

The ability of salmon and steelhead to migrate to and from their traditional spawning grounds is vital to their recovery in Washington. Additionally, other fish species and the freshwater life stages of juvenile salmon move between different areas of the stream to find suitable habitat. Barriers such as deteriorating or outdated fishways and diversion dams block fish from swimming upstream and moving within the stream, undermining recovery efforts. Two actions crucial to fish recovery are correcting human-made fishway barriers and properly screening surface water diversions to enable safe upstream and downstream passage for all fish at all life stages.

This chapter establishes the rules for the department's fish passage and screening authorities (chapter 77.57 RCW).

Instructions for using Chapter 220-XXX WAC.

The technical provisions in WAC 22-XXX-XXX through 220-XXX-XXX represent common provisions for fishways and water diversions in Washington for the protection of fish life at all life stages. These provisions are intended to be used in tandem with Hydraulic Code Rules, WACs 220-660. Hydraulic Codes rules contain guidance for the construction or performance of hydraulic projects that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. This Chapter 220-XXX WAC defines passability and protection standards for existing and new fishways and water diversions. These provisions reflect the current and best science, technology, and construction practices related to the fish protection.

The department will incorporate new science and technology as it becomes available and will allow alternative practices that provide equal or greater protection for fish life.

In addition to the rules in this chapter, the department has developed guidance to help fishways and water diversion owners. The guidance reflects the department's experience and expertise with various types of structures and hydraulic projects. Following the guidance will help ensure that a structure will adequately protect and pass fish. All guidance documents are available on the department's website.

Definitions.

The following are definitions for terms used in this chapter:

"Bankfull width" means the width of the surface of the water at the point where water just begins to overflow into the active flood plain. In streams where there is no flood plain, it is often the width of a stream or river at the dominant channel forming flow that reoccurs every one to two years.

"Climate adapted water crossing" means a water crossing structure for which the design has been modified to accommodate changes in the stream flow and/or channel shape caused by future climate change.

"Department" means the department of fish and wildlife.

"Director" means the director of the department of fish and wildlife.

"Ditch" means a wholly artificial watercourse or a lake, river, or stream altered by humans.

"Diversion" means to divert water from one course to another. Diversion, when used without qualification, includes the diversion of surface water and the withdrawal of groundwater.

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

"Entrained" means the entrapment of fish into a watercourse diversion that has no screen, into high velocity water along the face of an improperly designed screen, or into the vegetation cut by a mechanical harvester.

“Fish” means all fish species, including food fish, shellfish, game fish, unclassified fish species, and all stages of development of those species.

“Fish habitat” or “habitat that supports fish life” means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.

“Fish guard” means a device installed at or near a surface water diversion headgate, or on the intake of any device used for removing water from fish-bearing waters, to prevent entrainment, injury, or death of fish life. Fish guards physically keep fish from entering the diversion or intake and do not rely on avoidance behavior.

“Fish passage improvement structure” means artificial structures that are used to provide passage through, over, and/or around artificial barriers. They provide a graduated change in gradient with refuge areas allowing for fish to pass barriers.

“Fish screen” means “fish guard.”

“Fishway” means a device or structure that allows fish to pass freely through or around a dam, culvert, fish ladder, bridge, or other obstruction blocking the upstream or downstream fish habitat. They are generally known as “water crossing structures” or “fish passage improvement structures.”

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

“Lake” means any natural standing fresh waters or artificially impounded natural fresh waters of the state, except impoundments of the Columbia and Snake rivers.

“Maintenance” means repairing, remodeling, or making minor alterations to a facility or project to keep the facility or project in properly functioning and safe condition.

“Mitigation” means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat that supports fish life.

“Ordinary high water line” or “OHWL” 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 water are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

“Person” means an applicant, authorized agent, structure owner, permittee, or contractor. The term person includes an individual, a public or private entity, or organization.

“Protection of fish life” means avoiding, minimizing unavoidable impacts, and compensating for remaining impacts to fish life and the habitat that supports fish life through mitigation sequencing.

“Rehabilitation” means major work required to restore the integrity of a structurally deficient or functionally obsolete structure. This can include partial replacement of a structure.

