



Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

4/19/2024

Agenda item:

8. HPA Rule Making for Dock Flotation--Decision

Presenter(s):

Theresa Nation, HPA Rule Making Coordinator, Habitat Program

Background summary:

Staff are bringing a proposed Hydraulic Code rule amendment to the Commission today for a decision. The rule is necessary to incorporate statutory changes from [Substitute House Bill \(SHB\) 1085](#). The outcome will be that the Hydraulic Code rules (Chapter 220-660 WAC) will align with statute. This is an expedited rule.

SHB 1085 (Laws of 2023, chapter 135) was passed during the 2023 legislature and went into effect January 1, 2024. The topic of the bill is plastic pollution reduction. The portion of SHB 1085 relevant to the Hydraulic Code Rules is section 3. It establishes legal standards for the sale, distribution, and installation of flotation materials in overwater structures (e.g., docks and swim floats).

The Hydraulic Code Rules govern the administration of Hydraulic Project Approval (HPA) permits. The HPA permitting program already regulates the installation and use of flotation materials. The following sections of the Hydraulic Code Rules are being amended: WAC 220-660-140 and WAC 220-660-380. These sections contain rules for overwater structures in freshwater and in saltwater, respectively. Amendments will incorporate the language from SHB 1085 Section 3 that contains standards for the containment of foam flotation. The existing rules already require flotation materials to be contained, but are less detailed. The amended language will mirror the new statute. Additionally, erroneous language regarding plastic "wrap" will be eliminated in WAC 220-660-140.

The anticipated effect is that Hydraulic Project Approval (HPA) permits will align with standards from SHB 1085 and provide project proponents with information that is detailed enough to build a legal overwater structure.

Note: Water crossing structures such as bridges and culverts are addressed in a different section of the Hydraulic Code Rules and are not part of this amendment.

Materials

A copy of the proposed rule is attached. The amendments are located on pages 2 and 7.

Expedited Rule Making

The Administrative Procedure Act (APA), [Chapter 34.05 RCW](#), allows certain rule proposals to undergo an expedited rule making process ([RCW 34.05.353](#)). This rule proposal qualifies for the expedited process because it adopts part of a Washington State statute without material change. Expedited rules are exempt from several standard rule-making requirements, including a Small Business Economic Impact Statement ([RCW 19.85.025\(2\)](#)) and public hearing. Expedited rule making involves the following steps:

- Publication of the rule proposal in the State Register;
- A 45-day waiting period. Any person may file an objection to the expedited process during this time;
- If no objections, then the rule may be adopted;
- An adoption order is filed with the Office of the Code Reviser (OCR), and the rule becomes effective 31 days after filing.

Timeline for this rule making:

Date	Action
Feb. 7	The rule proposal was published in the State Register. A 45-day waiting period was initiated.
Mar. 26	The waiting period ended with no objections.
Apr. 19	The Fish and Wildlife Commission votes on rule adoption.
Late Apr.	WDFW files the adopted rule with the Office of the Code Reviser.
Late May	The new rule goes into effect 31 days after filing.

This rule proposal underwent the State Environmental Policy Act (SEPA) review process. The final decision was a Determination of Nonsignificance.

Staff recommendation:

Recommend adoption of the rule as presented by Department staff.

Policy issue(s) and expected outcome:

No policy issues expected.

WDFW has long regulated the installation of flotation materials through HPA permits. The proposed amendment will align HPA rule language with state law, providing clarity and consistency for the regulated community.

Fiscal impacts of agency implementation:

None. WDFW received a funding proviso from the legislature to support this rule amendment. No operational costs will be incurred.

Public involvement process used and what you learned:

WDFW sent notice to federally recognized tribes regarding rule making, as well as a copy of the proposed rule. The Department received no questions or inquiries. The Hydraulic Code Implementation Community Advisory Group reviewed the proposal and expressed support. Public notice was provided in the State Register, by press release, and on the WDFW website. The agency held a comment period for the SEPA Determination of Nonsignificance and received three comment letters. Two letters expressed thoughts on the topic of mitigation. The third stated opposition to state rules in general.

WDFW did not receive any objections during the 45-day waiting period for expedited rule making. Rule adoption may proceed.

Action requested and/or proposed next steps:

Recommend adoption of the rule as presented by Department staff.

Draft motion language:

Motion: *I move to adopt the rule as presented by staff. Is there a "second?"*

If so, then motion maker discusses basis for motion; other Commissioners discuss views on the motion; and a vote is taken. An expedited rule may not be amended. It must be adopted or rejected as presented.

Post decision communications plan:

Communications will utilize the WDFW website, email, and press release to announce adoption of the rule.

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) **Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design - General:**

(a) The design and location of structures must follow the mitigation sequence to protect freshwater habitats of special concern.

(b) Design and locate structures to protect fish spawning areas.

