
**Rural Development, Agriculture &
Natural Resources Committee**

HB 1838

Brief Description: Protecting, restoring, and maintaining habitat for salmon recovery.

Sponsors: Representatives Lekanoff, Fitzgibbon, Bateman, Berry, Macri, Ramel, Simmons, Pollet and Harris-Talley; by request of Office of the Governor.

Brief Summary of Bill

- Requires, with certain specified exemptions, public and private landowners who own property adjacent to a body of water identified and mapped on a riparian management zone map to establish, maintain, and protect the riparian management zone (RMZ).
- Requires the Department of Fish and Wildlife (WDFW) to develop a map that illustrates the RMZ for salmon and steelhead bearing rivers and streams.
- Requires the Salmon Recovery Funding Board to develop and implement a statewide riparian habitat conservation grant program to both protect and restore RMZs and ecosystems and provide an opportunity to cost share with landowners.
- Requires the WDFW to provide landowners in priority watersheds with an offer of grant funding to assist in implementation of RMZ requirements.
- Directs the WDFW to ensure compliance with RMZ requirements in prioritized watersheds where progress goals established by the WDFW have not been met.
- Requires the WDFW to maintain a digital web-based atlas of data pertaining to the amount and condition of RMZs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires counties and cities fully planning under the Growth Management Act to include restoration and protection of RMZs as part of their next scheduled periodic comprehensive plan update.
- Directs the Governor's Office of Indian Affairs to convene a state/tribal riparian management oversight committee.

Hearing Date: 1/19/22

Staff: Robert Hatfield (786-7117).

Background:

Riparian Ecosystems, Volume 2 - Riparian Management Zones and Site Class.

The Department of Fish and Wildlife (WDFW) published *Riparian Ecosystems, Volume 2: Management Recommendations* in December 2020. The recommendations were published in support of the WDFW's Priority Habitats and Species Program, through which the WDFW works with land use decision makers and landowners to identify solutions that address the needs of landowners and of fish and wildlife.

The recommendations define the following terms, among others:

- Site-potential tree height: "The average maximum height of the tallest dominant trees for a given age and site class."
- Riparian management zone (RMZ): "A delineable area defined in a land use regulation; often synonymous with riparian buffer. For the purposes of this document, we define the RMZ as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one 200-year site-potential tree height measured from the edge of the stream channel. In situations where a CMZ [channel migration zone] is present, this occurs within one site-potential tree height measured from the edges of the CMZ. In non-forest zones the RMZ is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet."
- Site class: "The classification of a site based on the productivity of its dominant tree species. Site classes vary based on local differences in soil nutrients and moisture, light and temperature regimes, and topography. Site classes are typically described as most productive (I) through least productive (V)."

Pollution Control Hearings Board.

The Pollution Control Hearings Board (PCHB) is an administrative appeals board with jurisdiction to hear appeals of certain decisions, orders, and penalties made by the Department of Ecology (Ecology) and several other state agencies. Parties aggrieved by a PCHB decision may obtain subsequent judicial review.

State Noxious Weed Board.

The State Noxious Weed Board must adopt a statewide noxious weed list at least once a year following a public hearing.

Invasive Species Council - Plans.

The Washington State Invasive Species Council was created to provide policy-level direction, planning, and coordination to prevent the spread and introduction of invasive species throughout the state. The Council is required to develop and periodically update a statewide strategic plan for addressing invasive species. The plan must include an inventory of invasive species.

Conservation Reserve Enhancement Program.

The Conservation Reserve Enhancement Program (CREP) is a partnership between the U.S. Department of Agriculture and the State of Washington that began in 1998. Under CREP, private agricultural landowners in eligible geographic areas are provided with incentives to restore and improve salmon and steelhead habitat. Landowners who enroll in CREP voluntarily remove lands from production and grazing under 10-year or 15-year contracts. Landowners then plant trees and shrubs to stabilize stream banks and serve other ecological purposes. In return, landowners get an annual rent, incentive and maintenance payments, and cost-sharing for these installations.

