
SUBSTITUTE HOUSE BILL 1270

State of Washington

64th Legislature

2015 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Buys, Blake, and Haler)

1 AN ACT Relating to increasing salmon populations in Washington
2 through the implementation of a new fish hatchery management
3 structure that is modeled on the proven, successful structure
4 utilized by the state of Alaska for the past forty years; amending
5 RCW 77.04.160, 77.95.210, 77.95.290, 77.100.050, and 77.12.459;
6 adding a new section to chapter 77.50 RCW; adding a new chapter to
7 Title 77 RCW; creating a new section; and providing an expiration
8 date.

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

10 NEW SECTION. **Sec. 1.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires
12 otherwise.

13 (1) "Certified hatchery manager" means the manager of the
14 permitted hatchery who has received certification from the department
15 under section 4 of this act.

16 (2) "Hatchery-affected area" means the delineated areas of state
17 waters identified by the department under section 2 of this act where
18 the permitted hatchery is expected to have a significant positive
19 effect on fishing opportunities.

1 (3) "Permit" means the permit issued to the qualified regional
2 aquaculture association under section 2 of this act to operate the
3 salmon hatchery.

4 (4) "Permitted hatchery" means the hatchery operated by the
5 qualified regional aquaculture association that possesses the permit
6 issued under section 2 of this act.

7 (5) "Qualified regional aquaculture association" means a private,
8 nonprofit organization that is governed by a board of directors
9 composed of representatives of native American tribes with treaty
10 salmon harvesting rights and salmon recovery stakeholders and is
11 organized for the purpose of managing the salmon hatchery under this
12 chapter. At least half of the board of directors must represent
13 native American tribes with treaty salmon harvesting rights.

14 (6) "Salmon recovery stakeholder" means a person who, either
15 directly or as a representative of a group, has been identified by
16 the department as having been involved in the state's ongoing salmon
17 recovery efforts, such as participating in a regional fisheries
18 enhancement group authorized under RCW 77.95.060 or a commercial
19 salmon fishery. "Salmon recovery stakeholder" includes, but is not
20 limited to, recreational and commercial fishers, seafood processors,
21 and municipalities.

22 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in this
23 section, the department must issue one permit to a qualified regional
24 aquaculture association based in a county that borders both Canada
25 and the Puget Sound to construct and operate an individual salmon
26 hatchery. The department may not issue the permit under this chapter
27 outside of a county that borders both Canada and the Puget Sound.

28 (2) The department may only issue the permit under this chapter
29 to a qualified regional aquaculture association that has actively
30 applied to the department for the permit and that satisfies the
31 requirements for the permit under this chapter.

32 (3) A hatchery that was permitted and operated by an educational
33 institution on the effective date of this section must, upon
34 application, automatically receive permitting as the commercial
35 production hatchery under this chapter if all other requirements of
36 this chapter are satisfied.

37 (4) As part of the permitting process, the department must
38 delineate the areas of state waters where the permitted hatchery is
39 expected to have a significant positive effect on fishing

1 opportunities. Beginning four years after the permitted hatchery is
2 operational and at a time when there is data available about the
3 number of salmon raised in the hatchery that returned to the
4 hatchery, and every four years thereafter, the department may, if
5 necessary, redelineate or otherwise modify a hatchery-affected area
6 so that the hatchery-affected area more accurately reflects the areas
7 of state waters where the permitted hatchery is expected to have or
8 is having a significant positive effect on fishing opportunities.

9 (5) The department is not required to issue the permit under this
10 chapter if there is no qualified regional aquaculture association
11 that satisfies the requirements for the permit under this chapter and
12 that has actively applied for the permit.

13 (6) Any money the department receives in return for issuing the
14 permit must be used only for the implementation of this chapter.

15 NEW SECTION. **Sec. 3.** (1) Prior to being approved for the permit
16 under this chapter, a qualified regional aquaculture association must
17 submit a business plan to the department.

18 (2) The business plan submitted by the qualified regional
19 aquaculture association must include, at a minimum:

20 (a) The identification of the amounts and proposed sources of
21 capital contributions necessary to initiate and maintain hatchery
22 production;

23 (b) The identification of the approximate cost of each production
24 harvest allocation as apportioned among the various harvest groups
25 participating in the qualified regional aquaculture association;

26 (c) Evidence of an agreement among harvest groups participating
27 in the qualified regional aquaculture association to apportion
28 operations costs;

29 (d) Evidence of an agreement of all applicable nontribal
30 stakeholders to not compete for grants against tribal organizations;
31 and

32 (e) A planned method for equitably resolving any inadvertent
33 allocation overharvesting among harvest groups participating in the
34 managing qualified regional aquaculture association that relies on a
35 system of cash payments from overharvesting groups to the
36 underharvesting groups in the year that the misallocation occurs.

