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HOUSE BILL 1270

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Buys, Blake, and Haler

Read first time 01/16/15. Referred to Committee on Agriculture & Natural Resources.

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, and 77.100.050; adding a new  
6 section to chapter 77.50 RCW; adding a new chapter to Title 77 RCW;  
7 creating a new section; and providing an expiration date.

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

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

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

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

19 (3) "Permit" means a permit issued to a qualified regional  
20 aquaculture association under section 2 of this act to operate a  
21 salmon hatchery.

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

4 (5) "Qualified regional aquaculture association" means a private,  
5 nonprofit organization that is governed by a board of directors  
6 composed of salmon recovery stakeholders, at least half of which  
7 represent native American tribes with treaty salmon harvesting  
8 rights, and is organized for the purpose of managing salmon  
9 hatcheries under this chapter.

10 (6) "Salmon recovery stakeholder" means a person who, either  
11 directly or as a representative of a group, has been identified by  
12 the department as having been involved in the state's ongoing salmon  
13 recovery efforts, such as participating in a regional fisheries  
14 enhancement group authorized under RCW 77.95.060 or a commercial  
15 salmon fishery.

16 NEW SECTION. **Sec. 2.** (1) Except as otherwise provided in this  
17 section, the department must issue at least three permits to  
18 qualified regional aquaculture associations to construct and operate  
19 individual salmon hatcheries. After the first three permits are  
20 issued, the department may issue additional permits at its  
21 discretion.

22 (2) The department may only issue a permit under this section to  
23 a qualified regional aquaculture association that has actively  
24 applied to the department for a permit and that satisfies the  
25 requirements for a permit under this chapter.

26 (3) A hatchery that was permitted as an educational hatchery on  
27 the effective date of this section must, upon application,  
28 automatically receive permitting as a commercial production hatchery  
29 under this section if all other requirements of this chapter are  
30 satisfied.

31 (4) As part of the permitting process, the department must  
32 delineate the areas of state waters where the permitted hatchery is  
33 expected to have a significant positive effect on fishing  
34 opportunities. Only one permit may be issued in each of these  
35 hatchery-affected areas.

36 (5) The department may only issue less than three permits under  
37 this section if there are too few qualified regional aquaculture  
38 associations that satisfy the requirements for a permit under this  
39 chapter and that have actively applied for a permit.

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

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

6        (a) The identification of the amounts and proposed sources of  
7 capital contributions necessary to initiate and maintain hatchery  
8 production;

9        (b) The identification of the approximate cost of each production  
10 harvest allocation as apportioned amongst the various harvest groups  
11 participating in the qualified regional aquaculture association;

12        (c) Evidence of an agreement among harvest groups participating  
13 in the qualified regional aquaculture association to apportion  
14 operations costs;

15        (d) Evidence of an agreement of all applicable nontribal  
16 stakeholders to not compete for grants against tribal organizations;  
17 and

18        (e) A planned method for equitably resolving any inadvertent  
19 allocation overharvesting amongst harvest groups participating in the  
20 managing qualified regional aquaculture association that relies on a  
21 system of cash payments from overharvesting groups to the  
22 underharvesting groups in the year that the misallocation occurs.

23        NEW SECTION.    **Sec. 4.**    (1) Each qualified regional aquaculture  
24 association awarded a permit under this chapter must have in its  
25 employ, or under contract, a hatchery manager that has been certified  
26 by the department.

27        (2) The department shall develop standards for hatchery manager  
28 certification and accept applications from individuals interested in  
29 being certified to operate a hatchery on behalf of a permitted  
30 qualified regional aquaculture association.

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

35        NEW SECTION.    **Sec. 5.**    (1) The department must provide a  
36 permitted hatchery with adequate production limits that emphasize the  
37 production of pink and chum salmon intended to rebalance the food  
38 chain for native coho, chinook, and steelhead species. The department

1 must also, if requested by a permitted hatchery, provide permitted  
2 hatcheries with an adequate production limit for coho salmon to  
3 encourage recreational fishing opportunities.

4 (2) Hatcheries that existed prior to the effective date of this  
5 section, if later permitted under a qualified regional aquaculture  
6 association, must receive priority application review for an  
7 expedited production increase.

