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**HOUSE BILL 1579**

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**State of Washington****66th Legislature****2019 Regular Session**

**By** 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

Read first time 01/24/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to implementing recommendations of the southern  
2 resident killer whale task force related to increasing chinook  
3 abundance; amending RCW 77.08.020, 77.32.010, and 43.21B.110; adding  
4 new sections to chapter 77.55 RCW; creating a new section; repealing  
5 RCW 77.55.141 and 77.55.291; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
8 population of southern resident killer whales has declined in recent  
9 years and currently stands at a thirty-year low of seventy-four  
10 animals.

11 (2) The governor convened the southern resident killer whale task  
12 force after the 2018 legislative session to study and identify  
13 actions that could be taken to help sustain and recover this  
14 important species. In the course of its work, the task force found  
15 that chinook salmon compose the largest portion of the whales' diet,  
16 and are therefore critical to the recovery of the species. Further,  
17 several runs of chinook salmon in Washington state are listed under  
18 the federal endangered species act, making chinook recovery all the  
19 more urgent.

20 (3) The task force identified four overarching southern resident  
21 killer whale recovery goals and adopted several recommendations for

1 specific actions under each goal. Goal one identified by the task  
2 force is to increase chinook abundance, and actions under that goal  
3 relate to habitat protection, protection of chinook prey, such as  
4 forage fish, and reducing impacts of nonnative chinook predators.

5 (4) To address the need identified by the task force to increase  
6 chinook abundance, the legislature intends to take initial, important  
7 steps consistent with recommendations made by the governor's southern  
8 resident killer whale task force.

9 **Sec. 2.** RCW 77.08.020 and 1989 c 218 s 2 are each amended to  
10 read as follows:

11 (1) As used in this title or rules of the commission, "game fish"  
12 means those species of the class Osteichthyes that shall not be  
13 fished for except as authorized by rule of the commission and  
14 includes:

15	<b>Scientific Name</b>	<b>Common Name</b>
16	Ambloplites rupestris	rock bass
17	Coregonus clupeaformis	lake white fish
18	Ictalurus furcatus	blue catfish
19	Ictalurus melas	black bullhead
20	Ictalurus natalis	yellow bullhead
21	Ictalurus nebulosus	brown bullhead
22	<del>((Ictalurus punctatus</del>	<del>channel catfish))</del>
23	Lepomis cyanellus	green sunfish
24	Lepomis gibbosus	pumpkinseed
25	Lepomis gulosus	warmouth
26	Lepomis macrochirus	bluegill
27	Lota lota	burbot or freshwater ling
28	<del>((Micropterus dolomieu</del>	<del>smallmouth bass</del>
29	<del>Micropterus salmoides</del>	<del>largemouth bass))</del>
30	Oncorhynchus nerka (in its	kokanee or silver trout
31	landlocked form)	
32	Perca flavescens	yellow perch
33	Pomixis annularis	white crappie
34	Pomixis nigromaculatus	black crappie
35	Prosopium williamsoni	mountain white fish
36	Oncorhynchus aquabonita	golden trout

1	Oncorhynchus clarkii	cutthroat trout
2	Oncorhynchus mykiss	rainbow or steelhead trout
3	Salmo salar (in its	Atlantic salmon
4	landlocked form)	
5	Salmo trutta	brown trout
6	Salvelinus fontinalis	eastern brook trout
7	Salvelinus malma	Dolly Varden trout
8	Salvelinus namaycush	lake trout
9	(( <del>Stizostedion vitreum</del>	<del>Walleye</del> ))
10	Thymallus arcticus	arctic grayling

11 (2) Private sector cultured aquatic products as defined in RCW  
12 15.85.020 are not game fish.

13 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to  
14 read as follows:

15 (1) Except as otherwise provided in this chapter or department  
16 rule, a recreational license issued by the director is required to  
17 hunt, fish, or take wildlife or seaweed. A recreational fishing or  
18 shellfish license is not required for carp(~~(, smelt,)~~) and crawfish,  
19 and a hunting license is not required for bullfrogs.