National Pollutant Discharge Elimination System Permits.

The Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES) permit system to regulate wastewater discharges from point sources to surface waters. The NPDES permits are required for anyone who discharges wastewater to surface waters or who has a significant potential to impact surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing Ecology to issue NPDES permits.

Forest Practices Act.

The Forest Practices Act establishes four classes of forest practices based on the potential for a proposed operation to adversely affect public resources. The Forest Practices Board (Board) establishes standards that determine which forest practices are included in each class. This includes standards for forest practices such as timber harvest, pre-commercial thinning, road construction, fertilization, and forest chemical application.

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes

land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as "fully planning" under the GMA.

Counties and cities must designate critical areas and adopt development regulations that protect the designated critical areas. Critical areas are defined in the GMA and include the following areas:

- wetlands;
- areas with a critical recharging effect on aquifers used for potable water;
- fish and wildlife habitat conservation areas;
- frequently flooded areas; and
- geologically hazardous areas.

Counties and cities are required to review and, if needed, revise their comprehensive plans and development regulations every eight years. Counties, and the cities within them, are grouped into four different year classes for purposes of when the obligation to review and revise their comprehensive plans commences. The next round of required comprehensive plan updates begins with King, Kitsap, Snohomish, and Pierce counties, and the cities within those counties, in 2024.

Shoreline Management Act.

The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. Ecology and local governments are authorized to adopt necessary and appropriate rules for implementing the provisions of the SMA. At the local level, SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt master programs that regulate land-use activities in shoreline areas of the state.

Salmon Recovery Funding Board.

The Salmon Recovery Funding Board (SRF Board) is responsible for making grants and loans for salmon habitat projects and salmon recovery activities from the amounts appropriated to the SRF Board for this purpose.

Hydraulic Project Approvals - Marine Shoreline Stabilization.

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. HPAs are issued by the WDFW to ensure the proper protection of fish life. If a person wishes to replace residential marine shoreline stabilization or armoring, that person must use the least impacting, technically feasible bank protection alternative for the protection of fish life

Summary of Bill:

Title.

The act shall be known and cited as the Lorraine Loomis Act.

Riparian Management Zones - Policy of the State.

It is declared to be the policy of the state to protect, restore, and maintain properly functioning RMZs and ecosystems in order to achieve specified salmon recovery goals and to restore and protect water quality.

Riparian Management Zones - Definitions.

Various terms are defined, including the following:

- Riparian function: the ecosystem services provided by an RMZ, but not limited to, water quality and quantity protection, pollution filtration, flood protection and storage, critical fish and wildlife migration, food supply and foraging, and in-stream and terrestrial cover habitats.
- Riparian management zone: as defined in *Riparian Ecosystems, Volume 2* published in December 2020 by the Department of Fish and Wildlife (WDFW).
- Site class: as defined in *Riparian Ecosystems, Volume 2* published in December 2020 by the WDFW.

Riparian Management Zones - Establishment of Riparian Management Zones.

With certain specified exemptions, public and private landowners who own property adjacent to a body of water identified and mapped on a riparian management zone map must establish, maintain, and protect an RMZ. Upon request by a landowner, the WDFW may issue a validation of compliance with this requirement. The validation may be appealed to the Pollution Control Hearings Board.

The requirement to maintain an RMZ does not limit the eligibility of a landowner or authorized agent or operator of a landowner to participate in federal or state conservation programs, including enrolling or reenrolling in federal conservation programs.

A person who replants an RMZ to meet RMZ requirements may not use plants listed either as noxious weeds by the Noxious Weed Control Board or as an invasive plant species by the Invasive Species Council.

Riparian Management Zones - Exemptions.