“Replacement” means the complete removal of an existing structure and construction of a substitute structure in the same location.

“River” means “watercourse.”

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

“Unimpeded fish passage” means the free movement of all fish species at any mobile life stage around or through a human-made or natural structure.

“Water crossing structures” means structures that span over, through, or under a water course. Examples are bridges, culverts, conduits, and fords.

“Water right” means a certificate of water right, a vested water right or claim to a valid vested water right, or a water permit, under Title 90 RCW.

“Watercourse,” “river,” or “stream” means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A water course includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or entirely artificially watercourses, except where they exist in a natural watercourse that has been altered by humans.

“Written notice” or “written notification” means a communication sent through U.S. mail or email.

Applicability of Fish Passage and Screening authority.

The provisions within WAC chapters 220-XXX-XXX to 220-XXX-XXX apply to the following structures and circumstances:

1. Performance Standards:
 - A. Protecting and ensuring that all fish species at all life stages can freely move through and around fishways.
 - B. Protecting and ensuring that all fish species at all life stages are safe from water diversions that may harm or cause entrainment.
2. Projects:
 - A. All fishways and water diversions connecting to a lake, stream, or river.
 - B. The repair or replacement of existing non-compliant fishways and water diversions connecting to a lake, stream, or river.

The provisions within WAC chapters 220-XXX do not apply to the following:

- A. Tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates.
- B. Lawful diversions of water from a lake, stream, or river installed on or prior to June 11, 1947.

Standards for Existing and New Fishways and Water Diversions.

The following section defines standards for fishways and water diversions to ensure the greatest protections and unimpeded fish passage of a structure for fish at all life stages.

1. Water Crossing Structures

This section applies only to water crossing over fish-bearing lakes, streams, and rivers.

- A. Description:** Water crossing structures are built to facilitate the movement of people, animals, or materials across or over rivers and other water bodies. These structures include bridges, culverts, fords, and conduits. Generally, people use bridges to cross over larger streams and rivers, or over unstable channels; they use culverts to cross over smaller streams and they use fords when other stream crossing options would result in a greater impact to fish life and fish habitat. Growing evidence shows that climate change is impacting our region’s aquatic systems. The Pacific Northwest hydrology is changing, including reductions in glaciers and snowpack size and earlier peak stream flow in many rivers. Most fresh water fish species can only survive in certain water temperature ranges or stream flow conditions. Climate change can threaten aquatic ecosystems by altering these conditions including increasing stream temperature, altering stream flow due to drought or increased storms and worsening other stressors. These trends are expected to continue, along with

increasing flood size and decreasing summer low flows. Typically, the size of water crossing structures like culverts and bridges is based on bankfull width. As the size of floods increases, water crossing sizes must also increase. Culverts are generally designed to last 50 to 100 years under current stream conditions. Designing culverts to be resilient to future changes in stream conditions will reduce the risk of structural failure and the creation of fishway barriers.

B. Fish Life Concerns:

- i. Water crossing structures in fish-bearing streams must allow fish to move freely through them at all flows when fish are expected to move. All water crossing structures must retain upstream and downstream connection to maintain expected channel processes. These processes include the movement and distribution of wood and sediment and shifting channel patterns. Fishways that are not designed to accommodate future flows can block or alter these processes, although some encroachment of the flood plain and channel migration zone will be approved when it can be shown that such encroachment has minimal impacts to fish life and habitat that supports fish life.
- ii. Fords have a high potential to generate and deliver sediment and may impede fish passage. However, under limited circumstances, fords are appropriate when they provide better protection of fish life and habitat that supports fish life than other water crossing structures.

