

Chapter 77.85 RCW
SALMON RECOVERY

Sections

- 77.85.005 Findings—Intent.
- 77.85.010 Definitions.
- 77.85.020 Consolidated report on salmon recovery and watershed health.
- 77.85.030 Governor's salmon recovery office—Purpose and duties.
- 77.85.040 Independent science panel on salmon recovery—Purpose.
- 77.85.050 Habitat project lists.
- 77.85.060 Critical pathways methodology—Habitat work schedule.
- 77.85.080 Sea grant program—Technical assistance authorized.
- 77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations.
- 77.85.110 Salmon recovery funding board—Creation—Membership.
- 77.85.120 Board responsibilities—Grants and loans administration assistance.
- 77.85.130 Allocation of funds—Procedures and criteria.
- 77.85.135 Habitat project funding—Statement of environmental benefits—Development of outcome-focused performance measures.
- 77.85.140 Habitat project lists—Tracking of funds.
- 77.85.150 Statewide salmon recovery strategy—Prospective application.
- 77.85.160 Salmon monitoring data, information.
- 77.85.170 Salmon recovery account.
- 77.85.180 Findings.
- 77.85.190 Federal assurances in forests and fish report—Events constituting failure of assurances—Governor's authority to negotiate.
- 77.85.200 Salmon and steelhead recovery program—Management board—Duties.
- 77.85.220 Salmon intertidal habitat restoration planning process—Task force—Reports.
- 77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan.
- 77.85.240 Puget Sound partners.

RCW 77.85.005 Findings—Intent. The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.

The legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government, and that the state may best accomplish this objective by integrating local and regional recovery activities into a statewide strategy that can make the most effective use of provisions of federal laws allowing for a state lead in salmon recovery, delivered through implementation activities consistent with regional and watershed recovery plans. The legislature also finds that a statewide salmon recovery strategy must be developed and implemented through an active public involvement process in order to ensure public participation in, and support for, salmon recovery. The legislature also finds that there is a substantial link between the provisions of the federal endangered species act and the federal clean water act (33 U.S.C. Sec. 1251 et seq.). The legislature further finds that habitat restoration is a vital component of salmon recovery efforts. Therefore, it is the intent of the legislature to specifically address salmon habitat restoration in a coordinated manner and to develop a structure that allows for the coordinated delivery of federal, state, and local assistance to communities for habitat projects that will assist in the recovery and enhancement of salmon stocks. A strong watershed-based locally implemented plan is essential for local, regional, and statewide salmon recovery.

The legislature also finds that credible scientific review and oversight is essential for any salmon recovery effort to be successful.

The legislature further finds that it is important to monitor the overall health of the salmon resource to determine if recovery efforts are providing expected returns. It is important to monitor salmon habitat projects and salmon recovery activities to determine their effectiveness in order to secure federal acceptance of the state's approach to salmon recovery. Adaptive management cannot exist without monitoring. For these reasons, the legislature believes that a coordinated and integrated monitoring system should be developed and implemented.

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end, the governor's salmon recovery office should be created to provide overall coordination of the state's response; an independent science panel is needed to provide scientific review and oversight; a coordinated state funding process should be established through a salmon recovery funding board; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies; habitat projects should be implemented without delay; and a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively. [2009 c 345 § 9; 2005 c 309 § 1; 1999 sp.s. c 13 § 1; 1998 c 246 § 1. Formerly RCW 75.46.005.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—1999 sp.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 13 § 24.]

Effective date—1999 sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 sp.s. c 13 § 25.]

RCW 77.85.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 77.85.060(2). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, state agency, a combination of such governments through interlocal or interagency agreements, a nonprofit organization, regional fisheries enhancement group, or one or more private citizens. A project sponsored by a state agency may be funded by the board only if it is included on the habitat project list submitted by the lead entity for that area and the state agency has a local partner that would otherwise qualify as a project sponsor.

(7) "Regional recovery organization" or "regional salmon recovery organization" means an entity formed under RCW 77.85.090 for the purpose of recovering salmon, which is recognized in statute or by the governor's salmon recovery office created in RCW 77.85.030.

(8) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(9) "Salmon recovery plan" means a state or regional plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(10) "Salmon recovery region" means geographic areas of the state identified or formed under RCW 77.85.090 that encompass groups of watersheds in the state with common stocks of salmon identified for recovery activities, and that generally are consistent with the geographic areas within the state identified by the national oceanic and atmospheric administration or the United States fish and wildlife service for activities under the federal endangered species act.

(11) "Salmon recovery strategy" means the strategy adopted under RCW 77.85.150 and includes the compilation of all subbasin and regional salmon recovery plans developed in response to a proposed or actual listing under the federal endangered species act with state hatchery, harvest, and hydropower plans compiled in accordance with RCW 77.85.150.

(12) "Tribe" or "tribes" means federally recognized Indian tribes.

(13) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(14) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property. [2007 c 444 § 1; 2005 c 309 § 2; 2002 c 210 § 1; 2000 c 107 § 92; 1998 c 246 § 2. Formerly RCW 75.46.010.]

