

# FINAL BILL REPORT

## 2SHB 1579

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### PARTIAL VETO C 290 L 19 Synopsis as Enacted

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

**Sponsors:** House Committee on Appropriations (originally sponsored 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).

**House Committee on Rural Development, Agriculture, & Natural Resources**  
**House Committee on Appropriations**  
**Senate Committee on Agriculture, Water, Natural Resources & Parks**  
**Senate Committee on Ways & Means**

#### **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.

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*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.*

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 Fish and Wildlife Commission. Game fish are classified in statute and include several species of fish, including catfish, trout, bass, and walleye.

### Hydraulic Project Approval.

#### *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 State 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 expedited approval process 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:**

#### Southern Resident Killer Whale Task Force.

Legislative intent is expressed to implement recommendations of the Southern Resident Killer Whale Task Force related to chinook abundance.

### Fish Classification and Harvest.

The Department of Fish and Wildlife (Department) must liberalize catch limits for bass, channel catfish, and walleye in anadromous waters of the state. A license is required to fish for saltwater smelt.

### Hydraulic Projects Approval.

#### *Hydraulic Project Pre-Applications.*

A person may file a hydraulic project pre-application with the Department to determine whether a project requires a complete application for a hydraulic project permit. The Department must provide tribes and local governments a seven-calendar-day review and comment period for pre-applications. If the Department determines that a complete application is required, the applicant would then be required to submit a complete application, as defined in statute, and the Department would process the permitting decision.

#### *Civil Enforcement of the Hydraulic Code.*

The hydraulic code's current enforcement provisions are repealed and replaced with new enforcement provisions.

When the 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 the superior court of the county in which a hydraulic project is located to inspect a site to verify compliance with the hydraulic code, or 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 do not limit or abrogate any other civil or criminal penalty, remedy, or right.

#### *Stop Work Orders and Notices to Comply.*

The Department may issue a notice to comply when there is either a hydraulic code violation or a deviation from an HPA and immediate action is needed to avoid more than minor harm to fish habitat. The Department may issue a stop work order when there is a severe violation of the hydraulic code or a deviation from a hydraulic project approval that may cause significant harm to fish life. A stop work order may require a project proponent to take corrective action to prevent, correct, or compensate for adverse impacts to fish. A project proponent or an owner of land on which the project is located may informally appeal stop work orders and notices to comply 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 (Board).

Stop work orders and notices to comply must contain a citation of the specific law or rule that applies to the violation; the date by which the Department requires compliance; a notice of ways to contact any technical assistance; and a notice of when, where, and to whom a request for extension of time to achieve compliance must be filed.

Stop work orders and notices to comply must be authorized by senior or executive level Department personnel, and the Department must identify in rule the appropriate level of senior or executive staff, taking into consideration the financial effect on the violator and the scope of the impact to fish.

#### *Civil Penalties.*

Civil penalties are changed from \$100 per violation per day to up to \$10,000 per violation if a provision is enacted directing the Conservation Commission (Commission) to initiate demonstration projects to test river management strategies that protect agricultural lands, fish life, and public infrastructure and recreational access. Proceeds from the civil penalties are deposited into the State 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 Board has jurisdiction to hear appeals based on civil penalties.

The Department must take all reasonable measures to ensure that a project proponent receives notice of stop work orders, notices to comply, or civil penalty notices.

#### *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.

#### Demonstration Projects.

Within amounts appropriated, the Commission must convene the Department, Department of Agriculture (WSDA), Department of Ecology (Ecology), Department of Natural Resources (DNR), and the Commission to work together to identify three demonstration projects to test the effectiveness and costs of river management strategies and techniques to: (1) protect

agricultural lands; (2) restore or enhance fish runs; and (3) protect public infrastructure and recreational access.

The Commission must convene a stakeholder group consisting of the relevant state agencies, local and statewide agricultural organizations and conservation districts, land conservation organizations, and local governments with interest and experience in floodplain management techniques. The stakeholder group must examine three demonstration projects, one each in Snohomish, Grays Harbor, and Whatcom counties, to examine a variety of management strategies and techniques related to protection and enhancement of fish habitat. The Commission must also seek participation and input from any federally recognized tribes that may be affected by each pilot project.

By December 31, 2020, the Commission must coordinate the development of a report to the Legislature that includes the input of all participants in the demonstration project process. Certain elements must be included in the report related to decision-making, fund sources, and benchmarks. The departments must report annually by December 31 through December 31, 2029.

**Votes on Final Passage:**

House	59	39	
Senate	26	20	(Senate amended)
House	57	37	(House concurred)

**Effective:** July 28, 2019

**Partial Veto Summary:** The Governor vetoed the subsection that establishes maximum civil penalty amounts for violations of the hydraulic code, and the section that requires certain state agencies and local governments to identify three river management demonstration projects.