C. Standards:

- i. Water crossing structures must provide unimpeded passage for all species of adult and juvenile fish. Passage is assumed when there are no barriers due to behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions. Fish passage improvement structures will only be approved where extreme and unusual site conditions prevent a person from complying with the provisions in this section provided associated impacts are adequately mitigated.
- ii. Projections of future 100-year peak flow and future bankfull width shall be considered in the design of water crossing structures. To determine the future bankfull width and future 100-year peak flow, a person must use the department's Culverts and Climate Change web application located on the department's website, or another method approved by the department. If the projected change in bankfull width and 100-year peak flow is less than 5 percent, further consideration of future bankfull width and future peak flow is not required.
- iii. Water crossing structures that are sized to accommodate future bankfull width and future 100-year peak flow must still follow the rules provided elsewhere in this chapter and in WACs 220-660. Appropriate methods to design water crossing structures are available in the department's Water Crossing Design Guidelines, or other published manuals and guidelines. A list of approved manuals and guidelines is on the department's website.

2. Fish Passage Improvement Structures

The provisions in this section apply to fish ladders, weirs constructed for fish passage management, roughened channels, trap-and-haul operations, and hydraulic design culvert retrofits.

A. Description: Fish passage improvement structures facilitate the passage of fish through or around a barrier. They restore upstream and downstream fish access to habitats that have

become isolated by human activities such as placing culverts, dams, and other artificial obstructions.

- B. Fish Life Concerns:** Barriers can block fish from using or accessing upstream spawning and rearing habitat. The main goal is to remove fish passage barriers and ensure unimpeded passage of fish at all life stages, as well as to maintain natural channel processes and function. However, when it is not feasible to remove a barrier, a fish passage improvement structure may be an alternative mitigation measure. The department does not generally recommend using fish passage improvement structures because they can be partial barriers to fish passage and generally require maintenance. Fish passage improvement structures that mainly pass one species or class of fish may unintentionally limit the passage of other species.
- C. Standards:** Fish passage improvement structures, such as fish ladders, must not accumulate sediment and debris at the downstream entrance, or upstream exit of the structure that could impact flow or passage. Water must adequately flow through the structure at a reasonable velocity. Any water surface drop present at a fish passage improvement structure must not exceed .24 meters at any of the controls to be fully passable. While these standards describe unimpeded fish passage for fish passage improvement structures, unless otherwise dictated by a legal agreement, these standards are not enforceable for fish passage improvement structures around natural barriers. Fish passage improvement structures should not be used to bypass permanent natural barriers except in extreme and unusual situations where they are needed to restore native fish species.

3. Existing Fishways

For structures that are in existence on for before XX-XX-XXXX. (rule implementation date)

- A. Description:** Fishways that were legally installed are not required to consider projections of future bankfull width and future 100-year peak flows unless being maintained, rehabilitated or replaced, so long as they function as originally intended and have not exceeded their useful life.
- B. Fish Life Concerns:** Fishways must allow fish to move freely through them at all flows when fish are expected to move. Fishways that are not designed to accommodate future flows can block or alter these processes, although some encroachment of the flood plain and channel migration zone will be approved when it can be shown that such encroachment has minimal impacts to fish life and habitat that supports fish life.
- C. Standards:** Fishway design must provide passage for adults and juveniles of the species that are expected to be present in that system, at the times of year they are expected to be present must provide unimpeded passage for all species of adult and juvenile fishes. Passage is assumed when there are no barriers due to behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions. Methods and guidance to initially determine if the fishway can freely pass fish can be found within the fish passage inventory and assessment guidance on the department's website. The fish passage inventory and assessment guidance should be considered along with the site specific metrics listed above.

4. Water Diversions

- A. Description:** Surface water diversions are common instream features in agricultural areas where the water is used for irrigation. Throughout the state, people also divert water for hydropower, industrial, recreational, residential, municipal, and hatchery uses. A water right must be obtained prior to diverting waters of the state.

B. Fish Life Concerns: To protect fish life, including salmon and steelhead, Washington state law (RCW 77.57.070 and 77.57.010) requires that all surface water diversions be appropriately screened to prevent fish from being drawn into the diversions where they are at risk for injury or death from entrainment. Other elements of a water diversion can result in direct and indirect sources of injury or mortality. Wing and check dams can prevent or delay upstream and downstream fish passage increasing predation, and fish may be physically injured or dewatered by active cleaning mechanisms or in bypass mechanisms.

