

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1286

Chapter 337, Laws of 2001

(partial veto)

57th Legislature
2001 Regular Legislative Session

SALMON--VIABLE EGGS

EFFECTIVE DATE: 7/22/01

Passed by the House April 19, 2001
Yeas 93 Nays 0

FRANK CHOPP
**Speaker of the House of
Representatives**

CLYDE BALLARD
**Speaker of the House of
Representatives**

Passed by the Senate April 18, 2001
Yeas 43 Nays 0

BRAD OWEN
President of the Senate

Approved May 15, 2001, with the
exception of section 6, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1286** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED
May 15, 2001 - 4:50 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1286

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Lisk, Grant, Sump, Cox, Doumit, G. Chandler, Mulliken, Mielke, Clements, Lambert, Hankins, Pflug, Dunn, B. Chandler, Buck, Cairnes, Pennington, Boldt, Hatfield, Delvin, Armstrong, Skinner, Alexander, Kessler, Pearson, D. Schmidt, Anderson, Rockefeller and Esser)

READ FIRST TIME 02/27/01.

1 AN ACT Relating to the use of viable salmon eggs; amending RCW
2 77.95.210, 77.95.270, 77.100.050, and 77.100.060; adding a new section
3 to chapter 77.04 RCW; and declaring an emergency.

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

5 **Sec. 1.** RCW 77.95.210 and 2000 c 107 s 11 are each amended to read
6 as follows:

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

15 (2) The department shall not destroy hatchery origin salmon for the
16 purposes of destroying viable eggs that would otherwise be useful for
17 propagation or salmon recovery purposes, as determined by the
18 department and Indian tribes with treaty fishing rights in a

1 collaborative manner, for replenishing fish runs. Eggs deemed surplus
2 by the state must be provided, in the following order of priority, to:

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

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

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

9 (d) Hatcheries of federally approved tribes in Washington to whom
10 eggs are moved, not sold, under the interlocal cooperation act, chapter
11 39.34 RCW; and

12 (e) Governmental hatcheries in Washington, Oregon, and Idaho.

13 The order of priority established in this subsection for
14 distributing surplus eggs does not apply when there is a shortfall in
15 the supply of eggs.

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

22 **Sec. 2.** RCW 77.95.270 and 1989 c 336 s 6 are each amended to read
23 as follows:

24 Except as provided in RCW 77.95.210, the department may make
25 available to private contractors salmon eggs in excess of department
26 hatchery needs for the purpose of contract rearing to release the
27 smolts into public waters. However, providing salmon eggs as specified
28 in RCW 77.95.210(2) has the highest priority. The priority of
29 providing eggs surplus after meeting the requirements of RCW
30 77.95.210(2) to contract rearing (~~shall be~~) is a higher priority than
31 providing eggs to aquaculture purposes (~~which~~) that are not destined
32 for release into Washington public waters.

33 **Sec. 3.** RCW 77.100.050 and 1987 c 505 s 73 are each amended to
34 read as follows:

35 (1) The department shall:

36 (a) Encourage and support the establishment of cooperative
37 agreements for the development and operation of cooperative food fish,

1 shellfish, game fish, game bird, game animal, and nongame wildlife
2 projects, and projects which provide an opportunity for volunteer
3 groups to become involved in resource and habitat-oriented activities.
4 All cooperative projects shall be fairly considered in the approval of
5 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 possible;

13 (d) Make viable eggs available for replenishing fish runs, and
14 salmon carcasses for nutrient enhancement of streams. If a regional
15 fisheries enhancement group, lead entity, volunteer cooperative group,
16 federally approved tribe in Washington, or a governmental hatchery in
17 Washington, Oregon, or Idaho requests the department for viable eggs,
18 the department must include the request within the brood stock document
19 prepared for review by the regional offices. The eggs shall be
20 distributed in accordance with the priority established in RCW
21 77.95.210 if they are available. A request for viable eggs may only be
22 denied if the eggs would not be useful for propagation or salmon
23 recovery purposes, as determined under RCW 77.95.210.

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

26 ~~((e))~~ (f) Publicize the cooperative program;

27 ~~((f))~~ (g) Not substitute a new cooperative project for any part
28 of the department's program unless mutually agreeable to the department
29 and volunteer group;

30 ~~((g))~~ (h) Not approve agreements that are incompatible with
31 legally existing land, water, or property rights.

32 (2) The department may, when requested, provide to volunteer groups
33 its available professional expertise and assist the volunteer group to
34 evaluate its project. The department must conduct annual workshops in
35 each administrative region of the department that has fish stocks
36 listed as threatened or endangered under the federal endangered species
37 act, 16 U.S.C. Sec. 1531 et seq., in order to assist volunteer groups
38 with egg rearing, share information on successful salmon recovery
39 projects accomplished by volunteers within the state, and provide basic

1 training on monitoring efforts that can be accomplished by volunteers
2 in order to help determine if their efforts are successful.

3 **Sec. 4.** RCW 77.100.060 and 2000 c 107 s 112 are each amended to
4 read as follows:

5 The commission shall establish by rule:

6 (1) The procedure for entering a cooperative agreement and the
7 application forms for a permit to release fish or wildlife required by
8 RCW 77.12.457. The procedure shall indicate the information required
9 from the volunteer group as well as the process of review by the
10 department. The process of review shall include the means to
11 coordinate with other agencies and Indian tribes when appropriate and
12 to coordinate the review of any necessary hydraulic permit approval
13 applications.