RCW 77.85.020 Consolidated report on salmon recovery and watershed health. (1) Beginning December 2010, the recreation and conservation office shall produce a biennial report on the statewide status of salmon recovery and watershed health, summarize projects and programs funded by the salmon recovery funding board, and summarize progress as measured by high-level indicators and state agency compliance with applicable protocols established by the forum for monitoring salmon recovery and watershed health. The report must be a consolidation of the current reporting activities, including the salmon recovery funding board and the forum on monitoring salmon recovery and watershed health, on the status of salmon recovery and watershed health in Washington state, in accordance with *RCW 77.85.250(8). The report shall also include a high-level status report on watershed planning efforts under chapter 90.82 RCW as summarized by the department of ecology and on salmon recovery and watershed planning as summarized by the Puget Sound partnership. The report's introduction must include a list of high-level questions related to the status of watershed health and salmon recovery to help decision makers and the public respond to salmon recovery and watershed health management needs.

(2) The department, the department of ecology, the department of natural resources, and the state conservation commission shall provide to the recreation and conservation office information requested by the office necessary to prepare the consolidated report on salmon recovery and watershed health. [2009 c 345 § 4; 2007 c 444 § 2; 2005 c 309 § 3; 1998 c 246 § 4. Formerly RCW 75.46.030.]

***Reviser's note:** RCW 77.85.250 expired June 30, 2011.

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

RCW 77.85.030 Governor's salmon recovery office—Purpose and duties. (1) The governor's salmon recovery office shall coordinate

state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. A primary purpose of the office is to coordinate and assist in the development, implementation, and revision of regional salmon recovery plans as an integral part of a statewide strategy developed consistent with the guiding principles and procedures under RCW 77.85.150.

(2) The governor's salmon recovery office is also responsible for maintaining the statewide salmon recovery strategy to reflect applicable provisions of regional recovery plans, habitat protection and restoration plans, water quality plans, and other private, local, regional, state agency and federal plans, projects, and activities that contribute to salmon recovery.

(3) The governor's salmon recovery office shall also work with regional salmon recovery organizations on salmon recovery issues in order to ensure a coordinated and consistent statewide approach to salmon recovery and shall work with federal agencies to accomplish implementation of federal commitments in the recovery plans.

(4) The governor's salmon recovery office may also:

(a) Assist state agencies, local governments, landowners, and other interested parties in obtaining federal assurances that plans, programs, or activities are consistent with fish recovery under the federal endangered species act;

(b) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive branch agencies for issues related to the state's salmon recovery plans;

(c) Provide periodic reports pursuant to RCW 77.85.020;

(d) Provide, as appropriate, technical and administrative support to science panels on issues pertaining to salmon recovery;

(e) In cooperation with the regional recovery organizations, prepare a timeline and implementation plan that, together with a schedule and recommended budget, identifies specific actions in regional recovery plans for state agency actions and assistance necessary to implement local and regional recovery plans; and

(f) As necessary, provide recommendations to the legislature that would further the success of salmon recovery, including recommendations for state agency actions in the succeeding biennium and state financial and technical assistance for projects and activities to be undertaken in local and regional salmon recovery plans. The recommendations may include:

(i) The need to expand or improve nonregulatory programs and activities; and

(ii) The need for state funding assistance to recovery activities and projects.

(5) For administrative purposes, the governor's salmon recovery office is located within the recreation and conservation office.

[2009 c 345 § 2; 2007 c 444 § 3; 2005 c 309 § 4; 2000 c 107 § 93; 1999 sp.s. c 13 § 8; 1998 c 246 § 5. Formerly RCW 75.46.040.]

Finding—2009 c 345: "The legislature finds that:

(1) Washington has made significant investments in watershed-based activities, including the establishment of water resource inventory area (WRIA) planning units and lead agencies, lead entities, and regional salmon recovery organizations across the state. Washington watersheds have developed subbasin plans under the

Northwest power and conservation council and national oceanic and atmospheric administration-approved regional salmon recovery plans that include locally prioritized salmon recovery projects;

(2) The governor's salmon recovery office was established to support the development and implementation of regional salmon recovery plans, to assist local governments in obtaining federal assurances, and to issue a biennial state of the salmon report;

(3) The salmon recovery funding board provides grants for salmon recovery and the forum on monitoring salmon recovery and watershed health works to provide greater coordination on monitoring. Administrative support for the board and the forum are provided by the recreation and conservation office;

(4) Lead entity funding to support infrastructure and capacity needs is provided through the recreation and conservation office, which contracts with the department of fish and wildlife to implement the program. Funding for WRIA planning units and lead agencies to develop and implement watershed-based plans under RCW 90.82.040 is provided by the department of ecology; and

(5) Currently, state watershed and salmon recovery-based programs are split among several state agencies or offices. Efficient implementation of these efforts will be enhanced by promoting consolidation and integration of their activities and programs. In addition, consolidation of reporting benefits the public and decision makers regarding watershed health, which includes salmon recovery. It is also the intent of the legislature, in cooperation with local and regional officials, and respecting the ability of local citizens and officials to organize in ways best suited to address local needs, to encourage the development of incentives that consolidate existing processes and promote more effective implementation of salmon recovery plans and watershed planning and implementation." [2009 c 345 § 1.]

Intent—2009 c 345: "Nothing in this act is intended to amend chapter 90.71 RCW." [2009 c 345 § 14.]