C. Standards: Devices must be designed and maintained so that fish life are unharmed if fish life is present at the diversion and intake. Effective fish screening is assumed when a given fish screen has no apparent damage, such as holes, dents, or corrosion, and there is no accumulation of woody, vegetative, or other debris near the screen when the device is in use.

D. Limit of department authority over water diversions and intakes:

1. The department cannot limit emergency water diversions during emergency fire response. When possible, a person must notify the department before the emergency diversion. When advance notification is not possible, a person must notify the department within twenty-four hours of the emergency diversion, at the twenty-four-hour hotline phone number at 360-902-2536.
2. The department cannot limit the amount or timing of water diverted under a water right, other than ensuring that there is sufficient bypass flow to return fish back to the stream of origin from a water diversion. However, the department requires the provisions within WAC 220-xxx-xxx for work that will use, divert, obstruct, or change the natural flow or bed of any of lake, river, or stream, or that will utilize any of the waters of a lake, river, or stream to divert water under a water right.
3. Regulating water flow from a permanent permitted irrigation structure by operating valves, or manipulating stop logs, check boards, headgates, or headboards, does not require approval under RCW 77.57 (this chapter), nor an HPA under RCW 77.55.
4. The department must allow a person who has a gravel berm dam diversion permitted by the department before January 1994 to continue to have the dam if it complies with the provisions of the HPA under RCW 77.55. However, the department can provision the approval of gravel berms.

E. Water diversion design, construction, operation, and maintenance:

1. A diversion structure must not hinder upstream or downstream adult and juvenile fish passage. If passage problems develop, the department may require a person to modify the check or wing dam.
2. At pump stations, screens, and headgate areas, a person may use excavation equipment or suction dredge to remove accumulated silts and gravel from within twenty feet of the point of diversion unless otherwise permitted. Place material removed so it will not reenter a lake, river, or stream. The water diversion must be open during this work to capture disturbed sediment within the irrigation diversion and prevent loss of sediment into the stream.
3. Equip and maintain any device used for diverting water from a fish-bearing watercourse with a fish screen approved by the department to prevent passage or impingement of fish into the diversion device. Maintain the fish screen and associated structures as necessary to achieve the approach velocity, a functional bypass, and fish protection criteria.
4. Irrigation diversions must not create blind diversion channels leading to the fish screen. Diversions must be equipped with a fish bypass mechanism to provide opportunity for fish entrained within a delivery canal to volitionally return to the stream.

5. Gravity diversions.
 - a. Wing and check dams.
 - i. Prior to constructing a wing or check dam, contact the department for opportunity to assess the site and determine whether active spawning and incubation is occurring at the site.
 - ii. Maintain diversion canals to maximize hydraulic gradient in the diversion canal to minimize the need for work within the natural watercourse. Maintenance includes removing sediment and debris at the point of diversion.
 - iii. Unless a gravel dam is approved, temporary wing or check dams for irrigation may be constructed using a combination of jersey barriers, concrete blocks, steel posts and wood, pinned straw bales, plastic sheeting, and similar inert materials.
 - iv. Where gravel dams are permitted, they must be constructed with gravels available on-site waterward of the ordinary high water line, or with clean round gravel transported to the site. Limit bed disturbance to the minimum needed to achieve the provisions of the water right.
 - v. Bed excavation depth to construct an irrigation diversion must not exceed eighteen inches unless otherwise approved by the department to avoid destabilizing the stream bed.
 - vi. Earth or dirt must not be used to seal check or wing dams. Straw, plastic sheeting, filter fabric, and similar inert materials may be used to seal wing or check dams.
 - vii. Do not use logs or other woody material waterward of the ordinary high water line to construct the dam unless approved by the department. Large wood from upland locations may be used to create a wing or check dam.
 - viii. If logs or other large woody material block water flow into a ditch or inhibit construction, a person may relocate them within the ordinary high water line.
 - ix. Wing or check dams must be constructed in a manner that does not cause bank erosion.
 - x. All foreign materials, except clean or native gravel, used to construct wing or check dams must be removed within seven days after the end of the irrigation season.
 - b. Diversion dams must not extend completely across the stream unless needed to seal the dam to achieve the water right.
 - c. Graveled wing dams must be removed or breached down to the natural bed elevation in at least two locations at the end of the irrigation season.
6. Start-up and shut-down of water diversions.
 - a. Clean and maintain the fish bypass mechanism prior to diverting water to ensure it is operational and will prevent injury or stranding of fish life.
 - b. Ensure that there is sufficient flow within the bypass mechanism to safely return fish life from the fish screen to state waters.
 - c. If at any point during water diversion there is insufficient instream flow to provide opportunity for fish life to migrate downstream, close the fish bypass until there is sufficient flow.
 - d. Slowly ramp down flows at the end of the irrigation season in a manner that prevents stranding or predation of fish life within a canal above the fish screens or within the

