
**Rural Development, Agriculture, &
Natural Resources Committee**

HB 1579

Brief Description: Implementing recommendations of the southern resident killer whale task force related to increasing chinook abundance.

Sponsors: Representatives Fitzgibbon, Peterson, Lekanoff, Doglio, Macri, Stonier, Tharinger, Stanford, Jinkins, Robinson, Pollet, Valdez, Cody, Kloba, Slatter, Frame and Davis; by request of Office of the Governor.

Brief Summary of Bill

- Removes bass, channel catfish, and walleye from statutory classification as game fish.
- Requires a fishing license to fish for smelt.
- Directs the Department of Fish and Wildlife (Department) to first seek voluntary compliance from a hydraulic project proponent if a violation of the hydraulic code has occurred or is about to occur.
- Authorizes the Department to offer technical assistance to correct violations, issue notices of correction, notices of violation, stop work orders, or notices to comply to hydraulic project proponents in cases of violations of the hydraulic code.
- Authorizes the Department to apply for an administrative inspection warrant to inspect project sites to verify compliance, or if there is probable cause to believe a violation is occurring or has occurred.
- Changes the civil penalty for violations of the hydraulic code from \$100 per day per violation to \$10,000 per violation.
- Authorizes the Department to disapprove applications for up to one year, or until all penalties and notices are paid and complied with, for persons who have failed to comply with either a final stop work order or notice to comply, or failed to pay a civil penalty.

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.

- Removes the requirement that the Department issue a hydraulic project approval for single-family residential bulkheads and rock walls.
- Declares a violation of the hydraulic code to be a public nuisance.

Hearing Date: 1/29/19

Staff: Rebecca Lewis (786-7339).

Background:

Southern Resident Killer Whale Task Force.

Over the 2018 interim, the Governor issued Executive Order 18-02, which, among other things, convened the Southern Resident Killer Whale Task Force (Task Force). Executive Order 18-02 directed the Task Force to identify, prioritize, and support the implementation of a plan to address three threats to southern resident orca whales as identified by the Executive Order: (1) prey availability; (2) contaminants; and (3) disturbance from vessel noise.

Fish classification and harvest.

The Department of Fish and Wildlife (Department) is responsible for the management of the state's fish and wildlife resources and establishes basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife. As a part of this responsibility, the Department issues licenses, tags, endorsements, and permits for hunting and fishing in Washington. Categories of fishing licenses include freshwater licenses, saltwater licenses, and combination licenses. There are several endorsements, stamps, permits, or other surcharges required for particular activities in addition to a fishing license. Fee amounts for fishing licenses, stamps, permits, and endorsements are set in statute.

A fishing license is not required to fish for smelt, carp, or crawfish.

"Game fish" are fish that may not be fished except by rule of the commission. Game fish are classified in statute and include several species of fish, including catfish, trout, bass, and walleye.

Civil enforcement of the hydraulic code.

A person must obtain a hydraulic project approval (HPA) prior to commencing any construction project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Hydraulic project approvals are issued by the Department to ensure the proper protection of fish life. To receive an HPA, the applicant must provide certain information to the Department. This information includes general plans for the overall project and complete plans for the proper protection of fish life.

A violation of an HPA permit is punishable by a civil penalty of up to \$100 per day per violation. Proceeds of civil penalties are deposited into the General Fund. The Department must provide notice of the imposed penalty in writing to the person incurring the penalty. Any person

incurring a penalty may choose to informally appeal the penalty to the Department, or may file a formal appeal to the Pollution Control Hearings Board, within 30 days of receiving the violation notice. Unless an appeal is filed, any penalties are due and payable 30 days after receiving the notice imposing the penalty. If an appeal is filed, the penalty is due upon completion of appeal proceedings and issuance of a final order confirming the penalty either in whole or in part. If the penalty is not paid, the state must bring an action in Thurston County Superior Court or the Superior Court of the county in which the person owing the penalty does business.

Single-family bulkheads.

The Department must approve, within 45 days and with or without additional conditions, applications for bulkhead and rock wall projects that are designed for single-family residences and that meet certain conditions. For example, projects that fall under this exemption must not be located more than 6 feet waterward of the ordinary high water line, and must not result in permanent loss of food fish or shellfish habitat. Projects replacing or repairing an existing bulkhead or rock wall must be in the same place as the bulkhead or rock wall they are replacing, unless removal of the existing structure would result in environmental degradation or other removal problems. Permits for projects that do not meet the conditions in statute must be processed by the Department in the same manner as other HPA permits.

Summary of Bill:

Southern Resident Killer Whale Task Force.

The bill contains an intent section expressing legislative intent to implement recommendations of the Southern Resident Killer Whale Task Force related to chinook abundance.

Fish classification and harvest.

Bass, channel catfish, and walleye are removed from classification as "game fish" in statute. A license is required to fish for smelt.

Civil enforcement of the hydraulic code.

The current enforcement provisions are repealed and replaced with new enforcement provisions.

When the Department of Fish and Wildlife (Department) identifies a violation of the hydraulic code, the Department must first seek voluntary compliance from the project proponent and may offer technical assistance to correct the violation. Subsequently, if the violation is not corrected, the Department may issue a notice of correction, notice of violation, stop work order, notice to comply, or a civil penalty. A "project proponent" is a person who has applied for a hydraulic project approval (HPA); is identified as an authorized agent on an HPA application; or has undertaken a hydraulic project without an HPA.

The Department may disapprove an HPA application for persons who have failed to comply with either a final stop work order or notice to comply. The Department may disapprove such applications for up to one year, or until all civil penalties are paid and outstanding notices are complied with, whichever is longer. The Department must provide written notice of its intent to

disapprove such applications to the applicant and to any authorized agent or landowner identified in the application. The disapproval period begins 30 days following the notice of intent, or when all administrative or judicial appeals have been exhausted.

The Department may apply for an administrative inspection warrant in Thurston County Superior Court or in the Superior Court of the county in which a hydraulic project is located:

1. to inspect a site to verify compliance with the hydraulic code; or
2. if there is probable cause to believe a violation of the hydraulic code is occurring or has occurred.

Violations of the hydraulic code or its rules are declared a public nuisance, and remedies in the hydraulic code are not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right.

Stop work order.

The Department may issue a stop work order when there is a hydraulic code violation, a deviation from an HPA, or if immediate action is needed to avoid more than minor harm to fish habitat. A project proponent or an owner of land on which the project is located may informally appeal a stop work order by filing with the Department in accordance with rules established by the Department, or by filing a formal appeal with the Pollution Control Hearings Board.

Notice to comply.

A notice to comply must clearly state the nature, extent, date, and time of the violation, any necessary corrective action, and the right to appeal. A project proponent or an owner of land on which the project is located may informally appeal a stop work order by filing with the Department in accordance with rules established by the Department, or by filing a formal appeal with the Pollution Control Hearings Board.

Civil penalties.

Civil penalties are changed from \$100 per violation per day to up to \$10,000 per violation. Proceeds from the civil penalties are deposited into the General Fund; however, the Department is authorized to seek and retain, if awarded, attorney fees and any costs awarded if it must litigate to recover civil penalties. The Pollution Control Hearings Board has jurisdiction to hear appeals based on civil penalties.

Single-family bulkheads.

The requirement that the Department issue an HPA within 45 days for single-family bulkhead projects is repealed. Those undertaking such projects must follow the HPA process established in the hydraulic code.

Appropriation: None.

Fiscal Note: Available.

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