Effective date—2007 c 444 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2007." [2007 c 444 § 9.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.040 Independent science panel on salmon recovery—

Purpose. (1) The governor may request the Washington academy of sciences, when organized pursuant to chapter 305, Laws of 2005, to impanel an independent science panel on salmon recovery to respond to requests for review pursuant to subsection (2) of this section. The panel shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

Based upon available funding, the governor's salmon recovery office may contract for services of the independent science panel for compensation under *chapter 39.29 RCW.

(2) The independent science panel shall be governed by guidelines and practices governing the activities of the Washington academy of

sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office may, during the time it is constituted, request that the panel review, investigate, and provide its findings on scientific questions relating to the state's salmon recovery efforts. The science panel does not have the authority to review individual projects or habitat project lists developed under RCW 77.85.050 or 77.85.060 or to make policy decisions. The panel shall submit its findings and recommendations under this subsection to the legislature and the governor. [2007 c 444 § 4; 2005 c 309 § 5; 2000 c 107 § 94; 1999 sp.s. c 13 § 10; 1998 c 246 § 6. Formerly RCW 75.46.050.]

***Reviser's note:** Chapter 39.29 RCW was repealed by 2012 c 224 § 29, effective January 1, 2013. See chapter 39.26 RCW.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.050 Habitat project lists. (1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIsAs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the salmon recovery funding board in accordance with procedures adopted by the board.

(4) The recreation and conservation office shall administer funding to support the functions of lead entities.

(5) Except as provided in subsection (6) of this section, a landowner whose land is used for a habitat project that is included on a habitat project list, and who has received notice from the project sponsor that the conditions of this section have been met, or a

regional fisheries enhancement group authorized under RCW 77.95.060 performing habitat restoration activities under this chapter, may not be held civilly liable for any property damages resulting from the habitat project regardless of whether or not the project was funded by the salmon recovery funding board. This subsection is subject to the following conditions:

- (a) The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;
 - (b) The project is designed to withstand 100 year floods;
 - (c) The project is not located within one-quarter mile of an established downstream boat launch;
 - (d) The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and
 - (e) If the project includes large wood placement, each individual root wad and each log larger than ten feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.
- (6) A regional fisheries enhancement group performing habitat restoration activities under this chapter may not be held civilly liable for any property damage resulting from a habitat project performed subject to the conditions specified under subsection (5) of this section unless the damage is due to acts or omissions constituting gross negligence or willful or wanton misconduct. [2023 c 260 § 1; 2013 c 194 § 1. Prior: 2009 c 345 § 3; 2009 c 333 § 25; 2005 c 309 § 6; 1999 sp.s. c 13 § 11; 1998 c 246 § 7. Formerly RCW 75.46.060.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.060 Critical pathways methodology—Habitat work schedule. (1) Critical pathways methodology shall be used to develop a habitat project list and a habitat work schedule that ensures salmon habitat projects will be prioritized and implemented in a logical sequential manner that produces habitat capable of sustaining healthy populations of salmon.

(2) The critical pathways methodology shall:

(a) Include a limiting factors analysis for salmon in streams, rivers, tributaries, estuaries, and subbasins in the region. The technical advisory group shall have responsibility for the limiting factors analysis;

(b) Identify local habitat projects that sponsors are willing to undertake. The projects identified must have a written agreement from the landowner on which the project is to be implemented. Project sponsors shall have the lead responsibility for this task;

(c) Identify how projects will be monitored and evaluated. The project sponsor, in consultation with the technical advisory group and the appropriate landowner, shall have responsibility for this task;

(d) Include a review of monitoring data, evaluate project performance, and make recommendations to the committee established under RCW 77.85.050 and to the technical review team. The technical advisory group has responsibility for this task; and

(e) Describe the adaptive management strategy that will be used. The committee established under RCW 77.85.050 shall have responsibility for this task. If a committee has not been formed, the technical advisory group shall have the responsibility for this task.

(3) The habitat work schedule shall include all projects developed pursuant to subsection (2) of this section, and shall identify and coordinate with any other salmon habitat project implemented in the region, including habitat preservation projects funded through the Washington wildlife and recreation program, the conservation reserve enhancement program, and other conservancy programs. The habitat work schedule shall also include the start date, duration, estimated date of completion, estimated cost, and, if appropriate, the affected salmonid species of each project. Each schedule shall be updated on an annual basis to depict new activities. [2000 c 107 § 95; 1999 sp.s. c 13 § 12; 1998 c 246 § 8. Formerly RCW 75.46.070.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.080 Sea grant program—Technical assistance authorized. The sea grant program at the University of Washington is authorized to provide technical assistance to volunteer groups and other project sponsors in designing and implementing habitat projects that address the limiting factors analysis required under RCW 77.85.060. The cost for such assistance may be covered on a fee-for-service basis. [2000 c 107 § 98; 1999 sp.s. c 13 § 14; 1998 c 246 § 11. Formerly RCW 75.46.100.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations. (1) The southwest Washington salmon recovery region, whose boundaries are provided in chapter 60, Laws of 1998, is created.

(2) Lead entities within a salmon recovery region that agree to form a regional salmon recovery organization may be recognized by the governor's salmon recovery office created in RCW 77.85.030 as a regional recovery organization. The regional recovery organization may plan, coordinate, and monitor the implementation of a regional recovery plan in accordance with RCW 77.85.150. Regional recovery organizations existing as of July 24, 2005, that have developed draft recovery plans approved by the governor's salmon recovery office by July 1, 2005, may continue to plan, coordinate, and monitor the implementation of regional recovery plans.