37 NEW SECTION. **Sec. 4.** (1) The qualified regional aquaculture
38 association awarded the permit under this chapter must have in its

1 employ, or under contract, a hatchery manager that has been certified
2 by the department.

3 (2) The department shall develop standards for hatchery manager
4 certification and accept applications from individuals interested in
5 being certified to operate the hatchery on behalf of the permitted
6 qualified regional aquaculture association.

7 (3) An individual who can demonstrate that he or she actively
8 managed a state, tribal, or federal hatchery on the effective date of
9 this section must, upon application, be provided a certification
10 under this section.

11 NEW SECTION. **Sec. 5.** (1) The department must provide the
12 permitted hatchery with adequate production limits that emphasize the
13 production of pink and chum salmon intended to rebalance the food
14 chain for native coho, chinook, and steelhead species. The department
15 must also, if requested by the permitted hatchery, provide the
16 permitted hatchery with an adequate production limit for coho salmon
17 to encourage recreational fishing opportunities.

18 (2) A hatchery that existed prior to the effective date of this
19 section that becomes the permitted hatchery under the qualified
20 regional aquaculture association must receive priority application
21 review for an expedited production increase.

22 NEW SECTION. **Sec. 6.** (1) The department must restrict harvest
23 opportunities in hatchery-affected areas to commercial fishers who
24 are financially participating in the capitalization and operating
25 expenses of the enhanced fishing opportunities provided by the
26 permitted hatchery and the associated qualified regional aquaculture
27 association. This section does not prohibit or limit a state licensed
28 recreational fisher from fishing in the hatchery-affected area.

29 (2) Permanent harvest allocations for harvest within the
30 hatchery-affected area, which may include individual harvest quotas,
31 must be agreed to in a written contract among the fishers authorized
32 to operate within the hatchery-affected area. The agreed-to harvest
33 allocations are considered permanent unless or until voluntarily
34 renegotiated by the signatories to the contract.

35 (3) All nontribal fishers authorized to harvest in the hatchery-
36 affected area must be legally licensed by the department under this
37 title.

1 (4) The department must condition all nontribal fishers operating
2 in the hatchery-affected area with harvest requirements for gear type
3 that encourage the best available technology for environmentally
4 sensitive selective harvesting.

5 NEW SECTION. **Sec. 7.** (1) The certified hatchery manager may
6 request broodstock from the department as necessary to operate the
7 permitted hatchery. The department must fulfill all broodstock
8 requests, when practicable, in the time and manner requested by the
9 certified hatchery manager.

10 (2) The department must monitor actual broodstock survival rate
11 performance at the permitted hatchery and replace, as necessary,
12 broodstock if the existing broodstock demonstrates low survival.

13 (3) Any necessary licenses for receiving broodstock must be
14 issued in the name of the qualified regional aquaculture association
15 responsible for managing the permitted hatchery and not in the name
16 of the certified hatchery manager.

17 NEW SECTION. **Sec. 8.** The department must, in its implementation
18 of this title, fully and expeditiously cooperate with the goals of
19 the qualified regional aquaculture association awarded the permit
20 under this chapter and with the intent of this chapter.

21 NEW SECTION. **Sec. 9.** The commission shall adopt rules to
22 implement the requirements of this chapter. In adopting rules, the
23 commission must study and, when appropriate, model the mature,
24 tested, and robust legal structure adopted for private, nonprofit
25 hatcheries by the state of Alaska that has led to significant
26 increases in the numbers of both wild and hatchery fish in Alaska
27 waters over the last forty years. All rules adopted under this
28 section must be designed to minimize the interaction among fish
29 produced by permitted hatcheries and any wild stocks that occur in
30 the hatchery-affected area.

31 NEW SECTION. **Sec. 10.** (1) Initial rule making under section 9
32 of this act must be completed by December 31, 2016.

33 (2) This section expires June 30, 2017.

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.50
35 RCW to read as follows:

1 The commission must condition all commercial salmon licenses that
2 authorize harvest in the hatchery-affected area, as that term is
3 defined in section 1 of this act, as necessary to comply with the
4 requirements of chapter 77.--- RCW (the new chapter created in
5 section 17 of this act).

