

# FINAL BILL REPORT

## E2SHB 1382

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Synopsis as Enacted

**Brief Description:** Streamlining the environmental permitting process for salmon recovery projects.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Tharinger, Dolan, Fitzgibbon, Wylie, Hackney and Callan).

**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:**

#### Hydraulic Project Approvals.

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. The Department of Fish and Wildlife (WDFW) issues Hydraulic Project Approvals to ensure the proper protection of fish life.

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

#### Fish Habitat Enhancement Projects.

Fish habitat enhancement projects that meet a certain set of criteria may qualify for a streamlined HPA review and approval process. These are projects that are expected to

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result in beneficial impacts to the environment, and are of the size and scale, as determined by the WDFW, to accomplish one or more of the following:

- elimination of human-made or human-caused fish passage barriers;
- restoration of an eroded or unstable streambank employing the principle of bioengineering;
- placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; or
- restoration of native kelp or eelgrass beds and native oysters.

To qualify for streamlined review, a project must also be approved by certain sponsoring entities, including the WDFW, a conservation district, the Department of Transportation, or a city or county.

In addition to being eligible for a streamlined HPA process, projects that meet the criteria for fish habitat enhancement projects are eligible for exemption from the State Environmental Policy Act and exemption from local government permits and fees.

### **Summary:**

#### Habitat Recovery Pilot Program.

The Habitat Recovery Pilot Program (Pilot Program) is created. The stated purpose of the Pilot Program is to promote and implement habitat restoration projects that have been determined to contribute to the recovery of watersheds throughout the state. To be included in the Pilot Program, an environmental restoration project must directly benefit freshwater, estuarine, or marine fish, or the habitat they rely on. In addition, the project must be included on a list of projects reviewed, approved, or funded by one of a number of specified entities, including: the Bonneville Power Administration Restoration Program; the Brian Abbott Fish Passage Barrier Removal Board; and the Salmon Recovery Funding Board.

A project permitted under the Pilot Program must document consistency with local, state, and federal flood risk reduction requirements. A project may not be reviewed under the Pilot Program if the local government in which the project will be located determines that the project does not meet applicable flood risk reduction requirements, or otherwise determines that the project raises concerns regarding public health and safety, and the local government provides timely notice of its determination to the Department of Fish and Wildlife (WDFW).

#### Cultural Resources.

A project applicant under the Pilot Program or funding agency must review the proposed project with the Department of Archaeology and Historic Preservation (DAHP) and complete any required site surveys before the project applicant files an application under the Pilot Program. A project applicant must document consistency in the application with

applicable cultural resource protection requirements. A project applicant must provide a copy of its application to the DAHP and to affected federally recognized tribes no fewer than 60 days before the application may be filed with the WDFW.

The WDFW may not review a project under the Pilot Program if a cultural resource site is identified at the project site or if an affected federally recognized tribe withholds its consent that the project should be expedited. Such consent may be withheld upon a determination that the project may adversely impact cultural resources. Notice of such a determination must be provided to the WDFW by the affected federally recognized tribe in a timely manner.

In the event of an inadvertent discovery of cultural resources or human remains, the project applicant must immediately notify the WDFW, the DAHP, and affected federally recognized tribes.

#### Permitting.

A permit issued pursuant to the Pilot Program is required for any project that meets the criteria for inclusion in the Pilot Program and that would otherwise be required to obtain a Hydraulic Project Approval (HPA). An applicant for a permit under the Pilot Program must submit an application through the WDFW online application system, and must, at the same time, submit a copy of the application to the appropriate local government, to the Pilot Program's multiagency permitting team, and to potentially affected federally recognized tribes.

Projects approved for inclusion in the Pilot Program and that are reviewed and approved according to the provisions of the Pilot Program are not required to prepare an Environmental Impact Statement under the State Environmental Policy Act. These projects are also not required to obtain local or state permits or approvals other than the permit issued under the Pilot Program, except permits minimally necessary as a requirement of participation in a federal program.

When the WDFW concludes that a complete application has been submitted under the Pilot Program and copies of the application have been provided as required by the Pilot Program, the WDFW must provide notice of receipt of a complete permit application to the local government within whose geographical jurisdiction the project will be located, to potentially affected federally recognized tribes, and to the members of the multiagency permitting team.

The WDFW must, in a timely manner, provide a copy of any application seeking review under the Pilot Program and shall thereafter coordinate with affected federally recognized tribes as it implements the Pilot Program.

The WDFW must evaluate and make a decision on the application not sooner than 25 days,

and not later than 45 days, after receipt of a complete permit application unless the multiagency permitting team process described below has been invoked.

Within 25 days of receiving a copy of the complete project application, the local government within whose geographical jurisdiction the project would be located, any member of the multiagency permitting team, or a potentially affected federally recognized tribe may request that the WDFW place the application on hold and immediately convene a meeting with the requesting entity and the multiagency permitting team to review and evaluate the project.

All parties involved in the consultation process must work in good faith to expedite permitting. Any party with concerns must provide the basis for its concerns and potential pathways to address those concerns. Any party objecting to expedited permitting must provide a written basis for its objections to the WDFW or the multiagency permitting team.

#### Aquatic Lands—Lease or other Land Use Authorization.

For projects that require a lease or other land use authorization from the Department of Natural Resources (DNR), the project applicant must include in its application for a permit under the Pilot Program a signed Joint Aquatic Resources Permit Application, Attachment E. The project applicant must provide a copy of a completed application to the DNR no fewer than 30 days before the application may be filed with the WDFW. The DNR must make a final decision on applications for projects under the Pilot Program within 30 days of the issuance of a permit under the Pilot Program.

#### Multiagency Permitting Team.

The multiagency permitting team is made up of representatives of the local government in whose geographical jurisdiction the project would be located, the WDFW, the Department of Ecology, the Recreation and Conservation Office, the Governor's Salmon Recovery Office, the DNR, and, when the project in question is located in the Puget Sound basin, the Puget Sound Partnership.

The WDFW and the multiagency permitting team must exclude from the Pilot Program any project that the WDFW or the multiagency permitting team concludes may adversely impact human health, public safety, or the environment.

#### Appeals.

Any person aggrieved by the approval, denial, conditioning, or modification of a permit under the Pilot Program may appeal the decision pursuant to the Hydraulic Code.

#### Liability.

No civil liability may be imposed by any court on the state or its officers and employees for any adverse impacts resulting from a fish recovery pilot project permitted by the WDFW or the DNR under the criteria of the Pilot Program except upon proof of gross negligence or willful or wanton misconduct.

Expiration.

The Pilot Program expires on June 30, 2025.

**Votes on Final Passage:**

House	95	2
Senate	49	0

**Effective:** July 25, 2021