

# HOUSE BILL REPORT

## HB 1270

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### As Reported by House Committee On: Agriculture & Natural Resources

**Title:** An act relating to increasing salmon populations in Washington through the implementation of a new fish hatchery management structure that is modeled on the proven, successful structure utilized by the state of Alaska for the past forty years.

**Brief Description:** Increasing salmon populations in Washington through the implementation of a new fish hatchery management structure that is modeled on the proven, successful structure utilized by the state of Alaska for the past forty years.

**Sponsors:** Representatives Buys, Blake and Haler.

#### **Brief History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 1/27/15, 2/19/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Creates a new fish hatchery management program in which the Washington Department of Fish and Wildlife must permit a private nonprofit qualified regional aquaculture association to operate one salmon hatchery in a county that borders both Canada and the Puget Sound that is designed to supplement the natural production of salmon in the state by increasing salmon stocks and limiting commercial fishing opportunities in the hatchery-affected area.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Dunshee, Kretz, Orcutt, Pettigrew and Schmick.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Stanford and Van De Wege.

**Staff:** Peter Clodfelter (786-7127).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### State Fish Hatcheries.

Fish hatcheries have operated in Washington for more than a century, beginning with one hatchery on the Kalama River in 1895. Currently, the Washington Department of Fish and Wildlife (WDFW) operates hatcheries throughout the state. For state-owned salmon hatcheries in the Hood Canal basin only, the WDFW is required to enter agreements with private sector partners for the continued operation and management of the state-owned hatcheries.

While reviewing applications from private sector partner applicants under the Hood Canal basin program, the WDFW must apply criteria identifying the appropriateness of a potential partner. The criteria must attempt to ensure that the partner has a long-range business plan, which may include the sale of hatchery surplus salmon, including eggs and carcasses, to ensure the long-range future solvency of the partnership. Partners must be: (1) qualified under section 501(c)(3) of the Internal Revenue Code; (2) a for-profit private entity; or (3) a federally recognized tribe.

There are also Regional Fisheries Enhancement Groups (RFEGs), which are local incorporated nonprofit organizations relying primarily on volunteer efforts that seek to enhance salmon resources and develop projects designed to aid the fishery enhancement capability of the WDFW. Regional Fisheries Enhancement Groups assist in salmon enhancement efforts but do not operate hatcheries.

### The Alaska Model.

In the 1970s, the state of Alaska created a program in which it authorized the Alaska Department of Fish and Game to issue permits to private nonprofit salmon hatcheries for the purpose of enhancing salmon stocks in the state. The program's goal is to protect hatchery-raised salmon during the juvenile stage in order to supplement the natural production of salmon and increase overall salmon abundance, while protecting wild stocks. Private nonprofit hatcheries are owned and operated by regional aquaculture associations or independent nonprofits. Currently, there are about 14 such groups operating roughly 30 hatcheries in Alaska. There are limits on the number of permits issued that allow fishing in each hatchery and individual permits restrict the allowable type of fishing gear.

### Ocean Ranching.

A person other than the United States, an Indian tribe recognized by the federal government, the state, a subdivision of the state, or a municipal corporation, or an agency of such a unit of government is prohibited from releasing salmon or steelhead trout into the public waters of the state and subsequently recapturing and commercially harvesting that salmon or steelhead trout. The prohibition does not apply to any person rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water.

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## **Summary of Substitute Bill:**

### Introduction to New Salmon Hatchery Program.

A new program is created to increase salmon populations that is modeled on the structure used by the Alaska for the past 40 years. The Washington Department of Fish and Wildlife (WDFW) must issue a permit to a qualified regional aquaculture association to construct and operate an individual salmon hatchery in a county that borders both Canada and the Puget Sound. Additional hatcheries are not allowed.

### Program Participants.

A qualified regional aquaculture association is a private nonprofit organization governed by a board of directors that consists of representatives of native American tribes with treaty salmon harvesting rights and salmon recovery stakeholders. At least half of the board of directors must represent native American tribes with treaty salmon harvesting rights. Salmon recovery stakeholder include, but are not limited to, recreational and commercial fishers, seafood processors, and municipalities.

A regional aquaculture association seeking to own and operate the hatchery must apply to the WDFW and demonstrate the regional aquaculture association is qualified. With its application, a regional aquaculture association applicant must include a business plan that includes, at a minimum, information like:

- the sources of proposed capital;
- the approximate cost of each production harvest allocation apportioned amongst the participating harvest groups;
- evidence of an agreement amongst participating harvest groups on how costs are apportioned;
- evidence of an agreement amongst the non-tribal participating harvest groups to not compete for grants with tribal organizations; and
- a planned method for resolving inadvertent allocation overharvesting amongst harvest groups based on a system of cash payments.

The qualified regional aquaculture association must employ or contract with a hatchery manager, who the WDFW has certified. Any money the WDFW receives from issuing the permit must be used to implement the program.

### Restricted Harvest Opportunities in the Hatchery-Affected Area.

The hatchery-affected area consists of areas of state waters that the WDFW expects the permitted hatchery will have a significant positive effect on fishing opportunities in. The hatchery-affected area is delineated by the WDFW during the permitting process and, if necessary, may be re-delineated or otherwise modified after four years when data on returning salmon is available, and every four years thereafter, so that the hatchery-affected area more accurately reflects the areas of state waters where the permitted hatchery is expected to have or is having a significant positive effect on fishing opportunities.

The WDFW must restrict harvest opportunities for commercial fishers in the hatchery-affected area to commercial fishers who are financially participating in the capitalization and operating expenses of the enhanced fishing opportunities provided by the permitted hatchery and the associated qualified regional aquaculture association. Permanent harvest allocations for harvest within the hatchery-affected area, which may include individual harvest quotas,

must be agreed to in a written contract between the commercial fishers allowed to operate within the hatchery-affected area. Recreational fishers may fish in a hatchery-affected area.

