

# HOUSE BILL REPORT

## ESHB 2496

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### As Amended by the Senate

**Title:** An act relating to salmon recovery planning.

**Brief Description:** Developing the critical path schedule for salmon recovery.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Buck, Doumit, Anderson, Sump, D. Sommers, Clements, Butler, Schoesler, Honeyford, Thompson, D. Schmidt, Linville, Chandler, Johnson, Regala, Hatfield, O'Brien, Dickerson, Ogden, Cooper, Kessler, Gardner, Conway and Eickmeyer).

#### **Brief History:**

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

Natural Resources: 1/20/98, 1/27/98 [DPA];  
Appropriations: 2/9/98 [DPS(APP)].

##### **Floor Activity:**

Passed House: 2/16/98, 98-0.  
Senate Amended.

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### HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Regala, Ranking Minority Member; Butler, Assistant Ranking Minority Member; Alexander; Anderson; Chandler; Eickmeyer; Hatfield and Pennington.

**Staff:** Bill Lynch (786-7092).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Appropriations be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cody; Cooke; Crouse; Grant; Keiser; Kenney; Kessler; Lambert; Lisk; Mastin; McMorris; Parlette; Poulsen; Regala; D. Schmidt; Sehlin; Sheahan; Talcott and Tokuda.

**Staff:** Jeff Olsen (786-7157).

**Background:** The National Marine and Fisheries Service (NMFS) has listed some salmon and steelhead runs in the state have been listed as threatened or endangered under the federal Endangered Species Act. Other fish runs within Washington are likely to be listed in the near future. Washington will be required to develop a state plan for NMFS that will lead to the recovery of these species.

### **Summary of Bill:**

#### **State of the Salmon Report**

Beginning in 1999, the Governor is required to submit a biennial state of the salmon report to the Legislature during the first week of December. The report may include a region-by-region description of the amount of funds spent on salmon recovery in response to listings under the federal Endangered Species Act; and a summary of habitat projects including accomplishments in identifying and removing salmon passage barriers, the role of volunteer initiatives and institutions of higher education in salmon habitat restoration efforts, and salmon restoration efforts undertaken in the past two years.

The report may also include a summary of: collaborative efforts with other states and Canada; fish management activities affecting salmon recovery, information regarding impediments to successful salmon recovery, information on the estimated carrying capacity of new habitat, and the number and types of violations of existing laws pertaining to water quality and salmon. The Governor may also include recommendations on the feasibility of forming a state-wide or regional community foundation for salmon recovery efforts as part of recommendations made to the Legislature.

#### **Salmon Recovery Office**

A Salmon Recovery Office is created in the Governor's Office. The Governor must appoint an executive director to serve at the pleasure of the Governor by April 1, 1998. The office may consist of up to eight total staff, and at least two of the staff must be employees of the Department of Fish and Wildlife. At least one of the permanent positions must be filled by a person knowledgeable in tribal fishery interests. Other agencies may transfer staff to the office as agreed to by the agencies.

Responsibilities of the Salmon Recovery Office include: assisting the Fish and Wildlife Commission in negotiating treaties affecting salmon recovery; establishing a uniform state-wide reporting system for regional councils to collect necessary information regarding salmon; acting as a liaison with Congress, federally recognized Indian tribes, and the federal executive branch for issues related to the state's salmon recovery plans; developing a data system to track information about violations of existing laws pertaining

to water quality and salmon; submitting state salmon recovery plans for evolutionary significant units to federal agencies to show the state response to listings under the federal Endangered Species Act; and coordinating technical assistance to regional councils.

### **Regional Councils**

The Department of Fish and Wildlife, in consultation with local, tribal, state, and federal governmental agencies must convene a public meeting to determine the process for creating regional councils. An existing group may be chosen to act as the regional council, but it must have a membership which reflects a reasonably balanced representation of interests.

The department must formally recognize a group as the regional council after consulting with local government entities in the region. Regional councils must hold open public meetings.