(3) Beginning January 1, 2008, the leadership council, created under chapter 90.71 RCW, shall serve as the regional salmon recovery organization for Puget Sound salmon species, except for the program known as the Hood Canal summer chum evolutionarily significant unit area, which the Hood Canal coordinating council shall continue to administer under chapter 90.88 RCW. [2009 c 345 § 10. Prior: 2007 c

444 § 5; 2007 c 341 § 49; 2005 c 309 § 7; 2000 c 107 § 99; 1998 c 246 § 12. Formerly RCW 75.46.110.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Effective date—2007 c 341: See RCW 90.71.907.

RCW 77.85.110 Salmon recovery funding board—Creation—Membership. (1) The salmon recovery funding board is created consisting of ten members.

(2) Five members of the board shall be voting members who are appointed by the governor, subject to confirmation by the senate. One of these voting members shall be a cabinet-level appointment as the governor's representative to the board. Board members who represent the general public shall not have a financial or regulatory interest in salmon recovery. The governor shall appoint one of the general public members of the board as the chair. The voting members of the board shall be appointed for terms of four years, except that two members initially shall be appointed for terms of two years and three members shall initially be appointed for terms of three years. In making the appointments, the governor shall seek a board membership that collectively provide the expertise necessary to provide strong fiscal oversight of salmon recovery expenditures, and that provide extensive knowledge of local government processes and functions and an understanding of issues relevant to salmon recovery in Washington state. The governor shall appoint at least three of the voting members of the board no later than ninety days after July 1, 1999. Vacant positions on the board shall be filled in the same manner as the original appointments. The governor may remove members of the board for good cause.

In addition to the five voting members of the board, the following five state officials shall serve as ex officio nonvoting members of the board: The director of the department of fish and wildlife, the executive director of the conservation commission, the secretary of transportation, the director of the department of ecology, and the commissioner of public lands. The state officials serving in an ex officio capacity may designate a representative of their respective agencies to serve on the board in their behalf. Such designations shall be made in writing and in such manner as is specified by the board.

(3) Staff support to the board shall be provided by the recreation and conservation office. For administrative purposes, the board shall be located with the recreation and conservation office.

(4) Members of the board who do not represent state agencies shall be compensated as provided by RCW 43.03.250. Members of the board shall be reimbursed for travel expenses as provided by RCW 43.03.050 and 43.03.060. [2007 c 241 § 20; 1999 sp.s. c 13 § 3. Formerly RCW 75.46.150.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.120 Board responsibilities—Grants and loans administration assistance. (1) The salmon recovery funding board is responsible for making grants and loans for salmon habitat projects and salmon recovery activities from the amounts appropriated to the board for this purpose. To accomplish this purpose the board may:

- (a) Provide assistance to grant applicants regarding the procedures and criteria for grant and loan awards;
- (b) Make and execute all manner of contracts and agreements with public and private parties as the board deems necessary, consistent with the purposes of this chapter;
- (c) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms that are not in conflict with this chapter;
- (d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and
- (e) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(2) The recreation and conservation office shall provide all necessary grants and loans administration assistance to the board, and shall distribute funds as provided by the board in RCW 77.85.130. [2007 c 241 § 21; 2000 c 107 § 101; 1999 sp.s. c 13 § 4. Formerly RCW 75.46.160.]

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.130 Allocation of funds—Procedures and criteria. (1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

- (2) (a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:
 - (i) Are based upon the limiting factors analysis identified under RCW 77.85.060;
 - (ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;
 - (iii) Will benefit listed species and other fish species;
 - (iv) Will preserve high quality salmonid habitat;

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding;

(vi) Are, except as provided in RCW 77.85.240, sponsored by an entity that is a Puget Sound partner, as defined in RCW 90.71.010; and

(vii) Are projects referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

(i) Are the most cost-effective;

(ii) Have the greatest matched or in-kind funding;

(iii) Will be implemented by a sponsor with a successful record of project implementation;

(iv) Involve members of the Washington conservation corps established in chapter 43.220 RCW or the veterans conservation corps established in RCW 43.60A.150; and

(v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar

document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legislative authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

(8) Any project sponsor receiving funding from the salmon recovery funding board that is not subject to disclosure under chapter 42.56 RCW must, as a mandatory contractual prerequisite to receiving the funding, agree to disclose any information in regards to the expenditure of that funding as if the project sponsor was subject to the requirements of chapter 42.56 RCW.

(9) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2011 c 20 § 16. Prior: 2007 c 341 § 36; 2007 c 257 § 1; prior: 2005 c 309 § 8; 2005 c 271 § 1; 2005 c 257 § 3; prior: 2000 c 107 § 102; 2000 c 15 § 1; 1999 sp.s. c 13 § 5. Formerly RCW 75.46.170.]

Findings—Intent—2011 c 20: See note following RCW 43.220.020.

Intent—Application—2011 c 20: See RCW 43.220.905.

Effective date—2007 c 341: See RCW 90.71.907.

