
SENATE BILL 5580

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Palumbo, Frockt, Dhingra, Keiser, Kuderer, and Saldaña; by request of Office of the Governor

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

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

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

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

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

1 (3) The task force identified four overarching southern resident
2 killer whale recovery goals and adopted several recommendations for
3 specific actions under each goal. Goal one identified by the task
4 force is to increase chinook abundance, and actions under that goal
5 relate to habitat protection, protection of chinook prey, such as
6 forage fish, and reducing impacts of nonnative chinook predators.

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

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

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

Scientific Name	Common Name
Ambloplites rupestris	rock bass
Coregonus clupeaformis	lake white fish
Ictalurus furcatus	blue catfish
Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
((Ictalurus punctatus	channel catfish))
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or freshwater ling
((Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass))
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie

1	Prosopium williamsoni	mountain white fish
2	Oncorhynchus aquabonita	golden trout
3	Oncorhynchus clarkii	cutthroat trout
4	Oncorhynchus mykiss	rainbow or steelhead trout
5	Salmo salar (in its	Atlantic salmon
6	landlocked form)	
7	Salmo trutta	brown trout
8	Salvelinus fontinalis	eastern brook trout
9	Salvelinus malma	Dolly Varden trout
10	Salvelinus namaycush	lake trout
11	((Stizostedion vitreum	Walleye))
12	Thymallus arcticus	arctic grayling

13 (2) Private sector cultured aquatic products as defined in RCW
14 15.85.020 are not game fish.

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

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

22 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
23 79A.80.040 is required to park or operate a motor vehicle on a
24 recreation site or lands, as defined in RCW 79A.80.010.

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

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

34 (1) When the department determines that a violation of this
35 chapter, or of any of the rules that implement this chapter, has
36 occurred or is about to occur, it shall first attempt to achieve

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

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

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

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

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

26 (a) There is any violation of this chapter or of the rules
27 implementing this chapter;

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

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

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

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

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

36 (iii) The right to an appeal.

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

1 (3) Within five business days of issuing the stop work order, the
2 department shall mail a copy of the stop work order to the last known
3 address of any project proponent, to the last known address of the
4 owner of the land on which the hydraulic project is located, and to
5 the local jurisdiction in which the hydraulic project is located.
6 Substantial compliance with these mailing requirements is deemed
7 satisfactory compliance with this subsection. For purposes of this
8 subsection, "substantial compliance" means mailing to the last known
9 address of the owner of the land on which the hydraulic project is
10 located, to the local jurisdiction in which the hydraulic project is
11 located, and to the last known address of any project proponent who
12 has applied for a hydraulic project approval, who is identified as an
13 authorized agent on an application for a hydraulic project approval,
14 or who has obtained a hydraulic project approval.

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

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

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

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

1 (1) (a) If a violation of this chapter or of the rules
2 implementing this chapter, a deviation from the hydraulic project
3 approval, damage to fish life or fish habitat, or potential damage to
4 fish life or fish habitat, has occurred and the department determines
5 that a stop work order is unnecessary, the department may issue and
6 serve upon a project proponent a notice to comply, which must clearly
7 set forth:

- 8 (i) The nature, extent, date, and time of the violation;
- 9 (ii) Any necessary corrective action; and
- 10 (iii) The right to an appeal.

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

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

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

38 (4) The project proponent who was served with the notice to
39 comply, the project proponent who received a copy of the notice to
40 comply from the department, or the owner of the land on which the

1 hydraulic project is located may commence an appeal to the board
2 within thirty days from the date of receipt of the notice to comply.
3 If such an appeal is commenced, the proceeding is an adjudicative
4 proceeding under the administrative procedure act, chapter 34.05 RCW.
5 The recipient of the notice to comply must comply with the notice to
6 comply immediately upon being served, but the board may stay, modify,
7 or discontinue the notice to comply, upon motion, under such
8 conditions as the board may impose.

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

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

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

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

22 (a) The basis for the penalty;

23 (b) The amount of the penalty; and

24 (c) The right of the person incurring the penalty to appeal the
25 civil penalty.

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

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

1 (4) The penalty imposed becomes due and payable thirty days after
2 receipt of a notice imposing the penalty unless an appeal is filed.
3 Whenever an appeal of any penalty incurred under this chapter is
4 filed, the penalty becomes due and payable only upon completion of
5 all review proceedings and the issuance of a final order confirming
6 the penalty in whole or in part. When the penalty becomes past due,
7 it is also subject to interest at the rate allowed by RCW 43.17.240
8 for debts owed to the state.

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

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

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

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

1 The department may apply for an administrative inspection warrant
2 in either Thurston county superior court or the superior court in the
3 county in which the hydraulic project is located. The court may issue
4 an administrative inspection warrant where:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) Civil penalties imposed pursuant to RCW 18.104.155,
14 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 7
15 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
16 90.56.310, 90.56.330, and 90.64.102.

17 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
18 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
19 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

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

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

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

37 (g) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any

1 dairy nutrient management practices, standards, methods, and
2 technologies to a particular dairy farm; and failure to adhere to the
3 plan review and approval timelines in RCW 90.64.026.

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

7 (i) Decisions of the department of natural resources, the
8 department of fish and wildlife, and the department that are
9 reviewable under chapter 76.09 RCW, and the department of natural
10 resources' appeals of county, city, or town objections under RCW
11 76.09.050(7).

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

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

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

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

25 (2) The following hearings shall not be conducted by the hearings
26 board:

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

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

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

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

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

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

6 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
7 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
8 173 s 6.

--- **END** ---