20 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or  
21 79A.80.040 is required to park or operate a motor vehicle on a  
22 recreation site or lands, as defined in RCW 79A.80.010.

23 (3) The commission may, by rule, indicate that a fishing permit  
24 issued to a nontribal member by the Colville Tribes shall satisfy the  
25 license requirements in subsection (1) of this section on the waters  
26 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and  
27 that a Colville Tribes tribal member identification card shall  
28 satisfy the license requirements in subsection (1) of this section on  
29 all waters of Lake Rufus Woods.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55  
31 RCW to read as follows:

32 (1) When the department determines that a violation of this  
33 chapter, or of any of the rules that implement this chapter, has  
34 occurred or is about to occur, it shall first attempt to achieve  
35 voluntary compliance. The department shall offer information and  
36 technical assistance to the project proponent, identifying one or

1 more means to accomplish the project proponent's purposes within the  
2 framework of the law. The department shall provide a reasonable  
3 timeline to achieve voluntary compliance that takes into  
4 consideration factors specific to the violation, such as the  
5 complexity of the hydraulic project, the actual or potential harm to  
6 fish life or fish habitat, and the environmental conditions at the  
7 time.

8 (2) If a person violates this chapter, or any of the rules that  
9 implement this chapter, or deviates from a permit, the department may  
10 issue a notice of correction in accordance with chapter 43.05 RCW, a  
11 notice of violation in accordance with chapter 43.05 RCW, a stop work  
12 order, a notice to comply, or a notice of civil penalty as authorized  
13 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

14 (3) For purposes of this section, the term "project proponent"  
15 means a person who has applied for a hydraulic project approval, a  
16 person identified as an authorized agent on an application for a  
17 hydraulic project approval, a person who has obtained a hydraulic  
18 project approval, or a person who undertakes a hydraulic project  
19 without a hydraulic project approval.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55  
21 RCW to read as follows:

22 (1) The department may serve upon a project proponent a stop work  
23 order, which is a final order of the department, if:

24 (a) There is any violation of this chapter or of the rules  
25 implementing this chapter;

26 (b) There is a deviation from the hydraulic project approval; or

27 (c) Immediate action is necessary to prevent continuation of or  
28 to avoid more than minor harm to fish life or fish habitat.

29 (2) (a) The stop work order must set forth:

30 (i) The specific nature, extent, and time of the violation,  
31 deviation, harm, or potential harm;

32 (ii) The specific course of action needed to correct or prevent a  
33 continuing violation, deviation, harm, or potential harm; and

34 (iii) The right to an appeal.

35 (b) A stop work order may require that any project proponent stop  
36 all work connected with the violation until corrective action is  
37 taken.

38 (3) Within five business days of issuing the stop work order, the  
39 department shall mail a copy of the stop work order to the last known

1 address of any project proponent, to the last known address of the  
2 owner of the land on which the hydraulic project is located, and to  
3 the local jurisdiction in which the hydraulic project is located.  
4 Substantial compliance with these mailing requirements is deemed  
5 satisfactory compliance with this subsection. For purposes of this  
6 subsection, "substantial compliance" means mailing to the last known  
7 address of the owner of the land on which the hydraulic project is  
8 located, to the local jurisdiction in which the hydraulic project is  
9 located, and to the last known address of any project proponent who  
10 has applied for a hydraulic project approval, who is identified as an  
11 authorized agent on an application for a hydraulic project approval,  
12 or who has obtained a hydraulic project approval.

13 (4) Issuance of a stop work order may be informally appealed by a  
14 project proponent who was served with the stop work order or who  
15 received a copy of the stop work order from the department, or by the  
16 owner of the land on which the hydraulic project is located, to the  
17 department within thirty days from the date of receipt of the stop  
18 work order. Requests for informal appeal must be filed in the form  
19 and manner prescribed by the department by rule. A stop work order  
20 that has been informally appealed to the department is appealable to  
21 the board within thirty days from the date of receipt of the  
22 department's decision on the informal appeal.