fish bypass mechanism. Do not close the headgate completely until fish have either left the canal and bypass or are salvaged and returned to the stream. Headgates located downstream of the fish screen may be closed immediately at the end of the irrigation season.

Compliance with WAC 220-XXX provisions.

A fishway or fish screen owner must comply with all provisions of chapter 77.57 RCW and this chapter. If a person violates chapter 77.57 RCW or this chapter, the department may require maintenance, rehabilitation, or replacement of the structure.

The department will help the regulated community understand how to voluntarily comply. The department achieves voluntary compliance through education and technical assistance when the department advises and consults on structures, performs on-site technical visits, or provides guidance materials written in easily understood language.

When the department cannot get voluntary compliance by issuing a correction request, the department may use a range of increasingly strict enforcement tools. This ranges from entering into an agreement for maintenance, rehabilitation, or replacement of a fishway or screen to issuing notices to comply, or when appropriate, criminal prosecution.

- 1. Technical assistance program:** The department will continue to develop programs to encourage voluntary compliance. The programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate delivery methods of technical assistance. In addition, the department will provide a list of organizations that provide technical assistance. This list is compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department or any organization.
 - a. Technical assistance includes:
 - i. Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;
 - ii. Information on methods to avoid compliance problems;
 - iii. Assistance in applying for permits; and
 - iv. Information on the mission, goals, and objectives of the program.
- 2. Technical assistance visit:**
 - a. A technical assistance visit is defined as a visit by the department to a project site or other location that:
 - i. Has been requested or is voluntarily accepted; and
 - ii. The department declares it to be a technical assistance visit at the start of the visit.
 - b. During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a correction request to inform the fishway or fish screen owner of any violations of law or department rules identified by the department.
 - c. The department may take action under this section without first issuing a correction request when a violation is observed during a technical assistance visit only if:
 - i. The project proponent has previously been subject to an enforcement action for the same or similar type of violation under RCW 77.57, or has been given previous notice for the same or similar type of violation under RCW 77.57; or
 - ii. The violation has a probability of causing more than minor harm to fish life.
- 3. Voluntary compliance:**
 - a. "Voluntary compliance" means an act of following a rule or law, or of acting according to an agreement without being forced to.

- b. For the rehabilitation, replacement, or maintenance of a fishway or fish screen, the owner must obtain a construction permit called the hydraulic project approval (HPA) from the department when applicable. Procedures for an HPA can be found in WAC 220-660.
- c. For occurrences where an HPA under RCW 77.55 does not apply, the department will enter into a memorandum of understanding (MOU) or compliance action plan (CAP) with the owner. The MOU or CAP must protect fish life:
 - i. Technical provisions in the MOU or CAP must meet requirements within this chapter for fishways and water diversions; and
 - ii. The provisions in the MOU or CAP must include the proposed project plans and a narrative that includes detail on construction materials, timing, invasive species control, pre- and post-construction notifications, clean up, and other considerations specific to the site and project.