(c) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks to six feet for the first (~~thirty~~) 30 feet from the shoreline (measured from mean low water). Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential pier and dock criteria may apply.

(B) For the Columbia River, limit the width of residential piers and docks to six feet for the first (~~fifty~~) 50 feet from the shoreline. Docks must have (~~twenty~~) 20 feet of water depth below them (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding, and rearing areas. Grounding of floats is approved in reservoirs and impoundments only at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential pier, dock, ramp and float designs to include grating. The department may require public recreational pier, dock, ramp and float designs to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least ~~((thirty))~~ 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least ~~((fifty))~~ 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(D) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(E) A dock or float six feet wide or narrower must have at least ~~((thirty))~~ 30 percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least ~~((fifty))~~ 50 percent of the deck surface covered in functional grating. The grating material's open area must be at least ~~((sixty))~~ 60 percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(F) If only the minimum deck surface area described in (c)(iv) of this subsection is grated, the grating material's open area must be at least ~~((sixty))~~ 60 percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced to at least ~~((forty))~~ 40 percent open area.

(d) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(e) ~~((Fully enclose and contain))~~ Flotation for the structure must be fully enclosed and contained in a shell ((~~tub~~) or 20--25 mm polyethylene or polyurethane wrap)). Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(f) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department.

(g) Embedded anchor(s) or other approved anchor(s) or piling may hold floats in place.

(h) The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features to minimize abrasion of the wood.

(i) The structure must have been usable at the site within the (~~twelve~~) 12 months immediately before the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(j) Replacement of more than (~~thirty-three~~) 33 percent or (~~two hundred fifty~~) 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only. The grating must conform to the requirements in this section.

(4) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed six inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum width needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, and/or untreated or department-approved treated wood.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(5) Watercraft lift design:

(a) The design of the watercraft lift/grid must follow the mitigation sequence to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of pilings needed to support the watercraft lift/grid.

(6) Mooring buoy design:

(a) In water bodies where mooring buoy systems might damage the bed and native submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Locate the buoy deep enough to prevent vessel grounding.

(ii) Design and install the buoy system with mid-water floats so that anchor lines do not drag.

(iii) In areas with native submerged aquatic vegetation, use an embedment-style mooring anchor instead of a surface-style mooring anchor.

(iv) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The mooring buoy must have a shell that is not readily subject to damage by ultraviolet radiation and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(7) Residential and public recreational docks, pier, ramp, float, watercraft lift, and buoy construction:

(a) Operate and anchor vessels and barges during construction in a manner that protects native aquatic vegetation.

(b) Reestablish the pier or dock centerline during the construction phase using the same methodology used to establish the centerline on the construction drawings.

(c) When installing steel piling, a vibratory hammer or water jet to drive piling is preferred.

(d) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(f) To avoid attracting fish to lights at night, limit impact pile driving to daylight hours whenever feasible.

(g) The department may require the following when removing piling:

(i) Use a vibratory or water jet system to dislodge piling whenever feasible.

(ii) After removal, place the piling on a construction barge or other dry storage site. Piling removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling.

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cut it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material.

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible.

(h) Securely anchor docks, floats, and mooring buoys.

(i) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(j) Dispose of removed docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas. This section applies to the design and construction of permanent, seasonal or temporary docks, piers, ramps (gangways), floats, watercraft lifts, and mooring.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, piling-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly

connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven or jacked into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) **Fish life concerns:**

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. Light reduction is the main impact to fish life at critical life stages. Light reduction or shading by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration and damage forage fish spawning beds. The light/dark contrast of shading/no shading caused by over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation.

(3) **Residential and public recreational pier, ramp, float, watercraft lift and buoy design - Generally:**

(a) The department requires that new structures are designed with a pier and ramp to span the intertidal beach, whenever feasible.

(b) The design and location of structures must follow the mitigation sequence to protect salt water habitats of special concern.

(i) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas.

(ii) Design and locate structures to protect documented Pacific herring, Pacific sand lance, and surf smelt spawning beds; and rockfish and lingcod settlement and nursery areas.

(iii) The department will require a seagrass/macroalgae habitat survey for all new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required for replacement of an existing structure within its original footprint.

(A) Structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet away from seagrass and kelp beds (measured at extreme low water).

(B) In documented herring spawning areas, structures must be located at least (~~twenty-five~~) 25 feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds on which herring spawn (measured at extreme low water).

(iv) If artificial nighttime lighting is used in the project, use low-intensity lights that are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.

(v) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department. The design should not use treated wood for the decking of the structure. The design may use treated wood for structural ele-

ments. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features such as rub strips to minimize abrasion of the wood.

(c) The structure must have been usable at the site within the past (~~twelve~~) 12 months of the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(d) Replacement of more than (~~thirty-three~~) 33 percent or (~~two hundred fifty~~) 250 square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced section only. The grating must conform to the requirements in this section.