23 (5) The project proponent who was served with the stop work order  
24 or who received a copy of the stop work order from the department, or  
25 the owner of the land on which the hydraulic project is located, may  
26 commence an appeal to the board within thirty days from the date of  
27 receipt of the stop work order. If such an appeal is commenced, the  
28 proceeding is an adjudicative proceeding under the administrative  
29 procedure act, chapter 34.05 RCW. The recipient of the stop work  
30 order must comply with the order of the department immediately upon  
31 being served, but the board may stay, modify, or discontinue the  
32 order, upon motion, under such conditions as the board may impose.

33 (6) For the purposes of this section, "project proponent" has the  
34 same meaning as defined in section 4(3) of this act.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55  
36 RCW to read as follows:

37 (1)(a) If a violation of this chapter or of the rules  
38 implementing this chapter, a deviation from the hydraulic project  
39 approval, damage to fish life or fish habitat, or potential damage to

1 fish life or fish habitat, has occurred and the department determines  
2 that a stop work order is unnecessary, the department may issue and  
3 serve upon a project proponent a notice to comply, which must clearly  
4 set forth:

5 (i) The nature, extent, date, and time of the violation;

6 (ii) Any necessary corrective action; and

7 (iii) The right to an appeal.

8 (b) The notice to comply may require that any project proponent  
9 take corrective action to prevent, correct, or compensate for adverse  
10 impacts to fish life or fish habitat.

11 (2) Within five business days of issuing the notice to comply,  
12 the department shall mail a copy of the notice to comply to the last  
13 known address of any project proponent, to the last known address of  
14 the owner of the land on which the hydraulic project is located, and  
15 to the local jurisdiction in which the hydraulic project is located.  
16 Substantial compliance with these mailing requirements is deemed  
17 satisfactory compliance with this subsection. For purposes of this  
18 subsection, "substantial compliance" means mailing to the last known  
19 address of the owner of the land on which the hydraulic project is  
20 located, to the local jurisdiction in which the hydraulic project is  
21 located, and to the last known address of any project proponent who  
22 has applied for a hydraulic project approval, who is identified as an  
23 authorized agent on an application for a hydraulic project approval,  
24 or who has obtained a hydraulic project approval.

25 (3) Issuance of a notice to comply may be informally appealed by  
26 a project proponent who was served with the notice to comply or who  
27 received a copy of the notice to comply from the department, or by  
28 the owner of the land on which the hydraulic project is located, to  
29 the department within thirty days from the date of receipt of the  
30 notice to comply. Requests for informal appeal must be filed in the  
31 form and manner prescribed by the department by rule. A notice to  
32 comply that has been informally appealed to the department is  
33 appealable to the board within thirty days from the date of receipt  
34 of the department's decision on the informal appeal.

35 (4) The project proponent who was served with the notice to  
36 comply, the project proponent who received a copy of the notice to  
37 comply from the department, or the owner of the land on which the  
38 hydraulic project is located may commence an appeal to the board  
39 within thirty days from the date of receipt of the notice to comply.  
40 If such an appeal is commenced, the proceeding is an adjudicative

1 proceeding under the administrative procedure act, chapter 34.05 RCW.  
2 The recipient of the notice to comply must comply with the notice to  
3 comply immediately upon being served, but the board may stay, modify,  
4 or discontinue the notice to comply, upon motion, under such  
5 conditions as the board may impose.

6 (5) For the purposes of this section, "project proponent" has the  
7 same meaning as defined in section 4(3) of this act.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55  
9 RCW to read as follows:

10 (1) The department may levy civil penalties of up to ten thousand  
11 dollars for every violation of this chapter or of the rules that  
12 implement this chapter. Each and every violation is a separate and  
13 distinct civil offense.

14 (2) The penalty provided must be imposed by notice in writing by  
15 the department, provided either by certified mail or by personal  
16 service, to the person incurring the penalty and to the local  
17 jurisdiction in which the hydraulic project is located, describing  
18 the violation. The civil penalty notice must set forth:

19 (a) The basis for the penalty;

20 (b) The amount of the penalty; and

21 (c) The right of the person incurring the penalty to appeal the  
22 civil penalty.