8 NEW SECTION. **Sec. 6.** (1) The department must restrict harvest  
9 opportunities in hatchery-affected areas to fishers who are  
10 financially participating in the capitalization and operating  
11 expenses of the enhanced fishing opportunities provided by the  
12 permitted hatchery and the associated qualified regional aquaculture  
13 association.

14 (2) Permanent harvest allocations for harvest within a hatchery-  
15 affected area, which may include individual harvest quotas, must be  
16 agreed to in a written contract amongst the fishers authorized to  
17 operate within a hatchery-affected area. The agreed-to harvest  
18 allocations are considered permanent until or unless voluntarily  
19 renegotiated by the signatories to the contract.

20 (3) All nontribal fishers authorized to harvest in a hatchery-  
21 affected area must be legally licensed by the department under this  
22 title.

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

27 NEW SECTION. **Sec. 7.** (1) Any certified hatchery manager may  
28 request broodstock from the department as necessary to operate a  
29 permitted hatchery. The department must fulfill all broodstock  
30 requests, when practicable, in the time and manner requested by the  
31 certified hatchery manager.

32 (2) The department must monitor actual broodstock survival rate  
33 performance at permitted hatcheries and replace, as necessary,  
34 broodstock if the existing broodstock demonstrates low survival.

35 (3) Any necessary licenses for receiving broodstock must be  
36 issued in the name of the qualified regional aquaculture association  
37 responsible for managing the permitted hatchery and not in the name  
38 of the certified hatchery manager.

1        NEW SECTION.    **Sec. 8.**    The department must, in its implementation  
2 of this title, fully and expeditiously cooperate with the goals of  
3 each qualified regional aquaculture association awarded a permit  
4 under this chapter and with the intent of this chapter.

5        NEW SECTION.    **Sec. 9.**    The department must, prior to selling or  
6 decommissioning a surplus hatchery owned or managed by the state,  
7 offer to sell or contract the operations of the hatchery to a  
8 qualified regional aquaculture association that has been permitted  
9 under this chapter or that could qualify for permitting under this  
10 chapter.

11       NEW SECTION.    **Sec. 10.**    The commission shall adopt rules to  
12 implement the requirements of this chapter. In adopting rules, the  
13 commission must study and, when appropriate, model the mature,  
14 tested, and robust legal structure adopted for private, nonprofit  
15 hatcheries by the state of Alaska that has led to significant  
16 increases in the numbers of both wild and hatchery fish in Alaska  
17 waters over the last forty years. All rules adopted under this  
18 section must be designed to minimize the interaction among fish  
19 produced by permitted hatcheries and any wild stocks that occur in a  
20 hatchery-affected area.

21       NEW SECTION.    **Sec. 11.**    (1) Initial rule making under section 10  
22 of this act must be completed by December 31, 2016.

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

24       NEW SECTION.    **Sec. 12.**    A new section is added to chapter 77.50  
25 RCW to read as follows:

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

31       **Sec. 13.**    RCW 77.04.160 and 2001 c 337 s 5 are each amended to  
32 read as follows:

33       (1) The department shall prepare an annual surplus salmon report.  
34 This report shall include the disposition of adult salmonids that  
35 have returned to salmonid hatchery facilities operated under the

1 jurisdiction of the state and by permitted hatcheries, as that term  
2 is defined in section 1 of this act, that:

3 (a) Have not been harvested; and

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

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

9 (a) Disposed in landfills;

10 (b) Transferred to another government agency for reproductive  
11 purposes;

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

13 (d) Sold to contract buyers after spawning;

14 (e) Transferred to Native American tribes;

15 (f) Donated to food banks; and

16 (g) Used in stream nutrient enrichment programs.

17 (3) The report shall also include, by species, information on the  
18 number of requests for viable salmon eggs, the number of these  
19 requests that were granted and the number that were denied, the  
20 geographic areas for which these requests were granted or denied, and  
21 a brief explanation given for each denial of a request for viable  
22 salmon eggs.