The boundaries for a regional council are the same as the boundaries of a regional fisheries enhancement group. The Department of Fish and Wildlife may adjust the boundaries of a regional fisheries enhancement group by rule after consulting with affected parties. The Governor may create up to four new regional fisheries enhancement groups in the state - three in eastern Washington, and one in western Washington. One or more regional councils may combine into a single area to conduct activities.

Regional councils are responsible for developing both habitat work schedules and habitat work plans, and prioritizing habitat projects identified by a technical assistance group and project sponsors. Regional councils may select an administrator and an administrative assistant, contract for habitat projects, and administer available funds for the implementation of these projects with regional fisheries enhancement groups, nongovernmental entities, governmental entities, private landowners, tribes, and citizen groups. The regional council must convene a technical assistance group consisting of federal, state, tribal, local, and private individuals to provide technical services.

Members of a regional council are prohibited from participating in decision-making on projects where they are acting as the project sponsor and for which the member will receive a direct financial benefit.

### **Habitat Work Schedules**

Regional councils are required to develop a habitat work schedule to prioritize and determine the order in which habitat projects within a region will be accomplished. The schedule must rely to the extent possible on existing information and use a critical pathways methodology.

The habitat work schedule must identify limiting factors for salmon in the region, identify and prioritize categories of projects to respond to these limiting factors, issue requests for project proposals, review and evaluate project proposals, prioritize and rank projects, fund high priority projects, and identify how the projects funded will be monitored and evaluated.

### **Habitat Work Plans**

Habitat work plans consist of habitat work schedules, the list of entities performing the habitat projects, a description of the adaptive management process which will be used to develop subsequent habitat work plans, the time lines for the project and estimated cost, and an assessment of the resources available for projects identified in the schedule. The work plan must be updated on an annual basis. The work plan must also be submitted to the Salmon Recovery Office and to the independent science panel for review.

### **Independent Science Panel**

An independent science panel is created consisting of five scientists appointed by the Governor. The Governor is directed to request an institution such as the National Academy of Sciences to screen candidates for the panel. The institution must submit a list of the nine most qualified candidates to the Governor, the chair of the Senate Natural Resources and Parks Committee, and the chair of the House Natural Resources Committee. Each of the chairs may remove one of the names from the list, and the Governor may remove two names from the list. The remaining persons on the list constitute the science panel. The panel members are appointed for four-year terms. The membership of the panel must reflect certain types of expertise, including habitat of salmon. The panel is governed by generally accepted guidelines and practices governing independent science boards such as the National Academy of Sciences.

The science panel is responsible for reviewing and evaluating the intended outcomes and performance measures of the regionally developed habitat work plans; developing model monitoring programs in cooperation with the Puget Sound ambient monitoring program for water quality and salmon habitat for regional use in salmon habitat and restoration efforts; and reporting to the Governor on adaptive management recommendations, performance measures, and intended outcomes for habitat work plans.

The Governor's Office provides the necessary administrative support for the science panel, except that the Puget Sound Action Team provides staff support to the science panel for the development of the model monitoring programs.

### **Volunteer Initiative**

A volunteer habitat restoration account is created in the state treasury. The Department of Fish and Wildlife may expend funds from this account, after appropriation, for

volunteer restoration projects, technical assistance, and administration associated with these projects. A volunteer habitat restoration initiative is created when a memorandum of understanding is signed by the director of the Department of Fish and Wildlife, an administrator for a regional council, and a nonprofit entity or a collaborative group of nonprofit entities.

The agreement must specify the responsibilities of each party. The regional council must, with the cooperation of the volunteer group, identify the types of projects that are appropriate for the volunteers to undertake, the outcome of the project, and the duration of the initiative. The Department of Fish and Wildlife must identify a mechanism to streamline permitting requirements for projects identified in a work plan, identify staff resources available to provide training or technical assistance to the project, and determine the amount of funds that will be provided by the department.

The nonprofit entity must recruit volunteers, provide training for the project, deploy volunteers, seek additional funds from other sources, work with private landowners and governmental entities to identify project opportunities, work with local and state government personnel to identify technical assistance needs and permitting obstacles, and work with the media to develop a high level of public awareness about the initiative.