4. Correction request:

- a. If during a technical assistance visit, the department discovers a violation of any provisions within chapter 77.57 RCW or this chapter, it must, during the visit or within a reasonable time thereafter, issue a correction request to the fishway or fish screen owner detailing steps needed to bring the structure into compliance.
- b. Contents of a correction request: A correction request must indicate whether it originates from a technical assistance or a compliance visit. A correction request must include:
 - i. A description of what is not in compliance with chapter 77.57 RCW or this chapter;
 - ii. The text of the specific section(s) or subsection(s) of chapter 77.57 RCW or this chapter;
 - iii. A statement of what is required to achieve compliance;
 - iv. The date by which the fishway or fish screen owner must achieve compliance;
 - v. Notice of the means to obtain technical assistance services provided by the department or others; and
 - vi. Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the correction request.
- c. The department must provide for a reasonable time to achieve compliance.
- d. Time extension to comply: A request for an extension of the deadline for achieving compliance with the correction request must be submitted to the department in writing within ten calendar days of receiving the correction request. The department must respond in writing to a request for extension of the deadline.
- e. A correction request is not a formal enforcement action and is not subject to appeal under state law.

5. Noncompliance actions:

- a. Following a technical assistance visit and correction request, if the person fails to respond by the date by which the fishway or fish screen owner must achieve compliance, the department will send a notice to comply:
 - i. A notice to comply must specify the corrective action to be taken, and may also require additional action to prevent, correct, or compensate for adverse impacts to fish life caused by the failure to respond.
 - ii. Contents of a notice to comply. A notice to comply must include:
 - 1. A description of the condition that is not in compliance;
 - 2. The text of the specific section(s) or subsection(s) of chapter 77.57 RCW or this chapter;

3. A statement of what is required to achieve compliance;
 4. The date by which the department requires compliance to be achieved;
 5. Notice of the means to obtain any technical assistance services provided by the department or others; and
 6. Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order.
 7. The right to appeal.
- iii. The department must provide for a reasonable time to achieve compliance.
 - iv. Signature authority for a notice to comply: A notice to comply must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.
 - v. Providing notice: Within five business days of issuing a notice to comply, the department must mail a copy of the notice to the last known address of the person, to the last known address of the owner of the land on which the fishway or fish screen is located, and to the local jurisdiction in which the fishway or fish screen is located. The department must take all reasonable measures to ensure that the project proponent receives the notice.
- b. Consequences of noncompliance: Failure to comply with a notice to comply can result in subsequent criminal enforcement actions.
- i. An action for injunctive relief to abate a noncompliant dam or obstruction as a public nuisance.
 - ii. Under Washington state law ([RCW 77.15.310](#)), unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor.
 - iii. Under Washington state law ([RCW 77.15.320](#)), unlawful failure to provide, maintain, or operate a fishway, dam, or other obstruction is a gross misdemeanor.
 - iv. Under Washington state law ([RCW 77.57.030](#)), dams or other obstructions may have a fishway approved by the director. Plans and specifications must be provided to the department prior to the director's approval. The fishway must be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.
 1. If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, their agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.
 2. If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, their agent, or the person in charge fails to do so, the dam or obstruction is deemed a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.
- c. Replacement/repair of the noncompliant fishway or fish screen by the department:

- i. Under Washington state law (RCW 77.57.070 and 77.57.010), water diversions that are found in violation of WAC 220-XXX, the director or the director's designee may close a water diversion device and keep it closed until it is properly equipped with a fish guard, screen, or bypass.
 1. The fish screens must be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device.
 2. Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien will be filed and recorded in the office of the county auditor of the county in which the action is taken.
- ii. For fishways and water diversion devices in existence on September 1, 1963 or before, the director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish screen without cost to owner. The fishway or water diversion device will be maintained at the expense of the owner.

Informal appeal of administrative actions.

An informal appeal is an internal department review of a department HPA decision and is conducted under chapter [34.05](#) RCW (Administrative Procedure Act).