6 **Sec. 12.** RCW 77.04.160 and 2001 c 337 s 5 are each amended to
7 read as follows:

8 (1) The department shall prepare an annual surplus salmon report.
9 This report shall include the disposition of adult salmonids that
10 have returned to salmonid hatchery facilities operated under the
11 jurisdiction of the state and by the permitted hatchery, as that term
12 is defined in section 1 of this act, that:

13 (a) Have not been harvested; and

14 (b) Were not allowed to escape for natural spawning.

15 (2) The report shall include, by species, the number and
16 estimated weight of surplus salmon and steelhead and a description of
17 the disposition of the adult carcasses including, but not limited to,
18 the following categories:

19 (a) Disposed in landfills;

20 (b) Transferred to another government agency for reproductive
21 purposes;

22 (c) Sold to contract buyers in the round;

23 (d) Sold to contract buyers after spawning;

24 (e) Transferred to Native American tribes;

25 (f) Donated to food banks; and

26 (g) Used in stream nutrient enrichment programs.

27 (3) The report shall also include, by species, information on the
28 number of requests for viable salmon eggs, the number of these
29 requests that were granted and the number that were denied, the
30 geographic areas for which these requests were granted or denied, and
31 a brief explanation given for each denial of a request for viable
32 salmon eggs.

33 (4) The report shall be included in the biennial (~~state of the~~
34 ~~salmon~~) report required by RCW 77.85.020 and other similar state
35 reports on salmon.

36 (5) The report shall include an assessment of the infrastructure
37 needs and facility modifications necessary to implement chapter 337,
38 Laws of 2001.

1 **Sec. 13.** RCW 77.95.210 and 2001 c 337 s 1 are each amended to
2 read as follows:

3 (1) Except as provided in subsection (2) of this section, the
4 department may supply, at a reasonable charge, surplus salmon eggs to
5 a person for use in the cultivation of salmon. The department shall
6 not intentionally create a surplus of salmon to provide eggs for
7 sale. The department shall only sell salmon eggs from stocks that are
8 not suitable for salmon population rehabilitation or enhancement in
9 state waters in Washington after the salmon harvest on surplus salmon
10 has been first maximized by both commercial and recreational fishers.

11 (2) The department shall not destroy hatchery origin salmon for
12 the purposes of destroying viable eggs that would otherwise be useful
13 for propagation or salmon recovery purposes, as determined by the
14 department and Indian tribes with treaty fishing rights in a
15 collaborative manner, for replenishing fish runs. Eggs deemed surplus
16 by the state must be provided, in the following order of priority,
17 to:

18 (a) Voluntary cooperative salmon culture programs under the
19 supervision of the department under chapter 77.100 RCW;

20 (b) Regional fisheries enhancement group salmon culture programs
21 under the supervision of the department under this chapter;

22 (c) Salmon culture programs requested by lead entities and
23 approved by the salmon funding recovery board under chapter 77.85
24 RCW;

25 (d) Hatcheries of federally approved tribes in Washington to whom
26 eggs are moved, not sold, under the interlocal cooperation act,
27 chapter 39.34 RCW; (~~and~~)

28 (e) The permitted hatchery, as that term is defined in section 1
29 of this act; and

30 (f) Governmental hatcheries in Washington, Oregon, and Idaho.

31 The order of priority established in this subsection for
32 distributing surplus eggs does not apply when there is a shortfall in
33 the supply of eggs.

34 (3) All sales, provisions, distributions, or transfers shall be
35 consistent with the department's egg transfer and aquaculture disease
36 control regulations as now existing or hereafter amended. Prior to
37 department determination that eggs of a salmon stock are surplus and
38 available for sale, the department shall assess the productivity of
39 each watershed that is suitable for receiving eggs.

1 **Sec. 14.** RCW 77.95.290 and 1999 c 372 s 15 are each amended to
2 read as follows:

3 (1) The department shall mark appropriate coho salmon that are
4 released from department operated hatcheries and rearing ponds in
5 such a manner that the fish are externally recognizable as hatchery
6 origin salmon by fishers for the purpose of maximized catch while
7 sustaining wild and hatchery reproduction.

8 (2) The department shall mark all appropriate chinook salmon
9 targeted for contribution to the Washington catch that are released
10 from department operated hatcheries and rearing ponds in such a
11 manner that the fish are externally recognizable as hatchery origin
12 salmon by fishers.