14 (2) The procedure for providing within forty-five days of receipt
15 of a proposal a written response to the volunteer group indicating the
16 date by which an acceptance or rejection of the proposal can be
17 expected, the reason why the date was selected, and a written summary
18 of the process of review. The response should also include any
19 suggested modifications to the proposal which would increase its
20 likelihood of approval and the date by which such modified proposal
21 could be expected to be accepted. If the proposal is rejected, the
22 department must provide in writing the reasons for rejection. The
23 volunteer group may request the director or the director's designee to
24 review information provided in the response.

25 (3) The priority of the uses to which eggs, seed, juveniles, or
26 brood stock are put. Use by cooperative projects shall be second in
27 priority only to the needs of programs of the department or of other
28 public agencies within the territorial boundaries of the state. Sales
29 of eggs, seed, juveniles, or brood stock have a lower priority than use
30 for cooperative projects. The rules must identify and implement
31 appropriate protocols for brood stock handling, including the
32 outplanting of adult fish, spawning, incubation, rearing, and release
33 and establish a prioritized schedule for implementation of this act,
34 and shall include directives for allowing more hatchery salmon to spawn
35 naturally in areas where progeny of hatchery fish have spawned,
36 including the outplanting of adult fish, in order to increase the
37 number of viable salmon eggs and restore healthy numbers of fish within
38 the state.

1 (4) The procedure for the director to notify a volunteer group that
2 the agreement for the project is being revoked for cause and the
3 procedure for revocation. Revocation shall be documented in writing to
4 the volunteer group. Cause for revocation may include: (a) The
5 unavailability of adequate biological or financial resources; (b) the
6 development of unacceptable biological or resource management
7 conflicts; or (c) a violation of agreement provisions. Notice of cause
8 to revoke for a violation of agreement provisions may specify a
9 reasonable period of time within which the volunteer group must comply
10 with any violated provisions of the agreement.

11 (5) An appropriate method of distributing among volunteer groups
12 fish, bird, or animal food or other supplies available for the program.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.04 RCW
14 to read as follows:

15 (1) The department shall prepare an annual surplus salmon report.
16 This report shall include the disposition of adult salmonids that have
17 returned to salmonid hatchery facilities operated under the
18 jurisdiction of the state that:

19 (a) Have not been harvested; and

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

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

25 (a) Disposed in landfills;

26 (b) Transferred to another government agency for reproductive
27 purposes;

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

29 (d) Sold to contract buyers after spawning;

30 (e) Transferred to Native American tribes;

31 (f) Donated to food banks; and

32 (g) Used in stream nutrient enrichment programs.

33 (3) The report shall also include, by species, information on the
34 number of requests for viable salmon eggs, the number of these requests
35 that were granted and the number that were denied, the geographic areas
36 for which these requests were granted or denied, and a brief
37 explanation given for each denial of a request for viable salmon eggs.

1 (4) The report shall be included in the biennial state of the
2 salmon report required by RCW 77.85.020 and other similar state reports
3 on salmon.

4 (5) The report shall include an assessment of the infrastructure
5 needs and facility modifications necessary to implement this act.

6 ****NEW SECTION. Sec. 6. This act is necessary for the immediate***
7 ***preservation of the public peace, health, or safety, or support of the***
8 ***state government and its existing public institutions, and takes effect***
9 ***immediately.***

10 ****Sec. 6 was vetoed. See message at end of chapter.***

Passed the House April 19, 2001.

Passed the Senate April 18, 2001.

Approved by the Governor May 15, 2001, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 2001.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 6,
3 Engrossed Substitute House Bill No. 1286 entitled:

4 "AN ACT Relating to the use of viable salmon eggs;"

5 Engrossed Substitute House Bill No. 1286 provides direction and
6 priorities to the Department of Fish and Wildlife (WDFW) and the Fish
7 and Wildlife Commission regarding the use of surplus salmon eggs.

8 Although I have approved the majority of this bill, I do have
9 concerns about how it may be implemented.

10 Section 4 of the bill directs the Commission to issue rules
11 allowing more hatchery salmon to spawn naturally in the state's
12 watersheds. In view of the significant concerns and uncertainties
13 surrounding the interaction between hatchery and wild salmon, the
14 Commission should take into account the recommendations of the federal
15 agencies with jurisdiction over this issue, namely the National Marine
16 Fisheries Service and the U.S. Fish and Wildlife Service.

17 Nothing in this legislation infringes on WDFW's co-management
18 responsibilities with the tribes. I anticipate that any rules will
19 comply with WDFW's Hatchery Genetic Management Plans, satisfying the
20 requirements of the Endangered Species Act and the goal of wild fish
21 recovery. I also expect the state and tribes to continue to improve
22 hatchery practices and to develop recommendations consistent with the
23 findings of the Hatchery Scientific Review Group.

24 Although hatcheries currently, and in the future, will play an
25 important role in the recovery of wild salmon populations, they are not
26 a substitute for the protection and restoration of habitat and reform
27 of our state water code. Wild salmon will not recover without our
28 addressing habitat, hatcheries, harvest and hydropower.

1 I also note that there is a technical conflict in the priorities
2 for the distribution of surplus eggs in section 1 of the bill and
3 existing law (RCW 77.100.060(3)). I ask that the WDFW work with the
4 legislature to address this issue.

5 Section 6 of this bill is an emergency clause. My discussions with
6 WDFW indicate that this provision is not necessary and that the
7 development of the appropriate rule package will take some time.

8 For these reasons, I have vetoed section 6 of Engrossed Substitute
9 House Bill No. 1286.

10 With the exception of section 6, Engrossed Substitute House Bill
11 No. 1286 is approved."