1. The department recommends that a person aggrieved by a department fishway or water diversion decision contact the department employee responsible for making the decision before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution without the need for an informal appeal.
2. The department encourages a person aggrieved by a department decision to take advantage of the informal appeal process before initiating a formal appeal. However, a person may pursue a formal appeal under WAC 220-XXX-XXX (below section) without first obtaining informal review under this section. This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection.
3. Requesting an informal appeal.
 - a. Issuance of a notice to comply may be informally appealed only by the structure operator who received the notice or by the owner of the land on which the structure is located.
 - b. Issuance of a notice of criminal penalty may be informally appealed only by the person incurring the penalty.
4. A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision, order, or notice. "Date of receipt" means:
 - a. Five business days after the date of mailing; or
 - b. The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt.
5. A request for informal appeal must be submitted in one of the following ways:
 - a. Mailed to:
 Fishways & Diversion Appeals Coordinator
 Department of Fish and Wildlife
 Habitat Program
 P.O. Box 43234
 Olympia, WA 98504-3234

- b. Email: (Need to create)
 - c. Fax: 360-902-2946; or
 - d. Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501, Habitat Program, Fifth Floor.
6. The request must be plainly labeled as "Request for Informal Appeal" and must include the following:
 - a. The appellant's name, address, email address (if available), and phone number;
 - b. The specific department action that the appellant contests;
 - c. The date of the specific department action being contested;
 - d. A copy of the specific department action that the appellant contests;
 - e. A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;
 - f. A clear and concise statement of facts to explain the appellant's grounds for appeal;
 - g. Whether the appellant is the landowner, resident, or another person with an interest in the department action in question;
 - h. The specific relief requested;
 - i. The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and
 - j. The signature of the appellant or their attorney.
 7. Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.
 8. Informal conference. If the appellant agrees, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.
 9. Informal appeal hearings. If the appeal is received from a person who is not the owner, or if the appeal involves an order imposing penalties, or if a resolution is not reached through the informal conference process, then the fishway and water diversion appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the fishway and water diversion appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.
 10. If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-XXX-XXX (section below). Formal review must be requested within the time periods specified in WAC 220-XXX-XXX (section below).

Formal appeal of administrative actions.

A formal appeal is an appeal to the pollution control hearings board (board) under chapters 34.05 RCW and 371-08 WAC.

1. The department recommends that a person aggrieved by a department fishways or water diversion decision contact the department employee responsible for making the decision on the fishway or water diversion before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution without the need for a formal appeal.
2. The department encourages a person aggrieved by a department fishway or water diversion decision to take advantage of the informal appeals process under WAC 220-XXX-XXX before

initiating a formal appeal. However, a person may pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-XXX-XXX.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection, under WAC 220-XXX-XXX.

3. Requesting a formal appeal.
 - a. Issuance of a notice to comply may be formally appealed only by a person who received the order or notice from the department or by the owner of the land on which the fishway or water diversion is located.
 - b. Issuance of a notice of criminal penalty may be formally appealed only by the person incurring the penalty.
4. A request for formal appeal must be in writing and must be filed with the clerk of the board and served on the department within thirty days from the date of receipt of the decision, order, or notice. "Date of receipt" means:
 - a. Five business days after the date of mailing; or
 - b. The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt.
5. The request must be plainly labeled as "Request for Formal Appeal" and, under [WAC 371-08-340](#), must include the following:
 - a. The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;
 - b. The specific department action that the appellant contests;
 - c. The date of the specific department action being contested;
 - d. A copy of the decision, notice, or order you are appealing;
 - e. A short and plain statement explaining why the appellant considers the department action, notice, or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;
 - f. A clear and concise statement of facts to explain the appellant's grounds for appeal;
 - g. Whether the appellant is the landowner, resident, or another person with an interest in the department action in question;
 - h. The specific relief requested;
 - i. The signature of the appellant or his or her representative.
6. Service on the department must be submitted in one of the following ways:
 - a. Mailed to:
Fishways & Diversion Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
P.O. Box 43234
Olympia, WA 98504-3234
 - b. Email: (Need to create)
 - c. Fax: 360-902-2946; or
 - d. Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501, Habitat Program, Fifth Floor.
7. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.
8. The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the board. The department will use the standards in [WAC 371-08-415\(4\)](#) to

make a decision on any stay request. At any time during the appeal, the appellant may appeal to the board for a stay of the decision or order, or removal of a stay imposed by the department.

9. If there is no timely request for an appeal, the department action will be final and nonappealable.

Remedies not exclusive: The remedies under this chapter are not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right available in law, equity, or statute.