### **Puget Sound Action Team and Puget Sound Council**

Representatives of commercial fishers and recreational fishers are added to the Puget Sound Council. A person representing federally recognized Indian tribes is added to the Puget Sound Action Team. Federal agency representatives are added to the Puget Sound Action Team as nonvoting members.

Recovery plans developed under the federal Endangered Species Act must be considered for inclusion into the Puget Sound Water Quality Management Plan. The Puget Sound work plan and budget must include specific actions and projects pertaining to salmon recovery plans.

### **Mitigation Proposals**

The Department of Transportation, the Department of Fish and Wildlife, the Department of Ecology, and tribes must convene a work group to develop a process for evaluating mitigation proposals, including identifying mitigation opportunities within a region.

### **Implementation**

The Governor is required to submit a summary of the implementation of this legislation by December 1, 1998, including recommendations to the Legislature that would further the success of salmon recovery.

## **EFFECT OF SENATE AMENDMENT(S):**

### **State of the Salmon Report**

The information contained in the Governor's state of the salmon report is largely unchanged, but the information to be contained in the report is no longer collected by the Salmon Recovery Office. The first biennial state of the salmon report must be delivered by the Governor in December 2000, rather than December 1999. The Senate amendment also deleted specific examples of impediments that may be included in the state of the salmon report, such as: delays due to jurisdictional disputes, gaps or conflicts in state statutes, land management practices or other activities which contribute to the degradation of salmon habitat, and the lack of water or poor water quality during certain times of the year for certain stream segments.

### **Salmon Recovery Office**

Specific language regarding the appointment of an executive director and employment of staff for the Salmon Recovery Office is deleted. The main purpose of the Office is to coordinate and assist in the development of salmon recovery plans for evolutionarily significant units, and submitting those plans to tribal governments and federal agencies in response to the Endangered Species Act.

Duties of the Salmon Recovery Office which have been deleted include establishing a state-wide reporting system for local efforts to collect information necessary to address topics that must be included as part of the state of the salmon report; developing a data system to track information pertaining to the number and types of violations of existing law; coordinating the delivery of technical assistance to local efforts; reviewing work plans with federal, state, and tribal governments for conflicts with applicable laws and treaties; and developing electronic access to up-to-date information pertaining to salmon. A termination date for the Salmon Recovery Office is established. The Salmon Recovery Office expires on June 30, 2006.

### **Habitat Restoration Project Lists and Funding**

The language pertaining to the creation and operation of regional councils, and the creation of additional regional fisheries enhancement groups is deleted. Counties, cities, and tribal governments must jointly designate, by official resolution, the area for which a habitat restoration project list is to be developed, and the lead agency responsible for submitting the list. The lead entity may be a county, city, conservation district, special district, tribal government, or other entity. The area covered by the habitat project list must be based at a minimum on a WRIA, combination of WRIs, an evolutionarily significant unit (ESU), or any other area agreed to by the counties, cities, and tribes.

The lead entity must establish a committee that includes representatives of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other restoration interests. The lead entity must compile a list of habitat restoration projects, establish priorities for individual projects, define the sequence for project implementation, identify potential funding sources, and submit the habitat restoration project list to the interagency team for funding. Habitat projects must have a written agreement from the landowner on which the project is to be implemented. Habitat restoration project lists must be submitted to the interagency team by January 1<sup>st</sup> and July 1<sup>st</sup> of each year, beginning in 1999. Critical pathways methodology must still be used for development of the habitat project list and habitat work schedule.

An interagency review team composed of representatives of the Conservation Commission, the Department of Transportation, and the Department of Fish and Wildlife dispenses funds for habitat restoration projects. If a lead entity is established for an area the interagency review team may remove, but may not add, projects from a habitat project list. If there is no lead entity for an area, the interagency review team must rank and prioritize habitat restoration projects for the area, giving priority to projects that provide a greater benefit to salmon recovery, will be implemented in a more critical area, are the most cost-effective, have the greatest amount of match or in-kind funding, and will be implemented by a sponsor with a successful record of project implementation.