23 (3)(a) Except as provided in (b) of this subsection, any person  
24 incurring any penalty under this chapter may appeal the penalty to  
25 the board pursuant to chapter 34.05 RCW. Appeals must be filed within  
26 thirty days from the date of receipt of the notice of civil penalty  
27 in accordance with RCW 43.21B.230.

28 (b) Issuance of a civil penalty may be informally appealed by the  
29 person incurring the penalty to the department within thirty days  
30 from the date of receipt of the notice of civil penalty. Requests for  
31 informal appeal must be filed in the form and manner prescribed by  
32 the department by rule. A civil penalty that has been informally  
33 appealed to the department is appealable to the board within thirty  
34 days from the date of receipt of the department's decision on the  
35 informal appeal.

36 (4) The penalty imposed becomes due and payable thirty days after  
37 receipt of a notice imposing the penalty unless an appeal is filed.  
38 Whenever an appeal of any penalty incurred under this chapter is  
39 filed, the penalty becomes due and payable only upon completion of

1 all review proceedings and the issuance of a final order confirming  
2 the penalty in whole or in part. When the penalty becomes past due,  
3 it is also subject to interest at the rate allowed by RCW 43.17.240  
4 for debts owed to the state.

5 (5) If the amount of any penalty is not paid within thirty days  
6 after it becomes due and payable, the attorney general, upon the  
7 request of the director, shall bring an action in the name of the  
8 state of Washington in the superior court of Thurston county or of  
9 the county in which such a violation occurred, to recover the  
10 penalty. In all such actions, the rules of civil procedures and the  
11 rules of evidence are the same as in an ordinary civil action. The  
12 department is also entitled to recover reasonable attorneys' fees and  
13 costs incurred in connection with the penalty recovered under this  
14 section. All civil penalties received or recovered by state agency  
15 action for violations as prescribed in subsection (1) of this section  
16 must be deposited into the state's general fund. The department is  
17 authorized to retain any attorneys' fees and costs it may be awarded  
18 in connection with an action brought to recover a civil penalty  
19 issued pursuant to this section.

20 (6) The department shall adopt by rule a penalty schedule to be  
21 effective by January 1, 2020. The penalty schedule must be developed  
22 in consideration of the following:

- 23 (a) Previous violation history;
- 24 (b) Severity of the impact on fish life and fish habitat;
- 25 (c) Whether the violation of this chapter or of its rules was  
26 intentional;
- 27 (d) Cooperation with the department;
- 28 (e) Reparability of any adverse effects resulting from the  
29 violation; and
- 30 (f) The extent to which a penalty to be imposed on a person for a  
31 violation committed by another should be reduced if the person was  
32 unaware of the violation and has not received a substantial economic  
33 benefit from the violation.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55  
35 RCW to read as follows:

36 The department may apply for an administrative inspection warrant  
37 in either Thurston county superior court or the superior court in the  
38 county in which the hydraulic project is located. The court may issue  
39 an administrative inspection warrant where:

1 (1) Department personnel need to inspect the hydraulic project  
2 site to ensure compliance with this chapter or with rules adopted to  
3 implement this chapter; or

4 (2) Department personnel have probable cause to believe that a  
5 violation of this chapter or of the rules that implement this chapter  
6 is occurring or has occurred.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.55  
8 RCW to read as follows:

9 (1) The department may disapprove an application for hydraulic  
10 project approval submitted by a person who has failed to comply with  
11 a final order issued pursuant to section 5 or 6 of this act or who  
12 has failed to pay civil penalties issued pursuant to section 7 of  
13 this act. Applications may be disapproved for up to one year from the  
14 issuance of a notice of intent to disapprove applications under this  
15 section, or until all outstanding civil penalties are paid and all  
16 outstanding notices to comply and stop work orders are complied with,  
17 whichever is longer.