Findings—Purpose—2005 c 257: See note following RCW 43.60A.150.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.135 Habitat project funding—Statement of environmental benefits—Development of outcome-focused performance measures. In providing funding for habitat projects, the salmon recovery funding board shall require recipients to incorporate the environmental benefits of the project into their grant applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process. The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the board should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section. [2001 c 227 § 9.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

RCW 77.85.140 Habitat project lists—Tracking of funds. (1) Habitat project lists shall be submitted to the salmon recovery funding board for funding at least once a year on a schedule established by the board. The board shall provide the legislature with a list of the proposed projects and a list of the projects funded as part of the biennial report required in RCW 77.85.020. Project sponsors who complete salmon habitat projects approved for funding from habitat project lists and have met grant application deadlines

will be paid by the salmon recovery funding board within thirty days of project completion.

(2) The recreation and conservation office shall track all funds allocated for salmon habitat projects and salmon recovery activities on behalf of the board, including both funds allocated by the board and funds allocated by other state or federal agencies for salmon recovery or water quality improvement. [2016 c 197 § 10. Prior: 2009 c 518 § 9; 2009 c 345 § 8; 2007 c 241 § 22; 2001 c 303 § 1; 2000 c 107 § 103; 1999 sp.s. c 13 § 6. Formerly RCW 75.46.180.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Intent—Effective date—2007 c 241: See notes following RCW 79A.25.005.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.150 Statewide salmon recovery strategy—Prospective application. (1) The governor shall, with the assistance of the governor's salmon recovery office, maintain and revise, as appropriate, a statewide salmon recovery strategy.

(2) The governor and the governor's salmon recovery office shall be guided by the following considerations in maintaining and revising the strategy:

(a) The strategy should identify statewide initiatives and responsibilities with regional recovery plans and local watershed initiatives as the principal means for implementing the strategy;

(b) The strategy should emphasize collaborative, incentive-based approaches;

(c) The strategy should address all factors limiting the recovery of Washington's listed salmon stocks, including habitat and water quality degradation, harvest and hatchery management, inadequate streamflows, and other barriers to fish passage. Where other limiting factors are beyond the state's jurisdictional authorities to respond to, such as some natural predators and high seas fishing, the strategy shall include the state's requests for federal action to effectively address these factors;

(d) The strategy should identify immediate actions necessary to prevent extinction of a listed salmon stock, establish performance measures to determine if restoration efforts are working, recommend effective monitoring and data management, and recommend to the legislature clear and certain measures to be implemented if performance goals are not met;

(e) The strategy shall rely on the best scientific information available and provide for incorporation of new information as it is obtained;

(f) The strategy should seek a fair allocation of the burdens and costs upon economic and social sectors of the state whose activities may contribute to limiting the recovery of salmon; and

(g) The strategy should seek clear measures and procedures from the appropriate federal agencies for removing Washington's salmon stocks from listing under the federal act.

(3) If the strategy is updated, an active and thorough public involvement process, including early and meaningful opportunity for

public comment, must be utilized. In obtaining public comment, the governor's salmon recovery office shall work with regional salmon recovery organizations throughout the state and shall encourage regional and local recovery planning efforts to ensure an active public involvement process.

(4) This section shall apply prospectively only and not retroactively. Nothing in this section shall be construed to invalidate actions taken in recovery planning at the local, regional, or state level prior to July 1, 1999. [2009 c 345 § 11; 2007 c 444 § 6; 2005 c 309 § 9; 1999 sp.s. c 13 § 9. Formerly RCW 75.46.190.]

Finding—Intent—2009 c 345: See notes following RCW 77.85.030.

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.160 Salmon monitoring data, information. State salmon monitoring data provided by lead entities, regional fisheries enhancement groups, and others shall be included in the database of SASSI [salmon and steelhead stock inventory] and SSHIAP [salmon and steelhead habitat inventory assessment project]. Information pertaining to habitat preservation projects funded through the Washington wildlife and recreation program, the conservation reserve enhancement program, and other conservancy programs related to salmon habitat shall be included in the SSHIAP database. [1999 sp.s. c 13 § 13. Formerly RCW 75.46.200.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.170 Salmon recovery account. The salmon recovery account is created in the state treasury. To the account shall be deposited such funds as the legislature directs or appropriates to the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for salmon recovery. [1999 sp.s. c 13 § 16. Formerly RCW 75.46.210.]

Severability—Effective date—1999 sp.s. c 13: See notes following RCW 77.85.005.

RCW 77.85.180 Findings. (1) The legislature finds that the forests and fish report as defined in RCW 76.09.020 was developed through extensive negotiations with the federal agencies responsible for administering the endangered species act and the clean water act. The legislature further finds that the forestry industry, small landowners, tribal governments, state and federal agencies, and counties have worked diligently for nearly two years to reach agreement on scientifically based changes to the forest practices rules, set forth in the forests and fish report as defined in RCW 76.09.020. The legislature further finds that if existing forest practices rules are amended as proposed in the forests and fish report as defined in RCW 76.09.020, the resulting changes in forest practices (a) will lead to: (i) Salmon habitat that meets riparian functions

vital to the long-term recovery of salmon on more than sixty thousand miles of streams in this state; (ii) identification of forest roads contributing to habitat degradation and corrective action to remedy those problems to protect salmon habitat; (iii) increased protection of steep and unstable slopes; and (iv) the implementation of scientifically based adaptive management and monitoring processes for evaluating the impacts of forest practices on aquatic resources, as defined in RCW 76.09.020, and a process for amending the forest practices rules to incorporate new information as it becomes available; (b) will lead to the protection of aquatic resources to the maximum extent practicable consistent with maintaining commercial forest management as an economically viable use of lands suitable for that purpose; and (c) will provide a regulatory climate and structure more likely to keep landowners from converting forestlands to other uses that would be less desirable for salmon recovery.

