

SENATE BILL REPORT

E2SSB 5885

As Passed Senate, February 12, 2022

Title: An act relating to marine shoreline habitat.

Brief Description: Concerning marine shoreline habitat.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Salomon, Stanford, Hasegawa, Keiser, Lovelett, Nobles and Rolfes).

Brief History:

Committee Activity: Environment, Energy & Technology: 1/25/22 [w/oRec-AWNP].
Agriculture, Water, Natural Resources & Parks: 1/27/22, 2/03/22 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/05/22, 2/07/22 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 2/12/22, 28-21.

Brief Summary of Engrossed Second Substitute Bill

- Directs the Department of Ecology to conduct a baseline survey of Puget Sound marine shorelines including creating a comprehensive on-the-water view of the shoreline by June 30, 2023.
- Directs state and local permitting agencies to consider survey results when exercising enforcement authority.
- Requires marine structure repairs or replacement projects in Puget Sound to consider the least impactful alternatives that upgrade the structures to the most recent code standards.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5885 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Rolfes and Stanford.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Minority Report: That it be referred without recommendation.

Signed by Senator Warnick, Ranking Member.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5885 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Billig, Carlyle, Conway, Dhingra, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Braun, Gildon, Muzzall and Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Rivers and Warnick.

Staff: Jed Herman (786-7346)

Background: Shoreline Management Program. The Shoreline Management Act (SMA) involves a cooperative regulatory approach between local governments and the state. The Department of Ecology (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.

Hydraulic Project Approval. 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 of Fish and Wildlife (WDFW) to ensure the proper protection of fish life. To receive an HPA, the applicant must provide certain information to the WDFW. This information includes general plans for the overall project and complete plans for the proper protection of fish life. The WDFW may impose proportionate conditions on a permit.

Summary of Engrossed Second Substitute Bill: By June 30, 2023, Ecology must conduct a baseline survey of Puget Sound marine shorelines that renews oblique shoreline aerial imagery and incorporates the use of new technology to create a 360 degree on-the-water comprehensive view of the shoreline. The marine shoreline survey must be updated on a regular five-year cycle. The survey must document and map existing shoreline conditions, structures, and structure conditions, including structures in disrepair and structures and vessels that potentially are derelict, and must be available to the public and incorporated into state geographic information system mapping. Puget Sound shorelines include Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the Strait of Juan de Fuca, including Hood Canal and the San Juan Islands.

Upon completion of regular surveys, state and local permitting agencies must consider survey results when exercising or considering to exercise enforcement authority. The initial marine survey must be complete by June 30, 2024, and be updated on a regular five-year cycle thereafter.

Puget Sound shorelines are unique for their role in supporting the Puget Sound marine ecosystem, including the food web that includes marine vegetation, forage fish, Washington's listed salmon, steelhead, and southern resident orcas. If any person desires to repair or replace a marine structure in the waters of Puget Sound, the marine replacement structure must be assessed to consider the least impactful alternatives that upgrade the structures to the most recent code standards ensuring that the updates are technically feasible. The assessment must also consider the least impactful alternatives for marine shoreline stabilization replacement projects.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: Protection of the nearshore environment is critical for the health of Puget Sound and there are gaps that need to be addressed. The first step is to establish a baseline to document the current conditions. By capturing a 360 degree on-the-water view, like Google street view for water, and making it publicly available, this will assist with habitat recovery efforts. Replacement structures must meet the same modern design standards as new projects. Shoreline armoring impacts the near shore, affecting forage fish, food supply, birds, and other species. Using shoreline imagery to document current conditions is a powerful tool that will be useful and should be digitally preserved. In the San Juan islands,

a review of shoreline armor projects revealed very few projects had received the proper permits. Critical habitat is being degraded, and it is important to regularly track what is occurring on the ground. There needs to be funding provided to the Department of Ecology and local governments to conduct a comprehensive assessment of the shoreline. Currently, the best monitoring data is permit data, but you cannot rely on permits only to understand impacts.

OTHER: Conducting a baseline survey is a good idea, including doing regular updates and sharing the maps and data. There are concerns that local code enforcement lacks sufficient resources to review that data. Local enforcement is underfunded and must compete with other critical local government services for funding. It is more likely that there will not be immediate action by local governments and a pilot project should be considered. Puget Sound should be recognized for its uniqueness. There are concerns about publishing information on public records for permits. There are a significant number of miles of shorelines, and there may be logistical challenges to implementing the timelines in the bill.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Jesse Salomon, Prime Sponsor; Amy Carey, Sound Action; Scott Andrews, Audubon Washington; Brian Footen, Earthviews; Tina Whitman, Friends of the San Juans; Kollin Higgins, King County; Alex Smith, Department of Natural Resources.

OTHER: Paul Jewell, Washington State Association of Counties; Margen Carlson, WDFW; Tim Gates, WA Department of Ecology; Don Gourlie, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Puget Sound was once a productive environment for salmon and steelhead which has been diminished due to a loss of critical habitat. This bill will help provide a more complete data set on existing structures.

Persons Testifying (Ways & Means): PRO: Bruce Wishart, Sound Action.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.