The interagency review team may annually establish a maximum amount of funding available for any individual project, subject to available funding. The review team must attempt to assure a geographical balance in assigning priorities to projects. The review team may provide block grants to the lead entity subject to available funding. For fiscal year 1998, the agencies represented on the review team may authorize, subject to appropriation, expenditures for projects to restore salmon habitat before completion of the project lists. Habitat protection projects, habitat projects which improve or protect water quality, and habitat project maintenance and monitoring activities are no longer eligible for funding. Habitat work schedules are no longer submitted to the Salmon Recovery Office or the independent science panel for review.

### **Independent Science Panel**

The role of the independent science panel is restricted to reviewing salmon recovery plans at the request of the Salmon Recovery Office. The Governor's Office is no longer directed to provide administrative support to the science panel. The science panel no longer develops model monitoring programs to be used in local efforts, and are prohibited from reviewing the project lists or individual projects. The Speaker of the House and the President of the Senate are substituted for the two natural resource committee chairs for the purpose of removing a candidate for the science panel from the list of recommended candidates. Expertise on the science panel must now include geomorphology instead of expertise in requirements for fully functioning ecosystems.

### **Technical Assistance**

The requirement for state natural resources-related agencies to provide technical assistance is deleted, and made permissive. The Conservation Commission, in consultation with local governments and tribes, invites government and private personnel with appropriate expertise to act as a technical assistance advisory group. Language is added which specifies that technical assistance can only be provided by state agency personnel from existing full-time equivalent employees unless specifically funded in the budget. The Sea Grant Program at the University of Washington may provide technical assistance on a fee-for-service basis.

### **Puget Sound Council**

The section which would have added a representative of commercial fishers and a representative of recreational fishers to the Puget Sound Council is eliminated.

### **Volunteer Initiative**

The language creating a volunteer habitat restoration account in the state treasury, and creating a volunteer initiative is removed.

### **Effective Date**

The emergency clause and the null and void clause are removed.

**Appropriation:** None.

**Fiscal Note:** Requested on January 14, 1998.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

**Testimony For:** (Natural Resources) The bill creates an accountable structure that is highly visible and tracks resources and costs effectively. Projects will be prioritized in regions where federal Endangered Species Act listings are being proposed. The proposal represents input from all stakeholders, including tribes, commercial fishers, sport fishers, and environmental groups. Funding for technical assistance is necessary to help local communities in their salmon recovery efforts.

(Appropriations) Efforts need to be coordinated so money and resources aren't wasted. A recovery effort on one creek resulted in 130,000 coho fry being destroyed. Restoration efforts need to be planned up front in order to utilize time effectively. Projects need to be prioritized so that we can get the fastest recovery possible. This is an important piece for salmon recovery, it helps ensure that the necessary tools are in

place so efforts aren't misplaced with volunteers. Milestones which are important to adaptive management are included. This provides a high degree of accountability. Adding 25-30 miles of habitat restoration a year can make a major impact towards healthy salmon runs.

**Testimony Against:** (Natural Resources) None.

(Appropriations) None.

**Testified:** (Natural Resources) (On proposed substitute) Representative Jim Buck, prime sponsor; Terry Wright, NW Indian Fisheries Commission; Ed Owens, Commercial Fisherman; Diane Nelson, Colville Tribe (pro); and Ron Schultz, National Audubon Society (pro with concerns).

(Appropriations) Representative Jim Buck, prime sponsor; Bruce Crawford, Department of Fish and Wildlife; Bill Wilkerson, Washington Forest Protection Association; Ed Owens, Coalition of Coastal Fisheries; Steve Robinson, Northwest Indian Fisheries Commission; Bruce Wishart, People for Puget Sound; John Kelly, King County Outdoor Sports Council; Doug Fricke, Washington Trollers; Josh Baldi, Washington Environmental Council; Joy Huber, Rivers Council of WA; and Paul Parker, WA State Association of Counties.