(2) The legislature further finds that the changes in laws and rules contemplated by chapter 4, Laws of 1999 sp. sess., taken as a whole, constitute a comprehensive and coordinated program to provide substantial and sufficient contributions to salmon recovery and water quality enhancement in areas impacted by forest practices and are intended to fully satisfy the requirements of the endangered species act (16 U.S.C. Sec. 1531 et seq.) with respect to incidental take of salmon and other aquatic resources and the clean water act (33 U.S.C. Sec. 1251 et seq.) with respect to nonpoint source pollution attributable to forest practices.

(3) The legislature finds that coordination is needed between the laws relating to forestry in chapter 76.09 RCW and the state salmon recovery strategy being developed under this chapter. The coordination should ensure that nonfederal forestlands are managed in ways that make appropriate contributions to the recovery of salmonid fish, water quality, and related environmental amenities while encouraging continued investments in those lands for commercial forestry purposes. Specifically, the legislature finds that forest practices rules relating to water quality, salmon, certain other species of fish, certain species of stream-associated amphibians, and their respective habitats should be coordinated with the rules and policies relating to other land uses through the statewide salmon recovery planning process. The legislature further finds that this subchapter is but one part of a comprehensive salmon strategy as required in this chapter, and this investment in salmon habitat will be of little value if a comprehensive state plan is not completed and fully implemented.

(4) The legislature recognizes that the adoption of forest practices rules consistent with the forests and fish report as defined in RCW 76.09.020 will impose substantial financial burdens on forestland owners which, if not partially offset through other changes in the laws and rules governing forestry, could lead to significantly reduced silvicultural investments on nonfederal lands, deterioration in the quality, condition, and amounts of forests on those lands, and long-term adverse effects on fish and wildlife habitat and other environmental amenities associated with well managed forests. Moreover, as the benefits of the proposed revisions to the forest practices rules will benefit the general public, chapter 4, Laws of 1999 sp. sess. suggests that some of these costs be shared with the general public.

(5) As an integral part of implementing the salmon recovery strategy, chapter 4, Laws of 1999 sp. sess. (a) provides direction to the forest practices board, the department of natural resources, and

the department of ecology with respect to the adoption, implementation, and enforcement of rules relating to forest practices and the protection of aquatic resources; (b) provides additional enforcement tools to the department of natural resources to enforce the forest practices rules; (c) anticipates the need for adequate and consistent funding for the various programmatic elements necessary to fully implement the strategy over time and derive the long-term benefits; (d) provides for the acquisition by the state of forestlands within certain stream channel migration zones where timber harvest will not be allowed; (e) provides for small landowners to have costs shared for a portion of any extraordinary economic losses attributable to the revisions to the forest practices rules required by chapter 4, Laws of 1999 sp. sess.; and (f) amends other existing laws to aid in the implementation of the recommendations set forth in the forests and fish report as defined in RCW 76.09.020. [1999 sp.s. c 4 § 101. Formerly RCW 75.46.300.]

Part headings not law—1999 sp.s. c 4: "Part headings used in this act are not any part of the law." [1999 sp.s. c 4 § 1403.]

RCW 77.85.190 Federal assurances in forests and fish report—Events constituting failure of assurances—Governor's authority to negotiate. (1) Chapter 4, Laws of 1999 sp. sess. has been enacted on the assumption that the federal assurances described in the forests and fish report as defined in RCW 76.09.020 will be obtained and that forest practices conducted in accordance with chapter 4, Laws of 1999 sp. sess. and the rules adopted under chapter 4, Laws of 1999 sp. sess. will not be subject to additional regulations or restrictions for aquatic resources except as provided in the forests and fish report.

(2) The occurrence of any of the following events shall constitute a failure of assurances:

(a) Either (i) the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is listed as threatened under the endangered species act within two years after the date on which the aquatic resource is so listed or, in the case of bull trout, within two years after August 18, 1999; or (ii) any such rule fails to permit any incidental take that would occur from the conduct of forest practices in compliance with the rules adopted under chapter 4, Laws of 1999 sp. sess. or fails to confirm that such forest practices would not otherwise be in violation of the endangered species act and the regulations promulgated under that act. However, this subsection (2)(a) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(b) Either the national marine fisheries service or the United States fish and wildlife service shall promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would preclude the conduct of forest practices consistent with the prescriptions outlined in the forests and fish report. However, this subsection (2)(b) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(c) Either the secretary of the interior or the secretary of commerce fails to issue an acceptable incidental take permit under 16

U.S.C. Sec. 1539(a) covering all fish and wildlife species included within aquatic resources on or before June 30, 2005. An acceptable incidental take permit will (i) permit the incidental take, if any, of all fish and wildlife species included within aquatic resources resulting from the conduct of forest practices in compliance with the prescriptions outlined in the forests and fish report; (ii) provide protection to the state of Washington and its subdivisions and to landowners and operators; (iii) not require the commitment of additional resources beyond those required to be committed under the forests and fish report; and (iv) provide "no-surprises" protection as described in 50 C.F.R. Parts 17 and 222 (1998);

(d) Either the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) within five years after the date on which a fish species is listed as threatened or endangered under the endangered species act which prohibits actions listed under 16 U.S.C. 1538;

(e) The environmental protection agency or department of ecology fails to provide the clean water act assurances described in appendix M to the forests and fish report; or

(f) The assurances described in (a) through (e) of this subsection are reversed or otherwise rendered ineffective by subsequent federal legislation or rule making or by final decision of any court of competent jurisdiction.

