed. The application or notification shall be
delivered in person to the department, sent by first-class mail to the
department or electronically filed in a form defined by the department.
The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

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

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

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

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

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

(f) If the application includes a forest practices hydraulic project, the following information is required:
   
   (i) Plans and specifications for the forest practices hydraulic project; and

   (ii) Proposed measures for the proper protection of fish life;

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

(h) Soil, geological, and hydrological data with respect to forest practices;

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

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

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

(l) All necessary application or notification fees.

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

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

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

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

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

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

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

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

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

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

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.
(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practice application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

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

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

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

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

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

(6)(a) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of ((two)) four years from the date of approval or notification ((and shall not be renewed unless a new application is filed and approved or a new notification has been filed)).
(b) A notification or application is eligible for renewal if the forest practice has not been completed after the permitted four-year period by the filing and approval of a new application or notification. A renewal application or notification is subject to the forest practices rules in effect at the time the renewal application or notification is filed. Nothing in this section precludes the applicant from applying for a new application or notification after the renewal period has lapsed.

(c) At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than (four) years.

(d) The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than (four) years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than (four) years, the applicant shall inform the department before commencing operations.

(7) If the United States fish and wildlife service or national marine fisheries service provides written notice to the state, pursuant to the procedures described in the state forest practices habitat conservation plan implementation agreement signed on June 5, 2006, that compliance with the habitat conservation plan or associated incidental take permits requires review during the effective term of a previously approved four-year forest practices application based on a change in the forest practices rules, the informal dispute resolution process provided in the implementation agreement must be utilized. The board may only authorize the department to review and specify further conditions on a previously approved four-year forest practices application in order to implement an agreement under the dispute resolution process. The department may not specify further conditions on a previously approved four-year forest practices application prior to the date specified in the agreement.

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

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

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

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

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

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

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

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.
(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control.

(10) The department of fish and wildlife and affected tribes may review and comment on any forest practices application.

Sec. 208. RCW 76.09.150 and 2000 c 11 s 7 are each amended to read as follows:

(1) The department shall make inspections of forest lands, before, during, and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter, the forest practices rules, including forest practices rules integrated under RCW 76.09.040(3), and to ensure that no material damage occurs to the natural resources of this state as a result of forest practices.

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

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

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

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

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

**NEW SECTION.** Sec. 209. A new section is added to chapter 43.30 RCW to read as follows:

(1) By December 31, 2011, the department must make examples of complete, high quality forest practices applications and the resulting issued permits readily available to the public on its internet site, as well as the internet site of the office of regulatory assistance established in RCW 43.42.010.

(2) The department must regularly review and update the examples required to be made available on the internet under subsection (1) of this section.

(3) The department must obtain the written permission of a permit applicant or permittee before making publicly available that applicant's or permittee's application or permit and must work cooperatively with the permit applicant or permittee to ensure that no personal or proprietary information is made available.

Sec. 210. RCW 76.09.065 and 2000 c 11 s 5 are each amended to read as follows:

(1) Effective July 1, 1997, an applicant shall pay an application fee ((and a recording fee, if applicable,)) at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) For applications and notifications submitted to the department, the application fee shall be ((fifty)) one hundred dollars for class II((, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred)) notifications and class III applications involving twenty acres or less of commercial harvest of timber. The fee shall be one hundred fifty dollars for class III applications involving from more than twenty to one hundred twenty acres of commercial harvest of
timber. The fee shall be five hundred fifty dollars for class III applications involving more than one hundred twenty acres of commercial harvest of timber. The fee shall be seven hundred fifty dollars for class IV forest practices that have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. The fee shall be five thousand dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be ((fifty dollars)) the same as for a class III forest practice involving the same acreage of commercial harvest of timber on those lands where the forest landowner provides:

(a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(b) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

(3) The forest practices application account is created in the state treasury. Moneys in the account may be spent only after appropriation. All money collected from fees under ((this)) subsection (2) of this section shall be deposited in the ((state general fund)) account for the purposes of implementing this chapter, chapter 76.13 RCW, and Title 222 WAC.

((4)) (4) For applications submitted to ((the)) a local governmental entity as provided in this chapter, the fee shall be ((five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided)) determined by the local governmental entity.

((4)) Recording fees shall be as provided in chapter 36.18 RCW.
(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department.)

Sec. 211. RCW 76.09.030 and 2008 c 46 s 1 are each amended to read as follows:

(1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of (community, trade, and economic development) commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor (PROVIDED, That such). However, the county member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) (The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and

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programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3)) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

(4) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties.

Sec. 212. RCW 76.09.020 and 2010 c 210 s 19 and 2010 c 188 s 6 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.
(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the pollution control hearings board created by RCW 43.21B.010.

(3) "Application" means the application required pursuant to RCW 76.09.050.

(4) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(5) "Board" means the forest practices board created in RCW 76.09.030.

(6) "Commissioner" means the commissioner of public lands.

(7) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(8) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

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

(10) "Department" means the department of natural resources.

(11) "Ecosystem services" means the benefits that the public enjoys as a result of natural processes and biological diversity.

(12) "Ecosystem services market" means a system in which providers of ecosystem services can access financing or market capital to protect, restore, and maintain ecological values, including the full spectrum of regulatory, quasiregulatory, and voluntary markets.

(13) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(14) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not
include agricultural land that is or was enrolled in the conservation
reserve enhancement program by contract if such agricultural land was
historically used for agricultural purposes and the landowner intends
to continue to use the land for agricultural purposes in the future.
As it applies to the operation of the road maintenance and abandonment
plan element of the forest practices rules on small forest landowners,
the term "forest land" excludes:
  (a) Residential home sites, which may include up to five acres; and
  (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
and the land on which appurtenances necessary to the production,
preparation, or sale of crops, fruit, dairy products, fish, and
livestock exist.
(15) "Forest landowner" means any person in actual control of
forest land, whether such control is based either on legal or equitable
title, or on any other interest entitling the holder to sell or
otherwise dispose of any or all of the timber on such land in any
manner. However, any lessee or other person in possession of forest
land without legal or equitable title to such land shall be excluded
from the definition of "forest landowner" unless such lessee or other
person has the right to sell or otherwise dispose of any or all of the
timber located on such forest land.
(16) "Forest practice" means any activity conducted on or directly
pertaining to forest land and relating to growing, harvesting, or
processing timber, including but not limited to:
  (a) Road and trail construction;
  (b) Harvesting, final and intermediate;
  (c) Precommercial thinning;
  (d) Reforestation;
  (e) Fertilization;
  (f) Prevention and suppression of diseases and insects;
  (g) Salvage of trees; and
  (h) Brush control.
"Forest practice" shall not include preparatory work such as tree
marking, surveying and road flagging, and removal or harvesting of
incidental vegetation from forest lands such as berries, ferns,
greenery, mistletoe, herbs, mushrooms, and other products which cannot
normally be expected to result in damage to forest soils, timber, or
public resources.
(17) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(18) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(19) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(20) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(21) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(22) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(23) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(24) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(25) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(26) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(27) "Unconfined channel migration zone" means the area within which the active channel of an unconfined stream is prone to move and where the movement would result in a potential near-term loss of
riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(28) "Unconfined stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

(29) "Forest practices hydraulic project" means a hydraulic project, as defined under RCW 77.55.011, that: (a) Meets the criteria established in RCW 77.55.021(1)(a)(ii); and (b) requires a forest practices application under this chapter.

NEW SECTION. Sec. 213. RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c 173 s 6 are each repealed.

NEW SECTION. Sec. 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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