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**SUBSTITUTE HOUSE BILL 1270**

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**State of Washington                      64th Legislature                      2015 Regular Session**

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

READ FIRST TIME 02/20/15.

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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