Upon the occurrence of a failure of assurances, any agency, tribe, or other interested person including, without limitation, any forestland owner, may provide written notice of the occurrence of such failure of assurances to the legislature and to the office of the governor. Promptly upon receipt of such a notice, the governor shall review relevant information and if he or she determines that a failure of assurances has occurred, the governor shall make such a finding in a written report with recommendations and deliver such report to the legislature. Upon notice of the occurrence of a failure of assurances, the legislature shall review chapter 4, Laws of 1999 sp. sess., all rules adopted by the forest practices board, the department of ecology, or the department of fish and wildlife at any time after January 1, 1999, that were adopted primarily for the protection of one or more aquatic resources and affect forest practices and the terms of the forests and fish report, and shall take such action, including the termination of funding or the modification of other statutes, as it deems appropriate.

(3) The governor may negotiate with federal officials, directly or through designated representatives, on behalf of the state and its agencies and subdivisions, to obtain assurances from federal agencies to the effect that compliance with the forest practices rules as amended under chapter 4, Laws of 1999 sp. sess. and implementation of the recommendations in the forests and fish report will satisfy federal requirements under the endangered species act and the clean water act and related regulations, including the negotiation of a rule adopted under section 4(d) of the endangered species act, entering into implementation agreements and receiving incidental take permits under section 10 of the endangered species act or entering into other intergovernmental agreements.

(4) (a) It is expressly understood that the state will pursue a rule delineating federal assurances under 16 U.S.C. Sec. 1533(d) and may concurrently develop a Sec. 10(a) habitat conservation plan by June 2005. The department of natural resources must report regularly

to the house of representatives and senate natural resources committees on the progress of the program, and on any technical or legal issues that may arise.

(b) The forest and fish agreement as embodied in chapter 4, Laws of 1999 sp. sess. and this chapter, the rules adopted by the forest practices board to implement this chapter, and all protections for small forestland owners, are reaffirmed as part of the extension of time granted in chapter 228, Laws of 2002 and will be collectively included in the federal assurances sought by the state of Washington. [2002 c 228 § 1; 1999 sp.s. c 4 § 1301. Formerly RCW 75.46.350.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.190.

RCW 77.85.200 Salmon and steelhead recovery program—Management board—Duties. (1) A program for salmon and steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat areas classified as the lower Columbia evolutionarily significant units by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for developing and overseeing the implementation of the habitat portion of the salmon and steelhead recovery plan and is empowered to receive and disburse funds for the salmon and steelhead recovery initiatives. The management board created pursuant to this section shall constitute the lead entity and the committee established under RCW 77.85.050 responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within the lower Columbia evolutionarily significant units. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within the lower Columbia evolutionarily significant units as a voting member selected by the cities in the lower Columbia evolutionarily significant units; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within the lower Columbia evolutionarily significant units selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in the lower Columbia evolutionarily significant units appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the members of the management board by the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties.

Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3) (a) The management board shall participate in the development of a habitat recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activities as well as habitat conservation plans in the development and implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for the development of a lower Columbia salmon and steelhead habitat recovery plan and for coordinating and monitoring the implementation of the plan. The management board will submit all future plans and amendments to plans to the governor's salmon recovery office for the incorporation of hatchery, harvest, and hydropower components of the statewide salmon recovery strategy for all submissions to the national marine fisheries service. In developing and implementing the habitat recovery plan, the management board will work with appropriate federal and state agencies, tribal governments, local governments, and the public to make sure hatchery, harvest, and hydropower components receive consideration in context with the habitat component. The management board may work in cooperation with the state and the national marine fisheries service to modify the plan, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river salmon and steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in salmon and steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each tributary basin in the lower Columbia. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a biennial basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the

conclusion of the program describing its efforts and successes in developing and implementing the lower Columbia salmon and steelhead recovery plan. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). [2009 c 199 § 1; 2005 c 308 § 1; 2001 c 135 § 1; 2000 c 107 § 121; 1998 c 60 § 2. Formerly RCW 75.56.050.]

Effective date—2001 c 135: "This act takes effect August 1, 2001." [2001 c 135 § 3.]

Finding—Intent—1998 c 60: "The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date." [2001 c 135 § 2; 1998 c 60 § 1.]

Effective date—1998 c 60: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 1998]." [1998 c 60 § 3.]