(4) Pier and ramp design:

(a) Design piers to maximize height over the bed to improve light transmission. The bottom of the pier must be at least six feet above the bed at the landward end.

(b) Limit the width of residential piers to no more than six feet wide. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(c) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least (~~thirty~~) 30 percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(d) Northeast/southwest, northwest/southeast, and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least (~~fifty~~) 50 percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(e) If only the minimum pier deck surface described in (c) or (d) of this subsection is covered, the grating material's open area must be at least (~~sixty~~) 60 percent open area unless grating covers more than the minimum pier deck area of the pier. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to at least (~~forty~~) 40 percent open area.

(f) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(5) Float design (floats connected to a pier):

(a) Whenever feasible, place float so that the largest dimension is oriented north/south.

(b) Limit the width of residential floats to eight feet. Limit the width of public recreational floats to the minimum width needed to accommodate the intended use.

(c) Whenever feasible, limit the length of single-family dock floats to (~~thirty~~) 30 feet and joint-use dock floats to (~~sixty~~) 60 feet.

(d) If the design has a float positioned perpendicular to the ramp to serve as a ramp landing, this float must not be more than six feet wide and (~~ten~~) 10 feet long.

(e) Design floats in intertidal areas with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom.

(f) A float six feet wide or less must have at least (~~thirty~~) 30 percent of the entire deck surface covered in functional grating. A

float between six and eight feet wide must have at least ~~((fifty))~~ 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only.

(g) The grating material's open area must be at least ~~((sixty))~~ 60 percent.

(h) Flotation for the structure must be fully enclosed and contained in a shell ~~((tub))~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(i) Embedded anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place.

(j) If a project uses anchors to hold the float in place, the anchor lines must not rest on the substrate at any time.

(6) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed ~~((twelve))~~ 12 inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum diameter needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or treated wood approved by the department.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) Fit all pilings with devices to prevent perching by fish-eating birds.

(7) Watercraft lift/grid design:

(a) Design the watercraft lift/grid to minimize shading caused by the structure.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of piling needed to support the watercraft lift/grid.

(8) Buoy design: ~~((+))~~ In water bodies where buoy systems might damage submerged aquatic vegetation, locate and design the buoy system to minimize damage.

~~((i))~~ (a) Whenever feasible, use an embedded anchor.

~~((A))~~ (i) A seagrass/macroalgae habitat survey is not required if an embedment-style mooring anchor is installed. The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate.

~~((B))~~ (ii) A seagrass/macroalgae habitat survey is required if a surface style mooring anchor is installed. The survey is needed to ensure the mooring buoy system is installed at a location where seagrass, kelp, and in herring spawning beds other macroalgae used as spawning substrate will not be damaged.

~~((ii))~~ (b) Place the buoy deep enough to prevent vessel grounding.

~~((iii))~~ (c) Locate the buoy to avoid damage from vessel propellers to submerged aquatic vegetation.

~~((iv))~~ (d) Design the buoy system with a mid-water float so that anchor lines do not drag.

~~((v))~~ (e) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

~~((vi))~~ (f) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

~~((vii))~~ (g) The buoy must have a shell that is resistant to ultraviolet radiation (sunlight) and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(9) **Replacement floating docks:** The department will authorize replacement floating docks, if:

(a) The area of replaced floating dock structure is not expanded;

(b) The replaced floating dock is not relocated within waters of the state without written authorization from the department. The replaced structure must be removed and disposed of upland so it will not reenter state waters;

(c) Floats are designed with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom;

(d) A float six feet wide or less must have at least ~~((thirty))~~ 30 percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least ~~((fifty))~~ 50 percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only;

(e) The grating material's open area must be at least ~~((sixty))~~ 60 percent;

(f) Flotation for the structure must be fully enclosed and contained in a shell ~~((tub))~~. Flotation containing expanded or extruded plastic foam must be enclosed in a shell made of plastic with a minimum thickness of 0.15 inches, concrete, aluminum, or steel. The shell ~~((or wrap))~~ must prevent breakup or loss of the flotation material into the water. The shell ~~((or wrap))~~ must not be readily subject to damage by ultraviolet radiation and abrasion.

(10) **Residential and public recreational dock, pier, ramp, float, floating dock, watercraft lift, and buoy construction:**

(a) The dock or pier centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(b) When installing steel piling, a vibratory hammer is preferred.

(c) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(d) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(e) To avoid attracting fish to light at night, limit impact pile driving to daylight hours whenever feasible.

(f) The department may require the following during piling removal:

(i) Use of a vibratory system to dislodge piling whenever feasible;

(ii) Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken,

hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material;

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible;

(v) When removing creosote piling:

(A) Containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(B) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(g) Securely anchor dock, floats, and mooring buoys.

(h) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(i) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.