18 (2) The department shall provide written notice of its intent to  
19 disapprove an application under this section to the applicant and to  
20 any authorized agent or landowner identified in the application.

21 (3) The disapproval period runs from thirty days following the  
22 date of actual notice of intent or when all administrative and  
23 judicial appeals, if any, have been exhausted.

24 (4) Any person provided the notice may seek review from the board  
25 by filing a request for review within thirty days of the date of the  
26 notice of intent to disapprove applications.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.55  
28 RCW to read as follows:

29 Any violation of this chapter or of the rules adopted to  
30 implement this chapter is declared to be a public nuisance.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55  
32 RCW to read as follows:

33 The remedies under this chapter are not exclusive and do not  
34 limit or abrogate any other civil or criminal penalty, remedy, or  
35 right available in law, equity, or statute.

1       **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to  
2 read as follows:

3       (1) The hearings board shall only have jurisdiction to hear and  
4 decide appeals from the following decisions of the department, the  
5 director, local conservation districts, the air pollution control  
6 boards or authorities as established pursuant to chapter 70.94 RCW,  
7 local health departments, the department of natural resources, the  
8 department of fish and wildlife, the parks and recreation commission,  
9 and authorized public entities described in chapter 79.100 RCW:

10       (a) Civil penalties imposed pursuant to RCW 18.104.155,  
11 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 7  
12 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
13 90.56.310, 90.56.330, and 90.64.102.

14       (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
16 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17       (c) Except as provided in RCW 90.03.210(2), the issuance,  
18 modification, or termination of any permit, certificate, or license  
19 by the department or any air authority in the exercise of its  
20 jurisdiction, including the issuance or termination of a waste  
21 disposal permit, the denial of an application for a waste disposal  
22 permit, the modification of the conditions or the terms of a waste  
23 disposal permit, or a decision to approve or deny an application for  
24 a solid waste permit exemption under RCW 70.95.300.

25       (d) Decisions of local health departments regarding the grant or  
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27       (e) Decisions of local health departments regarding the issuance  
28 and enforcement of permits to use or dispose of biosolids under RCW  
29 70.95J.080.

30       (f) Decisions of the department regarding waste-derived  
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and  
32 decisions of the department regarding waste-derived soil amendments  
33 under RCW 70.95.205.

34       (g) Decisions of local conservation districts related to the  
35 denial of approval or denial of certification of a dairy nutrient  
36 management plan; conditions contained in a plan; application of any  
37 dairy nutrient management practices, standards, methods, and  
38 technologies to a particular dairy farm; and failure to adhere to the  
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority  
2 which pursuant to law must be decided as an adjudicative proceeding  
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the  
5 department of fish and wildlife, and the department that are  
6 reviewable under chapter 76.09 RCW, and the department of natural  
7 resources' appeals of county, city, or town objections under RCW  
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of  
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,  
12 deny, condition, or modify a hydraulic project approval permit under  
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to  
14 comply, to issue a civil penalty, or to issue a notice of intent to  
15 disapprove applications.

16 (l) Decisions of the department of natural resources that are  
17 reviewable under RCW 78.44.270.

18 (m) Decisions of an authorized public entity under RCW 79.100.010  
19 to take temporary possession or custody of a vessel or to contest the  
20 amount of reimbursement owed that are reviewable by the hearings  
21 board under RCW 79.100.120.

22 (2) The following hearings shall not be conducted by the hearings  
23 board:

24 (a) Hearings required by law to be conducted by the shorelines  
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW  
27 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
28 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110  
30 and 90.44.220.

31 (d) Hearings conducted by the department to adopt, modify, or  
32 repeal rules.

33 (3) Review of rules and regulations adopted by the hearings board  
34 shall be subject to review in accordance with the provisions of the  
35 administrative procedure act, chapter 34.05 RCW.

36 NEW SECTION. **Sec. 13.** The following acts or parts of acts are  
37 each repealed:

1           (1) RCW 77.55.141 (Marine beach front protective bulkheads or  
2 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;  
3 and

4           (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146  
5 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c  
6 173 s 6.

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