Land adjacent to water is exempt from RMZ requirements if it is:

- enrolled in the federal Conservation Reserve Enhancement Program that establishes an

RMZ;

- legally permitted and used as a public or private water access or recreational use area;
- covered by a road, trail, building, or other structure that exists as of the effective date of the act;
- regulated by a National Pollutant Discharge Elimination System permit and requires an RMZ;
- regulated by the Forest Practices Act; or
- a small parcel in which the RMZ would cover more than half of the parcel. Any reduction in the size of the RMZ must maximize riparian functions to the greatest extent practicable and take into consideration opportunities for cost share. Reductions may not be granted for parcels determined to be small as a result of subdivision after the effective date of the act.

Riparian Management Zones - Mapping.

The WDFW must develop a map that illustrates the RMZ for salmon and steelhead bearing rivers and streams for each watershed. The maps must be developed in consultation with federally recognized tribes and in coordination with regional salmon recovery organizations. The map must be publicly available on a web-based application. The RMZ map must include all streams, rivers, and floodplains that support salmon and steelhead recovery, including those in undeveloped urban growth areas. The inclusion of tribal lands in an RMZ map may occur only upon permission of the tribe to include their lands.

The WDFW must prioritize watersheds in need of RMZ restoration. Watershed priorities must be developed in consultation with federally recognized tribes, in coordination with the Ecology, and input from regional salmon recovery organizations.

By June 30, 2023, the WDFW must provide an RMZ map to each jurisdiction planning under the Growth Management Act (GMA), with a periodic update due June 30, 2024. The WDFW must provide subsequent RMZ maps to each jurisdiction on or before June 30 of the year prior to a local jurisdiction's periodic comprehensive plan review or update.

Within one year after the due date for adoption of a comprehensive plan update pursuant to the GMA, the WDFW, in consultation with federally recognized tribes, must establish riparian restoration progress goals for the priority watersheds located within the area subject to the plan update.

The WDFW must design and implement the work required by the act to achieve RMZs with healthy riparian functions in all priority watersheds of the state by December 31, 2032.

Riparian Management Zones - Rules.

The WDFW must adopt rules and guidance to implement the act, including the application of the RMZ requirements and the process and criteria for prioritization of watersheds. The WDFW's

rules must address protection and restoration of the RMZ in different climate zones of the state, based on best available science.

Financial Assistance.

The Salmon Recovery Funding Board (SRF Board) must develop and implement a statewide riparian habitat conservation grant program to protect and restore RMZs and ecosystems and provide an opportunity to cost share with landowners. The SRF Board may establish criteria for determining when block grants may be made for purposes of distributing funds to the highest priority watersheds based on the WDFW's prioritization process.

The riparian habitat conservation grant program must be funded with state or federal funds set aside explicitly for riparian habitat in the Salmon Recovery Account. The riparian funds must be separate from state SRF Board or federal pacific coastal salmon recovery funds for lead entity salmon recovery projects. Riparian projects are eligible for funding under the riparian grant program where consistent with the WDFW's RMZ maps and the WDFW's best available science standards.

The SRF Board, with input from the state/tribal riparian management oversight committee, may prioritize funding for riparian restoration projects in priority watersheds and where progress goals established by the WDFW have not been met.

Funding may only be provided in watersheds in which RMZ maps are complete.

Financial Assistance - Cost-Sharing.

In priority watersheds, the WDFW must provide landowners with an offer of grant funding to assist in implementation of RMZ requirements. A cost-share offer must cover at least 70 percent of the landowner's cost to establish and maintain the RMZ, or 90 percent of the landowner's cost if there is an economic hardship.

A landowner's costs to establish or enhance an RMZ include the following:

- costs to establish or enhance an RMZ, including mulch, fertilizer, seedling trees, and other necessary materials;
- the reasonable value of necessary labor, equipment, and supplies to establish the RMZ; and
- the reasonable value of necessary yearly maintenance costs up to a maximum of five years.

If a landowner is required to remove more than half of an acre of riparian land from agricultural production, the cost-share offer must include part of the cost of removing that land from production. The amount must be at least equal to the amount that would be offered under the CREP if the affected lands were enrolled in that program for 10 years. A landowner is eligible for this cost-share only if the landowner agrees to keep the RMZ out of agricultural production in perpetuity.