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

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

29 **Sec. 14.** RCW 77.95.210 and 2001 c 337 s 1 are each amended to  
30 read as follows:

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

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

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

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

12 (c) Salmon culture programs requested by lead entities and  
13 approved by the salmon funding recovery board under chapter 77.85  
14 RCW;

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

18 (e) A permitted hatchery, as that term is defined in section 1 of  
19 this act; and

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

21 The order of priority established in this subsection for  
22 distributing surplus eggs does not apply when there is a shortfall in  
23 the supply of eggs.

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

30 **Sec. 15.** RCW 77.95.290 and 1999 c 372 s 15 are each amended to  
31 read as follows:

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

37 (2) The department shall mark all appropriate chinook salmon  
38 targeted for contribution to the Washington catch that are released  
39 from department operated hatcheries and rearing ponds in such a

1 manner that the fish are externally recognizable as hatchery origin  
2 salmon by fishers.

3 ~~((The goal of the marking program is: (1) The annual marking by  
4 June 30, 1997, of all appropriate hatchery origin coho salmon  
5 produced by the department with marking to begin with the 1994 Puget  
6 Sound coho brood; and (2) the annual marking by June 30, 1999, of all  
7 appropriate hatchery origin chinook salmon produced by the department  
8 with marking to begin with the 1998 chinook brood.))~~ (3) The  
9 department may experiment with different methods for marking hatchery  
10 salmon with the primary objective of maximum survival of hatchery  
11 marked fish, maximum contribution to fisheries, and minimum cost  
12 consistent with the other goals.

13 (4)(a) The department shall coordinate with other entities that  
14 are producing hatchery chinook and coho salmon for release into  
15 public waters to enable the broadest application of the marking  
16 program to all hatchery produced chinook and coho salmon and require  
17 the application of the marking program for all permitted hatcheries,  
18 as that term is defined in section 1 of this act.

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

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

25 **Sec. 16.** RCW 77.100.050 and 2001 c 337 s 3 are each amended to  
26 read as follows:

27 (1) The department shall:

28 (a) Encourage and support the establishment of cooperative  
29 agreements for the development and operation of cooperative food  
30 fish, shellfish, game fish, game bird, game animal, and nongame  
31 wildlife projects, and projects which provide an opportunity for  
32 volunteer groups to become involved in resource and habitat-oriented  
33 activities. All cooperative projects shall be fairly considered in  
34 the approval of cooperative agreements;

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

38 (c) Determine the availability of rearing space at operating  
39 facilities or of net pens, egg boxes, portable rearing containers,

1 incubators, and any other rearing facilities for use in cooperative  
2 projects, and allocate them to volunteer groups as fairly as  
3 possible;

4 (d) Make viable eggs available for replenishing fish runs, and  
5 salmon carcasses for nutrient enhancement of streams. If a regional  
6 fisheries enhancement group, lead entity, volunteer cooperative  
7 group, federally approved tribe in Washington, permitted hatchery as  
8 defined in section 1 of this act, or a governmental hatchery in  
9 Washington, Oregon, or Idaho requests the department for viable eggs,  
10 the department must include the request within the brood stock  
11 document prepared for review by the regional offices. The eggs shall  
12 be distributed in accordance with the priority established in RCW  
13 77.95.210 if they are available. A request for viable eggs may only  
14 be denied if the eggs would not be useful for propagation or salmon  
15 recovery purposes, as determined under RCW 77.95.210;

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

18 (f) Publicize the cooperative program;

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

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

24 (2) The department may, when requested, provide to volunteer  
25 groups its available professional expertise and assist the volunteer  
26 group to evaluate its project. The department must conduct annual  
27 workshops in each administrative region of the department that has  
28 fish stocks listed as threatened or endangered under the federal  
29 endangered species act, 16 U.S.C. Sec. 1531 et seq., in order to  
30 assist volunteer groups with egg rearing, share information on  
31 successful salmon recovery projects accomplished by volunteers within  
32 the state, and provide basic training on monitoring efforts that can  
33 be accomplished by volunteers in order to help determine if their  
34 efforts are successful.

35 NEW SECTION. **Sec. 17.** Sections 1 through 10 of this act  
36 constitute a new chapter in Title 77 RCW.

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