13 ~~((The goal of the marking program is: (1) The annual marking by~~
14 ~~June 30, 1997, of all appropriate hatchery origin coho salmon~~
15 ~~produced by the department with marking to begin with the 1994 Puget~~
16 ~~Sound coho brood; and (2) the annual marking by June 30, 1999, of all~~
17 ~~appropriate hatchery origin chinook salmon produced by the department~~
18 ~~with marking to begin with the 1998 chinook brood.))~~ (3) The
19 department may experiment with different methods for marking hatchery
20 salmon with the primary objective of maximum survival of hatchery
21 marked fish, maximum contribution to fisheries, and minimum cost
22 consistent with the other goals.

23 (4)(a) The department shall coordinate with other entities that
24 are producing hatchery chinook and coho salmon for release into
25 public waters to enable the broadest application of the marking
26 program to all hatchery produced chinook and coho salmon and require
27 the application of the marking program for the permitted hatchery, as
28 that term is defined in section 1 of this act.

29 (b) The department shall work with the treaty Indian tribes in
30 order to reach mutual agreement on the implementation of the mass
31 marking program.

32 (c) The ultimate goal of the program is the coast-wide marking of
33 appropriate hatchery origin chinook and coho salmon, and the
34 protection of all wild chinook and coho salmon, where appropriate.

35 **Sec. 15.** RCW 77.100.050 and 2001 c 337 s 3 are each amended to
36 read as follows:

37 (1) The department shall:

38 (a) Encourage and support the establishment of cooperative
39 agreements for the development and operation of cooperative food

1 fish, shellfish, game fish, game bird, game animal, and nongame
2 wildlife projects, and projects which provide an opportunity for
3 volunteer groups to become involved in resource and habitat-oriented
4 activities. All cooperative projects shall be fairly considered in
5 the approval of cooperative agreements;

6 (b) Identify regions and species or activities that would be
7 particularly suitable for cooperative projects providing benefits
8 compatible with department goals;

9 (c) Determine the availability of rearing space at operating
10 facilities or of net pens, egg boxes, portable rearing containers,
11 incubators, and any other rearing facilities for use in cooperative
12 projects, and allocate them to volunteer groups as fairly as
13 possible;

14 (d) Make viable eggs available for replenishing fish runs, and
15 salmon carcasses for nutrient enhancement of streams. If a regional
16 fisheries enhancement group, lead entity, volunteer cooperative
17 group, federally approved tribe in Washington, permitted hatchery as
18 defined in section 1 of this act, or a governmental hatchery in
19 Washington, Oregon, or Idaho requests the department for viable eggs,
20 the department must include the request within the brood stock
21 document prepared for review by the regional offices. The eggs shall
22 be distributed in accordance with the priority established in RCW
23 77.95.210 if they are available. A request for viable eggs may only
24 be denied if the eggs would not be useful for propagation or salmon
25 recovery purposes, as determined under RCW 77.95.210;

26 (e) Exempt volunteer groups from payment of fees to the
27 department for activities related to the project;

28 (f) Publicize the cooperative program;

29 (g) Not substitute a new cooperative project for any part of the
30 department's program unless mutually agreeable to the department and
31 volunteer group;

32 (h) Not approve agreements that are incompatible with legally
33 existing land, water, or property rights.

34 (2) The department may, when requested, provide to volunteer
35 groups its available professional expertise and assist the volunteer
36 group to evaluate its project. The department must conduct annual
37 workshops in each administrative region of the department that has
38 fish stocks listed as threatened or endangered under the federal
39 endangered species act, 16 U.S.C. Sec. 1531 et seq., in order to
40 assist volunteer groups with egg rearing, share information on

1 successful salmon recovery projects accomplished by volunteers within
2 the state, and provide basic training on monitoring efforts that can
3 be accomplished by volunteers in order to help determine if their
4 efforts are successful.

5 **Sec. 16.** RCW 77.12.459 and 1998 c 190 s 74 are each amended to
6 read as follows:

7 A person other than the United States, an Indian tribe recognized
8 as such by the federal government, the state, a subdivision of the
9 state, the qualified regional aquaculture association operating the
10 permitted hatchery as defined in section 1 of this act, or a
11 municipal corporation or an agency of such a unit of government shall
12 not release salmon or steelhead trout into the public waters of the
13 state and subsequently ((~~to~~)) recapture and commercially harvest such
14 salmon or trout. This section shall not prevent any person from
15 rearing salmon or steelhead trout in pens or in a confined area under
16 circumstances where the salmon or steelhead trout are confined and
17 never permitted to swim freely in open water.

18 NEW SECTION. **Sec. 17.** Sections 1 through 9 of this act
19 constitute a new chapter in Title 77 RCW.

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