A grant from any public or private source, or combination of sources, may be counted as part of a cost-share grant for purposes of cost-share requirements. A loan is not a grant. Before making a determination of a bona fide offer of cost sharing to the landowner, the WDFW must provide 30 days' notice in writing of its intent to make a determination of a bona fide offer.

Enforcement.

The WDFW must take additional action to ensure compliance with RMZ requirements in prioritized watersheds where progress goals established by the WDFW have not been met. If the WDFW determines that a landowner is not in compliance with RMZ requirements, the WDFW must provide the landowner with a list of corrective actions needed to come into compliance and a practical timeline to meet the requirements.

A landowner may not conduct any activity that would remove or willfully degrade an RMZ unless the activity is consistent with exceptions established in rules adopted by the WDFW and the landowner has obtained the necessary permits to do so.

If the landowner does not comply with the list of actions and timeline provided, the WDFW must pursue compliance and enforcement of RMZ requirements and must notify Ecology.

When the WDFW determines, after consultation with Ecology, that a person has violated RMZ requirements, the WDFW must notify the person of its determination by registered mail. Within 30 days from the receipt of notice of the determination, the person must file with the WDFW a full report stating what steps have been and are being taken to establish and maintain an RMZ or to otherwise comply with the determination of the WDFW. After receiving the report, the WDFW must issue an order or directive as it deems appropriate under the circumstances and notify the person of the order by registered mail.

A person who violates RMZ requirements established in statute or in rule is subject to a penalty in an amount of up to \$10,000 a day for each violation. This penalty is in addition to any other penalty provided under law. Each violation is a separate and distinct offense, and, in case of a continuing violation, every day's continuance is a separate and distinct violation.

Any act, whether by commission or omission, that procures, aids, or abets in the violation of RMZ requirements is considered a violation and subject to the penalty described above. The WDFW must set the penalty amount in consideration of the previous history of the violator and the severity of the violation's impact on public health or the environment in addition to other relevant factors.

When enforcing RMZ requirements, the WDFW must coordinate with Ecology, who may also take actions to enforce any water quality standard violation resulting from the conditions of the riparian lands owned by the person.

Any penalty issued by the WDFW must be delivered to the person by registered mail.

Orders and penalties issued by the WDFW to enforce the RMZ requirements are appealable to the Pollution Control Hearings Board.

Monitoring.

Data pertaining to the amount and condition of RMZ must be maintained by the WDFW in a digital web-based atlas. The riparian and salmon habitat atlas must consolidate riparian and salmon habitat data from the WDFW and other specified agencies, in consultation with federally recognized tribes, lead entities, and salmon recovery regional organizations. The WDFW must monitor changes and report biennially in the consolidated report on salmon recovery and watershed health.

Land Use.

Salmon recovery is added as a goal of the Growth Management Act (GMA).

Counties and cities fully planning under the GMA must include restoration and protection of RMZs as part of their next scheduled periodic comprehensive plan update.

A definition of "fish and wildlife habitat conservation areas" is added to the GMA to mean areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem and which, if functions are reduced, may reduce the likelihood that the species will persist. These areas include, but are not limited to: RMZs; floodplains; rare or vulnerable ecological systems; communities; habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness.

Wetlands management recommendations made by Ecology and habitat conservation area recommendation made by the WDFW must form the basis of the best available science that counties and cities must include in their protection of critical areas. Counties and cities must give special consideration to RMZs established by the WDFW.

Shoreline master program updates approved after the effective date of the act must meet RMZ protection and restoration requirements.

Permitting requirements related to residential marine shoreline stabilization are modified to apply to all marine shoreline stabilization, rather than just residential marine shoreline stabilization.

State / Tribal Riparian Oversight Committee.

The Governor's Office of Indian Affairs must convene a state/tribal riparian management oversight committee that will review and support implementation of the act. The committee may

develop performance targets and adaptive management thresholds, and recommend changes to rules, regulations, and policies as needed to improve implementation of the act.

Appropriation: None.

Fiscal Note: Requested on January 13, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.