All nontribal fishers allowed to harvest in a hatchery-affected area must be licensed by the WDFW under Title 77 RCW. Additionally, the WDFW must condition all nontribal fishers operating in a hatchery-affected area with harvest requirements for gear type that encourage the best available technology for environmentally sensitive selective harvesting. Likewise, the WDFW must condition all commercial salmon licenses that allow harvest in a hatchery-affected area as is necessary to implement the program.

Additional Obligations of the Washington Department of Fish and Wildlife and the Fish and Wildlife Commission.

The Fish and Wildlife Commission is required to adopt rules to implement the program and look to the Alaska model for guidance in doing so. The rules must minimize the interaction between fish produced by the permitted hatchery and any wild stocks in the hatchery-affected area.

The WDFW is required to assist the qualified regional aquaculture association by fulfilling broodstock requests from certified hatchery managers, monitoring broodstock survival rate performance at the permitted hatchery, and replacing broodstock if the existing broodstock demonstrate low survival. The WDFW must also provide surplus eggs to the permitted hatchery, just like the WDFW is currently obligated to do for existing hatcheries in other programs.

Further, the WDFW is required to coordinate with other entities to mark any hatchery chinook and coho salmon from the permitted hatchery prior to their release, just like the WDFW is currently obligated to do for existing hatchery programs. Similarly, the WDFW must include information about adult salmon that return to the permitted hatchery in the annual surplus salmon report that the WDFW already prepares to document information about salmon from hatcheries in other programs.

Ocean Ranching.

The qualified regional aquaculture association operating the permitted hatchery is added to the list of entities exempted from the general prohibition on releasing salmon or steelhead trout into the public waters of the state and subsequently recapturing and commercially harvesting the salmon or steelhead trout.

**Substitute Bill Compared to Original Bill:**

The scope of the hatchery program is narrowed so that the Washington Department of Fish and Wildlife (WDFW) is required to issue one permit to a qualified regional aquaculture association to operate an individual private nonprofit salmon hatchery that is based in a county that borders both Canada and the Puget Sound; the WDFW may not issue more than the one permit. Additionally, if necessary, the WDFW may re-delineate or otherwise modify the hatchery-affected area after four years when data on returning salmon is available, and every four years thereafter, so that the hatchery-affected area more accurately reflects the areas of state waters where the permitted hatchery is expected to have or is having a significant positive effect on fishing opportunities. Further, it is clarified that state-licensed

recreational fishers are not restricted from fishing in the hatchery-affected area. Moreover, the WDFW is required to use any money the WDFW receives from issuing the permit for the individual private nonprofit salmon hatchery to implement the program. Also, recreational and commercial fishers, seafood processors, and municipalities are added as examples of salmon recovery stakeholders. Last, the qualified regional aquaculture association operating the permitted hatchery is added to the list of entities exempted from the general prohibition on releasing salmon or steelhead trout into the public waters of the state and subsequently recapturing and commercially harvesting the salmon or steelhead trout.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 20, 2015.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The intent of the bill is to increase declining salmon stocks. A similar program has worked well in Alaska over the last 40 years to raise salmon stocks, including species native to Alaska. Prior to implementing the program, Alaska's salmon stocks were at historically small percentage levels. Today, Alaska's salmon stocks have greatly improved from that historical low. Much science supports the conclusion that salmon hatcheries help increase overall salmon stocks. Today, Washington is at a crossroads as salmon stocks are at historic lows and, like in Alaska, private hatcheries could help increase salmon stocks in Washington.

(With concerns) The Washington Department of Fish and Wildlife (WDFW) supports using public-private partnerships to enhance salmon stocks and has had success in doing so at the McKernan Hatchery; however, several points in the bill should be clarified. Flexibility to define hatchery-affected areas by reference to a specific time period, in addition to the defined area, would benefit the bill. Also, it is unclear if the restricted fishing opportunities in the hatchery-affected areas apply to both recreational as well as commercial fishers. Further, the relationship between permitted hatcheries under this program and the prohibition on ocean ranching should be clarified as currently the program may violate that prohibition. Moreover, clarity should be provided on where additional revenue will go.

(Opposed) The bill would allow the commercial fishing industry to operate hatcheries and it would exclude recreational fishers. Recreational fishers provide the state with significantly more revenue per biennium through licensing fees than commercial fishers. Also, the bill fails to define where the hatcheries will be located and the bill could be clearer as to how hatchery-affected areas are defined. Relatedly, the bill is unclear whether hatcheries may be located in mixed-stock areas where nonselective harvest is currently illegal in the state. Moreover, the hatchery program's relationship with the federal Endangered Species Act (ESA) is problematic. Alaska does not have any ESA-listed salmon species, whereas Washington does. Endangered Species Act permits may be necessary and it is unclear who

has to pay for and secure those ESA permits. Last, the bill does not address native American tribes' harvest rights in the hatchery-affected areas.

**Persons Testifying:** (In support) Representative Buys, prime sponsor; Doug Karlberg, Whatcom Commercial Fishermans Association; Chuck Johnson, American Canadian Fishing Company; and Elden Hillaire, Lummi Nation.

(With concerns) Kelly Cunningham, Washington Department of Fish and Wildlife.

(Opposed) Scott Sigmon, Coastal Conservation Association; and Carl Burke, Fish Northwest, Puget Sound Anglers, and National Sportsfishing Industry Association.

**Persons Signed In To Testify But Not Testifying:** None.