RCW 77.85.220 Salmon intertidal habitat restoration planning process—Task force—Reports. (1) If a limiting factors analysis has been conducted under this chapter for a specific geographic area and that analysis shows insufficient intertidal salmon habitat, the department of fish and wildlife and the county legislative authorities of the affected counties may jointly initiate a salmon intertidal habitat restoration planning process to develop a plan that addresses the intertidal habitat goals contained in the limiting factors analysis. The fish and wildlife commission and the county legislative authorities of the geographic area shall jointly appoint a task force composed of the following members:

(a) One representative of the fish and wildlife commission, appointed by the chair of the commission;

(b) Two representatives of the agricultural industry familiar with agricultural issues in the geographic area, one appointed by an organization active in the geographic area and one appointed by a statewide organization representing the industry;

(c) Two representatives of environmental interest organizations with familiarity and expertise of salmon habitat, one appointed by an organization in the geographic area and one appointed by a statewide organization representing environmental interests;

(d) One representative of a diking and drainage district, appointed by the individual districts in the geographic area or by an association of diking and drainage districts;

(e) One representative of the lead entity for salmon recovery in the geographic area, appointed by the lead entity;

(f) One representative of each county in the geographic area, appointed by the respective county legislative authorities; and

(g) One representative from the office of the governor.

(2) Representatives of the United States environmental protection agency, the United States natural resources conservation service, federal fishery agencies, as appointed by their regional director, and tribes with interests in the geographic area shall be invited and encouraged to participate as members of the task force.

(3) The task force shall elect a chair and adopt rules for conducting the business of the task force. Staff support for the task force shall be provided by the Washington state conservation commission.

(4) The task force shall:

(a) Review and analyze the limiting factors analysis for the geographic area;

(b) Initiate and oversee intertidal salmon habitat studies for enhancement of the intertidal area as provided in RCW 77.85.230;

(c) Review and analyze the completed assessments listed in RCW 77.85.230;

(d) Develop and draft an overall plan that addresses identified intertidal salmon habitat goals that has public support; and

(e) Identify appropriate demonstration projects and early implementation projects that are of high priority and should commence immediately within the geographic area.

(5) The task force may request briefings as needed on legal issues that may need to be considered when developing or implementing various plan options.

(6) Members of the task force shall be reimbursed by the conservation commission for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(7) The task force shall provide annual reports that provide an update on its activities to the fish and wildlife commission, to the involved county legislative authorities, and to the lead entity formed under this chapter. [2003 c 391 § 4.]

Initiation of process—2003 c 391 §§ 4 and 5: "The process established in sections 4 and 5 of this act shall be initiated as soon as practicable in Skagit county." [2003 c 391 § 7.]

Severability—Effective date—2003 c 391: See notes following RCW 77.57.030.

RCW 77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan. (1) In consultation with the appropriate task force formed under RCW 77.85.220, the conservation commission may contract with universities, private consultants, nonprofit groups, or other entities to assist it in developing a plan incorporating the following elements:

(a) An inventory of existing tide gates located on streams in the county. The inventory shall include location, age, type, and

maintenance history of the tide gates and other factors as determined by the appropriate task force in consultation with the county and diking and drainage districts;

(b) An assessment of the role of tide gates located on streams in the county; the role of intertidal fish habitat for various life stages of salmon; the quantity and characterization of intertidal fish habitat currently accessible to fish; the quantity and characterization of the present intertidal fish habitat created at the time the dikes and outlets were constructed; the quantity of potential intertidal fish habitat on public lands and alternatives to enhance this habitat; the effects of saltwater intrusion on agricultural land, including the effects of backfeeding of salt water through the underground drainage system; the role of tide gates in drainage systems, including relieving excess water from saturated soil and providing reservoir functions between tides; the effect of saturated soils on production of crops; the characteristics of properly functioning intertidal fish habitat; a map of agricultural lands designated by the county as having long-term commercial significance and the effect of that designation; and the economic impacts to existing land uses for various alternatives for tide gate alteration; and

(c) A long-term plan for intertidal salmon habitat enhancement to meet the goals of salmon recovery and protection of agricultural lands. The proposal shall consider all other means to achieve salmon recovery without converting farmland. The proposal shall include methods to increase fish passage and otherwise enhance intertidal habitat on public lands pursuant to subsection (2) of this section, voluntary methods to increase fish passage on private lands, a priority list of intertidal salmon enhancement projects, and recommendations for funding of high priority projects. The task force also may propose pilot projects that will be designed to test and measure the success of various proposed strategies.

(2) In conjunction with other public landowners and the appropriate task force formed under RCW 77.85.220, the department shall develop an initial salmon intertidal habitat enhancement plan for public lands in the county. The initial plan shall include a list of public properties in the intertidal zone that could be enhanced for salmon, a description of how those properties could be altered to support salmon, a description of costs and sources of funds to enhance the property, and a strategy and schedule for prioritizing the enhancement of public lands for intertidal salmon habitat. This initial plan shall be submitted to the appropriate task force at least six months before the deadline established in subsection (3) of this section.

(3) The final intertidal salmon enhancement plan shall be completed within two years from the date the task force is formed under RCW 77.85.220 and funding has been secured. A final plan shall be submitted by the appropriate task force to the lead entity for the geographic area established under this chapter. [2009 c 333 § 24; 2003 c 391 § 5.]

Initiation of process—2003 c 391 §§ 4 and 5: See note following RCW 77.85.220.

Severability—Effective date—2003 c 391: See notes following RCW 77.57.030.

RCW 77.85.240 Puget Sound partners. When administering funds under this chapter, the board shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 37.]

Effective date—2007 c 341: See RCW 90.71.907.